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Enlarging the House of Representatives

[Bruce Bartlett](#)

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[Bruce Bartlett](#) held senior policy roles in the Reagan and George H.W. Bush administrations and served on the staffs of Representatives Jack Kemp and Ron Paul. He is the author of "[The Benefit and the Burden: Tax Reform — Why We Need It and What It Will Take.](#)"

Last week, I discussed the case for [increasing the size of the California State Legislature](#) and perhaps others as well. But the case for increasing the size of the House of Representatives is even stronger.

The size of the House was one of the most hotly debated issues at the Constitutional Convention in Philadelphia in 1787. The delegates initially proposed a figure of 40,000 people per congressional district. But George Washington thought this number was too high and on the only occasion in which he addressed the convention he asked [that it be reduced to 30,000](#). This change was agreed to and that is what Article I, Section 2 of the Constitution requires.

The Constitution is silent on the question of whether the House would increase in size as the population of the United States grew. James Madison was among those with concerns that the House would not increase in size, leading to increasingly large districts, which he expressed in [Federalist 55](#). [He therefore proposed](#) that the first amendment to the Constitution be one that guaranteed an increase in the House proportional to rising population. The amendment read:

After the first enumeration required by the first article of the Constitution, there shall be one representative for every 30,000, until the number shall amount to 100, after which the proportion shall be so regulated by Congress, that there shall be not less than 100 representatives, nor less than one representative for every 40,000 persons, until the number of

representatives shall amount to 200; after which the proportion shall be so regulated by Congress, that there shall not be less than 200 representatives, nor more than one representative for every 50,000 persons.

But the amendment was not ratified along with the other amendments that we call the Bill of Rights.

Madison's fears proved unfounded for more than 100 years. The size of the House was increased with additional states and rising population from 65 members in the first Congress to 435 after the 1910 census.

But after the 1920 census, Congress failed either to increase the size of the House or change its apportionment, despite the fact that the population had both substantially increased and changed its geographical distribution significantly.

Not only had the relative populations of the various states changed, but the populations within states as well, generally reducing the rural population and increasing the urban population. As [a political matter](#), this was important because rural voters tended to support Prohibition, while those in the cities favored repeal.

By the end of the decade, [malapportionment was severe](#), with states that gained relative population, such as California, being severely underrepresented and those that lost relative population, such as Missouri, being overrepresented.

There was also a constitutional question about whether the House was in fact [legally constituted](#) after having failed its constitutional duty to reapportion. And since apportionment affects the Electoral College, there was fear that it might affect the election of the president.

Another issue that arose during the apportionment debate of the 1920s was whether Southern states should have their representation reduced because of their widespread violation of the voting rights of African-Americans, as provided for in [Section 2 of the 14th Amendment](#). In 1920, Representative George H. Tinkham, Republican of Massachusetts, [suggested that apportionment](#) be based on the actual voting population

rather than the gross population, which would have penalized states that encouraged voter disenfranchisement.

There was strong resistance to increasing the size of the House for both philosophical and institutional reasons, such as the need to increase the size of the House chamber. Two speakers of the House, [Frederick H. Gillett](#) and [Nicholas Longworth](#), strongly opposed an increase in the size of the House. In a 1920 editorial, [The New York Times agreed](#), saying:

The House is too large already. After the next census Congress will have to perform the duty which it now shuns and postpones. For physical reasons, if no other, the growth of the House can't be allowed to continue indefinitely. The bigger it is, the greater the hindrances to effective work.

Eventually, President Herbert Hoover pressured Congress not only to resolve the apportionment standoff, but to do so permanently. This led to passage of the [Permanent Apportionment Act of 1929](#). Not only did it permanently fix the size of the House at 435, but it established a [mathematical formula](#) for automatic reapportionment after future decennial censuses.

One problem that continues to fester is that the Constitution says no state may have fewer than one House member. This means that small states such as Wyoming, Vermont and North Dakota are overrepresented in the House — and other states are underrepresented. This is a violation of the principle of one person one vote, established by the Supreme Court in the 1964 case [Reynolds v. Sims](#).

A number of political scientists and legal scholars now contend that an increase in the size of the House is necessary to relieve the growing malapportionment under the fixed size of 435, the minimum representation requirement and the mathematical formula used for reapportionment. Articles making this argument have appeared in [Perspectives on Politics](#), [Polity](#), the [Washburn Law Journal](#), the [New York University Journal of Legislation and Public Policy](#) and [The New York Times](#).

Intriguingly, a [2003 article](#) in the political science journal PS argued that had the House increased in size to 500 before the 2000 election, Al Gore would

have won, owing to more precise apportionment and, therefore, Electoral College votes in his favor.

In 2009, some activists [brought suit](#) in federal court challenging the constitutionality of the law freezing the number of House members at 435. But [it was rejected](#) by a Federal District Court in 2010, which said the question was a political one for Congress to decide, and the Supreme Court [refused to review](#) the case.

In closing, let me note that according to the [Inter-Parliamentary Union](#), the House of Representatives is on the very high side of [population per representative](#) at 729,000. The population per member in the lower house of other major countries is considerably smaller: Britain and Italy, 97,000; Canada and France, 114,000; Germany, 135,000; Australia, 147,000; and Japan, 265,000.