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A House of Our Own or A House We’ve Outgrown?
An Argument for Increasing the Size of the House of Representatives

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I. INTRODUCTION

Many Americans would probably be surprised to discover that the House of Representatives’ current size is set neither by the Constitution nor a constitutional amendment.¹ Rather, the number 435 was simply the size of the House when that body froze its growth. The Framers, however, intended the House to grow proportionately with the population. A string of recent events, including the census, the subsequent reapportionment of House seats and a lawsuit challenging the current method of reapportionment, suggest that the size of the House should be re-examined.

Although the House of Representatives grew proportionately with the population of the United States until 1912,² the size of the House has not changed since that date.³ The current freeze, which became formalized in 1929,⁴ was not based upon any study

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1. A constitutional amendment would not be needed to change the size of the House of Representatives. The 1929 Act and the 1941 amendments that chose the mathematical method of apportionment can be reversed at any time through the passage of a new statute. See James K. Glassman, Let’s Build a Bigger House; Why Shouldn’t the Number of Congressmen Grow with the Population?, Wash. Post, June 17, 1990, at D2.

2. James K. Glassman, Why Just 435? After 80 Years, This May Be the Time to Increase the Number of Members in the House, Roll Call, June 11, 1990, at 1, 22. After the 1910 reapportionment, the House had 433 members. In 1912, with the addition of Arizona and New Mexico as states, the House was expanded to its present size of 435. Charles A. Kromkowski & John A. Kromkowski, Why 435? A Question of Political Arithmetic, 24 Polity 129, 133 n.16 (1991) [hereinafter A Question of Political Arithmetic].

3. See, e.g., Kim Mattingly, Montana May Sue to Keep Second Seat; First Legal Manifestation of Growing Movement to Increase Size of House Beyond 435, Roll Call, Oct. 8, 1990, at 8, 8; Glassman, supra note 2, at 22.

or evaluation of the ideal size of a legislature. Instead, the decision was made because Congress was unable to agree upon an increase in the House's membership.

Since the workload of Congress has increased commensurately

the mathematical formula to be used in reapportionment. Pub. L. No. 13, 55 Stat. 761 (codified as amended at 2 U.S.C. § 2(a) (1941)). In pertinent part, the Act states:

(a) On the first day, or within one week thereafter, of the first regular session of the 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 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 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 Eighty-third Congress and in each Congress thereafter until the taking effect of 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.

5. See Apportionment of Representatives in Congress Among the Several States: Hearings on H.R. 15983, 16301, 16346 and 16704 Before the House Comm. on the Census, 71st Cong., 3d Sess. 106 (1931) [hereinafter Hearings on H.R. 15983, 16301, 16346 and 16704] (statement of Rep. Rankin) ("I had never committed myself to the arbitrary number of 435, which was probably arrived at 20 years ago by tossing a coin."); see also Increasing the Membership of the House of Representatives and Redistricting Congressional Districts: Hearings on H.R. 841, 1178, 1183, 1998, 2531, 2704, 2718, 2739, 2768, 2770, 2783, 3012, 3176, 3414, 3725, 3804, 3890, 4068, 4609, 6431, 7355, 8075, 8616 and H.J. Res. 419 Before Subcomm. No. 3 of the House Comm. on the Judiciary, 87th Cong., 1st Sess. 44 (1961) [hereinafter 1961 Hearings] (statements of Reps. Battin and Chelf) ("Why was the figure of 435 adopted and why for the last 50 years has it not been changed?" "To tell you the truth there is no real reason... the 435 number is not magical to me. It means nothing to me. Why we have ever set on dead center with 435 the Lord only knows."); infra note 105 and accompanying text (Rep. Lozier spoke cynically about the arbitrary choice of 435).

6. See Apportionment of Representatives in Congress Amongst the Several States: Hearings on H.R. 13471, 69th Cong., 2d Sess. 136 (1927) (statement of Rep. Lozier). Freezing the size of the House was the only way the Members from California and Michigan, inter alia, could ensure a reapportionment, which guaranteed both states many more seats and reduced the workload for those already in the House. This coalition had been affected to a greater degree than most other representatives, because their states' populations were increasing at the greatest rate. They were so frustrated with the failure to reapportion, that even if they would have typically supported an increase, they voted for a freeze.

Societal pressures and prejudices were also potentially responsible for the freeze. Glassman notes that "[i]nactivist, anti-immigrant passions were the culprit in freezing the number of Representatives..." Glassman, supra note 2, at 22.

In addition, demographic changes were a factor in delaying reapportionment. So intent were rural legislators on preventing power from slipping out of their hands that they managed to block reapportionment of the House following the Census of 1920. That census showed urban residents in the majority for the first time in American history.

with the growth in population, the time has come to re-examine whether 435 is the appropriate size for the House of Representatives. This question becomes even more important when one considers the potential conflict between the House and the courts over apportionment. Montana, with a population of 799,000, will have one congressman for the first time since 1900, when its population was 243,000. Montana has sued to have the 1929 Act declared unconstitutional, alleging that the Act violates the constitutional principle of one person-one vote because of the disparity between the size of the average district, 572,000, and the size of Montana's district.

This Article argues that the Framers of the Constitution intended the House of Representatives to grow with the population

7. One Congressman stressed:

[The work of the Representatives has increased manyfold in the past 30 years. During that period, the Federal Government has moved into numerous fields theretofore left to the States.... Each new program... brings more people into contact with the Federal Government.... Confused and uncertain, distressed by rigid rules and often uncompromising Federal administrators, the citizens turn in ever-increasing numbers to their Representatives for help.]

1961 Hearings, supra note 5, at 26 (statement of Rep. Whitten); see Charles C. Clapp, The Congressman 50 (1963); "Congressmen are busy people unable to cover completely the gamut of their responsibilities... Their primary function is to legislate, yet the clearly meritorious demands of constituents may severely limit their capacity to do so." Id.


There are many divergent calls for an increase. House Minority Whip Newt Gingrich has suggested an increase to 500. See Chris Harvey, Foley Blasts GOP Plans to Boost Turnover on the Hill, Wash. Post, July 25, 1989, at A3; see also Wilma Rule, Expanded Congress Would Help Women, N.Y. Times, Feb. 24, 1991, at 16 (arguing that the House is not representative — especially of minorities — and should therefore be increased).


10. See Glassman, supra note 1, at D2.
so that each member of the House would represent a fixed number of citizens. In section II, this Article discusses *Montana v. United States Department of Commerce*, the recent district court decision which held that the use of the mathematical formula known as equal proportions violates the one person-one vote doctrine. After concluding that the district court decision should be upheld because the current system of reapportionment violates one person-one vote, section III analyzes the constitutional and historical arguments favoring either the affirmance of Montana's suit or a statute increasing the size of the House. This section concentrates on the history of the debate over the appropriate size for the House of Representatives, including (1) the intent of the Framers, (2) the 1929 debates and (3) the 1961 attempt to increase the size of the House after the addition of Alaska and Hawaii as states. Section IV compares the size of the U.S. House with legislatures in other western democracies, noting that most have larger lower houses which function efficiently and responsively. Finally, section V analyzes the public policy reasons in favor of expansion and concludes that expansion should occur.

13. Political scientists have divided representation into four components:
   Service responsiveness: 'the advantages and benefits which the representative is able to obtain for particular constituents.'
   Allocation responsiveness: 'legislative allocations of public projects [that] involve advantages and benefits presumably accruing to a representative's district as a whole.'
   Policy responsiveness: the interaction of 'the representative and the represented . . . with respect to the making of public policy.'
   Symbolic responsiveness: a relationship 'built on trust and confidence expressed in the support that the represented give to the representative and to which he responds by symbolic, significant gestures, in order to, in turn, generate and maintain continuing support.'


See generally, Michael L. Mezey, Comparative Legislatures (1979) (discussing different concepts of representation).

II. MONTANA V. UNITED STATES DEPARTMENT OF COMMERCE

Montana recently brought suit to challenge the 1990 apportionment as implemented by the 1929 Act. Montana alleges the apportionment unconstitutionally dilutes the votes of Montana residents. When the 1990 reapportionment is completed, Montana will be left with one member of Congress for the first time since 1900,\(^{15}\) when its population was only 243,000.\(^{16}\) With a current population of over 799,000,\(^{17}\) Montana's congressional district will be the largest in the country, much larger than the average congressional district of about 572,000 people.\(^{18}\) Montana claims that by having 227,000 "extra" citizens in its district, Montana's residents' votes will be diluted.

Montana's suit against the Commerce Department\(^ {19}\) alleged that the current method of apportionment is unconstitutional because, inter alia, it violates the constitutional doctrine of one person-one vote. A three judge district court\(^ {20}\) panel held that the cur-

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16. See supra note 11.

17. See supra note 9.

18. See supra note 12.


20. Section 2284(a) provides: "A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of Congressional districts or the apportionment of any statewide legislative body." 28 U.S.C. § 2284(a) (1978).
Montana faces three hurdles when its case is reviewed by the Supreme Court. First, it will have to convince the Court that the case is justiciable. Second, it needs to show the Court that the 1929 Act should be reviewed with heightened or strict scrutiny. Finally, it needs to demonstrate that the Hill method violates one person-one vote and that the Dean method presents a viable alternative. The suit brings the validity of the 1929 Act into question and suggests that even absent affirmance of the district court’s decision, Congress should consider expanding the size of the House.

A. JUSTICIABILITY

The first hurdle for Montana will be convincing the Supreme Court that the case is justiciable. While, the district court found the case justiciable, the Supreme Court might view the justiciability issue more narrowly.

Since the early 1960’s, however, the Supreme Court has become much more willing to decide apportionment suits. Until Baker v. Carr, apportionment suits were considered non-justiciable political questions. Recent decisions, such as Davis v. Bandemer, have extended the justiciability doctrine. Davis involved an alleged partisan gerrymander of Indiana’s congressional districts in an effort to maximize the number of Republican members of the House of Representatives. The Court allowed a chal-


The two judges in the majority are both residents of Montana. The dissenter, a Ninth Circuit judge, is a resident of Oregon. See Montana Court Blocks U.S. Reapportionment Plan; Census: The Injunction Puts the National Redistricting Plan in Limbo. The Case Challenges the Formula Used for Seats in House of Representatives, Los Angeles Times, Oct. 19, 1991, at A15.


24. 369 U.S. 186 (1962) (holding that a challenge to a Tennessee apportionment should not have been dismissed by the district court because it presented a justiciable controversy).

25. See, e.g., Colegrove v. Green, 328 U.S. 549 (1946) (cautioning against entering the “political thicket” of legislative apportionment).

Increasing the Size of the House

The Court’s decision in *Davis* is significant because it accepted the case even though standards for deciding partisan gerrymandering cases are particularly difficult to define. Furthermore, the standards, once defined, are difficult to apply.

Although inter-state geographic discrimination presents an issue of first impression for the Court, the *Davis* decision indicates the likelihood that the Court will make a determination on the merits of the case. First, the one person-one vote standard has been refined in a series of court decisions over the past twenty five years. Second, one of the most important characteristics of the one person-one vote standard is the relative ease of its application.

**B. STANDARD OF REVIEW**

The Supreme Court is often willing to defer to the decisions of legislative bodies and even administrative agencies. A statute, if it does not infringe upon a fundamental right, is generally reviewed using the rational basis test which is “equivalent to a strong presumption of constitutionality.” In essence, the Court refrains from reviewing decisions made by electorally accountable bodies unless the statute impinges upon a fundamental right. State legis-

27. Evan Geldzahler, Note, *Davis v. Bandemer: Remedial Difficulties in Political Gerrymandering*, 37 Emory L.J. 443 (1988). The Court found *Davis* justiciable, even though it failed to formulate effective standards for identifying and remedying unfair partisan apportionment schemes. Id. at 444. This bodes well for Montana, because it shows the Court’s willingness to try and attack apportionment problems, even without clear guidelines and readily apparent solutions.

28. Id. at 444 (arguing that “effective new standards cannot be developed in the political gerrymandering context”).


30. *Montana v. United States Dep’t of Commerce*, 775 F. Supp. 1358, 1362 (D. Mont. 1991) (2-1 decision), cert. granted, 60 U.S.L.W. 3429 (U.S. Dec. 16, 1991) (No. 91-860) (“No state has heretofore turned to the judicial branch to challenge the method employed by Congress to apportion representatives among the several states. This case therefore raises an issue of first impression.”).

31. See Schuck, supra note 23, at 1327 n.19. Professor Schuck notes “the ‘one person, one vote’ principle has proved to be judicially manageable, . . . whereas defining and enforcing representational fairness for parties — even if understood as simple proportionality — is not so manageable.” Id.

32. See *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984) (holding that deference to an agency’s reasonable interpretation of a statute is proper if the statute and the legislative history provide no guidance as to the legislature’s intent).

ervative bodies and Congress are assumed to be better equipped than the courts to deal with difficult political choices. However, if a statute does impinge upon a fundamental right, then the statute will be subject to heightened or strict scrutiny. 34

The Court has long held that voting is a fundamental right. 35

As a fundamental right, review of legislative acts impinging upon the right should receive heightened or strict scrutiny. 36 Justice Blackmun has acknowledged that: “[T]he right to vote is accorded extraordinary treatment because it is, in equal protection terms, an extraordinary right: a citizen cannot hope to achieve any meaningful degree of individual political equality if granted an inferior right of participation in the political process.” 37 Montana’s citizens will have an inferior right if the current method of apportionment is allowed to stand. As Chief Justice Warren noted in *Lucas v. Forty-Fourth Colorado General Assembly*: “An individual’s constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a State’s electorate.” 38 Similarly, the weight of a person’s vote cannot be diluted by an Act passed by his — or rather his grandfather’s — member of Congress.

Traditionally, the Court has only applied strict scrutiny in

34. Id. at 1454, recognizing that “[l]egislative and administrative classifications are to be strictly scrutinized and thus held unconstitutional absent a compelling governmental justification if they distribute benefits and burdens in a manner inconsistent with fundamental rights.” Tribe also acknowledges that there appears to be an intermediate level of scrutiny, which “seems to be a judicial response to statutes creating distinctions among classes of residents based on factors the Court evidently regards as in some sense ‘suspect’ but appears unwilling to label as such.” Id. at 1445.


36. See Andrew Luger, Note, Liberal Theory as Constitutional Doctrine: A Critical Approach to Equal Protection, 73 Geo. L.J. 153, 166 (1984) (“The fundamental rights strand of equal protection analysis declares that certain activities are of constitutional importance and must be protected by strict scrutiny. Such activities include voting . . . .”); Traci Dallas, Note, Rebutting the Marital Presumption: A Developed Relationship Test, 88 Colum. L. Rev. 369, 381 (1988) (“In cases in which a statute interferes . . . with a fundamental interest, the Supreme Court has applied a heightened or strict scrutiny standard within the equal protection context. To meet this standard, the classification must be precisely suited to effectuate a compelling state interest.")); see also Karen M. Weaver, Note, Constitutional Law — Fourteenth Amendment — Equal Protection, 31 Emory L.J. 201, 234 (1982) (“[A]ny statute selectively denying the ‘fundamental’ right to vote will be subject to strict scrutiny.”).


cases where there has been a direct limitation on the ability of a citizen to exercise his or her right to vote. Nonetheless, the Court recognized in 

Reynolds \( ^{39} \) 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.\( ^{40} \) The 1929 Act, as implemented, dilutes the effectiveness of Montana’s voters’ ballots. Their votes are only fractionally as effective as the votes of the residents in districts that comport with the one person-one vote requirement. While most Americans have one representative for every 572,000 citizens, a Montana resident will have one representative for 799,000 citizens. Thus, a vote cast by a Montana resident is worth at least twenty five percent less than the average citizen’s vote.\( ^{41} \) Such a reduction in value of a vote substantially interferes with the right of Montana’s residents to cast a meaningful or effective ballot. Therefore, the Court’s review of the statute in question should take on heightened or strict scrutiny.

C. ONE PERSON-ONE VOTE

Despite the longstanding significance of the one person-one vote doctrine,\( ^{42} \) it has only been used to invalidate reapportionment within a state,\( ^{43} \) never to decide apportionment among the states.\( ^{44} \) The theory and language used in the intra-state one person-one vote cases, however, clearly encompasses inter-state one person-one vote cases.

The Court first attacked congressional malapportionment in 

Wesberry v. Sanders,\( ^{45} \) striking down a Georgia congressional ap-
portionment which divided the state's ten districts unequally. The districts varied in size from 272,154 to 823,680. Justice Black commented that "[n]o 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."46 Although the citizens of Montana will not be deprived of the ability to go to the polls and vote, the value of their votes will be diluted47 unless the current system of apportionment is changed or the size of the House is increased. Their votes will not have the same weight as those of the citizens of other states. "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 idea of a House of Representatives elected 'by the people,' a principle tenaciously fought for and established at the Constitutional convention."48 As the court in Montana noted, the principle should be applicable to inter-state apportionment as well.49

In Reynolds v. Sims,50 the Supreme Court extended the one person-one vote standard to state house and senate malapportionment. The Reynolds Court proclaimed that citizens must be afforded equal protection when electing state representatives.51 A citizen's right to vote is unconstitutionally impaired when his or her vote carries substantially less weight than the votes of citizens in other parts of the state.52 Even though the opinion involved state reapportionment, the one person-one vote standard should apply to under-representation in the present context as well. Further...

46. Id. at 17.
47. Vote dilution refers to the notion that votes in more populous districts are undervalued because of the disparity in district sizes. Mary J. Kosterlitz, Note, Thornburg v. Gingles: The Supreme Court's New Test for Analyzing Minority Vote Dilution, 36 Cath. U. L. Rev. 531, 536 (1987). Even though this is not a "minority vote dilution" case, Montana is claiming that its citizens' votes are diluted because its congressional district will be so much larger than the average district.
48. Wesberry, 376 U.S. at 13. See also infra text accompanying notes 123-34 (discussing the Framers' notion of what purpose the House was to serve).
49. Montana v. United States Dep't of Commerce, 775 F. Supp. 1358, 1363 n.2 (D. Mont. 1991) (2-1 decision), cert. granted, 60 U.S.L.W. 3429 (U.S. Dec. 16, 1991) (No. 91-860) ("Congress itself has recognized that the 'one man, one vote' principle set forth in intrastate districting cases has at least some application to national apportionment decisions.") (citation omitted).
51. Id. at 565. See Geldzahler, supra note 27, at 457.
52. Reynolds, 377 U.S. at 568.
Furthermore, "the dilution of a vote on the basis of geographic locality [is] as obnoxious a constitutional violation as the dilution of voting strength on the basis of race." 53

In Karcher v. Daggett 54 the Supreme Court examined New Jersey's apportionment of its congressional districts. The Court noted that the average district should contain 526,059 people. 55 The largest district in New Jersey contained 527,472 people, while the smallest contained 523,798, resulting in a deviation of only 0.6984%.56 Nevertheless, the Court noted that "[t]he legislature had before it other plans with appreciably smaller population deviations between the largest and smallest districts" 57 and invalidated the apportionment after finding that no legitimate state purpose existed for choosing the plan with the larger deviation.58 The Court cautioned lower courts against permitting "de minimis" deviations, because the Court feared that legislatures would depart from the Article I, Section 2 requirement of a "good-faith effort to achieve absolute equality."59 The same principles should apply in this case.

The choice of apportionment method is important, for as in Karcher, Montana must show that "population differences among districts could have been reduced or eliminated altogether by a good-faith effort to draw districts of equal population."60 If it can be shown that another method more fairly apportions citizens among the states, then the district court's decision should be upheld; for surely no "legitimate goal"61 is effectuated by using a method that malapportions congressional districts.62

54. 462 U.S. 725 (1982).
55. Id. at 728.
56. Id.
57. Id.
58. Id. at 788-89.
59. Id. at 730-32.
60. Id. at 730.
61. Id. at 731 (a statute effectuating a legitimate state goal will be upheld).
62. See also Brown v. Thomson, 462 U.S. 835 (1983) (5-4 decision), where the Supreme Court upheld a Wyoming state apportionment plan, but on very narrow grounds. The dissent recognized that "[s]evere dilution of the votes of a relatively small number of voters is perhaps the most disturbing result that may attend invalid apportionments, because those unfortunate victims may be virtually disenfranchised." Id. at 856 (Brennan, J., dissenting).

Brown v. Thomson has come to stand for the notion that "fair apportionment has two dimensions, one 'quantitative' and the other 'qualitative.' " The Supreme Court, 1982 Term: Constitutional Law, 97 Harv. L. Rev. 70, 139 (1983). The quantitative dimension requires that districts be of equal size, for it rests upon the assumption that each person's vote should be of equal weight. Id. In this case, Montana's citizens' votes are worth substantially...
D. APPORTIONMENT METHODS

The Montana District Court's discussion focused primarily on the appropriate system of apportionment. This question has divided politicians and mathematicians for over 200 years. The debate centers on deciding which mathematical method most fairly divides the 385 House seats remaining after each state is allotted its constitutionally guaranteed seat. In 1941 Congress made apportionment automatic by legislating that a mathematical formula known as the Hill method, or the method of equal proportions, would be used to determine the apportionment of the remaining 385 seats. Congress thereby relieved itself of its decennial duty of passing reapportionment legislation.

The Hill method takes the population of each state, as determined by the census, and multiplies it by the decimal of a fraction. The result of this computation is a priority value, according to which all seats are assigned. The Hill method's purpose is to

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less than votes cast by residents of other states. Therefore, the quantitative dimension's requirement is not met. This violation should cause the Court some concern.

63. See Balinski & Young, infra note 150, at 10-35, 46-59 (providing a history of the different methods used over the past 200 years and of the continuous disputes over which formula best apportioned the remaining House seats); Barbara Vobejda, In Battle over Reapportionment, Even Math is a Target, Wash. Post, May 27, 1991, at A21 (noting that the problem has frustrated mathematicians and politicians for over 200 years).


65. Congressional Quarterly, Inc., supra note 6, at 534.

66. Id. Congress performed this duty after every census until 1910. See supra note 2.

67. Problems with the accuracy of the census count have been the subject of much recent controversy. See, e.g., Judith B. Austin, Campaign '92: Incumbent vs. Incumbent: Lipinski vs. Lepinske, Gannett News Serv., Jan. 23, 1992, available in LEXIS, Nexis Library, Wires File (noting that a "group of states, cities and civil rights organizations has filed suit charging that the census undercounted millions of people, many of them minorities").

68. The fraction is one divided by the square root of n(n-1), where n is the number of seats the state already has. Congressional Quarterly, Inc., supra note 6, at 533.

69. Id. The computation is done for each seat, and each seat is assigned to the state with the highest priority value. The priority values are recalculated, using the formula, after each seat is assigned. For example, after the 1970 census, seats were assigned as follows:
reduce the relative difference among states.\textsuperscript{70} The Hill method tends to favor large states over smaller states.\textsuperscript{71}

After evaluating the intent of the Framers\textsuperscript{72} as well as Supreme Court decisions upholding the principle of one person-one vote, the district court held that "[i]t does not place an undue burden upon Congress to require that, once every decade, it apply various accepted statistical methods to the census results and determine which method best meets the Constitutional mandate for population equality among the districts."\textsuperscript{73} In light of the heightened scrutiny required,\textsuperscript{74} the Court must look especially closely at Congress' choice of the Hill method as the method which putatively apportions the House most fairly.

Although numerous methods for apportionment exist,\textsuperscript{75} the most effective is the Dean method. Commentators have noted: "The 'Dean' method minimize[s] the absolute difference between the number of persons per representative, [while] the 'equal pro-

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Id.


\textsuperscript{71} Montana v. United State Dep't of Commerce, 775 F. Supp. 1358, 1361 (D. Mont. 1991) (2-1 decision), cert. granted, 60 U.S.L.W. 3429 (U.S. Dec. 16, 1991) (No. 91-860). This might be the correct approach historically, since the Great Compromise protected small states in the Senate, while allowing representation to be determined by population in the House. But, as the district court acknowledged, the division can more accurately be described as being one of one house for the states and the other for the people. Id.

\textsuperscript{72} See infra notes 111-34 and accompanying text.

\textsuperscript{73} Montana, 775 F. Supp. at 1366.

\textsuperscript{74} See supra note 36.

\textsuperscript{75} See Apportionment of Representatives in Congress: Hearings Before the House Comm. on the Census, 76th Congress, 3d Sess. 1-92 (1940) (discussion of the five methods considered for adoption: (1) major fractions, (2) greatest divisors, (3) smallest divisors, (4) equal proportions and (5) harmonic means).
portions’ method minimize[s] the relative (percentage) difference of both the number of persons per representative and each person’s ‘share’ of a representative.”

The Dean method’s goal, according to the district court, is to “calculate reapportionment to result in the smallest absolute difference between numbers of persons per representative.” The court then recognized that “[t]he Dean method also best accomplishes the goal of creating districts closest to the ideal district size.”

In dissent, Judge O'Scannlain attacked the Dean method by asserting that it will actually increase the variance between the size of Montana's districts and Washington's districts. He argued that, if one of Washington’s House seats is transferred to Montana, as would happen under the Dean method, each of Washington's districts would become 38,527 persons larger than the ideal district. Under the equal proportions method each would be 29,361 smaller than the ideal. Judge O'Scannlain's analysis, however, is misguided. First, he fails to acknowledge one of the important tenets of one person-one vote which the Court enunciated in Karcher v. Daggett: “absolute population equality [should] be the paramount objective of apportionment . . . in the case of congressional districts...” The one person-one vote doctrine mandates that each district be as close to the ideal as possible. In the instant situation, the Dean method comports with one person-one vote to a greater degree because it substitutes Montana's deviation of 229,000 per district under the equal proportions method with Washington's deviation of only 38,527 per district. What is important is that the deviation in Montana would be reduced significantly with only a slight increase in district size in Washington. As


77. Montana, 775 F. Supp. at 1364.

78. Id.

79. Id. at 1371 (Judge O'Scannlain concurred with the majority that Montana had standing and that their claims were justiciable. His dissent was on the merits of Montana's claim).

80. Id.

81. Id.


83. Karcher, 462 U.S. at 730 (citing Wesberry v. Sanders, 376 U.S. 1, 7-8, 18 (1964)). The focus in Karcher was on what percentage deviation each district was from the ideal.
the Court acknowledged in *Wesberry v. Sanders*:

> 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.84

Presently, the Dean method best complies with this mandate.85

Secondly, Judge O'Scannlain adds the district variance in each of Washington's districts and compares that sum with the variance of Montana's district from the ideal. He then asserts that because the sum total of district variance in Washington is greater than the variance of the Montana district, the Dean method is flawed.86 The total variance in one state is, however, of no consequence for one person-one vote. Instead, the analysis should focus on each district's deviation from the ideal.87 Focusing on a state's deviation from the ideal overlooks the goal of the one person-one vote doctrine — a reduction in population disparities from district to district which dilute or debase the value of a vote.

Furthermore, the Dean method, because it leaves a smaller absolute difference between the largest and smallest districts, better meets the demand of one person-one vote. While the equal proportions method leaves an absolute difference of 347,680 between the smallest and largest districts, the Dean method leaves an absolute difference of 298,171.88 Besides leaving a greater absolute differ-

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85. While admittedly the equal proportions method achieved the fairest representation in the House in 1941, changing circumstances demand a re-examination of the method that best complies with the doctrine of one person-one vote today. See *Montana*, 775 F. Supp. at 1366 n.8. Congress should reconsider which method best comports with one person-one vote, because demographic changes require the adoption of a new method.
87. See, e.g., *Karcher*, 462 U.S. at 728 (focusing on the largest and smallest districts' deviation from the ideal).
88. A Question of Political Arithmetic, supra note 2, at 139. These absolute differences are achieved by taking the most populous district under equal proportions (Montana) and subtracting the smallest district under equal proportions (Wyoming). Then the Kromkowskis look to the largest (South Dakota) and subtract the smallest (ironically, Montana) under the Dean method. The Kromkowskis note:

> [T]he equal proportions method reapportions the House with the effect of minimizing the percentage differences in the average district sizes of the states. Formulated before the U.S. Supreme Court announced its "one person-one vote" standard for congressional districts, this equal proportions method does not minimize absolute differences between the states' average district sizes.
ence, the equal proportions method leaves the largest district with 100,000 more constituents than the largest district contains under the Dean method.\textsuperscript{89} The Dean method, therefore, is preferable to the equal proportions method because it comports to a greater degree with one person-one vote.

In essence both methods have favorable aspects, as do several other methods considered in 1941. The district court’s objection to the use of equal proportions was that while it might have been constitutional in 1941 — before the Court announced one person-one vote — it is not constitutional today.\textsuperscript{90} The Dean Method comes closest to the goal of one person-one vote enunciated by the Court in \textit{Wesberry v. Sanders},\textsuperscript{91} \textit{Reynolds v. Sims}\textsuperscript{92} and their progeny. The people of Montana will be unconstitutionally denied their full representation in the House of Representatives unless the current system of reapportionment is struck down or Congress decides to increase the size of the House.\textsuperscript{93}

With the tremendous increase in population and other enormous changes in the United States in the past half century, Congress’ decision should be examined much more carefully. Blind deference to a legislative decision, especially when demographic changes have made the original decision constitutionally suspect, does not satisfactorily resolve the House apportionment dilemma.

E. UNCONSTITUTIONALITY OF THE 1929 ACT

In the district court, Montana argued that the 1929 Act and the 1941 amendments violated the Constitution by arbitrarily freezing the size of the House.\textsuperscript{94} Montana argued that the Constitution intentionally left the question of the size of the House unanswered, requiring the House to make the determination decenni-

\textsuperscript{89} Id. at 138-39 (citations omitted).
\textsuperscript{90} Id. at 139 (Montana is the largest district under equal proportions with 799,000, while South Dakota would be the largest district under the Dean method, with 699,999).
\textsuperscript{91} \textit{Wesberry v. Sanders}, 376 U.S. 1 (1964).
\textsuperscript{92} \textit{Reynolds v. Sims}, 377 U.S. 537 (1964).
\textsuperscript{93} The influence Montana citizens exert over policy and their link to the national government will be severely diminished, unless Montana retains its second member of Congress. The lone member of Congress from Montana will also have a tremendously difficult job because of the increased demands upon his or her time. See Lesly, infra note 238.
\textsuperscript{94} See Mattingly, supra note 3, at 8.
ally. The district court did not answer this question directly, but if the Supreme Court upholds the district court, Congress will surely reexamine the current system of "automatic" apportionment.

Even if the district court's decision is reversed, as expected, Congress should consider either reexamining the equity of the current method of apportionment or increasing the size of the House. The current system of apportionment is being questioned more often; other states have either filed suit, or are considering filing suit, challenging the reapportionment. Congress should not ignore this issue, even if the Supreme Court overturns the Montana case. The very pendency of this suit should bring about a reexamination of why 435 is the appropriate size for the House of Representatives. The Framers intended relative equality among congressional districts. The Court has noted that mathematical exactness is not required. Nonetheless, disparities in congressional district size which can be rectified, should be rectified.

95. Id. The district court did not decide the merits of this claim, basing its decision instead upon one person-one vote. See supra notes 42-62 and accompanying text.

96. See Susan B. Glasser, Will Wash. State Have to Return Its Seat to Mass.? Court Ruling Rolls Reapportionment, Roll Call, Feb. 24, 1992, available in LEXIS, Nexis Library, Nwtrs File (quoting Rep. Tom Sawyer as stating that the combination of the Massachusetts lawsuit and the Montana suit have raised "questions about all the technical details of apportionment, as well as larger issues of fairness and equality of political representation").


100. See Barbara Vobejda, Justice Department Appeals Apportionment Ruling: High Court Asked to Overturn Decision Rejecting Current Method of Distributing House Seats, Wash. Post, Nov. 28, 1991, at A58 (noting that Massachusetts has already filed suit against the government). The validity of the census has also been challenged, albeit unsuccessfully. Glasser, supra note 96, notes that Massachusetts won its suit to regain its 11th seat before a three-judge district court. The case turned on the inclusion of federal employees stationed overseas. Id.

101. See infra notes 111-35 and accompanying text.

III. HISTORY OF THE DEBATE ON THE SIZE OF THE HOUSE OF REPRESENTATIVES

The major reason for the cap at 435 was a desire to resolve an impasse which had prevented any reapportionment since 1910 and threatened to prolong the under-representation of states with rapidly growing populations, such as California and Michigan. Was this a rational decision? At least one Representative spoke cynically about the choice of 435.

The bill seeks to prescribe a national policy under which the membership of the House shall never exceed 435 unless Congress, by affirmative action, overturns the formula and abandons the policy enunciated by this bill. I am unalterably opposed to limiting the membership of the House to the arbitrary number of 435. Why 435? Why not 400? Why not 300? Why not 250, 450, 535, or 600? Why is this number 435 sacred? What merit is there in having a membership of 435 that we would not have if the membership were 335 or 535? There is no sanctity in the number 435....

There was absolutely no reason, philosophy, or common sense in arbitrarily fixing the membership of the House at 435 or at any other number.108

There was no real reason for limiting the number of members to 435. In the interest of political expediency, those members who voted for the limit forced their successors to represent two to three times as many constituents as they themselves represented.107

This section evaluates the history of the debate on the size of the House of Representatives. It begins by looking to the Constitution, the intent of the Framers as seen in both James Madison's notes from the Constitutional Convention and the Federalist Papers. It then evaluates the history and the debate leading up to the

103. See infra notes 144-47 and accompanying text.
104. See generally Hearings on H.R. 111, 398, 413 and 3808, infra note 158 (especially Feb. 25).
106. Critics of the cap have asserted that one explanation for the cap might have been discrimination against immigrants. Capping the Congress at 435 and thereby preserving the status quo meant that immigrants and minorities would continue to remain unrepresented. See Glassman, supra note 2, at 22.
107. Glassman, supra note 1, at D2. In 1810 each House member represented 39,000; in 1910 that number was 211,000. The average House member today represents over 572,000 persons. Benanti, supra note 12. While some of the effects of diluted representation have been countered by improvements in technology and increased congressional staffing, the burden for each member continues to grow. See Lawrence C. Dodd & Bruce I. Oppenheimer, Congress Reconsidered 204 (1981).
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1929 Act. Finally, this section analyzes the 1961 attempt to increase the size of the House after the admission of Alaska and Hawaii to the union.


Other than setting a minimum of at least sixty-five representatives, and requiring that each State shall have one representative, the Constitution does not specify the number of members of the House.108 The Framers of the Constitution intended for the size of the House of Representatives to increase as the population increased.109 Their intent can be seen in the Constitution’s wording, Madison’s notes of the proceedings of the Constitutional Convention and the arguments surrounding the Federalist Papers.

Article I, Section 2 of the Constitution states, in relevant part: “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.”110 The ratio of representatives to citizens was the subject of much debate at the Constitutional Convention.111 On the final day of the Convention, George Washington spoke112 in favor of reducing the ratio from one repre-

108. See Glassman, supra note 1, at 22.
109. See Madison, infra note 111, at 655 (Washington’s motion carried unanimously); see also Glassman, supra note 1, at D2 (discussing Madison’s arguments in favor of increasing the size of the House proportionately as the population increases).
110. U.S. Const. art. 1, § 2. Possibly no other example in American jurisprudence illustrates such a gross violation of the plain meaning of the Constitution.
111. James Madison, Notes of Debates in the Federal Convention of 1787 237, 244-47, 257, 261-64, 297-98, 413 (Bicentennial ed. Norton 1987). This debate focused on the ideal ratio to preserve the representative nature of the House. Id. See Robert S. Morgan, James Madison on the Constitution and the Bill of Rights 19 (1988); Congressional Quarterly, Inc., supra note 6, at 523. The issue of reapportionment was also the subject of the first proposed constitutional amendment. Although the First Congress proposed a ratio which would have regulated the number of representatives, it was not ratified by the states. Id. at 525.
112. Washington rose and spoke for the first time at the convention. He noted that “although his situation had hitherto restrained him from offering his sentiments on questions depending in the House . . . he thought this of so much consequence that it would give [him] much satisfaction to see it adopted.” Madison, supra note 111, at 655 (source notes at 655 n.6 that the word “him” was inserted into the transcript); Madison mentions that this was the only occasion on which the future President entered into the discussions of the Convention. Id. at 655. Washington’s speech thus takes on heightened importance. See 1961 Hearings, supra note 5, at 48-49 (1961) (statement of Rep. Sikes); id. at 49 (“George Washington spoke out for the proposed amendment and urged its adoption. He asserted that it would give him satisfaction to see the smaller representation be adopted in order to further
sentative for every forty thousand citizens to the ratio which is in the Constitution.113

Madison's notes of the Convention are replete with examples of debate which reflect the Framer's concern that the size of Congress be steadily adjusted so that its representative character would not be destroyed.114 Their concern that the House remain a body connected to and dependent on the people for its support and power115 has been subverted as the ratio of members of Congress to citizens has grown ever larger.116 A reduction in the ratio today would not ensure that the Framers' goals are met, but it would be a step towards making the House a more representative body.

Madison was a strong proponent of the Constitution, and more specifically of the need to secure the peoples' liberties through the House of Representatives.117 He saw the ratio of one representative to every thirty thousand constituents proposed in the Constitution as vital and defended it from anti-Federalist attack in The Federalist Nos. 55 through 58.118

Madison wrote The Federalist No. 58 to reassure the public that the number of members of the House would indeed be augmented as necessary after each census.119 Madison explained that

secure the rights and interests of the people. On this item alone did Washington express his direct concern.

113. Madison, supra note 111, at 655.
114. Id. at 266; George Mason asserted that “[h]e did not object to the conjectural ratio which was to prevail in the outset; but considered a Revision from time to time according to some permanent & precise standard as essential to [the] fair representation required in the 1st branch.” Id.
115. See Richard J. Pierce, Jr., The Role of the Judiciary in Implementing an Agency Theory of Government, 64 N.Y.U. L. Rev. 1239, 1248 (1989) (“The Framers believed that the potential danger of factionalism in the House of Representatives would be counteracted by its close dependence on the people and its impermanence relative to the other institutions of government.”); see also Eugene W. Hickok, Jr., The Framers' Understanding of Constitutional Deliberation in Congress, 21 Ga. L. Rev. 217, 225 (1986) (quoting James Wilson as stating “[t]he Legislature ought to be the most exact transcript of the whole society”).
116. See, e.g., Glassman, supra note 2, at 22.
117. See The Federalist Nos. 56-58 (James Madison); see also Hickok, supra note 115, at 254-55 (discussing the Framers' contention that the new Constitution would protect citizens' liberties, in part by maintaining a truly representative legislature). More specifically, the new legislature needed to be large enough to adequately represent the various interests of the diverse populace. The decennial census “would help to ensure that the House of Representatives continued to reflect the general will. The census [also] would help maintain the representative character of the government.” Hickok, supra note 115, at 255.
118. See Hickok, supra note 115, at 252.
119. See Hickok, supra note 115, at 255.
the object of the census was twofold. First, it would:

Readjust, from time to time, the apportionment of representatives to the number of inhabitants, under the single exception that each State shall have one representative at least; second[,] [it would] . . . augment the number of representatives at the same periods, under the sole limitation that the whole number shall not exceed one for every thirty thousand inhabitants.120

Madison made predictions about the eventual size of the House in an effort to assure the anti-Federalists that growth would occur. He noted that:

At the expiration of twenty-five years, according to the computed rate of increase, the number of representatives will amount to two hundred; and of fifty years, to four hundred. This is a number which, I presume, will put an end to all fears arising from the smallness of the body. I take for granted here what I shall, in answering the fourth objection, hereafter show, that the number of representatives will be augmented from time to time in the manner provided by the Constitution.121

The growth of the House did not match Madison’s expectations, but Madison clearly foresaw rapid and continued growth.122

He needed to be explicit on this point because the anti-Federalist’s greatest fear was that, with the passage of time, the House would become less and less of a democratic body.123 The Federalist

121. The Federalist No. 55, at 343 (James Madison) (Clinton Rossiter ed., 1961). See Robert J. Morgan, James Madison on the Constitution and the Bill of Rights 64 (1988). But see The Federalist No. 55, at 342 (James Madison) (Clinton Rossiter ed., 1961) where Madison makes the argument that has been used by proponents of a smaller House. Madison wrote that “the number ought at most to be kept within a certain limit, in order to avoid the confusion and intemperance of a multitude.” Id. Nonetheless, Madison foresaw a House of Representatives of at least 400 within 50 years of the ratification of the Constitution. He must have envisaged growth after that point.
122. See supra note 121.
123. See The Antifederalist Papers (Morton Borden ed., 1965) (Nos. 55-58 are on point); Herbert J. Storing, What the Anti-Federalists Were for 51 (1981). The anti-Federalists’ concern was twofold. First, they feared that membership in the House would remain frozen at sixty-five and thereafter become undemocratic as the size of the population grew.
Second, the anti-Federalists were concerned that without augmentation and reapportionment “rotten boroughs” would develop as they had in Great Britain. “Rotten boroughs” were districts such as those in “[n]ewly developing industrial cities [which] had no more representation in the House of Commons than small almost deserted country towns.” Congressional Quarterly, Inc., supra note 6, at 523. See also George B. Galloway, The History of the House of Representatives 22 (1962) (noting that one of the primary factors behind the inclusion of a decennial census requirement in the Constitution was the desire to avoid the
No. 58 addressed this contention. Madison wanted the House of Representatives to remain a body that responded to the needs of the people. However, the anti-Federalists' concern that the House would lose its democratic character if the number of representatives was frozen is becoming a reality.

It was clear that the House also needed to be consistently augmented to ensure that it served a different purpose than the Senate. In essence, the anti-Federalists feared the development of two Senates. Madison responded to this charge in *The Federalist* No. 56. There he spoke of the necessity of preserving a ratio of about one representative for every thirty thousand constituents so that the interests vested in the House of Representatives would be adequately protected.

The intent of the Framers of the Constitution as expressed both in the Constitution and in *The Federalist* papers is clear. Most members of the Convention agreed that the strength of the lower house would be derived from the continued ability of the representatives to accurately reflect the 'interests and circum-

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124. The Federalist No. 58 (J. Madison).
125. Id.
126. See Michael W. McConnell, Federalism: Evaluating the Founders' Design, 54 U. Chi. L. Rev. 1484, 1509 (1987) (book review). "The Federal Farmer argued that increasing the number of representatives would make the nation 'more democratical and secure, strengthen the confidence of the people in it, and thereby render it more nervous and energetic.' " Id. (citation omitted).
127. See Pierce, supra note 115, at 1248; Hickok, supra note 115, at 255. The fear was that the House would not be a body which responded to the needs of the people.
128. See Daniel A. Farber & Suzanna Sherry, A History of the American Constitution 205-07 (1990) (pointing to anti-Federalist concerns that unless the House was large enough it would become an aristocratic legislature similar in purpose to the Senate).
129. See The Federalist No. 56, at 350 (James Madison) (Clinton Rossiter ed., 1961); see also The Federalist No. 58, at 357 (James Madison) (Clinton Rossiter ed., 1961) (arguing that augmentation was needed in order to ensure representation of citizens because "one branch of the legislature is a representation of citizens, the other of the States").
130. Andrew Hacker, Congressional Districting: The Issue of Equal Representation 14 (1963) ("The House of Representatives was designed to be a popular chamber, giving the same electoral power to all those who had the vote. And the concern of Madison, King and Pickney that districts be of equal size was an institutional step in the direction of securing this democratic principle.")
stances' of their constituents." The Framers intended for the gradual expansion of the House of Representatives to reflect increases in the population, so that the House would remain a democratic and truly representative institution. As Representative Chelf noted, "[i]t was the intent of the drafters of the Constitution to keep Members of the House of Representatives close to the people." A member cannot be close to, much less adequately represent, 572,000 people.

B. reapportionment history and the 1929 act

Until 1910, the Framers' vision of the House as a truly representative body, familiar with its constituents, was closely followed. Although the House of Representatives grew from 105 members in 1790 to 433 members in 1910, matching the population explosion of the United States, the growth of the House did not meet Madison's expectation that the House would contain 400 members within fifty years. Nevertheless, the growth of the House was rapid, and much of this growth occurred at a time when the men who wrote the Constitution could have objected if their intent had been for other than proportionate increases in the House of Representatives to match population growth.

131. Abner J. Mikva & Patti B. Saris, The American Congress: The First Branch 53 (1983). This can only be accomplished by keeping legislative districts relatively small.

132. See Hickok, supra note 115, at 227. "The idea of a chamber established for the representation of the people carried with it the implicit assumption that the size of the chamber would be directly proportional to the size of the population." Id.

133. Hickok, supra note 115, at 227.

134. Hickok, supra note 115, at 224 notes that in The Federalist No. 56 Madison assured those who felt that the House was not representative enough by stating that "[a]s time passed and society underwent transformations which would lead to 'variety and complexity' in the affairs of the nation, the size of the legislature would increase to accommodate the need for 'fuller representation.' " (citation omitted).


136. See Glassman, supra note 1.

137. Only in 1840 did the size of the House "remain the same or decrease." See infra note 150 and accompanying text.

138. See infra note 150.

139. See generally infra note 150 (table showing the increase in the size of the House accompanying population growth, until 1910).

140. See supra note 121 and accompanying text.

141. Cf. Christopher J. Bailey, The U.S. Congress 31 (1989) (noting that "by the 18th
In 1910, Congress approved a reapportionment and an increase in the size of the House to 433. The House was increased to 435 in 1912 to accommodate the entry of Arizona and New Mexico as states. Congress was unable to pass legislation reapportioning the House in 1920. Indeed, for several years Congress refused to even debate the issue. In 1926 Congress finally began debates on the size of the House and reapportionment. Despite President Coolidge’s intervention in 1927 to urge a resolution to the impasse, Congress did not pass a bill until 1929. It froze the size of the House at 435 and reapportioned the House for the first time in twenty years. The debate over the 1929 Act focused primarily on a dispute over whether the House of Representatives needed to be augmented to reflect the increased workload and greatly enlarged constituent base, or whether the House of Representatives was already too large and unwieldy. In 1941, Congress amended the Act, providing for the use of the mathematical formula of equal proportions to apportion the House. Adoption of this formula effectively eliminated its responsibility in this area.

1. Support for an Increase

During the three years of debate over the 1929 Act, the proponents of an increase in the number of members of the House of Representatives stressed that the size of the House traditionally had grown consistently with the population. This growth en-

Congress (1821-2) there were 213 representatives).  
142. See A Question of Political Arithmetic, supra note 2, at 133.  
143. Id.  
144. Id. at 134. The number of immigrants increased substantially during this period. See U.S. Bureau of the Census, supra note 9, at 9; see also Glassman, supra note 6 (commenting that racist anti-immigrant feelings might have been a motivating factor behind the reluctance to reapportion the House); Margo J. Anderson, The American Census: A Social History 153 (1998) (suggesting that the dispute over which mathematical formula to use was a primary cause of the failure to reapportion); see generally Charles W. Eagles, Democracy Delayed (1990) (recounting the failure to reapportion in 1920 and the debates leading up to the 1929 Act).  
145. See A Question of Political Arithmetic, supra note 2, at 134.  
146. Congressional Quarterly, Inc., supra note 6, at 532.  
147. Id.  
148. Id.  
149. See supra note 4.  

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<td>105</td>
<td>1/37,000</td>
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</table>

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Id.


152. As Congressman Lozier noted: "If we place the membership of the House in a straightjacket . . . [one] will reduce the representation of Kansas, Iowa, and of Nebraska to five or six Congressmen, and the representation of all other agricultural States proportionately." Apportionment of Representatives in Congress Amongst the Several States: Hearing on H.R. 13471 Before the House Comm. on the Census, 69th Cong., 2d Sess. 127 (1927) [hereinafter Hearing on H.R. 13471] (statement of Rep. Lozier). Representative Lozier and others spoke mainly about maintaining the agricultural states' membership for symbolic reasons, but the fear of a transfer of real power in the House from the rural districts to urban districts also motivated their drive to increase the size of the House. See supra note 6 and accompanying text.

153. "Until 1912, every apportionment except that of 1840 resulted in an increase in the number of Representatives in Congress." 1961 Hearings, supra note 5, at 184 (memorandum from the Department of Census to the House Comm. on the Judiciary).

154. See 69 Cong. Rec. 8125 (1928) (Rep. Jacobstein noted that one district in California had over 1,250,000 residents and another district in Michigan had over 750,000 residents while the average district size was 225,000). House members' districts in general varied tremendously in size. This was mainly due to the lack of any reapportionment since 1910. 70 Cong. Rec. 1600 (1929) (statement of Rep. Crail); see also Hearings on H.R. 13471, supra note 152, at 155 (1927) (Rep. Lineberger stated that his district contained over 516,000 residents).

155. The ratio was one representative for every 194,877 people in 1900, one for every 211,877 people in 1910 and one for every 281,000 people in 1930. 1961 Hearings, supra note 5, at 180 (memorandum from Library of Congress to House Comm. on the Judiciary).
felt would be destroyed by a freeze in growth.¹⁵⁶

Some congressmen expressed a fear in 1929 that the increasing population, coupled with a limit on the growth, would enlarge their district so that they would not be able to represent all of their constituents adequately.¹⁵⁷ Many also expressed concern that they would not be able to perform constituent service satisfactorily.¹⁵⁸ At that time, constituent services represented a small, but ever increasing, portion of a congressman’s workload in 1929. Today constituent services have become one of the most time-consuming tasks for members of Congress.¹⁵⁹

During the debates leading up to the 1929 Act, there was also considerable recognition of the fact that members of the House of Representatives represented many more constituents than did their counterparts in lower houses in other western democracies.¹⁶⁰

¹⁵⁶ Representative Lozier cautioned:
If you are going to destroy the representative character of the House and turn it into a little club or rich-man’s bureau in which a few master minds will dominate their colleagues and determine national policies, why not go a step further and abolish Congress . . . . I assert that the House of Representatives with a large membership will best reflect, interpret, and declare the popular will and is the surest safeguard of our free institutions.


¹⁵⁷ Hearing on H.R. 13471, supra note 152, at 117 (statement of Rep. Brougham). This concern, which still remains today, was being raised when each member of Congress represented, on the average, only 218,000 people. For comparison, a member of Congress in 1991 represents approximately 570,000 people. See supra note 12.

One of the most concrete proposals was to limit the ratio to one Representative for every 250,000 citizens, producing a House composed of 517 members. Hearings on H.R. 15983, 16301, 16346 and 16704, supra note 5, at 14 (statement of Rep. Edwards).

¹⁵⁸ See Apportionment of Representatives in Congress Amongst the Several States: Hearings on H.R. 111, 398, 413 and 3808 Before the House Comm. on the Census, 69th Cong., 1st Sess. 25-6 (1926) (hereinafter Hearings on H.R. 111, 398, 413 and 3808) (exchange between Rep. Thurston and Rep. Barbour) (discussing the increasing workload in the House, pointing especially to steadily increasing constituent service requests. They also debated whether or not clerks or staffers alone could solve this problem); 69 Cong. Rec. 9014 (1928) (statement of Rep. Lozier); see also Malcolm E. Jewell, State Legislatures 14 (1985) (commenting that most of a member’s time in the House is spent cutting through red tape and performing other constituent services).

¹⁵⁹ See, e.g., Rediscovering the Democratic Principle, supra note 15, at 10. Representative Hare recognized that “[w]e must realize that the Congress may become less efficient as the population increases unless the number of Representatives increases proportionately.” Hearings on H.R. 15983, 16301, 16346 and 16704, supra note 5, at 29 (statement of Rep. Hare). Debates on the appropriate size of the House continued after the 1929 Act and into the 1930s.

Both the supporters and some opponents of an increase agreed that the House procedural rules would not create more inefficiency if an increase were enacted. Hearing on H.R. 13471, supra note 152, at 143 (1927) (statements of Reps. Beedy and Jacobstein).

¹⁶⁰ Hearing on H.R. 13471, supra note 152, at 157 (statement of Rep. Thurston and
The disparity in the number of citizens represented became even more apparent with the recognition that members of Congress also represented considerably more net worth per district than did their European counterparts. Furthermore, congressional districts were comparatively larger in square mileage.161

2. Opposition to an Increase

The opponents of an enlarged House of Representatives felt that the House had become too large and unwieldy.162 They noted that the House's size prevented actual debate163 on legislation because very few members could comment on a bill while it was on the floor of the House.164 Opponents felt that this made the House a less representative institution.165 "The machine will be enlarged; but the fewer, and often the more secret, will be the springs by which its motions are directed."166 Some opponents of an increase even wanted to decrease the size of the House to enable more dis-
cussion of proposed bills on the floor.\footnote{167}

Opponents also stressed that most bills came to the House floor in a form that could not be altered without significantly delaying a final vote on the bill.\footnote{168} This ensured limited debate, and, the opponents believed, diminished the effectiveness of their representation of their constituents.\footnote{169}

Representatives also voiced concern over the necessity of an increase in light of recent technological improvements which allowed members to maintain better contact with their constituents.\footnote{170} Many argued that increased staffing could either eliminate or alleviate the increased congressional workload.\footnote{171} Consequently, the opponents of an increase in the size of the House of Representatives felt that the time had come to freeze the growth of the House — if not to reduce the number of members of the House to a more “manageable” size.\footnote{172}

The arguments put forth against a further increase in the size of the House of Representatives in the 1928-29 debates are similar to arguments made today by opponents of an increase as well as by proponents of a reduction in the number of members.\footnote{173} Members

\footnote{167. \textit{Hearings on H.R. 111, 398, 413 and 3808, supra note 158, at 37} (statement of Rep. Blanton). This view is also espoused by former Senator Proxmire. Proxmire, supra note 8, at D5.}

\footnote{168. See \textit{Hearings on H.R. 111, 398, 413 and 3808, supra note 158, at 37} (statement of Rep. Blanton); \textit{Hearing on H.R. 13471, supra note 152, at 142} (statement of Rep. Beedy). Opponents and proponents both agreed that much of the work and debate was done in committee and that the fate of the bill was settled, in most cases, once the bill reached the floor of the House.}

\footnote{169. \textit{Hearing on H.R. 13471, supra note 152, at 143} (statement of Rep. Beedy). He acknowledged that “[e]ach time the membership of the House is increased, the individual Member loses a proportionate opportunity to represent his constituents on the floor of the House; each Member becomes a smaller cog in the big wheel.” Id. This type of reasoning explains why it will probably be difficult to increase the membership today, as most members will be unlikely to pass a bill that dilutes their power.}

\footnote{170. Apportionment of Representatives: \textit{Hearing on H.R. 130, Before the House Comm. on the Census, 70th Cong., 1st Sess. 34-35 (1928) [hereinafter Hearing on H.R. 130] (statement of Rep. Crail) (“With modern means of communication and transportation he can keep in closer touch with many times the number possible in early days.”).}

\footnote{171. Id. at 34 (Rep. Crail asserted that most constituent service work was not a “[c]ongressional dut[y], but work that can be done by a good clerk . . . .”); see also \textit{Hearings on H.R. 111, 398, 413 and 3808, supra note 158, at 35} (statement of Rep. Blanton) (asserting that routine business, such as responding to constituent letters, could be done by clerks).}

\footnote{172. Opponents either wanted merely to freeze growth, or to reduce the size of the House to around 300. Three hundred was the most oft-cited ideal number for those who felt that the House had become too large and unwieldy. See, e.g., 69 Cong. Rec. 9105 (1928) (statement of Rep. Newton).}

\footnote{173. Compare \textit{Hearings on H.R. 111, 398, 413 and 3808, supra note 158, at 16-17}}
were also clearly concerned that the rapid expansion of the population of the United States would soon result in a House of "700 or 800" members. Many congressmen felt that "[t]he House now is large enough." Their fears were addressed both at that time and by subsequent commentators, one of whom noted that "[a] republican and representative, not necessarily an 'efficient,' government is our constitutional system's goal." The emphasis on the efficiency of debate on the House floor seems especially hollow today, with Congress conducting most of its business in committees and with recent technological improvements in voting methods speeding the House's transaction of its business.

The twenty year impasse worked to the benefit of those in favor of the status quo. Many of those in favor of growth voted with congressmen who wanted to resolve the twenty year deadlock, just so that reapportionment might take place. (statement of Rep. Fitzgerald) (arguing for an increase in the size of Congress) with Silverman, supra note 8, at 16 (arguing against an increase and calling for a reduction of the size of the House to 300); Hearing on H.R. 130, supra note 170, at 33 (statement of Rep. Crail) (arguing for a reduction in the size of House).

175. Id. at 9002. See 69 Cong. Rec. 9005 (1928) (statement of Rep. Burton); 70 Cong. Rec. 1584 (1929) (statement of Rep. Dickinson). A quote commonly used by opponents of an increase in the size of the House was: "Though every member of the Athenian assembly be a Socrates, the aggregate body would be a mob." The Federalist No. 56, at 342 (James Madison) (Clinton Rossiter ed., 1961); see, e.g., 69 Cong. Rec. 9005 (1928) (statement of Rep. Burton). Even though Madison recognized that there must be limits, he did foresee rapid and steady augmentation of the House; see also text accompanying supra note 121.
177. See Bailey, supra note 141, at 154. Congressional reliance on committees has grown tremendously since the 1920s; see also Roger H. Davidson, The Two Congresses and How They are Changing, in The Role of the Legislature in Western Democracies 3, 6 (Norman Ornstein ed., 1981),"[T]he House and Senate are working more diligently than ever before. Within the last decade Congress has gone to virtually a year long schedule. In the twenty years ending in 1976, House and Senate committee and subcommittee meetings doubled in number. . . ."
178. See A Question of Political Arithmetic, supra note 2, at 144 (computerized voting speeds the voting process on bills).
179. See supra note 6 and accompanying text. Reapportionment was desperately needed in 1929 because of the disparity in the size of congressional districts; see also supra note 154 and accompanying text.
C. 1961 Effort to Increase the Size of the House

In 1961 Congress conducted hearings re-examining the possibility of an increase in the size of the House. Many congressmen felt that most of the reasons given in 1929 for opposing an increase were no longer valid. Representative Whitten argued that the situation had been exacerbated to the point where expansion was desperately needed. Arguing that something must be done to lighten the House's workload, Whitten stressed that space limitation was no longer a problem. In addition, rules of procedure in the House had grown stricter, weakening the claim that the House was too unwieldy. Another argument for expansion was that both of the other branches of government had been expanded significantly to deal with the huge increase in the nation's population. Congress had recently increased the number of district

180. The hearings took place because of the addition of Hawaii and Alaska. See 1961 Hearings, supra note 5, at 24 (statement of Rep. Whitten). Two extra members of Congress had been allocated to accommodate the new states, but the House voted in 1961 to return to 435. Id. Unless the Supreme Court strikes down the present method of apportionment, or Congress decides to reconsider the 1929 Act, a change might not be possible until Puerto Rico or the District of Columbia are seriously considered for statehood.

181. See, e.g., id. at 60-62 (statement of Rep. Philbin); id. at 38 (statement of Rep. Chelf) (noting that even though technological improvements made communication easier, it was no longer possible to meet face-to-face with constituents).

182. Id. at 25 (statement of Rep. Whitten).

It is believed by many people familiar with the work of the Congress that something must be done soon to lighten the congressional load, so that the Representatives may have more time to devote to their duties. The most practical way to accomplish this end would be to increase the number of Representatives by providing that the present population ratio per Representative should remain at the 1950 figure of 345,000, rather than permitting it to rise to approximately 413,000. It is estimated that this would result in an additional 82 Representatives, or a total of 517 in all.

183. Id. at 25-26 (statement of Rep. Whitten).

184. Id. See also A Question of Political Arithmetic, supra note 2, at 144 (noting that this problem should not prevent growth today).


186. Id. Representative Whitten also noted that a large, well-led and highly disciplined body such as the House was much more efficient than a smaller body without those characteristics.

187. See id. at 27. Rep. Whitten recognized that: "The Congress has not demanded that the size of its two coordinate branches of Government remain static as their problems and difficulties have increased. . . . Only in the legislative branch . . . has there been no change over the past five decades, despite the vast increase in its work and its responsibilities." Id., see also id. at 37 (statement of Rep. Chelf) (pointing to the recent House's creation of 73 new district court judgeships to better serve the people); id. at 108 (statement of Rep. Fountain) (noting that the President's Cabinet was enlarged to deal with new
court judges to keep pace with the increasing judicial workload and had also authorized funding enabling administrative agencies to grow so that they could handle their increased burden. In stark contrast, Congress remained the same size. Although the number of staffers increased, this growth has not enhanced the effectiveness of members of Congress.

Representative Stratton acknowledged this lack of effectiveness:

I think all of us would agree that probably one of the most difficult jobs a Congressman has to do is to try to find time to read and to mediate on some of the major issues that are before us as well as doing the day-to-day routine assignments that are also a proper and necessary part of the job of being a Congressman.

Representative Stratton and his colleagues who favored expansion failed in their attempt to increase the size of the House.

IV. INTERNATIONAL COMPARISONS

Because of recent developments questioning the ability of the House to act as a representative institution, this Article argues in favor of increasing the size of the House of Representatives. This section compares the U.S. House of Representatives to representative institutions in other democracies, in an effort to gauge the feasibility of increasing the size of the House. The fact that other countries have lower houses which are larger than the House of Representatives suggests that expansion is not only possible, but also necessary to increase voter turnout, to help recruit new candidates and to heighten representation.

The members of Congress who objected to freezing the growth

188. Id. at 37 (statement of Rep. Chelf).
189. See supra note 3.
190. See infra note 217 and accompanying text.
192. See supra note 19.
193. Comparisons among legislatures are difficult to make. See Philip Norton, Introduction to Legislatures 6 (Philip Norton ed., 1990) (recognizing the problems and attributing them to “difficulties of conceptualizing and ensuring comparability of data derived from different social and political environments”). Nonetheless, the comparative method has been praised. See, e.g., Rudolf B. Schlesinger et al., Comparative Law: Cases-Text-Materials 1 (1988) (“By the use of [the comparative method] it becomes possible to make observations, and to gain insights that would be denied to one who limits his study to the law of a single country.”).
of the House in 1929 were aware that they represented many more people than their counterparts in other countries. The disparity in the number of constituents represented between the United States and other industrialized democracies has widened over the past fifty-three years. The existence of many lower houses considerably larger than the House of Representatives suggests that lower houses can function effectively with 500-600 members. These larger legislatures are among the more influential models for developing nations.

Furthermore, almost all representative democracies, except the United States, have adjusted the size of their lower house in the recent past to accommodate population growth. In sum, the


196. See Glassman, supra note 1; New Zealand Royal Comm'n, supra note 195, at 319. The French Chamber of Deputies has 577 members. West Germany has 496 members in its lower house, and the British House of Commons has 650 members. Japan's Diet is also larger; it has 512 members. A Question of Political Arithmetic, supra note 2, at 137.


198. See Rediscovering the Democratic Principle, supra note 15, at 8.
world community has recognized the necessity of placing an upper limit on the number of people a given representative can effectively represent.\(^\text{199}\)

Although it is difficult to make international comparisons, the process here is made easier because the function that legislators in foreign lower houses fulfill is similar to that of the members of the House of Representatives.\(^\text{200}\) Members of the House, however, have a much more difficult task than their foreign counterparts because they have to represent so many more constituents.\(^\text{201}\) This detracts from the time they have to spend in committees debating the merits of proposed bills.\(^\text{202}\) Foreign legislators, conversely, can make more efficient use of their limited time performing constituent services and researching the effects of their proposals.

The British House of Parliament, for example, serves as a good comparison with the House of Representatives because of the common political and legal heritage between the United States and Britain. Members of Parliament ("MPs") hold regular office

<table>
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<tr>
<th>Country</th>
<th>Year of last change in number of representatives</th>
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<tr>
<td>Australia</td>
<td>1980</td>
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<tr>
<td>Austria</td>
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<td>Brazil</td>
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<td>Canada</td>
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<td>United Kingdom</td>
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<td>United States</td>
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\(^{199}\) See supra note 195 (chart reveals that no ratio of representatives to represented exceeds 294,500:1).

\(^{200}\) See Gerhard Loewenberg & Samuel C. Patterson, Comparing Legislatures 40-44 (1979) (arguing that a primary function of all legislators is to link constituents with the national government); Olson, supra note 197, at 11-13 (acknowledging that all parliaments perform similar functions, including representing constituents); see also New Zealand Royal Comm’n, supra note 195, at 317-18 (The New Zealand Commission recommended that the number of members of the lower house be expanded so that the legislators could fulfill their functions: 1) representing constituents, 2) representing the nation 3) providing an effective government and 4) enacting legislation and scrutinizing the actions of the executive). This recommendation was made, even though each legislator in New Zealand only represents 34,021 constituents, Id. at 319.

\(^{201}\) In the United States, federalism, to a certain extent, removes some of the burden from national legislators. Nonetheless, the burden borne by members of the House of Representatives is much greater than the burden of legislators from other industrialized nations.

\(^{202}\) See Strauss infra note 218.
hours, and not surprisingly, "more than one-third of British citizens report that they have seen their MP in person." The closer ties between the representative and the represented suggest one reason for the much higher turnout in parliamentary elections in Great Britain than in House elections in the United States. Finally, the opportunity for election to Parliament is much higher in Great Britain than the opportunity for election to the House of Representatives, where members of Congress were reelected at a ninety-nine percent reelection rate in the last election. Increasing the size of the House would allow greater electoral opportunities for non-incumbent candidates, particularly minorities and women.

Congressmen fulfill a dual representative role, both by representing local interests in a national setting and by assisting their constituents in disputes with the national government. Constituent service in Great Britain is usually first brought to the MPs' attention personally in office hours. In contrast, most constituent service requests in the United States are first handled by the congressman's staff.

203. Loewenberg & Patterson, supra note 200, at 46. ("In Great Britain more than 90 percent of MPs hold regular office hours in their districts."). Constituent service in Great Britain is usually first brought to the MPs' attention personally in office hours. In contrast, most constituent service requests in the United States are first handled by the congressman's staff.

204. Id.

205. See David Glass et al., Voter Turnout: An International Comparison, Pub. Opinion, Dec.-Jan. 1984, at 49, 50 (noting that turnout, as a measure of voting age population, is over twenty percentage points higher in the United Kingdom than it is in the United States (76.0% to 52.6%)). While some of the disparity may be attributable to measures in place in the United Kingdom, such as automatic registration, some of the difference must also be due to relative familiarity with one's representative.

206. See Loewenberg & Patterson, supra note 200, at 84. Loewenberg and Patterson suggest that because Parliament is smaller, candidates have an easier time in seeking office. They also note that the larger size of the United States limits opportunities for election. However, the opportunity for election in Great Britain is reduced by the longer periods between elections.

Smaller districts would reduce the amount of money needed to win a congressional seat. See generally David B. Magleby & Candice J. Nelson, The Money Chase: Congressional Campaign Finance Reform (1990) (discussing the costs of congressional campaigns). The reduction in the size of districts might ease the pressure to seek money from political action committees ("PACs").

207. See Pierce, supra note 115, at 1249.

208. See infra notes 223-25 and accompanying text.

209. Mezey, supra note 13, at 15.

210. Id. (noting that one essential service which members of Congress perform is cutting through the red tape associated with large bureaucratic governments). See Clapp, supra note 7, at 50:

The significant increase in the impact of government on the daily lives of the population that has characterized the period since the early 1930's has thrust increasing responsibilities on members of the Congress. . . . One result has been the steady rise in the time which legislators allocate to performance of the 'represen-
constituent base would allow Congressmen to reflect more accurately their constituents' desires and can give them more time to handle the inevitable, and ever increasing, constituent service requests.

Since representatives in the lower houses in most foreign countries represent considerably fewer constituents, it appears that any increase in the size of the House of Representatives would be a beneficial step toward reducing Congress' workload and restoring the Framer's original vision for the House.

V. PUBLIC POLICY ARGUMENTS IN FAVOR OF EXPANSION

An increase in the size of the House would not only bring the United States into conformity with other democracies, but it would also have beneficial public policy consequences. Reducing the ratio of constituents to representatives would reduce the constituent service burden, increase electoral opportunities for previously under-represented groups and ease calls for term limitations.

Opponents of an expansion in the size of the House fail to recognize the critical role that members of the House have come to play in the day-to-day lives of their constituents. In fact: "Members of Congress have come to play a critical ombudsman role over the years. They're the main point of contact between the citizens and the growing bureaucracy. . . . It's a critical . . . role, and it grows more difficult as the size of districts and the size of the government expands." Despite this "critical role," members of Congress have become increasingly alienated from their constituents as their expanding workload has forced them to rely more and more on congressional staff.
The huge explosion in the number of House staffers over the last thirty years\(^{214}\) has not diminished the calls for increases in the size of the House.\(^{215}\) Those who argued, in 1929, that staffers alone were the answer have been proven mistaken.\(^{216}\) In fact, the increase in the number of staffers may have had a detrimental effect on the House.\(^{217}\)

Increased reliance on staff has "marginaliz[ed] debate and discussion among elected representatives,"\(^{218}\) because representatives no longer study problems themselves. Rather than helping save time, so that representatives can deliberate on issues, larger staffs require members to manage and coordinate the work such staffs generate.\(^{219}\)

Enlarging the House will also reduce the number of committee assignments and the heavy congressional workload,\(^{220}\) leaving House members more time for constituent affairs. Furthermore, dividing the demands of constituent services among more representatives would also decrease the number of staff needed per member. This would have the added benefit of permitting House members to increase control over politically unaccountable staffers.\(^{221}\)

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\(^{214}\) See Mikva & Saris, supra note 131, at 162.

\(^{215}\) See, e.g., Glassman, supra note 2, at 22.


\(^{217}\) Michael J. Malbin, Unelected Representatives: Congressional Staff and the Future of Representative Government 243 (1980) (arguing that the increased number of staffers results in an increased workload); see also Craig Winneker, Boren Declares, 'Congress Is In Trouble,' Offers a Remedy, Roll Call, Aug. 1, 1991, at 1, 19 (quoting Sen. Boren as asserting that the increased number of staffers has cut down on the communication among members of Congress).


\(^{219}\) Id.

\(^{220}\) Id.; see also A Question of Political Arithmetic, supra note 2, at 143 (noting that an increase in House membership would reduce the number of committee and subcommittee assignments of members). Members currently sit on six to seven committees and subcommittees. Id.

\(^{221}\) A Question of Political Arithmetic, supra note 2, at 143. Opponents of an increase would do well to listen to Representative Gibson, who stated: "I am not afraid of a larger House. It would function and be more representative of the people of the country. . . . Will we have full representative government or a restricted representative government?" Hearings on H.R. 15983, 16301, 16346 and 16704, supra note 5, at 23 (statement of Rep. Gibson).
An increase might also give more opportunities for women and minorities to enter the House. Women make up fifty-two percent of the U.S. population, yet, "[o]ur 94.4 percent male House is the fourth most gender-unbalanced among 25 Western democracies." Adding more districts would also ease the process of drawing black-majority districts, therefore ensuring increased black representation in Congress. A larger House also might increase smaller parties' electoral chances because larger assemblies are more conducive to small party representation. In addition, this increase could have a positive effect upon voter turnout in national elections. A reduction in the ratio might also have the effect of increasing participation in the electoral process, by heightening political awareness and alleviating the sense of alienation from the national government.

222. "[I]ncreases in the number of persons per district dilute the political power of groups in urban areas and contribute to spiraling campaign costs, effectively cutting off the electoral process from a wide range of potential candidates." See Kromkowski, supra note 176, at 22.


224. Id.

225. See Glassman, supra note 1, at D2. Glassman suggests that as blacks move out of "center-city areas" it will become more and more difficult to draw black-majority districts. Increasing the size of the House will ameliorate this problem by adding districts.

226. Id. (noting that current population trends show blacks moving from inner-city areas to the suburbs). This trend will most likely lead to lower representation for blacks in the Congress.


Smaller districts will provide all minorities, including third party candidates, with increased chances for victory in our winner-take-all system. See A Question of Political Arithmetic, supra note 2, at 141.

In addition, smaller districts will permit more personal campaigning and lessen dependency upon PAC contributions. The diffusion of power resulting from an expansion of the House will increase access to legislators, thus reducing the need to rely on PACs.

228. See Taagepera, supra note 212, at 173.

229. See Rediscovering the Democratic Principle, supra note 15, at 10. A similar notion was expressed in 1929. See Hearing on H.R. 13471, supra note 152, at 121 (statement of Rep. Greenwood) (noting that a sense of alienation from the government and the resultant effect on voter turnout suggest that reducing the number of citizens represented by each congressman might have a positive impact on national voter turnout).

230. See Glassman, supra note 1, at D2. Nonetheless, most studies show that constituents are satisfied with their representative. See Loewenberg & Patterson, supra note 200, at 47.
Finally, enlarging the House would also ease calls for a limitation on congressional tenure:231 "Such an augmentation would have a healthy effect on the democratic process in this country by bringing new faces to Congress, by bringing Congress closer to the people and by reducing the all-consuming importance of redistricting."232 The benefits of an increase far outweigh any costs which might have to be borne for more office space and additional staff.233 The House should fulfill its historical role by representing the people;234 an increase in the size of the House would be a step towards alleviating the growing increased elitism of the House.235

A crucial concern of the proponents of an increase in the size of the House of Representatives in 1929 remains unanswered. How many people can one member of Congress represent? Representative Gibson said, "In my opinion, no Representative can well represent more than from 200,000-250,000 people."236 Today the number has grown to over 572,000 for every member of Congress, and within forty years it will probably exceed 800,000.237 Surely

231. Glassman, supra note 1, at D2. He argues that an infusion of new congressmen will help end the calls for term limitations. Glassman is an opponent of term limitations, but even proponents of term limitations should favor expanding the House, since it will accomplish some of the goals of term limitations. See also A Question of Political Arithmetic, supra note 2, at 141 (noting that with the entry of new members the House would become more diverse without the institution of term limitations).

232. Glassman, supra note 1, at D2.

233. Rule, supra note 223 (arguing that the cost would be small when one considers the commensurate improvement in the ratio between representatives and represented).

234. See The Federalist No. 52, at 327 (James Madison) (Clinton Rossiter ed., 1961) ("As it is essential to liberty that the government in general should have a common interest with the people, so it is particularly essential that the branch of it under consideration should have an immediate dependence on, and an intimate sympathy with, the people.").

235. See Kromkowski, supra note 176, at 22.


237. Glassman, supra note 1, at D2.
the time has come to re-examine how many persons a member of
the House can adequately represent.\footnote{238}

\section{VI. Conclusion}

The average member of Congress represents five to fifteen
times as many constituents as his or her foreign counterparts.
Even though technological advances and increased staffing have re-
duced this burden somewhat, this is still too heavy a load for any
member of Congress to carry. Efficiency need not be the determi-
nant factor. Indeed, "[p]olitics is not about limited resources . . . .
Politics is really about inclusion and legitimacy . . . ."\footnote{239}

The Framers envisioned a steady augmentation of the size of
the House, matching the growth in the population. They suggested
a ratio of one congressman for every thirty thousand voters.\footnote{240}
This goal is obviously beyond reach in a country the size of the United
States, but any reduction in the ratio should be welcomed.\footnote{241}
Unlike the present limitation of 435, the size of the House should be
chosen after careful study. A rollback of the ratio to one member
of Congress for each 500,000 people\footnote{242} will result in a relatively

to the voters, and by increasing the number of council members, to increase the
potential for a more representative council.

Bob Liff, Drawing a Template for the Future, N.Y. Newsday, Mar. 20, 1991, at 99 (interview
with Alan Gartner). The expansion will reduce the size of each district from an average of
202,000 to 143,000. Congress should consider a similar increase to maintain the representa-
tiveness of the House of Representatives.

238. The House has not grown in the past 80 years while the U.S. population has
grown 263%. This growth in population has been accompanied by increased constituent
demands upon every member of the House. L. Craig Schoonmaker, Time to Expand Size of

See also Elizabeth Lesly, Only the Lonely—House Members from Single Seat States
in LEXIS, Nexis Library, Wires File (describing the difficulties that members who represent
an entire state face). Montana will become the seventh state with a single member after the
1992 reapportionment unless the Supreme Court upholds Montana v. Department of Com-
merce, or the House votes to increase the size of the House. Id.

(quoting Prof. Charles Kromkowski).


241. Professor Kromkowski notes that an increase will "reviv[e] the constitutional
principle that political representation is related to our nation's most precious commodity:
the American people." A Question of Political Arithmetic, supra note 2, at 142.

242. This increase would lead to a steady expansion in the size of the House. Although
a limitation might become necessary if U.S. population growth does not stabilize, a total of
550 members does not appear to be unworkable.
small increase in the number of members of the House while ensuring that residents of states such as Montana are not disenfranchised. In addition, it would lead to greater accountability of representatives to their constituents, as well as an increase in the number of women, minorities and small party members in the House. Finally, the increase might enhance voter participation.

There are many reasons for enlarging the size of the House of Representatives, including the suit by Montana. Even if the Supreme Court reverses the Montana district court decision, however, the House should take action to maintain adequate levels of representation. "There is . . . a good deal of evidence that those who framed and ratified the Constitution intended that the House of Representatives have as its constituency a public in which the votes of all citizens were of equal weight." A House in which each member represents over 572,000 people no longer fulfills this vision.

243. See Moss, supra note 239, at A1 (Moss quotes David C. Huckabee of the Congressional Research Service as noting that a House of 489 members would have an average district of 509,000).

244. Unfortunately, however desirable this action might be, it is unlikely to occur, for as Matthew Conssolotto notes: "[B]y expanding the number of members, the House would also be diluting the power and importance of each individual seat. And politicians are not known for such acts of self-denial." Matthew Conssolotto, Enlarge the House, Christian Sci. Monitor, Dec. 22, 1989, at 19. The Supreme Court should consider this political reality when ruling on Montana v. Department of Commerce.

245. Hacker, supra note 130, at 14.