U.S. Department of Commerce v. Montana **(1992)**

112 S. Ct. 1415

Article I, Section 2, of the U.S. Constitution requires apportionment of Representatives among the several States "according to their respective Numbers." A 1941 federal statute provides that after each decennial census "the method known as the method of equal proportions" shall be used to determine the number of Representatives to which each State is entitled. The method of equal proportions is one of five methods (the others being the method of smallest divisors, the method of the harmonic mean, the method of major fractions, and the method of greatest divisors) that Congress through the years had considered and either rejected or adopted that could address the problem of fractional remainders—i.e., the fractional portion of the number that results when a state's total population is divided by the population of the ideal district: that fraction must either be disregarded or in certain instances treated as equal to one Representative because each state must be represented by the whole number of legislators.

Application of the method of equal proportions to the 1990 census caused Montana to lose one of its two seats in the House of Representatives. According to the 1990 census, the population of the 50 states that elect members of the House of Representatives was 249,022,783. The average size of the congressional districts was 572,466. Montana's population of 803,655 formed a single congressional district that was 231,189 persons larger than the ideal congressional district. If it had retained its two districts, each would have contained 170,638 persons fewer than the ideal district. In terms of absolute difference, each of the two districts would have been closer to ideal size than was the single congressional district.

The State of Montana and several of its officials sued the Department of Commerce (which contains the Bureau of the Census) in U.S. District Court, alleging that the apportionment method found in the 1941 federal statute violated Article I, Section 2, in that it did not "achieve the greatest possible equality in the number of individuals per representative." It argued that if Congress had chosen the method of the harmonic mean, Montana would have retained its second seat after the 1990 census and that the State of Washington would have received one less—eight instead of nine. A three-judge court found for the State and held the statute unconstitutional because the variance between the single district's population and that of the ideal district could not be justified under the "one-person, one-vote" standard developed in Wesberry v. Sanders (1964). It enjoined the federal government from effecting any reapportionment of the House of Representatives pursuant to the method of equal proportions. The federal government appealed.

Opinion of the Court: <u>Stevens</u>, Blackmun, Kennedy, O'Connor, Rehnquist, Scalia, Souter, Thomas, White.

MR. JUSTICE STEVENS delivered the opinion of the Court.

The general admonition in Article I, 2, that Representatives shall be apportioned among the several States "according to their respective Numbers" is constrained by three requirements. The number of Representatives shall not exceed one for every 30,000 persons; each State shall have at least one Representative; and district boundaries may not cross state lines. Although the text of Article I determined the original apportionment that the Framers had agreed upon, it did not explain how that specific allocation had been made.

… After the 1920 census Congress failed to pass a reapportionment Act, but debates over the proper method of apportionment ultimately led to a request to the National Academy of Sciences to appoint a committee of experts to review the subject. That committee, composed of respected mathematicians, recommended the adoption of the "method of equal proportions." Congress used that method in its apportionment after the 1930 census, and formally adopted it in the 1941 statute at issue in this case.

… In the opinion of the committee members, given the fact that it is impossible for all States to have districts of the same size, the best method was the one that minimized the discrepancy between the size of the districts in any pair of States. Under their test of fairness, a method was satisfactory if, for any pair of States, the transfer of one Representative would not decrease the discrepancy between those States' districts.

… The Government argues that Congress' selection of any of the alternative apportionment methods involved in this litigation is not subject to judicial review. Relying principally on *Baker v. Carr* (1962), the Government contends that the choice among these methods presents a "political question" not amenable to judicial resolution.

… The case before us today is "political" in the same sense that *Baker v. Carr* was a "political case." It raises an issue of great importance to the political branches. The issue has motivated partisan and sectional debate during important portions of our history. Nevertheless, the reasons that supported the justiciability of challenges to state legislative districts, as in *Baker v. Carr,* as well as state districting decisions relating to the election of Members of Congress apply with equal force to the issues presented by this litigation. The controversy between Montana and the Government turns on the proper interpretation of the relevant constitutional provisions. As our previous rejection of the political question doctrine in this context should make clear, the interpretation of the apportionment provisions of the Constitution is well within the competence of the Judiciary. The political question doctrine presents no bar to our reaching the merits of this dispute and deciding whether the District Court correctly construed the constitutional provisions at issue.

Our previous apportionment cases concerned States' decisions creating legislative districts; today we review the actions of Congress. Respect for a coordinate branch of Government raises special concerns not present in our prior cases, but those concerns relate to the merits of the controversy rather than to our power to resolve it. As the issue is properly raised in a case otherwise unquestionably within our jurisdiction, we must determine whether Congress exercised its apportionment authority within the limits dictated by the Constitution. Without the need for another exploration of the *Baker* factors, it suffices to say that, as in *Baker* itself and the apportionment cases that followed, the political question doctrine does not place this kind of constitutional interpretation outside the proper domain of the Judiciary.

Wesberry v. Sanders … established a "high standard of justice and common sense" for the apportionment of congressional districts: "equal representation for equal numbers of people." The constitutional command that Representatives be chosen "by the People of the several States" meant that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." In subsequent cases, the Court interpreted that standard as imposing a burden on the States to "make a good-faith effort to achieve precise mathematical equality."

Our cases applying the *Wesberry* standard have all involved disparities in the size of voting districts within the same State. In this case, however, Montana contends, and a majority of the District Court agreed, that the *Wesberry* standard also applies to apportionment decisions made by Congress and that it was violated because of an unjustified variance between the population of Montana's single district and the ideal district size.

Montana's evidence demonstrated that if Congress had used the method of the harmonic mean (sometimes referred to as the "Dean method") instead of the method of equal proportions (sometimes called the "Hill method") to apportion the districts, 48 of the States would have received the same number of Representatives, while Washington would have received one less— eight instead of nine—and Montana would have received one more. Under an apportionment undertaken according to the Hill method, the absolute difference between the population of Montana's single district (803,655) and the ideal (572,466) is 231, 189; the difference between the average Washington district (543,105) and the ideal is 29,361. Hence, the sum of the differences between the average and the ideal district size in the two States is 260,550. Under the Dean method, Montana would have two districts with an average population of 401,838, representing a deviation from the ideal of 170,638; Washington would then have eight districts averaging 610,993, which is a deviation of 38,527 from the ideal district size. The sum of the deviations from the ideal in the two States would thus be 209,165 under the Dean method (harmonic mean), while it is 260,550 under the Hill method (equal proportions). More generally, Montana emphasizes that the Dean method is the best method for minimizing the absolute deviations from ideal district size.

There is some force to the argument that the same historical insights that informed our construction of Article I, 2 in the context of intrastate districting should apply here as well. As we interpreted the constitutional command that Representatives be chosen "by the People of the several States" to require the States to pursue equality in representation, we might well find that the requirement that Representatives be apportioned among the several States "according to their respective Numbers" would also embody the same principle of equality. Yet it is by no means clear that the facts here establish a violation of the *Wesberry* standard. In cases involving variances within a State, changes in the absolute differences from the ideal produce parallel changes in the relative differences. Within a State, there is no theoretical incompatibility entailed in minimizing both the absolute and the relative differences. In this case, in contrast, the reduction in the absolute difference between the size of Montana's district and the size of the ideal district has the effect of increasing the variance in the relative difference between the ideal and the size of the districts in both Montana and Washington. Moreover, whereas reductions in the variances among districts within a given State bring all of the affected districts closer to the ideal, in this case a change that would bring Montana closer to the ideal pushes the Washington districts away from that ideal.

What is the better measure of inequality— absolute difference in district size, absolute difference in share of a Representative, relative difference in district size or share? Neither mathematical analysis nor constitutional interpretation provides a conclusive answer. In none of these alternative measures of inequality do we find a substantive principle of commanding constitutional significance. The polestar of equal representation does not provide sufficient guidance to allow us to discern a single constitutionally permissible course.

A State's compliance with *Wesberry*'s "high standard of justice and common sense" begins with a good-faith effort to produce complete equality for each voter. As our cases involving variances of only a fraction of one percent demonstrate, that goal is realistic and appropriate for State districting decisions. In this case, however, whether Montana has one district or two, its variance from the ideal will exceed 40 percent.

The constitutional guarantee of a minimum of one Representative for each State inexorably compels a significant departure from the ideal. In Alaska, Vermont, and Wyoming, where the statewide districts are less populous than the ideal district, every vote is more valuable than the national average. Moreover, the 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. Accordingly, although "common sense" supports a test requiring "a good-faith effort to achieve precise mathematical equality" within each State, the constraints imposed by Article I, Section 2, itself make that goal illusory for the Nation as a whole.

This commonsense understanding of a characteristic of our Federal Government must have been obvious to the masters of compromise who framed our Constitution. The spirit of compromise that provided two Senators for every State and Representatives of the People "according to their respective Numbers" in the House must also have motivated the original allocation of Representatives specified in Article I, Section 2, itself. Today, as then, some compromise between the interests of larger and smaller States must be made to achieve a fair apportionment for the entire country.

The constitutional framework that generated the need for compromise in the apportionment process must also delegate to Congress a measure of discretion that is broader than that accorded to the States in the much easier task of determining district sizes within State borders. Article I, Section 8, cl. 18, expressly authorizes Congress to enact legislation that "shall be necessary and proper" to carry out its delegated responsibilities. Its apparently good-faith choice of a method of apportionment of Representatives among the several States "according to their respective Numbers" commands far more deference than a state districting decision that is capable of being reviewed under a relatively rigid mathematical standard.

… The decision to adopt the method of equal proportions was made by Congress after decades of experience, experimentation, and debate about the substance of the constitutional requirement. Independent scholars supported both the basic decision to adopt a regular procedure to be followed after each census, and the particular decision to use the method of equal proportions. For a half century the results of that method have been accepted by the States and the Nation. That history supports our conclusion that Congress had ample power to enact the statutory procedure in 1941 and to apply the method of equal proportions after the 1990 census.

The judgment of the District Court is reversed.