UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, et al., Plaintiffs, -v- UNITED STATES DEPARTMENT OF COMMERCE, et al., Defendants.	18-CV-2921 (JMF) ORDER

JESSE M. FURMAN, United States District Judge:

Plaintiffs' motion to include additional documents in the Administrative Record (Docket No. 521) is DENIED for the reasons given on the record at trial on November 15, 2018.

Plaintiffs' motion to admit certain trial exhibits into evidence (Docket No. 522) is GRANTED in part and DENIED in part for the reasons given on the record at trial on November 15, 2018. With respect to the exhibits as to which the Court had reserved judgment — namely, PX-347, PX-377, PX-383, PX-392, PX-395, PX-396, PX-401, and PX-413 — Defendants' hearsay objections are overruled, as there is no dispute that each exhibit is a statement by a party's "employee on a matter within the scope of that relationship and while it existed." Fed. R. Evid. 801(d)(2)(D). In the Court's judgment, the disclaimer on each exhibit affects the weight, but not the admissibility, of the evidence. An analogy is instructive: Consider a document authored by a corporate party's employee setting forth his or her "own" views on a matter for discussion within the company. Even if the employee's views were shared solely to stimulate discussion and did not represent the views of the company itself, there is no question that such a document would not be hearsay pursuant to Rule 801(d)(2)(D) of the Federal Rules of Evidence.

So too the articles written by Census Bureau employees on matters within the scope of their employment relationship are not hearsay, even though they contain disclaimers indicating that the views expressed are "not necessarily" those of the Census Bureau.

With those rulings, the trial record is now closed, subject to the caveats discussed on the record at trial on November 15, 2018 — including that, as jointly stipulated by the parties on the record, the Court may reopen the trial record for the purpose of obtaining and including Secretary Ross's testimony in the event that the Supreme Court's stay of the Court's Order compelling that testimony is dissolved before the Court issues a final decision.

No later than November 19, 2018, Plaintiffs shall submit an agreed-upon exhibit list updated to reflect (1) which exhibits were admitted into evidence (and when) and (2) whether those exhibits appear in the Administrative Record (and, if so, where).

The Clerk of Court is directed to terminate Docket Nos. 521 and 522.

SO ORDERED.

Dated: November 16, 2018
New York, New York

JESSE M. FURMAN
United States District Judge