RATIONAL FOR LIMITING THE NUMBER OF MEMBERS OF THE HOUSE OF REPRESENTATIVES TO 435

Article I, Section 2, Clause 3, of the Constitution provides:

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 within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative....

The first sentence of Article I, Section 2, Clause 3, has been changed as to apportionment by Section 2 of Amendment XIV, which provides in pertinent part that "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."
"The census has been taken decennially since 1790, and, with the exception of 1920, was followed each time by reapportionment." Constitution, Jefferson's Manual, and Rules of the House of Representatives, House Doc. No. 416, 93d Cong., 2d Sess. (1975), Section 15. "In the first Congress the House had 65 Members; increased after each census, except that of 1840, until 435 was reached in 1913," id., pursuant to the Act of August 8, 1911, 37 Stat. 13, 14. See VI Cannon's Precedents, Section 40. No reapportionment measures were enacted subsequent to the Act of August 8, 1911, until the Act of June 18, 1929, ch. 28, 46 Stat. 21. See Laurence Schmeckebier, Congressional Apportionment (1941), 120-22. Section 22 of the Act of June 18, 1929, 46 Stat. 26, provided, inter alia, as follows:

On the first day, or within one week thereafter, of the second regular session of the Seventy-first 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 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.... (emphasis added)

* The pertinent portions of the Act of June 18, 1929, as amended, are codified in 2 U.S.C. Sections 2a, 2b.
The language emphasized in that portion of section 22 of the Act of June 18, 1929, set forth above, was not affected by amendments to the 1929 Act by the Act of April 25, 1940, ch. 152, 54 Stat. 162, or by the Act of November 14, 1941, ch. 470, 55 Stat. 761. Thus, since March 4, 1913, "permanent House membership has remained fixed at 435...." Constitution, Jefferson's Manual, and Rules of the House of Representatives, supra, Section 227. However, "membership was temporarily increased to 436, then to 437, upon admission of Alaska (72 Stat. 345) and Hawaii (73 Stat. 8), but returned to 435 on January 3, 1963, the effective date of the reapportionment under the 18th decennial census." Id., Section 15.

Our research into the legislative history has revealed some indications as to why the number of Members of the House was set at 435 in 1911. Also, in the legislative history of the 1911 Act, as well as in certain other sources discussed below, there can be found various arguments that have been raised concerning the size of legislative bodies in general and the House of Representatives in particular, especially as to the relative advantages and disadvantages of large and small legislative bodies.

House Rept. 12, 62d Cong., 1st Sess. (Report of the Committee on the Census on H.R. 2983, which when enacted became the Act of August 8, 1911), stated at 3-4:
The bill provides an increase of 42 Members more than the present House. This increase of membership received the serious consideration of the committee and while it is realized that the size of the House should not be increased more than necessary, yet an increase to such a number as would prevent any State from losing a Member is felt to be justified under the conditions existing today....

It is important to keep the membership of the House as low as the growing and expanding interests of the country and the demand for full representation will allow. We must take into consideration the extended scope of legislation that necessarily arises in our growing and developing country. It is vitally important that the business of the House may be orderly and its work may be deliberative. It is already provided that the Hall in which the House meets shall be rearranged by providing for the seating of Members in a smaller space, so that they can better hear and understand the proceedings and we may fairly presume that under this new arrangement the House can conduct its business, with the increased membership, in a more orderly and less difficult manner than it can now with the present membership and the present arrangement of the House.

Senate Rept. 94, Part 2, 62d Cong., 1st Sess. (Report of the Minority of the Committee on the Census on H.R. 2983) is critical of H.R. 2983 for increasing the membership of the House and discusses various disadvantages of large legislative bodies. Pertinent portions of that discussion, at 2-4, are set forth below:
So large a number must make the House a clumsy and unwieldy instrument for legislation; it hampers the field of action and diminishes the responsibility of each individual Member. It intensifies the very dangerous tendency to make each Member a mere agent of a locality rather than a representative of the great body of the people. Again, such an increase in membership necessarily lodges the control of legislation in the hands of a few Members, with all the dangers of clique domination. This becomes a matter of the gravest importance in view of the increasing power of the special interests in politics and their skill and adroitness in securing legislative favors.

It is very often argued that the larger the body the more representative it is and the more independent each Member may be. This argument is absolutely fallacious. The larger the body the more representative it is and the more independent each Member may be. This argument is absolutely fallacious. On this subject Mr. Madison very aptly said in the Federalist:

The more numerous any assembly may be, of whatever characters composed, the greater is known to be the ascendency of passion over reason. In the next place, the larger the number the greater will be the proportion of members of limited information and of weak capacities. We know there are in such bodies considerable numbers, who can never be more than in supposing that in multipliying their Representatives beyond a certain limit they strengthened the barrier against the government of a few. The consequence of Government may become more democratic, but the soul that animates it will be more oligarchic.

The following expression on this subject in the Federalist is ascribed to Mr. Hamilton or to Mr. Madison. The question of the authorship of this quotation, as well as the former, is in doubt, although in the discussion of 1843 the former was ascribed to Mr. Madison.

Nothing can be more fallacious than to found our political calculations on arithmetical principles. Sixty or seventy men may be more properly trusted with a given degree of power than six or seven. But it does not follow that six or seven hundred would be proportionately a better depositary. And if we carry on the supposition to six or seven thousand, the whole reasoning ought to be reversed. The truth is that in all cases a certain number, at least, seems to be necessary to secure the benefit of free consultation and discussion, and to curb against too great a combination for improper purposes; as, on the other hand, the number ought not to be kept within a certain limit, in order to avoid the confusion and intemperance of a multitude. In all very numerous assemblies, of whatever character composed, passion never fails to wrest the scepter from reason. Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob.

One rule which seems to have almost controlling force in the action of the House was that no State should lose a member. This rule seems to have had great force in the apportionment under the census of 1800. If it is adopted in the present and succeeding decades, it will inevitably result in considerable increases in the membership of the House.

It is argued that this rule will be followed for this time, but that future Congresses may pursue a different method and limit the numbers. This contention virtually amounts to saying that while the present Congress may act wisely and present a good example for future apportionment acts, future Congresses will display a wisdom not exhibited at this time and refuse to follow our bad example. Considerations of every character which induce to such a course should give way to the general wisdom.

I pass by without special comment the probable additional expenses of $1,000,000 annually. This is relatively but a minor objection to the proposed plan. The influence of Members on the floor does not depend upon the State from which they come nor upon the number from that State, but rather upon their dignity and standing. With a House limited even to 41, Members who are not nearly close enough in the legislative race to enable one to influence the other one day, a smaller House would result in the distance of caucus and better results would be obtained in legislation. As relative to the standing and influence in proportion to numbers directly to the standing, dignity, power, and influence of the individual Members, as we increase the number up in a larger body we decrease the standing and influence of each individual Member.
Much more serious than the additional expense involved in the payment of Members and for the organization of a larger House is the increasing danger of extravagance arising from the pressure of individual Members for their respective localities. The tendency of each Member to obtain appropriations will be increased by an increase in membership. Independence and initiative would be discouraged. There would be a great lack of responsibility as to the presence of Members, and thus the difficulty of insuring the attendance of a quorum would be increased. Briefly summarized, an increase in the number in the House will have the following results:

1. Give greater opportunity for machine domination.
2. Give greater opportunity for the use of the "pork barrel."
3. Augment the now too prevalent chaos and confusion.
4. Increase the expense to the Government by $1,000,000 annually.
5. Make the committees more unwieldy. They are now too many in number and too large in membership.
6. Make it still harder to obtain a quorum and do business.
7. Make intelligent debate even more difficult than at present.

Although the Congress failed to reapportion after the 1920 census, H.R. 14498, a bill which would have increased the number of Members of the House to 483, was reported by the House Committee on the Census in 1921, 66th Cong., 3d Sess.

This bill was amended to provide for only 435 Members. The bill was passed by the House, but the Senate failed to act on it. There was some discussion of the reasons for limiting the House to 435 Members. See 60 Cong. Rec. 1676-94 (January 19, 1921). Senator Kennedy, of Rhode Island, advanced several arguments against limiting the House to 435 Members. 60 Cong. Rec. 1681-82. Kennedy pointed out that if the number of Representatives remains the same as the population of the country increases, each Member will represent an increasing number of people. Kennedy stated, 60 Cong. Rec. at 1681:
In the last 10 years, especially during the war, the people of this country have come into closer touch with their Government than they have during any previous period, and therefore they need today in the House of Representatives, the popular branch, a larger representation than ever before. It is a very well-known fact that the Members of the House have become and must remain in the future special advocates for the rights of their constituents in the various departments of the Government, whose bureaus, year by year, are becoming more numerous.

Kennedy dismissed the argument that economy will result by failing to increase the number of Members of the House. Of this argument, Kennedy said, 60 Cong. Rec. at 1681-82:

It is not tenable. Paying its legislators can never become an abuse which will seriously run up the measure of the public debt, and I am not disposed to believe that any serious injury can ever happen to the country through paying its legislators their salaries. The fact is that you are cheating representative government unless you endeavor to fix a ratio [of number of Members of the House to the population of the country] that will at least assure some degree of intimate relationship with your constituents.
Although the effect of the Act of June 18, 1929, ch. 28, 46 Stat. 21, was to limit the House to the number of Members (435) set by the 1911 Act, our research into the legislative history of the 1929 Act has revealed little significant discussion of this aspect of the measure. See Senate Rept. 2, 71st Cong., 1st Sess. (Report of the Committee on Commerce on S.312, which when enacted became the Act of June 18, 1929); House Repts. 19, 20, 71st Cong., 1st Sess. (Reports of the conference committee on S.312). See also 71 Cong. Rec. 1269, 1321, 1338, 1445, 1526, 1603, 1609, 1709, 1805, 1840, 1907, 1918, 1958, 1963, 1968, 2053, 2068, 2086, 2148, 2159, 2258-302, 2338-65, 2443, 2480, 2481, 2484, 2602-04 (1929). See generally Laurence Schmeckebier, Congressional Apportionment (1941), 122-24.

In 1961, in the 87th Congress, Representative Frank Chelf, of Kentucky, introduced H.R. 3725, which provided, inter alia, for increasing the number of Members of the House to 469. The bill was referred to the Committee on the Judiciary, see 107 Cong. Rec. 1703, but apparently received no further action. Representative Chelf, in a statement on August 24, 1961, to the Judiciary Committee in support of H.R. 3725, emphasized the need to reduce the number of persons represented by each Member so as to permit a Member to have more contact with his constituents. Chelf's statement also reviews certain other arguments for increasing the number of Members of the House, and provides a brief history of
the growth of the House. Chief's statement, as it appears in
the extension of remarks of Representative Frank Boykin, of
Alabama, 107 Cong., Rec. 17458-59 (August 29, 1961), is set
forth in the Appendix to this report.

Robert Luce, in Chapter V of his work Legislative
Assemblies (1924; De Capo Press reprint ed. 1974), noted that
"American lawmaking bodies were instituted and have developed
without any approach to uniformity in the matter of size."
Id., at 86 (reprint ed.). After discussing operations in
several different legislatures of varying sizes, and review-
ing numerous arguments concerning the relative advantages
and disadvantages of small and large legislatures, Luce con-
ccluded, id. at 96-97 (reprint ed.), that the various argu-
ments can be summarized as follows:

Large Houses are likely to secure
representation of a greater variety
of social interests, by having in
their membership men of all the
professions and many pursuits. A
much more extensive knowledge of
local conditions and local opinion
is available. Vandal influences can-
not turn a large body from the path
of duty. Bribery and corruption
have less chance, log-rolling is
harder, all secret influences are
hampered. In speeches and votes
personal friendships are less like-
ly to embarrass or swerve. Many
more citizens can profit by a share
in the educating effect of legisla-
tive service, and in turn the school-
ing in public affairs is much more
widely diffused by them throughout
the community. Vote voters know
their Representatives and therefore
take personal interest in the work
of the Legislature. Statutory as-
quaintance is fostered. Large bodies
move more slowly and therefore with less danger from hasty change. There are more men among whom to divide the work of committees.

On the other hand, as Cardinal de Retz said, every assembly of more than a hundred is a mob. In other words, large bodies are subject to the mob spirit, which replaces reason with impulse. Prejudice and passion sway large bodies. They tempt to partisan debate, which has been called the foe of reasonableness; to oratory, likewise called the foe of logic. Deliberation is declared impossible. Compromise and concession are hindered. It is harder to recede or accept correction before hundreds than before tens. A smaller proportion of the membership takes part in the business. Time is wasted; sessions are protracted.

Small Houses show less disposition to talk and to abuse freedom of debate. Their members are less inclined to pose. Yet each feels himself of more consequence, adding to his sense of responsibility. What every member does, is known. He can be watched and be strictly held accountable. The members get more thoroughly educated in public affairs. Party spirit is mitigated by friendly relations. Fewer bills are introduced, and sessions are correspondingly shortened. Money for salaries is saved.

On the other hand, in a small House, the single member has dangerous power. His one vote has the greater chance to defeat a good bill or pass a bad bill. This makes the absence of a few members a more serious matter.

Jay R. Shampansky
Legislative Attorney
American Law Division
March 9, 1977
Mr. Chairman and members of Subcommit-
mittee No. 3, I appear before you this morn-
ing an behalf of the entire Kentucky delega-
tion: Hon. Baker Spence, Hon. John C. 
Watts, Hon. William H. Knaggs, Hon. 
Frank A. Spurriell, Hon. Frank W. 
Bunce, Hon. Carl D. Perkins, Hon. Eugene 
Suitz, and myself, in support of H.R. 3725 
to provide that the House of Representa-
tives shall be composed of 460 Members.

There is ample precedent and a historical 
basis for this legislation. Beginning in 1820, 
there were 65 Members of the House and as 
the population increased, the House of Rep-
resentatives was likewise increased to meet 
their needs. On April 14, 1833, the number 
of 65 Members was raised to 100. In 1832, 
the number was increased to 141, in 1811 to 
181, in 1822 to 219, in 1823 to 239, in 1860 
252, in 1862 to 214, in 1872 to 284, in 1892 
275, in 1911 to 355, in 1901 to 385, and 
then in 1911, 50 years ago, the number was 
upped to 430, where it has remained until 
the admission of Arizona and Alaska, which 
brrought it to its present 439. These figures 
taken from the Congressional Library pre-
sent a revealing record of the growth of the 
country and the House of Representatives. 
From 91,972,000 in 1872, we have grown to 
182,000,000 in 1960—double our size. In-
deed, the population of the United States has 
grown from 209,000,000 in 1910 to 412,000,000 
in 1960.

The House has not only this precedent but 
we have a precedent of recent significance. 
The increase in the Rules Committee mem-
bership from 13 to 35, is an adoption of 250 
percent. I seek to increase the House by 34, 
which is only approximately 7.5 percent, not-
withstanding the fact that the population of 
the United States has more than doubled. 
My bill would help 14 of the 13 losing States 
to maintain their representation. Only two 
States would not be helped—Iowa and West 
Virginia. According to the statistics in the 
Congressional Record and the so-called equal 
proportions formula, it would take a House 
increase to 439 to restore Iowa’s loss and an 
increase of 433 Members to solve West Vir-
ginia’s loss.

I am hopeful that my bill would aid all 16 
States losing Members out of the 439 Members 
now in the House of the United States.

Now notwithstanding the fact, gentlemen, that 
no legislation introduced will help little New 
Jersey, as yet one of their delegation in 
the House have named the so-called Civil 
Rights. For this sympathetically understand-
ing of our problem, we, who stem from the 
remaining 15 States involved, are deeply 
grateful and shall remain everlastingly 
thankful to those loyal friends and good 
cooperators.

In addition to helping those 14 States that 
now have a bill, my bill would enable those 
States that have greatly gained in population 
to acquire seats in addition to those already 
allotted to them. I believe the Constitution 
unequivocally for them, my legislation would 
help to reduce their heavy workload per Member. 
The States that would be entitled to “bonus 
seats,” which are not over and above those al-
ready allotted, are Texas, two; Oregon, one; 
Ohio, two; New Mexico, one; New Jersey, 
one; Michigan, one; Louisiana, one; New 
York, one; Colorado, one; Connecticut, one; 
Florida, one; Illinois, one; Indiana, one; and 
California, three “bonus seats” in addition 
to the regular eight Members already allo-
cated to it.

H.R. 3725 would not only give “bonus 
seats” to those already entitled but it would 
also give additional representation to sev-
eral States that ordinarily would not be 
affected, up or down, by the 1960 census. In 
addition to this, this legislation would materi-
ally assist 14 of the 16 States that lose 
seats on the House. This would help 28 States 
and harm none.

As it has been stated, prior to 1911, it was 
the custom to automatically readmit the 
representative of the State every 10 years. In-
asmuch as no increase has been voted since 
1911, we, therefore, have an absolute 
91 million people in the United States thus 
literally have no representation because if 
it took 435 Members to constitute the Repre-
sentatent 91 million, I contend that the ad-
ditional 91 million in the United States are 
entitled to at least the 34 seats that was 
incidentally, the States of New Mexico, 
Arizona, Hawaii, and Alaska have been ad-
mitted to the Union since 1911. Therefore, 
these four States have drawn from the 
established allotment of 435 congressional 
seats.

Opponents of this-and similar bills say 
that it will make the House unwieldy. They 
argue that we are selfish in our motives be-
cause they contend that our legislation seeks 
to keep politicians in their jobs and that the 
cost to the taxpayers would be terrific. 
Those objections are erroneous. For in-
stance, I have been a Member of the House 
for 25 years and in all that time, I have 
ever heard all 435 Members answer any 
one rollcall. Deaths, illnesses, important 
committee meetings, and various other 
23 percent attendance. An accurate 
and systematic check of the roll and 
year votes over the past 10 years shows an 
average of only 370 Members per roll-
call. This means that an average of 65 
Members never vote, no matter how impor-
tant any business may be. On this basis, 
if we increase the House to 439, an average 
attendance would be approximately 400. 
What is so “unwieldy” about this number?

If the House is too large and too unwieldy 
as our opponents claim it to be, why is it 
that we 435 Members of the House are 
always through with our work (difficult as it 
may be) at the end of any given session and 
then have to wait another body to 
finish their work? A few years ago, under 
the Eisenhower administration, we created 
49 new Federal Judgeships. Several months 
ago at this session, we created an additional 
73 Judgeships—why? Obviously, this action 
was necessary in the interest of justice, 
and it is the only way the House was able 
to do it. Due to the very rapid growth of the 
country that has occurred with litigation and 
the only way to relieve the dockets was to create 
more judges. Why not take action to relieve 
the Representatives of the people so that 
they may be in a better position to more 
accurately serve their constituents?
APPENDIX (continued)

Insofar as the argument of selfishness is concerned, let me say that this legislation is, to the contrary, most unselfish because it really prevents any Member from growing too powerful and too important by the retention of the size of a given State's delegation. In other words, I am a more powerful Member of Congress if I am one of four than if I am one of a delegation of eight.

The argument of terrific cost falls flat on its face for the very simple reason that the 34 newly created seats, including Members' salaries, office staffs, allowances, and everything would cost the 182 million people in the United States today at an average of three-fourths of 1 cent per person, per year. This is less than the cost of the former penny post card.

With our population explosion, if we keep adding tens of thousands of constituents to an individual Member of Congress, the time will come when he will be so overwhelmed and frustrated by duties in the office that he will have little time in which to listen and practically no time in which to visit and mingle with his people. Through no fault of his own, a Member would become unavailable and inaccessible, which is just the reverse of what the Founding Fathers envisioned when they drafted the Constitution. As an example, it was never intended that the House of Representatives be separated from the people. I am told that the only occasion on which George Washington, President of the Constitutional Convention, entered into the discussion of the Convention was when he urged that the House be made accessible to more people rather than less.

James Madison reported in his Journal of the Federal Convention that when it was proposed that the constitutional requirement of 1 Representative for every 30,000 persons be amended to 1 Congressman for every 30,000 persons, George Washington spoke up on the proposed amendment, urged its adoption and asserted that it would give him much satisfaction to see the smaller ratio of representation be adopted in order to further the rights and interests of the people. As momentous and weighty as all the other provisions of the Constitution are, and were, when they were being considered in convention, only on this Item did Washington express his direct concern. We must acknowledge the significance of this fact.

George Washington, in my opinion, has made the strongest possible argument for the enactment of H.R. 3723. It was the primary object, intent, and purpose of George Washington and the drafters of the Constitution to keep the Members of the House of Representatives close to the people. It has been possible in the past for a Member to see his people and have his people see him. Let us not attempt to change this "modest antithesis" because if we do, good, sound, responsible, democratic government will become a legend rather than a living, active, moving force. In common parlance, a bricklayer can lay so many bricks in a day, a dentist can fill so many cavities, and a father can support only so many children. Likewise, a Member of the House can serve just so many constituents and no more.

Gentlemen, remember the size of a Member's constituency has grown from the 30,000 recommended by Washington in 1789 to 412,000 in 1900. Increasing the size of our staff is not the answer. The loyal and faithful members of our staff are truly, in every sense of the word, "Assistant Members of Congress" membership has been increased to many things that demand the personal attention of the House Member. When people come to one's office, they want to see the Congressman—not an aide. When the committees are in session, the presence of the Member is required—not his secretary.

When the House meets, we have to answer the rollcall and vote and, with only 24 hours in each day, we find it increasingly more difficult to be at all places, at all times.

The argument has been advanced that this legislation is not necessary because today we have faster means of travel, radio, TV, telephones, and telegraph, and that all of this makes it easier for a Member to serve his people. With the aid of these facilities, we have been able to increase the average constituency from the 30,000 in 1789 to 412,000 in 1900. However, with all of these modern facilities and the invention and use of others since 1911, we still cannot cope with the situation. Frankly, it is getting out of hand. There is no substitute for a face-to-face meeting and a handshaking with one's constituents.

As I previously stated, the Rules Committee membership is not adequate to represent the 182 million people of the United States by 20 percent. The seats in the Senate have grown from 22 to 100 in 50 years. This is an increase of 2 percent per year. Therefore, what is wrong with the House moving up only 7.2 percent on the basis of the requested 34 seats?

Gentlemen of the committee, I implore you to give the 11 million people who have come upon the scene in America since 1911 at least 34 seats, which would make the total 468. I repeat: If 435 Members were needed to adequately represent 91 million in 1911, don't you think 102 million, or double that number, are entitled to some consideration and representation?

Remember—these are electoral college seats that are being lost by those 16 sovereign States.

I urge you to vote for H.R. 3723.