

**THE CODE OF THE LAWS
OF THE
UNITED STATES OF AMERICA**

—
TITLE 2 – THE CONGRESS

**CHAPTER 1. ELECTION OF SENATORS AND
REPRESENTATIVES**

§ 2a. Reapportionment of Representatives; time and manner; existing decennial census figures as basis; statement by President; duty of clerk

(a) On the first day, or within one week thereafter, of the first regular session of the Eighty-second Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one Member.

(b) Each State shall be entitled, in the Eighty-third Congress and in each Congress thereafter until the taking effect of a reapportionment under this

section or subsequent statute, to the number of Representatives shown in the statement required by subsection (a) of this section, no State to receive less than one Member. It shall be the duty of the Clerk of the House of Representatives, within fifteen calendar days after the receipt of such statement, to send to the executive of each State a certificate of the number of Representatives to which such State is entitled under this section. In case of a vacancy in the office of Clerk, or of his absence or inability to discharge this duty, then such duty shall devolve upon the Sergeant at Arms of the House of Representatives.

(c) Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: (1) If there is no change in the number of Representatives, they shall be elected from the districts then prescribed by the law of such State, and if any of them are elected from the State at large they shall continue to be so elected; (2) if there is an increase in the number of Representatives, such additional Representative or Representatives shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; (3) if there is a decrease in the number of Representatives but the number of districts in such State is equal to such decreased number of Representatives, they shall be elected from the districts then prescribed by the law of such State; (4) if there is a decrease in the number of Representatives but the number of districts in such State is less than such number of Representatives, the number of Representatives by which such number of districts is exceeded shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; or (5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large.

(June 18, 1929, ch 28, § 22, 46 Stat. 26; Apr. 25, 1940, ch 152, §§ 1, 2, 54 Stat. 162; Nov. 15, 1941, ch 470, § 1, 55 Stat. 761; Aug. 20, 1996, P. L. 104-186, Title II, § 201, 110 Stat. 1724.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

With respect to the Clerk of the House of Representatives, referred to in this section, § 2(1) of Act June 3, 1995, P. L. 104-14, which appears as a note preceding 2 USCS § 21, provides that any reference to a function, duty, or authority of such officer in any provision of law enacted before January 4, 1995, shall be treated as referring, with respect to that function, duty, or authority, to the officer of the House of Representatives exercising that function, duty, or authority, as determined by the Committee on House Oversight of the House of Representatives.

Amendments:

1940. Act Apr. 25, 1940, in subsec. (a), in the preliminary matter, substituted "first regular session of the Seventy-seventh" for "second regular session of the Seventy-first", and substituted "sixteenth" for "fifteenth"; and, in subsec. (b), substituted the sentence beginning "If the Congress . . ." for one which read: "If the Congress to which the statement required by subdivision (a) of this section is transmitted, fails to enact a law apportioning Representatives among the several States, then each State shall be entitled, in the second succeeding Congress and in each Congress thereafter until the taking effect of a reapportionment under this Act or subsequent statute, to the number of Representatives shown in the statement based upon the method used in the last preceding apportionment."

1941. Act Nov. 15, 1941 substituted this section for one which read:

"(a) On the first day, or within one week thereafter, of the first regular session of the Seventy-seventh Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the sixteenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives made in each of the following manners:

"(1) By apportioning the then existing number of Representatives among the several States according to the respective numbers of the several States as ascertained under such census, by the method used in the last preceding apportionment, no State to receive less than one Member;

"(2) By apportioning the then existing number of Representatives among the several States according to the respective numbers of the several States as ascertained under such census, by the method known as the method of major fractions, no State to receive less than one Member; and

"(3) By apportioning the then existing number of Representatives among the several States according to the respective numbers of the several States as ascertained under such census, by the method known as the method of equal proportions, no State to receive less than one Member.

"(b) If the Congress to which the statement required by subdivision (a) of this section is transmitted has not, within sixty calendar days after such statement is transmitted, enacted a law apportioning Representatives among the several States, then each State shall be entitled, in the next Congress and in each Congress thereafter until the taking effect of a reapportionment under this Act or subsequent statute, to the number of Representatives shown in the statement based upon the method used in the last preceding apportionment. It shall be the duty of the Clerk of the last House of Representatives forthwith to send to the executive of each State a certificate of the number of Representatives to which such State is entitled under this section. In case of a vacancy in the office of Clerk, or of his absence or inability to discharge this duty, then such duty shall devolve upon the officer who, under section 32 or 33 of the Revised Statutes, is charged with the preparation of the roll of Representatives-elect.

"(c) This section shall have no force and effect in respect of the apportionment to be made under any decennial census unless the statement required by subdivision (a) of this section in respect of such census is transmitted to the Congress within the time prescribed in subdivision (a)."

1996. Act Aug. 20, 1996, in subsec. (b), substituted the concluding period for"; and in case of vacancies in the offices of both the Clerk and the Sergeant at Arms, or the absence or inability of both to act, such duty shall devolve upon the Doorkeeper of the House of Representatives."

CROSS REFERENCES

Apportionment of representatives, USCS Constitution, Art 1, § 2, cl 3; USCS Constitution, Amendment 14, § 2
This section is referred to in 2 USCS §§ 2b, 2c

RESEARCH REFERENCES

Am Jur.

14 Am Jur 2d, Census § 5
26 Am Jur 2d, Elections §§ 19, 225

INTERPRETIVE NOTES AND DECISIONS

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I. IN GENERAL

1. Generally

Requirement of equality, contiguity, and compactness does not apply to reapportionment under 2 USCS § 2a. *Wood v Broom* (1932) 287 US 1, 77 L Ed 131, 53 S Ct 1.

Electing Representatives at large, within state, indefinitely, is not prohibited by 2 USCS § 2a. *Norton v Campbell* (1966, CA10 NM) 359 F2d 608, cert den (1966) 385 US 839, 17 L Ed 2d 73, 87 S Ct 89.

Congressional Districts need not be so arranged as to ensure election of Negro members to Congress. *Connor v Johnson* (1966, SD Miss) 279 F Supp 619, affd (1967) 386 US 483, 18 L Ed 2d 224, 87 S Ct 1174.

2 USCS § 2a(c)(2) provides emergency statutory relief from otherwise unconstitutional situation; there is nothing in language of § 2a(c)(2) which indicates that Congress intended to bar federal courts from providing timely assistance to state in resolving redistricting dispute. *Carstens v Lamm* (1982, DC Colo) 543 F Supp 68.

President of United States, after he receives decennial census report from Secretary of Commerce, transmits information to Congress, which in turn reports such information to chief executive of each state as provided in 2 USCS § 2a(a) and (b), and results of 1970 Decennial Census would become official and effective in Indiana on February 18, 1971, when Governor of Indiana declared them to be such. *Cato v Chaddock* (1978) 175 Ind App 514, 373 NE2d 172.

2. Constitutionality

Apportionment of members of Congress among several states according to method of equal proportions under 2 USCS § 2a does not violate Article I, § 2 of federal constitution since apportionment of representatives among states is constrained by constitutional requirements that each state have at least one representative and that district boundaries not cross state lines, which makes it virtually impossible to have districts with same population in any pair of states, and use of procedure that is administered efficiently and avoids partisan controversy supports rather than undermines legitimacy of congressional action. *United States Dept. of Commerce v Montana* (1992, US) 118 L Ed 2d 87, 112 S Ct 1415, 92 CDOS 2692, 92 Daily Journal DAR 4277.

Contention that requirement of one representative for approximately every 147,000 citizens contravenes the spirit, if not letter, of USCS Constitution, Art I, § 2, cl 3, was without merit since both historical background and plain meaning of Constitution support power of Congress to fix number of representatives at figure less than maximum of one for every 30,000 inhabitants. *Whelan v Cuomo* (1976, ED NY) 415 F Supp 251.

3. Relation to other laws

2 USCS § 2c repeals 2 USCS § 2a(c)(5) by implication, since nothing in § 2c suggests any limitation on applicability, and floor

debate on § 2c indicates that Congress intended to eliminate possibility of at large elections, including those in situations where legislature failed to enact plan. *Shayer v Kirkpatrick* (1982, WD Mo) 541 F Supp 922, affd (1982) 456 US 966, 72 L Ed 2d 841, 102 S Ct 2228.

2 USCS § 2a does not repeal 2 USCS §§ 3, 4, and 5 and state apportionment act which does not comply with §§ 3, 4, and 5 and creates representative districts varying greatly in population is invalid. *Moran v Bowley* (1932) 347 Ill 148, 179 NE 526.

4. Collateral attack

Validity of Apportionment Act of 1941 (2 USCS §§ 2a, 2b) could not be attacked in collateral proceeding involving prosecution for failure to respond to subpoena issued by House Committee on Un-American Activities. *Dennis v United States* (1948) 84 US App DC 31, 171 F2d 986, affd (1950) 339 US 162, 94 L Ed 734, 70 S Ct 519, reh den (1950) 339 US 950, 94 L Ed 1364, 70 S Ct 799.

II. REAPPORTIONMENT ISSUES

5. Manner of computing census

Courts cannot provide remedy for census undercount, at least where undercount is not result of effort to reduce some group's representation or funding but is merely accident of census-taking process; Constitution directs Congress to conduct decennial census, and implementing statutes are so nondirective that it is arguable there is no law for court to apply in such case. *Tucker v United States Dept. of Commerce* (1992, CA7 Ill) 958 F2d 1411, reh en banc, den (1992, CA7) 1992 US App LEXIS 8556 and cert den (1992, US) 121 L Ed 2d 332, 113 S Ct 407.

2 USCS § 2a does not direct or authorize Secretary of Commerce and census bureau director to exclude disfranchised citizens in taking census and to compute statement showing reapportionment of representatives on basis of such exclusion. *Lampkin v Connor* (1965, DC Dist Col) 239 F Supp 757, affd (1966) 123 US App DC 371, 360 F2d 505.

6. Methods of reapportionment

Congress acted within its constitutional authority in enacting this section incorporating the "equal proportions" method of apportionment after the 1990 census; apportionment by the method of harmonic mean, though decreasing the absolute differences from ideal district size, would increase the relative differences, and congress' apparently good-faith choice of a method of apportionment was entitled to difference. *United States Dept. of Commerce v Montana* (1992, US) 118 L Ed 2d 87, 112 S Ct 1415, 92 CDOS 2692, 92 Daily Journal DAR 4227.

Only one factor may be taken into account in apportioning and establishing Congressional districts among people of state and that factor is population. *Connor v Johnson* (1966, SD Miss) 279 F Supp 619, affd (1967) 386 US 483, 18 L Ed 2d 224, 87 S Ct 1174.

Under "equal proportions" method of apportionment, priority list is obtained by dividing population of each county by geometric mean of successive numbers of representatives; under "major fractions" method of apportionment, priority list is obtained by dividing population of each county successively by arithmetic mean between succeeding representatives. *Shaw v Adkins* (1941) 202 Ark 856, 153 SW2d 415.

7. State action

When state redistricting law was disapproved by referendum vote, provision as to referendum being part of legislative power of state and not contrary to congressional Apportionment Act nor United States Constitution, disapproved law had no existence. *Ohio ex rel. Ohio ex rel. Davis v Hildebrant* (1916) 241 US 565, 60 L Ed 1172, 36 S Ct 708.

Whenever state constitution provides for participation by governor in legislative process, approval of redistricting bill or resolution by governor of such state or its passage over his veto is essential to its validity; legislative apportionment act is subject to veto by governor, especially where there has been practical construction in particular state, by which word "legislature" has been treated as applying to law-making power of state, as evidenced by submission of former apportionment acts to governor for his approval. *Smiley v Holm* (1932) 285 US 355, 76 L Ed 795, 52 S Ct 397.

Dismissal of action for declaratory relief in matter of alleged failure of state of Illinois to so apportion congressional districts as

to give equality of voting power to citizens of state was affirmed. *Colegrove v Green* (1946) 328 US 549, 90 L Ed 1432, 66 S Ct 1198.

Arkansas act which divided state into congressional districts was unconstitutional and void on basis that it debased plaintiffs right to vote, but citizen and resident of state had no right under laws of United States or state of Arkansas to cause state of Arkansas to be divided into congressional districts, since state constitution delegated this authority to general assembly. *Park v Faubus* (1965, ED Ark) 238 F Supp 62.

8. Elections at large

Where number of representatives of state is decreased, and new reapportionment act has not been passed, all representatives must be elected at large. *Smiley v Holm* (1932) 285 US 355, 76 L Ed 795, 52 S Ct 397.

While 2 USCS § 2a may have contemplated redistricting after any apportionment, it cannot be construed to prohibit elections at large. *Norton v Campbell* (1966, CA10 NM) 359 F2d 608, cert den (1966) 385 US 839, 17 L Ed 2d 73, 87 S Ct 89.

When state's reapportionment act is invalid, representatives must be elected at large. *Brown v Saunders* (1932) 159 Va 28, 166 SE 105.

9. Reapportionment as basis for cause of action

For purposes of determining availability of judicial review under Administrative Procedure Act with respect to challenge to Congressional reapportionment following decennial census, final action that affects states' entitlement to particular number of representatives is President's statement to Congress showing whole number of persons in each state and number of representatives to which each state will be entitled, not Commerce Secretary's report to President under 13 USCS § 141.

Franklin v Massachusetts (1992, US) 120 L Ed 2d 636, 112 S Ct 2767, 92 CDOS 5553, 92 Daily Journal DAR 8897.

Plaintiffs had no standing to sue requesting court to enter declaratory judgment that Secretary of Commerce and census bureau director are required at next decennial census to compile figures as to denial and abridgment of right to vote and to prepare, compile, and compute for transmittal to Congress apportionment of House of Representatives based on such figures. *Lampkin v Connor* (1965, DC Dist Col) 239 F Supp 757, affd (1966) 123 US App DC 371, 360 F2d 505.

Allegation of unconstitutionality of apportionment pursuant to 2 USCS § 2a on ground that Government failed to enforce USCS Constitution, Amendment 14, § 2 (which requires that basis of representation of each state be reduced by proportion of 21 year-old males whose right to vote has been abridged) did not give standing to enjoin candidates from running for Congress where party challenging apportionment could not demonstrate that alleged failure to enforce Amendment § 2 had resulted in detriment to his rights of representation in Congress. *Sharrow v Peyser* (1977, SD NY) 443 F Supp 321, affd without op (1978, CA2 NY) 582 F2d 1271.

Allegation of injury by 3 legislature representatives in their official capacity that they would be denied due process of law because undercount of City of Philadelphia's population would result in inaccurate reapportionment of Congressional and legislative district was insufficient to establish standing. *Philadelphia v Klutznick* (1980, ED Pa) 503 F Supp 663.

10. Power of courts

Court is without power to reduce number of representatives in Congress fixed by Act of Congress, or to decide, in case number of representatives from state should be reduced, what disposition should be made of vacancies thus caused, or to what other states they should be allotted in order to maintain total ordained by Congress. *Saunders v Wilkins* (1945, CA4 Va) 152 F2d 235, cert den (1946) 328 US 870, 90 L Ed 1640, 66 S Ct 1362, reh den (1946) 329 US 825, 91 L Ed 701, 67 S Ct 119.

State court has no power to issue mandatory injunction to compel issuance of certificate of election to candidate for member of Congress, Congress being sole judge of election of its members. *Burchell v State Bd. of Election Comrs.* (1934) 252 Ky 823, 68 SW2d 427.

State courts will not intervene in matters of reapportionment unless act of assembly violates some provision of state constitution, or its amendments, or act of federal Congress. *Watts v O'Connell* (1952, Ky) 247 SW2d 531.

11. Miscellaneous

Apportionment Act of 1911 applied only to thirteenth census and was superseded by Apportionment Act of 1929 [2 USCS § 2a], which must be applied to fifteenth census. *Koenig v Flynn* (1931) 141 Misc 840, 253 NYS 554, affd (1931) 234 App Div 139, 254 NYS 339, affd (1932) 258 NY 292, 179 NE 705, affd (1932) 285 US 375, 76 L Ed 805, 52 S Ct 403.