

Chapter CLV.¹

THE ELECTORS AND APPORTIONMENT.

1. Constitution and laws relating to electors. Section 38.
2. Constitution and laws relating to apportionment. Sections 39–47.
3. The privilege of bills relating to census and apportionment. Sections 48–52.
4. Right of the State to change districts. Section 53.
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38. The right of citizens of the United States to vote shall not be denied or abridged on account of sex.

The nineteenth amendment to the Constitution provides:

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.

39. The Constitution provides that the enumeration to fix the basis of representation shall be made once in every ten years.

The distribution of representation under the several apportionments.
Section 2 of Article XIV of the Constitution provides—

Representatives shall be apportioned among the several States according to their respective numbers,² counting the whole number of persons³ in each State, excluding Indians not taxed.

¹Supplementary to Chapter VIII.

²The various apportionments, including the first one made in the Constitution itself, have been as follows:

States.	1787	1790	1800	1810	1820	1830	1840	1850	1860	1870	1880	1890	1900	1910	1920	1930
Delaware	1	1	1	2	1	1	1	1	1	1	1	1	1	1	.....	1
Pennsylvania	8	13	18	23	26	28	24	25	24	27	28	30	32	36	.....	34
New Jersey	4	5	6	6	6	6	5	5	5	7	7	8	10	12	.....	14
Georgia	3	2	4	6	7	9	8	8	7	9	10	11	11	12	.....	10
Connecticut	5	7	7	7	6	6	4	4	4	4	4	5	5	5	.....	6
Massachusetts	8	14	17	20	13	12	10	11	10	11	12	13	14	16	.....	15
Maryland	6	8	9	9	9	8	6	6	5	6	6	6	6	6	.....	6
South Carolina	5	6	8	9	9	9	7	6	4	5	7	7	7	7	.....	6
New Hampshire	3	4	5	6	6	5	4	3	2	3	2	2	2	2	.....	2
Virginia	10	19	22	23	22	21	15	13	11	9	10	10	10	10	.....	9
New York	6	10	17	27	34	40	34	33	31	33	34	34	37	43	.....	45
North Carolina	5	10	12	13	13	13	9	8	7	8	9	9	10	10	.....	11
Rhode Island	1	2	2	2	2	2	2	2	2	2	2	2	2	3	.....	2
Vermont .....	.....	2	4	6	5	5	4	3	3	3	2	2	2	2	.....	1
Kentucky .....	.....	2	6	10	12	13	10	10	9	10	11	11	11	11	.....	9
Tennessee .....	.....	.....	3	6	9	13	11	10	8	10	10	10	10	10	.....	9
Ohio .....	.....	.....	.....	6	14	19	21	21	19	20	21	21	21	22	.....	24
Louisiana .....	.....	.....	.....	.....	3	3	4	4	5	6	6	6	7	8	.....	8
Indiana .....	.....	.....	.....	.....	3	7	10	11	11	13	13	13	13	13	.....	12
Mississippi .....	.....	.....	.....	.....	1	2	4	5	5	6	7	8	8	8	.....	7
Illinois .....	.....	.....	.....	.....	1	3	7	9	14	19	20	22	25	27	.....	27
Alabama .....	.....	.....	.....	.....	2	5	7	7	6	8	8	9	9	10	.....	9
Maine .....	.....	.....	.....	.....	7	8	7	6	5	5	4	4	4	4	.....	3
Missouri .....	.....	.....	.....	.....	1	2	5	7	9	13	14	15	16	16	.....	13

³The Constitution also provides for ascertaining this number of persons by a census every ten years.

But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

The last apportionment, which was the first under the act of 1929, was made on the basis of one Representative for 280,679 of population.

40. From March 3, 1913, the membership of the House was fixed at 435.

The law of August 8, 1911,¹ makes the following provisions as to the membership of the House:

That after the third day of March, nineteen hundred and thirteen, the House of Representatives shall be composed of four hundred and thirty-five members.

41. The apportionment of Representatives to the several States under the law of 1929.

Under the law of 1929 the President transmits to each fifth Congress a statement of population and apportionment of existing number of Representatives among the several States thereunder.

Methods of apportioning the existing number of Representatives among the several States in accordance with the census.

The act of June 18, 1929,³ makes the following provisions as to apportionment:

SEC. 22. (a) On the first day, or within one week thereafter, of the second regular session of the Seventy-first 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 fifteenth and each subsequent decennial census of the popula-

¹U. S. Code, title 2, sec. 2.

Footnote 2 continued from p. 31:

States.	1787	1790	1800	1810	1820	1830	1840	1850	1860	1870	1880	1890	1900	1910	1920	1930
Arkansas							1	2	3	4	5	6	7	7	.....	7
Michigan							3	4	6	9	11	12	12	13	.....	17
Florida								1	1	2	2	2	3	4	.....	5
Iowa								2	6	9	11	11	11	11	.....	9
Texas								2	4	6	11	13	16	18	.....	21
Wisconsin								3	6	8	9	10	11	11	.....	10
California								2	3	4	6	7	8	11	.....	20
Minnesota									2	3	5	7	9	10	.....	9
Oregon									1	1	1	2	2	3	.....	3
Kansas									1	3	7	8	8	8	.....	7
West Virginia									3	3	4	4	5	6	.....	6
Nevada									1	1	1	1	1	1	.....	1
Nebraska									1	1	3	6	6	6	.....	5
Colorado										1	1	2	3	4	.....	4
South Dakota												2	2	3	.....	2
North Dakota												1	2	3	.....	2
Montana												1	1	2	.....	2
Washington												2	3	5	.....	6
Idaho												1	1	2	.....	2
Wyoming												1	1	1	.....	1
Utah												1	1	2	.....	2
Oklahoma													5	8	.....	9
Arizona														1	.....	1
New Mexico														1	.....	1
Total	63	105	141	181	212	240	223	234	241	293	325	357	391	435	.....	435

³46 Stat. L., p. 26.

tion, 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.

42. Statement of population and apportionment thereunder submitted to the Seventy-first Congress, and form of message transmitting it.—On December 5, 1930,¹ it being the first day of the second regular session of the Seventy-first Congress, the President transmitted to the Congress the following message:

To the Congress of the United States:

In compliance with the provisions of section 22 (a) of the act approved June 18, 1929, I transmit herewith a statement prepared by the Bureau of the Census, Department of Commerce, giving the whole number of persons in each State, exclusive of Indians not taxed, as ascertained under the Fifteenth Decennial Census of population, and the number of Representatives to which each State would be entitled under an apportionment of the existing number of Representatives by the method known as the method of major fractions, which was the method used in the last preceding apportionment, and also by the method known as the method of equal proportions.

HERBERT HOOVER.

The message was accompanied by the following statement:

Apportionment of 435 Representatives by the method of major fractions, which was used in the last preceding apportionment, and by the method of equal proportions with total population of the several States, number of Indians not taxed, and population basis of apportionment

State	Population as enumerated April 1, 1930	Indians not taxed	Population basis of apportionment	Apportionment of 435 Representatives by method of—	
				Major fractions used in last preceding apportionment	Equal proportions
Total	122,288,177	194,722	122,093,455	435	435
Alabama	2,646,248	6	2,646,242	9	9
Arizona	435,573	46,198	389,375	1	1
Arkansas	1,854,482	38	1,854,444	7	7
California	5,677,251	9,010	5,668,241	20	20
Colorado	1,035,791	942	1,034,849	4	4
Connecticut	1,606,903	6	1,606,897	6	6
Delaware	238,380	.....	238,380	1	1
Florida	1,468,211	20	1,468,191	5	5
Georgia	2,908,506	60	2,908,446	10	10

¹Third session, Seventy-first Congress, House Document No. 664.

Apportionment of 435 Representatives by the method of major fractions, which was used in the last preceding apportionment, and by the method of equal proportions with total population of the several States, number of Indians not taxed, and population basis of apportionment—Continued

State	Population as enumerated April 1, 1930	Indians not taxed	Population basis of apportionment	Apportionment of 435 Representatives by method of—	
				Major fractions used in last preceding apportionment	Equal proportions
Idaho	445,032	3,496	441,536	2	2
Illinois	7,630,654	266	7,630,388	27	27
Indiana	3,238,503	23	3,238,480	12	12
Iowa	2,470,939	519	2,470,420	9	9
Kansas	1,880,999	1,501	1,879,498	7	7
Kentucky	2,614,589	14	2,614,575	9	9
Louisiana	2,101,593	.....	2,101,593	8	8
Maine	797,423	5	797,418	3	3
Maryland	1,631,526	4	1,631,522	6	6
Massachusetts	4,249,614	16	4,249,598	15	15
Michigan	4,842,325	273	4,842,052	17	17
Minnesota	2,563,953	12,370	2,551,583	9	9
Mississippi	2,009,821	1,667	2,008,154	7	7
Missouri	3,629,367	257	3,629,110	13	13
Montana	537,606	12,877	524,729	2	2
Nebraska	1,377,963	2,840	1,375,123	5	5
Nevada	91,058	4,668	86,390	1	1
New Hampshire	465,293	1	465,292	2	2
New Jersey	4,041,334	15	4,041,319	14	14
New Mexico	423,317	27,335	395,982	1	1
New York	12,588,066	99	12,587,967	45	45
North Carolina	3,170,276	3,002	3,167,274	11	11
North Dakota	680,845	7,505	673,340	2	2
Ohio	6,646,697	64	6,646,633	24	24
Oklahoma	2,396,040	13,818	2,382,222	9	9
Oregon	953,786	3,407	950,379	3	3
Pennsylvania	9,631,350	51	9,631,299	34	34
Rhode Island	687,497	.....	687,497	2	2
South Carolina	1,738,765	5	1,738,760	6	6
South Dakota	692,849	19,844	673,005	2	2
Tennessee	2,616,556	59	2,616,497	9	9
Texas	5,824,715	114	5,824,601	21	21
Utah	507,847	2,106	505,741	2	2
Vermont	359,611	.....	359,611	1	1
Virginia	2,421,851	22	2,421,829	9	9
Washington	1,563,396	10,973	1,552,423	6	6
West Virginia	1,729,205	6	1,729,199	6	6
Wisconsin	2,939,005	7,285	2,931,721	10	10
Wyoming	225,565	1,935	223,330	1	1

43. If Congress fails to apportion, each State shall be entitled to the number of Representatives shown in the President's statement under the method last used.

On failure of the Congress to apportion, the Clerk certifies to each State executive the number of Representatives to which the State is entitled under the law.

Form of the first certificate of notification under the law of 1929.

The act of June 18, 1929,¹ in providing for apportionment, has the following:

(b) 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. 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 sections 32 and 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).

The Seventy-first Congress having failed to enact an apportionment law after receipt of the required statement of population and apportionment thereunder from the President, the Clerk dispatched to each State executive a certificate of notification in the following form:

I, Wm. Tyler Page, Clerk of the House of Representatives of the United States, hereby certify, pursuant to section 22, subdivision (B), of the act of the Congress of the United States of America entitled "An act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress," approved June 18, 1929, that the State of _____ shall be entitled, in the Seventy-third Congress and in each Congress thereafter until the taking effect of a reapportionment under said act or subsequent Statute, to _____ Representatives in the House of Representatives of the Congress of the United States.

In witness whereof I hereto affix my name and the seal of the House of Representatives of the United States of America this fourth day of March, Anno Domini 1931, in the city of Washington, District of Columbia.

44. The law of 1911 provides that Representatives shall be elected in districts composed of contiguous and compact territory and containing as nearly as practicable an equal number of inhabitants.

The districts in a State shall be equal to the number of its Representatives, no one district electing more than one Representative.

The act of August 8, 1911,² has the following:

That in each State entitled under this apportionment to more than one Representative, the Representatives to the Sixty-third and each subsequent Congress shall be elected by districts composed of a contiguous and compact territory, and containing as nearly as practicable an equal number of inhabitants. The said districts shall be equal to the number of Representatives to which such State may be entitled in Congress, no district electing more than one Representative.

45. The act of a State legislature redistricting the State in accordance with the law of 1911 requires the approval of the governor of such State or passage over his veto.

¹46 Stat. L., p. 26, 27.

²U. S. Code, Title 2, sec. 3.

Where the number of Representatives to which a State is entitled pursuant to the act of 1929 is the same as the number under the last previous apportionment and the districts are unchanged, elections of Representatives may be conducted in the same manner as before the reapportionment.

Where the number of Representatives has been decreased by the new apportionment, all the Representatives must be elected by the State at large unless and until the new districts are created.

Where the number of Representatives for a State has been increased by the new apportionment, the additional Representatives, if no new districts are created, may be elected by the State at large.

Interpretation of the statutes providing for apportionment.

On April 11, 1932,¹ the Supreme Court held that the legislature of a State, in redistricting the State into congressional districts in accordance with the last previous census, pursuant to the act of 1929, is required to obtain the governor's approval or pass the act over his veto, where the constitution of the State so requires in the enactment of the laws.

The decision holds that a redistricting act or resolution of a legislature not approved by the governor, or passed over his veto as required by the State constitution, is void, and in such case the Representatives, if not increased in number, must be elected by the State at large, regardless of whether the act of 1911, fixing the requirements of districts, is still in effect.

The court further held that where the number of Representatives has been increased and the redistricting act is void, the Representatives to which the State was previously entitled are to be elected in the districts existing at the time of the attempted redistricting, and the additional Representatives by the State at large.

As to States where the number of Representatives is unchanged by reapportionment, the decision says:

In States where the number of Representatives remains the same, and the districts are unchanged, no question is presented; there is nothing inconsistent with any of the requirements of the Congress in proceeding with the election of Representatives in such States in the same manner as heretofore.

As to States where the number is increased, the court held:

In the absence of the creation of new districts, additional Representatives allotted to a State under the present reapportionment would appropriately be elected by the State at large.

As to States where the number is decreased, the court said:

Where the number of Representatives has been decreased, there is a different situation as existing districts are not at all adapted to the new apportionment. It follows that in such a case, unless and until new districts are created, all Representatives allotted to the State must be elected by the State at large.

46. The law of 1911 provides for the election of Representatives in old districts and at large until the respective States shall have rearranged the districts.—The act of August 8, 1911,² has the following:

¹285 U. S., pp. 355, 375.

²U. S. Code, title 2, sec. 4.

That in case of an increase in the number of Representatives in any State under this apportionment such additional Representative or Representatives shall be elected by the State at large and the other Representatives by the districts now prescribed by law until such State shall be redistricted in the manner provided by the laws thereof and in accordance with the rules enumerated in section three of this act; and if there be no change in the number of Representatives from a State, the Representatives thereof shall be elected from the districts now prescribed by law until such State shall be redistricted as herein prescribed.

Provisions similar, but not identical are found in previous apportionment acts.

47. The law of 1911 provides that candidates for Representative to be elected at large shall be nominated in the same manner as candidates for governor, unless otherwise provided.—The apportionment act of August 8, 1911,¹ has the following:

That candidates for Representative or Representatives to be elected at large in any State shall be nominated in the same manner as candidates for governor, unless otherwise provided by the laws of such State.

This was the first instance in which an apportionment act made provision for the nomination of candidates.

48. While the House gives priority to the consideration of business made privileged by constitutional mandate, it determines by its rules the procedure of such consideration.

Dicta relating to the privilege accorded by the Constitution to the consideration of a measure returned with the President's veto.

Dicta relating to the Constitutional privilege of a question of impeachment.

Bills relating to the census or apportionment, though privileged, held subject to the rules of the House providing for the consideration of privileged questions.

The Chair in his ruling is constrained to follow precedent and to obey a well-established rule even if unreasonable, but one precedent alone when unsupported by others is not necessarily conclusive.

On May 6, 1921,² Mr. D. R. Anthony, jr., of Kansas, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill (H. R. 5010) making appropriations for the support of the Army for the fiscal year ending June 30, 1922. and for other purposes.

Pending this motion, Mr. George Holden Tinkham, of Massachusetts, offered, as privileged under the Constitution, the following resolution:

Whereas the fourteenth article, in addition to and amendment of the Constitution of the United States, section 2, provides:

“When the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof is denied to any of the male inhabitants of such State, being 21 years of age and citizens of the United States, or in any way abridged, except for

¹ U.S. Code, title 2, sec. 5.

² First session Sixty-seventh Congress, Record, p. 1129.

participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens 21 years of age in such State," and

Whereas it is generally and commonly alleged and is susceptible of proof that in many States of the United States the constitutions thereof and the laws enacted by their legislatures have, in effect, denied or abridged to large numbers of citizens qualified under the Constitution of the United States the right to vote in such States, and that such alleged nullification of the Constitution of the United States, whether direct or indirect, constitutes flagrant and persistent disregard and violation of the fundamental law of the land and is subversive wholly of law and of Liberty itself; and

Whereas no greater political discrimination could exist between the several States of the Union and of their citizens than the general conference upon each of the States alike of the power to prescribe qualifications for electors (subject alone to the inhibitions of the fifteenth and nineteenth amendments to the Constitution of the United States) upon a basis of population, and the coexistence of an extensive and evasive unconstitutional denial of the exercise of the franchise to some citizens by some States resulting in disproportionate political power, accentuated and enlarged by the recent enfranchisement of females; and

Whereas the House of Representatives is about to make a reapportionment off Representatives in Congress among the several States, based upon the census of population of 1920: Therefore be it

Resolved, That the Committee on the Census or any subcommittee thereof is hereby authorized and directed to proceed forthwith to make diligent inquiry respecting the extent to which the right to vote is denied or abridged to citizens of the United States in any State in violation of the Constitution of the United States; and said committee is authorized to send for persons and papers, to administer oaths to witnesses, to conduct such inquiry at such times and places as the committee may deem necessary, and to report its findings and recommendations to the House at the earliest possible moment, either separately or together with such report as said committee may submit in connection with proposed legislation providing for a reapportionment of Representatives in Congress, to the end that such reapportionment shall be constitutional in form and in fact.

Mr. Frank W. Mondell, of Wyoming, made the point of order that the resolution was not so privileged as to take precedence of the privileged motion to resolve into the Committee of the Whole House on the state of the Union for the consideration of a general appropriation bill.

Mr. Tinkham urged that his resolution was submitted in compliance with a mandatory provision of the Constitution and therefore took precedence over a proposition merely privileged under the rules of the House, predicating his argument upon a decision¹ rendered on a similar proposition by former Speaker Henderson.

The Speaker² in terms overruled specifically the decision cited and said:

The Chair thinks that if this question were brought up as an original question, and there were no precedents upon it, every Member of the House would at once say, "Why, of course this can not be admitted as privileged," because it would give the right to any Member of the House at any time to a bring forward a resolution affecting some constitutional provision and to claim that his individual resolution can at once set aside all the regular business of the House, and must be considered by the House in preference to anything else. That puts it above the rules of the House and allows one man, and one after another if filibustering is desired, to bring before the House a question that he has in advance prepared, and insist that his individual will and preference shall change the regular order which the House itself has established just because a clause of the Constitution is affected. So the Chair thinks that if this were a matter of first impression, there would be no question about it. The Chair at any rate would have no question about it. But there is an exact precedent for this which has been followed by the gentleman from Massachusetts, and that has much embarrassed the Chair in coming to his decision. This whole question of a constitutional privilege being superior to the

¹ Vol. 1, sec. 305, of this work.

² Frederick H. Gillett, of Massachusetts, Speaker.

rules of the House is a subject which the Chair has for many years considered, and thought unreasonable. It seems to the Chair that where the Constitution orders the House to do a thing, the Constitution still gives the House the right to make its own rules and do it at such time and in such manner as it may choose, and it is a strained construction, it seems to the Chair, to say that because the Constitution gives a mandate that a thing shall be done, it therefore follows that any Member can insist that it shall be brought up at some particular time and in the particular way which he chooses.

If there is a constitutional mandate, the House ought by its rules to provide for the proper enforcement of that mandate, but it is still a question for the House how and when and under what procedure it shall be done, and a constitutional question, like any other, ought to be decided according to the rules that the House has adopted. But there have been a few constitutional questions—very few—which have been held by a series of decisions to be of themselves questions of privilege above the rules of the House. There is the question of the President's veto, and to the Chair that seems to be the only one in which there is any good reason to give a privileged status, because the Constitution says that when the President sends a veto to the House the House shall "proceed to" consider it; and that is apparently a definite order which can fairly be interpreted to mean that it shall be done at once, and that has been the practice of the House, and it has been held that without a rule in obedience to the Constitution a President's veto should be acted upon, not immediately but within a day or two.

Another subject which has been given constitutional privilege is impeachment. It has been held that when a Member rises in his place and impeaches an officer of the Government he can claim a constitutional privilege which allows him at any time to push aside the other privileged business of the House. To the Chair that does not seem rational. Although impeachment is a matter of constitutional privilege, yet there is no reason why it should not be introduced like any other matter, go into the basket, and be reported by a committee. But inasmuch as the long line of precedents has given it a privilege, the Chair would not think of overruling them; but the Chair can see no intrinsic reason for the privilege. It is simply a matter of precedent.

Then have come the two questions of the census and of apportionment. The Constitution provides that a census shall be taken every 10 years, and that after the census is taken there shall be an apportionment, and there is a line of decisions holding that because of that constitutional provision, although the rules of the House have not given the Committee on the Census a privileged status, they can come in ahead of other questions of privilege, although the House will remember that a few years ago the theory that a constitutional privilege was higher than the rules of the House received a damaging blow when it was attempted to bring up a census bill on Calendar Wednesday.

Speaker Cannon held that it was in order to do so, but the House overruled that decision and sustained the sanctity of Calendar Wednesday, and held that a census bill could not come up on that day, thereby deciding that the rule of the House which sets aside Calendar Wednesday is of higher authority than the constitutional privilege of the census bill.

But these questions of impeachment and others came up in the early days of the Congress, when the relative value of a privilege made little difference. In the first half century of our existence the House was not crowded with business. Anything that came before the House had ample opportunity to be heard and decided, and the question whether a subject was privileged or not was not of the same moment that it is to-day, when our calendars are crowded, when it is impossible to transact a tenth part of the business which is presented to the House, and when it is of vital importance to the House that it shall be able to determine an order of business and to consider those bills which it considers of the greatest importance. And apparently recognizing that, in 1880 the House for the first time adopted a rule defining questions of privilege. It was found necessary to check the tendency to claim the floor by alleging that a matter was privileged, and so Rule IX was adopted, which says:

“Questions of privilege shall be first, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings; second, the rights, reputation, and conduct of Members individually in their representative capacity only; and shall have precedence of all other questions, except motions to adjourn.”

It is fair to say that when that rule was adopted a motion was made that no other questions except those specified should be questions of privilege; and by that undoubtedly it was intended to shut out those questions of constitutional privilege which by long practice had become established. But that was voted down. The House obviously thought that it was not safe to say that there should be no questions of privilege except these described in Rule IX. That was in 1880, and the House had then recently, in the Hayes-Tilden contest, had a very vivid experience how important a question of privilege might be when Speaker Randall, in a turbulent House and in a great emergency, when an element in his own party was endeavoring to filibuster against the counting of the vote, held that the law of Congress and the necessity of determining the election was above the rules of the House, and insisted that there should be a vote. The Chair thinks it quite natural that Members who had had that recent experience should feel that it was not safe to decide that there should be no other questions of privilege than these described.

But this Rule IX was obviously adopted for the purpose of hindering the extension of constitutional or other privilege.

If the question of the census and the question of apportionment were new questions, the Chair would rule that they were not questions of constitutional privilege, because, while of course it is necessary to obey the mandate of the Constitution and take a census every 10 years and then make an apportionment, yet there is no reason why it should be done to-day instead of to-morrow. It seems to the Chair that no one Member ought to have the right to determine when it should come in in preference to the regular rules of the House, but that the rules of the House or the majority of the House should decide it. But these questions have been decided to be privileged by a series of decisions, and the Chair recognizes the importance of following precedents and obeying a well-established rule, even if it is unreasonable, that this may be a government of laws and not of men.

Now comes the decision by Speaker Henderson which stands alone on all fours with the present case. Shall it be followed? If you will notice the ruling of Speaker Henderson, you will see that it was not a carefully reasoned opinion. It seems to have been an impulsive, offhand opinion. He says:

“The Chair is unable to see why we should wander even among the precedents, which the Chair has looked over to some extent and which are all one way, when we have the plain language of the Constitution before us.”

He does not consider it necessary to consider precedents, but relies on the plain language of the Constitution. But, as I have already indicated, I do not agree that the language of the Constitution gives any privilege superior to the rules of the House. The plain language of the Constitution simply provides for equal representation. But this resolution and the resolution upon which Speaker Henderson ruled did not provide that at all, it did not pretend to carry out the mandate of the Constitution. This resolution simply says the Committee on Census is directed to proceed forthwith to make diligent inquiry. An inquiry is all the resolution provides, and the Chair finds it difficult to see why on a new question Speaker Henderson ruled as he did if he had given the matter careful investigation. He himself said within a year of that time in passing on the question of the constitutional privilege of the census:

“If this were an original question, the Chair would be inclined to hold that if the House adopts rules of procedure and leaves out any committee from the list of committees whose reports are privileged, that that committee would be remitted to those rules of procedure adopted by the House for its guidance.”

He agrees with the present occupant of the chair, that except for precedent, the Committee on the Census could not claim the constitutional privilege.

Therefore it seems to the Chair, there being this one precedent, and no others, and the claim of the gentleman from Massachusetts, Mr. Tinkham, being directly hostile to the control of the House over its own business, it being an attempt to broaden the figment of constitutional privilege,

which in 1880 the House started to limit, and which it seems to the Chair for the orderly prosecution and control by the House of its business ought to be narrowed rather than broadened, the Chair sustains the point of order.

Mr. Tinkham appealed from the decision of the Chair, and the question being taken, "Shall the decision of the Chair stand as the judgment of the House?", there appeared yeas 285 and nays 47. So the decision of the Chair was sustained.

49. A bill relating to the taking of the census was formerly held to be privileged because of the constitutional requirement.

On March 17, 1910,¹ Mr. Edgar D. Crumpacker, of Indiana, proposed to call up, as privileged under the Constitution, the following joint resolution reported from the Committee on the Census:

Resolved, etc., That the schedules relating to population for the Thirteenth Decennial Census, in addition to the inquiries required by the act entitled "An act to amend section 8 of an act to provide for the Thirteenth and subsequent decennial censuses, approved July 2, 1909," approved February 25, 1910, shall provide inquiries respecting the nationality or mother tongue of all persons born in foreign countries.

Mr. Thomas S. Butler, of Pennsylvania, having made the point of order that the resolution was not privileged, the Speaker² submitted to the House the question:

Is the bill called up by the gentleman from Indiana in order as a question of constitutional privilege, the rule prescribing the order of business to the contrary notwithstanding?

On motion of Mr. Oscar W. Underwood, of Alabama, this question was amended to read:

Is the House joint resolution, called up by the gentleman from Indiana, in order now?

The question being taken, it was decided in the affirmative, 201 yeas to 72 nays, and the House proceeded to the consideration of the joint resolution.

50. On June 21, 1918³ Mr. Harvey Helm, of Kentucky, as a privileged question, moved that the House proceed to the consideration of the bill (H. R. 11984) making provision for the Fourteenth and subsequent decennial censuses.

Mr. Frederick H. Gillett, of Massachusetts, made the point of order that the motion was not privileged and said:

The Speaker is, I know, perfectly familiar with the precedents and will remember, as I do, the argument and decision of Speaker Henderson on the subject. In making that decision Speaker Henderson indicated that if it was a new question without precedents he would be disposed to rule otherwise, and I think anybody would admit that the mere fact that the Constitution makes it the duty of Congress to provide for a census does not necessarily decide in what way the committee shall bring up that bill. It does not give the chairman of any one committee—the Committee on the Census or any other—the right to bring up any particular bill at any particular time. It really is a matter for Congress to decide by its rules how and in what way a bill should be brought up. The rules would naturally provide for it. It is simply our duty to pass a bill, but not any particular bill at any particular time.

It is the duty of Congress under the Constitution to pass appropriation bills for the expenses of the Government; but no one has ever contended that the Appropriation Committees derive their privilege from the Constitution, but it is derived from the rules of the House.

¹Second session Sixty-first Congress, Journal, p. 444. Record, p. 3290.

²Joseph G. Cannon, of Illinois, Speaker.

³Second session Sixty-fifth Congress, Record, p. 8130.

The Speaker¹ overruled the point of order on the ground that the bill was in compliance with a mandatory provision of the Constitution, and under the decisions of former Speakers of the House the privilege of such bills was too well established to be questioned.

51. A bill making an apportionment of Representatives presents a question of constitutional privilege.

A motion to go into Committee of the Whole to consider a bill being made, the House expresses its wish as to consideration by passing on this motion, and not by raising the question of consideration.

On October 14, 1921,² Mr. Isaac Siegel, of New York, as a privileged question, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 7882) providing for reapportionment of Representatives in Congress.

Mr. Thomas L. Blanton, of Texas, and Mr. Otis Wingo, of Arkansas, made the point of order that the motion was not privileged.

The Speaker³ overruled the point of order.

Thereupon Mr. Blanton demanded that the question of consideration be put.

The Speaker held that the motion to go into the Committee of the Whole raised the question of consideration and overruled the point of order.

52. A motion to go into the Committee of the Whole House on the state of the Union to consider an apportionment bill was formerly held to take precedence over the motion to go into the committee to consider a general appropriation bill.

The motion to resolve into Committee of the Whole to consider a privileged bill is not amendable.⁴

On February 9, 1911,⁵ Mr. Charles F. Scott, of Kansas, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill H. R. 31596, the agricultural appropriation bill.

Pending this motion, Mr. Edgar D. Crumpacker, of Indiana, moved that the House resolve itself into the Committee of the Whole House on the state of the Union to consider the bill (H. R. 30566) for the apportionment of Representatives in Congress among the several States under the Thirteenth Decennial Census.

The Speaker⁶ said:

The gentleman from Indian rose for the purpose of submitting a motion to the House that it do resolve itself into the Committee of the Whole House on the state of the Union for the purpose of considering the bill referred to—the apportionment bill—reported from the Committee on the Census. It seems to the Chair the gentleman calls up a matter which heretofore has been held, with one exception, uniformly to be a question of constitutional privilege, and the Chair will recognize the motion of the gentleman from Indiana.

¹ Champ Clark, of Missouri, Speaker.

² First session Sixty-seventh Congress, Journal, p. 483; Record, p. 6307.

³ Frederick H. Gillett, of Massachusetts, Speaker.

⁴ However, see clause 5 of Rule XXIV.

⁵ Third session Sixty-first Congress, Record, p. 2205.

⁶ Joseph G. Cannon, of Illinois, Speaker.

Thereupon Mr. Scott, rising to a parliamentary inquiry, asked if it would be in order to offer his motion as an amendment to the motion of the gentleman from Indiana.

The Speaker replied:

Those motions under the rule in the practice of the House have not been considered as amendable, since no time would be saved and no purpose would be effected.

53. The Virginia election case of Parsons v. Saunders, in the Sixty-first Congress.

Instance wherein a State legislature twice redistricted the State between enumerations.

A reapportionment by a State legislature which rendered congressional districts of the State less compact and contiguous as to territory and more disproportionate as to population was not disturbed.

On June 21, 1910,¹ Mr. James M. Miller, of Kansas, from the Committee on Elections No. 2, submitted the report of the majority of the committee in the Virginia case of John M. Parsons v. Edward W. Saunders.

The apportionment of 1901 made no change in the number of Representatives allotted under the previous apportionment to the State of Virginia in the House of Representatives, and the congressional districts of the State established under the apportionment of 1891 remained unchanged until 1906, when a complete reapportionment was made. In 1908 the State again apportioned its congressional districts and among other changes transferred Floyd County from the fifth district to the sixth district.

Prior to the State apportionment of 1908 the population of the fifth and sixth districts was 175,597 and 181,571, respectively. As the unit of population under the act of 1901 was approximately 180,000, the fifth district was already below and the sixth district above the statutory unit, a disparity which the transfer of Floyd County further increased by reducing the population of the fifth district to 160,191 and increasing that of the sixth district to 196,959.

It is apparent from the testimony of both contestant and contestee that the transfer also tended to reduce the compactness and to some extent the contiguity of territory of both districts.

It was charged by the majority of the committee and tacitly conceded by the minority that the change in the two districts was dictated largely by political considerations.

As there were practically no disputed questions of fact involved, the case resolved itself largely into a question as to whether the State redistricting act of 1908 was violative of the Federal Constitution, the apportionment act of 1901, and the constitution of the State of Virginia.

The act of 1901 provides that the Members of the House to which each State is entitled shall be selected by—

districts composed of contiguous and compact territory, containing as nearly as practicable an equal number of inhabitants.

¹Second, session, Sixty-first Congress, Journal, p. 820; p. 3699; House Report No. 1095.

Article 5, section 55, constitution of Virginia, quotes the express language of the Federal statute as follows:

The general assembly shall by law apportion the State into districts corresponding with the number of Representatives to which it may be entitled in the House of Representatives of the Congress of the United States, which districts shall be composed of contiguous and compact territory containing, as nearly as practicable, an equal number of inhabitants.

The majority report points out:

Historically these provisions of the statute of the United States, as of the constitution of Virginia, were clearly intended to constitute restraints upon legislative discretion so as to prevent the well-known vicious political device of forming congressional or other legislative districts for mere partisan purposes

These restrictions upon the legislative power are:

1. Legislative districts must be composed of contiguous territory.
2. Legislative districts must be composed of compact territory.
3. Legislative districts must contain an equal number of inhabitants.
4. The only qualification to these requirements is the phrase "as nearly as practicable."

The rule is well established that the Constitution must be so construed that every word and phrase of the organic law shall be given meaning and purpose; also that constitutional provisions are mandatory.

As to contiguity, the majority say:

1. Contiguity: An inspection of the map of the district would seem to show that notwithstanding the taking of Floyd County out of the body of the district, thereby nearly severing it into two parts, there still remained an apparent strip of contiguity 10 miles in width measured in a straight line across. The evidence before the committee, however, shows conclusively that at this point, running from the boundary of Floyd County across to the state line, there is a mountain ridge which prevents public travel by road between the inhabitants of the one half of the district with the inhabitants of the other half, except by going south into the adjoining State or north into the county of Floyd. This mountain barrier destroys in fact, if not in form, the apparently small strip of contiguity shown upon the map of the district.

To which the minority reply:

So far as Floyd was concerned, her natural interests and trade relations were with the sixth and not the fifth district. Her people are contiguous to the railroads in the sixth and trade with the towns on the lines of these roads. She has practically no trade relations with the fifth.

It is claimed in the majority report that the fifth Virginia district further offends against the Federal statute on the ground that it is not contiguous and compact territory. The objection on the score of contiguity is certainly not well taken, for the district is composed of a number of counties which touch each other in succession, as will be seen from the diagram and map filed. Contiguity means actual contact, nothing else, and the statute does not contemplate that each county in the district shall touch every other county, even if such a thing should be possible. It is stated in the report of the majority that as at present formed, a mountain ridge prevents public travel by road between the inhabitants of one portion of the district and the other, save by going through Floyd or North Carolina. The map to which the report refers shows that if the road from Patrick to Carroll goes through Floyd at all, it barely crosses, for the most insignificant distance, a sharp point which Floyd thrusts into Patrick. South of this road the map shows another road from Patrick into Carroll. The majority report further states that there is an apparent strip of contiguity 10 miles in width, measured in a straight line, across. This is intended to show that the counties are not contiguous save for this distance. But this is a mistake. The same map will show that, owing to the configuration of the two counties, they run together for as much as 30 miles, according to the map. The 10 miles is measured entirely in the county of Patrick. But granting, for the sake of argument, that the most convenient access from Patrick to Carroll would be through

a small part of Floyd, what would it prove? There are many districts in which the most convenient means of access from one portion of the district to another is through some other district.

On the question of compactness, the majority claim:

2. Compactness: An examination of the map of the fifth and sixth districts prior to this special apportionment of 1908 reveals the fact that the outline of the fifth district was fairly compact, but that the sixth district was abnormally elongated, with a tier of counties upon the other, extending in the form of a "shoestring" over the northern half or more of the fifth district. The removal of Floyd County under the apportionment act of 1908 from the body of the fifth district clearly destroyed its former compact form, and grossly aggravated the lack of compactness of the sixth district by attaching Floyd County to the extreme end of the excessively abnormal district.

In answer the minority assert:

But as in the matter of population, so in the respect of compactness the fifth Virginia district does not offend in any marked or striking degree; to such a degree, in comparison with other districts created in other States, that on this ground the act of the legislature of a State should be set aside, and the results of an admittedly honest election be nullified. For the purposes of comparison, the rasps of a number of districts, taken from the Congressional Directory for 1910, are submitted in this connection.

The majority conclude:

The phrase, "as nearly as practicable," indicates that these constitutional requirements do not seek to enforce perfection. Absolute contiguity, compactness, and equality of inhabitants are impossible of attainment. Mr. Webster discussed the general subject of apportionment in the Twenty-second Congress, first session, in an elaborate report, and with singular clearness and force laid down this rule:

"That which can not be done perfectly must be done in a manner as near perfection as can be. If exactness can not, from the nature of things, be attained, then the greatest practicable approach to exactness ought to be made."

Applying the Webster rule to this case, we can not find any approximation toward the exact truth, exact right, or exact justice; on the contrary, we find that the State legislature of Virginia turned its back on these constitutional requirements and deliberately moved away from them.

The basic idea underlying the word apportionment suggests an approximation to the truth, to the right, to equality, and to justice. The very purpose of an apportionment every 10 years is solely to approximate more closely a just and fair equality of representation by congressional districts. Can anyone say that this subsequent change of districts of the act of 1908 was an apportionment? On the contrary, it appears to us that it was a perversion of the term. It was a violation of the spirit and the meaning of an apportionment under the Constitution, and may be rightly declared no apportionment at all.

The majority report then cites in support of its conclusions the decisions of higher courts in a number of cases and continues:

After applying every reasonable and fair test suggested by common sense and judicial authority we have been impelled to this conclusion: This case presents as conclusive evidence of willful and deliberate legislative disregard of the fundamental constitutional requirements of contiguity, compactness, and equality of inhabitants as has come to the attention of the committee in reviewing the decisions of the courts of the various States of the Union that have declared similar enactments null and void. The only and the specific purpose of the act of 1908 in taking the county of Floyd out of the Fifth District and transferring it to the Sixth District, as appears from the evidence, was the political advantage that did result in making a close district barely safe for the dominant political party of the State.

This committee is a judicial tribunal. We have not the right to consider expediency or policy, politics, or personality. We have but to decide the case upon the broad lines of justice as determined

by the facts, the law, and the Constitution. But so far as we may go in considering the effect of our decision, we believe that it will shut the door of the House of Representatives to one of the most insidious and dangerous political offenses that can menace democratic government.

Our conclusion is, therefore, that the redistricting act of 1908 of Virginia does not conform to nor comply with the Constitution of the United States, the United States apportionment act of the Twelfth Census, nor the constitution of the State of Virginia, and is null and void, and that Floyd County is still a part of the Fifth Congressional District.

The minority report also cites various judicial decisions, and deduces:

the question of whether a particular apportionment is fair or unfair, just or unjust, in the ordinary acceptance of the terms, ought not to enter into this determination at all. All apportionments are political and are generally regarded by the opposing party as unfair or unjust. There is practically no apportionment which is made by a political organization which could not be re-formed so as to make it fairer and more just to the opposing organization. The proper question for determination is whether this body has the right to interfere with the apportionments made by the States, or whether, if it possesses that power, the interests of the Republic would be forwarded by an attempt on its part to exercise the same in some universal fashion. If it is to be exercised at all, it should not be exercised capriciously or spasmodically, but universally, so as to compel every district in the United States to be so constructed that in conformity with the statute it will be contiguous and compact, containing, as nearly as practical, an equal number of inhabitants.

In contravention of the contentions of the majority relative to disparity in population, the minority list districts in various States showing even greater disparity and contend:

Many other disparities equally striking might be furnished, but these will suffice. Two things will be noted upon examination of these figures. First, the wide differences that the States have made in the relative populations of the districts which they have created; second, that if the fifth Virginia district is an unconstitutional formation by reason of the disparity of its population with that of the sixth, there are many other districts in the country at large offending in a much greater degree, and therefore calling for rectification. But it is submitted that the existence of these greater disparities in other districts, which make the districts in which they occur unconstitutional formations, in the view of the majority, merely tends to show from another standpoint that the States have not considered that their right to make these disparities was limited by any constitutional authority.

In conclusion the minority took the ground:

If gerrymandering is the outcome of the exercise of uncontrolled political power under certain familiar conditions, it is difficult to see how the disease will be cured by transferring the power to accomplish it from a number of diverse political bodies to one central body, which will be operated upon by the same considerations as the members of the smaller bodies. If Congress is to undertake the exercise of this authority, conceding that this body possesses it, then it ought to be done upon the theory that its assumption and exercise will be in the general public interests. What indication has been afforded that such has been the case, or would be the case? The latest illustration of scientific arrangement was afforded in the case of Oklahoma, when the enabling act of Congress created districts in that State with a population difference of 89,733, and scientifically grouped the democratic majorities in such fashion that one democratic district had a majority of about 25,000. The remedy offered for the disease does not commend itself. In lieu of a number of individual gerrymanders, effected by different political organizations, in different States, and working out some kind of equality, as pointed out by the report in *Davison v. Gilbert*, we win have one universal gerrymander, coextensive with the limits of the country. The effect of this new policy in unsettling tenure of seats will be intolerable. No Member would know when he would be secure from a contest, based on the grounds of disparity of population or irregularities in the physical make-up of the district. The opportunity to make a universal gerrymander would be a

stake well worth the scramble of the party organizations, since it might mean a tenure of power extending over an indefinite period of years.

The majority report recommended the following resolutions:

Resolved, That Edward W. Saunders was not elected to membership in the House of Representatives of the United States in the Sixty-first Congress and is not entitled to a seat therein.

Resolved, That John M. Parsons was elected to membership in the House of Representatives of the United States in the Sixty-first Congress from the Fifth District of Virginia and is entitled to a seat therein.

However, on January 24, 1911,¹ on motion of Mr. Miller, by unanimous consent, the report was recommitted to the committee, and was not again reported to the House, Mr. Saunders retaining his seat.

54. The Texas election case of E. W. Cole in the Sixty-eighth Congress.

The House denied the claim of a State to representation greater than the apportionment had given her when the reasons for such claim applied to many other States.

The Clerk declined to enroll a person bearing regular credentials, but claiming to be a Representative in addition to the number apportioned to his State.

Since the enfranchisement of women constitutional provisions relating to apportionment are to be read in connection with the nineteenth amendment.

The constitutional provision authorizing an apportionment act based upon each succeeding census is not mandatory, but such enactments are discretionary with Congress.

On December 3, 1923,² at the organization of the House, the Clerk announced that a concurrent resolution by the Legislature of the State of Texas had been received, reciting:

Under the constitutional provision providing for representation of the States in the House of Representatives on a basis of numerical population, and basing its action on the census of 1920, the State of Texas proceeded to elect a Representative at Large on the ground that the census of 1920 entitled the State of Texas to one more Representative than it now has in Congress, making the number 19 instead of 18.

In May, 1922, E. W. Cole, of Austin, Tex., had his name placed on the ballot to be voted on in the primary election in the selection of democratic nominees for various offices of the State as well as for Representative at Large in Congress. Mr. Cole secured recognition on the ballot through the Democratic State executive committee according to his brief filed with his claim. He further alleges that in July, 1922, at the primary election he received practically the unanimous vote of the Democratic Party of Texas for the nomination for the position of Representative at Large.

The Governor of the State of Texas at the proper time, it is alleged, issued his proclamation calling for the election of the various Members of Congress and the State officers in November, 1922, and among other provisions included in the proclamation was one for the election of a Representative at Large in Congress for the State of Texas.

A certificate of election issued by the Governor of the State of Texas accrediting E. W. Cole, as elected from the State at Large, had also been received by the Clerk.

¹Third session Sixty-first Congress, Journal, p. 206; Record, p. 1398; Moore's Digest, p. 43.

²First session Sixty-eighth Congress, Record, p. 7.

The claim was referred to the Committee on Elections No. 1 and on March 29, 1924, Mr. John M. Nelson, of Wisconsin, submitted the report of the committee, who were unanimous in holding that in view of the failure of Congress to amend the apportionment act of 1913 fixing the number of Representatives in the House from the State of Texas at 18, the claimant could not be admitted.

In its statement of the case the report¹ says:

Claimant alleges that his name was duly placed upon the democratic ballot as the candidate for that party in the general election held in November, 1922, and that the Republican Party of the State of Texas had placed upon its ballot as a candidate for the same office the name of Herbert Peairs.

Claimant alleges that in the election November, 1922, the said Herbert Peairs received 46,048 votes and that claimant received 265,317 votes.

Claimant further alleges that thereafter the election board of Texas canvassed the result of the said general election, and declared that E. W. Cole, the claimant, was duly elected as Representative at Large from the State of Texas, and that thereafter in due time and form the Hon. Pat. M. Neff, Governor of the State of Texas, issued, signed, and delivered a certificate of election to claimant as Representative at Large for the State of Texas, and that said certificate of election was duly filed with the Clerk of the House of Representatives of the Congress of the United States. Claimant further alleges that the Clerk of the House of Representatives received and is holding said certificate of election, but has refused to file the same or to recognize the claims of the claimant for a seat in the House of Representatives of Congress and has refused to recognize the appointment of a secretary and other privileges to which the said E. W. Cole would be entitled as a Representative in the House of Representatives in the Sixty-eighth Congress.

After citing section 11 of Article XIV of the Constitution relating to apportionment the report continues:

It may be observed that male citizens only are referred to in this section of the Constitution, but by the nineteenth amendment to the Federal Constitution women were enfranchised and now those constitutional provisions have to be read in connection with the nineteenth amendment.

As to claimant's contention that the reenactment of an apportionment act based upon each succeeding census is mandatory, the committee hold:

While it is true that some color may be given a claim that long-established custom has fixed that time for Congress to pass a reapportionment act the first session of Congress following the taking of the census, it still remains custom and not a constitutional provision nevertheless.

The committee indicate two obstacles to the seating of the claimant. The first is:

The number of Representatives fixed by an act of the Congress in 1913, based upon the official census of 1911, is 435. That act of Congress was passed by the House, then by the Senate, and was signed by the President of the United States. Your committee is of the opinion that the House of Representatives alone could not amend or modify an act of the whole Congress by increasing the membership of the House of Representatives to 436 without the act of the House being passed upon by the United States Senate and the President of the United States. Consonant with that view, then, your committee is of the opinion that if this claimant were to be seated he would have to be seated through an act of Congress to increase the membership of the House to 436.

The second is:

¹House Report No. 398.

Even though the House might attempt by its own act and independently of the Senate and of the President of the United States to seat claimant, thereby increasing the membership of the House by one Member and increasing the representation of the State of Texas by one, there would be no fund with which to pay the salary, clerk hire, mileage, and other perquisites and expenses of claimant, because the appropriation from which salaries, clerk hire, mileage, and other expenses of Members of the House of Representatives is paid is an appropriation passed by an act of the whole Congress and approved by the President of the United States, and therefore, even though claimant were seated, his salary and perquisites would have to be paid by a special act of Congress.

The committee therefore conclude:

To attempt to settle questions of the nature involved in this case by seating the claimant would be to disorganize the House of Representatives. It would bring up other questions, such as the action to be taken in the cases of States which are now overrepresented, due to decrease in their population.

Your committee is of the opinion that in cases where States elect Representatives at large in the belief that such States are entitled to greater representation than they now have, the proper procedure is for such claimants to find their remedy through a bill presented to the Congress for action rather than through a report from an elections committee.

Accordingly the report recommended the following resolution:

Resolved, That E. W. Cole is not entitled to a seat in this House as a Representative from the State of Texas in the Sixty-eighth Congress.

The resolution was, on the 3d of June, 1924,¹ agreed to by the House without debate or division.

¹Journal, p. 636; Record, p. 10324.