Congress Back Then: Time for a Bigger House?



by K. Daniel Glover
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Comments: 67 posts

Christopher Earl Strunk believes passionately in the American ideal of representative democracy as embodied in a population-based House of Representatives. He also believes that a House whose membership has been set at 435 for much of this century has undermined that ideal. So Strunk, the vice president of a government-subsidized housing development in Bedford Stuyvesant, N.Y., has made it his mission to dramatically increase the House roster.

One major obstacle stands in his way, however. In 1929, Congress passed a law that indefinitely fixed the size of the House at 435 members and established a method for automatically reapportioning those seats among the various states every 10 years.

Strunk has challenged the constitutionality of the law before a U.S. District Court in New York, arguing that it "is arbitrarily and capriciously limiting the number of representatives." But his lawsuit, which has been defeated in early legal rounds, seems unlikely to succeed. Why? Because the statute removed often self-interested federal lawmakers from a politically explosive issue that no one seems eager to revisit.

The reapportionment game

Apportionment has been a flashpoint for democratic controversy since the nation's founding. Other than elections, the reallocation of House seats every 10 years gives regions, states, localities and political parties their best and most frequent opportunity to maximize their federal legislative power -- and thus their greatest temptation to succumb to self-interest, perhaps at the expense of national interest.

So explosive was the issue of apportionment that delegates to the 1787 Constitutional Convention declined to set hard-and-fast rules. Most agreed with the general principle, espoused in John Adams' influential 1776 pamphlet "Thoughts on Government," that the House should be "in miniature an exact portrait of the people at large," one that would "think, feel, reason and act like them." But they could not agree on a formula that would let them achieve that result consistently.

The end result, according to the *Encyclopedia of the American Legislative System*: Apportionment "was an episodic problem throughout the 19th century." It was the subject of the first presidential veto in 1792. And every 10 years after that, lawmakers debated arcane mathematical formulas at length, with each political and sectional faction arguing for the method that served its interests best.

Congress almost always resolved the regional and partisan gamesmanship by increasing the size of the House, even as it increased the ratio of members per representative far higher than the original 30,000 constituents for each lawmaker. Set at 65 members at the outset, House membership jumped to 106 in the 1790s, 213 in the 1820s and 325 in the 1880s, and grew steadily into the 20th century.

Eventually, Americans and the lawmakers who represented them began to question the growth in the size of the House. After the 1910 census, Congress set House membership at 435. And by 1920, that figure had become widely accepted as a good stopping point.



How large should a legislative body be?

Until the results of the 1920 census were in, that is. Because when that census indicated that more people had moved to the cities than anyone had expected and that the national headcount may have missed several million rural residents, increasing the size of the House again suddenly seemed like a good

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idea to people who feared the House would not hear their voices.

The House rejected calls to boost its membership either to 483 or 460, ultimately settling on a 435-member body in the bill it passed Jan. 19, 1921. But the Senate failed to act on that bill before the 66th Congress adjourned, and lawmakers bickered over reapportionment without resolution for the next eight years.

Size matters

The debate finally reached a fever pitch in early 1929, just two years before Congress would have begun work on the next regularly scheduled reapportionment. Frustrated by the national legislature's inability to resolve the issue, the House Census Committee approved a bill not only to fix the House membership at 435 but also to impose a mechanism for automatic reapportionment if Congress failed to act in the future.

Opponents of the measure criticized it on several grounds. Rep. Clarence McLeod (R-MI) chastised Congress for its "lapse of duty" and for having "perpetrated a great wrong, a crime against the Constitution," by not having reapportioned the House in 1921. But he added that it was "useless and foolish" to do so in 1929 under an outdated and questionable census. Others objected to the fail-safe idea of letting an executive-branch agency, the Commerce Department, decide how to reapportion the House.

The House membership lawmakers had chosen was at the heart of the debate. Congress had increased the membership after every census but two, in 1830 and 1920, and several lawmakers wanted to continue the practice by boosting membership to as much as 534.

Rep. Ralph Lozier (D-MO) labeled as "reactionary forces" those who wanted to reduce size by up to one-half. "The smaller the legislative body," he argued, "the less responsive it is to public sentiment, less inclined to reflect the will of the masses and more disposed to yield to pressure and influence from those whose chief purpose is to exploit the people and plunder the government."

Critics of the bill also questioned the logic of capping House membership *and* making reapportionment automatic. Rep. Arthur Greenwood (D-IN) argued that future House members would have to "bow down on our knees" to the Senate and president to expand the House roster. And they scoffed at the fascination with a specific number.

"[W]hat reason is there for 435?" Lozier asked sarcastically. "What mystery, what magic, lurks in that charmed number? ... Tear the flag if you must, trample the Constitution under foot, but under the peril of losing your immortal soul do not touch 435! That number is the Ark of the Covenant, and if you dare touch it, you will share the fate of Uzzah and drop dead, or worse."

Lawmakers who argued that the House already had become unwieldy ultimately prevailed, however. "We already have too many offices and too many officers in the United States -- municipal, county, state and federal -- and let us not add to the number," Rep. Eugene Black (D-TX) said. President Herbert Hoover signed the bill into law June 18, 1929.

A little debate can't hurt

With nearly three-quarters of a century of precedent behind it, the 1929 reapportionment law probably will not be ruled unconstitutional now or in the future. But that said, Strunk's lawsuit does raise a legitimate question: Is it time, after 70 years of inaction, to increase the size of the House?

History has shown that Rep. James Sinclair (R-ND) was right to worry that automatic reapportionment "will limit the size of the House of Representatives to 435 members for all future time." But colleagues of Sinclair who noted that any future Congress could change the rules of the apportionment game also were right. The automatic part of the 1929 apportionment law kicks in only if Congress fails to act.

There is nothing magical about the number 435, and after seven decades of silence on the issue, lawmakers should at least ask themselves if that number gives the American people the best representation.

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C-Span explains why the size of the House has not increased since the 1920s. A 1998 General Accounting Office report provided an "Overview of Historical Census Issues." The Census Bureau has Web pages dedicated to 1990 apportionment data, to the 2000 census and apportionment and to computing apportionment. An article in the *Indiana Business Review* ponders whether Indiana will lose a congressional seat in the post-2000 census reapportionment.

Should Congress increase the size of the House? Why or why not? If so, by how much -- and how often in future years? Does the 435-member limit dilute the representative nature of "the people's House?

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6/6/00 7:11:07 PM Living In Virginia
Mark: You forget that the President also is the commander of the military. In cases were it was critical that the job be done right, the framers put one person in charge rather than leaving it to a large committee. Under the U.S. system, the Congress does make the laws. As I said, the U.S. Congress was given a lot of power because the framers had so recently suffered under a king and feared putting too much power into one person's hands. Congress was meant to be a strong check against the President. This required giving Congress a lot of power. Even then, they didn't want the common people to run things. They created a Senate, with a smaller number of people and NOT chosen by the people, to keep the House from following the will of the people too closely. They knew quite well that a direct democracy would result in disaster.

6/7/00 12:39:32 AM UNCAS
Mark - I agree with you that the States would not vote to add mandates to their burden. It is interesting that the 16th and 17th amendments happened at the same time in 1913. One sweep of federal control regarding income taxes and federal control over State expenditure. If you know the debate around such I would be interested in hearing the jest of it. You seem to be savvy, and willing to take on the prattle by MM and LIV, its like they are quite comfortable with the demise of constitutional government; makes me shutter at the amount of blood that has been given in the name of this country. MM and LIV talk like they are sipping wine and eating cheese.

6/7/00 9:03:46 AM MM
Uncas: I am definitely NOT comfortable with the demise of constitutional govt–but that is what we have now. It started over a century ago, with the Comstock Act, when the Supreme Court somehow managed to read "unless it is pornography" into the 1st Amendment. Then in the 30's, the Interstate Commerce clause became stretched to allow the feds to regulate just about anything. Finally, although the Constitution explicitly says that only Congress can declare war, in my lifetime Presidents have started at least six wars and Congress has rubber-stamped their actions every time. So, I want a re-write of the Constitution and Congress replaced with something that may be more responsive to the people!

6/7/00 9:11:50 AM MM
Mark Wilson: "How about two houses, one selected based on population alone. The other selected on the basis of taxes paid." I was thinking of one "house" but two ways of counting the votes. Who was it that said "No Republic has long survived the discovery by the masses that they can vote themselves largesse from the public treasury"? We've been lucky so far, but I don't expect that to last forever. So we should require that appropriations be approved by majorities of both the head-count and the taxes paid is needed.

6/7/00 9:20:03 AM MM
LIV: The President is the commander in chief not to "do the job right", but because in war a fast wrong decision by a single commander is usually better than having some committee talking for a few days to arrive at the right decision. The President's role in the federal government as originally formed was rather limited, simply because there wasn't that much to the executive branch. I very much doubt that many of the founding fathers would have wanted the President overseeing national police forces, for instance.

6/7/00 4:27:49 PM UNCAS
MM - am I to understand that you think the only was yo get anything done is with a 'Constitutional Convention? If that is so what army are you going to use and who are you going to hold captive?

6/7/00 4:48:30 PM MM
Uncas: Well, I think there's a better chance of 3/4 of the states requesting a new Constitutional convention than there is of the President appointing and Congress approving 5 justices who think the Constitution means what it says...

6/7/00 10:14:13 PM Mark Wilson
LiV: The president is commander in chief, but under the constitution, he could not committ troops without authorization of congress. Secondly we were never supposed to have a standing army.

6/7/00 10:49:18 PM Christopher Earl Strunk
Dear Readers, I am reminded of a greek tragedy. We as a civilization are wanting of heart and purpose;one asks who were these people and where did they come from. Time will tell.

7/21/00 7:50:47 PM Robert Williams robsue@hotmail.com
I am sure of one thing we are not heard by our representatives just a few representatives control all of the laws/power $ that the many must live by.I for one don't like my representatives passing laws that will make me a otherwise law a-biding person a criminal. We as the people are over regulated we have been degraded to subjects by a continuing attack on our liberty/freedoms by all of these pages and pages of laws.I believe more representatives would give me a voice. As far as I am concerned we elect our representatives to protect our rights not to take our liberty. We need a change, what that might be I do not know but some thing must be done before it is to late.LIBERTY.

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