

Sec. 2—House of Representatives

Cl. 3—Apportionment

tion representatives among the states after the census is taken.³⁵⁵ It failed to make such a reapportionment after the census of 1920, being unable to reach agreement for allotting representation without further increasing the size of the House. Ultimately, by the act of June 18, 1929,³⁵⁶ it provided that the membership of the House of Representatives should henceforth be restricted to 435 Members, to be distributed among the states by the so-called “method of major fractions,” which had been earlier employed in the apportionment of 1911, and which has now been replaced with the “method of equal proportions.”³⁵⁷

Following the 1990 census, a state that had lost a House seat as a result of the use of this latter formula sued, alleging a violation of the “one person, one vote” rule derived from Article I, § 2. Exhibiting considerable deference to Congress and a stated appreciation of the difficulties in achieving interstate equalities, the Court upheld the formula and the resultant apportionment.³⁵⁸ The goal of absolute population equality among districts “is realistic and appropriate” within a single state, but the constitutional guarantee of one Representative for each state constrains application to districts in different states, and makes the goal “illusory for the Nation as a whole.”³⁵⁹

Although requiring the election of Representatives by districts, Congress has left it to the states to draw district boundaries. This has occasioned a number of disputes. In *Ohio ex rel. Davis v. Hildebrant*,³⁶⁰ a requirement that a redistricting law be submitted to a popular referendum was challenged and sustained. After the reapportionment made pursuant to the 1930 census, deadlocks between the governor and legislature in several states produced a series of cases in which the right of the governor to veto a reapportionment bill was questioned. Contrasting this function with other duties committed to state legislatures by the Constitution, the Court decided that it was legislative in character and subject to gubernatorial veto to the same extent as ordinary legislation under the terms of the state constitution.³⁶¹

³⁵⁵ For an extensive history of the subject, see L. SCHMECKEBIER, CONGRESSIONAL APPOINTMENT (1941).

³⁵⁶ 46 Stat. 26, 22, as amended by 55 Stat. 761 (1941), 2 U.S.C. § 2a.

³⁵⁷ See *U.S. Department of Commerce v. Montana*, 503 U.S. 442, 450–51 (1992) (describing history and various methods of apportionment).

³⁵⁸ *U.S. Department of Commerce v. Montana*, 503 U.S. 442 (1992).

³⁵⁹ 503 U.S. at 463 (“[T]he need to allocate a fixed number of indivisible Representatives among 50 States of varying populations makes it virtually impossible to have the same size district in any pair of States, let alone in all 50”).

³⁶⁰ 241 U.S. 565 (1916).

³⁶¹ *Smiley v. Holm*, 285 U.S. 355 (1932); *Koenig v. Flynn*, 285 U.S. 375 (1932); *Carroll v. Becker*, 285 U.S. 380 (1932).