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**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF THE DISTRICT OF COLUMBIA**

CITIZENS FOR CONSTITUTIONAL  
INTEGRITY,

Plaintiff,

v.

GINA RAIMONDO, *et al.*,

Defendants.

No. 1:21-cv-3045

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**PLAINTIFF'S APPLICATION FOR A THREE-JUDGE COURT AND  
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

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Under LCvR 9.1, Plaintiff Citizens for Constitutional Integrity (Citizens) hereby applies for a Three-Judge Court under 28 U.S.C. § 2284(a). Citizens claim that Defendants, the Census Bureau, the Department of Commerce, Secretary of Commerce Gina Raimondo, and Acting Director of the Census Bureau Ron Jarmin (collectively, Census), violated the Fourteenth Amendment by incorrectly apportioning seats in the U.S. House of Representatives among the states. Compl. ¶¶ 55-65, ECF No. 1.

When a plaintiff presents an application for a three-judge court, “the judge to whom the request is presented” may examine the allegations in the complaint to determine whether the case qualifies under Section 2284(a)—“no more, no less.” 28 U.S.C. § 2284(b)(1); *Shapiro v. McManus*, 1577 U.S. 39, 44 (2015) (alteration omitted). If it qualifies, Section 2284(b)(1) directs the judge to “immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge.”

This case qualifies for a three-judge court under Section 2284(a) because it “challeng[es] the constitutionality of the apportionment of congressional districts . . . .” See *Utah v. Evans*, 182 F. Supp. 2d 1165, 1167 (D. Utah 2001), *aff’d* 536 U.S. 457; see also *Dep’t of Commerce v. Montana*, 503 U.S. 442, 446 (1992). Specifically, Citizens for Constitutional Integrity claims that, in April 2021, Census violated the Fourteenth Amendment, Section 2, when apportioning representatives among the states under 13 U.S.C. § 141 and 2 U.S.C. § 2a. Compl. ¶ 55-65.

When states deny or abridge their citizens' rights to vote, the Fourteenth Amendment requires Census to calculate the states' basis of representation and to distribute seats based on that state's basis of representation, instead of its enumerated population.<sup>1</sup> The Fourteenth Amendment describes the formula for calculating the "basis of representation" as equal to the actual enumeration multiplied by the percentage of citizens who can vote (plus citizens who cannot vote because of a criminal conviction). *See* Compl. ¶ 26. Generally, if only X percent of a state's citizens can vote (again, plus citizens who cannot vote because of a criminal conviction), the Fourteenth Amendment allows Census to count only X percent of the state's residents when apportioning seats among the states. *See id.* ¶ 27. The Fourteenth Amendment requires Census to use that basis-of-representation figure when apportioning seats according to the method of equal proportions. *See* 2 U.S.C. § 2a; Compl. ¶¶ 21-24 (describing that method).

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<sup>1</sup> Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State. U.S. CONST., 14th amend., § 2. The Nineteenth and Twenty-Sixth Amendments, respectively, deleted "male" and replaced "twenty-one" with "eighteen." *See Evenwel v. Abbott*, 136 S. Ct. 1120, 1149 n.7 (2016) (Alito, J., concurring); *Breedlove v. Suttles*, 302 U.S. 277, 283 (1937), *overruled on other grounds* by *Harper v. State Bd. of Elections*, 383 U.S. 663, 668-69 (1966).

If Census had done its work, it would have found several states denying their citizens' right to vote. Compl. ¶¶ 45-47. States draw the line between citizens who can vote and who cannot by maintaining a voter registration list. *Id.* ¶¶ 43-44. Citizens not on the list cannot vote, so states deny those unregistered citizens the right to vote. *Id.* The Fourteenth Amendment required Census to use that data to calculate each state's basis of representation, discounted for voter registration rates, and to apportion seats accordingly. Census did not do so. *Id.* ¶¶ 42, 57. If it had complied, Census would have moved seats from states like Colorado and Indiana to states like New Jersey and Virginia. *Id.* ¶ 48.

Many states also abridge even already registered citizens' rights to vote by requiring them to present photo voter identification at the polls. *Id.* ¶ 49. Wisconsin's photo voter ID law, in particular, required forms of identification that 300,000 registered voters lacked. *Id.* ¶ 50. That law abridged those citizens' rights to vote. Therefore, the Fourteenth Amendment required Census to calculate Wisconsin's basis of representation after subtracting 300,000 from its number of citizens who can vote. *Id.* ¶¶ 53, 58. Again, Census did not do so and thereby violated the Fourteenth Amendment. *Id.* ¶¶ 42, 56-58. If Census had complied with the Fourteenth Amendment, it would have moved seats from Wisconsin to New York. *Id.* ¶ 53.

On its face, the Complaint asserts that the current apportionment of U.S. House of Representative seats among the states violates the Constitution. Therefore, Section 2284(a) requires this Court to convene a three-judge panel.

Dated November 17, 2021,

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