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**A NEW FORM OF  
GERRYMANDERING  
USING CVAP?  
AMENDMENT 3 HAS  
THE GREATEST  
NEGATIVE IMPACT ON  
MISSOURI'S  
COMMUNITIES WITH  
CHILDREN**

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## Executive Summary

- We evaluate Missouri's Amendment 3 on the ballot in 2020. If passed, Amendment 3 could allow the use of citizen-voting-age population (CVAP) instead of total population in redrawing the state's district lines. Total population equity has been the standard for state legislative districting since the Supreme Court's *Baker v. Carr* decision in 1962.
- In Missouri, we find that the use of CVAP for redistricting will have the greatest negative impact on communities with significant numbers of people under the age of 18. Missouri has very few non-citizens in its state, and thus the impact of this new form of gerrymandering using CVAP will be felt the most in those areas with large numbers of families with children.
- We explain that state legislators frequently engage in constituency services for families with children under age 18 and for voting-ineligible groups. State legislators also make significant policy decisions around education and other issues that impact children under the age of 18.
- An analysis of legislative districts with the largest number of children is conducted. We find that Amendment 3 will have the greatest impact in reducing representation in the suburbs and exurbs of Kansas City and St. Louis County.
- Communities such as Joplin and Springfield and surrounding areas will also likely lose representation if redistricting is conducted with CVAP instead of total population, given the large number of children in those communities.

Amendment 3 is a ballot proposition for Missouri voters in November 2020. This proposition introduces a new form of redistricting to the state by repealing nonpartisan redistricting procedures passed by Missouri voters in 2018. Redistricting is defined as the redrawing of legislative lines, typically following each decennial census. Amendment 3 could allow the use of the voting-eligible population in redistricting legislative lines used to elect state legislators. Instead of the total population being equal across state legislative electoral districts, state legislators could redraw their own lines with differences in population across districts if it passes. Amendment 3 could mean that voting-eligible populations, or CVAP, be equal in number across districts (we hereafter refer to the voting-eligible population as CVAP, which is the acronym for citizen voting-age population). This CVAP standard could replace the previous standard of population equality across districts established in *Baker v. Carr* in 1962, affirmed in *Evenwel v. Abbott* in 2015, and used by Missouri and all other states for nearly 60 years.

We evaluate the impact of Amendment 3 on Missouri's redistricting and representation were this CVAP standard used instead of population equality. We first argue and summarize how legislators engage in representation for all constituents, whether they are voters or not. This representation includes constituency service, outreach, and policy representation. In particular, legislators represent and engage in a significant amount of constituency service for those who do not vote in their districts, including children under the age of 18. Thus, a change in redistricting that will allow for significant population differences across districts will likely harm those constituents living in the overpopulated districts. These overpopulated districts in Missouri if Amendment 3 passes will be in communities with large numbers of children.

We then analyze the states' districts and regions most likely to be impacted negatively by the passage of Amendment 3. Under Amendment 3's use of CVAP to draw state legislative

district lines, children will not be counted as part of the redistricting process as they are not eligible to vote. We find that state legislative districts in the Kansas City suburbs, in the St. Louis suburbs, in Joplin, and in Springfield will be overpacked and thus lose representation in 2022 and beyond. The current state legislative districts in these regions of Missouri have large numbers and percentages of children, and since children would not be counted in a CVAP standard of redrawing district lines, the negative impact in these parts of the state will be significant. Under this standard, Amendment 3 will result in reduced numbers of legislators and districts from these regions, and a resulting reduction of influence in Jefferson City. We conclude that Amendment 3 presents a new form of gerrymandering with significant implications for changing who and how people are represented. Amendment 3 allows for gerrymandering where districts will no longer be equal in population, and communities with children will face the most negative effects of this gerrymandering.

*We conclude that Amendment 3 presents a new form of gerrymandering with significant implications for changing who and how people are represented.*

#### **Legal Background: Total Population Equity in Redistricting**

In *Evenwel v. Abbot* (2016) the Supreme Court ruled that states could use total population as the metric to draw state legislative boundaries with Justice Ginsburg arguing that it was the constitutional framers' intention to use total population in order to ensure "representational equality." In addition to citing the Framers' intentions, the Supreme Court's decision argued that the history of legal precedent on this issue, including a series of court cases in the 1960s that

ruled that legislative districts must be equal in terms of population, has solidified the necessity of using the total population metric.<sup>1</sup> However, this ruling did not specify whether states could indeed use alternative metrics such as CVAP, which excludes adult non-citizens and all minors under 18 (including citizens).

Amendment 3 allows for the use of CVAP as a metric in redrawing Missouri’s district lines and not using population equality as the metric. According to proponents, the 14<sup>th</sup> Amendment’s principle of “one man, one vote” was meant for equality between voters and not people – and implies strongly that the presence of non-voters somehow detracts from their representation (Rodriguez 2011). It also implies that non-voters are undeserving of representation, a claim that was directly challenged by the majority opinion in *Evenwel v. Abbot (2016)*, which argued “nonvoters have an important stake in policy debates and in receiving constituent services.”

Nonvoters have an important stake in policy representation and constituency service delivered by legislators. The representation of people – even if they do not vote – is a central tenet of redistricting theory and practice. Excluding those who do not vote, including children, when redrawing legislative lines could dramatically change the representation for those who do vote.

### **Delivering Constituency Service: Legislators Represent Non-Voters such as Children**

In the academic literature, state legislators engage in a number of activities, from writing laws to helping constituents through non-legislative activities commonly referred to as casework (Fiorina 1989). Elected officials rank casework as highly important (Ellickson and Whistler 2001) and also prioritize such requests from constituents over those asking about policy (Butler

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<sup>1</sup> These cases are *Baker v. Carr (1963)*, *Gray v. Sanders (1963)*, and *Reynold v. Sims (1964)*.

at al. 2012). Political scientists find that legislators engage in hiring practices to make their offices more welcoming to their constituents and conduct non-policy outreach to those living in their districts (Grose 2011). These constituents who legislators seek to engage and support in

## Population Equality in Redistricting

*The metric of total population equality established by the Supreme Court means that each legislator typically has to deal with the same number of requests from constituents and the casework load is spread fairly evenly across legislators and districts equal in population.*

their districts include voters and non-voters and those who support the legislator and those who do not (Fenno 1978; Grose, Malhotra, and Van Houweling 2015).

Thus, one key job of a legislator is to help those living in the district with assistance. For instance, constituents who need help with government services, have problems accessing public web sites or information, or who even want a tour of the state capitol will reach out and contact their legislator.

The primary function of service requests is to usually help constituents with accessing government services. It should be noted that government services are not limited to adult citizens. This simple fact means that children, and non-citizens, which includes lawfully legal permanent residents, have a right to government services and therefore a reasonable expectation of representation by the legislator.

Legislators have a broad view of the constituency according to famed political scientist Richard Fenno, who came up with the term known as the geographic constituency (Fenno 1978). The geographic constituency refers to all the residents of the district, and the primary determinant of membership here is

one's physical presence. The interpretation of the redistricting case, *Reynolds v. Sims (1964)*, led to the consensus that the geographic constituency would include non-voting population in order to ensure mathematical equality between the districts. The Supreme Court's ruling in *Reynolds v. Sims (1964)* and subsequent rulings have made an implicit expectation that the state legislator's duties include providing services to the total populations of legislative districts.

Political science scholarship also finds evidence that elected officials at all levels of government represent non-voting constituencies with constituency service and casework requests. Audit studies of responsiveness find that state legislators are responsive to those not included in the CVAP metric who seek help with the citizenship process (Butler et al. 2012) and from non-voting constituents under 18 who need assistance regarding future education (Mendez 2015). One prominent study finds that legislators respond similarly and frequently to native-born and foreign-born persons (Gell-Redman et al. 2018). In sum, the research is consistent with the Supreme Court's opinion in *Evenwel v. Abbott (2016)* that those not included in CVAP have an interest in receiving constituency services; it turns out that state legislators already agreed with this sentiment and engage in responsiveness and service requests to children, non-citizens, and non-voters in their districts.

Districts that are not equal in population lead to overrepresentation of districts with fewer people. Research on states before *Baker v. Carr* required equal population across districts showed that the lack of equal population led to a reduced distribution of state and federal spending to districts in suburbs and cities that had larger populations (Ansolabehere, Gerber, and Snyder 2002). Thus, the total population standard that could be overturned by Amendment 3 in Missouri has allowed for greater equity in the distribution of government spending to the areas with the most people. An implication is that the CVAP metric that could become law if

Amendment 3 passes would lead to a reduction in spending and government services for the most vote-rich and populated areas of Missouri.

Regarding those under age 18 specifically, Amendment 3 may bar their representation in the redistricting process as these voters may not be counted in the CVAP metric. The academic research on service responsiveness to non-voters suggests that legislators are also responsive to children. Even though

voting rights are not granted to those under the age of 18 in Missouri, children are perceived from an early age as

*Missouri's Amendment 3 on the 2020 ballot allows for not counting children under the age of 18 in the redistricting process.*

potential voters. In fact, it has been long established that the roots of political participation begins in early childhood as parents and schools instill civic values in the younger generation (Campbell et al. 1960). In schools, childhood is treated as a period in which those under 18 are learning about their coming responsibilities as adults and voters. State law is already cognizant of children as potential voters as Missouri allows 17 ½ year olds to register to vote. Removing children from the metric used to determine total population could potentially have negative ramifications on this population's political participation in the future and the aggregate representation of their parents and communities with large numbers and percentages of children.

### **The Representation of Children: Education and Other Policies in the States**

Political scientists have established that legislators engage in constituency service to children and those not included in Amendment 3's CVAP metric, but research also shows that



legislators engage in policy representation that has significant impacts for non-CVAP populations.

One policy area that is extremely relevant to constituents under the age of 18, and to their parents, is education policy. Legislators debate and make education policies that affect “funding, quality, and choice” in public education, especially at the state level (Rouse and Ross 2018). In Missouri, the presence of children in public education was associated with the policy views and attitudes of the legislators on education policy (Skinner 2010). Missouri state legislators with representational connections to children in public education had distinct views from those without.

In 2020, a number of elementary and secondary school age children had problems accessing the public school of their choice when education switched to online due to COVID. The Missouri Course Access and Virtual School Program (MOCAP) is a state law that allows children to access “the online school of their choice” (National Coalition for Public School Options 2020). Because of this, some children and parents of children contacted their state legislators expressing the need for short-term assistance and long-term policy changes. This is just one example of how children who do not vote and are not included in CVAP are represented and affected by state policy making in the area of education.

In addition to education policy, other public policies are regularly debated that affect and impact those under age 18. For example, in 2020, the Missouri state legislature considered legislation that loosened restrictions on firearm usage by minors and considered a different bill that would “change the age at which judges are required to consider trying children for certain felonies” (Ballentine 2020).

This policy representation of children implies that the total population standard of redistricting – and not the CVAP metric excluding those under the age of 18 – is meaningful as the legislators represent and engage all those in the district on policies. The policy choices of legislators affect those under age 18 as well as over, citizen and non-citizen; and the total population equity standard in redistricting that could be overturned by Amendment 3 reflects this policy representation of those who are barred from voting, such as those under age 18.

### **The CVAP Metric in Amendment 3: A New Form of Gerrymandering**

Amendment 3, on the ballot in 2020 in Missouri, seeks to overturn the nonpartisan redistricting procedures passed by the state’s voters in 2018. Amendment 3 presents a new form of gerrymandering, opening the door to no longer counting all people in the drawing of district lines. Instead of all districts equal in population, CVAP could be used under Amendment 3.

*Amendment 3 presents a new form of gerrymandering, no longer counting all people in the drawing of district lines. Instead of all districts equal in population, Amendment 3 opens the door to excluding those under the age of 18 when redrawing lines.*

In Missouri, the adoption of the use of CVAP, instead of total population as is currently used, would not count citizens under the age of 18 in redrawing legislative maps and would not count non-citizens. The state of Missouri has a very low non-citizen population. The vast majority of the excluded individuals using Amendment 3’s potential CVAP metric are children as only two percent of Missouri’s population consists of noncitizens.<sup>2</sup> In contrast, almost one-

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<sup>2</sup> “Immigrants in Missouri.” *American Immigration Council*. June 4, 2020.

quarter of Missouri's population is people under the age of 18. Therefore, if Amendment 3 passes, children of Missouri citizens and voters could be uncounted in the redistricting process.

This exclusion of children from the counts for redrawing state legislative district lines has significant implications for which regions of Missouri will lose representation in a 2022 remap. In 2022, Missouri will redraw its state legislative district lines as is required following the decennial census. The number of children are not evenly and uniformly distributed across legislative districts nor across the state. For those districts that currently have large numbers of children, Amendment 3 could lead to overpacking of the total number of people into districts that would be redrawn in 2022 in these geographic regions. The result of this overpacking of total population is likely to harm certain geographic areas in the state. In short, by not counting children and thus packing some districts with very large populations and having fewer people in other districts, the representational burdens on legislators and constituents will vary widely. In the overpopulated districts that could result from Amendment 3 – those with lots of children – constituency services and other legislator-determined resources will be more challenging to access than in lower-populated districts drawn with fewer children.

Given this potential impact on those under the age of 18, we wanted to evaluate whether certain parts of the state would be most heavily impacted by the use of the CVAP metric. In which current state legislative districts do children make up a large number of legislators' constituents? It is in these districts where Amendment 3's potential CVAP redistricting standard is most likely to reduce the quality of representation by overpacking people into districts.

### **Data and Methodology**

To examine the impact that Amendment 3's potential CVAP redistricting standard would have on redistricting and communities in Missouri, we examined population numbers in the

current state senate and state house districts. The current districts were drawn with the standard of total population equity across districts as required in *Baker v. Carr* (1962). This equal population standard counts children and adults so districts are equal in the number of people.<sup>3</sup>

Amendment 3 might not use the equal population standard, and thus possibly leading to not counting children when using CVAP to redraw district lines. Our analysis uses data from the U.S. Census's file on CVAP for state legislative districts as of 2018. We used this 2018 ACS data from the U.S. Census Bureau to measure the total number of children in each state senate and state house district, as well as the percentage of children in each state senate and state house district.

Of Missouri's 34 state senate districts, we identified the 10 senate districts with the greatest number of children. Of Missouri's 163 state house districts, we also identified the 10 house districts that have the greatest number of children. We compare the number of children in these districts to the median number of children across all districts as currently drawn. We then examined the geographic areas in which these districts with the greatest number of children are located in order to determine the parts of the state most likely to be impacted were Amendment 3

*Of Missouri's 34 state senate districts, we identified the 10 senate districts with the greatest number of children. Of Missouri's 163 state house districts, we also identified the 10 house districts that have the greatest number of children. Using CVAP in redistricting would result in a lowering of representation in these districts.*

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<sup>3</sup> As population has shifted across Missouri since the 2010 census, the districts were equal in population when they were drawn for 2012. After the 2020 census, without the passage of Amendment 3, the districts would be redrawn again with equal population. With amendment 3, the districts would be redrawn using CVAP. Thus our analysis considers current districts in order to project where the biggest impact of Amendment 3 would be felt in the state after the 2020 census.

to pass and the CVAP standard eventually used. Using CVAP in redistricting would result in a lowering of representation in these districts with very large numbers of children.

Table 1: Which State Senate Districts Lose Out if Children Are Not Counted in Redistricting Under Amendment 3? The 10 Missouri State Senate Districts with the Greatest Number of Children

State Senate Districts With the Most Children	Location	Current Senator	Children (Total # of those under age 18 in district)	% of district that will be uncounted children if Amendment 3 passes
Senate District 2	St. Louis Suburbs	Sen. Bob Onder	53,935	26.6%
Senate District 8	Kansas City Suburbs	Sen. Mike Cierpiot	47,465	27.1%
Senate District 20	Springfield	Sen. Eric Burlison	47,055	25.3%
Senate District 32	Joplin	Sen. Bill White	45,770	24.7%
Senate District 17	Kansas City Suburbs	Sen. Lauren Arthur	45,635	24.1%
Senate District 34	Kansas City Suburbs	Sen. Tony Luetkemeyer	43,910	23.3%
Senate District 26	St. Louis Suburbs	Sen. Dave Schatz	43,570	23.7%
Senate District 10	5 counties west of St. Louis	Sen. Jeanie Riddle	42,460	23.6%
Senate District 9	Kansas City Suburbs	Vacant	42,195	25.2%
Senate District 13	St. Louis Suburbs	Sen. Gina Walsh	42,085	25.1%
Median State Senate District	-----	-----	40,245	22.7%


**St. Louis County Suburbs & Kansas City Suburbs Will Lose Representation if Amendment 3 Passes**

Our analysis shows that moving from the established and long-standing metric of total population to only counting those over the age of 18 will lead to a consistent pattern of decreased

representation of suburbs and exurbs in Missouri. This is because most of Missouri's suburbs have more people under the age of 18 than other parts of the state.

If Amendment 3 passes, we find that representation of the state's suburbs could decline. Table 1 shows the 10 state senate districts with the greatest number of children. Three of these districts are in the St. Louis county suburbs or in counties bordering St. Louis county (St. Charles county and Franklin county). Not surprisingly, bedroom communities and outlying exurbs of St. Louis have a large number of children. A fourth district with lots of children is just east of these suburbs (senate district 10). Under Amendment 3, these St. Louis-area districts would be redrawn in a way that would result in overpacking more people in these districts compared to other areas with fewer children.

The quality of representation for residents in the Kansas City suburbs is also likely to decline if Amendment 3 passes. Table 1 shows that 4 of the 10 districts in Missouri with the most children are in the Kansas City suburbs. Districts in Clay, Jackson and Platte counties that include communities outside of Kansas City could lose representation under Amendment 3's redistricting methods.



*If Amendment 3 passes, Missouri may not count children in its redistricting in 2022. This new form of gerrymandering has the potential to significantly change representation in the state legislature.*

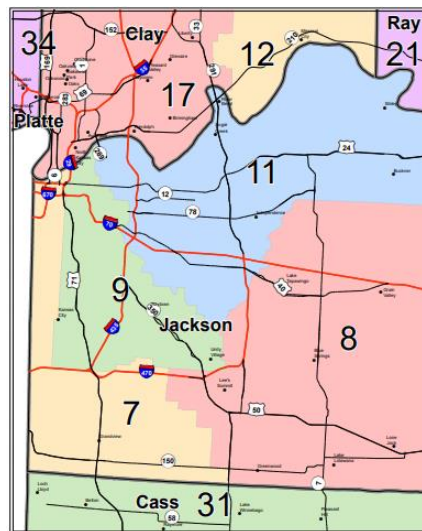
*If children are uncounted in Missouri redistricting, the analysis shows that the biggest losers are likely to be the suburbs and exurbs of Kansas City and St. Louis County.*

*Springfield, Joplin, and surrounding areas are also likely to lose representation in the state senate.*

In 2022, if Amendment 3 passes, these districts could be redrawn so as not to be equal in total population. This would mean the Kansas City suburbs would have fewer legislators after 2022.

Because these districts in the Kansas City area have a very large number of children, CVAP-based redistricting will result in overpopulated districts in the Kansas City suburbs. Representation will decline under a CVAP/Amendment 3 metric, as there would be more people per senator in the Kansas City suburbs than elsewhere in Missouri. These current Kansas City suburban districts (8, 9, 17, and 34) with very large numbers of children are pictured in Figure 1.

**Figure 1: Kansas City Region Senate Districts Negatively Impacted by Amendment 3**



Finally, Table 1 also shows that districts centered around the Joplin and Springfield areas are in the top 10 senate districts in terms of large child populations under age 18. Joplin and Springfield could be impacted negatively by the passage of Amendment 3, as the redrawing of districts would undercount the children living in those regions. Districts in Springfield and Joplin would be much larger in population than elsewhere, making it harder for constituents to contact and communicate with their elected legislators than in lower-populated surrounding districts.

We also examine Missouri’s state house districts to see which regions’ current house districts have the most children. Table 2 shows the 10 state house districts that have the most

children. In the state house, the passage of Amendment 3 could significantly and negatively affect the representation of people in the Kansas City suburbs. Eight of the 10 state house districts with the greatest number of children in the state of Missouri are in the Kansas City suburbs. As Table 2 shows, the Kansas City area districts most negatively impacted if Amendment 3 passes are districts 12, 16, 20, 31, 32, 34, 37, and 38. These districts cover much of the inner and outer suburban areas of the Kansas City metro area.

Table 2: Which State House Districts Lose Out if Children Are Not Counted in Redistricting Under Amendment 3? The 10 Missouri State House Districts with the Greatest Number of Children

State House Districts with the Most Children	Location	Current legislator	Children (Total # of those under age 18 in district)	% of district that will be uncounted children if Amendment 3 passes
House District 63	St. Louis exurbs	Rep. Bryan Spencer	13,655	28.4%
House District 12	Kansas City suburbs	Rep. Kenneth Wilson	12,185	27.7%
House District 108	St. Louis suburbs	Rep. Justin Hill	11,930	28.2%
House District 16	Kansas City suburbs	Rep. Noel Shull	11,840	27.5%
House District 34	Kansas City suburbs	Rep. Rebecca Roeber	11,290	29.4%
House District 32	Kansas City suburbs	Rep. Jeff Coleman	10,985	28.8%
House District 37	Kansas City suburbs	Rep. Joe Runions	10,975	26.7%
House District 31	Kansas City suburbs	Rep. Dan Stacy	10,895	28.7%
House District 20	Kansas City suburbs	Rep. Bill Kidd	10,815	27.6%
House District 38	Kansas City suburbs	Rep. Doug Richey	10,680	26.9%
Median State House District	-----	-----	8,497	22.9%



Like with the state senate results shown in Table 1, Table 2 reveals that the St. Louis metro area also has state house districts with large numbers of children. The district with the most children in the entire state is district 63, which is in St. Charles and Warren counties (west of St. Louis County). The number and percentage of children in this district are vastly greater than the median state house district in Missouri, and thus the people currently in this district will likely face a lower quality of representation if Amendment 3 passes and the decision is made to redraw lines using the CVAP metric. The St. Louis exurbs are home to another state house district with a high number of children (district 108, west of St. Louis city and county).

**Conclusion: Amendment 3 and a Loss of Representation for Areas with Children**

This report has argued that switching to CVAP is in violation of long-standing precedent when it comes to redistricting of state legislative districts and unduly disadvantages areas with large numbers of nonvoting populations such as those under the age of 18. In particular in Missouri, Amendment 3 could have a disparate impact on communities with very large numbers of children. The academic literature finds that legislators regularly are called upon to represent people, and not just voters. Those who vote – and even those who cannot vote – are viewed as proper recipients of casework. Children ask for assistance, communicate with their legislators, and parents of children often have specific constituency service needs from their legislators.

The switch to CVAP and no longer counting children in drawing equally populated state legislative districts has significant policy impacts as well. Nonvoting populations have needs for policy representation. Children who do not vote (and their parents who sometimes do) are subject to state laws regarding education and other regulations. State legislators represent both voting-age populations as well as those who cannot vote like children when making policy.

Further, the potential switch to the CVAP metric if Amendment 3 passes will heavily underweight the number of legislators who will be elected from Missouri's suburbs as well as other geographic areas with large numbers of children. Under Amendment 3's metrics, the state legislative districts would be dramatically redrawn. Our analysis is the first to demonstrate with data that specific geographic areas and their constituents will be negatively impacted by Amendment 3's potential use of the CVAP metric.

From a policy standpoint, the state's overall policy agenda in the state legislature is likely to change if Amendment 3 passes and this new districting metric is used. If children are not counted in the redrawing of legislative district lines, there will be fewer districts in areas where children live. This means there will be fewer legislators representing geographic areas in Missouri where policy issues of relevance to children and families, such as education, will be important.

In addition to lowering the quality of constituency services and lowering the number of legislators representing areas where issues relevant to children are central, we have found that Amendment 3 could affect specific areas of the state of Missouri. Our analyses show that Amendment 3 could have a disparate impact on specific regions and geographies of Missouri. Amendment 3's new proposed form of gerrymandering will give more weight to underpopulated areas of the state where few children live. To summarize, Amendment 3 could harm the representation of people across many parts of the state where a significant portion of Missouri's residents live. State legislative districts in the Kansas City suburbs, the St. Louis suburbs, the Joplin area, and the Springfield area would be the hardest hit by Amendment 3.

This negative impact would be felt in the suburbs of the state's largest metro areas – as well as in other communities such as Joplin and Springfield – because Amendment 3 would

cause legislative districts to be drawn without considering total population. Amendment 3's proposed redistricting standard excludes children from the count. Thus, state legislative districts in these regions of the state – and other districts that are above the median in the number or percentage of children – will be overpacked with people into too few districts. The exclusion of children from the count in redistricting in Missouri means that the Kansas City suburbs, the St. Louis suburbs, Joplin, and Springfield will lose state legislative districts and thus lose representation in Jefferson City in 2022 and beyond.

*Amendment 3 could reduce representation for communities with many children.*

*The greatest impact will be felt in the Kansas City suburbs, the St. Louis suburbs, and areas near Joplin and Springfield. These areas could lose representation and lose state legislative districts in 2022 under the CVAP gerrymandering proposal in Amendment 3.*

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