

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

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UTAH ET AL. *v.* EVANS, SECRETARY OF COMMERCE,  
ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF UTAH

No. 01–714. Argued March 27, 2002—Decided June 20, 2002

The Census Bureau derives most census information from forms it mails to a nationwide list of addresses. If no one replies to a particular form or the information supplied is confusing, contradictory, or incomplete, the Bureau follows up with visits by its field personnel. Occasionally, despite the visits, the Bureau may still have conflicting indications about, *e.g.*, whether a listed address is a housing unit, office building, or vacant lot, whether a residence is vacant or occupied, or the number of persons in a unit. The Bureau may then use a methodology called “imputation,” by which it infers that the address or unit about which it is uncertain has the same population characteristics as those of its geographically closest neighbor of the same type (*i.e.*, apartment or single-family dwelling) that did not return a form. In the year 2000 census, the Bureau used “hot-deck imputation” to increase the total population count by about 0.4%. But because this small percentage was spread unevenly across the country, it made a difference in the apportionment of congressional Representatives. In particular, imputation increased North Carolina’s population by 0.4% while increasing Utah’s by only 0.2%, so that North Carolina will receive one more Representative and Utah one less than if the Bureau had simply filled relevant informational gaps by counting the related number of individuals as zero. Utah brought this suit against respondents, the officials charged with conducting the census, claiming that the Bureau’s use of “hot-deck imputation” violates 13 U. S. C. §195, which prohibits use of “the statistical method known as ‘sampling,’” and is inconsistent with the Constitution’s statement that an “actual Enumeration be made,” U. S. Const., Art. I, §2, cl. 3. Utah sought an injunction compelling respondents to

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change the official census results. North Carolina intervened. The District Court found for the Bureau.

*Held:*

1. The Court rejects North Carolina’s argument that Utah lacks standing because this action is not a “Case” or “Controversy,” Art. III, §2, in that the federal courts do not have the power to “redress” the “injury” that respondents allegedly “caused” Utah, *e.g.*, *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 561. Because there is no significant difference between Utah and the plaintiff in *Franklin v. Massachusetts*, 505 U. S. 788, in which the Court rejected a similar standing argument, North Carolina must convince the Court that it should reconsider *Franklin*. It has not done so. It argues that ordering respondents to recalculate the census numbers and recertify the official result cannot help Utah because North Carolina is “entitled” to the number of Representatives already certified to it under the statutes that require a decennial census, 13 U. S. C. §141(a); mandate that the results be reported to the President, 141(b); obligate the President to send Congress a statement showing the number of Representatives to which each State is “entitled” by the census data, 2 U. S. C. §2a(a); and specify that the House must then send each State a certificate of the number of Representatives to which it is “entitled.” The statutes also say that once all that is done, each State “shall be entitled” to the number of Representatives the “certificate” specifies. §2a(b). Unlike North Carolina, the Court does not read these statutes as absolutely barring a certificate’s revision in all cases. The statutes do not expressly address what is to occur in the case of a serious mistake—say, a clerical, mathematical, or calculation error in census data or in its transposition. Guided by *Franklin*, which found standing despite §2a’s presence, the Court reads the statute as permitting certificate revision in such cases of error, including cases of court-determined legal error leading to a court-required revision of the underlying census report. So read, the statute poses no legal bar to “redress.” Nor does Pub. L. 105–119, Title II, §209(b), 111 Stat. 2481, which entitles “[a]ny person aggrieved by the use of any [unlawful] statistical method” to bring “a civil action” for declaratory or injunctive “relief against the use of such method.” Despite North Carolina’s argument that this statute implicitly forbids a suit after the census’ conclusion, the statute does not say that and does not explain why Congress would wish to deprive of its day in court a State that did not learn of a counting method’s representational consequences until after the census’ completion—and hence had little, if any, incentive to bring a precensus action. The Court reads limitations on its jurisdiction narrowly, see, *e.g.*, *Webster v. Doe*, 486 U. S. 592, 603, and will not read into a statute an unexpressed congres-

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sional intent to bar jurisdiction the Court has previously exercised, *e.g., Franklin, supra*. Because neither statute poses an absolute legal barrier to relief, it is likely that Utah's victory here would bring about the ultimate relief it seeks. See *id.*, at 803. Thus, Utah has standing. Pp. 4–9.

2. The Bureau's use of "hot-deck imputation" does not violate 13 U. S. C. §195, which "authorize[s] the use of the statistical method known as 'sampling,'" "[e]xcept for the determination of population for purposes of apportionment of Representatives." Bureau imputation in the year 2000 census differs from sampling in several critical respects: (1) As to the *nature of the enterprise*, sampling seeks to extrapolate the features of a large population from a small one, but the Bureau's imputation process sought simply to fill in missing data as part of an effort to count individuals one by one. (2) As to *methodology*, sampling seeks to find a subset that will resemble a whole through the use of artificial, random selection processes, whereas the Bureau's methodology was not that typically used by statisticians, but that used to assure that an individual unit (not a "subset"), chosen nonrandomly, will resemble other individuals (not a "whole") selected by the fortuitous unavailability of data. (3) As to the *immediate objective*, sampling seeks to extrapolate the sample's relevant population characteristics to the whole population, while the Bureau seeks simply to determine the characteristics of missing individual data. These differences, whether of degree or of kind, are important enough to place imputation outside the scope of §195's phrase "the statistical method known as 'sampling.'" That phrase—using the words "known as" and the quotation marks around "sampling"—suggests a term of art with a technical meaning. And the technical literature, which the Court has examined, see *Corning Glass Works v. Brennan*, 417 U. S. 188, 201, contains definitions that focus upon the sorts of differences discussed above. Also, insofar as the parties rely on statisticians' expert opinion, that opinion uniformly favors the Government. Further, §195's legislative history suggests that the "sampling" to which the statute refers is the practice that the Secretary called "sampling" in 1958 when Congress wrote that law, and that the statutory word does not apply to imputation, which Congress did not consider. Finally, Utah provides no satisfactory alternative account of the meaning of the phrase "the statistical method known as 'sampling.'" Its several arguments—that "sampling" occurs whenever information on a portion of the population is used to infer information about the whole population; that the Court found that two methods, allegedly virtually identical to imputation, constituted "sampling" in *Department of Commerce v. United States House of Representatives*, 525 U. S. 316, 324–326; that the Bureau, if authorized to

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engage in imputation, might engage in wide-scale substitution of imputation for person-by-person counting; and that two of the Bureau's imputation methods are inaccurate—are not convincing. Utah has failed to overcome the fact that the Bureau has long and consistently interpreted §195 as permitting imputation, while Congress, aware of this interpretation, has enacted related legislation without changing the statute. Pp. 9–18.

3. The Bureau's use of "hot-deck imputation" does not violate the Census Clause, which requires the "actual Enumeration" of each State's population "within three Years after the first Meeting of the Congress . . . , in such Manner as they shall by Law direct." Utah argues that the words "actual Enumeration" require the Census Bureau to seek out each individual and prohibit it from relying on imputation, but the Constitution's text does not make the distinction that Utah seeks to draw. Rather, it uses a general word, "enumeration," that refers to a counting process without describing the count's methodological details. The textual word "actual" refers in context to the enumeration that would be used for apportioning the Third Congress, succinctly clarifying the fact that the constitutionally described basis for apportionment would not apply to the First and Second Congresses. The final part of the sentence says that the "actual Enumeration" shall take place "in such Manner as" Congress itself "shall by Law direct," thereby suggesting the breadth of congressional methodological authority, rather than its limitation. See, *e.g.*, *Wisconsin v. City of New York*, 517 U. S. 1, 19. This understanding of the text is supported by the history of the Constitutional Convention of 1787, which demonstrates that "actual Enumeration" does not limit census methodology as Utah proposes, but was intended to distinguish the census from the apportionment process for the First Congress, which was based on conjecture rather than a deliberately taken count. Further support is added by contemporaneous general usage, as exemplified by late-18th-century dictionaries defining "enumeration" simply as an act of numbering or counting over, without reference to counting methodology, and by contemporaneous legal documents, in which "enumeration" does not require contact between a census taker and each enumerated individual, but is used almost interchangeably with the phrase "cause the number of the inhabitants . . . to be taken." Indeed, the Bureau's imputation method is similar in principle to other efforts used since 1800 to determine the number of missing persons, including asking heads of households, neighbors, landlords, postal workers, or other proxies about the number of inhabitants in a particular place. Nor can Utah draw support from the Census Clause's basic purposes: to use population rather than wealth to determine representation, to tie taxes and representation together, to

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insist upon periodic recounts of the population, and to take from the States the power to determine the manner of conducting the census. Those matters of general principle do not directly help determine the issue of detailed methodology before the Court. Nonetheless, certain basic constitutional choices may prove relevant. The decisions, for example, to use population rather than wealth, to tie taxes and representation together, to insist upon periodic recounts, and to take from the States the power to determine methodology all suggest a strong constitutional interest in accuracy. And an interest in accuracy here favors the Bureau, which uses imputation as a last resort after other methods have failed. The Court need not decide here the precise methodological limits foreseen by the Census Clause. It need say only that in this instance, where all efforts have been made to reach every household, where the methods used consist not of statistical sampling but of inference, where that inference involves a tiny percent of the population, where the alternative is to make a far less accurate assessment of the population, and where consequently manipulation of the method is highly unlikely, those limits are not exceeded. Pp. 18–24.

182 F. Supp. 2d 1165, affirmed.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C. J. and STEVENS, SOUTER, and GINSBURG, JJ., joined, and in which O'CONNOR, J., joined as to Parts I and II. O'CONNOR, J., filed an opinion concurring in part and dissenting in part. THOMAS, J., filed an opinion concurring in part and dissenting in part, in which KENNEDY, J., joined. SCALIA, J., filed a dissenting opinion.