Supreme Court upholds population count in electoral districts; endorses Yakima's new districting

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Rick Hasen of electionlawblog.org wrote that "Justice Ginsburg's opinion holds that districting using total population was consistent with constitutional history, the Court's own decisions, and longstanding practice". *All* of them, recorded by the census, count for the goal of drawing political districts. As a result of *Evenwel*, the presence of large numbers of illegal immigrants in an area will give that area more representation in state houses and dilute the voting power of Americans eligible to vote. "A national database of eligible voters does not exist and will not exist in the foreseeable future", he said in an amicus brief.

The Court said, "Adopting voter-eligible *apportionment* as constitutional command would upset a well-functioning approach to districting that *all* 50 States and countless local jurisdictions have followed for decades, even centuries".

However, the high court stopped short of saying that states must use total population.

Not a single member of the court, down to eight members since the death of conservative justice Antonin Scalia, sided with the challengers.

It comes as the justices are also weighing a legal challenge to Virginia's congressional map.

Ilya Shapiro, a senior fellow at the libertarian Cato Institute, said the court avoided "the elephant in the voting booth" by not addressing whether the one-person, one-vote principle requires "equalizing *people* or *voters* when crafting representational districts".

Civil rights leaders and minority groups backed the status quo, arguing a change would negatively impact Hispanics. Said Chief Justice Earl Warren: "Legislators represent *people*, not trees or acres".

"Representatives don't represent land".

It's important that the total-population method recognizes that everyone, *voter* or not, is entitled to representation by elected officials. "They don't represent counties".

Justices Clarence Thomas and Samuel Alito, both conservatives, concurred with the court's ruling but did not join Ginsburg's opinion.

The case, Evenwel versus Abbott, sought to force states to draw political district lines according to *eligible voters*, not an area's total population. The judge imposed a new council election system but the city's lawyers filed an appeal that hinged on whether Evenwel would win in the Supreme Court case. In opposition, Texas argued that jurisdictions may design voting districts using any population baseline including total population and voter-eligibility population-as long as the choice is rational. The ruling did not address the question of whether states have the right to choose some other method, such as the one favored by the plaintiffs.

"The choice is best left for the *people* of the states to decide for themselves how they should apportion their legislature", he wrote.