

IN THE
Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT
OF THE UNITED STATES, *et al.*,

Appellants,

v.

NEW YORK, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**BRIEF OF THE LEAGUE OF WOMEN VOTERS OF
THE UNITED STATES, THE LEAGUE OF WOMEN
VOTERS CALIFORNIA, THE LEAGUE OF WOMEN
VOTERS TEXAS, AND THE LEAGUE OF WOMEN
VOTERS FLORIDA AS *AMICI CURIAE*
IN SUPPORT OF APPELLEES**

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INTEREST OF *AMICI CURIAE*¹

Amici, the League of Women Voters of the United States, the League of Women Voters of Texas, the League of Women Voters of Florida, and the League of Women Voters of California (collectively, “the League”), are nonpartisan, community-based political organizations. One of the League’s primary goals is to promote government that is representative, accountable, responsive, and that assures opportunities for effective and inclusive voter participation in government decision-making. The League has advocated for representative government and robust voter participation since its initial formation in 1920. The League has direct interests in the issues here.

INTRODUCTION AND SUMMARY OF ARGUMENT

Trust is at the foundation of our representative democracy. Ensuring an accurate census and apportionment base is at the heart of the American government. The requirement that “Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state” is enshrined in the Constitution itself.² Through the apportionment mandate, the Constitution assures full and fair representation, engendering trust and reliance on the “representative” promise of our democracy.

1. The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission.

President Trump’s Memorandum dated July 21, 2020³ undermines trust in the Constitutional promise of representative democracy. Contrary to the express language of the Constitution, the Memorandum directs the Secretary of Commerce to exclude all undocumented immigrants from the apportionment base of the decennial census. By contravening the Constitution’s basic apportionment mandate—*i.e.*, by refusing to apportion representatives based on the whole number of persons in each state—the Memorandum will erode trust in our representative democracy and Constitutional system. The Memorandum will negatively impact how Americans view and act within our democracy.

The Memorandum has already decreased participation in the 2020 census. If implemented, the Memorandum will reduce participation in future censuses and depress voter turnout in states whose representation is artificially reduced, resulting in an erosion in Americans’ trust in the government. Further, the Memorandum will likely cause withdrawal of undocumented immigrants and their families from society—including political and civic engagement—that will harm everyone. As a result, the Memorandum will undermine the work of civic-oriented organizations, such as the League, to increase civic engagement and voter participation.

3. *Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census*, 85 Fed. Reg. 44,679 (July 23, 2020) (the “Memorandum”).

In addition, the Memorandum risks unfairly and artificially reducing certain states' representation in Congress, while improperly increasing the representation of other states. Thus, the impact of the Memorandum will be felt not only by undocumented immigrants, but by all citizens in every state. Ultimately, the Memorandum, if implemented, will result in decreased political representation for states with sizable populations of undocumented immigrants, as their apportionment base would be artificially lowered (the "Artificially Lowered Apportionment States"). Such an unconstitutional apportionment will sow distrust in the representative nature of our democracy.

ARGUMENT

I. THE MEMORANDUM UNDERMINES REPRESENTATIVE DEMOCRACY, AND ERODES TRUST IN OUR CONSTITUTIONAL SYSTEM.

The Memorandum's clear intent—and its likely effect—is to shift the political representation among the states, reducing representation in Congress of states with sizable undocumented immigrant populations.⁴ The directive to not count undocumented immigrants in the apportionment base is constructed on President Trump's "determin[ation] that respect for the law and protection of the integrity of the democratic process warrant the exclusion" of undocumented immigrants from the apportionment base.⁵ In fact, the Memorandum has the

4. *See* Memorandum.

5. *Id.*

opposite result, violating the Constitution and hundreds of years of precedent thereunder, as well as violating federal statutory law. The Memorandum’s practical effect is an erosion of democracy through a reduction in political representation, increased political apathy, distrust and disinterest.

This result impacts all Americans.⁶ Excluding undocumented immigrants from the apportionment base runs counter to the fundamental principle of representative democracy: accurate representation. As this Court recognized last year, “representational rights” are “crucial” and “depend on the census and the apportionment.”⁷

In addition, the broader societal impact of the Memorandum, following this Administration’s efforts to include a citizenship question on the census⁸, should be considered. The Administration’s repeated attacks on undocumented immigrants and the census in general have caused immigrants and legal residents alike to lose faith in and even become fearful and distrustful of the government. Those who become distrustful or apathetic are likely to be less politically involved across all levels of civic life, including voting.

6. The negative effects of the Memorandum will be most acutely and directly felt by states whose populations include sizable numbers of undocumented immigrants, *i.e.* the Artificially Lowered Apportionment States (*infra*, Part III), but all will be affected.

7. *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2569 (2019), quoting *Franklin v. Massachusetts*, 505 U.S. 788, 790–791 (1992) (Stevens, J., concurring in part and concurring in the judgment).

8. *See generally, Dep’t of Commerce*, 139 S. Ct. 2551

In short, The Memorandum stands to erode faith in our democracy and the Constitution. This is not just an “immigrant” issue, but a representative democracy issue, which is at the core of the League’s organizational purpose and mission.

A. Representation Based on Accurate Apportionment Is the Bedrock of Our Democracy.

Representative democracy depends on an accurate count of the population that is to be governed through its elected representatives. Indeed, the Founders of this country viewed the idea of representation as even more important than suffrage itself.⁹

From the start, representation was meant to extend further than the right to vote. For example, women were counted in the census for the first 130 years of our republic, despite not having the right to vote until adoption of the Nineteenth Amendment. Similarly, children are counted today in the census, despite not having the right to vote. There is no rational distinction to be made between these groups and undocumented persons, as it is evident that inclusion in the census is not dependent on one’s right to vote. The Constitution makes clear that all persons should be counted for purposes of apportionment and makes no reference to their documentation status.¹⁰ Thus, excluding undocumented immigrants from the congressional apportionment base undermines the “representative” core of representative democracy.

9. CHARLES A. BEARD & MARY RITTER, *AMERICAN CITIZENSHIP* (1914).

10. U.S. CONST. amend. XIV, § 2; *see id.* art. I, § 2, cl. 3.

The Founders based apportionment on numbers from the actual enumeration in order to “limit political chicanery.”¹¹ By attempting to exclude undocumented immigrants from the congressional apportionment base, the Memorandum violates the “actual Enumeration” requirement. Reallocating political power away from states with larger undocumented immigrant populations is the explicit purpose of the Memorandum.

B. The Exclusion of Undocumented Immigrants from the Apportionment Base Would Create a Loss of Faith in the Democratic Process and Constitution.

The census is critical for the equitable and accurate distribution of political power based on population. Consequentially, the exclusion of undocumented immigrants from the apportionment base will create a loss of faith in the democratic process. States such as Texas and California will almost certainly lose congressional seats and, thus, suffer loss of political power.¹² Those lost seats will shift to other states whose political power will increase by windfall.¹³ This inequity can be expected to discourage residents of Artificially Lowered Apportionment States from participating in a system tilted against them and will assuredly result in the Artificially Lowered Apportionment States not being adequately represented.

11. *Utah v. Evans*, 536 U.S. 452, 500 (2002) (Thomas, J., concurring in part and dissenting in part).

12. *See* App. 344-45, ¶ 11, Table 6.

13. *See id.*

American democracy was built on the idea that our representatives would be “apportioned among the several states according to their respective numbers, counting the whole number of persons in each state.”¹⁴ The Supreme Court has stated that to establish a representative democracy, “the Framers chose to use population . . . as the basis for representation,”¹⁵ and that “representatives serve all residents,”¹⁶ not only citizens. Certainly, the Framers could have limited the representation to only citizens, but they did not. The exclusion of undocumented immigrants from the apportionment base is contrary to the Constitution and the foundational principles that guide our democratic system. Such obvious disregard for the Constitution and representative democracy can be expected to discourage participation in civil institutions, including the census¹⁷ and voting in elections.

Indeed, the Memorandum, together with the Administration’s other attacks on the census, has already dampened participation. The League is heavily involved in promoting awareness and engagement in voting and the census, and the League has observed increasing levels of disinterest and apathy in responding to the current census. The Administration’s attempt to include a “citizenship question” and, most recently, the exclusion of undocumented immigrants from the apportionment base, has generated fear in immigrant communities around census participation—*i.e.* that immigrants cannot

14. U.S. CONST. amend. XIV, § 2; *see id.* art. I, § 2, cl. 3.

15. *Utah*, 536 U.S. at 478.

16. *Evenwel v. Abbott*, 136 S. Ct. 1120, 1132 (2016).

17. *See App.* 255-56, ¶ 14.

benefit from participating, but could face retaliation or other negative consequences. Decreased participation due to fear of immigration consequences (and no benefits based on the Memorandum) is especially impactful in the Artificially Lowered Apportionment States, given the proportion of undocumented immigrants among their total population.¹⁸

The impacts of the Memorandum are likely to extend beyond just the next decade by entrenching fear and distrust of the federal government that is difficult to reverse. This type of entrenched fear and distrust can be seen, for example, in the African American community, which has experienced long-term discrimination in many different contexts, including distribution of federal benefits (*e.g.*,

18. In Texas alone there are 2.7 million people, including 1.4 million U.S. citizens, who live with at least one undocumented family member (based on data from 2010 to 2014). *See* Am. Immigr. Council, *Immigrants in Texas* (August 6, 2020), <https://www.americanimmigrationcouncil.org/research/immigrants-in-texas> (last accessed Nov. 9, 2020). In California, undocumented immigrants comprised nine percent of the state's workforce in 2016. *See* Am. Immigr. Council, *Immigrants in California* (August 6, 2020), <https://www.americanimmigrationcouncil.org/research/immigrants-in-california> (last accessed Nov. 9, 2020). In Florida, there are nearly one million people, including almost 500,000 U.S. citizens, who lived with at least one undocumented immigrant between 2010 and 2014. *See* Am. Immigr. Council, *Immigrants in Florida* (August 6, 2020), <https://www.americanimmigrationcouncil.org/research/immigrants-florida> (last accessed Nov. 9, 2020). The Memorandum's effort to exclude undocumented immigrants from the congressional apportionment base will intimidate those families and citizens who live with an undocumented immigrant, as well as immigrants who are here legally, from participating not only in the census, but in civic life more broadly. *See infra*, Part II.

veterans assistance benefits and farm subsidies, among others). The Memorandum will lead to decreased census participation and other government-based interactions, such as registering to vote and voting, which will likely impact immigrant communities and racial minorities disproportionately. If people choose not to participate in a census out of fear, or a belief that their response will not matter, the enumeration becomes less accurate, causing undercounting and under-representation, eroding confidence in representative democracy.

Increased distrust of representative government has the potential to undermine democracy.¹⁹ The Memorandum’s corrosive effect on democracy is compounded by other forces. According to the latest Freedom in the World report by Freedom House, a think tank founded in 1941 that monitors freedom and democracy around the world, between 2009 and 2019, America has declined by eight points on a scale measuring freedom from 1-100.²⁰ The report mentions that for the past several

19. “Anti-democratic tendencies affect not only the periphery of democracy, usually considered more vulnerable, but also the countries traditionally regarded at its core.” Gabor Attila Toth, *Breaking the Equilibrium: From Distrust of Representative Government to an Authoritarian Executive*, WASH. INT’L L.J. (2019) (“even a country with a long pedigree of democratic traditions may not be entirely immune to the creep of authoritarian ideas and practices” that can result from the institutional erosion of democracy and intolerance toward vulnerable minorities). “Scholars warn that the twenty-first century could become a century of authoritarianism as a result of the institutional erosion of democracy.” *Id.* (citing LARRY DIAMOND ET AL., *AUTHORITARIAN GOES GLOBAL: THE CHALLENGE TO DEMOCRACY* (2016)).

20. SARAH REPUCCI, FREEDOM HOUSE, *FREEDOM IN THE WORLD 2020: A LEADERLESS STRUGGLE FOR DEMOCRACY* (2020).

years the United States has seen efforts to undermine democratic norms and standards, including pressure on electoral integrity, judicial independence, and safeguards against corruption.²¹ The Memorandum is another example of an act meant to undermine our democratic norms and standards. Its impact on democracy should be considered in the broader context of democratic erosion and distrust in America. Public trust in the federal government has been at near-record lows for years.²² Trust is considered a necessary precondition for democracy. As such, a decline in trust is an existential threat to democracy. A democratic government does not have to crumble in one fell swoop. Continuous and varied efforts at eroding democracy over time are just as dangerous, even if less obvious.

II. THE MEMORANDUM WILL CAUSE SOCIETAL WITHDRAWAL OF FAMILIES WITH UNDOCUMENTED MEMBERS, HARMING EVERYONE.

The Memorandum will cause tangible social harm to all states arising from the withdrawal of immigrant families from civic life and economic participation. Such withdrawal is a natural consequence of fear from increased government attention and monitoring that could lead to detention, separation from their children or family, and possible deportation.

21. *Id.*

22. PEW RSCH. CTR., AMERICANS' VIEW OF GOVERNMENT: LOW TRUST, BUT SOME POSITIVE PERFORMANCE RATINGS (Sept. 14, 2020) <https://www.pewresearch.org/politics/2020/09/14/americans-views-of-government-low-trust-but-some-positive-performance-ratings/> (last accessed Nov. 9, 2020).

The League has significant direct experience guiding and advocating for vulnerable undocumented immigrants and families who are timid or terrified—even under normal circumstances—of interacting with the government or putting themselves in situations where they may come in contact with authorities, especially in the area of child public health. Just as legalization and legitimization of immigration status causes social and economic benefits to society as a whole through *increased* immigrant participation—*e.g.*, through a surge in investment in language skills, education, training, and general economic assimilation—the converse is also true: increased spotlighting and delegitimization of undocumented status causes a reactionary *withdrawal* of undocumented immigrants, their families, and their communities from societal participation, leading to social and economic harm.

The specter of a government microscope conjured by this Memorandum will likely cause many of these individuals and families to avoid civic life and engagement, or seek assistance from public programs or authorities, even when in dire need. Withdrawal jeopardizes public health, public education and public safety, because those facing fear of adverse consequences based on immigration status will avoid even the most necessary public services such as police protection from violence, health services, going to work, sending their children to school, or appearing in court to defend their rights. The Memorandum will have a disparately negative impact on Hispanic communities and other people of color who are fearful and reluctant to engage with even the most necessary public services, and the effects of such withdrawal will be felt by society as a whole.

Withdrawal behavior—where immigrants and their families disengage from interactions with government officials for fear of being arrested, detained, or deported—is well documented. For example, withdrawal of immigrants, their families, and communities, occurred in 2019, when the Administration announced its intention to add a question to the census form inquiring about the respondent’s citizenship status.²³ The addition of the question caused distrust among noncitizens and fear of deportation, leading to a substantially lower likelihood they would fill out a census form.

Withdrawal is likely to occur when immigrants and those concerned about immigration status believe they are at an increased threat for arrest and detention by ICE, and as a result, are less likely to attend state court hearings to protect their rights, to testify about housing complaints, as a witness, or to accompany a family member.²⁴ In addition, those concerned about immigration status are less likely to go to the police as witness, to call the local police if they witness a crime, or to submit a police report as a victim.²⁵

23. Matt Barreto et al., *New Research Shows Just How Badly a Citizenship Question Would Hurt the 2020 Census*, THE WASHINGTON POST, (April 22, 2019), <https://www.washingtonpost.com/politics/2019/04/22/new-research-shows-just-how-badly-citizenship-question-would-hurt-census/> (hereinafter “Barreto, *New Research*”) (last accessed Nov. 9, 2020); see also *New York v. Dep’t of Commerce*, 351 F. Supp. 3d 502, 578-93 (S.D.N.Y.), *aff’d in part, rev’d in part and remanded sub nom. Dep’t of Commerce v. New York*, 139 S. Ct. 2551 (2019), and *appeal dismissed*, No. 19-212, 2019 WL 7668098 (2d Cir. Aug. 7, 2019).

24. App. 283-86, ¶¶ 47-52.

25. *Id.*

Those concerned about immigration status are also fearful of immigration consequences that would result in separation from their children; as a result, parents may be more reluctant to send their children to school, or even to seek medical care for their children.²⁶ For these children, such fear and extreme interruptions to their daily lives is likely to have long-term psychological effects.

The trust of immigrants, their families, and communities in the government and public health system is key to preventing the tragic consequences of the COVID-19 pandemic. Testing, medical care, contact tracing, and education on the coronavirus all depend on engagement with various governmental entities. Immigrants may be too fearful to make the choices that protect their health and prevent further infections in their communities, when such choices also put them at perceived increased risk for monitoring, arrest, or detention by ICE.²⁷

The League and other civic organizations, as well as state governments, have worked hard through public relations and educational campaigns to reverse the withdrawal effect after this Court rejected the addition of the citizenship question. Still, fear persists, as well as the withdrawal effects stemming from such fear, for many

26. See, e.g., Pedraza & Osorio, *Courted and Deported: The Salience of Immigration Issues and Avoidance of Police, Health Care, and Education Services among Latinos*, 42 AZTLÁN: J. CHICANO STUD. 2, 255-59 (2017).

27. See, e.g., Miriam Jordan, “We’re Petrified”: *Immigrants Afraid to Seek Medical Care for Coronavirus*, N.Y. TIMES (March 18, 2020), <https://www.nytimes.com/2020/03/18/us/coronavirus-immigrants.html> (last accessed Nov. 9, 2020).

immigrants and their families, despite the efforts taken by the League and other organizations.

The Memorandum could have an even greater withdrawal effect from public participation than the citizenship question had in 2019. Because the government cannot determine one's citizenship or immigration status from a completed census form, immigrant communities may fear that the government will try to determine their legal status through other means, thus leading to withdrawal from civic life to avoid such negative attention. The Administration has already instructed federal agencies to seek state and federal records to determine citizenship status—an effort with which at least four states are complying.²⁸ Such a chilling effect on civic engagement may actually be the intended goal of the Memorandum, especially to decrease the likelihood of response of immigrants, their families, and their communities who are already fearful of responding to the census.

III. IMPLEMENTATION OF THE MEMORANDUM WILL HARM INDIVIDUAL STATES AND THEIR CITIZENS, REGARDLESS OF POLITICAL AFFILIATION OR LEGAL STATUS.

The Memorandum, if implemented, will cause some Artificially Lowered Apportionment States to lose representation in the U.S. House of Representatives. The Memorandum compels undocumented immigrants

28. Hansi Lo Wang, *Four States Are Sharing Driver's License Info to Help Find Out Who's a Citizen*, NPR (July 14, 2020), <https://www.npr.org/2020/07/14/890798378/south-dakota-is-sharing-drivers-license-info-to-help-find-out-who-s-a-citizen> (last accessed Nov. 9, 2020).

to be excluded from the apportionment base, which will substantially affect many individual states. An estimated 5.5%, 5.2%, and 5.6% of the populations of New Jersey, California, and Texas, respectively, would be inappropriately excluded by this mandate—an extraordinary change to the population count.²⁹ Moreover, *all* state populations will be incorrectly calculated for purposes of apportioning representatives, because at least some portion of the population of every state is made up of undocumented immigrants.³⁰

Undercounting the actual population unlawfully impacts how congressional seats are apportioned among states. Article I, Section 2, of the U.S. Constitution provides: “Representatives and direct Taxes shall be apportioned among the several states which may be included within this Union, according to their respective Numbers.” Coupled with the Fourteenth Amendment’s requirement that “Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state . . .” (emphasis added), apportionment must be based on the number of all people residing in the United States regardless of whether they are here lawfully. Indeed, this Court recently held that “the Fourteenth Amendment calls for the apportionment of congressional districts

29. App. 361-62, ¶ 37, Table 6.

30. *Id.*; JEFFREY S. PASSEL AND D’VERA COHN, PEW RES. CTR., U.S. UNAUTHORIZED IMMIGRANT TOTAL DIPS TO LOWEST LEVEL IN A DECADE (Nov. 27, 2018), https://www.pewresearch.org/hispanic/wp-content/uploads/sites/5/2019/03/Pew-Research-Center_2018-11-27_U-S-Unauthorized-Immigrants-Total-Dips_Updated-2019-06-25.pdf (last accessed Nov. 9, 2020).

based on the total population,” which includes non-citizen residents, irrespective of legal status.³¹

The wholesale omission of undocumented immigrants renders the apportionment “numbers” flawed. The Artificially Lowered Apportionment States will have their populations artificially decreased which, in turn, will cause those states to have less Congressional representation in the U.S. House of Representatives than they otherwise would.³² The result will be immediate malapportionment within the House of Representatives; this result is repugnant to fundamental principles of representative democracy. It will also directly result in the reduction of federal and state financial support to these states for essential services.

For example, California and Texas are almost certain to lose a seat if undocumented immigrants are excluded from the apportionment base.³³ Just two-and-a-half years ago, it was estimated that Texas—based on recent population trends—would gain at least two, possibly three, congressional seats following the 2020 census.³⁴ New Jersey is also likely to lose seats if undocumented

31. *Evenwel*, 136 S. Ct. at 1129.

32. App. 344-45, ¶ 11.

33. App. 344-45, 365-67, ¶¶ 11, 42-43, Table 7.

34. Election Data Serv., *Some Change in Apportionment Allocations with New 2017 Census Estimates; But Greater Change Likely by 2020*, 2-3 (Dec. 26, 2017),

https://www.electiondataservices.com/wp-content/uploads/2017/12/NR_Appor17c3wTablesMapsC2.pdf (last accessed Nov. 9, 2020).

immigrants are excluded from the apportionment base.³⁵ Florida and New York may lose a seat as well.³⁶ Thus, the ramifications of malapportionment will likely be felt by a large percentage of the U.S. population who live and vote in the Artificially Lowered Apportionment States.

The Memorandum directly and fundamentally affects political representation in Congress by leaving residents of Artificially Lowered Apportionment States artificially underrepresented. This removal of representation affects every single state resident—even those legal residents who will not be excluded from the apportionment base—by creating an unbalanced distribution of political power. This decrease in political power is tangible.³⁷ Studies have shown that the loss of a congressional seat likely decreases a state’s share of federal outlays due to its reduction in voting power in Congress.³⁸ The distribution

35. App. 344-45, 365-66, ¶¶ 11, 42, Table 7.

36. *Id.*

37. The aftermath of the 1962 case in which the U.S. Supreme Court ordered a correction to Tennessee’s apportionment law, *Baker v. Carr*, 369 U.S. 186 (1962), illustrates this. Following the court-ordered apportionment correction, counties that were underrepresented prior to the suit due to malapportionment saw their representation increase when apportionment was corrected. *See* App. 344-45, ¶ 49 (citing Roy Elis, Neil Malhotra & Marc Meredith, *Apportionment Cycles as Natural Experiments*, 4 POL. ANALYSIS 17, 358–376 (2009)). Further, previously underrepresented counties also saw their share of state spending increase. *See* App. 344-45, ¶ 49 (citing Stephen Ansolabehere, Alan Gerber, & Jim Snyder, 4 AM. POL. SCI. REV. 96, 767-777 (2002)).

38. Elis, Malhotra, & Meredith, *supra* note 37, at 358-376 (2009). It is a well-established finding in political science and political

of federal funds is based, in part, on the number of seats a geographic area holds in Congress.³⁹ Studies show that an increase in a state's share of the number of representatives leads to an increase in that state's share of the federal budget.⁴⁰

A further ripple effect of the malapportionment of Congressional seats is that states whose population is artificially decreased will receive fewer Electoral College votes in future elections. Article II, Section 1, Clause 2 of the U.S. Constitution specifies that the sum of each state's electors is equal to the sum of the state's membership in Congress; the number of Electoral College votes is directly related to the size of a state's congressional delegation. Thus, a loss of representation stemming from the Memorandum manipulates states' importance and influence in future presidential elections.

This artificial shift in political power will significantly harm the League's own members in Artificially Lowered Apportionment States. The loss in representation will be felt directly—in the form of reduced political power on a per-resident basis—by League members who reside in the Artificially Lowered Apportionment States. This further undermines the League's mission because it will be more difficult to persuade individuals to vote—especially in the Artificially Lowered Apportionment States—if their votes are expected to count for less.

economy that the loss of political power as a result of the loss of representation leads to the loss of funding. *See Dep't of Commerce*, 351 F. Supp. 3d at 516.

39. Elis, Malhotra, & Meredith, *supra* note 37, at 360.

40. *Id.*

These negative impacts will be long-lasting. For at least the next decade, the Artificially Lowered Apportionment States will suffer from reduced representation in Congress (relative to representation that reflects an accurate apportionment base). “Fairness in representation, embodied in the concept of one person, one vote, is one of the most important normative standards against which democratic institutions are measured.”⁴¹ When a state faces underrepresentation in Congress, all of its constituents—regardless of political affiliation—suffer from the inequity of having to “share” their representative and federal resource allocation with more of their neighbors than do residents of other states.⁴²

41. *Id.* at 373.

42. ANDREW HACKER, CONGRESSIONAL DISTRICTING: THE ISSUE OF EQUAL REPRESENTATION (1963).

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted,

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