



Supreme Court takes up 'one person, one vote'

Ariane de Vogue

December 8, 2015

Washington (CNN) The Supreme Court will take on a case on Tuesday that could upend the way that states draw their legislative lines.

At issue is the "one person, one vote" doctrine dating back to the 1960s when the Supreme Court held that state legislative districts must be drawn so they are equal in population. Although the court never explicitly defined whether the doctrine applies to general population or voting population, most jurisdictions look to the former.

Now two Texas voters -- backed by a conservative group -- have come to the high court arguing that their vote is being diluted in relation to voters in other districts and that Texas must look primarily at the total number of eligible voters when it draws district lines.

If the plaintiffs prevail, civil rights groups fear that Latino communities in certain states with nonvoting residents, as well as children and others, will be sharply disadvantaged.

"This case could cause a nationwide upheaval in state legislatures," said Michael Li, counsel for the Brennan Center's Democracy Program.

If the court sides with the plaintiffs, it could potentially shift power from urban areas -- districts that tend to include a higher percentage of individuals not eligible to vote such as noncitizens, released felons and children -- to rural areas that are more likely to favor Republicans.

Richard L. Hasen, an election law expert from the University of California, Irvine School of Law, says that although the case is about state lines, it could influence how congressional district lines are drawn.

He says the plaintiffs in the case are trying to "help the Republican Party capture more congressional and state legislative districts in places that have large Latino noncitizen populations."

The *Evenwel v. Abbott* case, named after lead plaintiff Sue Evenwel, a resident of Titus County, Texas, is backed by Edward Blum, the director of a group called the Project on Fair

Representation. The group was also behind a 2013 case that invalidated a central provision of the Voting Rights Act as well as a case this term seeking to strike down a race-conscious admissions program at the University of Texas.

"From the beginning, the fundamental purpose of the one-person, one-vote principle has been to ensure that the states apportion districts in a way that protects the right of eligible voters to an equal vote," Evenwel's lawyers argued in court filings. "It necessarily follows that requiring the states to apportion approximately the same number of eligible voters to each district is the only way to enforce that constitutional right."

Texas says that the issue should be left to the states.

"States are permitted to use total population when they reapportion, and they are also entitled to choose citizen or voting-eligible population," state lawyers argued in briefs. "This choice does not violate the Equal Protection Clause."

The Obama administration sides mostly with Texas in the dispute, arguing that all states use total population data collected through the federal census.

"Apportionment plans that equalize total population satisfy the Equal Protection Clause because they ensure equal representation for equal numbers of people," Solicitor General Donald Verrilli argued in court papers.

In their briefs supporting Texas, civil rights groups and the Democratic National Committee worry that an adverse ruling might negatively impact those who don't vote.

"To reverse course now is to shun precedent and needlessly engineer a plan to bring harm on a specific subset of people; namely communities of color -- including children -- undocumented individuals and families, persons with prior felony convictions and individuals with disabilities," said Penda Hair, co-director of the Advancement Project, in a statement.

Also supporting Texas is Nathaniel Persily of Stanford Law School, who says that if the court were to say that the Constitution requires states to use the voting population, it could unleash a series of questions regarding the reliability of voter lists and surveys.

"A national database of eligible voters does not exist and will not exist in the foreseeable future," he said in an amicus brief.

But Ilya Shapiro of the libertarian Cato Institute says times have changed since the court came down with the one-person, one-vote doctrine and that modern immigration patterns have created disparities in voting districts. He supports Evenwel.

"Just as it was intolerable for a rural district with 500 voters to have the same representation in a state legislature as an urban district with 5,000 voters, it's now constitutionally suspect to have that disparity between a heavily (noncitizen) foreign-born district and one with mostly native-born citizens," Shapiro wrote in an essay for *Scotusblog*.

A three-judge district court ruled against Evenwel and dismissed the case.