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In Defense of the American Community Survey

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Since this talk is about the American Community Survey, the first question I need to answer is: "What is the American Community Survey?" The ACS is a set of questions administered every year by the Census Bureau to a sample of American households. Every year, the Census Bureau gives 3 million households the ACS; as a result, the Census Bureau is able to obtain data for areas as small as a zip code. By law, every ACS question must in some way relate to federal funding. For example, Medicaid funds are distributed to states based on a formula related to each state's per capita income- data obtained through the ACS. Similarly, the ACS asks questions about commuting habits and vehicle ownership; because of these questions, government at all levels can figure out which zip codes have high demand for public transit and which are more car-oriented, and can use that data to efficiently spend public funds. I myself have used ACS data in my own scholarly research on gentrification and housing costs.

The ACS is controversial because of privacy concerns; for example, in 2012 the House of Representatives voted to defund the ACS because it thought ACS questions were too intrusive. (However, the Senate ignored this proposal). I have also found one article, written in 2010, arguing that the ACS is constitutional. The primary purpose of my article is to respond to that piece.

The primary policy argument against the ACS is that by asking questions about income, race, commuting habits and other personal matters, it infringes on Americans' privacy. But today, government and the private sector can find much more personalized information without getting a warrant, so these concerns seem outdated.

The constitutional arguments against the ACS focus on three portions of the Constitution: the First Amendment, the Fourth Amendment, and the Census Clause. The first two arguments are based on the fact that the ACS compels Americans to disclose data about themselves. However, the federal courts (although not the Supreme Court) have already spoken on this subject. In *Morales v. Daley*, plaintiffs argued that the Census compels them to engage in speech; the court disagreed, holding that compelled speech is most likely to create a First Amendment issue when individuals are forced to endorse a message, not when they merely disclose information useful to government. This is especially true for Census data, which by law is confidential. Similarly, Fourth Amendment challenges to Census questioning have been repeatedly rejected, because of the strength of the interests favoring the Census and because its intrusiveness is quite limited.

The most serious Constitutional argument against the ACS is based on the Census Clause. The Clause requires a Census so that representatives can be apportioned among the states. It has been argued that the Clause therefore forbids questioning unrelated to apportionment; under this theory, the Census Bureau cannot collect other statistical data. But this argument proves too much; if this were the case, the Census could not ask any questions beyond the number of persons in a household. But even the first Census in 1790 asked questions about race and gender, questions unrelated to apportionment. The following generation went even further: the

1810 and 1820 Censuses asked questions about employment and manufacturing. The article critiquing the ACS relies on Congress's refusal to endorse James Madison's proposal to add additional questions to the First Census. However, there is no evidence that Congress's refusal was based on constitutional grounds.

One possible compromise is to make the ACS voluntary. However, a voluntary ACS is unlikely to be workable. In 2011, Canada experimented with a voluntary Census; response rates plunged by 25 percent, even though the Canadian government had to spend extra money to increase the number of households sampled. As a result, many cities had unreliable data. Thus, a voluntary ACS is not really a useful compromise.