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No. 23-1331

**ORIGINAL**

IN THE  
**Supreme Court of the United States**

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William C. Schroeder,

*Petitioner,*

v.

United States of America,

*Respondent.*

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On Petition For Writ Of Certiorari To The United States Court Of Appeals For The  
Ninth Circuit

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PETITION FOR WRIT OF CERTIORARI

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(i)

## QUESTIONS PRESENTED

1. Representation in the House is not determined by population. U.S. Census Bureau Apportionment Tables show the gap between the states with the largest House districts (Delaware – 990,837; Idaho – 920,689; West Virginia – 897,523) and the states with the smallest House districts (Montana – 542,704; Rhode Island – 549,082; Wyoming – 577,719) is approaching 500,000 persons. This Court has held that “each representative must be accountable to (approximately) the same number of constituents.” *Rucho v. Common Cause*, 588 U.S. 684, 708 (2019); *Dept. of Commerce v. New York*, 588 U.S. \_\_\_, 139 S.Ct. 2551, 2586 (2019) (Breyer, J., concurring in part). Do U.S. CONST. amend. XIV, § 2, and U.S. CONST. art. I, § 2, require that each Member of the House of Representatives be elected from constituencies comprised of approximately the same number of residents?

2. The “Number of Electors” to which each “State may be entitled” for elections for the President and the Vice-President is “equal to the whole Number of Senators and Representatives” of each State “in the Congress[.]” Does U.S. CONST. art. II, § 1, require that each Member of the House of Representatives be elected from constituencies comprised of approximately the same number of residents, so that the “Number of Electors” assigned each state is determined by each state’s respective population?

3. This Court has held that a voter who resides in a district which has diluted voting power relative to other districts has Article III standing. *Gill v. Whitford*, 585 U.S. 48, 65-67 (2018); *Dept. of Commerce, et al., v. United States House of Representatives, et al.*, 525 U.S. 316, 334 (1999) (“[V]ote dilution satisfies the injury-in-fact, causation, and redressability requirements.”). Appellant, a Washington voter

(ii)

(district population: 771,595), has 0.703 of a vote in federal elections for the Presidency and Vice-Presidency, and for the House, as compared to a Montana voter (district population: 542,704).  $[542,704 / 771,595 = 0.703]$  Did the Court of Appeals err in holding that Appellant lacked standing?

4. This Court has held that “the interpretation of the apportionment provisions of the Constitution is well within the competence of the Judiciary. ... The political question doctrine presents no bar to our reaching the merits of this dispute[.]” *Dept. of Commerce v. Montana*, 503 U.S. 442, 458-59 (1992). Did the Court of Appeals err in holding that Appellant’s claims were barred by the political question doctrine?

(iii)

**LIST OF PARTIES**

William C. Schroeder, *Petitioner*

And

United States of America, *Respondent*

**LIST OF PROCEEDINGS**

*Schroeder v. United States*, No. 2:22-cv-00172-MKD, U.S. District Court for the Eastern District of Washington. Order of Dismissal [ECF 10] and Judgment [ECF 9] entered on September 11, 2023.

*Schroeder v. United States*, No. 23-35606, U.S. Court of Appeals for the Ninth Circuit. Memorandum Decision [ECF 28] filed May 9, 2024.

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**PETITION FOR WRIT OF CERTIORARI**

Petitioner William C. Schroeder respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

**OPINIONS BELOW**

The opinion [ECF 10] of the United States District Court for the Eastern District of Washington, *Schroeder v. United States*, No. 2:22-cv-00172-MKD, appears at Appendix A to this petition. It is unpublished, dated September 11, 2023, and available at 2023 WL 5916903.

The opinion of the United States Court of Appeals for the Ninth Circuit, *Schroeder v. United States*, No. 23-35606, appears at Appendix B to this petition. It is unpublished, dated May 9, 2024, and available at 2024 WL 2077787.

**JURISDICTION**

The date on which the United States Court of Appeals decided my case was May 9, 2024.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers[.] ... The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative[.]

### U.S. CONST. art. I, § 2.

Each State shall appoint ... 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. art. II, § 1.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State[.]

### U.S. CONST. amend. XIV, § 2.

(a) On the first day, or within one week thereafter, of the first regular session of the [**Seventy-First / Seventy-Seventh / Eighty-Second**] Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the [**fifteenth / sixteenth / seventeenth**] and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of **the then existing number of Representatives** [435] by the method known as the method of equal proportions, no State to receive less than one Member.

(b) Each State shall be entitled, in the [**Seventy-Second / Seventy-Eighth / Eighty-Third**] Congress and in each Congress thereafter until the taking effect of a reapportionment under this section or subsequent statute, to the number of Representatives shown in the statement required by subsection (a) of this section, no State to receive less than one Member.

2 U.S.C. § 2a (**emphasis added**) (June 18, 1929, ch. 28, § 22, 46 Stat. 26; Apr. 25, 1940, ch. 152, 54 Stat. 162; Nov. 15, 1941, ch. 470, § 1, 55 Stat. 761; Pub. L. 104-186, title II, § 201, Aug. 20, 1996, 110 Stat. 1724).

## STATEMENT OF THE CASE

### A. Basis for Federal Jurisdiction.

#### 1. *U.S. District Court for the Eastern District of Washington Had Jurisdiction.*

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.C. § 1331.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person ... To ... secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

28 U.S.C. § 1343(a)(4).

Petitioner, resident of Spokane, Washington, commenced suit on July 18, 2022. [ER-18-77] Respondent moved to dismiss the complaint on September 19, 2022. [ER-121] The district court issued the memorandum decision (dismissal without prejudice) on September 11, 2023. [ER-6-17] The clerk entered the Judgment in a Civil Action the same day. [See ER-5; ER-121-122]

#### 2. *U.S. Court of Appeals Had Appellate Jurisdiction.*

“The courts of appeals ... shall have jurisdiction of appeals from all final decisions of the district courts of the United States[.]” 28 U.S.C. § 1291.

[A]ppeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeals as follows: ... From a district court of the United States to the court of appeals for the circuit embracing the district[.]

28 U.S.C. § 1294(1).

The Ninth Circuit ‘embraces’ the United States District Court for the Eastern District of Washington. 28 U.S.C. § 41; 28 U.S.C. § 46.

The Court of Appeals had jurisdiction over the appeal of the memorandum decision [ER-6-17] and judgment [ER-5] of the district court for the Eastern District of Washington, which dismissed Petitioner’s claim on motion.

## B. Summary – Popular Representation In The House Is A Common Misconception.

From 1792 to 1913, House Seats, and later House Districts, were apportioned by equal ratios - each Member represented the same number of residents, first directly, and later through equal-population, contiguous districts.

The Constitution, therefore, must be understood, not as enjoining an absolute relative equality, because that would be demanding an impossibility, but as requiring of Congress to make the apportionment of Representatives among the several states according to their respective numbers, as near as may be. That which cannot be done perfectly must be done in a manner as near perfection as can be.

Representative Daniel Webster, as quoted in Crocker, R., *The House of Representatives Apportionment Formula: An Analysis of Proposals for Change and Their Impact on States*, at p.4, Congressional Research Service ([www.crs.gov](http://www.crs.gov)), Library of Congress, Order Code R41382, August 26, 2010.

Congress failed to reapportion after the 1920 census.

In 1929, Congress enacted 2 U.S.C. § 2a to divide the “then existing number” of representatives, 435, among the states after each decennial census. In recent decades, this has produced House districts with six-digit inter-state population differences.

Apportionment Tables published by the United States Census Bureau<sup>1</sup> show that following the census in 2020, 435 House Seats were assigned to the several states as follows:

State	2020		
	Average Population Per Seat [District]	Total Population [State]	Seats [Districts]
Delaware	990,837	989,948	1
Idaho	920,689	1,839,106	2
West Virginia	897,523	1,793,716	2
South Dakota	887,770	886,667	1

<sup>1</sup>See [www.census.gov/data/tables/time-series/dec/apportionment-data-text.html](http://www.census.gov/data/tables/time-series/dec/apportionment-data-text.html), last accessed May 30, 2024.

Utah	818,813	3,271,616	4
Iowa	798,102	3,190,369	4
Arizona	795,436	7,151,502	9
Oklahoma	792,703	3,959,353	5
Ohio	787,257	11,799,448	15
Virginia	786,777	8,631,393	11
Massachusetts	781,497	7,029,917	9
North Dakota	779,702	779,094	1
New York	777,529	20,201,249	26
Nevada	777,116	3,104,614	4
Louisiana	776,911	4,657,757	6
Michigan	775,726	10,077,331	13
New Jersey	774,541	9,288,994	12
Maryland	773,160	6,177,224	8
Washington	771,595	7,705,281	10
Florida	770,376	21,538,187	28
Missouri	770,035	6,154,913	8
Tennessee	768,544	6,910,840	9
Texas	767,981	29,145,561	38
Georgia	766,091	10,711,908	14
Pennsylvania	765,403	13,002,700	17
California	761,091	39,538,223	52
Indiana	754,476	6,785,528	9
Illinois	754,279	12,812,508	17
Arkansas	753,439	3,011,524	4
Kentucky	751,557	4,505,836	6
North Carolina	746,711	10,439,388	14
Mississippi	740,979	2,961,279	4
Wisconsin	737,184	5,893,718	8
Alaska	736,081	733,391	1
Kansas	735,216	2,937,880	4
South Carolina	732,102	5,118,425	7
Hawaii	730,069	1,455,271	2
Colorado	722,771	5,773,714	8
Connecticut	721,660	3,605,944	5
Alabama	718,579	5,024,279	7
Minnesota	713,719	5,706,494	8
Oregon	706,917	4,237,256	6
New Mexico	706,740	2,117,522	3
New Hampshire	689,545	1,377,529	2
Maine	681,791	1,362,359	2
Nebraska	654,444	1,961,504	3
Vermont	643,503	643,077	1
Wyoming	577,719	576,851	1

Rhode Island	549,082	1,097,379	2
Montana	542,704	1,084,225	2

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It is a common misconception that representation in the House, which is to say apportionment of House seats among the several states, is determined by population. This common misconception is even shared by the Office of the President of the United States:

In accord with constitutional and statutory requirements ... every apportionment since ratification of the Fourteenth Amendment has calculated each State's share of Representatives based on "the whole number of persons in each State," ... This unbroken practice has ensured that "the basis of representation in the House" is "every individual of the community at large." (*Evenwel v. Abbott*, 136 S. Ct. 1120, 1127 (2016).

January 20, 2021, *Executive Order on Ensuring a Lawful and Accurate Enumeration and Apportionment Pursuant to the Decennial Census*.

The official Apportionment Tables published by the Census Bureau, and quoted *supra*, show that "the basis of representation in the House" is not population.

The gap between the states with the largest House districts (Delaware – 990,837; Idaho – 920,689; West Virginia – 897,523) and the states with the smallest House districts (Montana – 542,704; Rhode Island – 549,082; Wyoming – 577,719) is approaching 500,000 persons, and will only continue to increase.

### **C. Apportionment From 1792 To 1868, Pursuant To Art. I, § 2.**

After each of the first five (5) censuses, the same language was employed in the respective apportionment acts, changing only the number:

[T]he House of Representatives shall be composed of members elected agreeably to a ratio of one member for every [ ] thousand persons in each state, computed according to the rule prescribed by the constitution[.]

See Apportionment Act of April 14, 1792, 2nd Cong., Sess. I, Ch. 23; Apportionment Act of January 14, 1802, 7th Cong., Sess. I, Ch. 1; Apportionment Act of December 21,

1811, 12th Cong., Sess. I, Ch. 9; Apportionment Act of March 7, 1822, 17th Cong., Sess. I, Ch. 10; and Apportionment Act of May 22, 1832, 22nd Cong., Sess. I, Ch. 91.

After the sixth census, Congress used the same apportionment language, and added a ‘greater fractions’ method, a ‘separate districts’ requirement, and a ‘contiguous territory’ requirement:

[T]he House of Representatives shall be composed of members elected agreeably to a ratio of one Representative for every seventy thousand six hundred and eighty persons in each State, and of one additional representative for each State having a fraction greater than one moiety of the said ratio[.] ..

And be it further enacted, That in every case where a State is entitled to more than one Representative, the number to which each State shall be entitled under this apportionment shall be elected by districts composed of contiguous territory equal in number to the number of Representatives to which said State may be entitled, no one district electing more than one Representative.

Apportionment Act of June 25, 1842, 27th Cong., Sess. II, Ch. 47.

After the seventh census, the 1850 Act provided that the aggregate population of the United States “shall be divided by the number two hundred and thirty-three [233], and the product of such division ... shall be the ratio, or rule of apportionment, of representatives among the several States[.]” Census Act of 1850, 31st Cong., Sess. I, Ch. 11, Sec. 25 (May 23, 1850).

The number of Representatives was subsequently increased to 234. Apportionment Act of July 30, 1852, 32nd Cong., Sess. I, Ch. 74.

After the eighth census, the number of House Seats was increased to 241. Apportionment Act of March 4, 1862, 37th Cong., Sess. II, Ch. 36.

**D. Apportionment From 1868 To 1913. Pursuant To U.S. CONST. amend. XIV, § 2.**

“Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State[.]” U.S. CONST. amend. XIV, § 2.



Each citizen has a “right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof[.]”  
*Id.*

Congress used the same apportionment language after the ninth, tenth, eleventh, twelfth, and thirteenth censuses:

[T]he House of Representatives shall be composed of [ ] members, to be apportioned among the several States[.] ... Congress shall be elected by Districts composed of contiguous territory, and containing as nearly as practicable an equal number of inhabitants[. The said districts shall be] equal in number to the Representatives to which such State may be entitled in Congress, no one District electing more than one Representative[.]

Apportionment Act of February 2, 1872, 42nd Cong., Sess. II, Ch. 11, Sec. 1; Supplemental Act of May 30, 1872, 42nd Cong., Sess. II, Ch. 239; Apportionment Act of February 25, 1882, 47th Cong., Sess. I, Ch. 20;

Apportionment Act of February 7, 1891, 51st Cong., Sess. II, Ch. 116; Apportionment Act of January 16, 1901, 56th Cong., Sess. II, Ch. 93; and Apportionment Act of August 8, 1911, 62nd Cong., Sess. I, Ch. 5.

**E. “In 1920, The Census Bureau Did Transmit Apportionment Counts To Congress, But Congress Did Not Reapportion.”**

The above quote is from the Census Bureau’s Apportionment Table, at note 2:  
[www.census.gov/data/tables/time-series/dec/apportionment-data-text.html](http://www.census.gov/data/tables/time-series/dec/apportionment-data-text.html).

The fourteenth census counted 106,021,537 resident persons in the forty-eight (48) United States, as of January 1, 1920.

The present size of the House was arrived at purely by chance. The apportionment in 1911 provided for a House of 433 members since that was the lowest number which would prevent any state from losing a representative. The admission to statehood one year later of Arizona and New Mexico forced the size of the House to its present level without any thought that a House of 435 members would be permanent.

*Apportionment of the House of Representatives*, 58 Yale L.J. 1360, 1362-63 (July, 1949).

After the census of 1920 the House Committee on the Census reported a bill fixing the size of the House at 483, the smallest size which would cause no state to lose a representative. The House amended this to provide a body of 435 members, but the Senate killed the bill because many states would have lost seats. A new measure was then reported which would have apportioned 460 members, causing two states to lose one representative each. By a margin of four votes, the House defeated this bill. In 1927 another bill which would have provided a House of 435 members was defeated.

58 Yale L.J. at 1363.

**F. The Permanent Apportionment Act Of 1929 Sets The “Then Existing Number” Of 435.**

“Until 1929 no two apportionment acts had ever provided for the same size House.” 58 Yale L.J. at 1362. “In order to prevent the recurrence of a decade without an apportionment, Congress passed a Permanent Apportionment Act in 1929.” *Id.* at 1363.

“[T]he tabulation of total population by States as required for the apportionment of Representatives shall be completed within eight months from the beginning of the enumeration and reported by the Director of the Census to the Secretary of Commerce and by him to the President of the United States.” Fifteenth Census and Apportionment Act of June 18, 1929, 71st Cong., Sess. I, Ch. 28, Sec. 2.

[T]he President shall transmit to the Congress a statement showing the whole number of persons in each State ... as ascertained under the fifteenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives [435][.]

*Id.*

Congress in 1929 enacted what it considered to be a backstop, which would automatically conduct the apportionment process if a future Congress failed to act.

The enactment of an apportionment law that will forever hereafter prevent a failure to reapportion under the Constitution is of itself a great

achievement. For almost a decade Congress has failed to perform this plain constitutional duty, and there were the strongest reasons for fearing that, unless an anticipatory reapportionment law was passed before the 1930 census is taken, no reapportionment would be made for years to come, and never again without greatly increasing the size of the House. With this law on the statute books if a future Congress charged with the duty of making a reapportionment shall fail in that duty the law we have enacted will automatically come into operation and the apportionment will be made in accordance with this law.

Congressional Record [House], June 19, 1929, p. 3288.

I disliked to support a measure which transferred to the executive branch a duty imposed by the Constitution on Congress, but I found consolation in the fact that Congress will have three months to perform this duty, and not unless Congress fails again to act will the executive branch have the power to reapportion. The outstanding feature of the legislation is that the House will be reapportioned on the basis of the census of 1930, and some thirty million people now residing in the large cities and now deprived of proper representation due to Congress failing to reapportion since 1911 will secure the representation to which they are entitled. From forty to fifty representatives now credited to rural districts will be succeeded by representatives from urban centers, when the County is properly reapportioned. The influence of the Anti-Saloon League and kindred organizations prevented re-apportionment in the past because the representatives of these organizations knew their influence was more pronounced among Congressmen elected from rural districts than among those elected from the cities.

Congressional Records [House], June 19, 1929, p. 3304.

It was necessary in the act to specify for what size House the Secretary of the Interior should prepare his tables, and Congress wrote into law the figure 435. The Permanent Apportionment Act was amended in 1941 to require use of the method of equal proportions, but the size of the House was not changed. The present "fixed" limit on the size of the House means that some states will have their number of representatives reduced at any apportionment.

*Apportionment of the House of Representatives*, 58 Yale L.J. at 1363.

### **G. U.S. Population Triples, While the House is Unchanged.**

#### *1. 1930 – fifteenth census.*

The fifteenth census counted 123,202,624 resident persons in the forty-eight (48) United States, as of April 1, 1930.

After the 1930 census, 47 states were assigned House districts of between 220,768 and 395,982 residents; and Nevada [population 91,058] was assigned a

House district of 86,390 residents. Excepting Nevada, the maximum inter-state House district gap was 175,214 residents.

2. *1940 – sixteenth census.*

The sixteenth census counted 132,164,569 resident persons in the forty-eight (48) United States, as of April 1, 1940.

After the 1940 census, 47 states were assigned House districts of between 249,631 and 359,231 residents; and Nevada [population 110,247] was assigned a House district of 110,247 residents. Excepting Nevada, the maximum inter-state House district gap was 109,600.

3. *1950 – seventeenth census.*

The seventeenth census counted 151,325,798 resident persons in the forty-eight (48) United States, as of April 1, 1950.

After the 1950 census, 47 states were assigned House districts of between 266,621 and 395,948 residents; and Nevada [population 160,083] was assigned a House district comprised of 160,083 residents. Excepting Nevada, the maximum inter-state House district gap was 129,327.

4. *1960 – eighteenth census.*

The eighteenth census counted 179,323,175 resident persons in the fifty (50) United States, as of April 1, 1960.

After the 1960 census, 48 states were assigned House districts of between 303,461 and 484,633 residents; Nevada was assigned one district of 285,278; and Alaska was assigned one district of 226,167 residents. Excepting Nevada and Alaska, the maximum inter-state House district gap was 181,172 residents.

5. *1970 – nineteenth census.*

The nineteenth census counted 203,302,031 resident persons in the United States, as of April 1, 1970.

After the 1970 census, 36 states were assigned House districts of between 430,914 and 498,940 residents; seven (7) states were assigned House districts of between 304,067 and 392,451 residents; six (6) states were assigned House districts of between 503,160 and 551,928; and North Dakota [population 617,761] was assigned a House district of 624,181 residents. Excepting North Dakota, the maximum inter-state House district gap was 247,861.

*6. 1980 – twentieth census.*

The twentieth census counted 226,542,199 resident persons in the United States, as of April 1, 1980.

After the 1980 census, 34 states were assigned House districts of between 504,128 and 595,225 residents; 12 states were assigned House districts of between 400,481 and 487,411 residents; Nevada and Montana were assigned House districts of 399,592 and 393,345 residents, respectively; and North Dakota and South Dakota were assigned House districts of 652,695 and 690,178 residents, respectively. Excluding the two (2) largest and the two (2) smallest, the maximum inter-state House district gap was still 194,744.

*7. 1990 – twenty-first census.*

The twenty-first census counted 248,709,873 resident persons in the United States, as of April 1, 1990.

After the 1990 census, 37 states were assigned House districts of between 502,992 and 599,828 residents; 11 states were assigned House districts of between 600,542 and 699,999 residents; Wyoming [population 453,588], was assigned a house district of 455,975 residents; and Montana [population 799,065], was assigned a house district of 803,655 residents. Excluding Wyoming and Montana, the maximum inter-state House district gap was still 197,007.

**H. In the 21<sup>st</sup> Century, the Gap Between the Smallest-District-States and the Largest-District-States Approaches 500,000.**

*1. 2000 – twenty-second census.*

The twenty-second census counted 281,421,906 resident persons in the United States, as of April 1, 2000.

After the 2000 census, 41 states were assigned districts of between 604,359 and 691,764 residents; four (4) states were assigned districts of between 713,232 and 785,068 residents; three (3) states were assigned districts of between 524,831 and 586,385 residents; Wyoming [population 493,782] was assigned a district of 495,304 residents; and Montana [population 902,195] was assigned a district of 905,316 residents.

State	2000		Number of Seats
	Average Population Per Seat	Total Population	
Montana	905,316	902,195	1
Delaware	785,068	783,600	1
South Dakota	756,874	754,844	1
Utah	745,571	2,233,169	3
Mississippi	713,232	2,844,658	4
Oklahoma	691,764	3,450,654	5
Oregon	685,709	3,421,399	5
Connecticut	681,907	3,405,565	5
Indiana	676,754	6,080,485	9
Kentucky	674,905	4,041,769	6
Kansas	673,456	2,688,418	4
Wisconsin	671,401	5,363,675	8
South Carolina	670,844	4,012,012	6
Arkansas	669,933	2,673,400	4
Nevada	667,344	1,998,257	3
Michigan	663,722	9,938,444	15
Maryland	663,486	5,296,486	8
Washington	656,520	5,894,121	9
New York	655,344	18,976,457	29
Illinois	654,686	12,419,293	19
Texas	653,250	20,851,820	32
Idaho	648,637	1,293,953	2

New Jersey	648,027	8,414,350	13
Pennsylvania	647,404	12,281,054	19
Virginia	645,518	7,078,515	11
North Dakota	643,756	642,200	1
Arizona	642,585	5,130,632	8
Florida	641,156	15,982,378	25
California	640,204	33,871,648	53
Louisiana	640,039	4,468,976	7
Maine	638,866	1,274,923	2
Alabama	637,304	4,447,100	7
Massachusetts	635,557	6,349,097	10
Tennessee	633,337	5,689,283	9
Ohio	631,919	11,353,140	18
Georgia	631,306	8,186,453	13
Alaska	628,933	626,932	1
Missouri	622,918	5,595,211	9
North Carolina	620,590	8,049,313	13
New Hampshire	619,208	1,235,786	2
Colorado	615,983	4,301,261	7
Minnesota	615,709	4,919,479	8
Vermont	609,890	608,827	1
Hawaii	608,321	1,211,537	2
New Mexico	607,940	1,819,046	3
West Virginia	604,359	1,808,344	3
Iowa	586,385	2,926,324	5
Nebraska	571,790	1,711,263	3
Rhode Island	524,831	1,048,319	2
Wyoming	495,304	493,782	1

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2. *2010 – twenty-third census.*

The twenty-third census counted 308,745,538 resident persons in the United States, as of April 1, 2010.

After the 2010 census, 30 states were assigned districts of between 700,029 and 786,750 residents; 15 states were assigned districts of between 610,608 and 694,826 residents; two (2) states were assigned districts of 527,624 and 568,300 residents, respectively; two (2) states were assigned districts of 994,416 and 900,877 residents, respectively; and South Dakota was assigned a district of 819,761.

State	2010		Number of Seats
	Average Population Per Seat	Total Population	
Montana	994,416	989,415	1
Delaware	900,877	897,934	1
South Dakota	819,761	814,180	1
Idaho	786,750	1,567,582	2
Oregon	769,721	3,831,074	5
Iowa	763,447	3,046,355	4
Louisiana	758,994	4,533,372	6
Oklahoma	752,976	3,751,351	5
Missouri	751,435	5,988,927	8
Mississippi	744,560	2,967,297	4
North Carolina	735,829	9,535,483	13
New Jersey	733,958	8,791,894	12
Arkansas	731,557	2,915,918	4
Virginia	730,703	8,001,024	11
Massachusetts	728,849	6,547,629	9
Kentucky	725,101	4,339,367	6
Maryland	723,741	5,773,552	8
Ohio	723,031	11,536,504	16
Indiana	722,398	6,483,802	9
Alaska	721,523	710,231	1
Colorado	720,704	5,029,196	7
New York	719,298	19,378,102	27
Connecticut	716,326	3,574,097	5
Kansas	715,953	2,853,118	4
Illinois	714,688	12,830,632	18
Arizona	712,522	6,392,017	9
Wisconsin	712,279	5,686,986	8
Tennessee	708,381	6,346,105	9
Michigan	707,973	9,883,640	14
Pennsylvania	707,495	12,702,379	18
California	704,566	37,253,956	53
Texas	701,901	25,145,561	36
Florida	700,029	18,801,310	27
Georgia	694,826	9,687,653	14
Utah	692,691	2,763,885	4
New Mexico	689,091	2,059,179	3
Alabama	686,140	4,779,736	7
Hawaii	683,431	1,360,301	2
Nevada	677,358	2,700,551	4
North Dakota	675,905	672,591	1



Washington	675,337	6,724,540	10
Maine	666,537	1,328,361	2
Minnesota	664,360	5,303,925	8
South Carolina	663,711	4,625,364	7
New Hampshire	660,723	1,316,470	2
Vermont	630,337	625,741	1
West Virginia	619,938	1,852,994	3
Nebraska	610,608	1,826,341	3
Wyoming	568,300	563,626	1
Rhode Island	527,624	1,052,567	2

3. 2020 – twenty-fourth census.

The twenty-fourth census counted 331,449,281 resident persons in the United States, as of April 1, 2020.

State	2020		
	Average Population Per Seat [District]	Total Population	Seats [Districts]
Delaware	990,837	989,948	1
Idaho	920,689	1,839,106	2
West Virginia	897,523	1,793,716	2
South Dakota	887,770	886,667	1
Utah	818,813	3,271,616	4
...			
Nebraska	654,444	1,961,504	3
Vermont	643,503	643,077	1
Wyoming	577,719	576,851	1
Rhode Island	549,082	1,097,379	2
Montana	542,704	1,084,225	2

The five (5) states assigned the largest districts, and the five (5) states assigned the smallest districts, are listed above. [see section 'A', *supra*, for complete chart].

## REASONS FOR GRANTING PETITION

**A. Whether the Constitution Requires Representatives From Every State To Each Represent Approximately The Same Number Of Constituents Is An Important Question Of Federal Law Which Should Be Settled By This Court, And The Court Of Appeals' Decision Conflicts With This Court's Decisions *Rucho v. Common Cause*, *Utah v. Evans*, and *Dept. of Commerce v. Montana*.**

This Court should grant the Petition pursuant to Rule 10(c), as this matter concerns an important question of federal law that should be determined by this Court, and the Court of Appeals' decision conflicts with prior decisions of this Court, specifically *Rucho v. Common Cause*, *supra*, *Utah v. Evans*, 536 U.S. 452 (2002), and *Dept. of Commerce v. Montana*, *supra*.

“Our precedents new and old have employed this structural method of interpretation to read the Constitution in the manner it was drafted and ratified—as a unified, coherent whole.” *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787, 829 (2015) (Roberts, C.J., dissenting) (citations omitted).

[W]hen it comes to interpreting the Constitution, not all history is created equal. ‘Constitutional rights are enshrined with the scope they were understood to have when the people adopted them.’ The Second Amendment was adopted in 1791; the Fourteenth in 1868.

*New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 34 (2022) (citation omitted).

We should be guided, therefore, by the Census Clause’s ‘original meaning, for [t]he Constitution is a written instrument. As such its meaning does not alter. That which it meant when adopted, it means now.’

*Utah v. Evans*, 536 U.S. at 491-92 (citations omitted) (Thomas, J., concurring in part and dissenting in part).

The census is intended to serve “the constitutional goal of equal representation.” *Franklin v. Massachusetts*, 505 U.S. 788, 804 (1992).

More generally, by mandating a population count that will be used to apportion representatives, see § 141(b), 2 U. S. C. § 2a, the Act imposes “a duty to conduct a census that is accurate and that fairly accounts for the crucial representational rights that depend on the census and the apportionment.” *Franklin*, 505 U.S. at 819–820[.]

*Dept. of Commerce v. New York*, 139 S.Ct. at 2568-69.

We have long relied on contemporaneous constructions of the Constitution when interpreting its provisions, for ‘early congressional enactments ‘provid[e] ‘contemporaneous and weighty evidence’ of the Constitution’s meaning.’ This Court has repeatedly laid down the principle that a contemporaneous legislative exposition of the Constitution when the founders of our Government and framers of our Constitution were actively participating in public affairs, acquiesced in for a long term of years, fixes the construction to be given its provisions[.]’

*Utah v. Evans*, 536 U.S. at 503-04 (citations omitted) (Thomas, J., concurring in part and dissenting in part).

[The Census] Clause reflects several important constitutional determinations: that comparative state political power in the House would reflect comparative population, not comparative wealth; that comparative power would shift every 10 years to reflect population changes; that federal tax authority would rest upon the same base; and that Congress, not the States, would determine the manner of conducting the census.

*Utah v. Evans*, 536 U.S. at 477 (citations omitted).

The Constitution apportions power among the States based on their respective populations; consequently, changes in population shift the balance of power among them. Mindful of the importance of calculating the population, the Framers chose their language with precision, requiring an “actual Enumeration,” U.S. Const., art. I, § 2, cl. 3. They opted for this language even though they were well aware that estimation methods and inferences could be used to calculate population.

*Utah v. Evans*, 536 U.S. at 488-89 (Thomas, J., concurring in part and dissenting in part).

“In *Wesberry v. Sanders*, the Court extended its ruling [in *Baker v. Carr*] to malapportionment of congressional districts, holding that art. I, § 2, required that ‘one man’s vote in a congressional election is to be worth as much as another’s.’” *Rucho v. Common Cause*, 588 U.S. at 700.

The history of the Constitution, particularly that part of it relating to the adoption of art. 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.

*Wesberry v. Sanders*, 376 U.S. 1, 9 (1964).

While it may not be possible to draw congressional districts with mathematical precision, 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.

*Wesberry*, 376 U.S. at 17-18.

We hold that, construed in its historical context, the command of art. 1, § 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.

*Wesberry*, 376 U.S. at 7.

This Court held that "each representative must be accountable to (approximately) the same number of constituents." *Rucho v. Common Cause*, 588 U.S. at 700.

The Framers wrote into the Constitution a mandate to conduct an "actual Enumeration" of the population every 10 years. Art. I, § 2, cl. 3. They did so for good reason. The purpose of the census is to "provide a basis for apportioning representatives among the states in the Congress," *Baldrige*, 455 U.S. at 353, 102 S.Ct. 1103, ensuring that "comparative state political power in the House ... reflect[s] comparative population," *Evans*, 536 U.S. at 477, 122 S.Ct. 2191. The Framers required an actual count of every resident to "limit political chicanery" and to prevent the census count from being "skewed for political ... purposes." *Id.*, at 500, 122 S.Ct. 2191 (THOMAS, J., concurring in part and dissenting in part).

*Department of Commerce v. New York*, 139 S.Ct. at 2586 (Breyer, J., concurring in part).

Presently, representation in the House is not determined by population. U.S. Census Bureau Apportionment Tables show the gap between the states with the largest House districts (Delaware – 990,837; Idaho – 920,689; West Virginia – 897,523) and the states with the smallest House districts (Montana – 542,704; Rhode Island – 549,082; Wyoming – 577,719) is approaching 500,000 persons.

As representation in the House is not determined by population, neither is the resulting “Number of Electors” assigned to each State for elections for the President and Vice-President.

U.S.CONST. amend. XIV, § 2, art. I, § 2, and art. II, § 1, require that each Member of the House of Representatives be elected from constituencies comprised of approximately the same number of residents.

The Petition should therefore be granted.

**B. Vote Dilution Is A Justiciable Controversy. The Court Of Appeals’ Decision Conflicts With Prior Decisions Of This Court: *Gill v. Whitford*; *Dept. of Commerce v. Montana*; And *Dept. of Commerce, et al., v. United States House of Representatives, et al.***

This Court should grant the Petition pursuant to Rule 10(c), as this matter concerns an important question of federal law that should be determined by this Court, and the Court of Appeals’ decision conflicts with prior decisions of this Court, specifically *Gill v. Whitford, supra*, 585 U.S. at 65-67; *Dept. of Commerce v. Montana, supra*, 503 U.S. at 458-59; and *Dept. of Commerce, et al., v. United States House of Representatives, et al., supra*, 525 U.S. at 334.

“The right to vote is too important in our free society to be stripped of judicial protection by such an interpretation of Article I.” *Wesberry*, 376 U.S. at 7.

[T]he reasons that supported the justiciability of challenges to state legislative districts . . . as well as state districting decisions relating to the election of Members of Congress ... apply with equal force to the issues presented by this litigation.

*Dept. of Commerce v. Montana*, 503 U.S. at 458-59.

A voter who resides in a district which has diluted voting power relative to other districts has Article III standing. *Gill v. Whitford*, 585 U.S. at 65-67.

“[V]ote dilution satisfies the injury-in-fact, causation, and redressability requirements.” *Department of Commerce, et al., v. United States House of Representatives, et al.*, 525 U.S. at 334.

In the context of apportionment, we have held that voters have standing to challenge an apportionment statute because “[t]hey are asserting ‘a plain, direct and adequate interest in maintaining the effectiveness of their votes.’”

*Department of Commerce, et al., v. United States House of Representatives, et al.*, 525 U.S. at 331-32 (quoting *Baker v. Carr*, 369 U.S. 186, 208 (1962) (quoting *Coleman v. Miller*, 307 U.S. 433, 438 (1939))).

Appellant, a Washington voter (district population: 771,595), has 0.703 of a vote in federal elections for the Presidency and Vice-Presidency, and for the House, as compared to a Montana voter (district population: 542,704). [542,704 / 771,595 = 0.703]

The Court of Appeals erred in holding Appellant lacked standing, and the Petition should be granted.

**C. Since “The Interpretation Of The Apportionment Provisions Of The Constitution Is Well Within The Competence Of The Judiciary,” The Court of Appeals’ Application of the Political Question Doctrine Conflicts with *Dept. of Commerce v. Montana*.**

... As our previous rejection of the political question doctrine in this context should make clear, the interpretation of the apportionment provisions of the Constitution is well within the competence of the Judiciary. ... The political question doctrine presents no bar to our reaching the merits of this dispute and deciding whether the District Court correctly construed the constitutional provisions at issue.

*Dept. of Commerce v. Montana*, 503 U.S. at 458-59.

Therefore, the Court of Appeals erred in holding that Appellant’s claims were barred by the political question doctrine, and the Petition should be granted.

## CONCLUSION

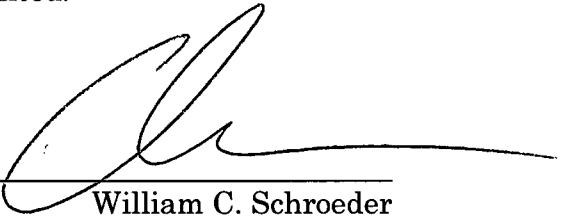
Presently, no two states have House districts with the same number of residents. This is the opposite of the stated intent of the Framers as expressed through Congressional enactments from 1792-1862, and from 1872-1913, that each

House member from every state represents approximately the same number of residents.

Moreover, unless each House seat represents approximately the same number of residents, then the 'electoral college' of art. II, § 1 is a lottery, with odds reallocated each decade.

The Petition for a Writ of Certiorari should be granted.

Signed this 11<sup>th</sup> day of June, 2024, by:

A handwritten signature in black ink, consisting of a large, stylized initial 'W' followed by a cursive 'C' and a long horizontal line extending to the right.

William C. Schroeder  
WSBA 41986  
*Pro Se*