

# 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

---

## **Appellant's Post-Argument Brief**

Respectfully Submitted:

Lewis Y. Liu

Plaintiff – Appellant Pro Se

98 Mott Street, Suite 609

New York, NY 10013

347-237-0192

equalvoteamerica@gmail.com

Constrained by the 5-minute limitation during the oral argument hearing, the Plaintiff/Appellant respectfully submits the following response to the Defendants' Attorney who cited the case of *Department of Commerce v. Montana*, 503 U.S. 442 (1992).

### **The Supreme Court's *Montana* Decision**

In *Montana*, the late Justice Stevens wrote the opinion for a unanimous Court which...

1. Rejected the Government's political argument and affirmed judicial review on unequal representation and dilution of voting right.
2. Did not reverse the District Court 3-judge panel majority's ruling that the plaintiffs had standing.
3. Did not overrule the District Court 3-judge panel majority's opinion that the principles of vote equality set out in *Wesberry* also applied to apportionment of Representatives among States.
4. Found "*some force to the argument that the same historical insights that informed our construction of Article I, § 2, in the context of intrastate districting should apply here as well.*"
5. Affirmed that "*the constitutional command that Representatives be chosen "by the People of the Several States" meant that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's."*
6. Quoted in length Justice Black's opinion in *Wesberry v. Sanders* (1964) "*...The House of Representatives, the Convention agreed, was to represent the people as individuals, and on a basis of complete equality for each voter.*"
7. Affirmed that "*In subsequent cases, the Court interpreted that standard as imposing a burden on the States to "make a good-faith effort to achieve precise mathematical equality."*

8. Rejected Montana’s request to retain two seats because it *“has the effect of increasing the variance in the relative difference between the ideal and the size of the districts in both Montana and Washington.”*
9. Stated that *“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 no constitutional obstacle preventing Congress from adopting such a sensible procedure.”*

### **Plaintiff/Appellant Has Standing**

Just as the plaintiffs in Montana, Plaintiff/Appellant has brought this lawsuit on the grounds of violation of our voting rights and equal protection. Pursuant to *Montana*, as well as *Baker, Reynolds, and Wesberry*, Plaintiff/Appellant has the standing.

### **George Washington’s First Veto Message**

Thomas Jefferson deemed the first congressional reapportionment bill unconstitutional,

*“If the [ratio of] representation [is] obtained by any process not prescribed in the Constitution, it [then] becomes arbitrary and inadmissible.”*

Convinced by Jefferson, George Washington vetoed the bill with these explicit objections:

*“First. The Constitution has prescribed that Representatives shall be apportioned among the several States according to their respective numbers, and there is no one proportion or divisor which, applied to the respective numbers of the States, will yield the number and allotment of Representatives proposed by the bill.*

*Second. The Constitution has also provided that the number of Representatives shall not exceed I for every 30,000, which restriction is by the context and by fair and obvious construction to be applied to the separate and respective numbers of the States; and the bill has allotted to eight of the States more than I for every 30,000.”*

Essentially, the two arguably most important founding fathers emphatically declared if there wasn't one proportion / divisor / ratio of representation that was fair, obvious and applied to all states according to their respective numbers, then such reapportionment bill would be unconstitutional. In another word, Washington and Jefferson would have vetoed the reapportionment laws since 1929 because they are arbitrary and inadmissible and unconstitutional.

### **The Modified Wyoming Rule**

The Plaintiff/Appellant has proposed the Wyoming Rule with Nearest Tenth Digit, and believes it is exactly such a sensible procedure called for by the Supreme Court in *Montana*. It will work in a simple straightforward manner as follows:

1. The least populous state's population will be always the baseline population and the common denominator, which currently is Wyoming's population c.a. 600,000.
2. Divide all other 49 states' population by the common denominator, currently 600,000.
3. Each state's house delegation is determined by its resultant quotient with one member's vote carrying the resultant fraction and representing a larger district in the respective state.
  - a. For example, NYS's population of c.a. 20 million is divided by 600,000, the resultant quotient is rounded to 33.3. Hence, NYS gets 33 members, 32 members have a vote value of 1.0 each, the 33<sup>rd</sup> member has a vote value of 1.3 representing a larger district.
  - b. For Montana, its population c.a. 1.07 million is divided by 600,000, the resultant quotient is rounded to 1.8. Therefore, Montana will have 1 member with a vote value of 1.8 representing all of its 1.07 million residents.
4. Every house member's congressional/federal ID card will be programmed with the value of his/her vote. A congressional voting system will read each card for each casting a vote, then instantly display, record and tally the results on a big board in the House.

### **The Modified Wyoming Rule will...**

1. Comply with the Founding Fathers' insistence in the Great Compromise that equal representation by population in the House balanced the equal representation among states in the Senate.
2. Ensure every state will get at least one member in the House as mandated by Article I § 2.
3. Guarantee every state's population will be equally represented as mandated by Article IV § 2's Equal Privilege Clause, and the 14<sup>th</sup> Amendment's Equal Protection Clause, no American in any state will be favored as "high priority" or condemned as "low priority" as currently treated by the so-called Equal Proportion method.
4. Satisfy Thomas Jefferson's demand for arithmetic precision.
5. Satisfy James Wilson's requirement of vote equality.
6. Address James Madison's concern that the House would become too large. The total number of house members will be determined by dividing the U.S. total population by the baseline population. By the latest estimate, it would be around 550 (US population 330 million divided by Wyoming's population 600,000). Germany (709 seats), the U.K. (650 seats), and France (577 seats) all have far more members in their lower house while their respective population is only 20% to 25% of the U.S. population.
7. Satisfy the Supreme Court's desire for self-execution without any politics and transparency easily understandable to the general public.
8. Satisfy the Supreme Court's primary concern in *Montana* about significant absolute and relative variances among all 50 states. Based on 2017 estimated populations, the Modified Wyoming Rule will significantly narrow among the 50 states the absolute variance to the

baseline population from [-49,496 to 471,178] to [-13,469 to 9,373], and the relative variance from [ -8.5% to 81.3%] to [-2% to 0.9%] (see Appendix on Page 7).

## **In Conclusion**

The existing cap of 435 combined with Equal Proportion method enacted by Congress since 1929 has betrayed our country's founding principle (taxation with equal representation), dishonored our founding fathers' Great Compromise, violated multiple textual provisions in the Constitution, and contradicted multiple Supreme Court's previous decisions.

The Plaintiff/Appellant not only has the standing as affirmed by the Supreme Court's multiple previous decisions, but also has presented a far better solution that will rectify all of the deficiencies under the current reapportionment process.

The 2020 Census results will be announced soon, hence time is of essence. It is long overdue to guarantee every American's equal right to vote and be represented in the House of Representatives regardless of state residence as insisted by our Founding Fathers and mandated by the Constitution.

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 inconsistent with respect to the Great Compromise and multiple constitutional provisions, such as 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  
October 18, 2020

**State-by-State Allocation of Seats in House of Representatives**  
**The Modified Wyoming Rule with Nearest Tenth Digit Proposal**

Census Data as of 2017: [https://en.wikipedia.org/wiki/List\\_of\\_states\\_and\\_territories\\_of\\_the\\_United\\_States\\_by\\_population](https://en.wikipedia.org/wiki/List_of_states_and_territories_of_the_United_States_by_population)

				1,050,493	471,178	81.3%	44.9%					2.4%	588,688	9,373	0.9%
	Maximum			579,315	529,820	-49,496	-8.5%	-9.3%				-1.6%	565,846	-13,469	-2.0%
	Minimum			744,903				22.4%	561.1	497.0	64.1	0.1%			
	Average							73,122,172	542	497	45	311,867			
	Total	325,719,178	435												
Index	State	Population 2017	Current # of House Reps Allocated	Current Population per HouseRep	Current Absolute Variance to Base Population	# of HouseRep Guaranteed By the Constitution	Current Population Taxed w/o Rep %	Proposed HouseRep Rounded to the Nearest Tenth Digit	Proposed # of Members with 1 Vote	Proposed # of Members with 1.1-1.9 Vote	Proposed Population Taxed w/o Rep %	Proposed Population per HouseRep	Proposed Absolute Variance to Base Population	Proposed Relative Variance to Base Population	
1	California	39,536,653	53	745,975	166,660	68.25	22.3%	68.2	67	1.2	-0.1%	579,716	401	0.001%	
2	Texas	28,304,596	36	786,239	206,924	48.86	26.3%	48.9	47	1.9	0.1%	578,826	(489)	-0.002%	
3	Florida	20,984,400	27	777,200	197,885	36.22	25.5%	36.2	35	1.2	-0.1%	579,680	365	0.002%	
4	New York	19,849,399	27	735,163	155,848	34.26	21.2%	34.3	33	1.3	0.1%	578,700	(615)	-0.003%	
5	Illinois	12,802,023	18	711,224	131,909	22.10	18.5%	22.1	21	1.1	0.0%	579,277	(38)	0.000%	
6	Pennsylvania	12,805,537	18	711,419	132,104	22.10	18.6%	22.1	21	1.1	0.0%	579,436	121	0.001%	
7	Ohio	11,658,609	16	728,663	149,348	20.12	20.5%	20.1	19	1.1	-0.1%	580,030	715	0.006%	
8	Georgia	10,429,379	14	744,956	165,641	18.00	22.2%	18.0	18	0.0	0.0%	579,410	95	0.001%	
9	North Carolina	10,273,419	13	790,263	210,948	17.73	26.7%	17.7	16	1.7	-0.2%	580,419	1,104	0.011%	
10	Michigan	9,962,311	14	711,594	132,279	17.20	18.6%	17.2	16	1.2	0.0%	579,204	(111)	-0.001%	
11	New Jersey	9,005,644	12	750,470	171,155	15.55	22.8%	15.5	14	1.5	-0.3%	581,009	1,694	0.019%	
12	Virginia	8,470,020	11	770,002	190,687	14.62	24.8%	14.6	13	1.6	-0.1%	580,138	823	0.010%	
13	Washington	7,405,743	10	740,574	161,259	12.78	21.8%	12.8	11	1.8	0.1%	578,574	(741)	-0.010%	
14	Arizona	7,016,270	9	779,586	200,271	12.11	25.7%	12.1	11	1.1	-0.1%	579,857	542	0.008%	
15	Massachusetts	6,859,819	9	762,202	182,887	11.84	24.0%	11.8	10	1.8	-0.3%	581,341	2,026	0.030%	
16	Tennessee	6,715,984	9	746,220	166,905	11.59	22.4%	11.6	10	1.6	0.1%	578,964	(351)	-0.005%	
17	Indiana	6,666,818	9	740,758	161,443	11.51	21.8%	11.5	10	1.5	-0.1%	579,723	408	0.006%	
18	Missouri	6,113,532	8	764,192	184,877	10.55	24.2%	10.6	9	1.6	0.4%	576,748	(2,567)	-0.042%	
19	Maryland	6,052,177	8	756,522	177,207	10.45	23.4%	10.4	9	1.4	-0.5%	581,940	2,625	0.043%	
20	Wisconsin	5,795,483	8	724,435	145,120	10.00	20.0%	10.0	10	0.0	0.0%	579,548	233	0.004%	
21	Colorado	5,607,154	7	801,022	221,707	9.68	27.7%	9.7	8	1.7	0.2%	578,057	(1,258)	-0.022%	
22	Minnesota	5,576,606	8	697,076	117,761	9.63	16.9%	9.6	8	1.6	-0.3%	580,896	1,581	0.028%	
23	South Carolina	5,024,369	7	717,767	138,452	8.67	19.3%	8.7	7	1.7	0.3%	577,514	(1,801)	-0.036%	
24	Alabama	4,874,747	7	696,392	117,077	8.41	16.8%	8.4	7	1.4	-0.2%	580,327	1,012	0.021%	
25	Louisiana	4,684,333	6	780,722	201,407	8.09	25.8%	8.1	7	1.1	0.2%	578,313	(1,002)	-0.021%	
26	Kentucky	4,454,189	6	742,365	163,050	7.69	22.0%	7.7	6	1.7	0.1%	578,466	(849)	-0.019%	
27	Oregon	4,142,776	5	828,555	249,240	7.15	30.1%	7.2	6	1.2	0.7%	575,386	(3,929)	-0.095%	
28	Oklahoma	3,930,864	5	786,173	206,858	6.79	26.3%	6.8	5	1.8	0.2%	578,068	(1,247)	-0.032%	
29	Connecticut	3,588,184	5	717,637	138,322	6.19	19.3%	6.2	5	1.2	0.1%	578,739	(576)	-0.016%	
30	Iowa	3,145,711	4	786,428	207,113	5.43	26.3%	5.4	4	1.4	-0.6%	582,539	3,224	0.102%	
31	Utah	3,101,833	4	775,458	196,143	5.35	25.3%	5.4	4	1.4	0.9%	574,414	(4,901)	-0.158%	
32	Mississippi	2,984,100	4	746,025	166,710	5.15	22.3%	5.2	4	1.2	0.9%	573,865	(5,450)	-0.183%	
33	Arkansas	3,004,279	4	751,070	171,755	5.19	22.9%	5.2	4	1.2	0.3%	577,746	(1,569)	-0.052%	
34	Nevada	2,998,039	4	749,510	170,195	5.18	22.7%	5.2	4	1.2	0.5%	576,546	(2,769)	-0.092%	
35	Kansas	2,913,123	4	728,281	148,966	5.03	20.5%	5.0	5	0.0	-0.6%	582,625	3,310	0.114%	
36	New Mexico	2,088,070	3	696,023	116,708	3.60	16.8%	3.6	2	1.6	-0.1%	580,019	704	0.034%	
37	Nebraska	1,920,076	3	640,025	60,710	3.31	9.5%	3.3	2	1.3	-0.4%	581,841	2,526	0.132%	
38	West Virginia	1,815,857	3	605,286	25,971	3.13	4.3%	3.1	2	1.1	-1.1%	585,760	6,445	0.355%	
39	Idaho	1,716,943	2	858,472	279,157	2.96	32.5%	3.0	3	0.0	1.2%	572,314	(7,001)	-0.408%	
40	Hawaii	1,427,538	2	713,769	134,454	2.46	18.8%	2.5	1	1.5	1.5%	571,015	(8,300)	-0.581%	
41	New Hampshire	1,342,795	2	671,398	92,083	2.32	13.7%	2.3	1	1.3	-0.8%	583,824	4,509	0.336%	
42	Maine	1,335,907	2	667,954	88,639	2.31	13.3%	2.3	1	1.3	-0.3%	580,829	1,514	0.113%	
43	Rhode Island	1,059,639	2	529,820	(49,496)	1.83	-9.3%	1.8	0	1.8	-1.6%	588,688	9,373	0.885%	
44	Montana	1,050,493	1	1,050,493	471,178	1.81	44.9%	1.8	0	1.8	-0.7%	583,607	4,292	0.409%	
45	Delaware	961,939	1	961,939	382,624	1.66	39.8%	1.7	0	1.7	2.4%	565,846	(13,469)	-1.400%	
46	South Dakota	869,666	1	869,666	290,351	1.50	33.4%	1.5	0	1.5	-0.1%	579,777	462	0.053%	
47	North Dakota	755,393	1	755,393	176,078	1.30	23.3%	1.3	0	1.3	-0.3%	581,072	1,757	0.233%	
48	Alaska	739,795	1	739,795	160,480	1.28	21.7%	1.3	0	1.3	1.8%	569,073	(10,242)	-1.384%	
49	District of Columbia	693,972													
50	Vermont	623,657	1	623,657	44,342	1.08	7.1%	1.1	0	1.1	2.2%	566,961	(12,354)	-2.0%	
51	Wyoming	579,315	1	579,315	-	1.00	0.0%	1.0	1	0.0	0.0%	579,315	-	0.0%	

Index	Comments
1	Under the existing reapportionment laws, based on 2017 estimated populatons, the ration of 1 rep-per-population ranges from 529,802 to 1,050,493.
2	Currently nationwide a total of 73,122,172 Americans or 22.4% of U.S. population have been taxed without representation in the House.
3	Under the Modified Wyoming Rule, Wyoming has the least population, hence 579,315 would be the common denominator. Each state population is divided by the common denominator.
4	For example, NY population (19,849,399) / (579,315) = 34.264, the resultant quotient rounds to the nearest tenth digit, e.g. NY's quotient 34.264 rounds to 34.3
5	NY's number of seats increases from currently 27 to 34.3, i.e. 33 members have 1 vote each, the 34th member has a vote of 1.3 representing a proportionally larger district.
6	Under this proposal, nationwide only 311,867 Americans or 0.1% of U.S. population would be taxed without representation, while 340,308 or 0.1% of U.S population would be over-represented.
7	The highest percentage of population taxed without representation in one state would decrease from currently 44.9% (Montana) to 2.4% (Delaware).
8	The highest percentage of population taxed with over-representation in one state would decrease from currently 9.3% (Rhode Island) to 1.6% (Rhode Island).
9	Under this proposal, the total number of house seats would be around 550. In this simulation, the currently 435-body will increase by 107 additional members to 542 with a total vote of 561.1.
10	Among the 542 members 497 have 1 vote each, and 45 have a vote of 1.1 to 1.9, representing a proportionally larger district in each respective state.
11	The absolute variance to the least state population (the base) among all 50 states would narrow from [-49,496 to 471,178] to [-13,469 to 9,373].
12	The relative variance to the least state population (the base) among all 50 states would narrow from [-8.5% to 81.3%] to [-2% to 0.9%].