NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Wash-ington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 91–1502

BARBARA FRANKLIN, SECRETARY OF COMMERCE, ET AL., APPELLANTS *v.* MASSACHUSETTS ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

[June 26, 1992]

JUSTICE O'CONNOR delivered the opinion of the Court, except as to Part III.

As one season follows another, the decennial census has again generated a number of reapportionment controversies. This decade, as a result of the 1990 census and reapportionment, Massachusetts lost a seat in the House of Representatives. Appellees Massachusetts and two of its registered voters brought this action against the President, the Secretary of Commerce (Secretary), Census Bureau officials, and the Clerk of the House of Representatives, challenging, among other things, the method used for counting federal employees serving overseas. In particular, the appellants' allocation of 922,819 overseas military personnel to the State designated in their personnel files as their "home of record" altered the relative state populations enough to shift a Representative from Massachusetts to Washington. A three-judge panel of the United States District Court for the District of Massachusetts held that the decision to allocate military personnel serving overseas to their "homes of record" was arbitrary and capricious under the standards of the Administrative Procedure Act (APA), 5 U. S. C. §701 *et seq*. As a remedy, the District Court directed the Secretary to eliminate the overseas federal employees from the apportionment counts, directed the President to recalculate the number of

Representatives per State and transmit the new calculation to Congress, and directed the Clerk of the House of Representatives to inform the States of the change. The federal officials appealed. We noted probable jurisdiction, stayed the District Court's order, and ordered expedited briefing and argument. 503 U. S. ___ (1992). We now reverse.

Article I, §2, cl. 3, of the Constitution provides that Representatives "shall be apportioned among the several States . . . according to their respective Numbers," which requires, by virtue of §2 of the Fourteenth Amendment, "counting the whole number of persons in each State." The number of persons in each State is to be calculated by "actual Enumeration," conducted every 10 years, "in such Manner as [Congress] shall by Law direct." U. S. Const., Art. I, §2, cl. 3.

The delegates to the Constitutional Convention included the periodic census requirement in order to insure that entrenched interests in Congress did not stall or thwart needed reapportionment. See 1 M. Farrand, Records of the Federal Convention of 1787, pp. 571, 578–588 (rev. ed. 1966). Their effort was only partially successful, as the congressional battles over the method for calculating the reapportionment still caused delays. After just such a 10–year stalemate after the 1920 census, Congress reformed the reapportionment process to make it virtually self-executing, so that the number of Representatives per State would be determined by the Secretary of Commerce and the President without any action by Congress. See S. Rep. No. 2, 71st Cong., 1st Sess., 2–3 (1929) ("The need for legislation of this type is confessed by the record of the past nine years during which Congress has refused to translate the 1920 census into a new apportionment. . . . As a result, great American constituencies have been robbed of their rightful share of representation . . ."); *United States Dept. of Commerce* v. *Montana*, 503 U. S. ––––, ––––, and n. 25 (1992).

Under the automatic reapportionment statute, the Secretary of Commerce takes the census, "in such form and content as [s]he may determine." 13 U. S. C. §141(a). The Secretary is permitted to delegate her authority for establishing census

procedures to the Bureau of the Census. See §§2, 4. "The tabulation of total population by States . . . as required for the apportionment of Representatives in Congress . . . shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States." §141(b). After receiving the Secretary's report, the President "shall transmit to the Congress a statement showing the whole number of persons in each State . . . as ascertained under the . . . 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 . . . ." 2 U. S. C. §2a(a). "Each State shall be entitled . . . to the number of Representatives shown" in the President's statement, and the Clerk of the House of Representatives must "send to the executive of each State a certificate of the number of Representatives to which such State is entitled." §2a(b).

With the one-time exception in 1900 of counting overseas servicemen at their family home, the Census Bureau did not allocate federal personnel stationed overseas to particular States for reapportionment purposes until 1970. App. 175, 177. The 1970 census, taken during the Vietnam War, allocated members of the Armed Forces stationed overseas to their "home of record," using Defense Department personnel records. *Id.*, at 179. "Home of record" is the State declared by the person upon entry into military service, and determines where he or she will be moved after military service is complete. *Id.*, at 149. Because the Bureau found that military personnel were likely to designate a "home of record" with low or no income taxes instead of their true home State—even though home of record does not determine state taxation—the Bureau did not allocate overseas employees to particular

States in the 1980 census. App. 180.

Initially, the Bureau took the position that overseas federal employees would not be included in the 1990 state enumerations either. There were, however, stirrings in Congress in favor of including overseas federal employees, especially overseas military, in the state population counts. Several bills requiring the Secretary to include overseas military were introduced but not passed in the 100th and 101st Congresses. See H.R. 3814, 100th Cong., 1st Sess. (1987); H.R. 4234, 100th Cong., 2d Sess. (1988); H.R. 3815, 100th Cong., 1st Sess. (1987); H.R. 4720, 100th Cong., 2d Sess. (1988); S. 2103, 100th Cong., 2d Sess. (1988); H.R. 1468, 101st Cong., 1st Sess. (1989); H.R. 2661, 101st Cong., 1st Sess. (1989); H.R. 3016, 101st Cong., 1st Sess. (1989); S. 290, 101st Cong., 1st Sess. (1989). In July 1989, nine months before the census taking was to begin, then-Secretary of Commerce Robert Mosbacher agreed to allocate overseas federal employees to their home States for purposes of congressional apportionment. App. 182. His decision memorandum cites both the growing congressional support for including overseas employees and the Department of Defense's belief that "its employees should not be excluded from apportionment counts because of temporary and involuntary residence overseas." *Id.,* at 120. Another factor explaining the Secretary's shift was that the Department of Defense, the largest federal overseas employer, planned to poll its employees to determine, among other things, which State they considered their permanent home. *Id.,* at 184. In December 1989, however, the Defense Department canceled its plans to conduct the survey due to a lack of funds. *Ibid.* As an alternative, the Defense Department suggested that it could provide data on its employees' last six months of residence in the United States, information that would be more complete and up-to-date than the home of record

data already in the personnel files. This possibility also failed to materialize when the Defense Department informed the Census Bureau that it was not able to assemble the information after all. *Ibid.*

In the meantime, two more bills were introduced in Congress, but not passed, which would have required the Census Bureau to apportion members of the overseas military to their home States using the "home of record" data already in their personnel files. See H.R. 4903, 101st Cong., 2d Sess. (1990); S. 2675, 101st Cong., 2d Sess. (1990). In July 1990, six months before the census count was due to be reported to the President, the Census Bureau decided to allocate the Department of Defense's overseas employees to the States based on their "home of record." App. 185. It chose the home of record designation over other data available, including legal residence and last duty station, because home of record most closely resembled the Census Bureau's standard measure of state affiliation—``usual residence.'' 3 Record 925. Legal residence was thought less accurate because the choice of legal residence may have been affected by state taxation. Indeed, the Congressional Research Service found that in 1990 "the nine States with either no income taxes, or those which tax only interest and dividend income, have approximately 9 percent more of the overseas military personnel claiming the States for tax purposes, than those same States receive using *home of record*." Congressional Research Service Report, App. 151, n. 13. For similar reasons, last duty station was rejected because it would provide only a work address, and the employee's last home address might have been in a different State, as with those, for example, who worked in the District of Columbia but lived in Virginia or Maryland. 3 A.R. 925. Residence at a "last duty station" may also have been of a very short duration and may not have reflected the more enduring tie of usual residence. App. 150.

Those military personnel for whom home of record information was not available were allocated based on legal residence or last duty station, in that order. *Id.*, at 186.

The Census Bureau invited 40 other federal agencies with overseas employees to submit counts of their employees as well. Of those, only 30 actually submitted counts, and only 20 agencies included dependents in their enumeration. Four of the agencies could not provide a home State for all of their overseas employees. *Ibid.*

Appellees challenged the decision to allocate federal overseas employees, and the method used to do so, as inconsistent with the APA and with the constitutional requirement that the apportionment of Representatives be determined by an "actual Enumeration" of persons "in each State." U. S. Const., Art. I, §2, cl. 3; U. S. Const., Amdt. 14, §2. Appellees focused their attack on the Secretary's decision to use "home of record" data for military personnel. The District Court, finding that it had jurisdiction to address the merits of the claims, was "skeptical" of the merits of appellees' constitutional claims, speculating that "[t]here would appear to be nothing inherently unconstitutional in a properly supported decision to include overseas federal employees in apportionment counts." *Commonwealth* v. *Mosbacher*, 785 F. Supp. 230, 266 (Mass. 1992). The District Court nonetheless held that, on the administrative record before it, the Secretary's decision to allocate the employees and to use home of record data was arbitrary and capricious under the standards of the APA. *Id.*, at 264–266.

Appellees raise claims under both the APA and the Constitution. We address first the statutory basis for our jurisdiction under the APA. See *Blum* v. *Bacon*, 457 U. S. 132, 137 (1982); *Burton* v. *United States*, 196 U. S. 283, 295 (1905).

The APA sets forth the procedures by which federal agencies are accountable to the public and their actions subject to review by the courts. The Secretary's report to the President is an unusual candidate for "agency action" within the meaning of the APA, because it is not promulgated to the public in the Federal Register, no official administrative record is generated, and its effect on reapportionment is felt only after the President makes the necessary calculations and reports the result to the Congress. Contrast 2 U. S. C. §441a(e) (requiring Secretary to publish each year in the Federal Register an estimate of the voting age population). Only after the President reports to Congress do the States have an entitlement to a particular number of Representatives. See 2 U. S. C. §2a(b) ("Each State shall be entitled . . . to the number of Representatives shown in the [President's] statement").

The APA provides for judicial review of "final agency action for which there is no other adequate remedy in a court." 5 U. S. C. §704. At issue in this case is whether the "final" action that appellees have challenged is that of an "agency" such that the federal courts may exercise their powers of review under the APA. We hold that the final action complained of is that of the President, and the President is not an agency within the meaning of the Act. Accordingly, there is no final agency action that may be reviewed under the APA standards.

To determine when an agency action is final, we have looked to, among other things, whether its impact "is sufficiently direct and immediate" and has a "direct effect on . . . day-to-day business." *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 152 (1967). An agency action is not final if it is only "the ruling of a subordinate official," or "tentative." *Id*., at 151. The core question is whether the agency has completed its decisionmaking process, and whether the result of that process is one that will directly

affect the parties. In this case, the action that creates an entitlement to a particular number of Representatives and has a direct effect on the reapportionment is the President's statement to Congress, not the Secretary's report to the President.

Unlike other statutes that expressly require the President to transmit an agency's report directly to Congress, §2a does not. Compare, *e.g.*, 20 U. S. C. §1017(d) ("The President shall transmit each such report [of the National Advisory Council on Continuing Education] to the Congress with his comments and recommendations"); 30 U. S. C. §1315(c) (similar language); 42 U. S. C. §3015(f) (similar language); 42 U. S. C. §6633(b)(2) (similar language). After receiving the Secretary's report, the President is to "transmit to the Congress a statement showing the whole number of persons in each State . . . as ascertained under the . . . decennial census of the population." 2 U. S. C. §2a. Section 2a does not expressly require the President to use the data in the Secretary's report, but, rather, the data from the "decennial census." There is no statute forbidding amendment of the "decennial census" itself after the Secretary submits the report to the President. For potential litigants, therefore, the "decennial census" still presents a moving target, even after the Secretary reports to the President. In this case, the Department of Commerce, in its press release issued the day the Secretary submitted the report to the President, was explicit that the data presented to the President was still subject to correction. See United States Department of Commerce News, Bureau of Census, 1990 Census Population for the United States is 249,632,692: Reapportionment Will Shift 19 Seats in the U. S. House of Representatives (Dec. 26, 1990) ("The population counts set forth herein are subject to possible correction for undercount and overcount. The United States Department of Commerce is considering whether to correct these counts and will

publish corrected counts, if any, not later than July 15, 1991").[1] Moreover, there is no statute that rules out an instruction by the President to the Secretary to reform the census, even after the data is submitted to him. It is not until the President submits the information to Congress that the target stops moving, because only then are the States entitled by §2a to a particular number of Representatives. Because the Secretary's report to the President carries no direct consequences for the reapportionment, it serves more like a tentative recommendation than a final and binding determination. It is, like "the ruling of a subordinate official," *Abbott Laboratories* v. *Gardner*, *supra*, at 151, not final and therefore not subject to review. Cf. *Chicago & Southern Air Lines, Inc.* v. *Waterman S.S. Corp*, 333 U.S. 103, 109 (1948); *United States* v. *Bush & Co.*, 310 U. S. 371, 379 (1940).

The statutory structure in this case differs from that at issue in *Japan Whaling Assn.* v. *American Cetacean Soc.*, 478 U. S. 221 (1986), in which we held that the Secretary of Commerce's certification to the President that another country was endangering fisheries was

---

[1]JUSTICE STEVENS suggests that the "decennial census" is a single count, determined solely by the Secretary, that is used for many purposes other than reapportionment of Representatives. Therefore, he reasons, it cannot be within the control of the President. However, the President may be involved in the policymaking tasks of his cabinet members, whether or not his involvement is explicitly required by statute. The question here is whether the census count is final before the President acts. It seems clear that it is not. The tabulations used for purposes of State redistricting, which include counts of persons in each State district, are not required by statute to be completed until April 1, months after the President's report to Congress. 13 U. S. C. §141(c).

"final agency action." *Id.*, at 231, n. 4. In that case, the Secretary's certification to the President under 22 U. S. C. §1978(a)(1) automatically triggered sanctions by the Secretary of State under 16 U. S. C. §1821(e)(2)(B), regardless of any discretionary action the President himself decided to take. *Japan Whaling*, *supra*, at 226. Under 13 U. S. C. §141(a), by contrast, the Secretary's report to the President has no direct effect on reapportionment until the President takes affirmative steps to calculate and transmit the apportionment to Congress.

Appellees claim that because the President exercises no discretion in calculating the numbers of Representatives, his "role in the statutory scheme was intended to have no substantive content," and the final action is the Secretary's, not the President's. Brief for Appellees 86. They cite the Senate Report for the bill that became 2 U. S. C. §2a, which states that the President is to report "upon a problem in mathematics which is standard, and for which rigid specifications are provided by Congress itself, and to which there can be but one mathematical answer." S. Rep. No. 2, 71st Cong., 1st Sess., 4–5 (1929).

The admittedly ministerial nature of the apportionment calculation itself does not answer the question whether the apportionment is foreordained by the time the Secretary gives her report to the President. To reiterate, §2 does not curtail the President's authority to direct the Secretary in making policy judgments that result in "the decennial census;" he is not expressly required to adhere to the policy decisions reflected in the Secretary's report. Because it is the President's personal transmittal of the report to Congress that settles the apportionment, until he acts there is no determinate agency action to challenge. The President, not the Secretary, takes the final action that affects the States.

Indeed, it is clear that Congress thought it was

important to involve a constitutional officer in the apportionment process. Congress originally considered a bill requiring the Secretary to report the apportionment calculation directly to Congress. See S. Rep. No. 1446, 70th Cong., 2d Sess., 4 (1929). The bill was later amended to require the participation of the President: "Another objection to the previous bill was that the Secretary of Commerce should not be intrusted with the final responsibility for making so important a report to Congress. The new and pending bill recognizes this objection to the extent that the President is substituted for the Secretary of Commerce so that this function may be served by a constitutional officer. This makes for greater permanence, which is one of the major virtues to be desired in such a statute." S. Rep. No. 2, *supra*, at 5. It is hard to imagine a purpose for involving the President if he is to be prevented from exercising his accustomed supervisory powers over his executive officers. Certainly no purpose to alter the President's usual superintendent role is evident from the text of the statute.

As enacted, 2 U. S. C. §2a provides that the Secretary cannot act alone; she must send her results to the President, who makes the calculations and sends the final apportionment to Congress. That the final act is that of the President is important to the integrity of the process and bolsters our conclusion that his duties are not merely ceremonial or ministerial. Thus, we can only review the APA claims here if the President, not the Secretary of Commerce, is an "agency" within the meaning of the Act.

The APA defines "agency" as "each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—(A) the Congress; (B) the courts of the United States; (C) the governments of the territories or possessions of the United States; (D) the government of the District of Columbia." 5 U. S. C.

§§701(b)(1), 551(1). The President is not explicitly excluded from the APA's purview, but he is not explicitly included, either. Out of respect for the separation of powers and the unique constitutional position of the President, we find that textual silence is not enough to subject the President to the provisions of the APA. We would require an express statement by Congress before assuming it intended the President's performance of his statutory duties to be reviewed for abuse of discretion. Cf. *Nixon* v. *Fitzgerald*, 457 U. S. 731, 748, n. 27 (1982) (Court would require an explicit statement by Congress before assuming Congress had created a damages action against the President). As the APA does not expressly allow review of the President's actions, we must presume that his actions are not subject to its requirements. Although the President's actions may still be reviewed for constitutionality, see *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579 (1952), *Panama Refining Co.* v. *Ryan*, 293 U. S. 388 (1935), we hold that they are not reviewable for abuse of discretion under the APA. See *Armstrong* v. *Bush*, 288 U. S. App. D. C. 38, 45, 924 F. 2d 282, 289 (1991). The District Court erred in proceeding to determine the merits of the APA claims.

Although the reapportionment determination is not subject to review under the standards of the APA, that does not dispose of appellees' constitutional claims. See *Webster* v. *Doe*, 486 U. S. 592, 603–605 (1988). Constitutional challenges to apportionment are justiciable. See *United States Dept. of Commerce* v. *Montana*, 503 U. S. ___ (1992).

We first address standing.[2] To invoke the

[2]While appellants asserted below that the courts have no subject matter jurisdiction over this case because it involves a "political question," we recently rejected a similar argument in *United States Dept. of*

constitutional power of the federal courts to adjudicate a case or controversy under Article III, appellees here must allege and prove an injury "fairly traceable to the [appellants'] allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen* v. *Wright*, 468 U. S. 737, 751 (1984).

To determine whether appellees sufficiently allege and prove causation requires separating out appellees' claims: Appellees claim both that the Secretary erred in deciding to allocate overseas employees to various States and that the Secretary erred in using inaccurate data to do so. Appellees have shown that Massachusetts would have had an additional Representative if overseas employees had not been allocated at all. App. 183. They have neither alleged nor shown, however, that Massachusetts would have had an additional Representative if the allocation had been done using some other source of "more accurate" data. Consequently, even if appellees have standing to challenge the Secretary's decision to allocate, they do not have standing to challenge the accuracy of the data used in making that allocation. We need, then, review only the decision to include overseas federal employees in the state population counts, not the Secretary's choice of information sources.

The thornier standing question is whether the injury is redressable by the relief sought. Tracking the statutory progress of the census data from the Census Bureau, through the President, and to the States, the District Court entered an injunction against the Secretary of Commerce, the President, and the Clerk of the House. 785 F. Supp., at 268. While injunctive relief against executive officials like the Secretary of Commerce is within the courts'

Commerce v. *Montana*, 503 U. S., at ___ , and appellants now concede the issue. Brief for Appellants 21.

power, see *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579 (1952), the District Court's grant of injunctive relief against the President himself is extraordinary, and should have raised judicial eyebrows. We have left open the question whether the President might be subject to a judicial injunction requiring the performance of a purely "ministerial" duty, *Mississippi* v. *Johnson*, 4 Wall. 475, 498–499 (1867), and we have held that the President may be subject to a subpoena to provide information relevant to an ongoing criminal prosecution, *United States* v. *Nixon*, 418 U. S. 683 (1974), but in general "this court has no jurisdiction of a bill to enjoin the President in the performance of his official duties." *Mississippi* v. *Johnson*, *supra*, at 501. At the threshold, the District Court should have evaluated whether injunctive relief against the President was available, and, if not, whether appellees' injuries were nonetheless redressable.

For purposes of establishing standing, however, we need not decide whether injunctive relief against the President was appropriate, because we conclude that the injury alleged is likely to be redressed by declaratory relief against the Secretary alone. See *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.*, 438 U. S. 59, 75, n. 20 (1978); *Allen* v. *Wright, supra,* at 752. The Secretary certainly has an interest in defending her policy determinations concerning the census; even though she cannot herself change the reapportionment, she has an interest in litigating its accuracy. And, as the Solicitor General has not contended to the contrary, we may assume it is substantially likely that the President and other executive and congressional officials would abide by an authoritative interpretation of the census statute and constitutional provision by the District Court, even though they would not be directly bound by such a determination.

On the merits, appellees argue that the Secretary's allocation of overseas federal employees to the States violated the command of Article I, §2, cl. 3, that the number of Representatives per State be determined by an "actual Enumeration" of "their respective Numbers," that is, a count of the persons "in" each State. Appellees point out that the first census conducted in 1790 required that persons be allocated to their place of "usual residence." Brief for Appellees 77. See Act of March 1, 1790, §5, 1 Stat. 103. Because the interpretations of the Constitution by the First Congress are persuasive, *Bowsher* v. *Synar*, 478 U. S. 714, 723–724 (1986), appellees argue that the Secretary should have allocated the overseas employees to their overseas stations, because those were their usual residences.

The appellants respond, on the other hand, that the allocation of employees temporarily stationed overseas to their home States is fully compatible with the standard of "usual residence" used in the early censuses. We review the dispute to the extent of determining whether the Secretary's interpretation is consistent with the constitutional language and the constitutional goal of equal representation. See *United States Dept. of Commerce* v. *Montana, supra,* at ___–___ (1992) (slip op., at 17–18).

"Usual residence" was the gloss given the constitutional phrase "in each State" by the first enumeration Act and has been used by the Census Bureau ever since to allocate persons to their home States. App. 173–174. The term can mean more than mere physical presence, and has been used broadly enough to include some element of allegiance or enduring tie to a place. The first enumeration Act itself provided that "every person occasionally absent at the time of the enumeration [shall be counted] as belonging to that place in which

he usually resides in the United States." Act of March 1, 1790, §5, 1 Stat. 103. The Act placed no limit on the duration of the absence, which, considering the modes of transportation available at the time, may have been quite lengthy. For example, during the 36–week enumeration period of the 1790 census, President George Washington spent 16 weeks traveling through the States, 15 weeks at the seat of Government, and only 10 weeks at his home in Mount Vernon. He was, however, counted as a resident of Virginia. T. Clemence, Place of Abode, reproduced in App. 83.

The first enumeration Act uses other words as well to describe the required tie to the State: "usual place of abode," "inhabitant," "usual reside[nt]." Act of March 1, 1790, §5, 1 Stat. 103. The first draft of Article I, §2 also used the word "inhabitant," which was omitted by the Committee of Style in the final provision. 2 Farrand, Records of the Federal Convention of 1787, at 566, 590.[3]

In the related context of congressional residence qualifications, U. S. Const., Art. I, §2, James Madison interpreted the constitutional term "inhabitant" to include "persons absent occasionally for a considerable time on public or private business." 2 Farrand, Records of the Federal Convention of 1787, at 217. This understanding was applied in 1824, when a question was raised about the residency qualifications of would-be Representative John

---

[3]As submitted to the Committee of Style, the provision read: "[T]he Legislature shall . . . regulate the number of representatives by the number of inhabitants." 2 M. Farrand, Records of the Federal Convention of 1787, p. 566 (rev. ed. 1966). After its return by the Committee, it had a more familiar ring: "Representatives . . . shall be apportioned among the several states . . . according to their respective numbers." *Id.*, at 590.

Forsyth, of Georgia. Mr. Forsyth had been living in Spain during his election, serving as minister plenipotentiary from the United States. His qualification for office was challenged on the ground that he was not "an inhabitant of the State in which he [was] chosen." U. S. Const., Art. I, §2, cl. 2. The House Committee of Elections disagreed, reporting that: "[t]here is nothing in Mr. Forsyth's case which disqualifies him from holding a seat in this House. The capacity in which he acted, excludes the idea that, by the performance of his duty abroad, he ceased to be an inhabitant of the United States; and, if so, inasmuch as he had no inhabitancy in any other part of the Union than Georgia, he must be considered as in the same situation as before the acceptance of the appointment." M. Clarke & D. Hall, Cases of Contested Elections in Congress 497–498 (1834). Representative Bailey, supporting the qualification of Mr. Forsyth, pointed out that if "the mere living in a place constituted inhabitancy," it would "exclude sitting members of this House." *Id*., at 497 (emphasis deleted).

Up to the present day, "usual residence" has continued to hold broad connotations. For example, up until 1950, college students were counted as belonging to the State where their parents resided, not to the State where they attended school. App. 219. Even today, high school students away at boarding school are allocated to their parents' home State, not the location of the school. *Id.*, at 220. Members of Congress may choose whether to be counted in the Washington D.C. area or in their home States. *Id.*, at 218. Those who are institutionalized in out-of-state hospitals or jails for short terms are also counted in their home States. *Id*., at 225.

In this case, the Secretary of Commerce made a judgment, consonant with, though not dictated by, the text and history of the Constitution, that many federal employees temporarily stationed overseas

had retained their ties to the States and could and should be counted toward their States' representation in Congress: "Many, if not most, of these military overseas consider themselves to be usual residents of the United States, even though they are temporarily assigned overseas." *Id.,* at 120. The Secretary's judgment does not hamper the underlying constitutional goal of equal representation, but, assuming that employees temporarily stationed abroad have indeed retained their ties to their home States, actually promotes equality. If some persons sharing in Washington's fate had not been properly counted, the votes of all those who reside in Washington State would not have been weighted equally to votes of those who reside in other States. Certainly, appellees have not demonstrated that eliminating overseas employees entirely from the state counts will make representation in Congress more equal. Cf. *Karcher* v. *Daggett*, 462 U. S. 725, 730–731 (1983) (parties challenging state apportionment legislation bear burden of proving disparate representation.) We conclude that appellees' constitutional challenge fails on the merits.

The District Court's judgment is

Reversed.