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Case Overview: *Evenwel v. Abbott*

The Texas Legislature reapportioned its state senate districts following the 2010 Census. As states have done for 50 years, Texas drew its senate districts based on Census total population data so that each district contains a substantially equal number of people (within the +/- 10% deviation norm for state legislative redistricting); however, the districts contain a somewhat different number of "eligible voters".

Two plaintiffs sued Texas, arguing that the State should use an undefined and new standard of "eligible voters," instead of total population, for state legislative redistricting. Specifically, plaintiffs claim that their votes are worth less than people in other districts (namely urban areas) because they live in districts (namely rural areas) that are comparatively overpopulated with voters, thereby diluting the impact of their individual vote.

A three-judge federal district court dismissed the claim and plaintiffs appealed directly to the U.S. Supreme Court. **On December 8, 2015, the Court will hear oral argument in this case, *Evenwel v. Abbott.*** The primary question before the U.S. Supreme Court is whether state legislative apportionment based on total population satisfies the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. It does.

The Fourteenth Amendment states: "No State shall … deny to any person within its jurisdiction the equal protection of the laws." More than 50 years ago, the U.S. Supreme Court held that this Equal Protection Clause requires that legislative districts be substantially equal in population (*Reynolds v. Sims*, 1964). For more than a half-century, in an unbroken line of cases, the "one person, one vote" rule has helped realize the constitutional promise of inclusion and equal access to our nation's representative bodies. This bedrock principle guards against discrimination and ensures that <u>everyone</u> is counted when legislative districts are redrawn.

Creating state legislative districts with equal populations fosters access to electoral representation and constituent services regardless of race, class, religion, or other characteristics. Using total population allows everyone -- including children who are not old enough to vote, individuals who have not yet registered to vote, people who are on the path to citizenship, individuals rendered ineligible to vote by felon disfranchisement laws, persons with mental disabilities, and others -- to be represented in state and local legislative bodies, not just those who can or do vote.

Currently, states and local jurisdictions have the flexibility, buttressed by safeguards, to draw districts based on total population. Every state in the country relies upon total population -- such that it is the *de facto* policy of all states, which courts have repeatedly approved.

And when redistricting is discussed, we often hear of one party or the other seeking to draw lines for political advantage. Given this context, it is important to note that using total population for

redistricting has overwhelming, bipartisan support among state *and* local governments. For example, as the friend of the court brief filed on behalf of 21 states stated: "Relying on the Census ensures that States have accurate, useful, and *neutral* total-population counts on which to base redistricting." (emphasis added) The governors of the states signing this brief are almost perfectly balanced between Democrats (11) and Republicans (10). Likewise, various cities across this country filed briefs supporting the "Constitution's promise that all persons—not merely voters—are entitled to equal protection of the laws."

The Supreme Court's long-standing, inclusive understanding of electoral democracy is a response to our country's history of excluding people of color at the polls. Prior to *Reynolds* and the Voting Rights Act, States used literacy tests, poll taxes, and outright prohibitions on suffrage to exclude Black people from the political process. As a result, elected officials often ignored racial minorities in the making of important policy decisions that impacted their daily lives. It is only through the Civil War, key constitutional amendments, years of litigation, and other advocacy that our country has begun to overcome these obstacles to equal access to representation.

Sherrilyn Ifill, President and Director-Counsel of the NAACP Legal Defense and Educational Fund (LDF), the nation's leading civil rights and racial justice legal organization and a separate entity from the NAACP, stated, "We should not turn the clock back by creating two classes of people: those who count for purposes of redistricting and those who do not. The plaintiffs' nebulous standard of 'eligible voters' would treat millions of people as invisible during legislative redistricting and make them outsiders for purposes of democratic representation."

This case recalls *Gomillion v. Lightfoot* (1960), which LDF litigated. There, the Court reviewed a challenge to the City of Tuskegee's borders, which had been redrawn to exclude all but four or five (out of 400) Black voters, while not removing a single white resident or voter. The Court unanimously rejected the new boundaries and warned against manipulating rights out of existence.

In *Evenwel*, plaintiffs do not offer a clear definition of "eligible voters." The process of defining the term would create abundant opportunities for political manipulation and the exclusion of people of color and others from civic participation. Indeed, under an "eligible voter" measure for state redistricting, more than 20 million Black people – children, non-citizens, unregistered voters who are citizens, disfranchised persons, and others – would be denied representation. Taking even one of these categories of people out of the redistricting count would be devastating. For example, children under the age of 18 are 23% (or 75 million) of the total U.S. population, the majority of whom are citizens, and concentrated in certain areas across all 50 states

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By contrast, total population can be readily qualified by Census data. The Constitution requires that congressional districts be drawn based on total populations as determined by the Census. There is no need for two sets of redistricting standards, one for state redistricting and one for federal.

As the amicus brief of Stanford Law Professor Nathaniel Persily and other experts on the Census concluded: "Rarely can one say of a constitutional argument that it is not only wrong, but it is impossible … A national database of eligible voters does not exist and will not exist in the foreseeable future."

The Court should reaffirm the constitutionality of States' established use of total population figures when drawing legislative districts. There is no reason to depart from settled law and longstanding practice.

"The changes that plaintiffs suggest would fence millions of people out of American political life and reverse the Court's advances to make democratic institutions more open, inclusive, and representative," continued Ifill.

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The NAACP Legal Defense and Educational Fund, Inc. http://www.naacpldf.org/ is America's premier legal organization fighting for racial justice. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. LDF also defends the gains and protections won over the past 75 years of civil rights struggle and works to improve the quality and diversity of judicial and executive appointments. Since its founding in 1940, LDF has been a pioneer in the struggle to secure and protect the voting rights of African-Americans. LDF has been involved in nearly all of the precedent-setting litigation relating to minority voting rights.