

**A BETTER APPROACH TO REDISTRICTING:  
APPORTIONING STATE LEGISLATIVE SEATS BASED ON  
CITIZEN VOTING AGE POPULATION**

**A WHITE PAPER BY THE PROJECT ON FAIR REPRESENTATION**

**2021**



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## **The Project on Fair Representation**

Founded in 2005, the Project on Fair Representation is a not-for-profit legal defense foundation that is designed to support litigation that challenges racial and ethnic classifications and preferences in state and federal courts. The mission of the Project on Fair Representation (POFR) is to facilitate pro bono legal representation to political subdivisions and individuals that wish to challenge government distinctions and preferences made on the basis of race and ethnicity. Please visit us at [www.projectonfairrepresentation.org](http://www.projectonfairrepresentation.org) to learn more about our cases, support our efforts, and contact us.

## Introduction

Every ten years States must redistrict to account for population shifts and ensure that districts contain equal population. Traditionally, States have used a “total population” measure as the basis for redistricting. But total population is riddled with problems. A total population measure is what it sounds like—districts are drawn on the basis of raw population, without regard to citizenship or voting eligibility. This means that districting can be distorted by the presence of non-voters in districts, such as non-citizens, children, and incarcerated prisoners.<sup>1</sup> Moreover, using total population as the basis of redistricting contributes to the growing underrepresentation of rural voters and creates a perverse incentive for urban areas to enact sanctuary city policies. Total population also has been shown to disparately harm African Americans, who are overwhelmingly voting-eligible citizens.

To counteract these harms, many have been advocating for States to replace total population with “citizen voting age population” (CVAP) as the basis of redistricting. CVAP is a long-established measure of eligible voters that is widely used by courts, the Department of Justice, and state and local governments. It leads to more equal representation by ensuring only eligible voters are counted—unlike total population, which creates significant disparities in voting power among eligible voters. CVAP also promotes good government by imposing a straightforward standard to apportion seats that significantly reduces opportunities to engage in race-based manipulation of districts and gerrymandering. Additionally, CVAP is responsive to changing immigration circumstances. The massive increase in immigration over the past several decades has led to a substantial gap between eligible voters and total population. CVAP is responsive to these changed circumstances by reducing the distortion and ensuring that only those eligible to vote are used as the basis for apportioning state legislative seats. Finally, CVAP is already in widespread use by the courts, the Department of Justice, and state and local

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<sup>1</sup> Patrick J. Charles, *Representation Without Documentation?: Unlawfully Present Aliens, Apportionment, the Doctrine of Allegiance, and the Law*, 25 *BYU J. Pub. L.* 35 (2011); Robert W. Bennett, *Should Parents Be Given Extra Votes on Account of Their Children?: Toward a Conversational Understanding of American Democracy*, 94 *Nw. U. L. Rev.* 503, 511 (2000); Charles Wood, *Losing Control of America's Future--The Census, Birthright Citizenship, and Illegal Aliens*, 22 *Harv. J.L. & Pub. Pol'y* 465, 470 (Spring 1999).

governments. Shifting from total population to CVAP is practical and would not burden State resources.

In the November 2020 election, the people of Missouri approved an amendment to their state constitution (Amendment 3), which allows for the apportionment of state legislative seats on the basis of a measure other than total population.<sup>2</sup> The Amendment repeals a 2018 constitutional amendment that had taken redistricting out of the hands of elected officials by mandating that a professional demographer draw districts based on total population.<sup>3</sup> Amendment 3 replaces this “nonpartisan” professional demographer with a bipartisan citizens commission tasked with drawing districts “on the basis of one person, one vote.”<sup>4</sup> State officials and legislators have made clear that they will seek to apportion legislative seats on the basis of CVAP rather than the total population measure currently in use.<sup>5</sup>

Other States should consider following Missouri’s lead. Not only is CVAP a better measure, it is legal and more in line with the Constitution. The Constitution is silent on the appropriate measure for States to apportion their own legislative seats. And this silence indicates that States have broad authority to employ whatever measure they think appropriate, consistent with popular government and the one person, one vote principle of the Fourteenth Amendment. CVAP best captures the one person, one vote principle by ensuring that each eligible voter has equal voting power, which is not the case with the total population measure.

This White Paper (1) lays out the benefits of using CVAP instead of total population and (2) describes why using CVAP complies with federal laws and the Constitution and is more in line with the history and text of the Constitution. It concludes by encouraging States and localities to use CVAP to do their redistricting.

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<sup>2</sup> S.J. Res. No. 38, 100th Gen. Assemb., 2d Reg. Sess. (Mo. 2020), *available at* [bit.ly/2LUpjFy](https://bit.ly/2LUpjFy); Kayla Wheeler, *Voters Pass Amendment 3 in Missouri*, 5 ON YOUR SIDE (Nov. 4, 2020), [bit.ly/39APOIb](https://bit.ly/39APOIb).

<sup>3</sup> Mo. Sec’y of State, Amendment No. 1 (2018), *available at* [bit.ly/35IdQQh](https://bit.ly/35IdQQh).

<sup>4</sup> *See supra* note 1.

<sup>5</sup> Hansi Lo Wang, *A National Fight Over Who Is Counted In Voting Districts May Arise From Missouri*, NPR (Nov. 6, 2020), [n.pr/38L3Qrz](https://n.pr/38L3Qrz).

## Background

To take into account population shifts and growth, Supreme Court precedent requires States to redistrict state legislative seats every ten years.<sup>6</sup> Thus, following the decennial census, all States redraw their legislative districts to ensure they are of equal size, preserving each voter’s equal voting power. This process is necessary to preserve equality of the vote and can result in significant shifts of legislative seats. States have traditionally used a total population measure rather than a measure of eligible voters, like CVAP, to equalize state legislative districts.<sup>7</sup> But due to the growing distortions created by total population—particularly given the recent rise in immigration—many are beginning to advocate for States to shift from total population to CVAP as the basis for redistricting. CVAP would ensure that all eligible *voters*—*i.e.*, citizens of voting age—are divided equally throughout state legislative districts. Total population, which counts non-citizens, prisoners, and others ineligible to vote, has led to the creation of districts containing vastly disparate numbers of eligible voters, undermining the one person, one vote principle of the Fourteenth Amendment.

### **I. Total Population as a Basis for Districting Is Deeply Flawed.**

The traditional method for apportionment—total population—leads to unjust and anomalous districts. The premise of equal voting rights is that each voter has equal voting power—for purposes of state legislative redistricting, where a voter lives cannot affect his voting power relative to other voters throughout the State.<sup>8</sup> But total population arbitrarily inflates the votes of some voters who happen to live in areas with more people over the votes of voters who live in areas with an equal number of voters but less overall population. Thus, “when the population of eligible voters is [not] equal across districts, the number of people actually choosing a representative will vary, thereby giving voters in different districts different voting strengths.”<sup>9</sup> Professor Robert Bennett has starkly illustrated the inequality in voting power caused by total population:

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<sup>6</sup> See *Reynolds v. Sims*, 377 U.S. 533, 583-84 (1964).

<sup>7</sup> Nat’l Conf. of State Legislatures, *Redistricting Systems: A 50-State Overview* (June 2, 2020), [bit.ly/3bQoico](https://bit.ly/3bQoico).

<sup>8</sup> *Reynolds*, 377 U.S. at 563-68.

<sup>9</sup> Ilya Shapiro & Thomas A. Berry, *Evenwel v. Abbott: The Court Shanks Its Punt on ‘One Person, One Vote’*, 17 Fed. Soc’y Rev. 2 (June 2, 2016), [bit.ly/3oRY9Oa](https://bit.ly/3oRY9Oa).

[A]ssume that there are two equally populated electoral districts within a state—district A and district B—each with fifty thousand people and each entitled to one representative because the allocation is based on total district population. District A, however, has twenty thousand eligible voters and thirty thousand ineligibles, while district B has forty thousand voters and ten thousand ineligibles. The franchise is then distributed between the voters of A and B unequally. Each of A’s voters has twice the ability of B’s voters to influence electoral outcomes.<sup>10</sup>

Thus, under a total population measure, two districts with vastly different numbers of eligible voters receive the same number of representatives:

<b>Districts Based on Total Population</b>			
District	Total Population	Eligible Voters	Number of Representatives
A	50,000	20,000	1
B	50,000	40,000	1

In District A, one representative represents 20,000 voters, but in District B one representative must represent 40,000 voters—twice as many than in District A. Put differently, in this scenario, the voting power of those in District A is *twice as powerful* as the voting power of those in District B.

These distortions are not confined to hypothetical exercises—they occur in the real world. For example, in the *Evenwel v. Abbott* litigation, it was uncontested that Texas’s total-population-based districting maps led to an eligible voter in Texas District 27’s vote being between 1.56 to 1.84 times more powerful than the vote of an eligible voter in Texas District 1.<sup>11</sup> Similar distortions were also demonstrated by the City of Yakima, Washington.<sup>12</sup>

This basic injustice leads to several incidental harms. To start, total population includes non-citizens as the basis for apportioning districts. Under a total population measure, a non-citizen who is “transported into the United States by a smuggler, has received a deportation

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<sup>10</sup> Bennett, *supra* note 1, at 512.

<sup>11</sup> Brief for Appellants, *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016) (No. 14-940), 2015 WL 4624625, at \*11-12.

<sup>12</sup> Brief of The City of Yakima, Washington as Amicus Curiae Supporting Appellants, *Evenwel*, 136 S. Ct. 1120 (No. 14-940), 2015 WL 4881828, at \*6-10.

notice, or is simply an illegal resident who has not been apprehended because of ineffective federal law enforcement,” is counted for apportionment purposes right alongside voting-age citizens.<sup>13</sup> Total population perversely incentivizes sanctuary city policies. Jurisdictions that willfully defy federal immigration law are rewarded with more state legislative seats than by a total population measurement.<sup>14</sup>

Total population also counts incarcerated felons, which leads to overweighting areas in which a prison is located.<sup>15</sup> Areas surrounding prisons, whose citizens overwhelmingly have no ties to the prisoners, are granted inflated voting power based on the incarcerated felons who happen to reside in their districts.<sup>16</sup> CVAP would eliminate this disparity and also save States the trouble of adjusting their apportionment data to exclude incarcerated prisoners.<sup>17</sup>

The use of a total-population baseline also reduces African Americans’ voting power. Because African Americans are almost always citizens, the use of total population inevitably devalues their votes and reduces their representation. The National Center for Public Policy Research has estimated that “apportionment according to total population rather than CVAP could potentially diminish the value of a Black citizen’s vote by nearly 10 percent” in Chicago, 5 percent in New York City, 27 percent in Los Angeles, 14 percent in Miami, 23 percent in

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<sup>13</sup> Wood, *supra* note 1, at 470.

<sup>14</sup> Brief of Amicus Curiae Immigration Reform Law Institute in Support of Appellants, *Evenwel*, 136 S. Ct. 1120 (No. 14-940), 2015 WL 4747986, at \*18-20; Charles, *supra* note 1, at 38, 76.

<sup>15</sup> The overwhelming majority of States count incarcerated felons at their place of incarceration. Only nine States—California, Colorado, Delaware, Maryland, Nevada, New Jersey, New York, Washington, and Virginia—require adjustments to census data “to count incarcerated people at home rather than in prison or jail for congressional redistricting, state legislative redistricting, or both.” Jeff Zalesin, *Beyond the Adjustment Wars: Dealing with Uncertainty and Bias in Redistricting Data*, 130 Yale L.J. Forum 186, 192 n.26 (2020).

<sup>16</sup> *Cf. Calvin v. Jefferson Cty. Bd. of Comm’rs*, 172 F. Supp. 3d 1292, 1317 (N.D. Fla. 2016) (“On the whole . . . the record bears out Plaintiffs’ contention that ‘JCI inmates are not true constituents in Jefferson County.’”); Bennett, *supra* note 1, at 533 (“[T]he extra voting power is typically assigned to the voters in whose district a prison is located rather than to any population more likely to have ties to the prisoners of family or friendship.”).

<sup>17</sup> See *In re Initiative Petition No. 426, State Question No. 810*, 465 P.3d 1244, 1253 (Okla. 2020) (“The court in *Calvin* even suggested that including prisoners in districts only where prisons were located was arbitrary, not the reverse.” (citing *Calvin*, 172 F. Supp. 3d at 1323)).

Houston, 21 percent in Dallas, and over 1 percent in Atlanta.<sup>18</sup> This likely eliminates African American representation in competitive districts.<sup>19</sup>

Finally, total population contributes to a growing urban-rural imbalance in apportionment. Just as urban populations were once undercounted, the pendulum has swung in the other direction. Total population measures routinely underweight rural districts because urban areas contain more non-voting eligible population.<sup>20</sup>

Both States and the courts have also long recognized that “blind reliance” upon total population is inappropriate and have excluded temporary military personnel from the apportionment count.<sup>21</sup> CVAP would allow the States to treat non-citizens and prisoners in the same manner.

## **II. CVAP Is the Better Way to Apportion State Legislative Seats.**

### **A. CVAP Promotes Equal Voting Power.**

Citizens who are eligible to vote are the appropriate measure upon which to base state legislative apportionment. As the Supreme Court has noted, “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 for proportionally equal numbers of officials.”<sup>22</sup> And the Fourteenth Amendment’s one person, one vote principle

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<sup>18</sup> Brief for Project 21 as Amicus Curiae in Support of Appellants, *Evenwel*, 136 S. Ct. 1120 (No. 14-940), 2015 WL 4720267, at \*21-23.

<sup>19</sup> *Id.* at 31-32 (“[R]edistricting according to CVAP would result in additional Black representation—almost certainly one, and perhaps two, additional secure majority-Black districts and multiple additional districts where Black candidates of choice would be competitive or successful.”).

<sup>20</sup> Hans A. von Spakovsky, *Evenwel v. Abbott: Destroying Electoral Equality and Eroding “One Person, One Vote”*, 2016 Cato Sup. Ct. Rev. 101, 104-05 (“Today, lawmakers from urban areas dominate many state legislatures partly because of the huge influx of noncitizens—both legal and illegal immigrants—into predominantly urban settings. This greatly increases the population of nonvoters who can be used to fill in urban legislative districts.”).

<sup>21</sup> *Cablin*, 172 F. Supp. 3d at 1303; *see also* Zalesin, *supra* note 15, at 192 n.26 (“Hawaii, Kansas, and Washington ‘exclude certain non-permanent residents, including nonresident members of the military’ from their redistricting population bases.”).

<sup>22</sup> *Hadley v. Junior Coll. Dist. of Metro. Kansas City, Mo.*, 397 U.S. 50, 56 (1970).

protects the right of eligible voters to have an equal vote for state legislators and officials.<sup>23</sup> Moreover, CVAP is grounded in the notion of electoral equality—that each voter is entitled to equal weight—while total population is grounded in concepts of “virtual representation”—that voters represent the interests of nonvoters in their districts. The wide expansion of the franchise to nearly all voting age citizens has rendered “virtual representation” an outmoded concept that should be abandoned in favor of the electoral equality of each voting age citizen.<sup>24</sup>

CVAP ensures that the distortions created by total population discussed above do not occur: every eligible voter is entitled to equal representation.

<b>Districts Based on CVAP</b>			
District	Total Population	Eligible Voters	Number of Representatives
A	60,000	30,000	1
B	40,000	30,000	1

Under this scenario, the voting power of those in District A is now *equal* to the voting power of those in District B. Each representative represents 30,000 voters.

**B. CVAP Promotes Good Government.**

CVAP reduces opportunities for manipulation and gerrymandering in the redistricting process. As the National Center for Public Policy Research has demonstrated, CVAP reduces “opportunities for intentionally manipulating voting strength based on race” by imposing a uniform standard for apportionment under both Section 2 of the Voting Rights Act and the Fourteenth Amendment.<sup>25</sup> Thus, by employing CVAP, in addition to considering “traditional

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<sup>23</sup> See, e.g., *Garza v. Cty. of L.A.*, 918 F.2d 763, 782 (9th Cir. 1990) (Kozinski, J., concurring and dissenting in part) (“[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, making sure that each voter gets one vote—not two, five or ten.”).

<sup>24</sup> See, e.g., *id.* (“[W]hat lies at the core of one person one vote is the principle of electoral equality, not that of equality of representation.”); see also Shapiro & Berry, *supra* note 9, at 10-11 (“The true attitude of those who passed the Fourteenth Amendment toward the concept of virtual representation for independent adults is revealed in their responses to these arguments. Rep. Ignatius Donnelly remarked that ‘if men have no voice in the national Government, other men should not sit in this Hall pretending to represent them.’”).

<sup>25</sup> Project 21 Amicus Brief, *supra* note 18, at 16-19 (“[A] legislature that uses CVAP both in drawing Section 2 districts and in apportioning population does not get to decide what the relative voting strength of racial

districting principles such as compactness, contiguity, and respect for political subdivisions,”<sup>26</sup> there will be less opportunity to gerrymander. Districts, in turn, will become more integrated, reducing the need for judicial intervention.

### **C. CVAP is Responsive to Changing Immigration Circumstances.**

The massive influx of immigration in the past decades increases the need for CVAP. When the courts were developing the one person, one vote principle, the difference between total population and eligible voters was insignificant. However, “[w]ith the dramatic influx of concentrated illegal immigration in the late 1980s and 1990s . . . the ordinary correlation between total population and voter population began to break down.”<sup>27</sup> Compounding the problem, the influx in non-citizens is not evenly distributed: non-citizens overwhelmingly reside in cities rather than rural areas.<sup>28</sup> In sum, given this massive influx, total population is more suspect than ever. CVAP would end the distortion by ensuring that nonvoting non-citizens are not counted in apportionment.

### **D. CVAP is Practical and Readily Available.**

CVAP data is readily available and already in widespread use by courts, the Department of Justice, and State and local governments. The Census Bureau collects CVAP data as part of its American Community Survey, which “allow[s] demographers, legislators, and the general public to calculate a jurisdiction’s CVAP with relative ease.”<sup>29</sup> And the Census Bureau will soon release the most recent CVAP data.<sup>30</sup>

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minorities in Section 2 districts will be. Instead, the legislature in that instance is required to fill out each district with eligible voters, and the relative weight of those eligible voters’ votes will be secured. This limits the potential for manipulation of vote weight based on race and the potential for invidious discrimination.”).

<sup>26</sup> *Shaw v. Reno*, 509 U.S. 630, 646-47 (1993).

<sup>27</sup> Kent D. Krabill & Jeremy A. Fielding, *No More Weighting: One Person, One Vote Means One Person, One Vote*, 16 Tex. Rev. L. & Pol. 275, 276 (2012); see von Spakovsky, *supra* note 20, at 117.

<sup>28</sup> Audrey Singer & Jill H. Wilson, *Immigrants in 2010 Metropolitan America: A Decade of Change*, BROOKINGS INST. (Oct. 13, 2011), [brook.gs/39DdQCe](http://brook.gs/39DdQCe).

<sup>29</sup> See Brief of Demographers Peter A. Morrison, Thomas M. Bryan, William A.V. Clark, Jacob S. Siegel, David A. Swanson, and The Pacific Research Institute as Amici Curiae in Support of Appellants, *Evenwel*, 136 S. Ct. 1120 (No. 14-940), 2015 WL 4747987, at \*4, 23-27.

<sup>30</sup> See John M. Abowd, et al., *Determination of the 2020 U.S. Citizen Voting Age Population (CVAP) Using Administrative Records and Statistical Methodology*, U.S. CENSUS BUREAU (Oct. 30, 2020), [bit.ly/3qmQ6cm](https://bit.ly/3qmQ6cm).

Demonstrating its reliability and availability, the Department of Justice routinely utilizes CVAP in assessing compliance with Section 2 of the Voting Rights Act.<sup>31</sup> Moreover, “[i]n order to meet [their] Section 2 requirements, States and local jurisdictions throughout the Nation retain professionals . . . to draw, analyze, and adjust voting district boundary lines to comply with Section 2—and they universally rely on CVAP data to accomplish this.”<sup>32</sup> States thus have the tools and experience to immediately switch to CVAP to apportion districts. Indeed, because States must already use CVAP as a basis for Section 2 compliance, utilizing it for general redistricting purposes would be more efficient than conducting a separate total population measure.

### **III. CVAP Is a Constitutionally Permissible Way to Apportion State Legislative Seats.**

Apart from its policy benefits, CVAP is also a legally permissible basis for state legislative reapportionment.

#### **A. The Text and Structure of the Constitution**

The text and structure of the Constitution does not establish a uniform standard for state legislatures to apportion their state legislative districts. This silence means that the people of each State determine how to apportion their state legislative seats,<sup>33</sup> subject to only two explicit textual restrictions. First, seats must be apportioned in a manner consistent with a “Republican Form of Government.”<sup>34</sup> Second, States must apportion seats in a manner consistent with the Fourteenth Amendment’s one person, one vote principle.<sup>35</sup> CVAP does not transgress either of these restrictions on the States’ otherwise plenary power to apportion state legislative seats.

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<sup>31</sup> See Brief of the American Civil Rights Union as Amicus Curiae in Support of Appellants, *Evenwel*, 136 S. Ct. 1120 (No. 14-940), 2015 WL 6529773, at \*14-22 (collecting cases).

<sup>32</sup> See Demographers’ Amici Brief, *supra* note 29, at \*18.

<sup>33</sup> U.S. Const. amend. X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”); *Evenwel*, 136 S. Ct. at 1140 (Thomas, J., concurring in the judgment) (“The Constitution says nothing about what type of republican government the States must follow. When the Framers wanted to deny powers to state governments, they did so explicitly.” (citing U.S. Const. art. I, §10, cl. 1)).

<sup>34</sup> U.S. Const. art. IV, §4; *Evenwel*, 136 S. Ct. at 1139 (Thomas, J., concurring in the judgment).

<sup>35</sup> See U.S. Const. amend. XIV; *Evenwel*, 136 S. Ct. at 1124.

## **B. The Original Meaning of the Constitution and Fourteenth Amendment**

Historical evidence from the Founding and ratification of the Fourteenth Amendment demonstrates States' authority to utilize CVAP. The Framers recognized that there is no "universal formula" for "placing power in the hands of the people, while curtailing the majority's ability to invade the minority's fundamental rights."<sup>36</sup> Instead, they intended the people of each State to choose between various forms of structuring their governments and apportioning legislative seats as best fitted their local circumstances. This is demonstrated most clearly in the variety of forms of State apportionment that existed at the time of the Constitution's adoption. Indeed, at the Framing, only "[s]ix of the original thirteen states based representation in both houses of their state legislatures on population."<sup>37</sup> The adoption of the Fourteenth Amendment did not eliminate the States' role as laboratories of republican government. It only mandated that *federal* legislative seats continue to be apportioned based on total population and did so to promote sectional balance. It did not mandate that States adopt a uniform theory of apportionment based on total population for state legislative seats.<sup>38</sup>

## **C. Judicial Precedent**

The Supreme Court's precedents also indicate that CVAP is a permissible basis for apportioning state legislative seats. Most recently, in *Evenwel v. Abbott*, residents of Texas brought suit claiming that the Fourteenth Amendment compelled the use of CVAP rather than total population as the basis of apportionment. The Court disagreed, holding that the Fourteenth Amendment does not categorically preclude the use of total population. But the Court also rejected the Department of Justice's request to declare that total population is the only permissible measure.<sup>39</sup>

It is likely that a CVAP approach—like Missouri's—would be upheld in federal court, since courts have long employed CVAP. For example, federal courts have accepted CVAP as

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<sup>36</sup> *Evenwel*, 136 S. Ct. at 1139 (Thomas, J., concurring in the judgment).

<sup>37</sup> *Id.* (quoting Grant M. Hayden, *The False Promise of One Person, One Vote*, 102 Mich. L. Rev. 213, 218 (2003)).

<sup>38</sup> *See id.* at 1140; *see also id.* at 1146-49 (Alito, J., concurring in the judgment).

<sup>39</sup> *Id.* at 1133 ("[W]e need not and do not resolve whether, as Texas now argues, States may draw districts to equalize voter-eligible population rather than total population."); *see also id.* at 1143-44 (Alito, J., concurring in the judgment).

the appropriate measure when assessing minority voting strength in Voting Rights Act (VRA) Section 2 enforcement cases.<sup>40</sup> Moreover, the Supreme Court’s one person, one vote decisions center on the constitutional rights of eligible voters rather than the population as a whole: “[O]ne person’s vote must be counted equally with those of all other voters in a State.”<sup>41</sup>

In sum, the text and structure of the Constitution, history, and judicial precedent all point to the permissibility of using CVAP as the basis for apportioning State legislative seats.

### **Conclusion**

CVAP is a constitutional, just, and efficient basis for reapportionment. State legislatures should follow Missouri’s lead and use CVAP as a basis for their districting decisions.

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<sup>40</sup> See, e.g., *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 423-25, 427-29, 436-42 (2006) (opinion of Kennedy, J.); *id.* at 493-94, 502-10 (Roberts, C.J., concurring in part, concurring in the judgment in part, and dissenting in part) (relying on CVAP as a relevant statistic in compactness inquiry); *Bartlett v. Strickland*, 556 U.S. 1 (2009); see also Demographers Amici Brief, *supra* note 29, at \*15-20 (collecting cases).

<sup>41</sup> *Reynolds*, 377 U.S. at 560; see also *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964); *Gray v. Sanders*, 372 U.S. 368, 381 (1963); *Baker v. Carr*, 369 U.S. 186, 242 (1962) (Douglas, J., concurring).