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U.S. HOUSE COMMITTEE ON OVERSIGHT AND REFORM

SUBCOMMITTEE ON CIVIL RIGHTS AND CIVIL LIBERTIES

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I speak to you today from the perspective of a longtime community advocate, a civil rights attorney for more than 30 years, and an educator at Columbia University and New York University for almost twenty years. My areas of expertise include the constitution and its impact on communities of color, immigration with an emphasis on post-9/11 immigration policies, , voting rights, and diversity and inclusion in the global workforce. As a consultant, I was hired by New York Immigration Coalition, to create and grow New York Counts 2020, the first statewide coalition advocating for a fair and accurate Census from January 2018 to March 2019.

The Census is the heart of democracy. For more than two centuries, it has been a constitutionally mandated federal program that requires full participation of all persons. This intent was clear. James Madison, one of the Constitution's framers believed allocation of seats must be "founded on the aggregate number of inhabitants."¹ The original Article I, Section 2, Clause 3 of the Constitution, states "Representatives" are "apportioned . . . according to their respective numbers, which shall be determined by adding the whole Number of free Persons, including those bound too Service for a Term of Years and excluding Indians, not taxed, three fifths of all other Persons". Section 2 of the 14th Amendment, after the civil war, removed the Three-Fifths Clause from Article I. This actual enumeration must be conducted every ten years. And manipulation of apolitical, scientific data for partisan politics can infringe upon other constitutional rights, particularly when efforts interfere with the actual Enumeration for no reasonable purpose. Such infringement can lead to constitutional violations that impact the right to vote, the electoral college, and redistricting, indeed your very existence in Congress.

While the Constitution specifically establishes the decennial Census as the mechanism for apportioning seats in the House of Representatives, the census derived data has also been use, since nearly its inception, for determining the allocation of critical federal funding. Title I local Education Agency grants, the Supplemental Nutrition Program for Women, Infants, and Children, and Social Services Block Grants are but some of the 320 different federal programs that use census data to distribute more than \$800 billion dollars a year. Historically undercounted groups - low income people of color, immigrants, children, the disabled, and

¹ *Evenwel v. Abbot*, 578 U.S. 8-9 (2016)

elderly are also the demographic groups that are most often served by these programs. In New York, many residents belong to historically undercounted groups, including low-income individuals and non-Hispanic people of color and has a high immigrant population with language access needs.² In 2015, New York received \$53 billion alone in federal funds from sixteen of the largest federally assisted programs on the basis of census derived data.³ An inaccurate count could lead to catastrophic crippling of New York's ability to provide basic health and social services to low-income and vulnerable residents.

Another area of constitutional concern is the ability of federal agencies to safeguard data collected by the Census. The Census has a documented, checkered past with respect to violating the confidentiality of respondents' information and public trust. In 1943, the U.S. Treasury Secretary requested the names and whereabouts of Washington, D.C. residents of Japanese ancestry from the Census Bureau. The Bureau released this data, along with block-level data of neighborhoods more heavily populated with Japanese Americans in eight states, aiding the government's internment of people of Japanese ancestry.⁴ In 2002 and 2003, the Census Bureau divulged neighborhood data on Arab-Americans to the U.S. Department of Homeland Security, including detailed info on how many people of Arab background lived in certain zip codes.⁵ The executive branch's efforts to repeal DACA, end Temporary Protective Status for Haiti, Nepal, and Central American countries who are still recovering from natural disasters and facing civil unrest, impose the Muslim Ban, and separate children from families, has led to great distrust by immigrant communities of the federal government and its intentions. This distrust has been further fueled with Immigration Customs and Enforcement making arrests at local courthouses, a respected venue where residents are trying to comply with state law.⁶

This Subcommittee knows well the important role of community based organizations doing grassroots organizing. Their efforts have propelled monumental, historical and present day civil rights legislation and mobilized masses to apply for affordable health care, respond to natural

² "Quick Facts: New York," United States Census Bureau, last updated July 1, 2018, <https://www.census.gov/quickfacts/ny>; "State of Our Immigrant City", Annual Report, NYC Mayor's Office of Immigrant Affairs, March 2018, p.4.

³ <https://gwipp.gwu.edu/sites/g/files/zaxdzs2181/f/downloads/New%20York%20CFD%2005-31-17.pdf>

⁴ Lori Aratani, "Secret use of census info helped send Japanese Americans to internment camps in WWII," *The Washington Post*, April 6, 2018.

⁵ Lynette Clemetson, "Homeland Security Given Data on Arab-Americans", *The New York Times*, July 30, 2004.

⁶ Immigrant Defense Project, "The Courthouse Trap: How ICE Operations Impacted New York Courts in 2018", January 2019

disasters, and participate in government research on health, transportation, and housing. Leaders of grass roots organizing are the community based organizations (CBO's). CBO's, particularly those who have earned the trust of underserved, hard-to-reach communities are necessary partners in ensuring an accurate count. But money doesn't fall from trees. To enable CBO's to do the critical outreach and training to comply with the largest federal mandate, there must be an infusion of adequate funds earmarked for CBO's to do this essential outreach and training in a culturally sensitive and effective way. Otherwise, the results of the Census will not be representative of the population.

To counter these civil rights' and civil liberties' concerns and to ensure an accurate 2020 Census Count:

- a. The Census IDEA Act, introduced by Congresswoman Maloney, mandating a three year review for each question proposed to the decennial census must be passed immediately;
- b. Congress, state, and localities must increase government spending for Census community based outreach that enables community-based groups, including faith based groups, to provide the necessary outreach and training to hard -to-reach communities;
- c. The Census Bureau, the Department of Justice, and Immigration Customs and Enforcement must take affirmative steps to ensure all persons can meaningfully participate in the Census without fear of any repercussion; and
- d. the Census Bureau must allow states to apply for and grant a waiver of the citizenship requirement for Census enumerators if qualified language interpreters are needed as enumerators.