No. 24-1102

IN THE
Supreme Court of the United States

CITIZENS FOR CONSTITUTIONAL INTEGRITY,
Petitioner,

v.

CENSUS BUREAU, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the District of Columbia Circuit

AMICI CURIAE BRIEF OF GERARD N. MAGLIOCCA AND FRANITA TOLSON IN SUPPORT OF PETITIONER

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Dated: May 23, 2025

INTEREST OF *AMICI CURIAE*[*]

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SUMMARY OF ARGUMENT

The Court should grant this petition for three reasons. First, there is no Supreme Court opinion on the Reduction Clause in Section Two of the Fourteenth Amendment. Second, the petition presents a substantial constitutional question on standing. Third, granting the petition now rather than after the next reapportionment will give the Court time to decide the question thoughtfully rather than in a hurry on its emergency docket.

[*] This brief was not authored in whole or in part by counsel for any party, and no person or entity other than amicus curiae or its counsel has made a monetary contribution toward the brief's preparation or submission. All parties received timely notice of intent to file this brief.

REASONS TO GRANT THE WRIT

I. There is no guidance from this Court on the meaning of the Reduction Clause in Section Two of the Fourteenth Amendment.

Section Two of the Fourteenth Amendment provides, in pertinent part, that "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 States, 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."[1]

The Reduction Clause was never enforced by Congress or interpreted by the Court, even when Black voters were systematically and completely excluded from the polls under Jim Crow.[2] Without some guidance from this Court, the lower courts will struggle to resolve the Section Two cases.

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[1] The Nineteenth Amendment should be read as removing the word "male" from Section Two. Likewise, the Twenty-Sixth Amendment should be read as changing "twenty-one" to "eighteen." *See Evenwel v. Abbott*, 578 U.S. 54, 102 n.7 (2016) (Alito, J., concurring in the judgment).

[2] In *Richardson v. Ramirez*, 418 U.S. 24 (1974), the Court drew on the Reduction Clause's exception for those convicted of a crime in holding that state laws disenfranchising ex-felons are constitutional. *See id.* at 42-52.

II. The Petition raises a substantial constitutional issue that should be addressed by this Court.

At oral argument below, counsel for the Census Bureau was asked if any plaintiff would have standing to enforce the Reduction Clause. *See Citizens for Constitutional Integrity v. Census Bureau*, 115 F.4th 618, 630-31 (D.C. Cir. 2024) (Wilkins, J., concurring). The answer was "I'm not sure." *Id.* at 631 (quoting Oral Argument Transcript at 23). The Government's uncertainty on this point reinforces the argument for granting this petition. A constitutional provision may be non-justiciable or not amenable to a claim by individual plaintiffs. But such a weighty conclusion should come only from this Court.

A more acute constitutional problem underlying the petition is that the reapportionment statute does not permit the Census Bureau or anyone else to consider the Reduction Clause at all. The Census Bureau is required by Congress to use a mathematical formula to calculate how many representatives each state shall receive following each census. *See* 13 U.S.C. § 141 (a)- (b); *see United States Dep't of Commerce v. Montana*, 503 U.S. 442, 451-55 (1992) (describing the formula of equal proportions). The formula does not include a Reduction Clause variable. In effect, current law says that the provision cannot be enforced.

An elemental proposition is that a statute may not override a constitutional command. But this is what the reapportionment statute does. The Reduction Clause speaks in mandatory terms by stating that when the right to vote is denied or abridged (with some exceptions and conditions) the

basis of representation "shall be reduced" in a manner proportional to the denial or abridgement. The reapportionment statute instead says that representation shall not be reduced under any circumstances. Congress lacks the authority to set aside a mandatory constitutional provision, notwithstanding longstanding reapportionment practice to that effect.

III. The Court should hear a Reduction Clause case when time is a luxury.

Finally, this petition is an ideal vehicle for addressing the Reduction Clause because there is no need for the Court to make a quick decision. The most likely occasion for the next set of Reduction Clause challenges will be during the reapportionment cycle following the 2030 Census. At that point, though, time will be of the essence. Orderly elections for the House of Representatives and the Presidency in 2032 cannot take place without resolving the constitutional challenges to the new reapportionment. Experience suggests that election law disputes are not best resolved in haste on the emergency docket.

CONCLUSION

For these reasons, the Court should grant the petition.

Respectfully submitted,

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