



May 17, 2018

Hon. Senator Mike Kehoe, Chair  
*For distribution to the full Senate Committee on Rules, Joint Rules, Resolutions and Ethics*  
201 West Capitol Avenue, Room 321  
Jefferson City, MO 65101

BY EMAIL  
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Dear Members of the Senate Committee on Rules, Joint Rules, Resolutions and Ethics,

We write to oppose the passage of House Joint Resolution No. 100 (“HJR 100”). This proposed constitutional amendment is an affront to basic democratic principles. It should be voted down for three reasons: (1) using citizen population for redistricting rather than total population will disenfranchise minority communities, (2) the administrative burden of this unnecessary change will be a cost to taxpayers in Missouri, and (3) amending the constitution so that future politicians can prevent the implementation of important redistricting reforms before citizens can even vote to adopt them makes a mockery of the initiative and referendum process. The proponents of HJR 100 have not articulated a sufficiently weighty reason for adopting a measure that is sure to cause these harms.

***Using the citizen population instead of total population for one-person-one-vote purposes will disenfranchise minority communities by undercounting both citizens and non-citizens.*** Non-citizens should be counted when legislative districts are being drawn. This amendment, however, would undercount communities with relatively large non-citizen populations, effectively leaving them in the shadows, under the guise of preventing vote dilution.

This meager justification, however, is inconsistent with long held Supreme Court precedent and widely accepted social science. Using the citizen population instead of total population for redistricting will not protect the “one person, one vote doctrine,” as its



proponents have stated.<sup>1</sup> The purpose of using total population for this purpose is to assure that each legislator represents an approximately equal number of constituents. If this traditional and constitutionally approved approach is abandoned in favor of counting only citizens, the result will be a racial gerrymander favoring non-minorities and a partisan gerrymander favoring Republicans. It is also highly likely that this amendment will increase the underrepresentation of the historically undercounted African-American populations in Missouri by further diminishing the representation of non-citizens within African-American communities.<sup>2</sup>

Equally problematic is the unreliability of the data that this amendment mandates reapportionment officials use in legislative redistricting. Even if the 2020 Census ends up including a citizenship question, it is clear that the resulting data will severely undercount the minority *citizen* population.<sup>3</sup> Given the pending legal challenges, such a question may not be asked. In that event, the American Community Survey (ACS) data will be used in its place. However, this is problematic for multiple reasons.<sup>4</sup> The ACS data does not “align with the timing of redistricting,” which necessarily means that legislative redistricting would be based on outdated figures.<sup>5</sup> ACS data is “not available at the smallest

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<sup>1</sup> See *Statement of Rep. Dean Plocher* in Allison Kite, *Only citizens could be counted to draw legislative districts, per Missouri House bill*, THE KANSAS CITY STAR (May 15, 2018), <http://www.kansascity.com/news/politics-government/article211185104.html>.

<sup>2</sup> See e.g., *2010 Census missed 1.5 Million minorities*, CBS News, (May 22, 2012) <https://www.cbsnews.com/news/2010-census-missed-15-million-minorities/>.

<sup>3</sup> E.g., Michael Wines, *Census Bureau’s Own Expert Panel Rebukes Decision to Add Citizenship Question*, THE NEW YORK TIMES (Mar. 30, 2018), <https://www.nytimes.com/2018/03/30/us/census-bureau-citizenship.html>; Vanita Gupta, *The bitter lie behind the census’s citizenship question*, The Washington Post (Mar. 29, 2018), [https://www.washingtonpost.com/opinions/the-bitter-lie-behind-the-census-citizenship-question/2018/03/29/f2991020-32cc-11e8-8bdd-cdb33a5eef83\\_story.html?utm\\_term=.dc2a2d4035df](https://www.washingtonpost.com/opinions/the-bitter-lie-behind-the-census-citizenship-question/2018/03/29/f2991020-32cc-11e8-8bdd-cdb33a5eef83_story.html?utm_term=.dc2a2d4035df).

<sup>4</sup> *Brief Amici Curiae of Former Directors of the U.S. Census Bureau in Support of Appellees*, filed in *Evenwel v. Abbot*, No 14-940/U.S., <http://www.scotusblog.com/wp-content/uploads/2015/10/Evenwel-FormerCensusBureauDirectorsBrief092515.pdf>.

<sup>5</sup> *Id.*



geographical levels, and some data is suppressed to protect privacy.”<sup>6</sup> And finally, “as a statistical sample, ACS estimates are subject to error that make their use for line-drawing difficult.”<sup>7</sup>

Some proponents of citizen population data have gone beyond legitimate criticism and have made misleading and misguided arguments in favor of using citizen population that should be dispelled. Representative Plocher stated during floor debate last week that, “[i]f you’re a U.S. citizen right now the way it stands, your vote could be diluted if you have a disproportionate number, i.e. a greater number in your district than others that are not citizens of the United States.”<sup>8</sup> To say that citizen’s votes are being diluted by immigrant populations minimizes the contributions that hardworking, tax-paying immigrants make to American society, and reflects a view that these residents are not worthy of equal representation.

***HJR 100 is an unnecessary change in redistricting that will cause a cost to taxpayers in Missouri.*** The fiscal note summary of the amendment states that the proposed changes to legislative redistricting “will have no significant impact on revenues or costs for state and local government entities.” This is demonstrably false. State and local government entities will have to spend additional funds to update current infrastructure to accommodate the mandate that citizen population data be used in place of total population. As explained above, the citizen population data is not released at the census block level and so GIS experts will need additional time and resources to convert those data into the necessary format for use in census block level redistricting.

***HJR 100 may prevent citizens from increasing partisan fairness and competitiveness in the redistricting process.*** Hundreds of thousands of citizens in Missouri signed a petition to place a proposal on the 2018 general election ballot that will

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Supra* note 1.



require legislative redistricting to yield fair and competitive maps with the help of a nonpartisan demographer. HJR 100 would allow the legislature to completely thwart this initiative, even if the citizens of Missouri exercised their constitutional right to make this change to the way legislative maps are drawn.<sup>9</sup>

In the future, the citizens of Missouri may even want to create an Independent Redistricting Commission (“IRC”) to draw fair and unbiased maps. However, this legislation would prevent the implementation of an IRC because of the undemocratic restrictions it has placed on “reapportionment officials.” IRCs have a proven track record. They have been shown to lend greater public legitimacy to the redistricting process and minimize the conflicts of interest that are otherwise inherent in redistricting.<sup>10</sup> IRCs are not operated by legislators and have no political ties that would compromise their judgment as commissioners; they are structurally incentivized to redistrict according to the values espoused by state law rather than self-interest.<sup>11</sup> IRCs in red and blue states nationwide have successfully decreased partisan bias (one measure of whether or not a map is gerrymandered),<sup>12</sup> and partisanship in congressional delegations<sup>13</sup> while adhering to the “one person, one vote” doctrine.

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<sup>9</sup> The broad definition of “reapportionment official” as used in the bill is clearly meant to encompass, not only legislatures, but also possible future independent redistricting commissioners.

<sup>10</sup> Nicholas Stephanopoulos, *Reforming Redistricting: Why Popular Initiatives to Establish Redistricting Commissions Succeed or Fail*, 23 J.L. & Pol. 331, 338 (2007); Justin Levitt, *Essay: Weighing the Potential of Citizen Redistricting*, 44 Loy. L.A. L. Rev. 513, 532 (2011).

<sup>11</sup> Justin Levitt, *Essay: Weighing the Potential of Citizen Redistricting*, 44 Loy. L.A. L. Rev. 513, 538 (2011) (“[C]itizens whose job security is not affected by the outcome of a redistricting process will feel far less compulsion to distort otherwise coherent districts in the service of punishing a competitor, ensuring access to a particular funder, or capturing a personally salient landmark or facility that has little to do with the remainder of the district’s representation.”).

<sup>12</sup> Bruce E. Cain *et al.*, *Redistricting and Electoral Competitiveness in State Legislative Elections* 12 (2007); Vladimir Kogan & Eric McGhee, *Redistricting California: An Evaluation of the Citizens Commission Final Plans*, 4 Cal. J. Pol. & Pol’y 1, 16–17 (2012); Nicholas O. Stephanopoulos, *The Consequences of Consequentialist Criteria*, 3 U.C. Irvine L. Rev. 669, 692 (2013).

<sup>13</sup> David G. Oedel *et al.*, *Does the Introduction of Independent Redistricting Reduce Congressional Partisanship?*, 54 Vill. L. Rev. 57 (2009).



At a time when partisan bias is worse than ever,<sup>14</sup> these sorts of citizen-initiated reforms should be applauded not impeded. The legislature should not interfere with the will the people of Missouri by crafting an underhanded constitutional amendment that makes partisan fairness less attainable. We ask that you not pass House Joint Resolution No. 100.

Sincerely,

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<sup>14</sup> *N.C. State Conference of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016); see also *Brief of Amici Curiae Political Science Professors In Support of Affirmance*, filed in *Gill v. Whitford*, No. 16-1161/U.S. granted Oct. 3, 2017 (Modern technology, however, makes it possible for legislators to target voters of their choice with surgical precision.); Nicholas O. Stephanopoulos & Eric McGhee, *Partisan Gerrymandering and the Efficiency Gap*, 82 U. Chi. L. Rev. 831, 876 (2015) (A recent study into the level of partisan gerrymandering in state house and congressional elections from 1972 to 2014 found that “the scale and skew of today’s gerrymandering are unprecedented in modern history.”).