No. 18-966

IN THE

Supreme Court of the United States

DEPARTMENT OF COMMERCE, *et al.*,
Petitioners,

v.

STATE OF NEW YORK, *et al.*,
Respondents.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR AMICI CURIAE THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS, THE BRENNAN CENTER FOR JUSTICE AT N.Y.U. SCHOOL OF LAW, AND CIVIL SOCIETY ORGANIZATIONS IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI CURIAE[1]

The Leadership Conference on Civil and Human Rights ("The Leadership Conference") is the nation's oldest, largest, and most diverse coalition of more than 200 national organizations committed to the protection of civil and human rights in the United States. The Leadership Conference was founded in 1950 by leaders of the civil rights and labor rights movements, grounded in the belief that civil rights would be won not by one group alone but through a coalition. The Leadership Conference works to build an America that is inclusive and as good as its ideals by promoting laws and policies that further civil and human rights for all individuals in the United States.

The Brennan Center for Justice at N.Y.U. School of Law ("The Brennan Center") is a not-for-profit, nonpartisan think tank and public interest law institute that seeks to improve systems of democracy and justice. The Brennan Center was founded in 1995 to honor the extraordinary contributions of Justice William J. Brennan, Jr., to American law and society. Through its Democracy Program, The Brennan Center seeks to bring the ideal of representative self-government closer to reality by protecting the right to vote and promoting a full and accurate census count. The Brennan Center conducts empirical, qualitative, historical, and legal

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[1] No counsel for a party authored this brief in whole or in part, and no entity or person, other than amici curiae and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. This brief does not purport to convey the position of the New York University School of Law. Letters from the parties consenting to the filing of this brief are on file with the Clerk.

research on the census and regularly participates in voting rights cases before this Court.

Additional amici, listed in the Appendix, are grassroots, advocacy, labor, legal services, education, faith-based, and other organizations committed to the protection of civil and human rights in the United States. Amici are united by an interest in ensuring that all communities—particularly immigrants, low-income communities, and communities of color—continue to enjoy the recognition, freedom, and economic and political power to which they are entitled under the United States Constitution.

The amici who have joined together on this brief have spent decades advocating and litigating around issues concerning equal representation. Members of this coalition have vast knowledge and experience concerning the census and the uses to which it has been put, including the enforcement of voting rights. The government's addition of a citizenship question to the 2020 census gravely threatens to both undermine the enforcement of voting rights and harm the diverse communities amici represent—communities who stand to lose the most if the 2020 census includes a citizenship question.

SUMMARY OF ARGUMENT

The central question in this case is whether the district court correctly concluded that Secretary of Commerce Wilbur Ross acted "arbitrar[ily] and capricious[ly]" in deciding to add a citizenship question to the decennial census. Pet. App. 9a-10a.[2] The answer

[2] The district court in a case presenting similar issues, *California* v. *Ross*, 2019 WL 1052434 (N.D. Cal. Mar. 6, 2019), also recently concluded that the Secretary's "reliance on [Voting Rights

turns in part on whether Secretary Ross's reliance on the Department of Justice's proffered explanation for this decision—that including a citizenship question is "critical" to enforcement of the Voting Rights Act (VRA)—is "rational." Pet. Br. 3, 13, 36; *see also* Pet. App. 564a (letter from Arthur Gary to Ron Jarmin justifying citizenship question as "critical to the [Justice] Department's enforcement of Section 2 of the Voting Rights Act and its important protections against racial discrimination in voting"); Pet. App. 548a, 550a (memorandum from Wilbur Ross to Karen Dunn Kelley citing "DOJ's request for improved [citizen voting-age population] data to enforce the VRA").

The answer to that question is simple: There is no factual or legal basis—none—to support the position that collecting citizenship data from the decennial census is needed for VRA enforcement. In fact, modifying the short-form census to ask for the citizenship status of everyone in the country, as Secretary Ross has proposed, would *undermine* VRA enforcement. Despite Petitioners' protestations to the contrary, there is no question that the DOJ's proffered VRA rationale was "so flawed that it was arbitrary and capricious to rely on [it]." Pet. Br. 36.

Amici would know. They have been among the most experienced guardians of the VRA and the values it reflects for the past 54 years. In that time, existing citizenship data drawn from sample surveys or the long-form census sent only to small subsets of American housing units have been more than sufficient for robust, effective enforcement of the VRA. Amici are

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Act] enforcement to justify inclusion of the citizenship question was mere pretext and the definition of an arbitrary and capricious governmental act." *Id.* at *1.

not aware of a single case in which the success of plaintiffs in a VRA enforcement action turned on the unavailability of citizenship data from the decennial census—that is, data derived from the surveys used for the constitutionally required, once-a-decade head count. Indeed, the DOJ has never, in the 54-year history of the VRA, cited a VRA-related need for citizenship data from the decennial census. What is more, even this administration's former acting head of the DOJ's Civil Rights Division (the division that enforces the VRA) admitted in his deposition in this case that the citizenship question is not necessary to enforce the VRA.[3]

Nor is there any evidence that such data would assist VRA litigation either today or in the future. As representatives of minority communities, amici recognize the practical effects the citizenship question would have on response rates in their constituencies. And from their experience enforcing and advocating around the VRA, amici understand the harmful legal consequences of a differential undercount. Based on their experience and expertise, amici know that census citizenship data would be *less complete* and *less accurate* than existing citizenship data. Collecting citizenship data on the decennial census would therefore serve the opposite of Secretary Ross's stated purpose: It would severely undermine VRA enforcement. Indeed, a citizenship question would cause a disproportionate undercount of the very communities the VRA was enacted to protect, leading to dilution of their voting power and underrepresentation at all levels of government.

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[3] *See* Gore Dep. Tr. 300:8-11 ("Q: You agree, right, Mr. Gore, that CVAP data collected through the census questionnaire is not necessary for DOJ's VRA enforcement efforts? A: I do agree with that.").

The public comments that the Census Bureau received regarding Secretary Ross's decision reflect this broad understanding of the citizenship question's negative consequences for the communities amici represent: A staggering 99.1 percent of the nearly 150,000 comments received related to the citizenship question (some 136,400 comments) opposed adding the question.[4]

Under these circumstances, Petitioners' proffered VRA justification for the citizenship question is so implausible that it is impossible to treat it as a predicate for reasonable government action.

In short, including a citizenship question on the 2020 census will inflict grievous harm on poor people, immigrant communities, and communities of color with no countervailing benefit—and certainly not with the supposed voting rights benefit on which Petitioners stake their defense. The Court should affirm the decision below.

ARGUMENT

I. EXISTING DATA ARE SUFFICIENT TO ENFORCE THE VOTING RIGHTS ACT

Existing citizenship data, obtained through sources other than the decennial census, have long enabled plaintiffs to vindicate their rights under the VRA. Petitioners fail to offer any examples of cases where census citizenship data were necessary to protect the rights of minority voters. Instead, Petitioners claim Secretary Ross was entitled to base his decision on a letter from Arthur Gary, General Counsel for the Jus-

[4] U.S. Census Bureau, *Summary of Comments Received on the 2020 Census Federal Register Notice* 3, No. USBC-2018-0005-79003 (Jan. 24, 2019).

tice Management Division of the U.S. Department of Justice (the "Gary Letter")—a division with no role in enforcing the VRA—requesting that the Department of Commerce add a citizenship question to the decennial census purportedly to enhance VRA enforcement efforts. But the reasons provided in the Gary Letter—reasons that two district courts have deemed pretextual—were fundamentally flawed, rendering any reliance on that letter arbitrary and capricious.

A. VRA Litigation Has Proceeded Successfully For Decades With Citizenship Data From Sources Other Than The Decennial Census

Litigation under Section 2 of the VRA has proceeded for decades under a well-established legal framework. Section 2 prohibits States and their political subdivisions from implementing voting standards, practices, or procedures that result in "a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 52 U.S.C. § 10301(a). Section 2 is violated when, based on the totality of the circumstances, the challenged voting process is "not equally open to participation by members of a [racial minority group] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Id.* § 10301(b). Because Section 2 violations involve suppressing minority voting power—often through discriminatory redistricting—they are often referred to as "vote dilution" claims. *See League of Latin Am. Citizens* v. *Perry*, 548 U.S. 399, 427 (2006).

In *Thornburg* v. *Gingles*, 478 U.S. 30 (1986), this Court identified three "necessary preconditions" plaintiffs must show before proceeding with a vote dilution

claim under the VRA. *Id.* at 50. First, plaintiffs must establish that their minority group is "sufficiently large and geographically compact to constitute a majority in a single-member [voting] district" if the districts were drawn differently. *Id.* Second, they must show that the minority group is "politically cohesive." *Id.* at 51. Third, they must "demonstrate that the white majority votes sufficiently as a bloc to enable it … usually to defeat the minority's preferred candidate." *Id.* In *Bartlett* v. *Strickland*, this Court further explained that to satisfy the first *Gingles* precondition, plaintiffs must show it is possible to draw a district with a "numerical majority of minority voters" in the "voting-age population"—in other words, a majority-minority district. 556 U.S. 1, 14, 20 (2009) (plurality).

Plaintiffs bear the burden of establishing the three *Gingles* preconditions, and in doing so they routinely leverage data about citizenship status for a variety of purposes. First, these data are useful for establishing liability. For example, data about the citizen voting-age population (CVAP) can generate a picture of the local electorate to help show that the minority group could elect candidates of its choice if the district were drawn differently, that the group is unified by race or language, and that a white majority can mobilize against the minority group in most elections. *See Gingles*, 478 U.S. at 51. Second, in cases where plaintiffs are successful in proving discriminatory vote dilution, courts may also make use of CVAP data to fashion an effective remedy.[5] In such cases, citizenship data may

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[5] *Progress Report on the 2020 Census: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 115th Cong. 16 (2018) (testimony of Justin Levitt, Professor, Loyola Law School) ("Levitt Testimony").

be used in redrawing district lines to provide minority voters with an equitable opportunity to elect their candidates of choice.

Petitioners have not offered any examples of plaintiffs citing a need for decennial census citizenship data.[6] As the district court noted, in the 54 years that the DOJ has enforced Section 2 of the VRA, it has "never before cited a VRA-related need for citizenship data from the decennial census; never before asserted that it had failed to bring or win a VRA case because of the absence of such data; and never before claimed that it had been hampered in any way by relying on citizenship estimates obtained from sample surveys." Pet. App. 125a. Indeed, "for all fifty-four years that the VRA has existed, the federal government has *never* had a 'hard-count' tally of the number of citizens in the country." *Id.* 27a-28a.

Census citizenship data have been unnecessary because, since the enactment of the VRA, existing citizenship data—from sources other than the decennial census—have enabled both the DOJ and private plaintiffs to effectively litigate Section 2 cases. In contending that a new source of citizenship data is needed to protect minorities' voting rights, Petitioners and their amici elide an extensive record of successful Section 2 cases. According to one comprehensive study of VRA

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[6] Petitioners' amici erroneously suggest that the plaintiffs in *Benavidez* v. *Irving Independent School District*, 690 F. Supp. 2d 451 (N.D. Tex. 2010), could have succeeded on their Section 2 claim if citizenship data from the decennial census had been available to them. *See* Project on Fair Representation Amicus Br. 11; Republican Nat'l Comm. et al. Amicus Br. 21. As discussed below, however, that case did not turn on the availability of census citizenship data. *See infra* pp. 17-18.

litigation, there have been 117 "reported Section 2 cases leading to favorable results for minority voters" between the Act's reauthorization in 1982 and 2006.[7] And since that report was published in 2006, amici and their allies have used existing citizenship data to enforce the VRA successfully on myriad occasions.[8]

That number likely dramatically undercounts the incidence of successful vote dilution challenges because it includes only reported litigation with favorable outcomes. The number of successful Section 2 cases is even higher if unreported decisions and settlements are included. For example, one study of nine States with histories of voting-related discrimination found that "approximately ten times the number of" cases go unreported than reported.[9] Successful VRA cases in turn have led to reforms in numerous counties and multiple electoral systems within those counties. The same 2006 study referenced *supra* determined that plaintiffs prevailed in 653 reported and unreported cases across those nine states, affecting the voting populations in

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[7] National Commission on the Voting Rights Act, *Protecting Minority Voters: The Voting Rights Act at Work 1982-2005*, at 88 (Feb. 2006).

[8] *See, e.g.*, *Luna* v. *County of Kern*, 291 F. Supp. 3d 1088 (E.D. Cal. 2018); *Wright* v. *Sumter Cty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297 (M.D. Ga. 2018); *Patino* v. *City of Pasadena*, 230 F. Supp. 3d 667 (S.D. Tex. 2017); *One Wisconsin Inst., Inc.* v. *Thomsen*, 198 F. Supp. 3d 896 (W.D. Wis. 2016); *North Carolina State Conf. NAACP* v. *McCrory*, 831 F.3d 204 (4th Cir. 2016); *Pope* v. *County of Albany*, 94 F. Supp. 3d 302 (N.D.N.Y. 2015); *Montes* v. *City of Yakima*, 40 F. Supp. 3d 1377 (E.D. Wash. 2014); *Large* v. *Fremont Cty.*, 709 F. Supp. 2d 1176 (D. Wyo. 2010); *United States* v. *Brown*, 494 F. Supp. 2d 440 (S.D. Miss. 2007), *aff'd*, 561 F.3d 420 (5th Cir. 2009).

[9] *Protecting Minority Voters*, *supra* n.7, at 88.

counties at least 825 times—all without the use of citizenship data drawn from the decennial census.[10]

Part of the reason for these successes is that the citizenship data necessary to successfully litigate vote dilution claims have been obtained from sources other than the decennial census, and for good reason. Those sources—the long-form census and the American Community Survey (ACS), both of which are sample surveys—provide more accurate and up-to-date data on citizenship than the decennial census does.

From 1986 (when *Gingles* made CVAP data relevant to vote dilution claims) until 2005, CVAP data were obtained through the long-form census, a questionnaire provided only to approximately one in six households.[11] During that time, the long-form census included a citizenship question along with an extensive battery of other personal questions, ranging from questions about the mode of entering the house to the extent of the house's kitchen facilities.[12] More recently, from 2005 to the present, CVAP data have been available from the annual ACS, a monthly data-gathering exercise that collects continuous, consistent nationwide demographic data through surveys sent to only small

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[10] *Id.*

[11] Petitioners repeatedly assert that the citizenship question "has been asked in one form or another for nearly 200 years." Pet. Br. 12. But as the district court found, this is both "flat wrong in one respect" and "materially misleading in another." Pet. App. 274a. For an accurate account of the history of citizenship inquiries on the decennial census, *see generally* Census Historians and Social Scientists Amicus Br.

[12] Levitt Testimony 3-4.

subsets of the country's population.[13] Because it is not sent to everyone in the country, the ACS (like the long-form census before it) relies on sampling, which the Census Bureau has determined is a more accurate way to gather citizenship data than asking everyone about their citizenship status, which would suppress census response rates and lead to less accurate citizenship data. *See infra* Part II.[14] In fact, in recognition of the harms that asking about citizenship on the decennial census would entail, when DOJ has sought to collect additional citizenship data in the past, it has requested that such data be collected from the ACS, not the decennial census.[15]

Given the availability of citizenship data from other sources, "there is not one" case—across all of the Section 2 cases brought by the DOJ over the past 19 years, by both Republican and Democratic administrations—"in which a decennial enumeration would have enabled enforcement that the existing survey data on citizenship did not permit. Indeed, not one of these cases has realistically been close to the line."[16] While "[a]dding private litigation expands the sample set," it is still "exceedingly rare for plaintiffs enforcing the Voting Rights Act to run into trouble based on the adequacy of the Census's survey data, in any way that asking a citizenship question on the decennial enumeration might

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[13] *See* U.S. Census Bureau, *Decennial Census and the American Community Survey (ACS)* (Sept. 5, 2017).

[14] *See also* U.S. Census Bureau, *Statistical Abstract of the United States: 2004-2005* 925 (124th ed. 2004).

[15] *See* Levitt Testimony 13-14.

[16] *Id.* at 18 & n.77 (gathering cases).

possibly cure."[17] Acting Assistant Attorney General John Gore confirmed this in his statement to Congress, in which he was unable to identify a single DOJ enforcement action or private action that was hampered by currently available citizenship data.[18] There is simply no evidence that the success of Section 2 litigation has been frustrated by any inadequacy in existing citizenship data.

Despite the absence of any need for decennial census citizenship data, and despite VRA plaintiffs' success with existing data, Petitioners contend that adding "a question on citizenship will best enable the Department [to] protect all American citizens' voting rights under Section 2." Pet. App. 565a; *see also* Pet. Br. 47. Petitioners' support for this claim comes from the Gary Letter, which was submitted to Secretary Ross by Arthur Gary, the General Counsel for the DOJ's Justice Management Division—an individual and a division with no role or experience in enforcing the VRA. As recent supplemental congressional interviews have confirmed, the Gary Letter was actually written by then-Acting Assistant Attorney General for Civil Rights John Gore, with assistance from advisors at the Commerce Department who also had "no experience with, or responsibility for, enforcement of the VRA." Pet. App. 91a.[19]

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[17] *Id.* at 18.

[18] *See generally Progress Report on the 2020 Census* (statement of John M. Gore, Acting Assistant Att'y Gen., U.S. Dep't of Justice).

[19] *See also* Memorandum from the Majority Staff of the House of Representatives Committee on Oversight and Reform to Committee Members 2 (Mar. 14, 2019) ("Mr. Gore was the princi-

In support of the request for census citizenship data, the Gary Letter observed that "[m]ultiple federal courts of appeals have held that … citizen voting-age population is the proper metric for determining whether a racial group could constitute a majority in a single-member district," citing five cases. Pet. App. 565a. Those cases, the letter contended, "make clear that, in order to assess and enforce compliance with Section 2's protection against discrimination in voting, the Department needs to be able to obtain citizen voting-age population data for census blocks, block groups, counties, towns, and other locations where potential Section 2 violations are alleged or suspected." *Id.* 566a.

None of the cases the Gary Letter cited supports the anomalous and damaging request to include a citizenship question on the 2020 census. While these cases confirm that citizenship is a *relevant* consideration in Section 2 cases, they offer no indication that existing data are *inadequate*.

In cases in which plaintiffs have not met the first *Gingles* precondition, including those cases cited in the Gary Letter, they have failed for reasons wholly unrelated to the adequacy of existing citizenship data. In several cases, plaintiffs' proposed districts failed the numerosity requirement because they lacked a majority of minority voters. In *Negron* v. *City of Miami Beach*, for instance, the Eleventh Circuit affirmed the district court's conclusion that plaintiffs failed to satisfy the first *Gingles* precondition—not because of a lack of citizenship data but because, "when citizenship is taken into account, there is no Hispanic majority in any of the

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pal drafter of DOJ's December 12, 2017, request to the Department of Commerce to add the citizenship question[.]").

districts." 113 F.3d 1563, 1568 (11th Cir. 1997). The court's conclusion rested on its analysis of existing citizenship data and identified no flaw or deficiency in that information.

Similarly, in *Romero* v. *City of Pomona*, the district court did not question the accuracy or sufficiency of existing data; rather, it concluded that such data "conclusively establishes that neither hispanics nor blacks can constitute a majority of the voters of any single member district." 665 F. Supp. 853, 858 (C.D. Cal. 1987), *aff'd*, 883 F.2d 1418 (9th Cir. 1989).[20] In other cases, plaintiffs have been unable to show the existence of any illustrative district.[21] And in some cases,

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[20] *See also Strickland*, 556 U.S. at 14 (plurality) (African-Americans represented only 39.36 percent of voting-age population); *Hall* v. *Virginia*, 385 F.3d 421, 430 (4th Cir. 2004) ("The plaintiffs concede that black voters cannot form a majority in the Fourth District, and thereby elect a candidate, without the support of voters from other racial or ethnic groups."); *Dillard* v. *Baldwin Cty. Comm'rs*, 376 F.3d 1260, 1269 (11th Cir. 2004) ("As of the last census, the African-American population of Baldwin County had declined to less than 10% of the county's total voting-age population."); *McNeil* v. *Springfield Park Dist.*, 851 F.2d 937, 944 (7th Cir. 1988) ("[B]lacks … would not comprise a majority of the voting age population in either single-member district."); *Rios-Andino* v. *Orange Cty.*, 51 F. Supp. 3d 1215, 1225 (M.D. Fla. 2014) (trial expert "was uncertain as to whether Latino citizens of voting age were actually a majority" in the district).

[21] *See Wright* v. *Sumter Cty. Bd. of Elections & Registration*, 2014 WL 1347427, at *2 (M.D. Ga. Apr. 3, 2014) (plaintiff "did not propose or identify any scheme or district division—a benchmark—that would provide black voters better access to the political process"); *In re 2012 Legislative Districting*, 80 A.3d 1073, 1116 (Md. 2013) (plaintiffs did not "demonstrate that any politically cohesive minority group within a single-member district is sufficiently large and geographically compact to constitute a majority group in that district"); *Fairley* v. *Hattiesburg*, 584 F.3d 660, 669 (5th

plaintiffs have proposed illustrative districts that were not "geographically compact."[22] In none of these cases did the courts express any concerns about existing citizenship data.

In other words, plaintiffs have failed to meet the first *Gingles* precondition for a number of reasons, but never due to a lack of sufficient citizenship data. Collecting citizenship data on the decennial census, therefore, would not improve plaintiffs' ability to satisfy the first *Gingles* precondition—especially in light of the significant harms that will flow from adding a citizenship question. *See infra* Parts II and III.

B. The Gary Letter Offers No Valid Reasons For Requesting Citizenship Data From The Decennial Census

As noted, the Commerce Department's decision to include a citizenship question in the census purportedly followed a request from the DOJ as stated in the Gary Letter. *See* Pet. Br. 29-30; Pet. App. 564a-569a. The Gary Letter hinges on a fictitious need for decennial census citizenship data to further VRA enforcement,

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Cir. 2009) (plaintiffs did not satisfy their burden of showing illustrative plans).

[22] *See Sensley* v. *Albritton*, 385 F.3d 591, 596 (5th Cir. 2004) (plaintiffs showed that proposed district would have majority African-American voting-age population but did not satisfy "geographic compactness" requirement); *Gause* v. *Brunswick Cty.*, 1996 WL 453466, at *2 (4th Cir. Aug. 13, 1996) (per curiam) (unpublished table decision) ("The plaintiffs' vote dilution claim fails because the African-American population 'is spread evenly throughout' the County."); *Al-Hakim* v. *Florida*, 892 F. Supp. 1464, 1474 (M.D. Fla. 1995) (plaintiffs failed to establish that collection of majority-minority precincts "are geographically contiguous and could form a subdistrict"), *aff'd*, 99 F.3d 1154 (11th Cir. 1996).

yet it provides no valid connection between the two. Indeed, none of the reasons presented in the Gary Letter suggests that adding the citizenship question will lead to more accurate citizenship data. To the contrary, and as the district court found, "adding a citizenship question to the census will result in *less* accurate and *less* complete citizenship data." Pet. App. 290a.

Rather than defend the Gary Letter's reasoning (likely because they cannot), Petitioners now argue that Secretary Ross "was entitled to rely on" the Letter's analysis, regardless of how flawed or pretextual it was. Pet. Br. 36.[23] But the APA does not allow agencies to make decisions based on reasoning as fatally flawed as the Gary Letter's reasoning, for decisions based on illogical fallacies are arbitrary and capricious by definition—as even the cases Petitioners rely on recognize. *See City of Tacoma* v. *FERC*, 460 F.3d 53, 75 (D.C. Cir. 2006) ("[T]he critical question is whether

[23] Two district courts have now concluded that Secretary Ross's proffered rationale was pretextual. *See* Pet. App. 311a-321a; *California*, 2019 WL 1052434, at **61-62. Based on the administrative record alone, the district court in this case emphasized that "Secretary Ross had made the decision to add the citizenship question well before DOJ requested its addition in December 2017"; that the administrative record did not contain "any mention, *at all*, of VRA enforcement discussions of adding the question [before] the Gary Letter"; that Commerce Department staff had "unsuccessful[ly] attempt[ed] … to shop around for a request by another agency regarding citizenship data"; and that the Gary Letter arose only after "Secretary Ross's personal outreach to Attorney General Sessions." Pet. App. 313a. The district court also noted that Secretary Ross's interest in adding the citizenship question emerged only after discussions with political actors including then-White House advisor Steve Bannon and Kansas Secretary of State Kris Kobach, who served as Vice Chair of the controversial Presidential Commission on Election Integrity. *Id.* 79a-80a; *see also California*, 2019 WL 1052434, at **33, 47-48, 61-62.

the action agency's *reliance* was arbitrary and capricious, not whether the [underlying analysis] itself is somehow flawed. Of course, the two inquiries overlap to some extent, because reliance on a facially flawed [underlying analysis] would likely be arbitrary and capricious." (internal citations omitted)); *see also Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (stating that a decision is arbitrary when it is "so implausible that it could not be ascribed to a difference in view or the product of agency expertise").

As discussed above, none of the case law cited in the Gary Letter supports the conclusion that decennial census citizenship is necessary for VRA enforcement. And as discussed below, none of the other assertions made in the Letter bolsters that conclusion either.

1. VRA enforcement does not require the same data necessary for redistricting

The Gary Letter first claims it is important to use a data set with the same "scope and level of detail" for enforcing Section 2 as for conducting redistricting. Pet. App. 567a. This claim is indefensible. Jurisdictions adhere to the requirement that they draw districts with roughly equal populations based on an actual enumeration of the population. *See Evenwel* v. *Abbott*, 136 S. Ct. 1120, 1124 (2016) (noting the consensus among States to design electoral districts based on total-population numbers from the census). By contrast, Section 2 looks to the ability of citizens to elect their chosen representatives, which requires sophisticated estimation techniques, imputation of electoral preferences to racial and language minority groups, and assessments of local voting patterns by race and ethnici-

ty—an altogether and necessarily different analysis than redistricting.[24]

The Gary Letter also posits that census citizenship data "would align in time with the total and voting-age population data from the census that jurisdictions already use in redistricting." Pet. App. 568a. But Section 2 lawsuits brought in the middle of a decade rely on intra-decade election results. Census citizenship data would therefore not assist plaintiffs attempting to show a shift in the population of minority voters in the 10 years following the census. For example, in *Benavidez* v. *Irving Independent School District*, the court rejected the plaintiffs' argument that the share of Latino CVAP had risen since the last census to now capture a majority of votes. 690 F. Supp. 2d 451, 459 (N.D. Tex. 2010). The court's ruling was not based, however, on any flaw in the plaintiffs' data that could be addressed by altering the decennial census. Rather, the court faulted the plaintiffs' reliance on a single year's worth of ACS data, instead of more accurate five-year ACS data. *Id.* at 458-459. Citizenship data collected in a census, which occurs once every 10 years, would be of no use to plaintiffs bringing mid-decade redistricting challenges.

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[24] Petitioners' amici conveniently draw on a one-person, one-vote case to assert that Respondents previously "acknowledged the inferiority of ACS citizenship data." Oklahoma et al. Amicus Br. 13. Respondents previously acknowledged that ACS data would not be sufficient for redistricting purposes but said nothing about VRA enforcement. Moreover, in that same brief, Respondents expressly noted that asking about citizenship data on the census "could chill participation" in the census and therefore lead to less accurate census data. New York et al. Amicus Br. 17, *Evenwel* v. *Abbott*, No. 14-940 (U.S. Sept. 25, 2015).

2. Census block-level citizenship data would not help VRA enforcement

The Gary Letter's last two assertions claim that "decennial census data is a full count of the population" and thus has a lower margin of error than the ACS, and that having "census block level" data from the census, as opposed to only "census block group" data from the ACS, "would greatly assist the redistricting process" by providing more accurate data. Pet. App. 568a. But these two claims ignore the well-documented reality that the citizenship question would lead to *less accurate* citizenship data than the data currently supplied by the ACS. As the district court found, "local-level 'characteristic data'"—that is, data about "subgroups that comprise a jurisdiction"—"will decline in quality, even if the *total* population count within that jurisdiction is accurate." *Id.* 185a.

Moreover, because the ACS is administered in a survey format, experts can translate that data to the block level using statistical sampling and imputation where necessary.[25] Section 2 analyses are also legitimate because they rely on a series of statistical estimates to determine whether the relevant racial or language minority communities could constitute more than half of the electorate in a district-sized population and whether that district would perform for minority candidates of choice. In particular, that latter determination is necessarily an approximation that depends on a variety of data in addition to CVAP, including rates of voter eligibility, registration, and turnout—all of which

[25] *See* Levitt Testimony 16.

have corresponding margins of error.[26] Even the definition of a "district-sized population" is a range, given that the "Supreme Court has repeatedly held that district sizes may vary—for state and local districts, up to a presumptively valid 10% population disparity, and in some instances beyond."[27] It is therefore inconsequential for VRA plaintiffs that the decennial census could generate CVAP data at the smaller block level.

In touting the increased "precision" of these data, Petitioners and the Gary Letter also ignore the fact that census block-level data could provide only an *estimated* CVAP in light of the Census Bureau's statutory confidentiality obligations. To ensure that information about particular respondents is not identifiable, "the Census Bureau plans to apply disclosure avoidance protocols to every census block." Pet. App. 298a. As the district court found, these disclosure avoidance methods have "two significant implications with respect to DOJ's purported desire for census-block CVAP data." *Id.* First, the randomization protocols "mean[] that, even with a citizenship question on the census, there would not be a single census block (except for randomly) where citizenship data would actually reflect the responses of the block's inhabitants to the census questionnaire." *Id.* Second, these protocols "mean[] that block-level CVAP data based on responses to a citizenship question on the census would themselves be estimates, with associated margins of error, rather than a true or precise 'hard count.'" *Id.* Petitioners have offered no reason to think these error margins for block-

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[26] *See Fishkin, The Administration Is Lying About the Census*, Balkinization (Mar. 27, 2018).

[27] Levitt Testimony 17.

level CVAP data would "still allow redistricting offices and the Department of Justice to use the data effectively," nor do they know whether block-level data "would have smaller margins of error than the ACS-based CVAP data on which DOJ currently relies." *Id.* 299a.

In short, existing citizenship data have been sufficient to enforce Section 2 of the VRA. Collecting citizenship data on the decennial census is not necessary to enforce Section 2, and this Justice Department knows it: John Gore, the former acting head of the DOJ's Civil Rights Division, testified in his deposition in this case that collecting CVAP data on the decennial census "is not necessary for DOJ's VRA enforcement efforts."[28] And this administration, in notable contrast to the administrations before it, has yet to bring a single VRA enforcement action.[29] It is therefore hard to comprehend how this Justice Department could have determined what, if any, additional data are necessary to enforce a provision of law that it thus far has made no effort to enforce.

II. A CITIZENSHIP QUESTION WOULD UNDERMINE VRA ENFORCEMENT BECAUSE IT WOULD LEAD TO INACCURATE CENSUS DATA

Far from assisting Section 2 enforcement, asking about citizenship on the census would do precisely the opposite. A citizenship question would lead to an undercount of the very groups the VRA is intended to protect, an outcome the Census Bureau has itself predicted. An undercount is particularly hard to correct when it occurs on the decennial census, as the Bureau's

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[28] Gore Dep. Tr. 300:8-11.

[29] *See* DOJ, *Voting Section Litigation* (Sept. 27, 2018).

non-response follow-up procedures historically have proved unable to identify uncounted minorities. If the citizenship question proceeds, the undercount of minority communities will be exacerbated and minorities will find it substantially *harder* to successfully bring VRA cases.[30]

As this Court has recognized, "the purpose of the Voting Rights Act" is "to eliminate the negative effects of past discrimination on the electoral opportunities of minorities." *Gingles*, 478 U.S. at 65 (Brennan, J., Opinion). Additional citizenship data would thus be useful only if it more accurately counted historically disenfranchised and underrepresented groups. But as amici are acutely aware, adding a citizenship question on the 2020 census will result in a differential undercount of precisely these segments of the population. That undercount will impede rather than assist the litigation of Section 2 cases.

Petitioners are well aware of the detrimental effects that will result from adding a citizenship question to the census—in fact, they "conceded at oral argument" in the district court "that there is 'credible quantifiable evidence' that 'the citizenship question could be expected to cause a decline in self-response.'" Pet. App. 150a (quoting trial transcript). This is not a new realization: The Census Bureau has long opposed efforts to determine the citizenship status of everyone because of the real likelihood that such efforts would systemically undercount people in immigrant communi-

[30] Even a relatively small undercount of minority communities has an outsized effect on their ability to succeed on VRA Section 2 claims. *See* Persily, *The Right to Be Counted*, 53 Stan. L. Rev. 1077, 1109 (2001) (courts' strict adherence to numeric requirements in Section 2 cases underscores need for accurate data).

ties. In 1980, the Bureau opined that "any effort to ascertain citizenship will inevitably jeopardize the overall accuracy of the population count" and that "[q]uestions as to citizenship are particularly sensitive in minority communities and would inevitably trigger hostility, resentment and refusal to cooperate." *Federation for Am. Immigration Reform* v. *Klutznick*, 486 F. Supp. 564, 568 (D.D.C. 1980) (describing Bureau's litigation position). The then-Director of the Census Bureau confirmed that conclusion in congressional testimony in 1985, explaining that questions about citizenship status would lead to the Census Bureau being "perceived as an enforcement agency," which would have "a major effect on census coverage."[31] And when he announced his decision to add the citizenship question, Secretary Ross recognized that the career staff of "[t]he Census Bureau and many stakeholders expressed concern [that the decision] would negatively impact the response rate for noncitizens" and minorities. Pet. App. 552a.

These fears of undercounting the very populations the VRA is intended to protect are well-founded. The Census Bureau's own data from the Center for Survey Measurement (CSM) demonstrate that if a citizenship question is added to the census, formerly willing respondents will go to extraordinary lengths to avoid participating.[32] The CSM conducted pretesting after

[31] *Enumeration of Undocumented Aliens in the Decennial Census: Hearing Before the Subcomm. on Energy, Nuclear Proliferation, and Gov't Processes of the S. Comm. on Governmental Affairs*, 99th Cong. 16, 23, 32 (1985) (statement of John Keane, Dir., Census Bureau).

[32] *See generally* Memorandum from Center for Survey Measurement (CSM), U.S. Census Bureau, to Associate Directorate for Research and Methodology (ARDM): *Respondent Confidentiality Concerns* (Sept. 20, 2017) ("*CSM Memo*").

the Census Scientific Advisory Committee expressed concerns "about the possibility that 2020 could be politicized" through illegal uses of census information.[33] Through multiple methods including internet self-response; cognitive inquiry via the Census Barriers, Attitudes, and Motivators Survey; doorstep messages; and field representatives and supervisors interacting with focus groups, the CSM concluded that an unprecedented number of respondents were concerned about confidentiality and immigration status while participating.[34] Many respondents refused to share their own information with Bureau employees after expressing privacy and safety concerns, and, more troublingly, the CSM saw extremely high levels of "deliberate falsification" of information due specifically to concerns regarding revealing immigration status to the Census Bureau.[35] The CSM declared that its findings are "particularly troubling given that they impact hard-to-count populations disproportionately, and have implications for data quality and nonresponse."[36]

The Census Bureau confirmed these detrimental and disproportionate effects multiple times in the months leading up to the Secretary's decision and even during this litigation. In memoranda issued on December 22, 2017, and January 3, 2018, the Census Bureau estimated that adding a citizenship question would

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[33] Memorandum from Ron S. Jarmin, Director, U.S. Census Bureau, to Barbara Anderson, Chair, Census Scientific Advisory Comm.: *U.S. Census Bureau Responses to Census Scientific Advisory Committee Fall 2017 Recommendations* (Jan. 26, 2018).

[34] *See generally CSM Memo.*

[35] *Id.* at 3.

[36] *Id.* at 7.

cause a "minimum 5.1% decline in self-response among noncitizen households" and would "produce lower quality citizenship data." Pet. App. 43a-45a. In another memorandum dated January 19, 2018, the Bureau made the "'reasonable inference that a question on citizenship would lead to some decline in overall self-response' and 'a larger decline in self-response for noncitizen households'" and Hispanic households. *Id.* 48a, 142a.[37]

Then, on August 6, 2018, the Bureau's staff published the "Brown Memo," named after lead author and Senior Economist in the Census Bureau's Center for Economic Studies J. David Brown, which estimated

[37] Petitioners' amici disagree with these percentages—reached by the Census Bureau's own experts and credited by the district court—instead contending that the citizenship question will at most "cause an undercount of 0.001%." Oklahoma et al. Amicus Br. 33. This argument is both misleading and incorrect. Petitioners' amici reach this number by looking to the "breakoff rate" for Hispanic ACS respondents, or the rate at which respondents stopped answering the survey when they reached the citizenship question. *Id.* at 32. But as the Census Bureau explained, "[a] breakoff is different from failure to self-respond" and does not approximate the overall undercount associated with the citizenship question. JA112. This is in part because breakoff rates are derived from only internet-based surveys, not paper surveys, and even then are calculated based only on *returned* internet surveys. *See id.* 131-132. Breakoff rates therefore do not take into account surveys that are never submitted and thus do not account for respondents who, after seeing a citizenship question, refuse to submit the survey. The Bureau's 5.1 percent figure (as well as the 5.8 percent figure discussed below) were instead derived from actual observed decreases in response rates from both mail and online surveys among Hispanic and noncitizen households as compared to Caucasian households. *See* Pet. App. 142a. Thus, as the Census Bureau explained, the 5.1 and 5.8 percent numbers are "more appropriate for estimating the additional fieldwork cost" of adding a citizenship question and the true extent of decreased self-response rates among minority communities. JA132.

that adding a citizenship question would lead to a 5.8 percent differential decline in noncitizen self-response rates and would "disproportionately depress self-response rates among Hispanic households." Pet. App. 114a, 143a. That is, the citizenship question would "cause a decline in self-response rates" among noncitizen and Hispanic households "that will not occur among all other households." *Id.* 140a n.34. This estimate was "conservative," the Bureau explained, because "the analysis supporting the estimate relied on ACS data, and the effect of a citizenship question on the ACS may have been muted by its presence among the large number of questions." *Id.* 143a. The decennial questionnaire is much shorter than the ACS, so a citizenship question "'will be more visible' and thus likely to produce a more pronounced effect." *Id.*

Most recently, at the trial in this case, the Bureau's expert, Dr. John M. Abowd—the Census Bureau's Associate Director for Research and Methodology and Chief Scientist, and the official who supervised the Bureau's attempt "to determine the effects of adding a citizenship question," Pet. App. 42a—testified that the 5.8 percent figure was conservative for a second reason: The Census Bureau's analysis was based on data only up through 2016 and does not capture an increase in distrust of government within noncitizen households, which "believe[] that the census's 'purpose is to find undocumented immigrants.'" *Id.* 145a. A 2017 Census Bureau memorandum raised concerns that this distrust is especially high under the Trump Administration, noting immigrant respondents' increased "fear of government, and fear of deportation" in the "current environment."[38] In Dr. Abowd's expert opinion, these fears

[38] *CSM Memo* 3-4.

would lead to "gross omissions" of noncitizen and Hispanic populations from census data—undercounts that would "harm the quality of the data," regardless of any increase in accuracy of the overall enumeration. *Id.* 186a.

This undercount is especially hard to correct when it occurs in the decennial census. The Census Bureau uses Non-Response Follow-Up (NRFU) procedures to "attempt[] to make up for the large number of households that do not self-respond to the census questionnaire." Pet. App. 151a. But "NRFU has not remedied net undercounts in prior censuses," and "historical data show" that NRFU is particularly difficult to use in minority neighborhoods because "noncitizens and Hispanics who do not self-respond to the census because of the presence of a citizenship question are similarly unlikely to respond (or to give a complete response) to in-person NRFU enumerators." *Id.* 153a, 155a-156a. And while experts can use sampling and other statistical techniques to compensate for nonresponse rates on the ACS because it is administered as a survey, federal law and Supreme Court precedent significantly limit the techniques that can compensate for undercounting on the decennial census.[39] In short, even if the addition of a citizenship question could lead to more precise citizenship data for those who respond, it will inevitably lead to less accurate citizenship data by undercounting the very minority populations who rely on those data to bring VRA claims. *See id.* 290a; *California* v. *Ross*, 2019 WL 1052434, at *70 (N.D. Cal. Mar. 6, 2019) (including a citizenship question "is fundamentally coun-

[39] *See Utah* v. *Evans*, 536 U.S. 452, 465 (2002); Persily, *The Law of the Census: How to Count, What to Count, Whom to Count, and Where to Count Them*, 32 Cardozo L. Rev. 755, 759 (2011).

terproductive to the goal of obtaining accurate citizenship data about the public" but "quite effective at depressing self-response rates among immigrants and noncitizens").

This well-documented, well-recognized, and inevitable undercount will hurt the ability of historically underrepresented groups to successfully bring VRA cases. Without an accurate estimate of minority populations, plaintiffs will find it more difficult to meet the first *Gingles* precondition and show the existence of either majority-minority voting districts or cohesive minority voting blocs. Indeed, a differential undercount of even a couple percentage points—less than the Census Bureau currently forecasts will occur—will make a dramatic difference in the viability of many VRA claims. Under this Court's precedent, a minority community cannot establish a prima facie Section 2 claim unless it can show the ability to draw a district with a population that is at least 50 percent plus one minority voters. *See Strickland*, 556 U.S. at 14, 19-20 (plurality). This is so even if the minority community comprises a large voting bloc of the district that, with minimal crossover voting, would perform for minority candidates. *See id.* It is not unusual for minority communities to find themselves on the razor's edge of being able to vindicate their voting rights through Section 2. Thus, the combination of this strict numerosity requirement with a census questionnaire that will drive down the population estimates for minority communities will invariably undercut the viability of many legitimate VRA claims.[40]

As discussed above, minority or immigrant households frightened of adverse immigration consequences

[40] *See* Persily, 53 Stan. L. Rev. at 1109.

for themselves or their relatives might simply refuse to respond to the census, despite the associated legal consequences. The decennial census will then report an artificially lower minority population, making it more difficult for these groups to establish majority-minority districts, cohesive minority populations, and, in turn, Section 2 violations. The undercount that will result from adding a citizenship question to the decennial census would thus only harm efforts to enforce the VRA.

In sum, Petitioners' justification for the citizenship question is a red herring: Any greater precision in citizenship data will hurt VRA plaintiffs because it will come at the cost of undercounted minorities and a *less accurate* 2020 census. Rather than helping minority groups prove Section 2 claims, a citizenship question would introduce a high risk that the most vulnerable minority communities—those that the VRA seeks to protect—will be systematically undercounted in the decennial census. The resulting undercount will only hamper Section 2 enforcement.

III. A Citizenship Question Would Have Far-Reaching, Long-Lasting Negative Consequences For Minority Communities

The harm that a citizenship question would cause is not limited to VRA enforcement efforts. The undercount caused by the question will have far-reaching effects on minority communities—communities that include citizens and noncitizens alike—by reducing their political representation and funding for financial assistance programs. And these harms will be felt for at least a decade.

The district court correctly found that an undercount of minority and noncitizen communities "will cause

or is likely to cause several jurisdictions to lose seats in the next congressional apportionment." Pet. App. 173a. Given the Census Bureau's own estimated 5.8 percent differential undercount of noncitizen households, *see supra* at 24-26, States like California—with high noncitizen populations—will be "'extremely likely' to lose a congressional seat that [they] would not lose otherwise." Pet. App. 174a. Even "a mere *two* percent differential undercount of people who live in noncitizen households will lower the population enumerations," Respondents' trial expert explained, which will detrimentally affect "jurisdictions that are home to a disproportionate share of their states' populations living in noncitizen households" and "dilute the political power of such jurisdictions." *Id.* 176a-177a. These communities will therefore be deprived of a voice in the political process—an injury that will be particularly difficult to remedy, given the VRA-related harms discussed above.

This undercount will also result in reduced federal funding for minority and vulnerable communities, a loss that will ripple throughout some of the most critical aspects of life for those communities. At least 320 financial assistance programs created by Congress rely on census-specific data to apportion about $900 billion dollars annually to state and local governments. *See* Pet. App. 178a.[41] Any undercounting of the population will thus skew the collection of demographic data used in federal funding determinations and affect the distribution of funds to these communities.

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[41] *See also* Reamer, GW Institute of Public Policy, *Counting For Dollars 2020: The Role of the Decennial Census in the Geographic Distribution of Federal Funds, Report # 2: Estimating Fiscal Costs of a Census Undercount to States* 2 (Mar. 19, 2018) ("Reamer Report").

For example, assistance programs that use the Federal Medical Assistance Percentage (FMAP) are particularly sensitive to changes in the decennial census count. *See* Pet. App. 179a-180a. In Fiscal Year 2015, 48 percent of the federal grants given to States relied on the FMAP to determine the federal share of the costs of programs including Medicaid, the State's Children's Health Insurance Program (CHIP), the Child Care and Development Fund Matching Funds, and the Title IV-E Foster Care and Adoption Assistance programs, in addition to many other programs that rely on census data less directly. *See id.* 179a & n.45.[42] In that year alone, the average amount lost by a State was $1,091 *per person* missed in the 2010 census; the highest loss was in Vermont, where the State—a Respondent here—forfeited $2,309 per person missed in the decennial census.[43] Indeed, 37 out of 50 states forfeited FMAP federal funding opportunities for each person not counted in the 2010 decennial census. This translates to 74 percent of States missing out on funding due to undercounting.[44] And even a 1 percent increase in an undercount can have a dramatic effect on States' receipt of federal grants for these FMAP-guided programs: For example, Pennsylvania stood to lose $221,762,564 in FY2015 had there been a mere 1 percent increase in missed persons in the 2010 decennial census.[45]

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[42] *See also* Reamer Report 2.

[43] *Id.* at 1.

[44] *Id.*

[45] *Id.* at 4. The consequences for children living in Respondents' states are particularly severe. States with significant undercounts will suffer reductions in funding for programs such as

In addition to affecting the programs discussed above, a differential undercount on the census will cause the impacted communities "to lose funds from federal programs that distribute resources on the basis of census-derived data," which are critically important to many low-income and minority groups. Pet. App. 181a. These programs are, again, wide-ranging and affect all areas of life from child-abuse prevention (Community-Based Child Abuse Prevention Grants), to aging (Grants for State and Community Programs on Aging), to education (funding under the Every Student Succeeds Act), to energy (the Low-Income Home Energy Assistance Program), to criminal justice (the Victims of Crime Act program). *See id.* These undercounted jurisdictions would also suffer declines in programs that "provide direct funding to localities based on census-derived information," including critical housing programs such as the Community Development Block Grant, the Emergency Solutions Grant program, and the HOME Investment Partnerships Program. *Id.* 182a.

Amici represent communities at grave risk of suffering from a differential undercount. Their constituents stand to lose funding for their schools, housing, infrastructure, and healthcare, among other critical

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CHIP, which is funded based on census data, depriving many children of essential health care or other services. *See Urahn, et al.*, The Pew Charitable Trusts, *The Children's Health Insurance Program: A 50-state examination of CHIP spending and enrollment* 10 (Oct. 2014); Artiga & Damico, Kaiser Family Foundation, *Nearly 20 Million Children Live in Immigrant Families that Could Be Affected by Evolving Immigration Policies* 2 (Apr. 2018) ("Over 8 million citizen children with an immigrant parent have Medicaid/CHIP coverage. … Recent findings indicate that growing fear and uncertainty among immigrant families is leading to decreased participation in Medicaid and CHIP.").

needs, for the next decade if the citizenship question is allowed to go forward. And they are not alone in opposing the Secretary's decision: Over 99 percent of the public comments the Census Bureau received on the citizenship question opposed its addition. *See supra*, note 4 & accompanying text.

The destructive effects that an undercount would cause are well-documented, both in the record in this case and in current studies and research. Those effects will fall most heavily on jurisdictions with above-average shares of low-income and minority individuals, individuals who are the most likely to rely on the programs whose funding will be slashed if there is an undercount. In short, a citizenship question would bring long-lasting, tangible harms to the people amici represent—first by causing the census to omit them and their neighbors from the decennial count, and then by gutting the social services on which they depend. There is no valid reason for inflicting such grave consequences on so many people, most certainly not for the flawed reason the Commerce Department has put forth in this case.

CONCLUSION

Petitioners' claim that a citizenship question will advance the interests of the VRA is implausible on its face. Existing citizenship data have proven more than adequate to enforce Section 2 of the VRA. And, given the risk of a systematic undercount, the inclusion of a citizenship question on the decennial census will not result in useful data for the litigation of Section 2 cases. Instead, adding a citizenship question will harm the very populations that the VRA is intended to protect. Accordingly, this Court should affirm the judgment below.

Respectfully submitted.

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APRIL 2019

APPENDIX

APPENDIX: LIST OF AMICI

4CS of Passaic County

9to5

9to5 Colorado

9to5 Georgia

9to5 Wisconsin

ACCESS

Advancement Project California

Advocates for Children of New Jersey

African American Ministers In Action

American Anthropological Association

American Federation of State, County and Municipal Employees International Union

American Federation of Teachers, AFL-CIO

American Society on Aging

Andrew Goodman Foundation

Anti-Defamation League

Arab American Institute (AAI)

Arizona Asian American Pacific Islander Democratic Party Caucus

Arkansas Advocates for Children and Families

Asian American LEAD

Asian and Pacific Islander American Vote (APIAVote)

Asian Law Alliance

Association of Asian Pacific Community Health Organizations

Association of University Centers on Disabilities

Bend the Arc: A Jewish Partnership for Justice

Cabarrus Rowan Community Health Centers

California Calls Education Fund

California Pan-Ethnic Health Network

Campaign Legal Center

Center for Civic Policy

Center for Law and Social Policy (CLASP)

Center for Popular Democracy

Center for the Study of Hate & Extremism-California State University, San Bernardino

Center on Privacy & Technology at Georgetown Law

Central Conference of American Rabbis

CHANGE Illinois

Child Care Aware of America

Children Now

Children's Advocacy Institute

Citizens' Committee for Children of New York

Citizens Union

Clayton Early Learning

Clearinghouse on Women's Issues

Coalition for Humane Immigrant Rights (CHIRLA)

Coalition on Human Needs

Colorado Center on Law and Policy

Colorado Children's Campaign

Community Service Society of New York
Connecticut Association for Human Services
Crescent City Media Group
Defending Rights & Dissent
Delaware Ecumenical Council on Children and Families
Delta Sigma Theta Sorority, Inc.
Demand Progress Education Fund
Democracy Forward Foundation
Dēmos
Disability Rights Education & Defense Fund (DREDF)
El CENTRO de Igualdad y Derechos
Emgage Action
Empowering Pacific Islander Communities (EPIC)
Equality California
Equality North Carolina
Fair Count Inc.
Fair Elections Center
Fair Immigration Reform Movement (FIRM)
Feminist Majority Foundation
First Focus
FISH Hospitality Program, Inc.
General Synod of the United Church of Christ
Generations United
Government Information Watch
Hindu American Foundation

Hispanic Organization for Leadership & Action (HOLA)

Illinois Coalition for Immigrant and Refugee Rights

In Our Own Voice: National Black Women's Reproductive Justice Agenda

In the Public Interest

International Brotherhood of Teamsters (IBT)

International Union of Painters and Allied Trades

Jewish Council for Public Affairs

Justice in Aging

Lambda Legal Defense and Education Fund, Inc.

Latino Community Fund Inc.

League of Women Voters, U.S.

Legal Aid Justice Center

Maine Children's Alliance

Maine Immigrants' Rights Coalition

Marion County Commission on Youth, Inc.

Massachusetts Voter Table

Matthew Shepard Foundation

Men of Reform Judaism

Mi Familia Vota

Michigan Nonprofit Association

Minnesota Council on Foundations

Modern Language Association

Muslim Advocates

Muslim Anti-Racism Collaborative (MuslimARC)

Muslim Public Affairs Council (MPAC)

NALEO Educational Fund

National Asian Pacific American Women's Forum

National Association for the Advancement of Colored People

National Association of Social Workers (NASW)

National Center for Lesbian Rights

National Center for Transgender Equality

National Coalition for Asian Pacific American Community Development (National CAPACD)

National Coalition for Literacy

National Coalition on Black Civic Participation

National Consumer Law Center

National Consumers League

National Council of Asian Pacific Americans (NCAPA)

National Council of Jewish Women

National Council on Independent Living

National Education Association

National Employment Law Project

National Health Law Program

National Hispanic Media Coalition

National Housing Law Project

National Human Services Assembly

National Institute for Reproductive Health

National Iranian American Council

National Justice for Our Neighbors

National LGBTQ Task Force

National Organization for Women Foundation

National Partnership for Women & Families

National Urban League, Inc.

National Women's Law Center

NETWORK Lobby for Catholic Social Justice

New Florida Majority

New York State Black, Puerto Rican, Hispanic and Asian Legislative Caucus

NM CAFe

North Carolina Asian Americans Together (NCAAT)

Oasis - A Haven for Women and Children

OCA - Asian Pacific American Advocates

Partnership for America's Children

Paterson Alliance

Paterson Education Fund

Pegasus Legal Services for Children

People For the American Way Foundation

Planned Parenthood Federation of America

PolicyLink

Research Advisory Services, Inc.

Service Employees International Union (SEIU)

Sexuality Information and Education Council of the United States

South Asian Americans Leading Together (SAALT)

Southeast Michigan Census Council

Southern Poverty Law Center

Stronger North Carolina, Inc.

Texas Progressive Action Network

The Children's Partnership

The Impact Fund

The Protect Democracy Project

The Sikh Coalition

The Southern Coalition for Social Justice

The United Food and Commercial Workers International Union

The Women's Law Center of Maryland, Inc.

Union for Reform Judaism

United Chinese Association of Brooklyn, Inc.

United Farm Workers of America

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union AFL-CIO, CLC

United We Dream

University YMCA New American Welcome Center

UUFHC

Virginia Civic Engagement Table

Virginia Coalition for Immigrant Rights

Voices for Illinois Children

Voices for Utah Children

Voices for Vermont's Children

Voto Latino

Washington Nonprofits
Wind of the Spirit Immigrant Resource Center
Wisconsin Faith Voices for Justice
Women for Afghan Women
Women of Reform Judaism
Women's March
Woodhull Freedom Foundation
Yemeni American Merchants Association - YAMA
YMCA of Greater New York
ZERO TO THREE