ORAL ARGUMENT HELD APRIL 11, 2024

No. 23-5140

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CITIZENS FOR CONSTITUTIONAL INTEGRITY,

Plaintiff-Appellant,

v.

THE CENSUS BUREAU, *et al.*,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Columbia
No. 1:21-cv-3045-CJN-JRW-FYP
The Honorable Judges Justin R. Walker, Florence Y. Pan, and
Carl J. Nichols

PLAINTIFF-APPELLANT'S PETITION FOR PANEL REHEARING AND REHEARING EN BANC ERRATA[1]

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[1] Counsel for Appellant discovered incorrect page numbers on the filed petition. They updated only those and the certificate of service. Counsel regrets the inconvenience to the Court and to Appellees' counsel.

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The Amendment	The 14th Amendment, Section 2
APA	The Administrative Procedure Act, 5 U.S.C. §§ 701-706
The Census Bureau	Federal Defendants the Census Bureau, the U.S. Department of Commerce, the Secretary of Commerce, and the Director of the Census Bureau
Citizens	Citizens for Constitutional Integrity
Report	The Secretary of Commerce's 2021 report on apportionment to the President under 13 U.S.C. § 141(b), App-165

STATEMENT

The panel's opinion contravened decades of this Court's precedents that recognize Article III standing to claim an agency failed to complete a mandatory procedure. It asserted this Court has no established test for procedural rights, but it does. *Fla. Audubon Soc'y v. Bentsen*, 94 F.3d 658, 664 (D.C. Cir. 1996) (en banc). Procedural rights are not new. Since the Magna Carta and the Due Process Clause, when the Government takes a life, liberty, or property right, plaintiffs have had rights to mandatory procedures, as long as their injuries bring them within the zone of interests. *Daniels v. Williams*, 474 U.S. 327, 331 (1986); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 573 n.8 (1992).

The Census Bureau[2] admitted it did not comply with the 14th Amendment, Section 2 (the Amendment) procedure, and it disclaimed responsibility. App-11. The Concurrence rejected that position as "unacceptable" and "'Not it.'" Concurring Op. 1 (Wilkins, J.). It criticized the Census Bureau for failing "to have meaningfully attempted to figure out how to implement [the Amendment]." *Id.* at 10-11.

[2] The term "Census Bureau" also references Appellees the U.S. Department of Commerce, Secretary of Commerce Gina Raimondo, and Census Bureau Director Robert Santos.

The Amendment added a step to the procedure of apportioning U.S. House of Representatives seats. It required the Census Bureau to "reduce[]" each state's "basis of representation" to the extent those states deny or abridge their citizens' rights to vote. The Census Bureau issued the 2021 report (the Report), App-165, without reducing any state's basis of representation. App-11. Yet the opinion found Citizens for Constitutional Integrity lacked a procedural right to that mandatory procedure. Op. 16. Curing that error would open the door to judicial relief on whether the Census Bureau violated the Amendment—as this Court committed to the NAACP LDF. *Lampkin v. Connor*, 360 F.2d 505, 511 (1966).

The opinion stated, "[t]here is no established test in this Circuit for determining whether a claimed right is procedural or not . . . ." *Id.* at 12. That is incorrect. When a plaintiff seeks to "enforce a procedural requirement the disregard of which could impair a separate concrete interest of theirs,' [*Lujan*, 504 U.S. at 572], . . . a violation of the procedural requirements of a statute is sufficient to grant a plaintiff standing to sue, so long as the procedural requirement was designed to

protect some threatened concrete interest of the plaintiff." *City of Dania Beach v. FAA*, 485 F.3d 1181, 1185 (D.C. Cir. 2007) (cleaned up).

The opinion did not cite that test. These cases (and many others) applied formulations of that test:

- *Eagle Cnty. v. STB*, 82 F.4th 1152, 1170 (D.C. Cir. 2023) (Wilkins, J.);
- *Ctr. for Biological Diversity v. EPA*, 861 F.3d 174, 182 (D.C. Cir. 2017) (hereinafter, *CBD*) (Henderson, J.);
- *Huron v. Cobert*, 809 F.3d 1274, 1279 (D.C. Cir. 2016) (Millett, J.);
- *WildEarth Guardians v. Jewell*, 738 F.3d 298, 305 (D.C. Cir. 2013) (Henderson, J.);
- *Nuclear Info. and Res. Serv. v. Nuclear Regul. Comm'n*, 509 F.3d 562, 567 (D.C. Cir. 2007) (Kavanaugh, J.);
- *Renal Physicians Ass'n. v. HHS*, 489 F.3d 1267, 1278 (D.C. Cir. 2007) (explained by Appellants' Br. 56-57);
- *Dania Beach*, 485 F.3d at 1185;
- *Int'l Bhd. of Teamsters v. Peña*, 17 F.3d 1478, 1484 (D.C. Cir. 1994) (quoted by Appellant's Br. 49-50, 58; Appellees' Br. 24-25; Appellant's Reply 14-15);

Seven other United States Courts of Appeals use similar tests. *See Desuze v. Ammon*, 990 F.3d 264, 268 (2d Cir. 2021); *Hodges v. Abraham*, 300 F.3d 432, 444 (4th Cir. 2002); *Tex. Med. Ass'n v. U.S. Dep't of HHS*, No. 23-40217, at *12 (5th Cir. Aug. 2, 2024); *Lyshe v. Levy*, 854 F.3d 855, 859 (6th Cir. 2017); *Bensman v. U.S. Forest Serv.*, 408 F.3d 945,

951-53 (7th Cir. 2005); *Navajo Nation v. Dep't of the Interior*, 876 F.3d 1144, 1160 (9th Cir. 2017); *New Mexico v. Dep't of the Interior*, 854 F.3d 1207, 1215-16 (10th Cir. 2017). These tests all derive from *Lujan*.

Citizens met this Court's test. They proved (a) the Census Bureau failed to complete the Amendment procedure that affected the number of seats apportioned to their states, and (b) their vote-dilution injuries bring them within the zones of interest of two constitutional provisions and two statutes. Therefore, Article III relaxes the standards for proving redressability and causation. *See WildEarth Guardians*, 738 F.3d at 305. If the opinion had applied the relaxed standards, it likely would have recognized Citizens' standing. *See* Op. 10-11.

The opinion, in effect, denied all procedural rights claims. It rejected Citizens' procedural injury *because* they asserted concrete injury. Op. 12-13. That logic means all plaintiffs will fit one of these categories:

> Category 1: Plaintiff demonstrates procedural injury, but no concrete injury. No standing. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2214 (2021).
>
> Category 2: Plaintiff demonstrates concrete injury. Then, Plaintiff cannot establish procedural injury. Op. 12-13. No standing.

This holding would preclude Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706, claims of inadequate notice; National Environmental

Policy Act of 1969, 42 U.S.C. §§ 4321 to 4347, claims (*Eagle Cnty.*, 82 F.4th 1152); many Endangered Species Act, 16 U.S.C. §§ 1531-1544, claims (*CBD*, 861 F.3d at 182); and innumerable other claims.

Inconsistent cases in this Court and with other courts make full court consideration necessary to secure and maintain uniformity on procedural-injury standing. The opinion conflicts with this Court's test and with its commitment to reviewing Amendment claims. *Lampkin*, 360 F.2d at 511. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). Judge Wilkins recognized, although "implementing the Reduction Clause might be difficult, . . . that is no excuse for the Executive Branch to abdicate its responsibility to give effect to this important part of the Constitution." Concurring Op. 12. This situation compels panel rehearing and rehearing en banc.

LEGAL BACKGROUND

The Amendment's plain text and originalist intent compel judicial enforcement. The Framers saw the Thirteenth Amendment freeing 3.6

million people in the rebel states; consequently, the Constitution would have given the rebel states' leaders about thirteen additional U.S. House seats as a reward for starting the Civil War. *See* Cong. Globe, 39th Cong., 1st Sess. 74, 2767 (1866); 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) (hereinafter Reconstruction Report). The Constitution had originally apportioned seats by counting enslaved persons as three-fifths of a person. U.S. Const. art. I, § 2. But newly-free persons would count as whole persons—and the Framers knew the oligarchs in the rebel states would not let them vote. Reconstruction Report XIII. The Civil War victors could not let that stand.

The Framers wrote the Amendment to achieve "universal suffrage." Cong. Globe, 39th Cong., 1st Sess. 2459. The plain text requires the United States to "reduce[]" every state's "basis of representation" to the extent the state "denied" or "abridged" its own resident, over-eighteen, non-criminal, non-rebel citizens' "right to vote."[3]

[3] The Amendment states:

The Amendment "modified the then-existing apportionment procedure in Article I." Op. 4. It resulted in a three-step procedure:

Step 1: "[A]ctual[ly] Enumerat[e]" the people. U.S. Const. art. I, § 2, cl. 3.

Step 2: Reduce each state's basis of representation to the extent it "denied" or "abridged" its citizens' "right to vote." Amendment; 2 U.S.C. § 6.

Step 3: "[A]pportion[]" representatives via the "method of equal proportions." U.S. Const. art. I, § 2, cl. 3; 2 U.S.C. § 2a(a).

See Op. 3-7.

In 1941, Congress delegated its "broad authority" over the census and assigned the Census Bureau the duty to "fairly account[] for the crucial representational rights that depend on the census and the

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> 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.

The Nineteenth and Twenty-Sixth Amendments, respectively, deleted "male" and replaced "twenty-one" with "eighteen." Op. 2 n.1.

apportionment." *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2566, 2569 (2019) (quotations omitted); *Dep't of Commerce v. Montana*, 503 U.S. 442, 452 (1992). Congress made the apportionment "process self-executing." *Montana*, 503 U.S. at 452 n.25. Congress also executed the Amendment in 2 U.S.C. § 6.

FACTUAL AND PROCEDURAL BACKGROUND

The Census Bureau admitted it never completed the Amendment procedure. App-11. "[I]t is high time, after 150 years, that the Reduction Clause receive the respect it deserves." Concurring Op. 2. Citizens brought claims under the APA and the Mandamus Act, 28 U.S.C. § 1631, to force the Census Bureau to complete the Amendment procedure. Op. 3.[4]

Citizens proved vote-dilution, concrete, particularized injury to its New York, Pennsylvania, and Virginia members.[5] A single citizen's

[4] The Supreme Court already rejected arguments that apportionments present political questions, *Baker v. Carr*, 369 U.S. 186, 198 (1962), and already rejected arguments that census calculations do. *Montana*, 503 U.S. at 457-59.

[5] Article III allows organizations to prove standing either (a) via injury to themselves or (b) as representatives of their members, who have standing. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, No. 20-1199, Slip Op. at 15 (June 29, 2023). Citizens

state's "loss of a Representative" qualifies as injury. *Dep't of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 331 (1999) (pre-census claim); *Utah v. Evans*, 536 U.S. 452, 459-61 (2002) (post-census claim). New York and Pennsylvania now have one fewer representative than before the Report. App-166 ("-1"). And Virginia lost a seat from the Census Bureau's failure to implement the Amendment. App-49, -142 (map).[6] Citizens asserted a procedural right, so they need not "meet[] all the normal standards for redressability and immediacy." *Lujan*, 504 U.S. at 572 n.7.

In black-and-white, the Report caused Citizens' New York and Pennsylvania members' vote-dilution injury. App-166. But-for causation

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claim "representational" standing. Appellants' Br. 29-30. Therefore, Article III requires no proof of injury to the organization.

[6] Citizens make no "generally available grievance about government . . . ." *Lujan*, 504 U.S. at 573. The Report caused concrete vote-dilution injuries to citizens of only seven states. App-166. The failure to account for voter registration denials injured citizens of seven other states. App-142; App-49. As citizens of three of those fourteen states, Citizens' members suffered particularized injuries, and not just a generic, "every citizen's interest in proper application of the Constitution and laws." *See Lujan*, 504 U.S. at 573. Voters in malapportioned districts have standing to challenge malapportionments. *Gill v. Whitford*, 138 S. Ct. 1916, 1931-32 (2018). Here, the malapportioned districts include New York, Pennsylvania, and Virginia. Citizens thus seek a remedy that benefits them more than the "public at large." *See Lujan*, 504 U.S. at 574.

satisfies traceability even for non-procedural claims. *Duke Power Co. v. Carolina Env. Study Grp.*, 438 U.S. 59, 78 (1978); *Burrage v. United States*, 571 U.S. 204, 211 (2014) (explaining but-for causation as "proof that the harm would not have occurred in the absence of—that is, but for—the . . . conduct." (quotations omitted)). But-for the Report, Citizens New York and Pennsylvania members would not have lost a seat.

The Report also injured Citizens' Virginia member. A data scientist calculated the Census Bureau would have apportioned Virginia another seat by using Census-Bureau voter-registration data to reduce states' bases of representation. Op. 8-9; App-49, -142 (map). Citizens need not prove any method would give every member a new seat. Federal Rule of Civil Procedure 8(d)(2) allows them to plead in the alternative, and "the pleading is sufficient if any one of [the alternative statements] is sufficient." As long as *one* apportionment approach gives *one* of Citizens' member's state a new seat, Citizens satisfy Article III. *See id.*

Citizens established redressability because courts have "power" to remedy Citizens' injuries by vacating or setting aside the Report under the APA, 5 U.S.C. § 706(2); or by issuing a writ of mandamus, declaratory relief, or injunctive relief. *See Utah*, 536 U.S. at 459;

Appellants' Br. 38-60. Partial relief qualifies. *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 796, 801 (2021). This Court already recognized its declaratory relief power under the Amendment. *Lampkin*, 360 F.2d at 511.

The three-judge district court dismissed Citizens' case for lack of standing because, it concluded, plaintiffs only have procedural rights to if they can participate in the procedure, like via public comments; here, Citizens had no right to participate. App-161. That court did not acknowledge *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230 n.4 (1986), which recognized procedural rights—although plaintiffs had no right to participate. *See Lujan*, 504 U.S. at 573 n.8.

The panel opinion upheld the dismissal for lack of standing, but for a different reason. It held this Court lacks a test for establishing a procedural right, and it manufactured a new test. Op. 12.

The opinion held that, without the relaxed burdens of procedural injury, Citizens failed to prove causation. Op 16-20. The opinion held Citizens had not demonstrated a feasible, alternative methodology. *Id.* The opinion did not distinguish *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477, 512 n.12 (2010),

which rejected arguments that Article III requires proof of an agency's action in a "counterfactual world." It did not distinguish *Baker*, which denied Article III requires proving that curing a voting-right violation would cure the vote-dilution injury. 369 U.S. at 208. The opinion never addressed the Catch-22 that this Court rejected in other administrative law cases. *Oglala Sioux Tribe v. U.S. Nuclear Regulatory Comm'n*, 896 F.3d 520, 523 (D.C. Cir. 2018) (Garland, C.J.). It did not consider Citizens' argument-in-the-alternative that using the Census Bureau's own voter registration data would give Virginia a new seat.

ARGUMENT

The opinion failed to apply the test for procedural rights that this Court, seven other courts of appeal, and the Supreme Court use. It did not open the door to judicial relief for an Amendment claim, as this Court held it would. The opinion, in effect, eliminated standing for all plaintiffs asserting procedural-rights claims.

I. This Court recognizes procedural rights when (a) an agency fails to complete a mandatory procedure that could cause concrete harm and (b) the plaintiff's injury brings it within the zone of interests.

Citizens met this Court's test for demonstrating a procedural right. Judge Wilkins called the Amendment "essentially a dead letter . . . ."

Concurring Op. 8. But Congress passed 2 U.S.C. § 6 to prevent that result. Joint Committee on Reconstruction member Senator Justin Morill urged passing the statute because, "We must do nothing to impair the vitality of [the Amendment] or any other provision of the Constitution. *If not needed today, it may be tomorrow. It must not become a dead letter*." Cong. Globe, 42nd Cong., 2nd Sess. 670 (1872) (emphasis added).

A. The Amendment required a procedure that could have cured Citizens' vote-dilution injury.

Citizens demonstrated the Census Bureau violated a mandatory procedure by failing to complete the Amendment step in the apportionment process. The Supreme Court recognized procedural rights as "special." *Lujan*, 504 U.S. at 573 n.7. The Due Process Clause makes them special: "No person shall . . . be deprived of life, liberty, or property, without due process of law . . . ." If the government causes harm but fails to complete a mandatory process, due process guarantees a right to that process. Due process protects voting rights. *Minor v. Happersett*, 88 U.S. 162, 176 (1874), *superseded on other grounds by* U.S. Const. amend. XIX. "Certainly one of the basic purposes of the Due Process Clause has always been to protect a person against having the

Government impose burdens upon him except in accordance with the valid laws of the land." *Giaccio v. Pennsylvania*, 382 U.S. 399, 403 (1966); *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 879 (2011) (plurality).

The Amendment mandated a process. Each state's "basis of representation . . . shall be reduced" when those states deny or abridge their citizens' "right to vote." The word "shall" mandates the reduction. *See Shapiro v. McManus*, 577 U.S. 39, 43 (2015) ("the mandatory 'shall' normally creates an obligation impervious to judicial discretion." (cleaned up)). The passive-voice construction "shall be reduced" makes every branch of the United States responsible for implementation. *See Sheetz v. Cnty. of El Dorado*, No. 22-1074, Slip Op. 7, 10 (Apr. 12, 2024); THE CHICAGO MANUAL OF STYLE ¶ 5.112 (15th ed. 2003) (describing passive voice).

The Concurrence recognized, "the [Census] Bureau's responsibility to ensure that the apportionment count it is providing accords with the Reduction Clause as well as the Clause's statutory codification at 2 U.S.C. § 6." At 11-12. It described procedures to satisfy the Amendment: "promulgate rules, engage in notice and comment, seek out

implementation input from experts, or generate reports for submission to the President and Congress." *Id.* But the Census Bureau did no reducing.

Instead of following *Florida Audubon* or *Lujan*, the opinion created a new test. It asked whether, in the Complaint's "heart," Citizens seek substantive relief. Op. 13. This reasoning mixes up procedural and concrete injuries. Of course, Citizens pursued substantive redress for their concrete injuries. Without it, they lack standing. *See TransUnion*, 141 S. Ct. at 2203. Plaintiffs establish procedural injury by "tether[ing it] to some concrete interest adversely affected by the procedural deprivation . . . ." *WildEarth Guardians*, 738 F.3d at 305. Citizens tethered the violated procedure to their vote-dilution injuries.

The opinion sees a concession that Citizens seek substantive results because their Compliant claims the Report is arbitrary and capricious. Op. 14-15. That reasoning misapprehends fundamental administrative law. The APA requires designating an agency action. 5 U.S.C. § 704. Then, just as a fourth grader skipping a step in the long division process and producing arbitrary and capricious results, a procedural violation makes an agency action arbitrary and capricious. *Encino Motorcars,*

LLC v. Navarro, 136 S. Ct. 2117, 2125 (2016). The Census Bureau's procedural violation caused the Report's substantive flaws.

B. This Court requires meeting the zone-of-interests test as part of the procedural injury test.

The Supreme Court added a zone-of-interests test to assert procedural rights, and this Court implemented that direction—until this opinion. *Lujan* allowed procedural rights only for procedures "designed to protect" the plaintiffs. 504 U.S. at 573 n.8. That standard does not give courts unbridled discretion to consider the procedural requirement's design. It requires the zone-of-interests test. *Teamsters*, 17 F.3d at 1483 (quoting *Lujan*) (cited by Appellant's Br. 49-50, 58). Under that test, plaintiffs need not show any "explicit provision" or affirmative "purpose to benefit the would-be plaintiff." *Clarke v. Secs. Indus. Ass'n*, 479 U.S. 388, 394, 399-400 (1987). Without affirmative evidence of congressional intent to deny a claim, courts apply the "presumption in favor of judicial review of agency action." *Id.* at 399. Plaintiffs fail only if they have interests "so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit." *Id.*

The opinion contradicted *Teamsters*. It held the zone-of-interests only applies to statutory causes of action, so Citizens "demands application of the wrong test." Op. 15-16. But this Court uses the zone-of-interests test for both. *Teamsters*, 17 F.3d at 1484 (describing the two tests as "derivative"); *see Lujan*, 504 U.S. at 573 n.8; *Japan Whaling*, 478 U.S. at 231 n.4. The Amendment intended more seats for states that allow their citizens to vote. Citizens' vote-dilution injury brings them within the zone of interests for U.S. Constitution Article I, the Amendment, the apportionment statute, 13 U.S.C. § 141, and Act of Nov. 26, 1997, Pub. L. No. 105-119 § 209, 111 Stat. 2440, 2481 (codified at 13 U.S.C. § 141 note). Appellants' Br. 42-50.

The opinion relied on *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126 (2014), as "mark[ing] a sea change" and eliminating the zone-of-interest test and other prudential jurisdictional tests, so it ignored all pre-2014 Supreme Court precedents. Op. 16. It overreached. *See Mallory v. Norfolk S. Ry. Co.*, 143 S. Ct. 2028, 2038 (2023) (requiring the "lower court [to] follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions. This is true even if the lower court thinks

the precedent is in tension with some other line of decisions." (cleaned up)). Either way, the opinion took the wrong message from *Lexmark*. The Supreme Court eliminated "prudential" jurisdictional limits to ensure courts fulfill their "virtually unflagging" obligation to "hear and decide cases within [their] jurisdiction." *Lexmark*, 572 U.S. at 126 (cleaned up). At most, *Lexmark* eliminated this element of this Court's test. The Supreme Court now acknowledges procedural rights simply when an agency acts "without following mandatory procedures." *See Dep't of Educ. v. Brown*, 143 S. Ct. 2343, 2348 (2023). But the opinion, in effect, reconstituted "prudential" jurisdictional limits in a new test and thereby breached its "'virtually unflagging'" duty to assert its jurisdiction.

Citizens met this Court's test. They have procedural rights to claim the Census Bureau failed to complete the Amendment's mandatory procedures.

II. This Court previously held it would open the door to judicial relief on an Amendment claim.

The opinion contradicted this Court's holding it would open the door to judicial relief on Amendment claims. When the NAACP LDF sought declaratory relief under the Amendment, this Court deferred until

seeing the results of the then-brand-new Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (Aug. 6, 1965). *Lampkin*, 360 F.2d at 510-12. It recognized "the seriousness of the questions presented" and expressed skepticism of arguments the Amendment "does not mean what it appears to say." *Id.* at 512. If "discrimination persist[ed]," this Court stated it would "open the door to judicial relief . . . ." *Id.*

Now, despite the Voting Rights Act, "voting discrimination still exists; no one doubts that." *Shelby Cnty. v. Holder*, 570 U.S. 529, 536 (2013). This opinion contradicts *Lampkin* by failing to reach the merits on Citizens' Amendment claim.

III. The opinion precludes standing for all plaintiffs claiming procedural rights.

The opinion now precludes plaintiffs from bringing procedural right claims if they assert concrete injuries. Op. 12-13. That effectively precludes standing for all procedural-rights plaintiffs. "No concrete harm, no standing." *TransUnion*, 141 S. Ct. at 2200. That holding contradicts decades of this Court's precedent, *Lujan*, and even the Due Process Clause.

CONCLUSION

For the foregoing reasons, Citizens respectfully request panel rehearing and rehearing en banc.

Dated: October 25, 2024,

/s/ Jared S. Pettinato
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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

This brief complies with the type-volume limitations of Federal Rule of Civil Procedure 39(b)(2)(A) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f) and Circuit Rule 32(e)(1), it contains 3,879 words. I counted the words using MS Word 365. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it uses a proportionally spaced typeface, 14-point Century Schoolbook.

Dated: October 25, 2024,

/s/ Jared S. Pettinato
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CERTIFICATE OF SERVICE

On this day, I served Plaintiff-Appellant's Petition for Panel Rehearing and Rehearing En Banc Errata on the following counsel via CM/ECF on the following counsel:

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