19-3054

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Lewis Y. Liu,

Plaintiff - Appellant, Pro Se

Equal Vote America Corp,

Plaintiff,

v.

United States Congress,

Nancy Pelosi, in her official capacity as the Speaker of the House of Representatives,

Kevin McCarthy, in his official capacity as the Minority Leader of the House,

Mitch McConnell, in his official capacity as the Senate Majority Leader,

Charles Schumer, (Chuck) in his official capacity as the Senate Minority Leader,

Defendant - Appellees.

On Appeal from the United States District Court
for the Southern District of New York

Brief of Appellant

Respectfully Submitted:

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III. Constitutional Provisions and Statues Involved

Constitutional Provisions

U.S. Const. Article I § 1 provides in pertinent part:

- All legislative Powers herein granted shall be vested in a Congress of the United States.

U.S. Const. Article I § 2 provides in pertinent part:

- The House of Representatives shall be composed of Members chosen every second Year by the People of the several States (the Elected by People Clause).
- Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made … every subsequent Term of ten Years, in such Manner as they shall by Law direct. (the Representative and Direct Taxes Clause)

U.S. Const. Article I § 6 provides in pertinent part:

- The Senators and Representatives shall ... any Speech or Debate in either House, they shall not be questioned in any other Place.

U.S. Const. Article I § 9 provides in pertinent part:

- No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken. (the Proportional Clause)

U.S. Const. Article II § 1 provides in pertinent part:

- Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress.

U.S. Const. Article III § 1 provides in pertinent part:

- The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

U.S. Const. Article III § 2 provides in pertinent part:

- The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States… to Controversies to which the United States shall be a Party.

U.S. Const. Article IV § 2 provides in pertinent part:

- The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

U.S. Const. Article VI. Par. 2 provides in pertinent part:

- This Constitution, and the Laws of the United States … shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. Article VI. Par. 3 provides in pertinent part:
- The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution.

U.S. Const. Amend. I. provides in pertinent part:
- Congress shall make no law … or abridging the freedom of speech … or the right of people … and to petition the Government for a redress of grievances.

U.S. Const. Amend. V. provides in pertinent part:
- No person shall be … nor be deprived of life, liberty, or property, without due process of law.

U.S. Const. Amend. IX. provides in pertinent part:
- The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

U.S. Const. Amend. XIV. § 1. provides in pertinent part:
- …nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV. § 2. provides in pertinent part:
- 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 … Representatives in Congress, … or in any way abridged.

Statues

28 U.S. Code § 1291 provides in pertinent part:
- The courts of appeals … shall have jurisdiction of appeals from all final decisions of the district courts of the United States.

28 U.S. Code § 1331 provides in pertinent part:
- The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S. Code § 1361 provides in pertinent part:
- The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

IV. Statement of Subject Matter and Appellate Jurisdiction

1. Plaintiff-Appellant (hereinafter Appellant) is a citizen and a New York State resident.
2. A citizen's equal rights to vote and to be represented in the House of Representatives are guaranteed and protected by numerous constitutional provisions, such as Article I § 2, Article IV § 2, Amend. I., Amend. V., and Amend. XIV § 2.
3. Appellant filed this lawsuit against Congress on the ground that his constitutional rights to vote and to be represented have been violated by The Existing Reapportionment Laws enacted by Congress since 1929 (hereinafter ERLS1929). The four individuals are named Defendants on ex officio basis for their leadership position in both chambers of Congress.
4. The Constitution Article III § 2 establishes that the judicial power shall extend to all Cases … arising under this Constitution, the Laws of the United States, and in particularly to Controversies to which the United States shall be a Party.
5. Specifically, 28 U.S.C. § 1331 grants the district courts "original jurisdiction of all civil actions arising under the . . . laws . . . of the United States; and 28 U.S.C. § 1291 provides that the courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States. Furthermore, 28 U.S.C. § 1361 grants the district courts original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.
6. Appellant's lawsuit was dismissed by the U.S. District Court, Southern District of New York (hereinafter SDNY). Appellant therefore has filed appeal Pro Se with the U.S. Court of Appeals for the Second Circuit (hereinafter USCASC) within 30 days pursuant to the FRAP 3. (a) which establishes that "An appeal permitted by law as of right from a district court to a court of

appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by FRAP 4."

7. The relevant filing dates for the appeal for review are detailed as follows:
   a) 09/03/2019, the District Court Chief Judge Colleen McMahon – without scheduling an oral argument hearing – issued a memorandum decision and order (hereinafter "***Order***") granted Defendant's motion to dismiss Plaintiff's lawsuit citing lack of standing to sue.
   b) 09/23/2019, Plaintiff filed the Notice of Appeal with the U.S. District Court, SDNY.
   c) 09/23/2019, Plaintiff filed the Notice of Appeal Appearance Pro Se with the U.S. District Court, SDNY.
   d) 09/23/2019, Instructional Forms to Pro Se litigant, SENT.
   e) 09/30/2019, Acknowledgement and Notice of Appearance Form filed by Appellant Pro Se Lewis Y. Liu, Service by hand delivery.
   f) 09/30/2019, FORM D-P filed by Appellant Pro Se Lewis Y. Liu, Service by hand delivery.
   g) 09/30/2019, Scheduling Notification Filed by Appellant Pro Se Lewis Y. Liu, Informing the Court of the proposed due date 10/30/2019, Service by hand delivery.
   h) As of October 14, 261 individuals from 42 states have voluntarily and willingly joined in this action as co-plaintiffs by signing the online affidavit. Since it is administratively impractical for Plaintiff-Appellant to enter each of these 261 individuals into the ECF-CM system, both the Online Affidavit and the list of these co-plaintiffs are included in the Appellant Appendix 5 and 6 for the Court to review.

V. Statement of the Issues Presented for Review

The key issues presented for review are as follows:

1. Whether or not the ERLS1929 have dishonored our Founding Fathers' original intent, breached the Founding Agreement of the Union (the Great Compromise), violated multiple constitutional provisions such as the Representative & Direct Tax Clause, the Comity Clause, the First Amendment, the Fifth Amendment, and the Fourteenth Amendment?
2. Whether or not Appellant Pro Se, as well as 261 fellow Americans from 42 states who have signed online affidavit, has a standing to sue on the ground that his constitutional rights to vote and be represented have been abridged, and his rights to due process and equal protection have been violated.
3. Whether or not the Court has the judicial power to review this constitutional issue.

VI. Statement of the Case

The nature of the case, the course of proceedings, and the District Court order are hereby presented as follows:

A. This lawsuit concerns the constitutionality of the existing reapportionment laws, the equal right to vote and to be represented in the House of Representatives for every American regardless of state residence, and how to redress the collective failure by Congress since 1929 to uphold the multiple constitutional provisions.

B. The course of the proceedings at the District Court is detailed as follows:

   a) On January 11, 2019 Equal Vote America Corp. and Appellant filed the complaint with the SDNY on the ground that the ERLS1929 have violated Appellant's equal right to vote and to be represented in the House of Representatives. (DKT#1)

   b) On February 4, 2019, Chief Judge Colleen McMahon ordered Initial Pretrial Conference to be held on April 5, 2019. (DKT#5)

   c) On February 11, 2019, Plaintiffs filed Amended Complaint. (DKT#9)

   d) On April 26, 2019, both parties appeared for the initial conference.

   e) On June 7, 2019, Defendants filed Motion to Dismiss. (DKT#21 & 22)

   f) On July 8, 2019, Plaintiffs filed a Motion to Amend Complaint to add parties, (DKT#24) as well as Declaration and Memo of Law in Opposition to Dismiss. (DKT#25, 26)

   g) On July 18, 2019, Defendants filed Memo of Law in Opposition to Amended Complaint (DKT#27) and Reply Memo of Law in Support to Dismiss. (DKT#28)

   h) On September 3, 2019, Chief Judge Colleen McMahon granted Defendant's motion to dismiss citing lack of standing to sue. (DKT#29, 30)

   i) On September 23, 2019, Appellant filed the Notice of Appeal at the SDNY. (DKT#31)

VII. Statement of Facts

The facts relevant to this case are hereby presented for review as follows:

A. How many federal laws have been found unconstitutional by the Supreme Court?

The Huffington Post's reported 08/04/2012, since the *Marbury* decision in 1803 until 2002, the Supreme Court has found federal laws unconstitutional 158 times. In the last 10 years, it has exercised that power in 14 additional cases for a total of 172. A complete list of congressional acts held unconstitutional in whole or in party can be found at https://law.justia.com/constitution/us/acts-of-congress-held-unconstitutional.html

B. How many federal laws have been repealed by Congress?

The Wikipedia listed 44 federal legislations that have been repealed by subsequent Congress, such as the Three-fifths Clause, the Fugitive Clause, the Sedition Act of 1798, the Chinese Exclusion Act of 1882, the Immigration Act of 1924. And the 18th Amendment was unceremoniously repealed by the 21st Amendment after merely 24 years.

C. The Root Cause of American Revolution: "Taxation without Representation"

1. The principle of "No Taxation without Representation" could be found as early as in the English Bill of Rights 1689 which had forbidden the imposition of taxes without the consent of Parliament. Without representation in Parliament, the colonists considered taxes as violation of the guaranteed Rights of Englishmen. The Resolutions of the Continental Congress October 19, 1765, declared:

   "That it is inseparably essential to the freedom of a people, and the undoubted right of Englishmen, that no taxes be imposed on them, but with their own consent, given personally, or by their representatives."

2. Endorsed by every other Colony, the Virginia House of Burgesses drafted the 1768 Petition, Memorial, and Remonstrance objecting to taxation without representation:

   "that no Power on Earth has a Right to impose Taxes upon the People or to take the smallest Portion of their Property without their Consent, given by their Representatives in Parliament."

3. On July 4, 1776, our founding fathers in the Declaration of Independence denounced the British monarch's repeated injuries and usurpations, one of which was none other than:

   "For imposing Taxes on us without our Consent."

D. The Founding Fathers' Original Intent: the Great Compromise

At the Constitutional Convention 1787, James Madison proposed the Virginia Plan which included a bicameral legislature. The population was to elect the members of the lower house which in turn would elect the representatives in the upper house. William Patterson put forward a counter proposal, the New Jersey Plan, which called for equal representation of each state in a unicameral legislature. The convention almost fell apart until our Founding Fathers reached the Great Compromise, without which there would have been no Union at all. Writing for the Supreme Court decision in *Wesberry v. Sanders*, 376 U.S. 1 (1964), Justice Black recounted this founding chapter of our country:

The question of how the legislature should be constituted precipitated the most bitter controversy of the Convention. ... The dispute came near ending the Convention without a Constitution. ... The deadlock was finally broken when a majority of the States agreed to what has been called the Great Compromise, based on a proposal which had been repeatedly advanced by Roger Sherman and other delegates from Connecticut. ... The debates at the Convention make at least one fact abundantly clear: that, when the delegates agreed that the ***House should represent "people****," they intended that, in allocating Congressmen, the number assigned to each State should be* ***determined solely by the number of the State's inhabitants****.*

E. The Founding Agreement of the Union

1. The Great Compromise was literally the founding agreement for the Union. It established the bicameral national legislature with Equal Representation on both accounts where the populace was equally represented in the House of Representatives, while the States were equally represented in the Senate regardless of size and population.
2. After the Constitution was adopted and ratified, James Wilson of Pennsylvania, as one of the most active members at the Convention and then an Associate Justice of this Court, reaffirmed:

   All elections ought to be equal. *Elections are equal when a given number of citizens in one part of the state choose as many representatives as are chosen by the* ***same number*** *of citizens in any other part of the state. In this manner,* ***the proportion of the representatives*** *and of the constituents will* ***remain invariably the same***.
3. As William Johnson of Connecticut said, "in *one* branch, the *people* ought to be represented; in the *other*, the *States.*" Accordingly the Constitution provides:

   (1) Article I, §2 Clause 1: the House of Representatives shall be **elected by the People**.

   (2) Article I, §2 Clause 3: Representatives and direct Taxes shall be **apportioned by population**.

   (3) Article I, §3 Clause 1: each state shall have 2 senators in the Senate regardless of population.

   (4) Article I §9 Clause 4: no Capitation, or other direct, Tax shall be laid, unless **in Proportion to the Census** or Enumeration herein before directed to be taken.
4. The Founding Fathers clearly intended and demanded that these four constitutional provisions shall and must be honored and enforced simultaneously. First, within the two sides of the Founding Agreement, if the House side is not honored, the Senate side shall become illegitimate too according to the Great Compromise. Second, house representatives and direct taxes must be proportional to each state's population according to the Census according to the Taxation with Equal Representation. For those self-claimed textualists, according to Merriam-Webster, "Proportional" means having the same or a constant ratio.

F. The First Presidential Veto

On April 5, 1792, Washington, convinced by Jefferson, exercised the very first presidential veto in the U.S. history to reject a Congressional bill for allocating house seats among states because that it was unconstitutional and liable to be abused in the future. Jefferson said, "If the [ratio of] representation [is] obtained by any process not prescribed in the Constitution, it [then] becomes arbitrary and inadmissible" and suggested apportionment be derived from "arithmetical operation, about which no two men can ever possibly differ." As a result, the Apportionment Act of 1792 was passed by Congress on April 10, 1792, and signed into law by Washington on April 14, 1792. The law set the number of House Representatives at 105, effective with the 3rd Congress on March 4, 1793, which would be allotted to each state based upon the 1790 Census. During the subsequent decades Congress updated the number of house seats to reflect the population growth and shift among states.

G. The Original First Amendment

Madison proposed the original first amendment which was ratified by eight states, only one state short to be fully ratified. It was obvious that Madison anticipated the number of the house seats would increase proportionally with the national population. The Constitution guaranteed at least one representative for every state, but never capped the total seats in the House.

H. The Existing Reapportionment Laws

The 1911 Apportionment Act capped the number of house seats at 435. Congress failed to timely enact a reapportionment law following the 1920 Census. It was a gross dereliction of its constitutional duty (once every 10 years demanded by the Constitution) that had never been

held accountable. The Reapportionment Act of 1929 by the 71st Congress established a permanent method for reallocating the 435 seats among the states. In 1941 the 77th Congress made the reapportionment process self-executing after each decennial census, and adopted the Equal Proportions method to determine which state gets the next available seat by assigning "priority value" to each state for the next available seat.

I. The Unequal Representation caused by the Existing Reapportionment Laws

1. Following the 2010 Census, Wyoming gets one (1) house seat for its population of 563,626, while NY gets only 27 house seats for its population of 19,378,561, i.e. 717,707 per house seat. Effectively, NY residents have been deprived of 7.4 house seats, or under-represented by 21%. By the same calculation, CA has been deprived of by 13.1 seats, TX by 8.6 seats, and FL by 6.4 seats, respectively. In total, 39 states (95.9% of national population) were under-represented by a total of 111.7 house seats. Other than Wyoming, 48 states are under-represented between 7% (Nebraska) and 43% (Montana), while Rhode Island is the only one over-represented at 7%. (*Amended Complaint* at 28)
2. According to the Great Compromise, each state gets two seats in the Senate, resulting in huge disparity in terms of population per senate seat among states. For example, based on the 2010 Census, one senator represents 9,689,051 persons in New York, and only 281,813 persons in Wyoming, respectively. Hence a New Yorker is weighted as only 2.9% (281,813/9,689,051) of a Wyomingite for each senate seat (*Id*). Such huge disparity was supposed to be balanced by the equal representation in the House according to the Great Compromise.

J. The Three Landmark Decisions by the Supreme Court

1. In *Baker v. Carr* 369 U.S. 186 (1962), the Supreme Court (1) overturned the District Court's dismissal, (2) affirmed the plaintiffs' standing to challenge the existing unfair apportionment for state assembly districts, (3) declared the Court possessed jurisdiction of the subject matter, and (4) the district court is expected to "*fashion relief if violations of constitutional rights are found*". Writing for the Court, Justice William J. Brennan Jr. declared:

1. The District Court had jurisdiction of the subject matter of the federal constitutional claim asserted in the complaint.
2. Appellants had standing to maintain this suit.
3. The complaint's allegations of a denial of equal protection presented a justiciable constitutional cause of action upon which appellants are entitled to a trial and a decision.
179 F.Supp. 824, reversed and cause remanded
... ...
These plaintiffs and others similarly situated, are denied the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes," was dismissed by a three-judge court ... We hold that ***the dismissal was error****, and remand the cause to the District Court for trial and further proceedings consistent with this opinion.*

In light of the District Court's treatment of the case, we hold today only (a) that ***the court possessed jurisdiction of the subject matter****; (b) that a justiciable cause of [369 U.S. 186, 198] action is stated upon which appellants would be entitled to appropriate relief; and (c) because appellees raise the issue before this Court, that* ***the appellants have standing to challenge*** *the Tennessee apportionment statutes.*

Since the complaint plainly sets forth a case arising under the Constitution, ***the subject matter is within the federal judicial power*** *defined in Art. III, 2.*

An unbroken line of our precedents sustains ***the federal courts' jurisdiction*** *of the subject matter of federal constitutional claims of this nature.*

These ***appellants sued "on their own behalf and on behalf of all qualified voters*** *of their respective counties, and further, on behalf of all voters of the State of Tennessee who are similarly situated. ...*

We hold that the ***appellants do have standing*** *to maintain this suit… And Colegrove v. Green, .. recognized the standing of the voters there involved to bring those actions.*

A citizen's right to a vote free of arbitrary impairment by state action has been ***judicially recognized as a right*** *secured by the Constitution…*

They are entitled to a hearing *and to the District Court's decision on their claims. "The very essence of civil liberty certainly consists in* ***the right of every individual to claim the protection of the laws****, whenever he receives an injury." Marbury v. Madison, 1 Cranch 137, 163.*

We conclude that the complaint's allegations of a denial of equal protection present a ***justiciable constitutional cause*** *of action upon which appellants are entitled to a trial and a decision. The right asserted is within the reach of judicial protection under the Fourteenth Amendment.*

2. In *Reynolds v. Sims* 377 U.S. 533 (1964), the Supreme Court agreed with the District Court 's decision and affirmed (1) the right to vote is the fundamental right protected by the Constitution, (2) weighting votes differently based on residence is not justifiable, and (3) population must be the "controlling criterion" in redistricting to ensure all districts "as nearly equal to each other" in population. Writing for the Court, Chief Justice Earl Warren declared:

1. The right of suffrage is denied by debasement or dilution of a citizen's vote in a state or federal election.
2. Under the Equal Protection Clause, a claim of debasement of the right to vote through ***malapportionment presents a justiciable controversy****, and the Equal Protection Clause provides manageable standards for lower courts to determine the constitutionality of a state legislative apportionment scheme.*
3.The Equal Protection Clause requires substantially equal legislative representation for all citizens in a State regardless of where they reside.
...
The federal constitutional requirement that both houses of a state legislature must be ***apportioned on a population basis*** *means that, as nearly as practicable, districts be of equal population, though mechanical exactness is not required.*

Undoubtedly, the right of suffrage is a ***fundamental mater*** *in a free and democratic society. Especially the right to exercise franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.*

Legislators represent people*, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is [the] bedrock of our political system.*

Weighting the votes *of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable.*

To the extent that a citizen's right to vote is debased, he is that much less a citizen. The fact that an individual lives here or there is not a legitimate reason for ***overweighting or diluting*** *the efficacy of his vote.*

But the basic principle of representative government remains, and must remain, unchanged -- the ***weight of a citizen's vote*** *cannot be made to depend on* ***where he lives****. Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies.*

A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution's Equal Protection Clause. This is an essential part of the concept of a government of laws, and not men. This is at the heart of Lincoln's vision of 'government of the people, by the people, [and] for the people.' The Equal Protection Clause demands no less than ***substantially equal*** *state legislative representation for* ***all citizens****, of* ***all places*** *as well as of* ***all races****.*

3. In *Wesberry v. Sanders* (1964) the Supreme Court (1) overturned the District Court's dismissal for non-justiciability and want of equity, (2) recounted the history of the Great Compromise by our founding fathers who demanded equal representation in the House based on population, (3) reaffirmed the right to vote is the fundamental right protected by the Constitution and judicial review, (4) rejected one vote being worth more in one district than in another district, and (5) insisted mathematical precision cannot be the excuse for ignoring the Constitution's demand for equal representation in the House of Representatives. Writing for the Court, Justice Black declared:

1. As in Baker v. Carr, which involved alleged malapportionment of seats in a state legislature, the District Court had jurisdiction of the subject matter; appellants had standing to sue, and they had stated a justiciable cause of action on which relief could be granted.
2. A complaint alleging debasement of the right to vote as a result of a state congressional apportionment law is not subject to dismissal for "want of equity" as raising a wholly "political" question.
3. The constitutional requirement in Art. I, § 2, that Representatives be chosen "by the People of the several States" means that, as nearly as is practicable, one person's vote in a congressional election is to be worth as much as another's.

We hold that, construed in its ***historical context****, the command of Article I, § 2 that Representatives be chosen "by the People of the several States" means that,* ***as nearly as is practicable****, one man's vote in a congressional election is to be worth as much as another's. ...*

*We do not believe that the **Framers of the Constitution intended** to permit the same vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of inhabitants. To say that a vote is worth more in one district than in another would not only run counter to our **fundamental ideas of democratic government**, it would cast aside the principle of a House of Representatives elected "by the People," a principle tenaciously fought for and established at the Constitutional Convention. **The history of the Constitution**, particularly that part of it relating to the adoption of Article I, § 2, reveals that those who framed the Constitution meant that, no matter what the mechanics of an election, whether statewide or by districts, it was **population** which was to be **the basis of the House** of Representatives.*

*It would defeat the principle solemnly embodied in the Great Compromise -- **equal representation** in the House for **equal numbers** of people -- for us to hold that, within the States, legislatures may draw the lines of congressional districts in such a way as to give some voters a greater voice in choosing a Congressman than others.*

***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.*

*We agree with Judge Tuttle that, in debasing the **weight of appellants' votes**, the State has **abridged** the right to vote for members of Congress guaranteed them by the United States Constitution, that the District Court should have entered **a declaratory judgment** to that effect, and that it was therefore **error to dismiss** this suit.*

***The right to vote is too important** in our free society to be stripped of **judicial protection** by such an interpretation of Article I. This dismissal can no more be justified on the ground of "want of equity" than on the ground of "nonjusticiability." We therefore hold **that the District Court erred in dismissing** the complaint.*

4. In *Bush v. Gore, 531 U.S. 98 (2000)* the Supreme Court reaffirmed the constitutional principle that equal weight must be accorded to each vote, and equal dignity of each voter must be respected under the Equal Protection Clause:

"*... one source of its fundamental nature lies in the **equal weight** accorded to **each vote** and the **equal dignity** owed to **each voter**… It must be remembered that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."*

K. Does the U.S. have too many House Representatives?

1. Appellant surveyed 16 developed democratic countries based on https://en.wikipedia.org/wiki/, and found the U.S. has by far the highest population per lower house seat among these countries, almost 3 times as much as Japan, the second on the list (*Amended Complaint* at 11-12). In particular, Japan, Germany, France, and the U.K. have more lower House Representatives than the U.S. does despite far less population. For example, the U.K. population is only 20% of the U.S. population, but its House of Commons has 650 members, averaging only 101,569 persons per one seat vs. 748,736 persons per one seat in the U.S. In fact, when the Apportionment Act 1911 capped the number of house seats at 435, the population per seat was c.a. 210, 000, much closer to the other 15 surveyed countries.
2. Besides having by far the highest population per seat, the U.S. is also much larger in geographical size than the other 14 countries except Canada. It is impossible for the U.S. House Representatives to serve their constituents as effectively as their counterparts in the other 15 developed democracies. When on average a representative has to serve 748,736 constituents, it invariably means he/she becomes inaccessible or even unaccountable to most constituents.

L. How much does each House Representative cost?

As of 2017 the compensation for most congressional members was $174,000, $223,500 for the House Speaker, and $193,000 for the majority and minority leaders. As of June 2017, the average Members' Representational Allowance was $1,315,523 per representative. Hence the total cost per house representative is c.a. $1.5 million per year (*Amended Complaint* at 11).

The Appellant's proposal for "Equal Representation Reapportionment Act" would increase the house seats from 435 by 107 to 542. members to the House, entailing additional cost of approximately $189.4 million/year, less than 0.005% of the total federal budget (2017), or $0.58 per person per year. One F-22 Raptor fighter jet alone costs $180 million. (*Id.* at 25).

VII. Summary of the Arguments

With all due respect, the District Court Order should be reversed for the following considerations.

First, the ERLS1929 have violated the following constitutional provisions in both letter and intent:

A. The Elected by People Clause and the Representatives and Direct Tax Clause under Article I § 2;

B. The Comity Clause under Article IV;

C. The Freedom of Speech guaranteed by the First Amendment;

D. The Due Process guaranteed by the Fifth Amendment;

E. The Equal Voting Rights guaranteed by the Fourteenth Amendment.

In addition, the ERLS1929 have contradicted:

F. The Founding Fathers' intent, e.g. the Great Compromise, the Proportional Clause;

G. The basic democratic principle of "One Person One Vote" established by three Supreme Court decisions: *Baker v. Carr* (1962), *Reynolds v. Sims* (1964) and *Wesberry v. Sanders* (1964) (hereinafter *Baker/Reynolds/Wesberry*).

With all due respect to the District Court:

H. Its opinion on lack of standing (*Order* at 5) contradicts *Baker/Reynolds/Wesberry*, which affirmed plaintiffs' standing to defend their voting right, a fundamental right pursuant to the Constitution.

I. Its opinion on lack of injury in fact (*Order* at 6) contradicts *Baker/Reynolds/Wesberry*, which undoubtedly affirmed dilution and debasement of voting rights are injury in fact, regardless of economic harm.

J. Its opinion on lack of concrete harm (*Order* at 7) contradicts *Baker/Reynolds /Wesberry*, and other court decisions which have established that a harm shared with general population is concrete injury and shall be heard at the court of law.

K. Its opinion of "equal vote in any election never recognized in federal courts" (*Order* at 9) contradicts the 14th Amendment § 2 and ignores *Baker/Reynolds/Wesberry*, which recognized equal vote in redistricting for state legislative and Congress.

L. Its opinion on causal nexus between injury and Defendants (*Order* at 9) contradicts the historical facts and the Separation of Powers defined by the Constitution where Congress passed the reapportionment laws while the executive branch has simply executed the laws.

M. Its opinion on redressability (*Order* at 10) has (1) mischaracterized Appellant's complaint which requested only a declaratory judgment by the court, and (2) ignored the Court's history in declaring numerous laws unconstitutional since *Marbury v. Madison*, (1803).

N. Its opinion of sovereign immunity (*Order* at 11) has (1) rendered the Petition Clause under the First Amendment meaningless, and (2) contradicted the previous Supreme Court decisions such as *United States v. Lee* 106 U.S. 196 (1882).

Furthermore, the District Court Order …

O. brings back the memory of Dred Scott who was essentially denied standing too.

P. resembles the tactic used by those oppressive regimes where ordinary citizens are routinely denied standing to defend their rights.

Q. shows America is essentially the same as *Animal Farm* where "All Americans are created equal, but some Americans are more equal than others".

R. has employed a dubious tactic of quoting only part of the sentence or paragraph while discarding the rest in *Wesberry v. Sanders* and *Dept. of Commerce v. Montana.*

S. There have been many federal laws that were either declared unconstitutional by the Court or repealed by subsequent Congress, and the ERLS1929 are one of such. The Constitution requires redress by the courts "even if the legislature refuses to act" (*Obergefell v. Hodges*).

VII. The Arguments

The District Court Order claimed "No provision of the federal Constitution or the United State Code recognizes the "rights [of each citizen] to equal representation at the House and equal vote in any election[sic]" (*Order* at 6). This claim blatantly contradicts the following constitutional provisions, directly or indirectly.

A. **The Elected by People Clause and the Representatives and Direct Tax Clause in Article I** indisputably mandates both representatives and direct tax to be simultaneously apportioned based on population. However, since 1929 while all Americans of all states have to comply the same Federal tax laws, over 95% of Americans have been subject to unequal representation in the House of Representatives based on state residence. In fact, such political deprivation has caused serious economic consequences. For decades our great state of New York has always contributed far more in federal taxes than receiving federal spending while being deprived of equal representation in the House.

   According to Rockefeller Institute's annual reports, we as New Yorkers including Appellant have consistently been subject to negative Balance of Payment (Federal Spending received minus Federal Taxes contributed), the worst among all 50 states: -$48.0 billion in 2015, -$38.6 billion in 2016, and -$35.6 billion in 2017. Had they been alive today, our founding fathers including Hamilton must have been appalled by such taxation without equal representation caused by the existing reapportionment laws. For anyone who claims to be a textualist, this is the moment of either basic truth or utter hypocrisy.

B. **The Comity Clause** guarantees the same privilege and immunity for every American in every state. The right to vote and be represented must be one of such privileges. If residents in the least populous state are guaranteed full representation in the House, then residents of the other

49 states must be guaranteed the same. From 1930 to 2010 our great state of New York's population grew from 12.6 million to 19.4 million, but we lost 18 house seats because the so-called Equal Proportions method (*Amended Complaint* at 9) has literally assigned higher priority value to Americans in some states while condemning Americans in other states - New York being the prime example - with lower priority value for decades. The name "Equal Proportions" is deceptive at best but an outright lie at its core because the resultant disparity in population per house seat based on 2010 Census among the 50 states ranged from overrepresentation of 7% enjoyed by Rhode Islanders to underrepresentation of 43% suffered by Montanans (*Id.* at 28). One of the equitable and constitutional solutions is to adopt the Wyoming Rule combined with the "Nearest Tenth Digit" method *(Id*. at 24-25).

C. **The First Amendment** guarantees freedom of speech. Voting is the most sacred form of speech for every American. Since America is a representative democracy, the right to vote and the right to be represented in the House of Representatives are the two sides of the same coin. Each house representative represents the voice of his/her constituents. The undeniable fact is such: one representative for 563,626 Wyomingites compared to one for 717,707 New Yorkers including Appellant, and one for 989,415 Montanans per 2010 Census. Nationwide, 95% of Americans' vote in electing house representatives have been significantly devalued and diluted, hence their voice have been severely under-represented in the House of Representatives.

D. **The Due Process** under the Fifth Amendment mandates any government action to be fair both procedurally and substantively, rather than unreasonable, arbitrary or capricious. A free person's **Life** consists of one's physical wellbeing and one's intrinsic human dignity. Nothing manifests one's human dignity more than a person's right to vote. One of the most basic forms of **Liberty** is the freedom of speech, and casting a vote is the most peaceful and solemn

expression of a free person. A free person's **Property** consists of ownership of tangible assets (house, car, etc.) and unalienable rights to intangible entitlements, foremost the right to vote. Therefore, the right to vote is the ultimate manifestation of these unalienable rights of Life, Liberty and Property.

(1) The ERLS1929 have caused a significant disparity of representation among states: Rhode Island enjoys 7% over-representation while Montana being condemned to 43% under-representation. There is no constitutional justification to such substantive due process violation. Claiming it is impossible to achieve mathematical precision while rejecting any alternative solution that will achieve equal representation with much less disparity is nothing but a cynical excuse to perpetuate a gross injustice in favor of less populous states which already enjoyed huge advantages in the Senate. The Wyoming Rule combined with the "Nearest Tenth Digit" method (*Id.* at 25) will (1) ensure every state will be treated equally, and (2) apportion house seats to all states with a variance within +/-4%, which represents a near precision that shall satisfy our Founding Fathers.

(2) Under the ERLS1929 a procedural due process violation occurs when people move from one state to another. If Jack moves from Rhode Island (1,052,567 given 2 seats) to Montana (989,415 given 1 seat), his right to be represented decreases by half; and if Jill moves from Montana to Rhode Island, her right to be represented doubles. No American shall be punished -- without their knowledge and consent -- for exercising their freedom to choose where to live, one basic form of liberty.

(3) Furthermore, the basic elements of due process are notice and hearing. If any suspect must be informed of his/her Miranda right under the Fifth Amendment, all law-binding citizens certainly must be informed of their fundamental rights before being gravely violated.

Congress has never informed the overwhelming majority of Americans that they have been taxed without equal representation in the House. Even *The New York Times* in its 11/09/2018 Editorial failed to point out the Founding Agreement has been dishonored and the overwhelming majority of Americans' constitutional rights violated.

E. **The Equal Voting Rights Clause** in the Fourteenth Amendment demands the right to vote in any election including "Representatives in Congress" shall not be abridged in any way. However, under the ERLS1929, over 95% of Americans' vote have been demeaned and devalued based on state residence when compared to Wyomingites' vote. Can anyone argue this is not a form of "abridged"? In fact, § 2 of the 14th Amendment specifically struck down the Three-Fifths Clause in the original Constitution in 1787. It was morally wrong to count a black slave as three-fifths 232 years ago, it must be equally wrong to debase over 95% of Americans (including Appellant) significantly less than a full person in terms of our vote.

In addition, the ERLS1929 have contradicted:

F. **The Founding Fathers' original intent** (VII. Statement of Facts at 13): the Great Compromise achieved the balance between more populous states and less populous states by guaranteeing that states shall be equally represented in the Senate while People shall be equally represented in the House. Without this Founding Agreement (*Id.* at 13), there would have been no Union. The first presidential veto (*Id.* at 14), the original first amendment (*Id.* at 15), and most importantly, the three Clauses in Article I further evidenced our Founding Fathers' original intent. Hence since 1929 all successive Congress have collectively dishonored our Founding Fathers' founding agreement and original intent. For anyone who claims to be an originalist, this is the moment of either basic truth or utter hypocrisy.

G. **The Supreme Court's three landmark decisions**: *Baker v. Carr* (1962), *Reynolds v. Sims* (1964) and *Wesberry v. Sanders* (1964), all have established the basic democratic principle of "One Person One Vote" (*Id.* at 16-20).

(1) America was founded upon the principle of "All people are created equal." And nothing manifests human dignity more than a free person's sacred vote. If the value of each vote for the same legislative body in the same election is significantly unequal, then "One Person One Vote" becomes meaningless, and the founding principle "All men are created equal" empty promise.

(2) The Declaration of Independence declared "Governments are instituted among Men, deriving their just powers from the consent of the governed." The Constitution states that the House of Representatives represents all Americans of all states, hence its legitimacy must come from all voters whose vote must be counted with equal weight under the same democratic principle of "One Person One Vote, Every Vote Is Equal". Every American's vote shall and must be equal regardless where he/she lives. The claim that these three decisions applies to only apportionment within in one state but not to apportionment across states is nothing but a disingenuous attempt to perpetuate the existing injustice in favor of a few. The ERLS1929 are not only unconstitutional but also un-American.

With all due respect to the District Court:

H. Its opinion that "Plaintiffs Lack Standing to Bring This Suit" (*Order* at 5.) contradicts *Baker/Reynolds/Wesberry*, renders the Petition Clause meaningless, and forgets why our Founding Fathers declared revolution.

(1) *Baker/Reynolds/Wesberry* (VII. Statement of Facts at 16-20) have emphatically established and reaffirmed (a) individual voters have the standing to challenge when the weight or value of their votes are diluted or disadvantaged relative to other voters; (b) equal weight must be accorded to each vote, and equal dignity of each voter must be respected regardless of residence; and (c) individual voters are entitled to relief under the Equal Protection Clause of the 14th Amendment. The claim that the 14th Amendment applies to the states but not the federal government means it is unconstitutional for the states to discriminate voters within state boundaries, but it is OK for Congress to discriminate voters based on state residence. Such reasoning is intellectually dishonest and legally indefensible. In fact, Chief Justice Warren declared in *Bolling v. Sharpe*, 347 U.S. 497 (1954):

In view of this Court's decision in Brown v. Board of Education, that the Constitution prohibits the States from maintaining racially segregated public schools, it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government.

(2) Furthermore, this "no-standing" opinion renders the Petition Clause within the First Amendment meaningless. Appellant's complaint and appeal are essentially a petition for equal representation. The District Court Order means that individual citizens do not even have a standing at the court of the laws to petition for their constitutional right to vote and be represented.

(3) What happens when law-binding citizens, whose fundamental rights are violated, are denied their day in court? Perhaps both Defendants and the District Court need to be reminded that the Declaration of Independence specifically listed the king's failure to listen to colonists' petition as a cause of the Revolution War:

"In every stage of these oppressions, we have petitioned for redress in the most humble terms; our repeated petitions have been answered only by repeated injury."

I. Its opinion that "Plaintiffs fail to identify any injury in fact to a legally protected interest" (*Order* at 6.) contradicts *Baker/Reynolds/Wesberry*, which have established the right to equal representation - from state assembly to state senate, to house representatives within a state - is a fundamental right and legally protected interest (VII Statement of Facts at 16-20).

(1) The District Court dismissed Appellant for raising "a newly-imagined harm – underrepresentation relative to residents of Wyoming and Rhode Island." (*Order* at 9) Following the same logic, King George III should have told Washington, Adams, Jefferson, etc. that taxation without representation was merely an "imagined harm", no reason for fighting for independence.

(2) The District Court even quoted a decision by the Third Circuit *in Lavergne v. Bryson, 497 Fed. App'x 219* (2012) which held that '"an unconstitutional low number of representatives' was a type of injury 'which necessarily damages all United States voters equally' and thus could not give rise to standing." (*Order at* 8) It is bewildering to see a court could openly condone an "unconstitutional" act, call its damage "necessary", and basically tell citizens to shut up and be quiet. Appellant had seen such courts in one of those repressive regimes, but never thought such courts exist in America too.

J. Its opinion that "Alleged injuries shared with the general voting population do not suffice to show a concrete and particularized harm" (*Order at* 7) contradicts *Baker/Reynolds/ Wesberry*, which have established debasement and dilution of the right to vote based on residence is a generally shared but also concrete harm. Other previous court decisions also rejected this "particularized harm" requirements.

(1) The District Court's reasoning implies that the greater scale of harm and injustice is perpetrated, the less standing any individual victim has to challenge and defend his/her

rights. By this "particularized harm" logic, no individual black person could have standing against the Three-Fifths Clause or the Jim Crow laws because both were forced upon all people of color. Such reasoning defies any sense of justice, and sounds more like a theory any oppressive regimes would love to embrace. If the "particularized harm" logic is followed to its logical conclusion, it would mean that slaves should have remained obedient before 1865, and women should have stayed content without the right to vote before 1919. The slave-owners and the male politicians should have embraced the "particularized harm" logic to reject the 13th and 19th amendments, respectively.

(2) The District Court recited Appellant's question on the soundness of the "particularized harm" requirement (*Order at* 8), and gave no direct response. This case concerns constitutionality of a set of federal laws. By definition, federal laws shall apply to all Americans, not to one particular individual. Otherwise, such law by definition is either discriminative or giving unfair advantage to that individual, hence unconstitutional in either case.

(3) As Dr. Martin Luther King said, "Injustice anywhere is a threat to justice everywhere." *U.S. v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 686-88 (1973) ruled that "To deny standing to persons who are in fact injured simply because many others are also injured, would mean that the most injurious and widespread Government actions could be questioned by nobody." *Federal Election Commission v. Akins*, 524 U.S. 11, 24 (1998) ruled that "[W]here a harm is concrete, though widely shared, the Court has found injury in fact … where an injury is widely shared ... does not, by itself, automatically disqualify an interest for Article III purposes."

K. Its opinion that "equal vote in any election is a right never before recognized in federal courts" (*Order* at 9) essentially discarded *Baker/Reynolds/Wesberry*, which have indisputably recognized equal vote and equal representation in legislature as a constitutional right. (VII. Statement of Facts, at 16-20).

(1) The District Court conceded "while the Supreme Court has recognized that intrastate districting plans … may be subject to constitutional challenge, … no federal court has ever intervened to equalize the population of districts in different states." (*Order* at 3). It is intellectually disingenuous and legally self-contradictory to hold that the Court has recognized one American's vote equal to another American's vote if they reside within the same state, but the Court would not recognize such if the two Americans resides in two different states. Such reasoning is in direct contradiction to the Declaration of Independence, the Representatives & Direct Tax Clause, the Comity Clause and § 2 of the 14th Amendment. In fact, In *Bush v. Gore* (2000) the Supreme Court undoubtedly reaffirmed the constitutional principle that "equal weight" must be accorded to each vote, and "equal dignity" of each voter must be respected.

(2) Because America is a representative democracy, the right to vote and the right to be represented at any level of legislative body are the two sides of the same coin. Without equal vote, the right to vote is meaningless, and so would be the right to be represented. Although these three aforementioned cases concerned the voting right issue within a state, the same constitutional principle and legal reasoning must extend to the case on hand with respect to congressional districting apportionment for all 50 states. Otherwise, it would be not only a mockery of basic justice, but also a grave betrayal of our country's founding ideals and constitutional principles.

L. Its opinion that "Plaintiffs fail to establish a causal nexus between their injuries and the Defendants' conduct" (*Order at* 9) ignores the historical facts, and contradicted the Separation of Powers defined by the Constitution.

(1) It was the 71st Congress that enacted the Reapportionment Act of 1929, and in 1941 it was the 77th Congress that adopted the equal proportional method for reapportioning house seats. The subsequent Congress have allowed these unconstitutional laws to remain on the book and continue in force. Hence Appellant used "carry on", not "carry out" in describing the Defendants' action.

(2) Appellant made it clear that the Complaint was filed against Congress as a whole since 1929 with the four individuals being named as Defendants on ex officio basis for their leadership position in the current Congress because (a) it is impossible to sue the members of the previous Congress, (b) it is administratively impractical to name all 435 representatives and 100 senators of current Congress as defendants, and (c) Appellant do not believe the executive branch should be held accountable for the unconstitutional reapportionment laws that it had never been involved legislatively.

(3) The District Court wrote "Because Plaintiffs' alleged injuries are the result of the actions of the executive branch… thus fails to establish the causation element of standing." (*Order at* 10) Such statement simply contradicts the facts. The executive branch has to execute these reapportionment laws as required by the Constitution. Following the District Court's astonishing logic, there was nothing wrong with the 18th Amendment enacted by the 65th Congress, and the executive branch should have been blamed for the significant increase of alcohol-related crimes and violence while it had the constitutional duty and obligation to enforce the 18th Amendment. Were this true, why the 18th Amendment was repealed by

the 21st Amendment merely 24 years later? Therefore, in both *Department of Commerce v. Montana* (1992) and *Clemons v. Department of Commerce*, (2010), the plaintiffs sued the wrong party.

M. Its opinion that "Plaintiffs fail to establish this Court's ability to redress their injuries" (*Order at* 10), has mischaracterized Appellant's complaint, and again ignored the fact that numerous federal laws have been declared unconstitutional by the Supreme Court.

(1) The District Court wrote "Besides, any attempt by this Court to dictate new apportionment laws would violate the separation of powers." (*Order at* 11). The problem is, Appellant never asked the Court to do such. In fact, the District Court itself stated in the opening paragraph, "They [Plaintiffs] seek an order declaring the Apportionment Acts of 1911, 1929 and 1941 unconstitutional" (*Order at* 1) and "Plaintiffs seek a declaratory judgement" (*Order at* 4). It is perplexing to see such self-contradiction and mischaracterization from a district court order. The redress being sought was stated clearly in the *Amended Complaint* Page 22 as follows:

> The redress that Plaintiff is seeking is simply for the Court to make a declaratory judgment - as the Supreme Court clearly did in *Wesberry v. Sanders* (1964) – such as follows:
>
> ***The Apportionment Acts of 1911, 1929 and 1941 are unconstitutional with respect to the Great Compromise, Article I, § 1 & 2, Article IV, § 2, the First Amendment, the Fifth Amendment and the Fourteenth Amendment. Every American's rights to equal representation at the House and equal vote in any election shall not be denied, diluted, debased, diminished, demeaned, disadvantaged, or manipulated in any way by any means on any account.***

(2) Chief Justice Marshall established in *Marbury v. Madison* (1803) that "it is emphatically the province and duty of the judicial department to say what the law is" and that "a law repugnant to the Constitution is void." Since then, the Court has struck down numerous federal laws (e.g. *Bolling v. Sharpe* 1954 invalidated a federal law governing racial segregation in DC) and state laws (e.g. Jim Crow laws) as unconstitutional (VII. Statement

of Facts, at 12). Chief Justice John Roberts even compared judges to umpires at a baseball game to call fouls during his confirmation hearing on 09/12/2005.

(3) In *Cotting v. Godard,* 183 U.S. 79 (1901), the Supreme Court unequivocally reaffirmed its ultimate judicial power to determine constitutionality of any government actions by federal and states, and declared its highest duty was to enforce the Constitution (body and letter) in accordance with the Declaration of Independence (thought and spirit) as follows:

The first official action of this nation declared the foundation of government in these words: "We hold these truths to be self-evident…" it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government.

The Schuette v. Bamn 572 U.S. 291 (2014) made a more forceful statement:

"[t]he freedom secured by the Constitution consists, in one of its essential dimensions, of the right of the individual not to be injured by the unlawful exercise of governmental power." … "when hurt or injury is inflicted on racial minorities by the encouragement or command of laws or other state action, the Constitution requires redress by the courts."

(4) The District Court wrote "Finally, Plaintiffs must 'at least make a showing that there is a substantial likelihood that the relief will redress the injury claimed.'" (*Order* at 10) In *Baker/Reynolds/Wesberry* the Supreme Court repeatedly affirmed the Court has the duty and power to exercise judicial review on constitutionality of controversies related to voting rights (VII. Statement of Facts, at 16-20). In fact, unequal representation among state assembly districts, state senate districts and congressional districts within a state was rectified after these three landmark decisions.

(5) The District Court Order stated "the individual Defendants, who currently serve as leaders of the Democratic and Republican parties in the House and Senate, do not possess the power to move legislation through the House and Senate on their own" (*Order* at 11). This statement simply belies the facts. On June 27, 2013, the Senate passed a bi-partisan

comprehensive immigration bill, but the then-House Speaker single-handedly refused to schedule this bill for any hearing, debate and floor in the House. On March 8, 2019, the House passed a comprehensive voting rights bill, but the Senate Majority leader, one of the named Defendants, has pledged that the bill was "not going to go anywhere in the Senate" … "Because I [McConnell] get to decide what we vote on."

N. Its opinion that "Sovereign Immunity Bars This Suit" (*Order* at 11) is dubious in claiming Congress and its members are entitled to immunity under the Sovereign Immunity and the Speech and Debate Clause under Article I. The Sovereign Immunity is an archaic doctrine stemming from the ancient English principle that the monarch can do no wrong. This opinion blatantly contradicts multiple Supreme Court decisions that emphatically affirmed "no one is above the law", and the courts of justice are established to decide upon rights in controversy between people and the government.

(1) Chief Justice Marshall wrote the opinion in *Osborn v. Bank of United States* 22 U.S. 738 (1824), which did not foreclose actions against officials who could provide the relief requested by the plaintiff. The Court reached a unanimous decision in *Board of Liquidation v. McComb* 9 U.S. 531 (1876) that a state officer could not rely on an unconstitutional act to justify a violation of the plaintiff's rights, and "an unconstitutional law will be treated by the courts as null and void."

(2) President Lincoln in his 1861 State of the Union Address reaffirmed Chief Justice Marshall's "No one above the Law" principle:

It is as much the duty of Government to render prompt justice against itself, in favor of its citizens, as it is administer the same between private individuals.

(3) *United States v. Lee* (1882) held that the Constitution's prohibition on lawsuits against the federal government did not extend to government officers themselves because no one is above the law, otherwise America turns into a tyranny.

> *Not only that **no such power** is given, but that it is absolutely prohibited, both to the executive and the legislative, **to deprive anyone of life, liberty, or property without due process of law** or to take private property without just compensation.*
> *...*
> ***No man** in this country is so high that he **is above the law**. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it.*
> *...*
> ***Courts of justice** are established not only **to decide** upon the controverted rights of the citizens as against each other, but also upon rights in controversy **between them and the government,** and the docket of this Court is crowded with controversies of the latter class.*
> *...*
> *If such be the law of this country, **it sanctions a tyranny** which has no existence in the monarchies of Europe nor in any other government which has a just claim to well-regulated liberty and the protection of personal rights.*

(4) Furthermore, the Speech and Debate Clause is intended to protect members of Congress from political persecution, instead of giving them immunity for violating the Constitution. It is irrelevant in this case because Appellant has never sought any punishment or liability to be imposed on Defendants. This is another mischaracterization by the District Court Order, alleging Appellant for something that Appellant never did. What Appellant filed against is this: Congress since 1929 have either unknowingly failed to recognize the violation of constitutional rights imposed by the reapportionment laws on overwhelming majority of Americans, or knowingly designed such laws and perpetuated such triple-injustice where huge advantage in the Senate has not been balanced by equal representation in the House, and deprivation of house seats in turn has significantly debased and diluted 95% of Americans' vote in presidential elections. At the very least, this case will not allow any member of Congress to use "I have no idea" as an excuse in this regard going forward.

(5) The District Court perhaps forgotten that since 1776 America has been a monarch no more, instead it has become a republic whose sovereignty belongs to "***We the People***" while all government officers are public employees who are paid for by all taxpayers. The District Court's Sovereignty Immunity theory in fact resembles how many dictators have always claimed themselves to be sovereignty, hence beyond and above law.

With all due respect, the District Court Order conveys the following troubling implications:

O. The District Court Order invokes the appalling memory of *Dred Scott v. Sandford*, 60 U.S. 393 (1856). Mr. Scott's case was dismissed because a black person - enslaved or free – was deprived of any right as an America citizen, therefore no standing at the court of laws. The decision was repudiated by the 13th, 14th, and 15th Amendments, and has been widely condemned as the worst decision because it was wrong to employ "legal technicality" to perpetuate injustice. Neither the Defendants nor the District Court was able to refute the substantive merits of the case presented by Appellant. Hence the only way to silence Appellant, who is an ordinary citizen without any legal professional background, is to employ legal technicality to deny standing, the same legal tactic used in *Dred Scott*. In fact, one can certainly argue that this District Court Order is even worse than the *Dred Scott* decision by many orders of magnitude because many Supreme Court precedents since *Dred Scott* as set forth above have repeatedly affirmed an individual citizen has standing to bring an action seeking to redress a social injustice in voting rights and discrimination pursuant to the Constitution and the amendments, foremostly the 14th Amendment.

P. The District Court Order shows America is not fundamentally different from those oppressive regimes where ordinary citizens have no standing to defend their rights.

(1) This Appellant grew up in one of those one-party dictatorship regimes, and had first-hand experience how the regime silenced ordinary people. First, the regime wrote various rights (e.g. the right to vote) into the constitution. However, all officials including city council members, provincial legislators, and members of national congress are predetermined by the ruling communist party before every election. Hence the rights to vote and be represented are not even worth the paper they are printed on.

(2) Such blatant violation of constitutional right has long been forced upon all citizens. Applying the District Court's "particularized harm" requirement, no one would have any standing to challenge any injustice at all, be it discrimination based on race, sex, or infringement of voting rights based on residence. And indeed, when cracking down anyone who dares to stand up and speak out, the repressive regime has employed a very similar logic, "everyone is being treated the same way, why are you complaining?"

(3) The irony is that the repressive regime has always criticized America's democracy as fake because ordinary people do not have a voice, do not have equal right, and do not have a standing in court of law. The District Court did not even schedule an oral argument, literally refusing Appellant's day in court, therefore essentially proves what the repressive regime said about America was not far-fetched, and implies that the overwhelming majority of Americans shall remain obediently silent, and their "Unalienable Rights" are subject to the mercy of the politicians in Congress.

Q. In George Orwell's Animal Farm, "***All animals are equal, but some animals are more equal than others***." In America, since 1929 Wyomingites have always been guaranteed full representation in the House, while 95% of Americans have been subject to taxation without equal representation. Even the judge conceded to this sample undeniable fact and said "I

sympathize with Liu [Plaintiff]" (*Order at* 6). Appellant had a hope that the District Court would prove America is not an Animal Farm. Instead, the District Court Order shows America is indeed the same as an Animal Farm where "***All Americans are equal, but some Americans are more equal than others".***

R. It is worth noting that the District Court has adopted a dubious practice of partially quoting when citing the Supreme Court's previous decisions to support its opinions.

(1) First, it quoted *Wesberry v. Sanders* (*Order at* 6) *"While it may not be possible to draw congressional districts with mathematical precision,"* without the rest of the sentence:

*[…that is **no excuse for ignoring our Constitution's** plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives. That is the high standard of **justice and common sense** which the Founders set for us.]*

(2) Secondly, it quoted *Dept. of Commerce v. Montana* (*Order* at 6) "*no constitutional obstacle preventing Congress from adopting,"* without the preceding paragraph:

*[To the extent that the potentially divisive and complex issues associated with apportionment can be narrowed by the adoption of both procedural and substantive rules that are consistently applied year after year, the public is well served, provided, of course, that any **such rule remains open to challenge or change at any time**. We see…]*

(3) With all due respect, the disingenuousness displayed above by a district court is beyond expression. More importantly, the District Court attempted to hide the fact that the Supreme Court has repeatedly affirmed equal representation for each number of people as the fundamental goal for the House of Representative and the existing reapportionment laws are open to challenge or change at any time.

(4) The Supreme Court rightly rejected Montana's request to retain two seats because it would selfishly worsen unequal representation for other states. Only after comparing the five formulas presented in *Montana*, did the late Justice Stevens reluctantly conceded the Equal

Proportions method as the least bias. The Wyoming Rule combined with the "Nearest Tenth Digit" method presented by Appellant (*Amended Complaint* at 24-25) addresses Justice Steven's struggle of "the absolute and relative differences between the actual average district size and the ideal district size" for every state at the same time with a variance within +/-4%, which represents a near precision and a true good-faith effort as demanded by the Supreme Court in *Baker/Reynolds/Wesberry*.

S. Since 1787 there have been many federal laws that were either declared unconstitutional by the Court or repealed by subsequent Congress. (VII. Statement of Facts at 12). It is indisputable that Congress has a dubious record of enacting laws ill-conceived, immoral, un-American and unconstitutional. The ERLS1929 are such case in point.

(1) In 1787 only white male property owners had the right to vote in America and people of color were counted three-fifths. In 1868 the 14th Amendment expanded the right to vote to all white males aged 21 and older regardless of property ownership. In 1870 the 15th Amendment guaranteed the right to vote regardless of race and color of skin. It took World War I for the movement of women's suffrage to finally force the white men in Congress to pass the 19th Amendment in 1919. However, Jim Crow laws perpetuated discrimination and disenfranchised minorities in the South until the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. Finally, it took the Vietnam War for the 26th Amendment in 1971 to guarantee all persons aged 18 or above because it was simply unjust to draft young people to fight and die for their country while denying them the right to vote.

(2) Justice John Marshall Harlan reminded us, "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law." Since 1787 it has been a long and hard-fought journey to expand the right

to vote from only white male land-owners to all Americans, regardless of property ownership, race or color, gender, tax-paying status, and age. It is time to add residence to this "regardless of" list. The ERLS1929 have perpetrated a triple-injustice for 90 years and counting. It is long overdue to make our constitution "state-blind", and guarantee that "Every Vote Is Equal" for every American regardless of where he/she lives.

(3) Rather than continuing to dishonor our Founding Fathers and perpetuate injustice, the current Congress has a historical opportunity to follow the great examples of repealing immoral laws, e.g. the Chinese Exclusion Act of 1882 and the Immigration Act of 1924, and enacting new laws, e.g. the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

(4) However, since Defendants have chosen not to do the right thing, the Court shall recall what Justice Kennedy declared in *Obergefell v. Hodges*, 576 U.S. _ (2015)*:*

> *When the rights of persons are violated,* ***the Constitution requires redress by the courts*** *… and individual can invoke a right to constitutional protection when he or she is harmed …* ***even if the legislature refuses to act.***

(5) Once the existing reapportionment laws are declared unconstitutional by the Court, the existing reapportionment laws can't continue in effect. The Court does not need to compel Congress to do anything because the Constitution already provides Congress with the constitutional duty, obligation, and power to enact new reapportionment laws, unless Defendants and members of Congress choose to deliberately ignore the Court's decision and blatantly betray their oath to the Constitution under Article VI. Par. 2 and Par. 3.

(6) The House in 2012 and the Senate in2016, respectively, passed resolutions to apologize for the grave injustice caused by the Chinese Exclusion Act of 1882. By the District Court's "particularized harm" requirement, no individual Chinese American had standing at all. The question is whether today's Congress still has the honesty and courage to face the wrongdoing from its past, or has become no better than those oppressive regimes that never apologize for their wrongdoings?

VIII. Conclusion

1. Appellant presented in the Amended Complaint (a) the undeniable arithmetical facts, (b) the historical evidence of our Founding Fathers' well-documented intent, (c) the indisputable textual provisions in the Constitution and the subsequent amendments, and (d) the previous Supreme Court decisions. Neither Defendants nor the District Court was able to refute any of the aforementioned.
2. In order to deny Appellant's standing, Defendants and the District Court ignored the historical facts, disregarded the precedents and constitutional texts, mischaracterized Appellant's request for redress, used misleading partial quotes, resorted to the dubious legal tactic that was used in the *Dred Scott* decision, and employed the cynical "particularized requirement" that has been adopted by many repressive regimes.
3. The Declaration of Independence, the Constitution, and *Baker/Reynolds/Wesberry*, all have clearly affirmed "***All men are created equal…with certain unalienable Rights***" Under this Founding Principle, the Founding Agreement, and the Constitution, the ultimate question for the Court in this case is this:

   "***Is one American in one state equal to another American in every other state?***"
4. I, Plaintiff-Appellant, immigrated to America in 1989 because I identified its founding ideal enshrined in the Declaration of Independence.
5. I, Plaintiff-Appellant, filed this lawsuit as an ordinary independent citizen because I pledged my allegiance to the Constitution when I chose to become a naturalized citizen in 1994.
6. The 2020 Census is fast approaching, hence time is of essence. It is long overdue to guarantee every American's equal right to vote and be represented regardless of state residence as intended by our Founding Fathers and mandated by the Constitution.

7. I, Plaintiff-Appellant, therefore respectfully ask this Court to reverse the District Court Order with a declaratory judgement as follows:

The existing reapportionment laws since 1929 are unconstitutional with respect to the Great Compromise, Article I, § 1 & 2, Article IV, § 2, the First Amendment, the Fifth Amendment and the Fourteenth Amendment. Every American's rights to (1) equal representation in the House of Representatives and (2) equal vote in any election shall not be denied, diluted, debased, diminished, demeaned, disadvantaged, or manipulated in any way by any means on any account including residence.

Respectfully Submitted,

Lewis Y. Liu

Plaintiff-Appellant Pro Se

VII. Certification of Compliance

I, Lewis Y. Liu, certify that this appellant brief

- has been reviewed by my attorney, Yuxi Liu Esq.
- contains 14,000 words or less.
- font type and size used: Times New Roman 12.
- space is set at 2.
- all margins (top & bottom, left & right) are 1 inch.