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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

CITY OF SAN JOSE, CALIFORNIA, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

STATE OF CALIFORNIA, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

Case No. 5:20-cv-05167-LHK-RRC-EMC
Case No. 5:20-cv-05169-LHK-RRC-EMC

DECLARATION OF GABRIELLE D. BOUTIN IN SUPPORT OF PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR PARTIAL SUMMARY JUDGMENT

Date: October 8, 2020
Time: 1:30 p.m.
Place: Courtroom 8, 4th Floor
Judge: Honorable Richard R. Clifton
Honorable Lucy H. Koh
Honorable Edward M. Chen

I, Gabrielle D. Boutin, declare as follows:

1. I am a Deputy Attorney General with the California Department of Justice, duly licensed to practice law in the State of California. I am counsel of record in this action for the State of California. I make this declaration in support of Plaintiffs' Reply in Support of Motion for Partial Summary Judgment and in Opposition to Defendants' Motion to Dismiss, or in the Alternative, Motion for Partial Summary Judgment. I have personal knowledge of the facts stated herein and, if called upon to do so, could and would testify competently thereto.

2. Attached hereto as Exhibit A are excerpts from the transcript of the January 11, 2019 concurrent trial proceedings in *State of California, et al. v. Ross*, No. 18-cv-1865-RS (N.D. Cal. Jan. 11, 2019) and *City of San Jose, et al. v. Ross*, No. 18-cv-2279-RS (N.D. Cal. Jan. 11, 2019).

3. Attached hereto as Exhibit B are excerpts from the transcript of the January 14, 2019 concurrent trial proceedings in *State of California, et al. v. Ross*, No. 18-cv-1865-RS (N.D. Cal. Jan. 11, 2019) and *City of San Jose, et al. v. Ross*, No. 18-cv-2279-RS (N.D. Cal. Jan. 14, 2019).

4. The excerpts in Exhibits A and B reflect the trial testimony of Dr. John Abowd, Chief Scientist at the U.S. Census Bureau.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 21, 2020, in West Sacramento, California.

/s/Gabrielle D. Boutin
Gabrielle D. Boutin

ATTESTATION

I, Richard P. Bress, am the ECF user whose user ID and password authorized the filing of this document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred in this filing.

DATED: September 21, 2020

LATHAM & WATKINS LLP

By: */s/ Richard P. Bress*
Richard P. Bress

EXHIBIT A

Volume 5

Pages 779 - 991

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE RICHARD SEEBORG, JUDGE

STATE OF CALIFORNIA, by and through Attorney General Xavier Becerra; et al., Plaintiffs, VS. WILBUR L. ROSS, JR., in his official Capacity as Secretary of the U.S. Department of Commerce; et al., Defendants.	**NO. C 18-01865 RS**
CITY OF SAN JOSE, a municipal corporation; And BLACK ALLIANCE FOR JUST IMMIGRATION, A California Non-Profit Corporation, Plaintiffs, VS. WILBUR L. ROSS, JR., in his official Capacity as Secretary of the U.S. Department of Commerce; et al., Defendants.	**NO. C 18-02279 RS**

San Francisco, California
Friday, January 11, 2019

TRANSCRIPT OF BENCH TRIAL PROCEEDINGS

(APPEARANCES, NEXT PAGE)

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I N D E X

Friday, January 11, 2019 - Volume 5

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Friday - January 11, 2019 **9:00 a.m.**

P R O C E E D I N G S

---000---

THE CLERK: Calling case C 18-1865, State of California versus Ross, and C 18-2279, City of San Jose versus Ross.

THE COURT: Good morning.

Before we begin, let me just ask a question. I'm working on getting you an order probably at the lunch break just covering the various pending motions, evidentiary motions.

For the Reamer declaration there was back and forth about an agreement that I understood San Jose was making with respect to striking certain portions of the Reamer declaration. When I went and looked back at it all, I was unclear on the State of California's position because they were also offering Dr. Reamer.

Are you in agreement with the position that San Jose has taken on the Reamer declaration? In other words, I can assume that you jointly are agreeing that certain parts of that declaration are being amended, if you will.

MS. FERRARI: Anna Ferrari for the State of California.

Yes.

THE COURT: Okay. Thank you. That's what I needed to know.

As I say, hopefully I'll give you just an order covering all those pending issues over the lunch break.

Okay. So my understanding is we're going to begin today with Dr. Abowd. Am I pronouncing that right, by the way?

MS. BAILEY: It's Dr. Abowd, Your Honor.

THE COURT: Abowd? Okay.

MS. BAILEY: That's my best understanding.

THE COURT: Well, he can tell us one way or the other. Okay.

MR. WISE: I think we have a couple issues just to clarify with the Court first.

THE COURT: All right.

MS. FERRARI: Anna Ferrari again.

The State of California has three witnesses who will be testifying via any of the following: A trial deposition, New York trial testimony, and a trial affidavit submitted in the New York case. And we would appreciate the Court's clarification on whether it would be sufficient to lodge those transcripts and affidavits via ECF or if the Court would prefer that they be entered into evidence.

THE COURT: I don't feel strongly one way or the other.

Do the defendants have a view on how they think that process should play itself out?

MS. BAILEY: We think they should be entered into

evidence.

THE COURT: Okay. Well, then, why don't we just go through the process of you introducing each of those and entering it into evidence whenever you want to do it.

MS. FERRARI: Great. We expect that that might happen on Monday because there are several exhibits, and hopefully over the weekend we can come to an agreement with defendants about how to treat those.

THE COURT: Good.

MS. FERRARI: Thank you.

THE COURT: Thank you.

And then also with respect to the direct examination of -- or not the direct examination, the examination of our next witness from New York, there was some reference to the trial transcript from Judge Furman's trial. Has that been lodged yet or is it about to be lodged?

MR. WISE: Yeah. We have a stipulation that we've reached -- basically reached. There's one minor issue that I wanted to go over with the Court.

So the stipulation essentially says, yes, that we're going to admit the New York testimony, that a number of exhibits would go in with it, and that the plaintiffs in both cases reserve the right to introduce exhibits and additional topics in a direct after Dr. Abowd testifies today.

The one issue is there was an exhibit that was shown in

the New York direct testimony. It's a map of Fort Myers. It was used for demonstrative purposes only. We're just asking that the Court be able to look at that as the Court reviews the testimony.

So in one of our -- we've got two versions of the stipulation. One it says we're admitting into evidence these exhibits and this particular exhibit for demonstrative purposes only. I believe there's an objection from defendants to that particular stipulation, but we'd just like the Court's guidance on, you know, what the Court would prefer.

MS. FEDERIGHI: Well, demonstratives usually are just shown in court and then they vanish into, you know, the ether. So this one he's purporting to file it with the testimony, and we believe that's improper. It was just used as a demonstrative in New York by filing it.

THE COURT: Well, it's all in how it's treated not --

MS. FEDERIGHI: Right.

THE COURT: -- whether or not my eyes see it or not.

MS. FEDERIGHI: So --

THE COURT: I mean, the issue is really is it something, for example, that in any disposition in the case I would -- if I were to say when it was actually offered as a demonstrative, but I would then say, "Well, there is admissible evidence that demonstrates X, Y, or Z," that would be improper.

But attaching it so I look at it, as long as I know it is

simply a demonstrative piece of information, I think it's -- I'm not quite sure why, oh, it can't be attached because it's only a demonstrative and it would have evaporated from view and, therefore, it's -- you know, I don't feel strongly about it.

If you want to maintain that objection, what the plaintiffs can do is, you know, you can show it to me, if you want, I mean, when the witness is on the stand to get over this.

Is this -- are you really maintaining that objection? If you are, we'll do it that way.

MS. FEDERIGHI: We don't have an objection to you looking at it. If they want to provide it to you just in paper form so you can look at it, that would be fine with us; or if they want to show it -- put it up when Dr. Abowd is on the stand on redirect or whatever you call it, that would be fine as well.

THE COURT: Either way. I mean, you can do it either way and it will be made clear that it is a piece of demonstrative evidence and, therefore, it is not admitted as something that I would rely on in making a decision in this case.

So I leave it to the parties to decide how best I see this map of Fort Myers. Is that what I'm going to see? Okay. Fort Myers, Florida, or Fort Myers what?

MR. WISE: That's it, yep.

THE COURT: Okay.

MS. FEDERIGHI: Thank you, Your Honor.

THE COURT: Thank you.

MR. WISE: So we'll just hand the clerk so just so you can see what will be filed.

THE COURT: That's fine.

MS. FEDERIGHI: And which version?

MR. WISE: It's going to be the one without --

MS. FEDERIGHI: Oh, without. Okay.

MR. WISE: -- the reference to the demonstratives.

MS. FEDERIGHI: All right. Thank you.

THE COURT: Okay. But you're not asking me to enter this right now because you're still working on it or you want me to enter it?

MR. WISE: If the Court could enter it right now, that would be fine.

THE COURT: Okay.

(Pause in proceedings.)

MR. WISE: Apparently we need to put signatures on it --

THE COURT: All right.

MR. WISE: -- but that's what you'll see admitted.

THE COURT: All right. Fine. My view is that if the parties stipulate to something, I'm probably going to agree to

it, unless it means an additional week of trial or something like that. Then I may weigh in.

Okay. So are we ready to proceed?

MS. BAILEY: Yes, Your Honor.

THE COURT: And I recognize we are still in the plaintiffs' case, if I'm not mistaken.

MS. BAILEY: Defendants call Dr. John Abowd.

THE COURT: Dr. Abowd.

THE CLERK: Please stand and raise your right hand.

JOHN ABOWD,

called as a witness for the Defendants, having been duly sworn, testified as follows:

THE WITNESS: I do.

THE CLERK: Please be seated.

And state your name and spell your last name.

THE WITNESS: Good morning. My name is John Meron Abowd, A-B like bravo, O-W-D like delta.

MS. BAILEY: Judge Seeborg, I'd just like to confirm that although plaintiffs have not rested and they will be questioning Dr. Abowd after we finish, Dr. Abowd is being called as our expert as part of our case.

THE COURT: That's understood.

MS. BAILEY: Thank you.

DIRECT EXAMINATION

BY MS. BAILEY:

Q. Good morning, Dr. Abowd.

A. Good morning.

Q. I'd like to begin with a discussion of your academic and professional background.

Can we please call up DDX-25?

Can you tell us what this document is?

A. Oh, that document is my curriculum vitae.

Q. Is this a current and accurate copy of your curriculum vitae?

A. It's not quite current. There's one article that is marked as forthcoming that has appeared. Otherwise it is, yes.

Q. Can you please describe your educational background?

A. I received my Bachelor's degree in economics from the university of Notre Dame, and I received my Ph.D. in economics with a specialty in econometrics and on labor economics from the University of Chicago.

Q. And can you summarize your postgraduate professional experience?

A. I've been a university professor for more than 40 years. My first appointment was as an assistant professor of economics at Princeton University.

My second appointment was as an assistant and associate professor of econometrics and industrial relations at the University of Chicago Business School.

My current appointment, which started in 1987, is as the Edmund Ezra Day professor of economics, statistics, and information science at Cornell University.

Q. What do you consider to be your fields of expertise?

A. So I'm an economist by training but my econometrics background and research has related to the large-scale uses of administrative and survey data in a variety of fields, including statistics and economics.

Q. Is econometrics related to statistics?

A. Econometrics is the specialty within an economics Ph.D. that is basically the equivalent of a statistics Ph.D., and in many universities economists who are econometrics specialists are also appointed in the statistics departments like I am at Cornell.

Q. Have you taught courses regarding economics, econometrics, and statistics?

A. Yes, I have. I've taught undergraduate microeconomics for two decades but the salient course, I think, on my CV is the one that's called "Understanding Social and Economic Data," which is a course that was constructed as a part of a large-scale National Science Foundation Grant to instruct Ph.D. students in the uses of the microdata that are collected by federal statistical agencies primarily.

It's offered as a distance learning course every other year. It's been taken by hundreds of Ph.D. students and

faculty all over the country. It covers the design of the census of population in the United States, the design of the economic census in the United States, products produced from --

THE COURT: You may want to push that back a little.

THE WITNESS: Yeah. I think I'm too close. I'm sorry, Your Honor.

-- products produced from the American Community Survey, the current population survey; products produced by the Bureau of Labor Statistics, the National Center for Health Statistics, statistical agencies in other countries, including StatsCan and a statistical agency in Germany and France. Basically it's a -- it's an analysis of how the federal statistical system and its counterparts in other countries put together their statistical products.

One of the textbooks is Robert Groves, et al., *Survey Methodology*. Most of the other material is original material that I developed in collaboration with many other experts who've given guest lectures in that course.

THE COURT: Maybe if you slow down a little for our court reporter.

THE WITNESS: I'm sorry, Your Honor.

BY MS. BAILEY:

Q. Do you belong to professional associations within these fields?

A. Yes, I do. I've been a career-long member of the American

Economic Association; the American Statistical Association, I'm a fellow of the American Statistical Association; the Econometrics Society, which I'm also a fellow of; the International Statistical Institute, which I'm an elected member of; the International Association for Official Statistics; the American Association for the Advancement of Science; the American Association for Public Opinion Research; and the American Wine Economics Association; and the Society of Labor Economics of which I am also a fellow and past president of.

Q. About how many peer-reviewed papers have you published within these fields?

A. About 100.

Q. How long have you been employed by or working with the Census Bureau?

A. My first appointment at the Census Bureau was in 1998 when I was appointed as a distinguished senior research fellow on an Intergovernmental Personnel Act contract between Cornell and the Census Bureau. I continued in that capacity until May of 2016 in the sequence of IPA or regular contracts. I worked with professionals throughout the Census Bureau in that capacity.

My current job I was appointed to in June of 2016. I'm currently the chief scientist and associate director for research and methodology.

Q. And what are your responsibilities as chief scientist and associate director for research and methodology?

A. So the research and methodology director at the Census Bureau has about 370 professionals in it who represent the research aspects of all parts of the Census Bureau's activity -- survey methodology specialists, mathematical statisticians, economists, sociologists, demographers, information scientists, computer scientists -- and they are organized into a collection of centers. The center chiefs all report to my assistant director and then to me. They coordinate the research at the Census Bureau that applies to virtually all of the products that the Census Bureau produces.

I also serve in a full managerial capacity as a member of the Operating Committee, which is the highest level decision-making committee at the Census Bureau; the Data Stewardship Executive Policy Committee, which is the committee that handles confidentiality and other aspects of the way we curate our data products; the 2020 Census Executives Steering Committee, which is the final guidance committee for the 2020 census; the committee that oversees and peer reviews all of the research and technical reports for the 2020 census and similar committees around the Census Bureau.

Q. And what specific aspects of the decennial census do you have experience working with?

A. In a supervisory capacity or as a member of these

executive committees are then exposed to the detailed documents and ongoing planning for the 2020 census, as well as the economic census, from the start of my appointment. So those committees generally see weekly status reports on all aspects of the operations, they see the interim and final technical and operational reports, and are asked to make the major managerial decisions when there's decision-making involved.

Q. Have you published peer-reviewed papers regarding the activities of the Census Bureau?

A. Yes, I have. Most of my peer-reviewed research since 1998 uses data products that are curated by the Census Bureau; largely administrative record databases that include filings from businesses, filings from individuals, and survey answers, including the survey reports from the 2000 and 2010 censuses and all the American Community Surveys.

Q. And have you taught courses regarding census methodology?

A. The course that I referred to, Understanding Social and Economic Data, deals with the construction of the frame and the sampling for the various survey products in the Census Bureau, including the census of population and all of the steps in the production: The address management, the management of the master address file, the uses of the master address file, how it's updated.

MS. BAILEY: Your Honor, I move to certify Dr. Abowd as an expert in economics, econometrics, statistics, census

operations, and census procedures.

MR. LIBBY: No objection.

THE COURT: Very well. Dr. Abowd will be so designated.

BY MS. BAILEY:

Q. Dr. Abowd, I'd like to turn now to the opinions you're prepared to offer in these cases. Have you prepared a slide listing the topics on which you will opine?

A. Yes, I have.

Q. I'd like to call up DTX-26.

Can you please give a brief summary of your conclusion with respect to testing?

A. My conclusion with respect to testing is that the American Community Survey question on citizenship was adequately tested and was properly placed on the census if that's the question that's going to be used.

Q. And throughout our discussion today, can we refer to the ACS to mean American Community Survey?

A. Yes.

Q. Can you please explain your conclusion regarding self-response?

A. My conclusion is that the research that was done under my supervision established that there was credible quantitative evidence that the introduction of a citizenship question on the 2020 census could be expected to lower self-response rates.

Q. And throughout our discussion, can you define what you mean when you say "credible quantitative evidence"?

A. When I use the term "credible quantitative evidence," I mean that the research would stand up to internal and external peer review in the relevant scientific disciplines.

Q. And what is your conclusion regarding nonresponse follow-up?

A. My conclusion regarding nonresponse follow-up is that the nonresponse follow-up operation at the Census Bureau and the associated statistical analyses that surround it can mitigate the consequences of the decline in self-response with respect to the accuracy of the actual count.

Q. And can you explain what is meant by the quality of census data other than the count itself?

A. Yes. I probably should have added in my summary of the self-response conclusion that the consequence of the decline in self-response is that the quality of the census data will be affected, it will be lower quality.

When statisticians use the term "accuracy," they recognize that it is a multiple dimension thing. It's not -- there's not just one accuracy. So we usually talk about bias and variance. So bias means that the thing you're trying to estimate, you missed. And I think that the Court has already heard testimony about coverage measurement. So coverage measurement for the census is the way of assessing its bias.

But variability is also important. Although the census of population is an actual enumeration, meaning that everyone should have a record, the quality of the data on those records is affected by whether they were provided by a self-response or they were provided by a nonresponse follow-up interview of someone inside the household or a proxy or finally by count imputation.

In the cases where there's incomplete or inaccurate measurement of characteristics, the other uses of the census data, for example redistricting or allocation of funds, are affected because the quality of those characteristics affects the accuracy of the other uses, that they're more variable. They're not necessarily biased but they're more variable.

More variable means you're not actually sure that the right person got the subsidy, and you have to accept that variability as a part of the processing of the data.

Q. Are you expressing any opinion -- let me back up a bit.

Throughout this discussion, do you understand if I say "NRFU," I'm referring to nonresponse follow-up?

A. Yes, I do.

Q. Are you expressing any opinion with respect to NRFU and the integrated partnership and communications program?

A. So I believe I said NRFU and the associated operations of the Census Bureau. The integrated partnership and communications campaign is the operation of the 2020 census

CERTIFICATE OF REPORTERS

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Belle Ball

Belle Ball, CSR 8785, CRR, RMR, RPR

/s/ Jo Ann Bryce

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Official Reporters, U.S. District Court

Friday, January 11, 2019

EXHIBIT B

Volume 6

Pages 992 - 1111

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE RICHARD SEEBORG, JUDGE

STATE OF CALIFORNIA, by and through Attorney General Xavier Becerra; et al., Plaintiffs, VS. WILBUR L. ROSS, JR., in his official capacity as Secretary of the U.S. Department of Commerce; et al., Defendants.	**NO. C 18-01865 RS**
CITY OF SAN JOSE, a municipal corporation; and BLACK ALLIANCE FOR JUST IMMIGRATION, a California Non-Profit Corporation, Plaintiffs, VS. WILBUR L. ROSS, JR., in his official capacity as Secretary of the U.S. Department of Commerce; et al., Defendants.	**NO. C 18-02279 RS**

San Francisco, California
Monday, January 14, 2019

TRANSCRIPT OF BENCH TRIAL PROCEEDINGS

(APPEARANCES, NEXT PAGE)

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1 the nonresponders?
2 **A.** I think that's what I testified, yes.
3 **Q.** Before Secretary Ross decided to add a citizenship
4 question to the 2020 census, the Census Bureau did not design
5 an experiment of this sort?
6 **A.** That's correct.
7 **Q.** Let's follow-up on Mr. Libby's discussion on data quality.
8 Do you recall discussing zero-sum allocations with Mr. Libby?
9 **A.** Yes, I do.
10 **Q.** Local government decision-makers in particular depend on
11 accurate characteristic data when allocating resources?
12 **A.** They depend on the data that the formula calls for being
13 accurate, yes.
14 **Q.** These decision-makers allocate resources based on
15 decennial census data on age, for example?
16 **A.** Yes, as far as I know.
17 **Q.** And they allocate resources based on decennial census data
18 on race and ethnicity?
19 **A.** Yes.
20 **Q.** Because of the additional variability in the
21 characteristic data, the equity of the distribution of
22 resources will be affected?
23 **A.** If you mean by "equity" that some people will get a
24 resource that they weren't entitled to and others will not get
25 a resource that they were entitled to, then, yes.

1 **Q.** In other words, lower quality characteristic data will
2 cause misallocation of resources?
3 **A.** Yes.
4 **Q.** And, again, this is particularly true at the local level?
5 **A.** I'm not sure I testified that it was particularly true at
6 the local level, but it's certainly true at the local level as
7 well.
8 **Q.** The results of a misallocation of resources is that one
9 community will benefit at the expense of another community?
10 **A.** That's what's meant by zero sum in this case, yes.
11 **Q.** Let's talk about testing. You previously testified that
12 if a citizenship question is going to be placed on the 2020
13 census, the citizenship question that appears on the ACS has
14 been adequately tested; is that right?
15 **A.** Yes.
16 **Q.** In particular, you believe that the citizenship question
17 performs adequately in view of the cost, quality, and risk
18 constraints at the time the question was added to the 2020
19 census?
20 **A.** I think that's the correct quote, yes.
21 **Q.** The Census Bureau primarily faced time constraints because
22 your team, the SWAT team as you've called it, found out about
23 the request for a citizenship question in December 2017 and
24 Secretary Ross was required by statute to decide by March 2018
25 whether to add the question?

CERTIFICATE OF REPORTERS

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Belle Ball

Belle Ball, CSR 8785, CRR, RMR, RPR

/s/ Jo Ann Bryce

Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR

Official Reporters, U.S. District Court

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