No. 14-940

In The

Supreme Court of the United States

Sue Evenwel, Edward Pfenninger,

Appellants,

v.

Greg Abbott, in his official capacity as Governor of Texas, et al.,

Appellees.

On Appeal from the United States District Court for the Western District of Texas

Brief of the American Civil Rights Union as *Amicus Curiae* in Support of Appellants

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Interests of *Amicus Curiae*[1]

Amicus Curiae American Civil Rights Union (ACRU) is a non-partisan 501(c)(3) tax-exempt organization dedicated to protecting the civil rights of all Americans by publicly advancing a Constitutional understanding of our essential rights and freedoms. It was founded in 1998 by long time policy advisor to President Reagan, and the architect of modern welfare reform, Robert B. Carleson. Carleson served as President Reagan's chief domestic policy advisor on federalism, and originated the concept of ending the federal entitlement to welfare by giving the responsibility for those programs to the states through finite block grants. Since its founding, the ACRU has filed *amicus curiae* briefs on constitutional law issues and election matters in cases nationwide.

The members of the ACRU's Policy Board are former U.S. Attorney General Edwin Meese III; former Assistant Attorney General for Civil Rights William Bradford Reynolds; former Assistant Attorney General for the Office of Legal Counsel Charles J. Cooper; John M. Olin Distinguished Professor of Economics at George Mason University Walter E. Williams; former Ambassador to Costa Rica Curtin Winsor, Jr.; former Ohio Secretary of State J. Kenneth Blackwell; former Voting Rights Section attorney, U.S. Department of Justice, J.

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[1] No counsel for a party authored this brief in whole or in part, nor did any person or entity, other than *amicus curiae* and its counsel, make a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

Christian Adams; former Counsel to the Assistant Attorney General for Civil Rights and former member of the Federal Election Commission Hans von Spakovsky, and former head of the U.S. Department of Justice Voting Rights Section Christopher Coates.

This case is of interest to ACRU because it is concerned with protecting the sanctity and integrity of American elections.

Summary of the Argument

The present case raises the critical but still unsettled constitutional issue of whether the one-person, one-vote principle protects the rights of voters to an equal vote, or whether election districts may be drawn to artificially award political power to individuals who are not American citizens (and may even be in the country illegally) and therefore are not eligible to vote. Appellants seek relief from the latter, the drawing of districts by Texas which resulted in a malapportionment of voters and, subsequently, a significant dilution of their vote.

Dissenting in *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990), Judge Kozinski supported the same position as Appellants in this case, arguing, "[T]he name by which the Court has consistently identified this constitutional right—one person, one vote—is an important clue that the Court's primary concern is with equalizing the voting power of electors [voters], making sure that each voter gets one vote—not, two, five, ten ... or one-half." 918 F.2d at 782 (internal citation omitted).

Judge Kozinski is quite right. The precedents of this Court make clear that the one-person, one-vote

doctrine protects the right of every voter to an equal vote.

Faced with the important question of whether the one-person, one-vote doctrine means that voters must have an equal vote or that each person must have a supposed equal chance to get on his representative's appointments calendar, the district court determined it was a political question that each state was free to decide on its own. In so doing, the court failed to protect the right of voters to an equally-weighted vote.

Fortunately, the data necessary to ensure that each vote is weighed equally is available and reliable. In fact, when the U.S. Department of Justice (DOJ) enforces Section 2 of the Voting Rights Act, it uses Citizen Voting Age Population ("CVAP") or otherwise considers the number of citizens. The DOJ, as a statutory designated enforcer of the Voting Rights Act, understands the importance of concentrating on the number of *citizen* voters when evaluating possible violations of the law and allegations of unequal treatment. This policy is plain on the face of redistricting case after redistricting case brought by the DOJ.

For all of these reasons, this Court should reverse the lower court decision and confirm that its one-person, one-vote principle ensures that every citizen has an equal vote.

Argument

After each decennial Census, state legislatures nationwide redraw the election districts for their state representatives as well as for each of the state's federal Congressional representatives. Well-known precedents of this Court establish the one-person, one-vote principle, which requires roughly equal numbers of voters in each district, so that every voter in a state has roughly equal voting power as far as practicable. *See*, *e.g.*, *Baker v. Carr*, 369 U.S. 186 (1962); *Reynolds v. Simms*, 377 U.S. 533, 562 (1964); and *Hadley v. Junior Coll. Dist. of Metro. Kansas City, Mo.*, 397 U.S. 50, 56 (1970). This principle is rooted in the basic, equal right of every voter to participate in elections.

The Texas Senate Redistricting

In Texas, the legislature must reapportion the State's election districts at its first regular session after publication of the latest federal decennial Census. Tex. Const. art. III, § 28. The Texas State Constitution further provides that "[t]he State shall be divided into Senatorial Districts of contiguous territory, and each district shall be entitled to elect one Senator." Tex. Const. art. III, § 25.

The Texas Legislature first carried out these duties by passing redistricting plans for the Texas Senate, State House, and Congressional districts, signed into law by former Governor Rick Perry on June 17, 2011. After legal challenges were brought against all three redistricting plans, a three-judge panel of the United States District Court for the Western District of Texas found there was "a not insubstantial claim" that the plan for the State

Senate violated Section 5 of the Voting Rights Act. *Davis v. Perry*, 991 F. Supp. 2d 809, 817-18 (W.D. Tex. 2014). The three-judge panel consequently created Plan S172 as an interim map for the 2012 State Senate elections. *Id.* The Texas Legislature adopted Plan S172, and the Governor signed it into law on June 26, 2013. *Id.* at 818.

The Texas Legislature evaluated the redistricting plan under different metrics for measuring the population of each district. Those include (1) CVAP from the three American Community Surveys ("ACS") conducted by the U.S. Census Bureau for the 2010 decennial Census; (2) the total voter registration numbers for each district as counted by the State of Texas for 2008 and 2010; and (3) the non-suspense voter registration[2] numbers counted by Texas for 2008 and 2010. *See* Brief for Appellants at 7-8.

Theoretically "ideal," relatively equal Senate district populations were calculated based on each of the three alternative measures of district population specified above. *Id.* at 6. Shockingly, Plan S172 resulted in districts that varied from these "ideal" district populations by 46% to 55%. *Id.* at 9.

The practical result of basing Plan S172's redistricting on *total* population, not citizen population is that the votes of the residents of

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[2] "Non-suspense voter registration" is total voter registration minus previously registered voters who fail to respond to confirmation of residence notices sent by the county voter registrar to the registered residence address of each voter.

districts with larger non-citizen populations count roughly one and a half as much as the votes of the residents of other districts. Because extensive localities in Texas include large numbers of non-citizens who cannot legally vote, Plan S172 effectively provided a political subsidy by granting more political power to areas with larger non-citizen populations and diluting the political power of areas with higher concentrations of American citizens.

The Present Litigation

In response to Appellants' challenge, the district court concluded that the choice of which population metric to use in apportioning districts should be "left to the states absent the unconstitutional inclusion or exclusion of specific protected groups of individuals." Jurisdictional Statement's Appendix at 13a.

Most fundamentally, the district court ruled, "the decision whether to exclude or include individuals who are ineligible to vote from an apportionment base 'involves choices about the nature of representation with which we have been shown no constitutionally founded reason to interfere.'" Jurisdictional Statement's Appendix at 11a.

On the contrary, this case involves the fundamental principle of one-person, one-vote and the promise of an equal vote. The promise of an equal vote means that the states must look to the number of citizens—rather than the total number of people—when drawing legislative districts. Further, the fact that the DOJ looks to citizenship data not only enhances the propriety of the use of such data but it also exemplifies that such data is reliable and available.

I. The One-Person, One-Vote Principle Protects the Rights of Voters to an Equal Vote.

The question on appeal in the present case, i.e. what measure of population should be used for determining whether the population is equally distributed among the districts, has never been squarely addressed by this Court. Justice Thomas confirmed that in his dissent from the denial of certiorari in *Chen v. City of Houston*, 532 U.S. 1046 (2001). Justice Thomas pointed out that this Court has "never determined the relevant 'population' that States and localities must equally distribute among their districts," and, therefore, the Court has "left a critical variable in the requirement undefined." *Id.* at 1047. *ACCORD*: *Burns v. Richardson*, 384 U.S. 73, 91 (1966) (The Court has "carefully left open the question [of] what population" base is paramount for one-person, one-vote purposes); *Hadley*, 397 U.S. at 57, n.9 (same); *Chen v. City of Houston*, 206 F.3d 502, 524 (5th Cir. 2000) (Judge Garwood noted that "[t]he Supreme Court has from the beginning of this line of cases been somewhat evasive in regard to which population must be equalized"); *Garza*, 918 F.2d at 785 (Kozinski, J., concurring in part and dissenting in part).

The dilution of Appellants' votes demonstrates the consequences of this undefined gap in this Court's one-person, one-vote jurisprudence. As Justice Thomas further explained in his dissent from the denial of certiorari in *Chen*, "The one-person, one-vote principle may, in the end, be of little consequence if we decide that each jurisdiction can choose its own measure of population. But as long as

we sustain the one-person, one-vote principle, we have an obligation to explain to States and localities what it actually means." *Chen*, 532 U.S. at 1048.

The consequences of this Court not previously explaining the proper measure of population is further seen in Ninth Circuit precedent. In *Garza*, the Ninth Circuit panel majority held that the Equal Protection Clause constitutionally *required* Los Angeles County to use total Census population in redistricting, regardless of how many voters resided in each district as a result. The Ninth Circuit majority said, "[T]he people, including those who are ineligible to vote, form the basis for representative government," and, therefore, total population as counted by the Census was the "appropriate basis for state legislative apportionment." 918 F.2d at 774.

The Ninth Circuit majority ruled that basing the districts on total *voter* population would violate the Equal Protection Clause by producing "serious population inequalities across districts" which would result in "[r]esidents of the more populous districts [having] less access to their elected representative." *Id*. The panel majority further argued basing the districts on voter population would also violate the Petition Clause of the First Amendment by denying individuals access to elected officials, saying, "Interference with individuals' free access to elected officials impermissibly burdens their right to petition the government." *Id*. at 775.

But in dissent, Judge Kozinski argued that, "[T]he name by which the Court has consistently identified this constitutional right—one person, one vote—is an important clue that the Court's primary

concern is with equalizing the voting power of electors [voters], making sure that each voter gets one vote—not, two, five, ten … or one-half." *Id.* at 782 (internal citation omitted).

Judge Kozinski explained that the Equal Protection Clause "protects a right belonging to the individual [voter] and the key question is whether the votes of some [voters] are materially undercounted because of the manner in which districts are apportioned." *Id.* He added that this right "assures that those eligible to vote do not suffer dilution of that important right by having their vote given less weight than that of [voters] in another location." *Id.*

The issue that Judge Kozinski identifies is exactly the issue and problem in the present case before this Court. Appellants in this case allege precisely that their votes "are materially undercounted because of the manner in which districts [in Plan S172] are apportioned," and "dilution of that important right by having their vote given less weight than that of [voters] in another location." 918 F.2d at 782. Because the Senate districts in Plan S172 are based on total population, rather than on citizens that have the right to vote, the weight of voters in some Senate districts (with more non-citizen residents that cannot vote) counts roughly one and a half times as much as the vote of Appellants in their districts.

That problem would be solved if the Senate districts at issue in this case were apportioned based on equal numbers of citizens, rather than equal numbers of total population. That would be

consistent with the one-person, one-vote principle, as it would protect the right of all voters in the state to an equal vote with the same weight. As Judge Kozinski rightly explains, "at the core of one person one vote is the principle of electoral equality, not that of equality of representation." *Id*.

Amicus agrees with Justice Thomas and Judge Kozinski that the constitutional right protected by the one-person, one-vote principle is the right to an equal vote of the same weight as all other voters, rather than a right of equal access to representation. The degree of access a legislature may wish to give residents is much more the character of a political question compared to this Court's Constitutionalized one-person one-vote jurisprudence. As Judge Kozinski said, that is why the principle is called "one-person, one-vote." There is no evidence in the present case that districts of equal voters, rather than equal population, would leave non-citizens with any less effective access to their district's Senator, which would be an implausible claim on its face.

II. This Court's Precedents Protect the Right of Every Voter to an Equal Vote.

While this Court has never definitively resolved which population data the principle of one-person, one-vote applies to, the precedents of this Court make clear that the doctrine protects the right of every voter to an equal vote.

Central to the issue before the Court is *Reynolds v. Sims*. In it, this Court announced that "all who participate in [an] election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income,

and wherever their home may be…." 377 U.S. at 557-58.

This Court added in *Hadley* that the Equal Protection Clause "requires that each qualified voter must be given an equal opportunity to participate in that election." 397 U.S. at 56. Consequently, "when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of voters can vote proportionally for equal numbers of officials." *Id*. *See also, Reynolds*, 377 U.S. at 568.

As *Reynolds* explained, the Equal Protection Clause protects "the right of all qualified citizens to vote." 377 U.S. at 554. "Other rights, even the most basic, are illusory if the right to vote is undermined." *Id*. (quoting *Wesberry v. Saunders*, 376 U.S. 1, 17 (1964)). A citizen, therefore, "has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). As this Court noted further in *Greg v. Sanders*, 372 U.S. 368, 380 (1963), "The idea that every voter is equal to every other voter in his State, when he casts his ballot in favor of one of several competing candidates, underlies many of our decisions."

Reynolds further explained that "[w]ith respect to the allocation of legislative representation, all voters, as citizens of a state, stand in the same relation regardless of where they live." 377 U.S. at 565. "Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when

compared with the votes of citizens living in [other] parts of the State." *Id.* at 568. Judge Kozinski summarizes, "References to the personal nature of the right to vote as the bedrock on which the one person one vote principle is founded appear in the case law with monotonous regularity." *Garza*, 918 F.2d at 782 (Kozinski, J., concurring in part and dissenting in part).

Gaffney v. Cummings, 412 U.S. 735, 746 (1973) explained the principle in the way most relevant to the question at issue in this case, saying, "[T]otal population…may not actually reflect that body of voters whose votes must be counted and weighed for the purposes of reapportionment, because 'census persons' are not voters."

Just as this Court ended the artificial political subsidy to rural voters in *Reynolds*, so should it end the artificial political subsidy to those voters who live in areas with dense concentrations of non-citizens.

The decision of the district court below declined to follow the above long line of precedents of this Court, and the practice of the DOJ, below, which protect the right of *citizens* to an equal vote. The court below said whether the doctrine of so-called one-person, one-vote protected the right of citizens to an equal vote, or the right of total population to supposed equal chances to get on their representative's appointments calendar, was a political question that each state was free to decide on its own.

This Court has recognized that, typically, "'[w]hen a State exercises power wholly within the

domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.'" *Reynolds*, 377 U.S. at 566 (quoting *Gomillion v. Lightfoot*, 364 U.S. 339, 347 (1960)).

As the *Reynolds* Court explained:

> We are told that the matter of apportioning representation in a state legislature is a complex and many-faceted one. We are advised that States can rationally consider factors other than population in apportioning legislative representation. We are admonished not to restrict the power of the States to impose differing views as to political philosophy on their citizens. We are cautioned about the dangers of entering into political thickets and mathematical quagmires. Our answer is this: a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us.

377 U.S. at 566.

Indeed, the doctrine of one-person, one-vote logically grows directly out of the right to vote itself. The equal right of all to vote logically gives rise to the right of all to an equal vote. This Court in enforcing one-person, one-vote is just enforcing the equal right of all to vote.

This logic can be seen at the root of the rise of one-person, one-vote in *Baker v. Carr*, 369 U.S. 186.

This Court in that landmark case effectively rejected the district court's political question doctrine in finding that the Plaintiffs in that case had standing as "*voters* of the state of Tennessee" and that "*voters* who allege facts showing disadvantage to themselves as individuals have standing to sue." *Id*. at 204, 206 (emphasis added). This Court consequently found that the apportionment challenge of the Tennessee voters was "justiciable, and if 'discrimination is sufficiently shown, the right to relief under the equal protection clause is not diminished by the fact that the discrimination relates to political rights.'" *Id*. at 209-10 (quoting *Snowden v. Hughes*, 321 U.S. 1, 11 (1944)). This ruling on this reasoning logically forecloses the political question abdication of the district court below. Appellees make arguments not unlike those advanced by Tennessee and Alabama before this Court rejected them in *Baker* and *Reynolds*.

III. The Department of Justice Uses Citizens Voting Age Population in its Enforcement of the Voting Rights Act.

The logic of the one-person, one-vote principle and this Court's precedents, above, are the reason why redistricting and other suits brought by the DOJ under Section 2 of the Voting Rights Act[3] have been based on Citizen Voting Age Population

[3] All cases brought under Section 2 of the Voting Rights Act, with the complaints and other documents linked, are listed at the DOJ website under "Cases Raising Claims Under Section 2 of the Voting Rights Act," http://www.justice.gov/crt/about/vot/litigation/recent_sec2.php#osceola_school.

(CVAP), or otherwise focused on the rights of citizens who can vote, or on "voters."

When the DOJ brings a case pursuant to Section 2 of the Voting Rights Act, there are three so-called preconditions that it must show are present. *See Thornburgh v. Gingles*, 478 U.S. 30 (1986). The first *Gingles* precondition is that the minority group "is sufficiently large and geographically compact to constitute a majority in a single member district." *Id.* at 50-51. To establish this precondition, the DOJ explicitly turns to CVAP. Below are examples of this use.

1. *United States v. Town of Lake Park*

In its Complaint, the DOJ alleged "Plaintiff challenges the at-large method of electing the Town of Lake Park Commission on the grounds that it dilutes the voting strength of black *citizens* in violation of Section 2…." Complaint at 1, *United States v. Town of Lake Park, FL*, No. 09-80507 (S.D. Fla. 2009) (emphasis added), and thus the first *Gingles* precondition was satisfied. *See Gingles*, 478 U.S. 30, 50-51.

Indeed, as the foundation for the remedy sought, the Complaint further alleged, "The black population of the Town is sufficiently numerous and geographically compact that a properly apportioned single-member district plan for electing the Defendant Commission can be drawn in which black persons would constitute a majority of the total population, voting age population, and *citizen voting age population* in at least one district." Complaint at 3, *United States v. Town of Lake Park, FL* (emphasis added).

The Cause of Action section of the Complaint alleged, "the at-large method of electing the Commission has the effect of diluting black voting strength, resulting in black *citizens* being denied an opportunity equal to that afforded to other members of the electorate," and "Unless enjoined by order of this Court, Defendants will continue to conduct elections for the Commission under the present method of election that denies black *citizens* the opportunity to participate equally with white *citizens*…." *Id.* at 4 (emphasis added).

2. *United States v. Euclid City School District Board of Education*

The DOJ's lawsuit here reveals its policy on which population group should be used in Section 2 lawsuits involving legislative districts. The Complaint alleged, "The at-large method of electing the Euclid Board of Education dilutes the voting strength of African-American *citizens*, in violation of Section 2 of the Voting Rights Act…." Complaint at 2, *United States v. Euclid City School District Board of Education, OH*, No. 1:08-cv-02832 (N.D. Ohio 2008) (emphasis added). To satisfy the first *Gingles* precondition, the DOJ alleged, "The African-American population of Euclid is sufficiently numerous and geographically compact that a properly apportioned five single-member district plan . . . can be drawn in which African-Americans would constitute a majority of the total population and *voting age population* in one district." *Id.* at 3.

The Cause of Action section of the Complaint alleged, "the at-large election system for electing Defendant Euclid City School District Board of

Education…result[s] in African-American *citizens* being denied an opportunity equal to that afforded to other members of the electorate…." and "Unless enjoined by order of this Court, Defendants will continue to conduct elections for the Euclid City School District Board of Education under the present method of election that denies African-American *citizens* the opportunity to participate equally with white *citizens*…." *Id.* at 4 (emphasis added).

3. *United States v. The School Board of Osceola County*

In that Complaint, the DOJ alleged, "The Hispanic population of the county is sufficiently numerous and geographically compact that a properly apportioned single-member district plan for electing the School Board can be drawn in which Hispanic persons would constitute a majority of the *citizen voting-age population* in one out of five districts." Complaint at 3-4, *United States v. The School Board of Osceola County*, No. 6:08-cv-00582 (M.D. Fla. 2008) (emphasis added).

4. *United States v. Georgetown County School District, et. al.*

The DOJ Complaint alleged, "The African-American population of the county is sufficiently numerous and geographically compact that a properly apportioned single-member district plan for electing the Defendant Board can be drawn in which black *citizens* would constitute a majority of the total population, and voting age population in three districts." Complaint at 3, *United States v. Georgetown County School District, et. al.*, No. 2:08-cv-00889 (D.S.C. 2008) (emphasis added). The Cause

of Action section of the brief seeks relief against practices "resulting in African-American *citizens* being denied an opportunity equal to that afforded to other members of the electorate to participate in the political process and elect representatives of their choice…." *Id.*at 5 (emphasis added). Yet again, the DOJ affirmed that citizenship data is the proper data set to be used in determining liability under the first *Gingles* precondition.

5. *United States v. City of Euclid, et al.*

An earlier DOJ Complaint alleged that "the at-large/ward method of electing the Euclid City Council dilutes the voting strength of African-American *citizens*, in violation of Section 2 of the Voting Rights Act…." Complaint at 1, *United States v. City of Euclid, et al.*, No. 1:06-cv-01652 (N.D. Ohio 2006) (emphasis added). The Complaint further alleged that "The African-American population of the City of Euclid is sufficiently numerous and geographically compact that a properly apportioned single-member district plan for electing the Defendant City Council can be drawn in which black *citizens* would constitute a majority of the total population, and voting age population in two districts." *Id.* at 3 (emphasis added). The Cause of Action section of the Complaint seeks relief from practices "resulting in African-American *citizen*s being denied an opportunity equal to that afforded to other members of the electorate to participate in the political process and elect representatives of their choice, in violation of Section 2 of the Voting Rights Act." *Id.* at 4 (emphasis added).

6. *United States v. City of Boston*

The DOJ Complaint in this matter was based explicitly on "*citizen voting age population*." The Second Cause of Action alleges, "Defendants' conduct has had the effect of denying limited English proficient Hispanic and Asian American *voters* an equal opportunity to participate in the political process and to elect candidates of their choice on an equal basis with other citizens in violation of Section 2 of the Voting Rights Act." Complaint at 6, *United States v. City of Boston, MA*, No. 05-11598 (D. Mass. 2005) (emphasis added).

The Prayer for Relief section of the Complaint sought relief "to ensure that Spanish-speaking *citizens* are able to participate in all phases of the electoral process," and to prevent Boston "from implementing practices and procedures that deny or abridge the rights of limited English proficient Hispanic and Asian American *citizens* in violation of Section 2 of the Voting Rights Act." *Id*. at 7 (emphasis added). The Prayer for Relief also sought an injunction "[r]equiring Defendants to devise and implement a remedial program that provides Boston's limited English proficient Hispanic and Asian American *citizens* the opportunity to fully participate in the political process consistent with Section 2 of the Voting Rights Act." *Id*. at 7-8 (emphasis added).

7. *United States v. Osceola County*

The DOJ alleged, "In conducting elections in Osceola County, Defendants have failed to ensure that all Hispanic *citizens* with limited-English proficiency have an equal opportunity to participate

in the political process and to elect the representatives of their choice," and "The effects of discrimination on Hispanic *citizens* in Osceola County, including their markedly lower socioeconomic conditions relative to white *citizens*, continue to hinder the ability of Hispanic *citizens* to participate effectively in the political process in county elections." Complaint at 4, *United States v. Osceola County*, No. 6:05-cv-1053 (M.D. Fla 2005) (emphasis added).

The Complaint specifically alleged, "Upon information and belief, a majority of Board members in 1994-96 recognized that the growth of the Hispanic population would result in Hispanic voters achieving the ability to elect a candidate of their choice in one or more districts under the single-member district method of election," and "In 1996, a Hispanic candidate ran in Board of Commissioners District One, and was elected to the Board under the single-member district method of election." *Id.* at 5-6.

The Complaint explained, "In 2001, the Board of Commissioners appointed a redistricting committee to redistrict the county's residency districts. Commissioners expressed concern about the possibility they would be forced to change their method of election in the future, and the residency district plan was adopted with this concern in mind." *Id.* at 6. The Complaint added, "The residency districts adopted by the Board in 2001 split heavily Hispanic population concentrations." *Id.* Consequently, the Complaint alleged that the method for electing the Board "has the effect of diluting Hispanic voting strength, resulting in

Hispanic *citizens* … having less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice, in violation of Section 2." *Id.* at 6-7. (emphasis added).

8. *United States v. Alamosa County*

The DOJ Complaint alleged, "The current at-large method of electing the members of the Alamosa County Board of Commissioners violates Section 2 of the Voting Rights Act, because it results in Hispanic *citizens* of the county having less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice…." Complaint at para. 16, *United States v. Alamosa County*, No. 01-B-2275 (D. Colo. 2001) (emphasis added).

9. *United States v. Crockett County*

The Complaint alleged that the districting plan for the election of members of the County Board of Commissioners "violates Section 2 of the Voting Rights Act because it results in black *citizens* of the county having less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." Complaint at 3, *United States v. Crockett County*, No. 1-01-1129 (W.D. Tenn. 2001) (emphasis added). The Complaint further alleged, "The black population of Crockett County is sufficiently numerous and geographically compact that a properly apportioned multi-member district plan for electing the defendant Board of Commissioners can be drawn in which black voters would constitute an

effective majority in two districts out of twelve." *Id.* at 2.

10. *United States v. Charleston County*

The DOJ Complaint alleged a violation of Section 2 because "the at-large election system for electing the Charleston County Council has the effect of diluting black voting strength, resulting in black *citizens* being denied an opportunity equal to that afforded to other members of the electorate to participate in the political process and elect representatives of their choice." Complaint at 4, *United States v. Charleston County*, No. 2-01-0155 (D.S.C. 2001) (emphasis added). The Complaint specifically alleged, "The black population of Charleston County is sufficiently numerous and geographically compact that a properly apportioned single-member district plan for electing the Defendant County Council can be drawn in which black *citizens* would constitute a majority of the total population, voting age population, and registered voters in three districts." *Id.* at 3 (emphasis added).

Thus, it is clear that the DOJ, as the designated chief enforcer of the Voting Rights Act, concentrates on the numbers of eligible *citizen* voters when evaluating possible violations of the law and allegations of unequal treatment. The DOJ has plainly used citizenship data in redistricting case after redistricting case, voting case after voting case.

Conclusion

For all of the foregoing reasons, *Amicus Curiae* American Civil Rights Union respectfully submits that this Court should reverse the lower court decision and confirm that its one-person, one-vote principle ensures that every citizen has an equal vote, and thus, requires the use of citizen population when drawing legislative districts.

Respectfully submitted,

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