

# States Should Base Redistricting on Their Own State Censuses

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## KEY TAKEAWAYS

The federal decennial census is not currently obtaining citizenship data on the population of the United States.

States should therefore conduct their own censuses to determine the number of their residents who are citizens and the number of residents who are aliens.

Each state should then consider only its citizen population when deciding on its legislative redistricting plans.

The inclusion of aliens, whether legal or illegal, in the population used to draw new boundary lines for congressional, state legislative, and local city council and other offices dilutes the votes of U.S. citizens and distorts their representation and political power within legislative bodies. Since the U.S. decennial census is not currently obtaining citizenship data on the population of the country, states should conduct their own censuses that determine the number of their residents who are citizens and the number of residents who are aliens. Each state should then use only the citizen population when deciding on its legislative redistricting plans.

## History of a Citizenship Question on the Federal Census

Every 10 years, the federal government conducts an “Enumeration” of the population of the United

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States for the purposes of apportionment of the House of Representatives as required by the Enumeration Clause in Article I, Section 2, Clause 3 of the U.S. Constitution, although the results are also used for numerous other purposes such as the distribution of federal funds to the states under various federal programs. Congress is given the constitutional authority to conduct the census “in such Manner” as it “shall by Law direct.”

The Census Act of 1790, as amended through subsequent legislation, designates the Secretary of the Department of Commerce to carry out the census in “such form and content as he may determine,” a task that is accomplished by the Census Bureau, an agency within the department.<sup>1</sup>

There have been 24 decennial censuses since 1790, and as the Supreme Court of the United States outlined in 2019 in *Department of Commerce v. New York*,<sup>2</sup> “[e]very census between 1820 and 2000 (with the exception of 1840) asked at least some of the population about their citizenship or place of birth.” Between 1820 and 1950, a citizenship “question was asked of all households” who were sent a census form.<sup>3</sup>

From 1960 to 2000, the Census Bureau sent a short form “with a few basic demographic questions” and a long form with “more detailed demographic questions” to the general population. A citizenship question was included on the long form that went to “about one-fourth to one-sixth of the population.”<sup>4</sup>

The reason for that change—no longer asking a citizenship question on every census form—was the passage of a “statutory requirement for annual alien registration,” according to the Census Bureau. The Bureau claimed that this would provide the Immigration and Naturalization Service, “the principal user of such data, with the information it needed.”<sup>5</sup> Yet when the alien registration requirement was repealed in 1981, the Census Bureau failed to reinstate the citizenship question on all census forms sent to the general population.<sup>6</sup>

In 2010, during the Obama Administration, the Census Bureau changed its policy again and discontinued the long form, sending out only the short form asking basic demographic questions. The citizenship question was moved to the American Community Survey (ACS), an in-depth questionnaire that is sent out annually “to a rotating sample of about 2.6% of households.” The ACS has a specific question on the citizenship and place of birth of each individual in a household.<sup>7</sup>

### ***Department of Commerce v. New York***

In 2018, when Secretary of Commerce Wilbur Ross announced that the Trump Administration planned to reinstate the citizenship

question on the 2020 census form sent to all American households, the Administration was sued by multiple states, counties, cities, and nongovernmental organizations. The challengers claimed that adding a citizenship question on the census form was a violation of the Enumeration Clause in Article I of the Constitution, two provisions of the Census Act, and the Administrative Procedure Act because the decision was arbitrary and capricious.<sup>8</sup>

The main reason given for the change by Secretary Ross was that the citizen population data provided by the ACS were not sufficient to allow effective enforcement of the Voting Rights Act.<sup>9</sup> As the Department of Justice (DOJ) explained, in addressing vote dilution claims in single-member districts by minority voters, courts “determine whether a minority group could constitute a majority in a particular district by looking to the citizen voting-age population of the group.” The ACS data are “not ideal” for this purpose because they are “not reported at the level of the census block, the basic component of legislative districting plans,” in addition to which they “had substantial margins of error” and “did not align in time with the census-based population count used to draw legislative districts.”<sup>10</sup>

The Supreme Court held in a 5-to-4 decision that asking a citizenship question on the census form does not violate the Enumeration Clause because the “text of the Clause ‘vests Congress with virtually unlimited discretion in conducting the decennial ‘actual Enumeration,’ and Congress ‘has delegated its broad authority over the census to the Secretary.’”<sup>11</sup> This is supported by the fact that “[s]ince 1820, [Congress] has sought, or permitted the secretary to seek, information about citizenship in particular.”<sup>12</sup>

The Supreme Court also reversed the lower court’s ruling that adding a citizenship question violated two provisions of the Census Act. The challengers claimed that Secretary Ross violated Section 6(c) because “he opted to collect citizenship data using direct inquiries when it was possible to provide DOJ with data from administrative records alone.” However, the Supreme Court held that Section 6(c) did not “even apply here.”<sup>13</sup>

The challengers further claimed that Ross had violated Section 141(f), which requires the Commerce Secretary “to report to Congress about his plans for the census.”<sup>14</sup> The Court concluded, without determining whether the “Secretary’s compliance with the reporting requirement is for courts—rather than Congress—to police,” that while Ross’s first report to Congress in 2017 did not mention the citizenship question, his second report in 2018 informed Congress that Ross intended to modify “the original list of subjects” in the first report and add a citizenship question.<sup>15</sup> That more than satisfied the congressional reporting requirement.

The Trump Administration lost, however, because the majority agreed with the lower court that under the Administrative Procedure Act, the explanation given by Ross for adding the citizenship question at the request of the Justice Department was “incongruent with what the record reveals about the agency’s priorities and decisionmaking process.” The Court believed that it could not “ignore the disconnect between the decision made and the explanation given.”<sup>16</sup>

As a result, the Court ordered that the case be remanded to the Commerce Department. The majority specifically did “not hold that the agency decision here was substantively invalid” but also stated that “agencies must pursue their goals reasonably. Reasoned decisionmaking under the Administrative Procedure Act calls for an explanation for agency action. What was provided here was more of a distraction.”<sup>17</sup>

By the time this decision was issued on June 27, 2019, there was not enough time for further action by the Commerce Department to provide a more extensive explanation of the need for a citizenship question before printing had to begin in order to have the tens of millions of census forms needed to carry out the 2020 census. The Trump Administration was forced to print the census forms without the citizenship question, which resulted in no citizenship information being gathered in 2020 through the official enumeration carried out by the Census Bureau.<sup>18</sup>

## Federal Legislation

On May 8, 2024, the U.S. House of Representatives passed the Equal Representation Act, H.R. 7109, on a party-line vote of 206 to 202, with all Democrats voting against it.<sup>19</sup> Section 2 of the act would require a citizenship question on the 2030 census “and each decennial census thereafter.” Section 3 would also amend 2 U.S.C. § 2a(a), the statute that governs congressional apportionment, to provide that apportionment would be based on the citizen population of the United States, not the total population that contains large numbers of aliens, both legal and illegal.

Although this bill is now in the Senate, the Democrats’ uniform opposition in the House of Representatives indicates that it has no realistic chance of passing the Senate, which is currently controlled by the Democrats. The Biden Administration has also said it “strongly opposes” the Equal Representation Act, so there is little doubt that it would be vetoed by the President even if it passed both houses of Congress.<sup>20</sup> A Senate version of this bill, sponsored by Senator Bill Hagerty (R-TN) who proposed it as an amendment to a military appropriations bill, was defeated in a Senate vote

that included all Democrats, Independents, and Senator Lisa Murkowski (R-AK) in opposition.<sup>21</sup>

Thus, even if Republicans retain control of the House of Representative and regain control of the Senate in a future election, it seems highly unlikely that this bill would pass unless Republicans gained a filibuster-proof majority in the Senate and were not facing a Democrat President who would veto the bill.

This leaves the field wide open to the states. The Constitution dictates that states cannot change the population used for congressional *apportionment*, but they can change the population their state legislatures, redistricting commissions, and local representative bodies use to engage in *redistricting* for congressional seats, as well as all other legislative and local political seats in the various political subdivisions within a state.

## State Censuses: Obtaining Citizenship Information

Although states have been using federal census data for redistricting purposes for a very long time, there is no federal law requiring states to use those data, and no decision by the Supreme Court has ever held that states can use only federal population data for purposes of redistricting. Most likely, states have used the federal data because they are the only data available.

Any attempt by Congress to implement a law that required states to use federal census data for redistricting would most likely be held to be unconstitutional. This is because, with the exception of laws passed pursuant to Congress's authority under the Thirteenth, Fourteenth, Fifteenth, Nineteenth, and Twenty-Sixth Amendments to prevent discrimination on the basis of race, sex, and the age of citizens who are 18 and older, Congress has no power over the redistricting rules implemented by states for state and local legislative bodies. None of those amendments pertain to the census data used by states to draw political district boundary lines.

Moreover, while Congress has ultimate authority over the "Times, Places and Manner" of congressional elections under Article I, Section 4, Clause 1 of the Constitution, it has no authority over what data state legislatures or redistricting commissions use to draw congressional district boundary lines. Those boundary lines determine whether a particular resident of the state who resides within those boundary lines is qualified to vote in that particular congressional district. Under Article I, Section 2, Clause 1, state legislators have the sole authority to determine the "Qualifications" of voters for the House of Representatives so long as those qualifications

match those of voters “of the most numerous Branch of the State Legislature.” Obviously, state legislators have the sole authority to determine the qualifications of voters for state legislative houses.

There is no legal prohibition against states using their own, state-derived census data for purposes of redistricting, and for the first 100 years of our history, many states conducted their own censuses of their resident populations. The Census Bureau has a listing of those censuses that were conducted by 41 states and the District of Columbia, starting as early as 1774 in Rhode Island and as late as 1945 in Florida and South Dakota.<sup>22</sup>

Massachusetts continues to require the registrars and boards of elections of towns and cities to conduct an annual census of their residents that includes their “name, date of birth, occupation, veteran status, [and] *nationality, if not a citizen of the United States.*”<sup>23</sup> As the Public Interest Legal Foundation has reported, this state census can “uncover foreign participation in American elections.”<sup>24</sup>

The Census Bureau notes that these state censuses “can be as important as the federal census to genealogists” and points out that many of them “asked different questions than the federal census, thus recording information that cannot be found elsewhere in the federal” census records.<sup>25</sup>

This last observation by the Census Bureau is a crucial one. If Congress or a future President does not force the Census Bureau to reinstate a citizenship question on the decennial census, then states have the ability and the constitutional authority—authority that they should exercise—to conduct their own censuses that ask a citizenship question, as Massachusetts does, or any other demographic question a state government believes is important that is not currently being asked by the federal census.

Additionally, states are not bound either by the 10-year spacing of the federal census or by any requirement to conduct a census at the same time as the federal census. As the Census Bureau points out, “[m]ost states which took censuses usually did so every 10 years in years ending in ‘5’ (1855, 1865, etc.) to complement the federal census.”<sup>26</sup> A review of the Census Bureau’s state listing shows that states conducted censuses with a wide range of spacing, from every two years in some states such as Iowa to only every 30 years at one point in North Dakota (1885 and 1915).

The extent to which states use federal census data for other purposes, such as the distribution of funds through state government programs, is another reason for states to conduct their own censuses as a check on the accuracy, or lack thereof, of federal census data.

In a 2022 report based on a post-2020 census survey, the Census Bureau admitted that it significantly undercounted the populations of Arkansas

(-5.04 percent); Florida (-3.48 percent); Illinois (-1.97 percent); Mississippi (-4.11 percent); Tennessee (-4.78 percent); and Texas (-1.92 percent) following the 2020 census. At the same time, it had overcounted the populations of Delaware (+5.45 percent); Hawaii (+6.79 percent); Massachusetts (+2.24 percent); Minnesota (+3.84 percent); New York (+3.44 percent); Ohio (+1.49 percent); Rhode Island (+5.05 percent); and Utah (+2.59 percent).<sup>27</sup>

Because of the undercount, when apportionment occurred, Florida did not receive the two additional congressional seats and Texas did not receive the one additional congressional seat to which they were entitled. And due to the overcount, Colorado, Rhode Island, and Minnesota were each allowed to retain one congressional seat after the 2020 census that they should have lost.<sup>28</sup> Florida and Texas had no legal recourse to remedy this problem, but that type of error in a state's population count by the Census Bureau could substantially affect redistricting by states that rely on such inaccurate federal data.

## Distortion of Political Representation by the Alien Population

In two landmark decisions, *Reynolds v. Sims*<sup>29</sup> and *Wesberry v. Sanders*,<sup>30</sup> the U.S. Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment requires that state legislative districts (*Reynolds*) and congressional districts (*Wesberry*) be as nearly equal in population as possible. The Court said in *Reynolds* that “[f]ull and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature.”<sup>31</sup>

But while congressional districts must be drawn “with populations as close to perfect equality as possible,” states are given more leeway by the Supreme Court when “drawing state and local legislative districts.”<sup>32</sup> States are “permitted to deviate somewhat from perfect population equality to accommodate traditional districting objectives, among them, preserving the integrity of political subdivision, maintaining communities of interest, and creating geographic compactness.” As long as that deviation is less than 10 percent, “a state or local legislative map presumptively complies with the one-person, one-vote rule.” If the deviation is above 10 percent, it is “presumptively impermissible.”<sup>33</sup>

However, the number of aliens in the U.S. population is now so large that it distorts political representation when they are included in the population used for congressional apportionment and redistricting. As a consequence, citizens in those states do not have an “equally effective voice” in their representation.



A 2015 report by the Congressional Research Service, using an estimate of the 2013 citizen population, concluded that if congressional apportionment after the 2010 census had been based on the citizen population instead of the total population, it would have shifted seven congressional seats among 11 states.<sup>34</sup> California would have lost four seats, and Texas, Florida, and New York would each have lost one congressional seat. Louisiana, Missouri, Montana, North Carolina, Ohio, Oklahoma, and Virginia would each have picked up a seat in the House.<sup>35</sup>

A similar 2019 report by the Center for Immigration Studies, based on its estimates of the results of the 2020 census, concluded that including aliens, both legal and illegal, in apportionment redistributes eight congressional seats.<sup>36</sup> California has three additional seats it should not have, Texas has two additional seats, and New York has one additional seat. The inclusion of aliens cheats Alabama, Michigan, Minnesota, Ohio, and West Virginia of one additional seat that each state should have in Congress.<sup>37</sup>

Just the inclusion of illegal aliens, much less legal aliens, distorts congressional representation. A 2020 report by the Pew Research Center on “unauthorized immigrants” (Pew’s politically correct term for illegal aliens) estimated that without the inclusion of illegal aliens in the population used for apportionment, California, Florida, and Texas would each lose one congressional seat and that Alabama, Minnesota, and Ohio “would each hold onto a seat that they would have lost.”<sup>38</sup>

The distortion in redistricting caused by aliens is similar. The citizen/noncitizen populations of congressional and state legislative districts in different states can vary widely. For example, in Florida’s 11th congressional district, 81 percent of the adults are citizens, but in California’s 34th congressional district in Los Angeles, only 41 percent of the adults are citizens who are eligible to vote.<sup>39</sup>

The same problem can be seen in state legislative seats. As Sean Trende of *RealClear Politics* has pointed out, in 2015, the average citizen voting-age population (CVAP) in state senate districts in upstate New York was 217,759 citizens, yet the average CVAP for state senate districts in New York City was only 191,133 citizens.<sup>40</sup> Basing redistricting on the citizen population would shift state senate seats out of New York City and into upstate New York and would also have the same effect on at least one congressional district.<sup>41</sup> Moreover, the illegal alien population in New York City has grown progressively larger since this 2015 analysis.

Texas would see similar effects because the congressional districts that “abut the Rio Grande River...have high non-citizen populations” compared to districts in other parts of the state.<sup>42</sup> In fact, of “the 50 congressional



districts with the lowest shares of eligible voters, 41 are occupied by Democrats.... Meanwhile, of the 50 districts with the highest share of eligible voters, 38 are represented by [Republicans].”<sup>43</sup>

## Use of Citizen Population in Redistricting

In 2016, in *Evenwel v. Abbott*, Texas voters challenged the use of total population to draw the boundary lines of state senate districts.<sup>44</sup> They claimed that even when the total population of a political district meets the Supreme Court’s stated requirement that the populations of different districts must be as equal as possible, the inclusion of aliens in that population count resulted in a wide disparity in the number of citizens in each district.

Such “unequal districts when measured by voter-eligible population,” claimed the challengers, violated the “one person, one vote” standard of the Equal Protection Clause. They urged the Court to require states to use voter-eligible population, not total population, “to ensure that their voters will not be devalued in relation to citizens’ votes in other districts.”<sup>45</sup>

While rejecting this argument, the Supreme Court, in an opinion written by Justice Ruth Bader Ginsburg, pointed out that “in contrast to repeated disputes over the permissibility of deviating from perfect population equality, little controversy has centered on the population base jurisdictions must equalize.”<sup>46</sup> “On rare occasions,” said the Court, citing *Burns v. Richardson*, in which the Court had held that Hawaii, because of its “substantial temporary military population,” could use the registered-voter population in its redistricting, “jurisdictions have relied on the registered-voter or voter-eligible populations of districts.”<sup>47</sup>

The Court observed that “[t]oday, all States use total-population numbers from the census when designing congressional and state-legislative districts” but also noted that “only seven States adjust those census numbers in any meaningful way.”<sup>48</sup> The Court further noted that the constitutions and statutes of 10 states—California, Delaware, Hawaii, Kansas, Maine, Maryland, New Hampshire, New York, and Washington—“authorize the removal of certain groups from the total-population” base.<sup>49</sup> Those exclusions include:

- Non-permanent residents in Hawaii, Kansas, and Washington, including nonresident members of the military;
- Non-residents temporarily residing in New Hampshire;
- Inmates domiciled out-of-state prior to incarceration in California, Delaware, Maryland, and New York; and

- Noncitizen immigrants in Maine and Nebraska, although the Justice Department claimed in its brief in the *Evenwel* case that the provisions in these states are not “operational as written.”<sup>50</sup>

The deviations in the population of the state senate districts at issue in the *Evenwel* case were stark when citizen-voting-age-population was compared to the total population used by the state legislature. The maximum deviation in population of each district as drawn using total population was 8.04 percent, which is within the 10 percent deviation allowed by the Supreme Court in order to comply with traditional redistricting criteria. However, when those districts were “measured by a voter-population baseline—eligible voters or registered voters—the map’s maximum deviation exceeds 40%.”<sup>51</sup> A deviation that large significantly dilutes the votes of citizens who reside in a district that has a much larger number of citizens than a neighboring district with a much lower number of citizens, since it takes a higher number of votes in their district to elect their representatives than it takes in the low-citizen district.

As previously noted, the Supreme Court rejected the challengers’ argument and held that it “is permissible for jurisdictions to measure equalization by the total population of state and local legislative districts.”<sup>52</sup> The Court’s holding was based on the reasoning that “districting based on total population serves *both* the State’s interest in preventing vote dilution *and* its interest in ensuring equality of representation.”<sup>53</sup>

Significantly, however, while the Court held that using total population in the redistricting process does not violate the one-person, one-vote principle of the Equal Protection Clause, it also stated that “we need not resolve whether, as Texas now argues, States may draw districts to equalize voter-eligible population rather than total population.”<sup>54</sup> In his concurring opinion, Justice Clarence Thomas stated that:

The Constitution does not prescribe any one basis for apportionment within States. It instead leaves States significant leeway in apportioning their own districts to equalize total population, to equalize eligible voters, or to promote any other principle consistent with a republican form of government.... The Constitution leaves the choice to the people alone—not to this Court.<sup>55</sup>

Justice Samuel Alito also wrote a concurrence, joined by Thomas, in which he agreed that the Court was not deciding whether other population bases could be used for purposes of redistricting. Alito said that the Court had “no need to wade into these waters” that “implicate[] “very difficult theoretical and empirical questions about the nature of representation.”

“Whether a State is permitted to use some measure other than total population,” continued Alito, “is an important and sensitive question that we can consider if and when we have before us a state districting plan that, unlike the current Texas plan, uses something other than total population as the basis for equalizing the size of districts.”<sup>56</sup>

Both the Fourth and Fifth Circuit U.S. Courts of Appeal have expressed similar views. In 2000, in *Chen v. Houston*, the Fifth Circuit said that when it comes to which population base to use in redistricting, “this eminently political question has been left to the political process.”<sup>57</sup> In 1996, in *Daly v. Hunt*, the Fourth Circuit said that this “is quintessentially a decision that should be made by the state, not the federal courts, in the inherently political and legislative process of apportionment.”<sup>58</sup>

The bottom line is that the Supreme Court’s decision in the *Evenwel* case does *not* prohibit states from using citizen population in the redistricting process. The Court specifically stated that it was not addressing that issue. It held only that states are not *required* to do so.

## Aliens Have No Right to Participate in Our Democratic Process

It seems obvious that aliens who are in this country illegally have no constitutional right to participate in any way in the democratic process that we use to choose our representation at the local, state, and federal levels. That includes not distorting the democratic process through their presence by enhancing the votes of some citizens and diluting the votes of other citizens through the apportionment and redistricting process, key elements in the distribution of political power and influence.

The same is true of aliens who are present legally in the United States. Federal voting laws ban all aliens from registering or voting in federal elections. Federal campaign finance laws prohibit aliens, with the exception of permanent resident aliens, from making any political contributions, expenditures, or disbursements “in connection with a Federal, State, or local election.”<sup>59</sup> That exception for resident aliens was a decision made by Congress; it is not constitutionally required.

The ban on the participation of aliens in our elections has been upheld by the courts, as explained by Judge (now Justice) Brett Kavanaugh in 2011 in *Bluman v. FEC*, because:

The Supreme Court has long held that the government (federal, state, and local) may exclude foreign citizens from activities that are part of democratic

self-government. For example, the Supreme Court has ruled that the government may bar aliens from voting, serving as jurors, working as police or probation officers, or teaching at public schools. Under those precedents, the federal ban [on campaign expenditures] at issue here readily passes constitutional muster.<sup>60</sup>

## What the States Need to Do

For a multitude of reasons, including ensuring fair distribution of funds through state programs and obtaining accurate demographic information on the legal residents of a state, each state should implement its own census that asks a citizenship question of households. This census should be conducted at least once every 10 years, although given the high mobility of the U.S. population, conducting a census more often—for example, every five years—would yield more up-to-date data.

If conducted at the same time as the federal census, this state census could be used to detect errors in federal census counts. As the 2020 census shows, this can be a serious problem.

States should use the state census data on aliens, in conjunction with any applicable and useful data on aliens from the American Community Survey, as the base population for all redistricting of state, county, and local legislative bodies. Citizen population should also be used for congressional redistricting both to ensure fair representation and to prevent the devaluing and dilution of the votes of citizens. “Simply stated,” as the Supreme Court said in *Reynolds*, “an individual’s right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared to the votes of citizens living in other parts of the State.”<sup>61</sup>

## Conclusion

It is undeniable that the votes of citizens are diluted and impaired when they reside in a political district in which the number of citizens is much larger than the number of citizens who reside in a neighboring district. Their votes have less weight because it takes more votes to elect representatives in their district than it takes in a district with fewer citizens.

It is a matter of fundamental fairness that this problem finally be resolved, and the states cannot depend on the federal government to do it.

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## Endnotes

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4. *Id.*
5. *Id.* (citing U.S. DEP'T OF COMMERCE, U.S. CENSUS BUREAU, 1960 CENSUSES OF POPULATION AND HOUSING 194 (1966)).
6. See § 11, 95 Stat. 1617 (1981).
7. U.S. DEP'T OF COMMERCE, U.S. CENSUS BUREAU, *The Importance of the American Community Survey and the Decennial Census Form*, <https://www.census.gov/programs-surveys/acs/about/acs-and-census.html>.
8. 588 U.S. at 764.
9. *Id.* at 761–62.
10. *Id.* at 762.
11. *Id.* at 768 (citation omitted).
12. *Id.* at 769–70.
13. *Id.* at 778.
14. *Id.* at 779.
15. *Id.* at 780.
16. *Id.* at 785.
17. *Id.*
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24. *Report: Massachusetts Annual Mandatory Census Identifies Aliens and Inactive Registrants on the Voter Roll*, PUB. INT. LEGAL FOUND. (May 14, 2024), <https://publicinterestlegal.org/press/report-massachusetts-annual-mandatory-census-identifies-aliens-and-inactive-registrants-on-the-voter-roll/>. In the interests of full disclosure, I am a member of the Board of Directors of this organization.
25. U.S. DEP'T OF COMMERCE, U.S. CENSUS BUREAU, *History: State Censuses*.
26. *Id.*
27. U.S. DEP'T OF COMMERCE, U.S. CENSUS BUREAU, *U.S. Census Bureau Releases 2020 Undercount and Overcount Rates by State and the District of Columbia* (May 19, 2022), <https://www.census.gov/newsroom/press-releases/2022/pes-2020-undercount-overcount-by-state.html>.
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29. 377 U.S. 533 (1964).
30. 376 U.S. 1 (1964).
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32. *Evenwel v. Abbott*, 136 S.Ct. 1120, 1124 (2016).
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41. *Id.*
42. *Id.*
43. Wasserman & Enten, *supra* note 39.
44. *Evenwel v. Abbott*, 136 S.Ct. 1120 (2016).
45. *Id.* at 1123.
46. *Id.* at 1124.
47. *Id.* at 1124; *Burns v. Richardson*, 384 U.S. 73 (1966).
48. *Evenwel*, 136 S.Ct. at 1124.
49. *Id.* at 1149 n. 3.
50. *Id.*
51. *Id.* at 1125.
52. *Id.* at 1126–27.
53. *Id.* at 1131 (emphasis added).
54. *Id.* at 1132–33.
55. *Id.* at 1133.
56. *Id.* at 1143–44.
57. *Chen v. Houston*, 206 F.3d 502, 528 (5th Cir. 2000).
58. *Daly v. Hunt*, 93 F.3d 1212, 1227 (4th Cir. 1996).
59. 52 U.S.C. § 30121.
60. *Bluman v. FEC*, 800 F.Supp.2d 281, 286–87 (D.D.C. 2011), *aff'd*, 565 U.S. 1104 (2012).
61. *Reynolds*, 377 U.S. at 568.