

**Beyond Administrative Apportionment: Rediscovering
the Constitutional Calculus of Representative Government**

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L. Marvin Overby's "Apportionment, Politics, and Political Science" aspires to be an impressive effort to survey the literature of contemporary political science. Unfortunately, it does not engage the discussion invited by the historical, legal, and constitutional findings reported in our "Why 435?: A Question of Political Arithmetic."¹

"Why 435?" is essentially about the recovery of a *legislative* process designed to link representation in the House of Representatives to the U.S. Census. The Framers devised this linkage to insure that the size of the House and the division of its Members among the states would remain attuned to the growth and changing composition of the American people. The Fourteenth Amendment, ratified in 1868, recommitting every new decennial reapportionment of the House to the kind of legislative process outlined in Article I, Section 7 of the U.S. Constitution, further assuring decennial discussion over how best to attune representation in the House to the ever-changing constitution of the American polity.

Since 1929, however, this legislative process has been repeatedly distorted by an administrative procedure that requires neither debate nor even consent by Congress and the President. This distortion and its constitutional and political implications have been altogether unexamined by constitutional lawyers and political scientists. "Why 435?" points out this distortion and argues for the necessity of returning to this legislative process. Indeed, Overby tacitly admits this distortion as well as the need for debate about the "proper size" of the House. Unfortunately, he fixates only on the final aspect of the paper: the proposal that there are several potential benefits of marginal but decennial increases in the House of Representatives.

"Why 435?" examines a set of political experiences and constitutional mechanisms that are prior to the phenomena and propositions explored by the literature on the modern Congress. Overby thus compounds his

1. Charles A. Kromkowski and John A. Kromkowski, "Why 435?: A Question of Political Arithmetic," *Polity*, 24 (1991): 129-45.

misreading of the central purpose of "Why 435?" by depending heavily upon the original research of others which neither addresses nor acknowledges the pivotal importance of the 1920 reapportionment crisis. Overby, for example, cites Professor Wilma Rule to argue that more House seats would not provide more electoral opportunities for women. Ironically, in "Why 435?," we cite Professor Rule as supporting an expanded House for just this reason.² One can only wonder how Professors Fenno, Loomis, Mayhew, Fiorina, and others may incorporate the findings of our research into their original analyses of modern congressional behavior.

In short, Overby's inability to incorporate our historical and constitutional findings into a greater understanding of American politics is a tell-tale indicator of a static, self-referential scientific methodology. "Why 435?" is an open-ended invitation to examine and to expand the horizons of contemporary political science. Overby misses this call, and misappropriates the work of others to support an implicit cynicism concerning the possibility of reinvigorating American politics through incremental change. The greatest irony lies in the fact that Overby fails to include in his "canon of legislative literature" any scholarship concerning what he apparently believes is the most important issue: the "proper" size of the House. We suggest he start with *Federalist* 55 and 56.

Overby's so-called common sense critique of our findings does not fare any better. It is sustained only by an artificial reconstruction of our arguments that collapses our analysis, neglects our rhetoric, and shifts the primary focus and substance of our concerns and interests. The quantitative and qualitative effects of increasing the size of the House of Representatives cannot be measured or verified by the ostensible "common sense" approach advocated by Overby. We, therefore, are left only to imagine how the invocation of common sense could be useful beyond the recognition of one's own opinions and preferences. Instead, we suggest additional measurement and more rigorous analysis of the effects of reapportionment upon the allocation of federal monies to states and localities, representative-constituent relations, electoral strategies, and the levels of confidence in Congress expressed in various states over time. The states of Montana and California appear to be ideal candidates for such case studies.

Several other criticisms of our arguments cannot be overlooked. If we read Overby correctly, he contends that because of candidate emergence

2. Wilma Rule, "Expanded Congress Would Help Women," *New York Times*, February 24, 1991, p. E16.

patterns, marginal but decennial increases would not affect Congressional behavior. This simple explanation of Congressional behavior is not convincing because it does not account for the stunning personal and policy differences among Representatives Abercrombie (D-HI), Dornan (R-CA), Traficant (D-OH), and Kaptur (D-OH). The differences between Representatives Michel (R-IL) and Gingrich (R-GA) alone support our expectation that additional Members also would bring new approaches to our nation's problems and fresh visions for its future.

Overby's repeated reference to our support for "smaller" districts does not accurately report our discussion of *only* lessening the decennial increases in district populations. Moreover, his conclusion that *marginal* increases in the House size would lead to "packed," parochial, ethnically-homogeneous districts and his support of this inference with electoral studies of the U.S. Senate is imaginative but neither supportable by the text nor the literature relevant to the matter. Overby wanders further astray by claiming that more representatives would not produce more persons who met the threshold requirements of name recognition and political backing necessary for competitive Senatorial campaigns. Only a *massive* increase in the House size could lead to the expectation that the move from the House to the Senate was unrealistic.

Overby's second major criticism concerning the effect of more Members on the House's internal operations is also overblown. On the one hand, he overestimates the impact of additional members on the efficiency of the House's legislative process. On the other, he underestimates the resiliency of the institution and its capacity to produce the administrative procedures necessary to maintain the distinct character of the body as a *representative* institution. Overby's contention that more Members would bring the House to a screeching halt is facile because Congress is a complex institution driven by a dense network of relationships that is not determined solely by its size.

Overby's third criticism is well taken. Redistricting causes intense political competition within state legislatures. While we look forward to more rigorous analysis of the effects of the 1991 reapportionment on state legislatures, our argument in "Why 435?" was only that, all things being equal, where the loss of representatives is minimized the accommodation of interests is all the more easily achieved. Whether or not, for example, a loss of one representative produces the same kind of political conflict as losses of two or three representatives is another research question which follows from "Why 435?" Overby's citation of the Marquart and Harrington study, however, sustains one of our initial contentions that increasing the number of representatives would provide more interest and hope for persons traditionally underrepresented in Congress. On this much we can agree.