

Sec. 2—House of Representatives

Cl. 1—Congressional Districting

the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

CONGRESSIONAL DISTRICTING

A major innovation in constitutional law in recent years has been the requirement that election districts in each state be structured so that each elected representative represents substantially equal populations.²⁸⁰ Although this requirement has generally been rooted in the Equal Protection Clause of the Fourteenth Amendment,²⁸¹ the Court held in *Wesberry v. Sanders*²⁸² that “construed in its historical context, the command of Art. I, § 2, that Representatives be chosen ‘by the People of the several States’ means that as nearly as is practicable one man’s vote in a congressional election is to be worth as much as another’s.”²⁸³

Court involvement in this issue developed slowly. In our early history, state congressional delegations were generally elected at-large instead of by districts. Congress subsequently imposed a requirement for single-Member districting²⁸⁴ and later added a provision for equally populated districts.²⁸⁵ Voters seeking relief for failure of a state to comply with these laws, however, generally sought relief from the House through its authority to refuse to seat a Member-elect.²⁸⁶ The first series of cases did not reach the Supreme Court until the states began redistricting after the 1930 Census, and these cases were resolved without reaching constitutional issues and indeed without resolving the issue whether such voter complaints were

²⁸⁰ The phrase “one person, one vote” might well seem to refer to election districts drawn to contain equal numbers of voters rather than equal numbers of persons. But it seems clear from a consideration of all the Court’s opinions and the results of its rulings that the statement in the text accurately reflects the constitutional requirement. The case expressly holding that total population, or the exclusion only of transients, is the standard is *Burns v. Richardson*, 384 U.S. 73 (1966), a legislative apportionment case. Notice that considerable population disparities exist from state to state, as a result of the requirement that each state receive at least one Member and the fact that state lines cannot be crossed in districting. At least under present circumstances, these disparities do not violate the Constitution. *U.S. Department of Commerce v. Montana*, 503 U.S. 442 (1992).

²⁸¹ *Reynolds v. Sims*, 377 U.S. 533 (1964) (legislative apportionment and districting); *Hadley v. Junior College Dist.*, 397 U.S. 50 (1970) (local governmental units). See discussion Fourteenth Amendment, Apportionment and Districting, *infra*.

²⁸² 376 U.S. 1 (1964). See also *Martin v. Bush*, 376 U.S. 222 (1964).

²⁸³ 376 U.S. at 7–8.

²⁸⁴ Act of June 25, 1842, 5 Stat. 491.

²⁸⁵ Act of February 2, 1872, 17 Stat. 28.

²⁸⁶ The House uniformly refused to grant any such relief. 1 A. HINDS’ PRECEDENTS OF THE HOUSE OF REPRESENTATIVES 310 (1907). See L. SCHMECKEBIER, CONGRESSIONAL APPORTIONMENT 135–138 (1941).