

Commentary

Why 435? A Question of Political Arithmetic

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I take for granted . . . that the number of representatives will be augmented from time to time in the manner provided by the Constitution.

James Madison, *Federalist 55*

A permanent ministerial apportionment act should be susceptible of accommodation to the progressive state of knowledge.

U.S. Senator Arthur H. Vandenberg, April 18, 1929

On January 16, 1991, the U.S. House of Representatives was reapportioned according to state population totals from the 1990 Census. The proportional redivision of the House's 435 seats among the states has occurred automatically after every federal Census since 1929, in accordance with Title 2 of the U.S. Code.¹ Title 2 specifies the procedures for an automatic reapportionment of the House and mandates that within a week of the first session of every fifth Congress, "the President shall transmit to the Congress a statement showing the whole number of persons in each state . . . 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 equal proportions, no State to receive less than one Member." Within 15 days after receiving this statement, the Clerk of the House is required "to send to the executive of each State a certificate of the number of Representatives to which such State is entitled."

Despite the simplicity of execution, the effects of automatic reapportionment are underestimated and understudied. With several strokes of the Clerk's pen, for example, 19 House seats were transferred among 21 states. Residents of 13 states lost their rights to one or more representatives, while eight states gained additional representatives for their resi-

1. Ch. 28, Sec. 22, 46 Stat. 26, June 18, 1929; amended April 25, 1940, ch. 152, sec. 1, 2, 54 Stat. 162; and November 15, 1941, ch. 470, sec. 1, 55 Stat. 761.

dents. New York lost three representatives, while Montana's loss of one representative halved its delegation, insuring that a single member will represent more than 800,000 residents after the 1992 elections! Massachusetts, another hardship case, lost its eleventh representative by not having 12,000 more residents counted in the 1990 Census.² In contrast, California gained seven representatives, increasing its House delegation to 52, a record number. Florida and Texas respectively gained four and three representatives. Besides placing new redistricting responsibilities upon the state legislatures of these states,³ the 1991 reapportionment also will affect American politics throughout the next decade: altering the House's membership,⁴ changing the dynamics of congressional elections⁵ and policymaking, as well as dramatically reshaping the campaign strategies of the next three presidential elections. Despite its political significance, the automatic combination of decennial census numbers with the House's reapportionment remains largely unexamined and unchallenged.⁶

I. Representation and the Founding

The Framers of the U.S. Constitution were among the first to recognize the political genius of linking a decennial census with the reapportion-

2. "Little Hope for Mass. Keeping its 11th Rep.," *Roll Call*, Jan. 17, 1991; "Census Method Costly to Massachusetts," *Washington Post*, January 5, 1991; "In Battle Over Reapportionment, Even Math Is a Target," *Washington Post*, May 27, 1991, A21.

3. See "Politicians fasten their seat belts for winding road of redistricting," *Courier-Journal*, December 30, 1990, A1; "Remap madness rears its head," *Chicago Tribune*, January 28, 1991, p. 3; "Albany's New Best Friend: Congress, Near Redistricting," *New York Times*, March 3, 1991, A1; "Texas Redistricting: A Case Study of Democrats' Struggle," *Washington Post*, May 21, 1991, A1.

4. See "How a Texan Might be Unhorsed in '92," *National Journal*, February 16, 1991, p. 403; and "When Music Ends, Atkins May Have Nowhere to Sit," *Roll Call*, January 17, 1991; "In New York, and Other States Where the Census Has Cut Seats, Congressmen Prepare for Battle," *Wall Street Journal*, February 27, 1991, A12; "Redrawing West Virginia Map Sets Democrat v. Democrat," *Congressional Quarterly*, April 27, 1991, 1035.

5. See "House Candidates Have '92 in Mind," *Washington Post*, September 25, 1990, A1.

6. For a comprehensive history of the decennial census see Margo Anderson, *The American Census* (New Haven, CT: Yale University Press, 1988). Laurence Schmeckebier *Congressional Apportionment* (Washington, DC: Brookings Institution, 1941), and Michael L. Balinski and H. Peyton Young, *Fair Representation* (New Haven, CT: Yale University Press, 1982), are solid histories of the different mathematical methods that have been used to complete the House's apportionment. Charles Eagles, *Democracy Delayed* (Athens, GA: University of Georgia, 1990), analyzes the failure to reapportion the House in the 1920s.

ment of political representation. They did so in Article I of the Constitution to insure that the size of the House of Representatives, and the division of its members would remain attuned to the growth and changing composition of the American people.⁷ Article I, in part, demands that “Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective Numbers.” The Framers’ decision to connect a decennial census with the House’s apportionment accomplished several things. Foremost, it constitutionalized the relationship between the American people and the structure of the House of Representatives, literally endowing the House’s design with what Virginia delegate George Mason called its “democratic” principle.⁸ As his fellow delegate, James Madison, dramatically declared: “If the power is not immediately derived from the people, in proportion to their numbers, we may make a paper confederacy, but that will be all.”⁹ More concretely, the Framers’ decision also established a process for transferring political power among the states, an unprecedented solution to the “rotten borough” problem that had plagued British and colonial governments for generations.¹⁰ Finally, the Framers’ decision established a constitutional mechanism for incorporating new populations and the western territories into the Union. As Connecticut delegate Roger Sherman understood it, the Constitution’s apportionment process provided “for our posterity, for our children and our grandchildren, who would be as likely to be citizens of new western states as of the old states. On this consideration alone,” he flatly declared, “we ought to make no discrimination” in the apportionment of representation between older or newer states.¹¹

In the *Federalist*, Madison defends the Framers’ historic decision, insisting that there is a “natural and universal connection” between the personal rights of the people and “the proportion of those who are to represent the people of each State.” The “foresight of the [1787 Constitutional] convention,” Madison claimed, “has accordingly taken care that the progress of population may be accompanied with a proper

7. See Joel Francis Paschal, “The House of Representatives: Grand Depository of the Democratic Principle,” *Law and Contemporary Problems*, 17 (1952). For more on the development of political representation in the U.S., see Alfred de Grazia, *Public and Republic* (New York: Knopf, 1951).

8. *The Debates of the Several State Conventions of the Adoption of the Federal Constitution* (Jonathan Elliot ed., 1937), Vol. V, p. 136.

9. *The Records of the Federal Convention of 1787* (Farrand ed., 1911), Vol. I, p. 472.

10. Alfred de Grazia, *Public and Republic*, pp. 60-61. See also *Wesberry v. Sanders*, 376 U.S. 1 (1964).

11. *The Record of the Federal Convention of 1787* (Farrand ed., 1911), Vol. II, p. 3.

increase of the representative branch of the government.” Not surprisingly, Madison projected that in 50 years time, population increases would guarantee a 400-member House.¹²

With few records of state populations available to them, the framers debated the terms of the first apportionment, finally agreeing that apportionment under Article I would only be temporary until the first federal census could be completed in 1790. They also temporarily set the House’s size at 65 members, though many, including Madison, believed this number too low to make the House representative of the American people. Several delegates also were concerned that the House must be prevented from growing too large. By the Convention’s end, however, all attempts to increase the House’s size or to fix its apportionment procedures permanently had failed. Instead, the framers declared in Article I only that the number of representatives could “not exceed one for every thirty Thousand” persons, but that each state “shall have at Least one Representative.” The open texture of Article I thus guaranteed that the House’s size and the proportional division of its members would remain political questions for future generations to answer. As James Madison later acknowledged, “the truth is that in all cases a certain number [of representatives] at least seems to be necessary to secure the benefits of free consultation and discussion, and to guard against too easy a combination for improper purposes; as, on the other hand, the number ought at most to be kept within a certain limit, in order to avoid the confusion and intemperance of a multitude.” “Nothing,” however, “can be more fallacious than to found our political calculations on arithmetical principles.”¹³

Ironically, the first constitutional amendment ever proposed by Congress attempted to do just this. It modified the Constitution’s open-ended process of apportioning the House, standardizing the basis for dividing members among the states, and explicitly granting Congress full authority to regulate its procedures. Like the second proposed amendment, which regulated congressional pay raises, the apportionment amendment was never ratified. As a result, Congress and the President were once again left with the responsibility of completing subsequent reapportionments of the House. Within two years after completion of each of the first thirteen censuses, they did just this, passing legislation each decade to alter the House’s size and the division of its members among the states. From 1790 to 1910, the two branches also agreed to

12. *Federalist* Nos. 54 and 56. See also *Federalist* No. 55.

13. *Federalist* No. 55.

Table I. Growth in the Size of the U.S. House of Representatives, 1787-1910

1787	1780	1800	1810	1820	1830	1840	1850	1860	1870	1880	1890	1900	1910
65	105	141	181	213	240	223	234	242	292	325	356	386	435

marginal increases in the House’s size after every census, except the 1840 Census.¹⁴ The smallest increase was one member after the 1850 Census;¹⁵ the largest increase, 50, occurred after the 1870 Census. The House’s size did not grow as fast as Madison originally envisioned, as Table I shows, but by 1910 the American population had grown to 92 million and Congress and President William H. Taft approved legislation increasing the House to 435 members—its size today.¹⁶

In the 1920s, the process of reapportioning the House changed un-

14. For an interesting account of the 1840 apportionment, see Johanna Nichol Shield’s “Whigs Reform the ‘Bear Garden’: Representation and the Apportionment Act of 1842,” *Journal of the Early Republic*, V (1985).

15. After the 1840 apportionment, five new states entered the Union, raising the House’s size to 233 Members. In 1850, Congress and President Zachary Taylor approved legislation mandating the taking of the 7th decennial census. This legislation also included unique provisions for the House’s apportionment which attempted to freeze the body’s size at 233 Members, and to make the Secretary of Interior solely responsible for future apportionments. The legislation never succeeded in its goals, as the House was increased by one Member in 1852 (10 Stat. 25) and again by eight in 1862 (12 Stat. 353). The 1850 census statute was replaced by separate statutes mandating the 1870 census and reapportionment.

16. 37 Stat. L. 13 (August 8, 1911). There is a misconception about the effect of this statute’s language stating that the number of Members of the House of Representatives shall be 433 Members until Arizona and New Mexico became states, when the number shall be *fixed* at 435 Members. Commentators wrongly have taken this to mean that the House’s size was frozen. The language of previous statutes as well as Congressional debates on the 1910 and 1920 reapportionments reveal this not to be so. In short, only the 1929 statute and its amendments have effectively frozen the House’s size.

expectedly, breaking what Madison had called the “natural and universal connection” between the federal Census and the House’s reapportionment. The 1920 Census was completed as scheduled, revealing an American people who were demographically younger, more urban, and increasingly pluralistic in their ethnic ancestry. Charges of a rural undercount, however, and nativist anxieties over transferring political power to these new urban and ethnic populations resonated in Congress, blocking all efforts to reapportion the House. As a result, the House for the first time was not reapportioned.¹⁷

Despite the efforts of several congressmen, Congress and President Calvin Coolidge repeatedly failed to enact legislation mandating a new apportionment of the House, declining even to debate the issue for several years. Finally, under the pressures of an approaching 1930 census and a special session called by the newly-inaugurated President Herbert Hoover, Congress hastily passed reapportionment legislation which Alabama Senator Hugo Black at the time called “unjust and unrighteous” and Representative Jesse Dickinson of Iowa referred to as “a sugar-coated pill.”¹⁸

The 1929 Apportionment Act, now known along with its 1940 and 1941 amendments¹⁹ as Title 2 of the U.S. Code, was a noticeable departure from previous apportionment legislation, not to mention the political origins of Article I. Though advocates of this new apportionment process, like Senator Arthur H. Vandenberg of Michigan, promised timely completion of future reapportionments, elements of the House’s apportionment were changed profoundly. The assured expedience, for

17. For more on the 1920 census, see Anderson, *The American Census*, pp. 129-58. For more on the failed 1920 reapportionment, see Orville J. Sweeting, “John Q. Tilson: Reapportionment Act of 1929,” *The Western Political Quarterly*, 9 (1956): 434-53; Balinski and Young, *Fair Representation*, pp. 51-52; Charles A. Kromkowski and John A. Kromkowski, “Why 435?: The Decennial Apportionment of the House of Representatives,” Washington, DC: NCUEA, March 1990, pp. 14-17; Charles Eagles, *Democracy Delayed: Congressional Reapportionment and the Urban-Rural Conflict in the 1920s* (Athens, GA: University of Georgia Press, 1990), pp. 32-84.

18. Eagles, *Democracy Delayed*, p. 75; and *Congressional Record*, January 10, 1929, p. 1498.

19. The 1940 amendment changed the date of the President’s report to Congress, in response to the changes in the congressional calendar caused by the Twentieth Amendment to the Constitution (54 Stat. L. 162, April 25, 1940). The 1941 amendment (55 Stat. L. 761, November 15, 1941) resolved a mathematical debate between two apportionment formulas and a partisan conflict over the assignment of the House’s 435th seat, by requiring the use of the formula known as “equal proportions” and the assignment of the final seat to the Democratic-controlled state legislature of Arkansas.

example, came at the cost of unprecedented legislative procedures and several unintended political consequences. No longer, according to the Act's mandate, were the procedural requirements of two-house majorities followed by Presidential review necessary for completing new apportionments of the House. Nor, it followed, would either Congress or the President be able to alter future reapportionments with legislative amendments or even the simplest of bargaining techniques. Since 1929, in fact, decennial reapportionments have never had the explicit approval of Congress. Instead, the House's reapportionment now is completed as if the Constitution explicitly mandated the division of a 435-Member House by the "*equal proportions*" formula.

The 1929 Act had other profound effects upon the American political landscape. It effectively froze the size of the House of Representatives, completing through a statute what arguably only a constitutional amendment can accomplish. Even more perniciously though, the framers of the 1929 Act failed to continue the electoral standards of prior apportionment laws requiring congressional districts to be "compact,"²⁰ "contiguous,"²¹ and with "as nearly as practicable an equal number of inhabitants."²² The 1929 Act thus legitimized if not invited the legacy of gerrymandering that prevented fair representation of groups and persons until *Baker v. Carr*²³ and the "reapportionment revolution." In sum, the 1929 Act placed the House's reapportionment on automatic pilot; and in so doing, provided an administrative answer to what previously had been considered a political question.

II. Assessing Automatic Apportionment

Acceptance of automatic apportionments of the House since 1929 has precluded closer analysis of its political effects. By far the most dramatic effect has been on congressional districts. Since the House expansion to 435 Members in 1911, the U.S. population has increased by 170 percent—from 92 million persons to over 249 million persons in 1990. As Table II illustrates, without increases in House size, the average number of persons per representative has increased from roughly 211,000 in 1911 to about 575,000 in 1991. Within the next 50 years, the average member of the House of Representatives will be expected to represent 750,000 persons while several representatives of single-district states will represent well over one million persons!

20. 31 Stat. L. 733, January 16, 1901.

21. 5 Stat. L. 491, June 25, 1842.

22. 17 Stat. L. 28, February 2, 1872. See also *Wood v. Broom*, 287 U.S. 1 (1932).

23. 369 U.S. 186 (1962).

Table II. Increase in National Average of Persons per Representative

NUMBER OF PERSONS	YEAR					
	1790	1840	1890	1940	1990	2040 ^a
800,000						x
600,000					x	
400,000						
200,000				x		
100,000			x			
33,000	x	x				

^aState District averages: 1790, 33,000 persons; 1840, 76,680 persons; 1890, 176,000 persons; 1940, 304,000 persons; 1990, 574,000 persons; 2040, 747,000 (projection based on estimated U.S. population of 326 million persons, see Table VI).

A comparison of the House of Representatives with legislatures in 14 democratic governments exposes other anomalies of the House's automatic apportionment. Though comparisons of this type are limited by the internal particularities of each nation and government, Table III is revealing. First, it indicates that the international norm for representative houses is greater than 435 members: France's National Assembly, for example, has 577 members; Japan's Diet has 512 members; and Germany's newly-constituted Bundestag has 662 members. Second, it reveals more immediate relationships between foreign representatives and their constituents than between U.S. representatives and their constituents. Third, it records the year in which sizes of these legislatures were last changed, confirming the inflexibility of the automatic apportionment process and the anomaly of a growing U.S. population and a House of Representatives "permanently frozen" since 1929.

Since 1929, automatic apportionment has also had significant consequences for the states, heightening in many instances the severity of their reapportionment losses. Table IV reveals that, while no state lost a representative during the House's reapportionment from 1890 to 1910, at least nine states have lost one or more members during each reapportionment since 1929. Moreover, of the states losing representatives prior to 1929, most lost only one representative. By contrast, of the 13 states that lost representatives in the 1991 reapportionment, four lost two seats and one state lost three. Table IV also confirms that greater losses became common only after automatic apportionment was established in 1929. This trend will continue into the next century if the House size remains con-

Table III. Comparative Analysis of 14 Representative Governments

COUNTRY	POPULATION IN MILLIONS ^a	NO. OF REPRESENTATIVES IN LOWER HOUSE ^b	PERSONS PER REPRESENTATIVE	YEAR SINCE LAST CHANGE IN NO. OF REPRESENTATIVES
Australia	16.5	148	111,400	1980
Austria	7.6	183	41,500	1970
Brazil	141.4	479	294,500	1988
Canada	25.6	295	86,700	1974
France	55.6	577	96,300	1981
Great Britain	56.9	650	87,500	1980
Italy	57.4	630	91,100	1958
Japan	122.2	512	238,600	1972
Malaysia	16.9	177	95,400	1983
Poland	37.7	460	81,900	1989
Spain	39.0	350	111,400	1977
Sweden	8.4	349	24,000	1973
Germany	79.5	662	120,000	1990
United States	249.6	435	574,000	1911

^aPopulation data reflects official estimates from years 1987-1990.

^bRepresentatives for upper legislative chambers or senates not included.

Sources: *Europa World Yearbook, 1989*, 2 Vol. (Europa Publications Inc., 1989); *The International Almanac of Electoral History*, 2nd ed. (MacMillan Press, 1982); *The Information Please Almanac* (Houghton Mifflin Co., 1991).

stant and the U.S. population continues to increase. Moreover, because automatic apportionment preempts the political process by rendering decennial legislation unnecessary, opportunities for lobbying Congress for even partial relief from these greater losses have not been readily available to the states or their residents.

In addition, the 13 states that automatically lost one or more representatives in 1991 will have significantly reduced political capacities. Almost all will have their House delegations reduced to their nineteenth-century sizes: Illinois, for example, will have only 20 representatives, the same number it last had in 1880; while Pennsylvania and Kentucky will have 20 and 6 representatives respectively, delegation sizes resembling those in 1800! Of these 13 "loser" states, however, only two states (Iowa and West Virginia) actually lost population in the 1980s. The other eleven gained population but lost one or more seats anyway, another peculiar and understudied effect of automatic apportionment.

The 1991 apportionment yielded additional anomalies. As described above, Title 2 of the U.S. Code mandates the completion of the House's

Table IV. Reapportionment Losses by the States

YEAR	LOSS			TOTAL NUMBER OF STATES THAT LOST
	1 REPRESENTATIVE	2 REPRESENTATIVES	3 OR MORE REPRESENTATIVES	
1790	1	0	0	1
1800	0	0	0	0
1810	0	0	1	1 ^a
1820	4	0	0	4
1830	4	0	0	4
1840	5	5	5	15
1850	7	1	0	8
1860	8	5	0	13
1870	0	1	0	1
1880	3	0	0	3
1890	0	0	0	0
1900	0	0	0	0
1910	0	0	0	0
1920		No Apportionment		
1930	16	4	1	21
1940	9	0	0	9
1950	5	3	1	9
1960	12	3	1	16
1970	7	2	0	9
1980	6	3	1	10
1990	8	4	1	13

^aMassachusetts received 20 Representatives in the 1810 apportionment, an increase of 3 from the 1800 apportionment; however, when Maine was admitted as a state it received seven of Massachusetts's 20 representatives.

apportionment by the method known as equal proportions. Proposed in the 1900s by Joseph Hill, an assistant director of the Census, the equal proportions method reapportions the House with the effect of minimizing the *percentage* differences in the average district sizes of the states.²⁴ Formulated before the U.S. Supreme Court announced its "one person-one vote" standard for congressional districts,²⁵ this equal proportions method does not minimize *absolute* differences between the states'

24. See Schmeckebier, *Congressional Apportionment*, pp. 21-33; and David C. Huckabee, "Apportioning Seats in the House of Representatives: The Method of Equal Proportions," Congressional Research Service Report to Congress, February 17, 1988; see also Balinski and Young, *Fair Representation*, who challenge the formula on political grounds.

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

Table V. State Population Growth and the 1991 Apportionment

STATE (PRESENT NUMBER OF REPRESENTATIVES)	% POPULATION GROWTH SINCE 1980	NET POPULATION GROWTH SINCE 1980	EFFECT OF 1991 APPORTIONMENT ON NUMBER OF REPRESENTATIVES
Illinois (22)	0.3	40,000	-2
Pennsylvania (23)	0.5	61,000	-2
Michigan (18)	0.7	66,000	-2
Louisiana (7)	0.7	32,000	-1
Ohio (21)	0.8	90,000	-2
Nebraska (3)	0.9	15,000	None
Kentucky (7)	1.0	38,000	-1
Indiana (10)	1.3	74,000	None
Montana (2)	2.1	17,000	-1
Mississippi (5)	2.5	66,000	None
New York (34)	2.7	486,000	-3
Arkansas (4)	3.2	76,000	None
Alabama (7)	4.1	168,000	None
Oklahoma (6)	4.2	132,000	None
Massachusetts (11)	4.8	292,000	-1
Kansas (5)	4.9	122,000	-1
New Jersey (14)	4.9	384,000	-1

average district sizes. The 1991 reapportionment, thus, left Montana with the most populous district with 803,655 persons; while Wyoming was left with the least populous district with 455,975 persons, or an absolute difference among the states of 347,680 persons. In contrast, another apportionment method known as the Dean method, for the University of Vermont mathematics professor who created it in the 1830s, minimizes absolute differences among the states. A recalculation of the 1991 apportionment with the Dean method ironically leaves Montana with the least populous district with 401,827 persons; while South Dakota is left with the most populous district with 699,999 persons, or an absolute difference of 298,171 persons: 49,509 persons fewer than under the equal proportions method. In addition to this effect, the equal proportions method also had other anomalous effects upon states with decennial population growth. Kansas and New Jersey, for example, grew at the decennial rate of 4.9 percent and still lost one representative in 1991; Indiana, however, grew at 1.3 percent and lost nothing. Table V documents this effect upon other states that lost representation in the 1991 apportionment. Each of these states grew numerically or proportionally faster in population than several states that did not lose a single representative. While the mathematical calculations that produced this para-

doxical result are defensible, the political arithmetic is anything but satisfying for these states, especially when most would retain one representative from a marginal increase in the House's size.²⁶

III. Reforming the Apportionment Process

While automatic apportionment enables Congress and the President to avoid conflicts and difficult decision making, the administrative process established in the midst of the failures of the 1920s has long since exhausted its political usefulness. Whether political pressure ever builds for reforming the present process remains to be seen. Remedies for the harsher effects of reapportionment could begin in the courts. Arguably, the "automatic" procedures for completing the House's reapportionment could be challenged as violating the Constitution's Presentment Clause (Art. I, sec. 7, cl. 2 and 3), a host of Due Process requirements including Article I, Section 2's "one person-one vote" standard, as well as Article V amendment procedures required for permanent changes to the structures of our national institutions.²⁷ At best, however, judicial action invalidating the automatic apportionment process could only restart political debate on the House's size and the equity of the division of its members "among the several States."

Once restarted, this debate inevitably would include a variety of proposals. Some might increase the House's size in proportion to decennial population growth; others might increase it to minimize interstate differences or to implement proportional representation of underrepresented groups. Yet other proposals might press for decreasing the House's size, arguing that a smaller body would be less expensive and more efficient. Still others might simply advocate maintaining the House's present size.²⁸ The following arguments for marginal but decen-

26. According to the equal proportions method, Massachusetts would receive the 436th seat; New Jersey the 437th; New York the 438th; Kentucky the 439th; California the 440th; Montana the 441st; Arizona the 442nd; Georgia the 443rd; Louisiana the 444th; Michigan the 445th; Maryland the 446th; Illinois the 447th; Texas the 448th; Ohio the 449th; California the 450th.

27. See *I.N.S. v. Chadha*, 462 U.S. 919 (1983), where the U.S. Supreme Court struck down the one-house veto, contending that it violated the Presentment Clause. See *Bowsher v. Synar*, 478 U.S. 714 (1986) at 726-34; and *Metropolitan Washington Airports Authority v. Citizens Against Airport Noise*, 59 LW 4660 (1991), where the Court argues for a stricter separation of legislative and executive powers.

28. See, for example, James K. Glassman, "Let's Build a Bigger House," *Washington Post*, June 17, 1990, D2; Wilma Rule, "Expanded Congress Would Help Women," *New York Times*, February 24, 1991, E16; Morris Silverman, "Better Yet, Reduce the Size of the House," *New York Times*, January 14, 1991, A17.

nial increases in the House's size might also enrich this debate:

(1) An increase in House size would benefit the American political system, restoring the House to its democratic and federal foundations. Since 1930, when the House size was effectively frozen, the U.S. population has more than doubled, growing to almost 250 million persons. Despite this, the size of the House has remained unchanged and decennial reapportionments have produced an uneven federal landscape in which 13 states now have two or fewer representatives. Without an increase, we one day may have a House of Representatives in which one-fifth of the states have only one representative, and one-third have two or fewer.

(2) An increase in House size would bring new representatives into Congress with new approaches to our nation's problems and fresh visions for its future. With low turnover through retirement and electoral defeat, marginal but decennial increases arguably could reinvigorate Congress without resorting to term-limitation restrictions.

(3) An increase in the number of representatives would provide more electoral opportunities for persons traditionally underrepresented in Congress, like women, ethnic minorities, non-political professionals, and retired persons. Diversifying the composition of Congress through a free and open process would make the House more representative of the American people.

(4) An increase in House size by 1992 would strengthen the ties between Congress and the American people by stabilizing the decennial increases in the numbers of persons for each representative. Without an increase, the average congressional district will include more than 575,000 persons by 1992. This average will exceed 600,000 persons during the 1990s and 750,000 persons within the next 50 years!

(5) Increasing the House size would be politically progressive. Without an increase, New York and Massachusetts will have the same number of representatives in 1993 that they last had in 1860!

(6) Increasing the House by less than ten members by 1992 would allow Montana to maintain its second representative. Without an increase, the new representative of Montana's single district will represent more than 800,000 persons, and the nation's fourth largest state in terms of land area. Similar circumstances are projected for other western states after future reapportionments. Though trees and acres were never intended to be represented in Congress, large districts in geographically-large states far from the nation's Capital are a limitation on the efficiency of individual representatives and Congress as a whole.

(7) Increasing the House by less than 20 members by 1992 would reward fast-growing states and, at the same time, restore at least one

representative to northern and eastern, industrial-based states who have been hit the hardest by the geographic transfer of industrial growth to the South and West.

(8) Increasing the House by less than 40 Members by 1992 would make up for 60 years of automatic apportionment, reviving the constitutional principle that political representation is related to our nation's most precious commodity: the American people. Such an increase will insure that every state with a decennial population gain will not lose representation in Congress. Without an increase, eleven states will lose representatives in 1993, without losing population in the 1980s.

(9) Marginal increases in the House's size, moreover, would help our state legislatures assume their expanded policy and revenue responsibilities. By decreasing the numbers of members taken from a state—five states recently lost two or three members—the time, effort and money spent by state legislators on redistricting can be decreased. In short, the perceived benefits of an automatic apportionment are outweighed by deferred costs to the states.

(10) Marginal increases would support a larger pool of persons with the capacities and interests in election to higher office. In 1990, four elections for the U.S. Senate were uncontested, many others included only token opposition. Even incumbents readily admit that the persistent lack of serious competition weakens both the Senate and our electoral system in the long run. To insure that experienced, competent people run for higher elective offices, opportunities for lower elective office can be increased.

(11) Marginal increases would not slow down the legislative process in the House because, unlike the Senate, the House's committee system, the party caucuses and the House Rules Committee insure expeditious decision-making in the House.

(12) Decennial increases in House size would bring the body closer to international standards. As was reported in Table III, 7 of the 13 legislatures surveyed have more members in their lower house than does the U.S., and all of them have much lower ratios of representatives to population than does the U.S.

(13) Decennial increases, in addition, would make more sophisticated forms of grass-roots campaigning cost effective, reducing the significance of campaign expenditures that drive many people away from active participation in the political process.

(14) Decennial increases also might help renew public interest in the decennial census, once again connecting participation in the census with the concrete political benefit of better and more responsive representation. Higher response rates on census mail-in forms would mean reduced

governmental expenditures which now go to tens of thousands of extra census enumerators each decade.

(15) Decennial increases might strengthen both parties by creating “new” districts that demand national party resources and expertise.

(16) In southern and western states, more representatives in the House might mean that faster growing populations would enjoy more opportunities to elect representatives from their communities. More stable district boundaries would help establish political continuity and stability within America’s newest neighborhoods.

(17) In northern, southern and western states, more members might lessen some of the tensions caused by political competition between ethnic groups. Without resorting to proportional representation, increases in the California, Florida, Illinois, New York and Texas delegations likely will assure more political access and recognition for these groups.

(18) In northern states, more representatives in Congress might lessen political tensions created by reductions in a state’s delegation. Without serious consideration of increasing district populations, urban and ethnic minority Members will compete in the future for fewer districts in New York, Pennsylvania, Michigan and Illinois as well as many other older cities and suburbs, jeopardizing many of the goals of the 1982 Voting Rights Act.

(19) More representatives in Congress also might open the way for meeting the representational needs of persons living in the District of Columbia. A constitutional amendment providing for full representation of the District in the House need not address the thornier constitutional question of statehood. With roughly 600,000 persons, D.C. could receive one representative.

(20) More representatives also might short-circuit opposition to the statehood movement for Puerto Rico. As a state, Puerto Rico likely would receive six representatives from the 435 now divided among the 50 states.

(21) More representatives might help the House function more effectively by dividing the ever-increasing demands for constituency services among more representatives. By decreasing the need for more staff per representative, House members could retain control over their increasingly powerful but electorally unaccountable staff members.

(22) A larger House of Representatives, in addition, would reduce the workload of representatives, which now includes almost seven committee and subcommittee assignments. With fewer committee assignments, House members could concentrate more on policy expertise and their oversight responsibilities.

(23) A larger House would help to insure that Congress maintains its unique bicameral composition that demands differences between the legislative environments and behaviors of the House and the Senate.

(24) A larger House, in addition, would not require unreasonable modification of the House's chamber. As it now stands, the chamber often accommodates many more than 435 persons during State of the Union Addresses and special sessions. Since 1911, moreover, microphones, electronic voting, and C-SPAN television coverage are but a few of the technological advances that have revolutionized the legislative process in the House.

(25) Finally, an increase in the House's size would insure additional access to Congress, opening the governmental process to more information, interests, issues, and persons.

IV. Conclusion

Automatic apportionment has changed the House of Representatives and American politics in ways never anticipated nor currently studied. Enacted in 1929 in response to a political crisis, automatic apportionment has been accepted as a permanent feature of American politics. Ironically, the administrative procedures of automatic apportionment have depoliticized the process for much of the last 60 years.

Two reforms, therefore, have been proposed. The first reform advocates returning the House's reapportionment to the two political branches intentionally left with its legislative care: Congress and the President. The second reform advocates marginal but decennial increases in the size of the House of Representatives. Without reform, automatic apportionment will continue to affect American politics, stifling the political process and guaranteeing larger and larger congressional district sizes. Table VI suggests one alternative.

Finally, answers to the question "Why 435?" raise additional questions. Does the stability of maintaining a 435-member House outweigh the potential benefits of marginal but decennial increases in the House's size? Is returning the House's reapportionment to legislative control required by the Constitution? Would this requirement incite unmanageable demands for political representation? Can the path of marginal but decennial increases end when the U.S. population stabilizes? Is the size of the House a political question every generation should decide? Answers to these and other questions are needed because the relationship between the House of Representatives and the American people has been altered by 60 years of automatic apportionment in ways that potentially threaten the American polity.

Table VI. Projections for House District Populations^a
 (x = at 435-members, * = at decennial increases of
 15 members)

PERSONS	YEAR					
	1990	2000	2010	2020	2030	2040
750,000						x (747,000)
725,000						
700,000					x	
675,000				x		
650,000			x			
625,000		x				* (619,000)
600,000		*		*	*	
575,000	x	*	*			
550,000	*					
House Size:	435 ^x /450 [*]	435/465	435/480	435/495	435/510	435/525

^aPopulation projections for 2000 and 2010 are 267 and 282 million persons. See Signe I. Wetrogan, *Projections of the Population of States by Age, Sex and Race: 1989 to 2010*, Series P-25, No. 1053 (U.S. Government Printing Office, Washington, DC, 1990). Population projections for 2020, 2030 and 2040 vary widely; here, they are based upon a 5% decennial growth rate; or 296, 310, 326 million persons respectively.

Author's Note: On October 18, 1991, a three-judge federal court of the Ninth Circuit ruled in *Montana v. U.S.* that the "automatic" apportionment process was "unconstitutional and void." The Court held that Article I, Section 2 of the U.S. Constitution imposes the same standards of equal representation upon Congress as it imposes upon state legislatures: namely, as nearly as is practicable there must be equal representation for equal numbers of persons. The Court issued a permanent injunction enjoining reapportionment of the U.S. House of Representatives under the provisions of Title 2 of the U.S. Code. What becomes of "automatic" apportionment and the House size in the future remains to be seen.