Nos. 24-7050, 24-7065
Oral Argument Not Scheduled

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Stacia Hall, *et al.*,

Plaintiffs-Appellants, Cross-Appellees

v.

District of Columbia Board of Elections,

Defendant-Appellee, Cross-Appellant

On appeal from an order entered in the
United States Court below for the District of Columbia
No. 1:23-cv-1261
The Hon. Amy Berman Jackson

RESPONSE AND REPLY BRIEF OF PLAINTIFFS-APPELLANTS

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties and *Amici*

1. Stacia Hall, Ralph Chittams, Suzzanne Keller, Ken McClenton, Kimberly Epps, Dick A. Heller, and Nicolle S.A. Lyon were the plaintiffs in the court below and are the Plaintiffs-Appellants, Cross-Appellees in this Court.

2. The District of Columbia Board of Elections was the defendant in the court below and is the Defendant-Appellee, Cross-Appellant in this Court.

3. The Lawyers' Committee for Civil Rights Under Law and the Washington Lawyers' Committee for Civil Rights and Urban Affairs appeared as *amici curiae* in the court below in support of defendant. No *amici curiae* have appeared before this Court.

B. Ruling under review

Plaintiffs-Appellants seek review of the court below's order (App. 100) and memorandum opinion (App. 101), dated March 20, 2024, which granted Defendant-Appellee's motion to dismiss. The opinion and order are included in the appendix.

C. Related cases

Undersigned counsel is unaware of any other case related to these consolidated cases.

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GLOSSARY

Plaintiffs	Plaintiffs-Appellants, Cross-Appellees
The District	Defendant-Appellee, Cross-Appellant, DC Board of Elections
NCVL	D.C. Law 24-242. Local Resident Voting Rights Amendment Act of 2022

PERTINENT STATUTE

The pertinent parts of the challenged statute are contained in the Principal Brief for Plaintiffs-Appellants.

SUMMARY OF THE ARGUMENT

In their principal brief, Plaintiffs showed that they have standing because their own rights to citizen self-government are violated when they are forced to vote in a U.S. election alongside noncitizens; because the NCVL dilutes the votes of U.S. citizens with the votes of noncitizens, and the votes of persons of American national origin with those of foreign national origin; and because Plaintiff Stacia Hall, as an office-seeker, had an interest in an accurate vote count.

The District responds that suffering a violation of the right to citizen self-government is a mere general grievance common to all, not a particularized injury. Here, the District ignores the difference between U.S. citizen voters in DC and the public at large. Anyone might be offended or alarmed by the NCVL's violation of self-government by citizens and its erosion of popular sovereignty, but not everyone is a U.S. citizen forced to vote alongside noncitizens in DC. If the right to citizen self-government implies a right to vote in elections in which only citizens vote, as Plaintiffs contend (and this Court must assume in determining standing), those forced to vote in elections alongside noncitizens suffer a personal violation of this

right. And the violation of one's own constitutional right is an injury sufficient for standing.

In responding to Plaintiffs' showing that they have standing based on vote dilution, the District espouses the theory of the court below that no reduction in the voting strength of a group, or of its members, injures those members if, after the reduction is enacted, their votes are weighed equally with the votes of those outside their group. But, of course, when an expansion of the franchise is at issue, as here, the injury claimed is precisely *that* the new votes will be weighed equally with the old. And it is a very real injury, since to lose voting strength, as happens to original voters when new voters are added, is to suffer a reduction in power over the government. This Court has never embraced the District's theory, which has absurd consequences the District fails to rebut.

In its cross-appeal seeking review of the merits, the District attacks the existence of the right to citizen self-government, claiming that Plaintiffs derive it from Supreme Court dicta and an improper use of the Constitution's Preamble and Supremacy Clause, and that it is negated by a history of its violation. But the Supreme Court's statements in question were necessary to the judgment in those cases, and thus were holdings, and the Preamble and the Supremacy Clause are unmistakable proof of popular sovereignty, which necessitates citizen self-government. Nor does some history of noncitizen voting negate a right that is not

solely an unenumerated one protected by implication in the Due Process Clause, but is, as the Supreme Court has explained, basic to the theory of democratic self-rule that is presupposed by the Constitution.

The District also claims that U.S. citizens are not a protected class, though noncitizens are, and that those of American national origin, unlike those of foreign national origin, are also not a protected class. This view that "powerful" groups cannot form protected classes would make the Constitution enshrine a caste system of hereditary victims and hereditary oppressors, and has been rejected by the Supreme Court in favor of finding classifications based on certain general characteristics, such as race and national origin, suspect, leaving to the circumstances of a given case to decide whether a particular group defined by these characteristics needs protection. Obviously, if a law or government policy discriminates against a group defined by suspect criteria, as here, that group is not "powerful" in the circumstances before the court.

Lastly, the District claims that the NCVL discriminates against citizens and those of American national origin neither on its face nor intentionally, but only accidently, if foreseeably. But the NCVL dilutes the votes of citizens and those of American national origin by logical necessity, and thus does so on its face. Also, the District admits that the purpose of the NCVL is to benefit noncitizens. But that intent behind allowing noncitizens to vote implies the intent to reduce the voting share of

citizens and those of American national origin, because it is impossible to do the former without doing the latter.

Because the NCVL discriminates on its face against U.S. citizens and those of American national origin, it should receive strict scrutiny, which it cannot possibly pass. Indeed, under any level of scrutiny, the governmental interest the District asserts in giving noncitizens a share of power over the government of the locality they have chosen, often against the laws of the United States, to reside in cannot stand against the compelling governmental interest, recognized by the Supreme Court, in democratic self-rule and the maintenance of the popular sovereignty that underlies the Constitution.

STANDARD OF REVIEW

This Court reviews dismissals for lack of standing *de novo*. *AICPA v. IRS*, 804 F.3d 1193, 1196 (D.C. Cir. 2015). "The 'irreducible constitutional minimum of standing' requires that the plaintiff suffer an injury in fact fairly traceable to the challenged conduct of the defendant that can likely be redressed by a favorable judicial decision. *Tanner-Brown v. Haaland*, 105 F.4th 437, 443 (D.C. Cir. 2024) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). Although the plaintiff bears the burden of establishing the elements of standing, the Court must "accept the factual allegations in the plaintiffs' complaint as true and draw all reasonable inferences from those facts in their favor." *Id.*

ARGUMENT

I. Plaintiffs have standing to bring their claims.

A. Plaintiffs have standing to bring their citizen self-government claim.

In their principal brief, Plaintiffs show that they suffer a particularized injury because their own right to citizen self-government—which implies the right to vote in elections in which only citizens vote—is infringed when they are forced to vote in DC elections alongside noncitizen voters. Plaintiffs-Appellants' Principal Brief at 9-20. The infringement of one's own constitutional right is a sufficient injury for standing purposes. *See, e.g., AFGE v. OPM (In re United States OPM Data Sec. Breach Litig.)*, 928 F.3d 42, 54-55 (D.C. Cir. 2019) ("[T]he loss of a constitutionally protected privacy interest itself would qualify as a concrete, particularized, and actual injury in fact"). The District responds that Plaintiffs forfeited this argument, and, even if they did not, the violation of the right to citizen self-government is only an abstract grievance, shared by everyone. Defendant-Appellee's Principal and Response Brief ("Def. Pr. Br.") at 18-21.

But, of course, being a citizen who is forced to vote in a DC election alongside noncitizen voters is not an injury shared by everyone, but only by DC citizen voters. That all DC citizen voters suffer this injury to the same degree does not make it a generalized grievance, a mere violation of one's desire for constitutional government or the maintenance of popular sovereignty. Anyone—citizen or not—could suffer

that injury when contemplating the NCVL. But not everyone is a DC citizen voter. In *Michel v. Anderson*, 14 F.3d 623 (D.C. Cir. 1994), this Court rightly found a particularized injury in the weakening of the votes, to an equal degree, of every voter in every state in the country. *Id.* at 625-26. If that injury is particularized, Plaintiffs' is, too. Nor did Plaintiffs forfeit this argument below, but clearly stated that they had standing because they were injured by the violation of their constitutional right to citizen self-government, App. 53-56; 64-68, and that this right implied the right to vote in an election in which only citizens vote, App. 55-56. The court below, treating this injury as based in vote dilution, passed on this argument with its conclusion that no vote dilution had taken place. App. 107-09; App. 111 (concluding that "the power of plaintiffs' individual votes was not diminished in any way … plaintiffs' votes will be counted and weighted exactly as they were before").

B. Plaintiffs have standing to bring their Fifth Amendment claims.

The District, like the court below, espouses a theory of standing wherein *no* vote dilution, except that which results in the differential weighing of votes after its enactment, can ever constitute an injury sufficient for standing. Def. Pr. Br. at 24-27. As far as the District shows, no court has ever so held. This Court in *Daughtry v. Carter*, 584 F.2d 1050 (D.C. Cir. 1978), certainly did not do so. It conspicuously did not assert that Plaintiffs lacked standing, under their theory that their votes were diluted by unlawfully cast votes, on the ground that those unlawfully-cast votes

would be weighed equally with theirs; indeed, the gravamen of the claimed injury was that these unlawfully-cast votes *would* be weighed equally with theirs. Rather, the *Daughtry* Court found that the plaintiffs had not even alleged that their own votes would be diluted in any particular election by the addition of an unknown number of unlawful votes in places unknown. *Id.* at 1056. There is no such lack of factual specificity here. Plaintiffs allege, as is clearly the case, that their own votes, as U.S. citizens, are diluted in elections in a particular place, Washington, DC. That noncitizens' votes will be weighed equally with Plaintiffs' does not negate their injury, but is rather the particular form that injury takes.

The District's theory also has absurd consequences. One's share of the vote is a measure of one's share of governmental power. To claim that a person's share of governmental power can be reduced without any injury at all to that person is nonsensical. For example, if DC passed a law extending the right to vote in DC elections to white (and only white) residents of DC suburbs, this reduction in the share of governmental power possessed by black DC voters would injure them. In countering this hypothetical, the District assures this Court that these voters would still have standing because of a "racially stigmatizing injury." Def. Pr. Br. at 30. That is beside the point. The District, in defense of the court below, is still driven to deny that they would be injured by the dilution of their votes by a facially-discriminatory law. *Id.* at 29-30. Any argument for lack of standing with that absurd consequence

is fatally flawed. And, for that matter, the District never explains why the "stigmatizing injury" that would be suffered by black DC voters in this hypothetical is not suffered, here, by U.S. citizen DC voters and DC voters of American national origin at the hands of a law, the NCVL, that facially discriminates against them. Surely, it cannot be because the Constitution enshrines a kind of caste system, in which some groups are hereditary victims, and others hereditary oppressors (with some, such as Stacia Hall and other Plaintiffs, being both at once). *See, e.g.*, *Hirabayashi* v. *United States*, 320 U.S. 81, 100 (1943) ("Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.").

In fact, the answer to the hypothetical the District should have given, to preserve their flawed theory that expansions of the franchise that do not result in differential weighing of votes never work an injury, is that the law in the hypothetical would result in the differential weighing of votes, considered as votes by members of specified groups. By expressly adding only white voters to the rolls, the law reduces the share of the electorate occupied by black voters, but not white voters. It thus weighs votes differently, and injury can thus be found even on the District's over-restrictive theory.

But that answer would not have served the District well, since, in one of Plaintiffs' vote dilution claims—that their votes are diluted based on their national

origin—they do claim that their share of the electorate, and thus the weight of their votes, is lessened compared with the votes of another group of citizens: the foreign-born. The NCVL decreases the voting strength of DC voters of American national origin, but does not decrease the voting strength of foreign-born U.S. citizen DC voters. Neither the court below nor the District ever explains how this vote-dilution injury involving the differential weighing of votes between two groups of citizens, despite meeting even their own over-restrictive theory of vote-dilution injury, still does not constitute such an injury. Nor could they.

In fact, of course, *all* expansions of the franchise result in the differential weighing of votes, because they shrink the relative size of the electorate occupied by all of those who could vote before the expansion, from 100% to some lesser size, and in these situations vote-weighing is a function of electorate share. However much the District wishes to ignore this injury here, it is palpable, especially because the original voters are all members of the same protected class (U.S. citizens) and none of the new voters are (and alienage is not a suspect classification for voting or governing purposes). To say that the former are not injured by this reduction in their power over their government would be to say that they would not be injured even if noncitizens formed 50%, or 75%, of DC's residents, and the power of citizens' votes were cut by half, or three-quarters. No controlling case necessitates that absurd

result, and it would be pure sophistry to claim that the text of the "cases and controversies" requirement of Article III does so by itself.

This point may imply that all expansions of the franchise injure original voters sufficiently for standing. But this does not mean that all expansions of the franchise are unconstitutional; the vast majority would be scrutinized under, and pass, the rational basis test. There is no need to use standing to play a "gatekeeping" role over equal protection suits arising from expansions of the franchise, especially if that bars the gate in the probably-unique circumstances here.[1]

II. Plaintiffs' claims are meritorious.

Despite filing a cross-appeal seeking this Court's review of the merits, the District does not attack the logical validity or structure of Plaintiffs' merits claims. Rather, it disputes the premises. It attacks the existence of the right to citizen self-government, claiming Plaintiffs derive it from Supreme Court dicta and an improper

[1] Plaintiff Stacia Hall, though she had announced her candidacy for the DC Board of Education, later decided, due to a health issue, not to have her name placed on the ballot in the 2024 election. Declaration of Stacia Hall, dated January 4, 2025, at ¶ 6. Hall was born in Miami, Florida, has lived in DC continuously since 2019, *id.* at 3, has voted in DC elections, including for local offices, every two years during that period, *id.* at ¶ 4, and intends to vote and to run for Mayor in the 2026 DC election, *id.* at ¶¶ 4, 7. Plaintiff Dick Heller was born in San Diego, California. Declaration of Dick A. Heller, dated January 5, 2025 ("Heller Decl."), at ¶ 2. Heller has resided in DC continuously since 1976, has voted in every DC presidential election, usually including for local offices, since 1980, has generally voted every two years in DC elections since 1992, and intends to vote in both the 2026 and 2028 DC elections. Heller Decl. at ¶ 4. *See* 28 U.S.C. § 1653.

use of the Constitution's Preamble and Supremacy Clause, and that it is negated by a history of its violation. Def. Pr. Br. at 38-48. It claims that U.S. citizens are not a protected class, though noncitizens are, *id.* at 59-60, and that those of American national origin, unlike those of foreign national origin, are also not a protected class, *id.* It also claims that the NCVL discriminates against these groups neither on its face nor intentionally, but only by happenstance. *Id.* at 57-58.

A. The Supreme Court has recognized the right to citizen self-government.

As Plaintiffs have shown, the Supreme Court has clearly held that, under the Constitution, only citizens may vote. The District claims that this right to citizen self-government, nevertheless, does not really exist, because it is "unenumerated"—that is, is protected in the Constitution, if at all, only by implication in the Due Process Clause—and so only exists if it is deeply-rooted in our nation's history in a way that past practices of allowing noncitizen voting negate. Def. Pr. Br. at 35-45. But the right to citizen self-government is not derived solely by implication from the Due Process Clause. As Plaintiffs have shown, and the Supreme Court has explained, it is a right basic to the very theory of representative democracy presupposed by the Constitution. The District cites a case named after one of the plaintiffs here for the proposition that the Preamble protects no rights. Def. Pr. Br. at 46 (citing *District of Columbia v. Heller*, 554 U.S. 570, 579-80 (2008)); *see also* Heller Decl. at ¶ 3. But that is not to say that the Preamble has no evidentiary value.

It, together with the Supremacy Clause, with the Declaration of Independence as a backdrop, is proof positive that the people are sovereign: only a sovereign people of an independent United States could ordain and establish the supreme law of the land. Nor could noncitizens, who can be and almost universally have been excluded from governing and voting, be part of the sovereign people. And sovereignty implies the exclusive right to rule, though the whole people might, as they perhaps did in the Treaty Clause, U.S. Const. Art. II, sec. 2, cl. 2, and might in other ways through a constitutional amendment, provide for the sharing of governmental power, if certain conditions are met, by those outside of the people. But the NCVL, a mere act of the DC Council, cannot be enforced to conflict with the constitutional right to citizen self-government without violating the Supremacy Clause and the rights of its citizen voters.

The District makes much of the history it has unearthed of noncitizen voting in the United States, claiming that it cannot be unconstitutional because it happened in the founding generation. Def. Pr. Br. at 38-45. Yet in a footnote it explains that other relics of the past, such as excluding nonwhites and women from voting, are of course unconstitutional, even though they were near-universal. *Id.* at 4, n.1. Women, for example, were denied the right to vote until 1920, even though the exclusion rather glaringly violated the Equal Protection Clause of the Fourteenth Amendment. The Supreme Court in *Minor v. Happersett*, 88 U.S. 162 (1874), possibly fearing to

attempt a revolution from its courtroom, expressly declined to reach any basis for relief not argued by the petitioner's attorneys, and so confined its decision to the Privileges and Immunities Clause of the Fourteenth Amendment, leaving the Equal Protection Clause safely to the side. *Id.* at 165, 170. Here, too, the District's evidence might be adequate to defend against a Privileges and Immunities claim against noncitizen voting, but it has no tendency to show that Plaintiffs' equal protection claims, or their claim from the sovereignty of the people and the basic theory of democratic self-government, are faulty, any more than the historic denial of women's suffrage showed that the petitioner in *Minor v. Happersett* would have made an invalid equal protection claim, or any more than decades of school segregation throughout large parts of the country showed that *Brown v. Board of Education* was decided wrongly.

Indeed, what the history of voter qualifications shows is, over time, a gradually greater adherence to, and convergence on, the theory of democratic liberty, which includes equal protection. That convergence gradually expanded the franchise from favored groups to all citizens of age, and also gradually eliminated any noncitizen voting, so that, by the 1920s, all citizens could vote, and no noncitizens could vote. And if it took until 1978 for the Supreme Court to recognize and articulate that the basic theory of democratic self-government confines voting to

citizens, that does not mean that it was wrong to do so, and that this basic theory is not, as it obviously is, presupposed by the Constitution.

These statements by the Court were not, contrary to the District's claim, dicta. Def. Pr. Br. at 38, 47. Without them, the Court would have articulated no basis for its holding that, for example, a law barring aliens from being police officers was exempt from strict scrutiny, and no basis for its judgment in favor of the State of New York. *Foley v. Connelie*, 435 U.S. 291, 295-96 (1978) ("The act of becoming a citizen is more than a ritual with no content beyond the fanfare of ceremony. A new citizen has become a member of a Nation, part of a people distinct from others. The individual, *at that point*, belongs to the polity and is entitled to participate in the processes of democratic decisionmaking. Accordingly, we have recognized a State's historical power to exclude aliens from participation in its democratic political institutions as part of the sovereign's *obligation* to preserve the basic conception of a political community.") (internal citation omitted) (emphases added). "[A] democratic society is *ruled by its people. Thus*, it is clear that a State may deny aliens the right to vote, or to run for elective office, for these lie at the heart of our political institutions." *Id.* at 296 (emphasis added). Such restrictions "represent[] the choice, and *right, of the people to be governed by their citizen peers*." *Id.* (emphasis added). "[A]lthough we extend to aliens the right to education and public welfare, along with the ability to earn a livelihood and engage in licensed professions, the right to govern

is reserved to citizens." *Id.* at 297. *See also Ambach v. Norwick*, 441 U.S. 68, 73-74 (1979) ("Some state functions are so bound up with the operation of the State as a governmental entity as to permit the exclusion from those functions of all persons who have not become part of the process of self-government [by naturalizing]"); *Cabell v. Chavez-Salido*, 454 U.S. 432, 439-40 (1982) ("The exclusion of aliens from basic governmental processes is not a deficiency in the democratic system but a *necessary consequence* of the community's process of political self-definition. Self-government, whether direct or through representatives, begins by defining the scope of the community of the governed and thus of the governors as well: Aliens are by definition those outside of this community.") (emphasis added).

The District calls these cases "permissive" in nature, Def. Pr. Br. at 47, but, though their results were permissive, the principles held in order to reach those results were not permissive, and have stronger implications than the ones brought forth in those cases. The District argues that ill-considered dicta in one of these cases about school boards, which is at variance with the Court's prior holding that aliens can be excluded from being public schoolteachers, shows that the Court had no intention to articulate the principles it repeatedly articulated, *id.* at 47-48, but one reason dicta is not binding is that it often is ill-considered, and may only indicate inattentiveness. The District also protests that, if the Court were taken at its word, it could have decided these cases on the basis that the laws challenged were

constitutionally mandatory. *Id.* at 47. That, of course, is not true—the government is generally not required to make laws protecting constitutional rights—but even if it is, the Court had no need, and had not been asked, to reach that issue.

The District suggests that what the Court meant by saying that "the right to govern is reserved to the people" was that, though the people had this right and noncitizens did not, the people could, if they desired, grant the right to govern and to vote to noncitizens. *Id.* at 46. And so, of course, the whole people can, through a constitutional amendment. But the repeal of a constitutional right cannot be done in any other way, certainly not by a vote of the DC Council.

B. Plaintiffs' equal protection claims are meritorious.

The NCVL discriminates against U.S. citizens and persons of American national origin, and in favor of noncitizens and foreign-born citizens (as compared with native-born citizens), because it deprives U.S. citizens of what they formerly enjoyed—the exclusive right to vote—while benefitting noncitizens, and expands the voting strength of the foreign-born while contracting the voting strength of the native-born. U.S. citizens and persons of American national origin are both protected classes, and thus the NCVL's discrimination against them necessitates strict scrutiny.

Whether U.S. citizens form a protected class for purposes of tiered scrutiny appears to be a question of first impression in this Court, but it is abundantly clear

how it should be decided. The District's contrary view, Def. Pr. Br. at 59, that "powerful" groups, such as American citizens, native-born Americans, and white people, cannot be protected classes has been roundly rejected by the Supreme Court. As the Court has explained:

> Eliminating racial discrimination means eliminating all of it. And the Equal Protection Clause, we have accordingly held, applies "without regard to any differences of race, of color, or of nationality"—it is "universal in [its] application." *Yick Wo* [*v. Hopkins*], 118 U.S. [356], 369, 6 S. Ct. 1064, 30 L. Ed. 220 [(1886)]. For "[t]he guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color." *Regents of Univ. of Cal.* v. *Bakke*, 438 U.S. 265, 289-290, 98 S. Ct. 2733, 57 L. Ed. 2d 750 (1978) (opinion of Powell, J.). "If both are not accorded the same protection, then it is not equal." *Id.*, at 290, 98 S. Ct. 2733, 57 L. Ed. 2d 750.

Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll., 600 U.S. 181, 206 (2023). *See id.* at 208 ("'Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.' *Rice* v. *Cayetano*, 528 U.S. 495, 517, 120 S. Ct. 1044, 145 L. Ed. 2d 1007 (2000) (quoting *Hirabayashi* v. *United States*, 320 U.S. 81, 100, 63 S. Ct. 1375, 87 L. Ed. 1774 (1943))."). As directly applicable to whether U.S. citizens (and persons of American national origin) can be a protected class, the Supreme Court has held there to be a

> basic principle that the Fifth and Fourteenth Amendments to the Constitution protect *persons*, not *groups*. It follows from that principle that all governmental action based on race—a *group* classification long recognized as "in most circumstances irrelevant and therefore

> prohibited," *Hirabayashi*, 320 U.S. at 100—should be subjected to detailed judicial inquiry to ensure that the *personal* right to equal protection of the laws has not been infringed.

Adarand Constructors v. Pena, 515 U.S. 200, 227 (1995) (emphasis in original).

It follows from this longstanding approach that the principles of equal protection disallow discrimination based on general suspect *characteristics*, such as race, national origin, and citizenship status, leaving the circumstances of a case to decide which particular group defined by those characteristics needs protection. After all, if a previously- or generally-powerful group is harmed by a particular law or governmental practice, it is no longer "powerful" in the circumstances before the court. Thus, though the University of Michigan was governed and operated mainly by white people, its disfavoring of white applicants for admission was subjected to (and failed) strict scrutiny. *Gratz v. Bollinger*, 539 U.S. 244, 270 (2003). So, too, here. For whatever reason, U.S. citizens and native-born Americans, as a class, were not all-powerful in DC when the NCVL was passed, and in the circumstances of this case, Plaintiffs, as members of those classes, have not come before the court below or this Court from a place of power and privilege needing no real defense from the Constitution.

Absurdly, the District argues that the NCVL only happens to harm citizen voters and voters of American national origin, and does not do so intentionally. Def. Pr. Br. at 58. All the DC Council wished to do was benefit noncitizens, the District

claims. *Id.* at 48-49. But the NCVL dilutes the votes of both U.S. citizens and persons of American national origin by logical implication from its terms—the very opposite of happenstance—and thus does so on its face. *See, e.g.*, *Brown v. Bd. of Comm'rs*, 722 F. Supp. 380, 398 (E.D. Tenn. 1989) (striking down an expansion of the franchise to nonresidents of a city under the Equal Protection Clause). And a benefit intentionally given to one group that necessarily harms other groups intentionally harms those other groups as much as it intentionally benefits the former. For example, the racial preferences the Supreme Court invalidated in *Students for Fair Admissions* were meant to help the Harvard community and underrepresented minorities, 600 U.S. at 215-16, but, in so "helping," the preferences necessarily harmed Asians. The Court could not and did not view this harm as a mere unintended consequence, and neither did any party in the case. The question, rather, was whether the intentional harm to Asians could be justified. *Id.* This is because of an obvious truth that only the District seems not to grasp: it is impossible not to intend the necessary consequences of one's actions. *A fortiori*, *Reno v. Bossier Par. Sch. Bd.*, 520 U.S. 471, 487 (1997) ("[T]he impact of an official action is often probative of why the action was taken in the first place since people usually intend the natural consequences of their actions."); *Florida v. United States*, 885 F. Supp. 2d 299, 353 (D.D.C. 2012) ("And because legislatures, like people, 'usually intend the natural consequences of their actions,' the absence of retrogressive effects on minority

citizens suggests that the inter-county mover amendments were not motivated by a discriminatory purpose.") (quoting *Bossier Par. Sch. Bd.*, 520 U.S. at 487).

Nor can the facial discrimination against and the intentional harm to U.S. citizens and those of American national origin be justified here, whatever the level of scrutiny. Any interest the District may claim in giving citizens of foreign countries (but not of this one) a share of power over the government of the U.S. locality where they have chosen—often in violation of federal law—to reside, and certainly any claim that the NCVL, in allowing even illegal aliens to vote, is narrowly tailored to serve this interest, cannot stand against the compelling governmental interest, recognized repeatedly by the Supreme Court, in maintaining both the sovereignty of the people and the basic theory of democratic self-government presupposed by the Constitution.

CONCLUSION

For the foregoing reasons, and those given in Plaintiffs' principal brief, this Court should reverse the judgment of the court below.

Dated: January 6, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 28.1(e)(2)(A)(i) because it contains 5,138 words, excluding the parts of the motion exempted by Fed. R. App. 32(f) and Cir. R. 32(e)(1).

2. This brief also complies with the typeface requirements of Fed. R. App. 32(a)(5) and the typestyle requirements of Fed. R. App. 32(a)(6) because it has been prepared in proportionally spaced typeface using Microsoft Word in fourteen-point Times New Roman.

/s/ Christopher J. Hajec

Nos. 24-7050, 24-7065

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Stacia Hall, *et al.*,

Plaintiffs-Appellants, Cross-Appellees

v.

District of Columbia Board of Elections,

Defendant-Appellee, Cross-Appellant

DECLARATION OF PLAINTIFF-APPELLANT STACIA HALL

Pursuant to 28 U.S.C. §§ 1653 and 1746, I, Stacia Hall, state the following:

1. I am over eighteen years of age and have personal knowledge of the facts set forth below.

2. I was born in Miami, Florida, and am a United States citizen.

3. I have lived in the District of Columbia continuously since 2019, and currently reside at 3726 Connecticut Avenue NW, Apt 109, Washington, DC 20008.

4. I am a registered member of the District of Columbia Republican Party and voted in DC elections, including for candidates for local offices, in 2020, 2022, and 2024. I intend to vote in the DC election, including the election for Mayor of DC, in 2026.

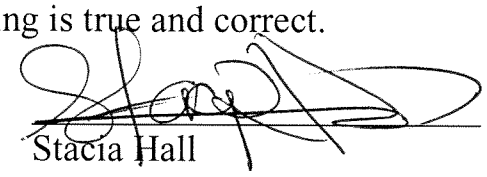
5. To serve the citizens of DC, I first ran for public office in DC in 2022. In that election, I was the Republican candidate for Mayor of DC.

6. Although I lost the 2022 election, I wanted to continue fighting to serve the citizens of DC. To that end, I announced my candidacy for the at-large seat on the DC Board of Education, but ultimately, due to a health issue, did not place my name on the ballot in the 2024 election.

7. My health issue is now resolved, and I intend to run for Mayor of DC in the election of 2026.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 4 day of January 2025.



Stacia Hall

Nos. 24-7050, 24-7065

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Stacia Hall, Dick A. Heller, *et al.*,

Plaintiffs-Appellants, Cross-Appellees

v.

District of Columbia Board of Elections,

Defendant-Appellee, Cross-Appellant

DECLARATION OF PLAINTIFF-APPELLANT DICK A. HELLER

Pursuant to 28 U.S.C. §§ 1653 and 1746, I, Dick A. Heller, state the following:

1. I am over eighteen years of age and have personal knowledge of the facts set forth below.

2. I was born in 1941 in San Diego, California, and am a United States citizen.

3. I have lived in the District of Columbia continuously since July 4, 1976, and am committed to defending my constitutional rights. For example:

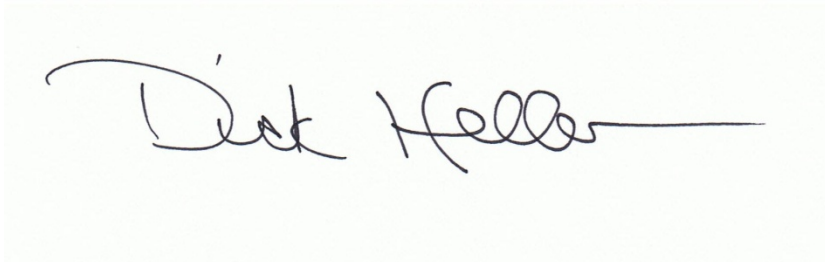
(a) I served 3 years in the U.S. Army from 1959 as a 101st Airborne Div. Paratrooper,

(b.) I successfully challenged the District's handgun ban on constitutional grounds and prevailed in getting the ban overturned. *See District of Columbia v. Heller*, 554 U.S. 570 (2008).

4. I have lived in DC continuously since 1976. I have voted in every Presidential election year since 1980, usually including for DC Council. For example, in 2024, I wrote in a libertarian I know for the at-large seat on the DC Council. To the best of my recollection, I have generally voted in the DC two-year local elections for local offices, such as Mayor, since 1992. I certainly intend to vote for local candidates in both the 2026 and the 2028 elections.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 5th day of January 2025.



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Dick A. Heller