



Background on *Evenwel v. Abbott* (to be argued on Tuesday December 8)

Legal Background: The One-Person, One-Vote Principle

- In *Reynolds v. Sims*,¹ the Supreme Court held that the Equal Protection Clause requires that election districts be roughly equal in population size.
- **Two Competing Conceptions of Equality:** The principle of “one person, one vote” can be interpreted as embodying two different, competing conceptions of equality in the political process:
 - **Representational Equality:** people should be represented equally, so legislators should each represent roughly the same number of people in their districts
 - **Electoral Equality:** every vote should be weighted equally, so legislators should each be elected by roughly the same number of voters in their districts
- **Issue Presented:** Does the Equal Protection Clause require states to equalize the number of eligible voters in legislative districts? Or may states draw districts to contain equal numbers of **people** regardless of their eligibility to vote, as almost all states currently do?

Factual and Procedural Background²:

- **The Plaintiffs.** Plaintiffs are Texas residents alleging that the State Senate districts in which they reside contain more eligible or registered voters than other districts, and that therefore the relative weight of their vote is less than that of voters in other districts containing fewer eligible voters.
- **Proceedings Below.** As a constitutional challenge to the apportionment of a statewide legislative body, the case was heard by a three-judge district court. The district court, relying on *Burns v. Richardson*³, (which sustained the constitutionality of Hawaii’s exclusion of military personnel from its redistricting plans), dismissed plaintiffs’ claim. This direct appeal to the SCOTUS ensued.

Plaintiffs-Appellants’ Position⁴:

- **“One person, one vote” stands for the principle of electoral equality, i.e.,** that each voter has the right to have his or her vote weighted equally with all other citizens.
- **Apportionment based on total population rather than eligible voters is unconstitutional** when doing so creates significant disparities in the number of voters per district.
- **Here, it was possible to equalize both the total number of people and the total number of voters** in each district. Thus, Texas’ use of total population dilutes the voting strength of eligible voters, and is unconstitutional.

Defendant-Appellee Texas’ Position⁵:

- **States have discretion** to equalize districts based on total population, citizen population, or eligible voters, so long as they do so in good faith. There is no constitutional requirement to reapportion based on any particular population measure.
- **Texas’ good-faith effort** to equalize the total population of its state legislative districts does not amount to unconstitutional vote dilution under the Equal Protection Clause.

¹ 377 U.S. 533 (1964)

² *Evenwel v. Perry*, 2014 WL 5780507, at *1 (W.D. Texas, 2014).

³ 382 U.S. 807 (1965)

⁴ Reply for Appellant, *Evenwel v. Abbott*, 2015 WL 6445776, No. 14-940, (U.S. Oct. 19, 2015).

⁵ Br. for Appellee, *Evenwel v. Abbott*, 2015 WL 5562189, No. 14-940, (U.S. Sept. 18, 2015).



The United States' Position⁶:

- **Equalizing total population** across legislative districts ensures equal representation for all. Broad discretion for states in this area would heighten the risk of gerrymandering and electoral manipulation.
- **There is no need to reach Texas's position** that states have broad discretion to choose the population metric for purposes of equalizing districts. It is sufficient for the Court to hold that redistricting on the basis of total population is permissible under the Equal Protection Clause.

ACLU Position as *Amicus Curiae*⁷:

- **The Constitution does not prohibit redistricting within states on the basis of total population**, which the Constitution actually requires for apportioning seats in the U.S. House among the States.
- **The principle of universal and equal representation for all persons** has long been considered to be at the core of republican government, which the Constitution requires States to maintain.

Potential Significance:

- **Loss of Representation.** At the core of this case is the question of what legislative representation means in republican democracy. Including all people in redistricting means that everyone is represented in the political process, which in turn helps ensure that the personal and unalienable rights of all people – including minors and non-citizens – are protected.
- **Radical Change:** Almost all states and jurisdictions currently draw their legislative districts so that they contain equal numbers of people. A ruling in the plaintiffs' favor would require redrawing virtually every redistricting plan in the country, potentially including districts for the U.S. House. The data necessary for such a project does not currently exist, as there is no national registry of citizens.⁸
- **Effect on Minority Representation.** A win for the plaintiffs would mean less representation for communities with more children and non-citizens, including:
 - **Latino communities.** On average, Latino families consist of more minors⁹ and non-citizens than do those of other racial and ethnic groups. Of the 25 congressional districts with the largest Hispanic populations, 19 are in the top 25 districts with the lowest voter-eligible populations.¹⁰
 - **African-American communities.** Amongst the African-American population, millions are non-voters, including 13 million children and 2 million non-citizens;¹¹ 2 million disenfranchised due to felony convictions;¹² and approximately 5 million citizens who are eligible but not registered to vote.¹³

⁶ Br. for the United States as Amicus Curiae in Support of Appellees, *Evenwel v. Abbott*, 2015 WL 5675829, No. 14-940, (U.S. Sept. 25, 2015).

⁷ Br. for the ACLU in Support of Appellees, *Evenwel v. Abbott*, 2015 WL 5719747, No. 14-940, (U.S. Sept. 25, 2015).

⁸ Nathaniel Persily, "The Mysterious Number of American Citizens," *Politico*, June 2, 2015, available at <http://www.politico.com/magazine/story/2015/06/the-supreme-courts-big-data-problem-118568>.

⁹ Br. of the Texas Senate Hispanic Caucus and the Texas House of Representatives Mexican American Legislative Caucus as Amici Curiae in Support of Appellees, *Evenwel v. Abbott*, No. 14-940, 2015 WL 5731666 (U.S. Sept. 25, 2015).

¹⁰ Drew DeSilver, The Pew Research Center, *Supreme Court could reshape voting districts, with big impact on Hispanics* (June 3, 2015), <http://www.pewresearch.org/fact-tank/2015/06/03/supreme-court-could-reshape-voting-districts-with-big-impact-on-hispanics/>.

¹¹ U.S. Census Bureau, Tbl. 29, Population by Sex and Age, for Black Alone or in Combination and White Alone, Not Hispanic (2012), <https://www.census.gov/population/race/data/ppl-bc12.html>; U.S. Census Bureau, Tbl. 35, Nativity and Citizenship Status by Sex, for Black Alone or in Combination and White Alone, Not Hispanic (2012), <https://www.census.gov/population/race/data/ppl-bc12.html>.

¹² Christopher Uggen et al., The Sentencing Project, State-Level Estimates of Felon Disenfranchisement in the United States, 2010, 17, Tbl. 4 (July 2012), http://sentencingproject.org/doc/publications/fd_State_Level_Estimates_of_Felon_Disen_2010.pdf.

¹³ U.S. Census Bureau, Tbl. 2, Reported Voting and Registration, by Race, Hispanic Origin, Sex, and Age (Nov. 2014), <https://www.census.gov/hhes/www/socdemo/voting/publications/p20/2014/tables.html>.