

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

GUY F. MARTIN JR., et al

Plaintiff,

v.

Civil Action No. : CCB-11-3443

MARTIN O'MALLEY, et al

Defendant

**MEMORANDUM IN SUPPORT OF PLEADING
OPPOSITION TO MOTION TO DISMISS**

Plaintiff respectfully opposes the motion to dismiss for failure

To state a claim upon which relief can be granted.

Federal Rule Of Civil Procedure 8(a)(2) requires only that a complaint

Include "a short and plain statement of the claim showing that the pleader

Is entitled to relief." Fed.R.Civ.P. 8(a). A claimant is not required to

"set out in detail the facts upon which he bases his claim" so long as

The claim "will give the defendant fair notice of what the plaintiff's claim is

and the grounds upon which it rests." (Conley, 355 U.S. at 47 78 S.Ct. 99)

ARGUMENT

The claim and cause for this case, requesting a relief that has

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DISTRICT OF MARYLAND
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Been granted in previous cases, are established in the following:

2 USC Sec. 2 Codification Section, act Aug. 8, 1911, Ch. 5, Secs. 1, 2,

Fixed composition of the House of Representatives at 435 Members,

Be apportioned to the States therein enumerated. (Exhibit 1)

Sixty-Second Congress, Session 1, Ch. 5, Sec. 1, 2, 1911.

(act Aug. 8, 1911) (Exhibit 2)

Chapter 5. -- ...the House of Representatives shall be composed of four

Hundred and thirty-three Members,

Sec. 2. That if the Territories of Arizona and New Mexico shall become

States in the Union *before the apportionment of Representatives under*

The next decennial census they shall have one Representative each.

(Exhibit 3.)

The act of Aug. 8, 1911 (Exhibit 2, 3) does not ' fixed the composition

Of House of Representatives at 435 Members ' in any section of the act.

The Act is not an Amendment to our Constitution, nor was it proposed as

An act to Amend, the Act did continue the established change in the

Number of members that was consistent every decade, after every census.

Office of the Clerk of the House of Representatives recorded 386 Members

(Exhibit 4)

For the 58th Congress after the twelfth census, also recording 435 Members

For the 63rd Congress after the thirteenth census. (Exhibit 5)

Codification of 2 USC Sec. 2, recorded in the Office of the Law Revision Counsel, U.S. House of Representatives, United States Code.
(Exhibit 1)

does not reflect the words written in the act Aug. 8, 1911.

Therefore Plaintiff requests, inter alia, a declaratory permanent judgment that the Federal statute 2 USC Sec. 2 is unconstitutional and an injunction restraining all state officers from conducting any further elections under it.

The Constitution forbids “ sophisticated as well as simple-minded modes Of discrimination” Lane v Wilson 307 U.S. 268, 275

The Court found further, in Westberry, that “ our Constitution’s plain Objective” was that “of making equal Representation for equal numbers of People the fundamental goal...” Reynolds v. Sims (377 U.S. 533, 560)

For which relief can be granted, the relief granted Connor v. Finch,

‘When those with legislative responsibilities do not respond, or the

Imminence of a state election makes it impractical for them to do so

It becomes the “ unwelcome obligation “ of the federal court to devise

And impose a reapportionment plan pending later legislation.’
Connor v Finch, supra, at 415

The claim and cause for this case, is the fixing of the number of

Representatives. The precedent established after the 1st Census through

The 13th Census changed the number of Congressional Representatives

based on population changes over each decade, the District Court has provided relief to many states for state legislative representation. (Wesberry v. Sanders)

As well as congressional representation. The Supreme Court has Recognized the claim as justiciable, as well as the District Court's authority in providing relief. (Reynolds v. Sims , Connor v. Finch)

The State's Governors, and Legislators have all responded that they Are obligated to obey the federal statutes 2 USC Secs. 2, 2a, & 2b, the President's office is currently obligated as well, which leaves the People with no other recourse to address this congressional inequity, Therein the reason plaintiff seeks this Court for injunctive relief, requesting Constitutional maximum number of U.S. Representatives making Equal representation for equal numbers of people the fundamental Goal.

Upon the Courts affirmative ruling for injunctive relief, the Governor, General Assembly can freely apportion Congressional districts, or if Necessary the State Courts can apportion Congressional districts, Unless the imminence of the election makes it impractical for the Governor, General Assembly, or State Court to do so, therefore the District Court can devise and impose a reapportionment plan pending

Later legislation. Connor v. Finch, supra, at 415

2 USC 2a (a), is written ‘ the President shall transmit to the Congress...the number of Representatives *to which each state would be entitled* under an Apportionment of the then existing number of Representatives.’ (Exhibit 6)

That statute requires an apportionment of a fixed number in perpetuity of Representatives, violating the Constitution, the Constitution does not Affix the number for longer than 10 years, until the next enumeration of the people.

Article I sec 2 cl. 3 the *Number of Representatives shall not exceed One for every thirty-thousand*, but each State shall have at least one Representative; *and until such enumeration shall be made*,

Detailing specifically the Constitutional maximum number of Representatives which the people are entitled, among the several States.

It is not written ‘In such manner as they shall by law direct.’

Article II sec. 1 the President shall take the following Oath or Affirmation:

“ I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my ability, *Preserve, protect, and defend the Constitution of the United States.*”

Article II sec. 3 'he shall take care that the Laws be faithfully executed, '
2 USC Sec. 2a (a) requires the President to transmit the number *to which*
each State would be entitled... of the then existing number of
Representatives,' (Exhibit 6)

Congress does not have the authority to alter the Articles of the Constitution
By legislation, forcing the states to be entitled to share an existing number
Of Representatives in perpetuity. Oregon v. Mitchell (400 U.S. 112)
28 USC 2284 (a)... challenging the constitutionality of apportionment of
Congressional districts..

28 USC 1343 (a) (3) To redress the deprivation, of any right, privilege
Or immunity secured by the Constitution of the United States... of all
Persons within the jurisdiction of the United States;

The right to vote freely for a candidate of one's choice is of the essence
Of a democratic society, and any restrictions on that right strike at the
Heart of representative government. The right of suffrage can be denied
By a debasement or dilution of the weight of a citizens vote just as
Effectively as by wholly prohibiting the free exercise of the franchise.
Reynolds v. Sims (377 US 533, 555)

2 USC Sec. 2a (a), as written, ' each State would be entitled under an
Apportionment of the then existing number of Representatives

Area or because he lives in the smallest rural county? Once the geographical Unit for which a representative is to be chosen is designated, all who Participate in the election are to have an equal vote--whatever their race, Whatever their sex, whatever their occupation, whatever their income, And wherever their home may be in that geographical unit. This is required By the Equal Protection Clause of the Fourteenth Amendment. The concept Of 'we the people' under the Constitution visualizes no preferred class of Voters but equality among those who meet the basic qualifications. The Idea that every voter is equal to every other voter in his State, when he casts His ballot in favor of one of several competing candidates, underlies many Of our decisions." Reynolds v. Sims (377 US 533, 558)

In a representative government, fixing the number of Representatives over decades of growth causes an infinite, continual dilution of the peoples representation. The federal statute 2 USC Sec. 2, 2a, that 'fixed' the Number of Representatives is the cause of the overweighting of some States voters votes and the diluting of other States voters votes.

2 USC Secs. 2, 2a, 2b, are failing to meet the basic 'one person one vote' (Exhibit 6, 7)

Requirement of the Equal Protection Clause of the Fourteenth Amendment
For all our States congressional representation in our nation.

By the method known as the method of equal proportions, (Exhibit 6)

‘ by the method known as the method of equal proportions, ‘ provides one

State the proportion of one for every 527,624 in Rhode Island, (Exhibit 8)

while providing another State one for every 994,416 in Montana.(Exhibit 9)

In 12 States the voters vote is worth more than those of Maryland,
(Exhibit 10)

9 States have voters whose vote is worth less than those of Maryland.

21 States are exceeding deviations allowed to State Legislative offices.

With the maximum deviation of 28 % greater then the mean average,

And 26 % lower then the mean average, for a total deviation of 54 %.

Also approximately 42 % of the States are above 10 % deviation.
(Exhibits 8 - 14)

The Supreme Court stated, ‘ In *Gray v. Sanders*, 372 U.S. 368, we held

That the Georgia county system, applicable in statewide primaries elections,

Was unconstitutional since it resulted in a dilution of the weight of the votes

Of certain voters merely because of where they resided. After indicating

That the Fifteenth and Nineteenth Amendments prohibit a State from

Overweighting or diluting votes on the basis of race or sex, we stated:

“How then can one person be given twice or ten times the voting power

Of another person in a statewide election merely because he lives in a rural

Area or because he lives in the smallest rural county? Once the geographical Unit for which a representative is to be chosen is designated, all who Participate in the election are to have an equal vote--whatever their race, Whatever their sex, whatever their occupation, whatever their income, And wherever their home may be in that geographical unit. This is required By the Equal Protection Clause of the Fourteenth Amendment. The concept Of 'we the people' under the Constitution visualizes no preferred class of Voters but equality among those who meet the basic qualifications. The Idea that every voter is equal to every other voter in his State, when he casts His ballot in favor of one of several competing candidates, underlies many Of our decisions." Reynolds v. Sims (377 US 533, 558)

In a representative government, fixing the number of Representatives over decades of growth causes an infinite, continual dilution of the peoples representation. The federal statute 2 USC Sec. 2, 2a, that 'fixed' the Number of Representatives is the cause of the overweighting of some States voters votes and the diluting of other States voters votes.

2 USC Secs. 2, 2a, 2b, are failing to meet the basic 'one person one vote' (Exhibit 6, 7, 23)

Requirement of the Equal Protection Clause of the Fourteenth Amendment
For all our States congressional representation in our nation.

These Exhibits establish the precedents of increasing the number

Of Representatives based on population growth. They also established

The definition of appropriate legislation.

Forty Second Congress Session II. Ch. 11 1872. (Exhibit 19)

Chap. XI. ---...the House of Representatives shall be composed of

Two hundred and eighty-three members, to be apportioned among the

Several states in accordance with this act, Approved Feb. 2, 1872.

184 Representatives for the 38th Congress after the eighth census.
(Exhibit 20)

292 Representatives for the 43rd Congress after the ninth census.
(Exhibit 21)

Plaintiff requests an injunction to halt the enforcement of 2 USC Sec. 2a

During the 2012 and all subsequent elections, while challenging the

Constitutionality of 'fixing' the number of US Representatives for a

Longer period of time than the completion of the next decennial census,

Computing according to the rule prescribed by the Constitution.

2 USC Sec. 2b, as written, ' *Each State shall be entitled*, in the

Seventy-eighth and in each Congress thereafter until the taking

Effect of a reapportionment under a subsequent statute or section

2a of this title, *to the number of Representatives shown in the statement*

Transmitted to Congress.. ' (Exhibit 23)

This section 2 USC Sec. 2b, stands as further proof of the federal government restricting the State's Representation at the federal level, the people elected to federal offices are voting to restrict the people of the several states their representation, in the federal government.

Plaintiff requests a ruling respecting the Equal Protection Clause of The Fourteenth Amendment where the vote of one person in a State, Is equal to a person of all the other States in our nation.

The claim and cause for this case, is the fixing of the number of Representatives for subsequent decades. The founders of our nation Did prove their intentions by their actions after the first enumeration Of our people, the State of Maryland *corrected* had a population Of 349,692 received December 19th, 1801, (Exhibit 24, 25)

Where the Act of the Seventh Congress, Statute 1, Chapter 1 it was Enacted, ' within the state of Maryland, nine ; as approved January 14, 1802. (Exhibit 17)

The basic redistricting statistics according to the Maryland General Assembly details the 2010 state population of 5,773,552 as of April 5, 2010. (Exhibit 26) Listing the Number of Congressional Districts we are

'entitled' is 8, with an Ideal Congressional District Population of 721,694
With Strict Population Equality. (Exhibit 27)

The Constitution forbids " sophisticated as well as simple-minded modes
Of discrimination " Lane v Wilson 307 U.S. 268, 275

The number of Representatives has remained fixed, at 435, since
Ratification of the nineteenth Amendment, the European immigration
Wave, and the Voting Rights Act, resulting in overweighting and
Diluting votes of the voters among the several States. Whether
Intentional or not, this is a very sophisticated means of discrimination.
Plaintiff requests the court recognize his stated claim for relief,
Requesting an injunction restraining all State officers from conducting
Elections under 2 USC 2, 2a, 2b, ordering the maximum allowed
Established in Article 1, Section 2, cl. 3 of the Constitution of the
United States. That this Courts order apply, and be respected by all
States of the Union in accordance with the Full Faith and Credit Clause.
Defendants Motion, claims this case was raised, litigated, and lost,
The details in this claim are not similar, this case does not claim
'The Governor in compliance with 28 USC Section 2284 '
This case does not claim the Governor is using this court to challenge

The constitutionality of congressional apportionment.

The Defendant notes, on October 27, 2011 this Court, Judge Bennett Presiding, granted the State's motion and dismissed Mr. Martin's complaint With prejudice, concluding that case (Complaint, No. 11 - 904 (filed April 6, 2011)) presented " a political question that must be determined by The legislative and executive branches of government and is not Justiciable."

This case I present now before this Court, (Civil No. CCB -11-3443), Is justiciable, in Westberry v. Sanders 376 U.S. 1 they held that Attacks on the Constitutionality of congressional districting plans Enacted 'by State legislatures do not present nonjusticiable questions and Should not be dismissed generally for " want of equity ".

Defendant claims previous " pleading does not state a claim " within The meaning of Rule 12 (b)(6) of the Federal Rules of Civil Procedure, Plaintiff has submitted this claim within the meaning of Rule 8(a) Requiring only that a complaint include " a short and plain statement Of the claim showing that the pleader is entitled to relief. " Fed.R.Civ.P. 8(a).

CONCLUSION

For the reasons set forth above, the Defendants Motion
Should be dismissed with prejudice.

Respectfully submitted,



Guy F. Martin Jr. et al

Plaintiff

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Dated January 31, 2012

EXHIBIT LIST

- Exhibit 1 : United States Code , Cite - 2 USC Sec. 2
- Exhibit 2 : Act August 8, 1911, Chapter 5, Secs. 1.
- Exhibit 3 : Act August 8, 1911, Chapter 5, Secs. 2, 3, 4, 5.
- Exhibit 4 : Office of the Clerk of the House of Representatives
58th Congress, number of Representatives.
- Exhibit 5 : Office of the Clerk of the House of Representatives
63rd Congress, number of Representatives.
- Exhibit 6 : United States Code, Cite - 2 USC Sec. 2a (a),(b).
- Exhibit 7 : United States Code, Cite - 2 USC Sec. 2a (b),(c).
- Exhibit 8 : Apportionment Data - 2010 Census
Listing states, Rhode Island.
- Exhibit 9 : Apportionment Data - 2010 Census
Listing states, Montana.
- Exhibit 10 : Representative Deviation per State.
- Exhibit 11 : Apportionment Data - 2010 Census.
- Exhibit 12 : Apportionment Data - 2010 Census
- Exhibit 13 : Apportionment Data - 2010 Census
- Exhibit 14 : Apportionment Data - 2010 Census
- Exhibit 15 : Second Congress. Session I. Chapter XXIII.
US Congressional Documents.
- Exhibit 16 : Office of the Clerk of the House of Representatives
3rd Congress, Total Membership.

- Exhibit 17 : Seventh Congress, Statute I. Chapter
US Congressional Documents
- Exhibit 18 : Office of the Clerk of the House of Representatives
8th Congress, Total Membership.
- Exhibit 19 : Forty - Second Congress. Session II. Chapter XI.
Secs. 2, 3. US Congressional Documents.
- Exhibit 20 : Forty - Second Congress. Session II. Chapter XI.
Sections 4, 5, 6. US Congressional Documents.
- Exhibit 21 : Office of the Clerk of the House of Representatives
38th Congress, Total Membership.
- Exhibit 22 : Office of the Clerk of the House of Representatives
43rd Congress, Total Membership.
- Exhibit 23 : United States Code, Cite - 2 USC Sec. 2b
- Exhibit 24 : Census enumeration completed Dec. 1801
- Exhibit 25 : Copy, Department of State letter.
- Exhibit 26 : Maryland General Assembly Redistricting Info.
Basic Redistricting Statistics.
- Exhibit 27 : Maryland General Assembly Redistricting Info.
Basic Redistricting Statistics.