

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

CITIZENS FOR CONSTITUTIONAL
INTEGRITY,

Plaintiff,

v.

THE CENSUS BUREAU, *et al.*,

Defendants.

No. 21-cv-3045

**PLAINTIFF'S SUPPLEMENTAL BRIEF APPLYING THE ZONE-OF-
INTEREST TEST TO ORGANIZATIONS**

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At the December 19, 2022, oral argument, the Court requested a supplemental brief on, as counsel understands it, whether an organization meets the zone-of-interest test when only its members suffered injuries within that zone. They do, and Citizens for Constitutional Integrity satisfies the zone-of-interests test here.

The zone-of-interests test qualifies as an element of the cause-of-action—and not as an element of the Article III case-or-controversy. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125-126 (2014) (quotations omitted). Not long ago, the Supreme Court abrogated the phrase “prudential standing” as a “misleading label” and a “misnomer.” *Id.* at 125, 127 (quotations omitted). It also criticized the label “statutory standing” because the zone-of-interests test relates to the cause-of-action and not the court’s “statutory or constitutional power to adjudicate the case.” *Id.* at 128 n.4 (quotations omitted). Courts do not dismiss cases “on grounds that are ‘prudential,’ rather than constitutional” because doing so would contravene a federal court’s “virtually unflagging” obligation “to hear and decide cases within its jurisdiction” *Id.* at 126 (quotations omitted); *see also Cohens v. Virginia*, 19 U.S. 264, 404 (1821) (“We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution.”) (Marshall, C.J.).

The zone-of-interest test asks “who may invoke the cause of action” *Lexmark*, 572 U.S. at 130. Courts use “traditional tools of statutory interpretation” to “[i]dentify[] the interests protected by” the provision, and they recognize a cause-of-action only for plaintiffs whose interests fall within that zone. *Id.* at 127, 128,

131, 137. For APA causes of action, that test “is not especially demanding.” *Id.* at 130 (quotations omitted). “[T]he benefit of any doubt goes to the plaintiff,” and the test “forecloses suit only when a plaintiff’s interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress authorized that plaintiff to sue.” *Id.* (quotations omitted).

When a defendant allegedly injures an organization’s members within the zone of interests of the provision, courts recognize the organization may invoke the cause of action. *See Japan Whaling Ass’n v. Am. Cetacean Soc’y*, 478 U.S. 221, 231 n.4 (1986); *Boston Stock Exchange v. State Tax Comm’n*, 429 U.S. 318, 321 n.3 (1977) (“The members therefore suffer an actual injury within the zone of interests protected by the Commerce Clause, and the Exchanges [membership organizations] satisfy the requirements for representational standing.”).

The zone of interests for the Fourteenth Amendment, Section 2 (the Amendment) includes vote-dilution injuries. The Framers defined the evil: “political power should be possessed in all the States exactly in proportion as the right of suffrage should be granted, without distinction of color or race.” Report of the Joint Committee on Reconstruction XIII, H.R. Rep. No. 30, 39th Cong., 1st Sess. (1866); Sen. Rep. No. 112, 39th Cong., 1st Sess. (1866). The Framers specifically aimed to protect voting citizens from vote-dilution by malapportionment to individuals without voting rights: “[R]epresentation does not belong to those who have not political existence, but to those who have. The object of the amendment is to enforce this truth.” Cong. Globe, 39th Cong., 1st Sess. 358 (1866); *see also id.* at 278, 2767.

Of course, the “rights sought to be vindicated in a suit challenging an apportionment scheme are personal and individual” *Reynolds v. Sims*, 377 U.S. 533, 562 n.39 (quotations omitted).

Citizens’ members fall well within the zone of interests for the Amendment. The New York and Pennsylvania members’ states each lost a seat as a result of the 2020 census process. Androniki Lagos Decl. ¶ 1 (“The Census Bureau’s 2021 Census injured me by resulting in the State of New York receiving one fewer seat in the U.S. House of Representatives (from 27 to 26 seats).”), ECF No. 14-23; Sarah Banks Decl. ¶ 1 (“Pennsylvania lost a seat in the U.S. House of Representatives.”), ECF No. 14-22; *see Table 1, Apportionment Population and Number of Representatives by State*, Census Bureau, ECF No. 14-6; Election Data Services, *Final Census Apportionment Counts Surprises Many Observers, Raising Questions of Why?*, Map 2, ECF No. 14-17.¹ Vote dilution by malapportioning the U.S. House of Representatives presents precisely the evil the Amendment aimed to cure. Because Citizens’ members suffered injuries within the Amendment’s zone of interests, Citizens can represent them to defend against those injuries. *See Japan Whaling*, 478 U.S. at 231 n.4; *Boston Stock Exchange*, 429 U.S. at 321 n.3.

Respectfully submitted, December 25, 2022,

/s/ Jared S. Pettinato
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¹ The Census Bureau disputes Citizens’ representational standing only because, they allege, Citizens has not demonstrated injury to any particular member. *See* Census Bureau Mem. of Law in Supp. of Defs.’ Mot. to Dismiss 7-8, ECF No. 24-1.