Senate

THURSDAY, SEPTEMBER 24, 1964

The Senate met at 11 o'clock a.m., and was called to order by the Acting President pro tempore (Mr. METCALF).

The Chaplain, Rev. Frederick Brown Harris, D.D., offered the following prayer:

Merciful Father: In a world that so largely lieth in darkness, with the human family swept by fitful winds of doubt and despair, we pause at this sheltered sanctuary of Thy grace to make sure that no encircling gloom without dims the inner light on the altar of our heart.

As servants of the state, set aside to prescribe for the ills of an ailing social order, we pray that Thou wilt first cleanse our own lives from moral pollution and from any compromise of evil. Make our spirits great enough for these days on ages telling. Matching the large design of these challenging times, may we keep step with the drumbeat of Thy truth which is marching on, grateful that—

Thy love hath led us in the past;
In this free land by Thee our lot is cast.
Be Thou our ruler, guardian, guide and stay;
Thy word our law, Thy paths our chosen way.

Amen.

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Ratchford, one of his secretaries, and he announced that on September 22, 1964, the President had approved and signed the following acts:

S. 584. An act for the relief of Yih-Ho Pao and his wife, Joanne T. Pao; and

S. 2701. An act to provide for an investigation and study to determine a site for the construction of a sea level canal connecting the Atlantic and Pacific Oceans.

EXECUTIVE MESSAGES REFERRED

As in executive session,

The ACTING PRESIDENT pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed a bill (H.R. 1096) to authorize the Secretary of the Interior to cooperate with the State of Wisconsin in the designation and administration of the Ice Age National Scientific Reserve in the State of Wisconsin, and for other purposes, in which it requested the concurrence of the Senate.

ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (S. 2049) to authorize the Secretary of Commerce to accept gifts and bequests for the purposes of the Department of Commerce, and for other purposes, and it was signed by the Acting President pro tempore.

HOUSE BILL REFERRED

The bill (H.R. 1096) to authorize the Secretary of the Interior to cooperate with the State of Wisconsin in the designation and administration of the Ice Age National Scientific Reserve in the State of Wisconsin, and for other purposes, was read twice by its title and referred to the Committee on Interior and Insular Affairs.

AMENDMENT OF FOREIGN ASSISTANCE ACT OF 1961

The Senate resumed the consideration of the bill (H.R. 11380) to amend further the Foreign Assistance Act of 1961, as amended, and for other purposes.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, with the time for the quarum call to be equally divided between each side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I yield 5 minutes to the distinguished senior Senator from Oregon.

The ACTING PRESIDENT pro tempore. The senior Senator from Oregon is recognized for 5 minutes.

Mr. MORSE. Mr. President, I appreciate the courtesy of the majority and minority leaders in permitting me to make my statement now in opposition to the Mansfield substitute. I am engaged in a conference, in a room close to the Senate Chamber, seeking to work out a compromise on the NEDA bill. Therefore I suggested that I be allowed to make my statement early.

I regret that I cannot support the Mansfield substitute for the also unsound Dirksen amendment. Most of the debate on the Dirksen amendment has centered around the rightness or wrongness of the Federal court decisions on apportionment. That is certainly one aspect of the Dirksen amendment. Personally, I favor the decisions, and I am opposed to any constitutional amendment to change them. But I believe there is something more immediate involved. The nature of the cases is not so important as the fact the Congress is interfering in the prerogatives of the Federal courts.

That is the real issue in the Dirksen amendment. That is the real issue in the substitutes. It does not matter one whit whether Congress addresses itself to cases of State apportionment arising under the 14th amendment, or to some other classes of cases so far as my opposition is concerned. It is to the bad practice that the legislation represents that I have addressed myself more than to the nature of the cases affected, because legislative intrusion into the jurisdiction of the courts is an unsound venture no matter what specific cases are affected by it. I have always opposed that during my service in the Senate, and shall continue to do so. When all is said and done, I believe that this approach violates the separate powers doctrine of the Constitution.

On the merits of the language itself, the new substitute is at least a huge improvement over the Javits amendment. It makes no mention and holds out no implied promise—of a constitutional amendment to preserve malapportionment.

It further improves upon previous language by being phrased in the language of enforcement rather than nonenforcement of the 14th amendment.

But it does not matter that only the advice of Congress is offered, or that it largely repeats the language of the High Court itself. It remains a rebuke to the courts so far as the public is concerned. It means that Congress believes something must be said to the courts from another separate branch of the Government about the way they are doing their job. It is "backseat driving."

Constitutionally, it is completely gratuitous.

In my judgment, it is in as bad grace as would be a "sense-of-the-Supreme-Court" resolution, passed by the Justices, giving us their gratuitous advice as to how we should conduct the legislative process in the Senate.

It assumes that the Supreme Court is failing in some respect or another and that Congress must fill the breach with its own opinion and advice, even if it were nothing more than a repetition of what the High Court has already said.

Any comment from Congress on this subject which does not take the form of a statutory enforcement procedure for en-

forcement of the 14th amendment is a substitution of the opinion of Congress for the opinion of the Court. Under the Constitution, Congress has authority to enforce the 14th amendment, including the application of the equal protection clause to State legislatures. But it has no authority to suspend the equal protection clause, as the Dirksen amendment proposes, nor to give to the courts its opinion of what constitutes equity in the absence of statute, as the Javits and now the Mansfield amendments propose.

The pending language means only that Congress now is going to give informal instructions to the lower courts about reapportionment cases. What can that possibly mean except that Congress believes the Federal judiciary is in need of advice and instruction from Congress on its handling of a judicial matter? This language, too, rebukes the Supreme Court, as though the latter were incapable of exercising proper control over the lower courts.

It is an evil day in American history when Congress begins to advise any level of the judicial system on the handling of its cases, and I shall not join in setting our country upon that course.

I warn the Senate today that I believe it is establishing a precedent that will rise to plague it. Every procedural argument that has been made against the Dirksen amendment is applicable also to the Mansfield substitute.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. MORSE. Mr. President, may I be permitted to continue for an additional minute?

The ACTING PRESIDENT pro tempore. Without objection the Senator from Oregon is recognized for an additional minute.

Mr. MORSE. Mr. President, the substitute is a rider on the foreign aid bill. We have heard that fact raised as an argument against the Dirksen amendment. It is pointed out that the Dirksen amendment is a rider, a nongermane addition to the foreign aid bill. I agree. The same is true of the Mansfield substitute. Both amendments are equally bad procedurally. I shall continue to oppose them. The Dirksen amendment has not been the subject of committee hearings. Neither has the Mansfield substitute been the subject of committee hearings. I have the same objection to it as to the Dirksen amendment.

We cannot justify the Mansfield amendment from a procedural standpoint.

Mr. President, if I were not alone—and I am sure I am alone—I would engage in what my liberal friends call a prolonged debate in opposition to this amendment. I call it a filibuster. It would be a legitimate use of the filibuster in order to obtain a postponement of this measure until there could be committee hearings.

I would be perfectly willing to fix a date in the latter part of January or early February of next year, after committee hearings, to vote on the whole package of reapportionment proposals. But I know that, standing alone, it would be an act in futility for me to try to stop this legislative steamroller. I am impressed with one argument of the Senator from Montana [Mr. MANSFIELD] that is quoted in the press. I believe we have reached the point in the Senate where we must go to a vote, or we shall do the Senate as much harm as we would if we passed the Dirksen-Mansfield amendment.

We have a duty as Senators also to protect the respect that the people ought to hold for the Senate.

I conclude my opposition with one further comment, so far as debate is concerned. I hope that the Mansfield substitute will be defeated, but in due course of time today I shall, if some other Senator does not, move to lay the whole package on the table, including the Dirksen amendment itself. I understand from a parliamentary standpoint that I shall be in a position to so move after there has been a vote on the Mansfield amendment and before a vote on the Dirksen amendment, as amended, is called for. I serve notice that at that point I shall move to lay the whole package on the table if in the meantime the Senate makes the mistake of passing the Mansfield substitute. If it defeats the Mansfield substitute I shall then move to lay the Dirksen amendment on the table.

Mr. MANSFIELD. Mr. President, I yield 5 minutes to the distinguished Senator from New York [Mr. JAVITS].

The ACTING PRESIDENT pro tempore. The Senator from New York is recognized for 5 minutes.

Mr. JAVITS. Mr. President, it will be recalled that, together with the Senators from Minnesota [Mr. MCCARTHY and Mr. HUMPHREY], I authored a sense-of-Congress resolution upon this question.

Now we have finally before us a sense-of-Congress resolution of which the majority leader is himself the sponsor. It is my belief that the resolution will carry. I wish to express my support of it, and point out what has been so very much implicit in the debate. It is an addition to, rather than a derogation of, the dignity of our standing in the hierarchy of the Federal establishment when we recognize, rather than tear down, the coordinate power of another branch of the Government—the judiciary. There is nothing in the resolution that shows weakness on our part. On the contrary, recognition of the strength of equals shows strength on our own part.

Many times legislation has stepped in where the Supreme Court jurisdiction has ended. The best evidence of that is that we have passed bills such as the bill designed to answer the problem of the Yates case, in which the Supreme Court narrowly limited the definition of those who would be charged with counseling the overthrow of government by force to the original organizers of the Communist Party.

The Congress was not satisfied with that decision. It enacted legislation expressing its intention that the statute relate to any such organization, including one established later than the original Communist Party, in order to bring such later organizations within the purview of the law. The Court had interpreted a statute. So the Congress had the power to act to reverse that interpretation.

But now we are dealing with a constitutional interpretation by the Court. Therefore, we do not have the power, except by a law of equal authority, namely, a constitutional amendment, to affect it.

The pending resolution, if heeded by the Supreme Court—and I shall come to that point in a moment—would accommodate the possibility of a constitutional amendment. I have already introduced substantially the amendment offered by Representative MCCULLOCH in the other body. That proposal would permit a statewide referendum in any State to determine whether the people of that State wish one house of its legislature apportioned not according to population. Americans believe that they ought to have that right, in my judgment, because they do not follow the labyrinth of reasoning that the establishment of the Senate under the Federal Constitution was the result only of the original Federal compact between the States and the trading within the Constitutional Convention. I believe it is endemic in the conscience of Americans that a type of legislative body like the Senate is a good thing. Many States, by a vote of the people—one person, one vote—may put such a provision into effect. We ought to give the States an opportunity to do so if the people wish it. The sense of Congress resolution accommodates that idea.

Finally, I should like to make the point that, in my judgment, the Supreme Court would listen. The Supreme Court should listen. The lower courts should listen. This whole controversy was brought about—and we must give credit to the Senator from Illinois [Mr. DIRKSEN] for highlighting it—by the fact that the lower courts in many cases showed an unreasonable lack of practicality. With all respect to the courts—and no one has fought for them harder than I have—they did so in New York. Compelling three elections in 2 years and curtailing the terms of individual legislators elected by the people is, in my judgment, to quote the language of the Supreme Court itself in Reynolds against Sims, unreasonable and embarrassing to any State. The courts did so in Vermont. They forbade the legislature from doing any business except redistricting, which was again demeaning to a State.

I believe the Supreme Court decision in the case of Reynolds against Sims should be enforced and can be with great dignity and respect to the authority and the standing in the Federal establishment of every State.

We have constructed our legislatures since the founding of the Republic pretty much in one way, and we should correct the situation. I am all for it. But it does not have to be done with quite the ax which was forecast in some of the three-judge court decisions.

I hope that the Senate will now resolve this dilemma by voting to adopt the Mansfield substitute, which will do what we want to do and, at the same

time, respect the power of a coordinate branch of the Government—the judiciary—and I am confident that the Supreme Court will listen.

I thank the Senator from Montana for yielding the time.

Mr. DIRKSEN. Mr. President, I yield 5 minutes to the distinguished Senator from Ohio [Mr. LAUSCHE].

The ACTING PRESIDENT pro tempore. The Senator from Ohio is recognized for 5 minutes.

Mr. LAUSCHE. Mr. President, I do not believe that the amendment offered by the senior Senator from Montana ought to be adopted. To me the whole problem has a significance far in excess of what has been generally recognized. In my judgment, if the order of the Court is carried into effect without the States being given an opportunity to decide whether they wish to amend the Constitution, we shall witness the initial steps in a change that will come about in our basic law, eliminating the right of States to have two Senators, regardless of population. To me that is the crux of the issue. Our Government, under a system giving States two Senators and Representatives on the basis of population, regardless of the number reached after a proper ascertainment of the population, has been the strength of our Government.

Rhode Island, with 841,000 people, has 2 Senators; Nevada, with 282,000 people, has 2 Senators; Alaska with 224,000 people, has 2 Senators. I do not know what the population of Montana is, but if we should apply the same formula to Montana that some are applying to representation in the State legislatures, Montana would have no Senator.

There are 190 million people in the United States. If the 100 Senators in the Senate were apportioned on the basis of population, there would be 1 Senator for each 1.9 million people. Ohio would be entitled to five Senators; Illinois would be entitled to six. New York would probably have eight, and California nine.

I suggest to Senators who come from sparsely populated States that they are witnessing the beginning of a movement that will call upon the people of the United States to amend the Constitution so as to select Senators on the basis of population and not on the basis of representing the individual States.

Mr. DOUGLAS. Mr. President, will the Senator yield?

Mr. LAUSCHE. I do not yield at this time. I have only 5 minutes. I will yield if the Senator from Montana will charge the time to the proponents.

The ACTING PRESIDENT pro tempore. Does the acting majority leader, the Senator from Hawaii [Mr. INOUYE], yield time to the Senator from Illinois?

Mr. INOUYE. I shall be happy to yield time.

Mr. DOUGLAS. I need only half a minute.

This is one provision of the Constitution which cannot be changed. Article V provides that no State can be denied equal representation in the Senate without its consent, so my friend from Ohio should lay his fears to rest.

Mr. LAUSCHE. I will not abide by that statement, because we can achieve things with the approval of the people. But if that is the position of the Senator, if he labels sound and wise the proposition that each of the States shall have two Senators, how can he reach the conclusion that the sparsely settled areas in my State or his State shall have no Senator? The Senator cannot answer that question logically. He will find himself at an impasse.

I should like to discuss what the Supreme Court has said and to point out the paradoxical position it reached in its catchy phrase that the legislators are not representing rocks, rivers, mountains, and streams, but that they are representing people. If that principle is sound, on what theory does the Senator say that Rhode Island, with 800,000, and Nevada, with 282,000, shall each have two Senators?

Those who framed our Constitution thought wisely. They pondered this issue. They wanted representation in Congress neither solely on the basis of population nor solely on the basis of geographical representation. They knew there was a need for a blend of the two. Unless there is such a blend, we shall have a one-sided Government.

I come from the city of Cleveland. My county has 1,500,000 people in it. If the industrial counties in and around Cleveland are given representation both in the lower and upper house on the basis of population, there will be completely destroyed the advice of the people in the rural areas.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. LAUSCHE. May I have 2 more minutes?

Mr. DIRKSEN. I yield 2 minutes to the Senator from Ohio.

Mr. LAUSCHE. Cuyahoga County, Cincinnati, Columbus, Dayton, and Youngstown will dominate. When they do, they will dominate through the labor leaders, the Americans for Democratic Action, and the big city political bosses.

When that point is reached, we shall not have good government. There must be the influence of the stable individuals who do not comprise that one segment of our economy completely. Legislatures should not be dominated one sidedly either by big city or rural voters.

May I point out what happened in Ohio? Our constitution provides that each county shall have at least one representative. Our State has 88 counties. That means each county has one representative. Added thereto is the factor of population giving added representation to the big cities. That is the constitutional provision. It was adopted in 1903.

In 1910 the people called for a constitutional convention. It was held in 1912. Efforts were made to change that provision, and the proposal was rejected.

In 1930 the people were asked to decide whether there should be a constitutional convention, which was submitted to them. One of the issues was whether to reapportion the State legislature. The vote was 1,056,000 against and 853,000 for. The convention was not held.

We come down to 1952. In 1952 the issue was primarily, Shall we have——

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. LAUSCHE. I ask for 1 more minute.

Mr. DIRKSEN. I yield 1 minute to the Senator from Ohio.

Mr. LAUSCHE. The issue was, Shall there be a constitutional convention? The question was whether there should be reapportionment. Those same forces arguing against the Dirksen amendment were arguing for the convention in 1952. What did the people do? Listen to the people: the vote was 1,977,000 "No"; 1,020,000 said "Yes." The vote was practically 2 to 1 against reapportionment.

I believe the Dirksen amendment should be adopted for the good of our country. It should be adopted so that there may be a blend of thinking in the State legislatures in determining what our economic and other policies shall be.

I yield the floor.

UTAH NOW HAS A MILLION HEIRS

Mr. DIRKSEN. Mr. President, I yield the Senator from Utah 20 minutes.

Mr. BENNETT. Mr. President, we have been discussing this problem now before us for a long time, and I beg the indulgence of the Senate to take this time to discuss what we have found in Utah to be a very pleasant fact.

Today, September 24, 1964, marks an important point in the history of Utah. The Census Bureau and Utah State officials have agreed that sometime today Utah's population will reach the magic 1 million mark.

Utah is relatively a newcomer to the United States, having first been settled on July 24, 1847, when Brigham Young led a hardy band of Mormon pioneers across the continent, peered into Salt Lake Valley and said, "This is the place."

It is recorded that Brigham Young prophesized that the Salt Lake Valley some day would be filled with homes and communities from one end to the other and that those living there would thrive and prosper for years to come.

Despite his prophetic vision, I doubt that even he had a full conception—although, I am sure he had hope—of the developments the next 117 years would bring.

Of one thing he and his followers were certain—in this area their cities and towns would be laid out, but no dream of theirs could envision the State of Utah now with 1 million inhabitants.

Utah's founding year was 1847, when the vanguard of the settlers came into the area. Now we salute the efforts of many unnamed toilers who built the schools, business enterprises, banks, mills, factories, mines, and beautiful cities sprinkled around, in and near, unexcelled outdoor recreational facilities in the can-

yons and parks that surround the valley.

By 1850 the population of Utah was about 11,000 as the original settlers began moving out from their early townsites in Salt Lake Valley.

By 1860 it was 40,273; by 1870, 86,786; and by 1890 it was 210,779.

As the century turned, Utah had 276,749 residents; by 1910, 373,351; by 1920, 449,396; by 1930, 507,847, the half million mark; by 1940, 550,310, and by 1950, 688,862.

When the last official U.S. census was taken in 1960, Utah's population was 890,627. In July of 1962, reports put it at 958,000. By July of this year the total was 992,000.

The population of Utah has many characteristics that make it distinctive.

Typically, Utah has the Nation's highest or second highest birth rate, and consistently has maintained the lowest or second lowest death rate. Utah's birth rate, in the last census, was 29.4 per thousand population, compared with a national average of about 23.4 per thousand. Its death rate during the same period was 6.7 per thousand compared with a national average of 9.3 per thousand.

And no one should talk of Utah's accomplishments as it moved to reach the million figure without mentioning those in the field of education.

Utah ranks first in the Nation of those 25 years old and older with at least 4 years of high school; first in the Nation in median school years completed by persons 25 years old and older; lowest percentage in the Nation of selective service registrants failing the mental test; lowest percentage in the Nation of population 25 years old and older with less than 8 years of schooling; and lowest percentage in the Nation of population 25 years old and older with less than 5 years of schooling.

If Utah's millionth resident is typical of other newcomers who have recently streamed into the State, he will seek and find a job in industries such as steelmaking, chemicals, electronics, machinery manufacture, garment making, and missiles, that have given the State a new look and a new outlook in the tremendous spurt of population increase during the past decade.

All Utahans are very proud of our "million" tag and I am sure it should not be too long before a Senator from my State stands before this same body and announces that the second million has been achieved.

Utah has come a long way since that day when Brigham Young left for Utah with 143 men, 3 women, 2 children, 73 wagons, 93 horses, 52 mules, 66 oxen, 19 cows, 17 dogs, and some chickens.

The first million and the first 117 years were the hardest.

This is a happy day for us, to have reached this mark.

THE PRICE OF SILVER—U.S. SILVER POLICY AT THE CROSSROADS

Mr. BENNETT. Mr. President, in this morning's Journal of Commerce we read that contracts for future delivery of silver, for next August, 1 year from now, traded in a range from a low of $1.3820 an ounce to $1.3850 an ounce.

During the past year I have been constantly reminding the Senate that the present legal price of silver, being maintained artificially by the willingness of the Treasury to sell silver to all comers at $1.29 an ounce, cannot long be maintained.

The day when the spot or current price of silver rises slightly above $1.29 an ounce, it will be profitable to melt down our silver dollars, because the silver in the dollars is monetized at a rate of $1.2929 an ounce. A rate which was set, by the way, in 1792 in the first monetary law passed after our Government was formed and the Constitution was adopted. This was the official value of silver in our silver dollars as long ago as that, and it has been maintained officially, though not always practically, since then.

I should emphasize that the $1.29 an ounce figure refers only to the monetized value of silver in the silver dollar coin. In 1853, the value of silver in the lesser coins—dimes, quarters, and half dollars—was reduced, so that it would require a price of $1.38 an ounce to bring us to the point where it would pay to melt down the smaller coinage. We have now reached that point in the futures market. We have reached it in the sense that the price paid yesterday for delivery, next August was $1.3820—$1.3850 an ounce.

This emphasizes a problem that I have long tried to bring to the attention of Members of the Senate. We are reminded that, with all the pressures that are operating against silver, the Treasury no longer has very much time in which to move to develop a new coinage system. If Congress and the Treasury do not act early in the next session of Congress to solve this problem, the shortage of coins which we now consider to be serious will become insignificant compared with the probable loss from circulation of almost all, if not all, the dimes, quarters, and half dollars.

Our silver dollars have already disappeared. Even though we have agreed upon a bill to mint $45 million more, at the same value of the silver, $1.29 an ounce, I predict that they will disappear as fast as they are minted. They are already collectors' items. Anyone who is not a collector does not realize that they are becoming an interesting curiosity. Many collectors have been gathering silver dollars with the intention of melting them down when the price of silver breaks through the ceiling.

The solution to our silver problem will not be a simple matter; nor will it be possible to satisfy all who are concerned. However, we must face the problem now. We have attempted to ignore the problem long enough but, as usual, ignoring it did not make it disappear.

One year ago predictions were made that our Treasury supplies of silver would be sufficient to fill the production deficit for as long as 15 to 20 years. The events of the past year should certainly impress all of us that the projections were inaccurate and that we cannot hesitate longer without adding to the problem and increasing the difficulty of its solution.

Only last week, at the American Mining Conference Convention, held in Portland, I outlined and analyzed our silver problem in a rather simple and brief fashion. I also pointed out the fallacies of the many superficial attempts to deal with the problem in legislative proposals which have been introduced. I should like to point out some of the highlights of this situation.

The silver problem is basically economic. It stems from the fact that both in the United States and throughout the world demand for silver at the price ceiling being held by the Treasury is greater than the amount that is being produced at that price. One does not have to be an economic genius to know that this cannot continue long, since the only way the demand can be met under these circumstances is to use up already existing stockpiles.

Let me review a few statistics on production and consumption which will indicate the magnitude of the problem. In 1940, U.S. production and consumption of silver were approximately equal at a figure of 68.3 million ounces. Last year domestic production was 37 million ounces, while domestic consumption had increased to 221.3 million. In other words last year the United States produced only about one-sixth of its own silver needs, leaving a deficit of 184.3 million ounces to be supplied either from foreign sources or from U.S. Treasury stocks.

If world production had been sufficient to supply this deficit, there would have been no great problem; but free world production was 210.5 million ounces compared with consumption of 419.2 million. Silver used for industrial and art purposes alone totaled 247 million ounces and exceeded total production by 37 million ounces. Thus, production would not have equaled consumption even in the absence of any use of silver for coinage. Coinage needs of foregin countries were 60.9 million ounces, and the U.S. mint used 111.3 million ounces. From these figures, one very important fact stands out. The free world used just twice as much silver as it produced.

WORLD SILVER DEFICIT DEPLETES TREASURY STOCKS

The world deficit had to be filled from previously mined silver, and last year most of it came from silver held by the U.S. Treasury. This year's outflow of silver from the Treasury will be approximately 263 million ounces, or a significant 53-percent increase over the 185 million ounces used last year. And things are not going to be any better next year as demands on Treasury silver increase.

We recently had some hearings in Congress on the need for additional coins. Representatives of the U.S. mint testified that mint facilities are now working at full capacity, and they intend to continue at that rate. It is expected that between 8 and 9 billion coins—twice the number minted this year—will be turned out next year. Approximately 1,629 million of these will be dimes, quarters, and half dollars. I mention these

coins specifically because they contain silver and will require approximately 245 million ounces. This demand alone exceeds all U.S. silver consumption during last year by over 23 million ounces and just about equals expected total world production, leaving nothing for the growing demand for silver for use in industry.

Minting of the new silver dollars authorized this year and transfers to other governmental agencies will require at least an additional 35 million ounces; and if industry continues to draw from the Treasury at the present rate, this will cause another 60-million-ounce withdrawal. All these add up to a total domestic demand on Treasury silver of about 340 million ounces. At this rate, the 1.4 billion ounces of silver held by the Treasury would be completely exhausted in 4 years.

We do not know what the reaction of foreign governments will be to the fact that the United States will be able to hold the price of silver at present levels for so short a time.

From the figures I used at the beginning of my statement, it can be realized that the world market for silver is already recognizing the Treasury's dilemma and is willing to bet that next August the price for silver will have broken through the $1.29 ceiling and have reached the price of $1.38, which is the point at which our small coins can be profitably put into the melting pot.

It would be naive to assume that some withdrawal due to foreign demands will not occur. Any such withdrawal will further hasten the day when the Treasury stocks will be depleted.

I hope these statistics impress all Members of the Congress as they do me, with the importance of immediate Treasury action.

TREASURY MUST SUPPLY ALL SILVER DEMANDS

Some have asked, "Well, why does not the Treasury simply stop selling its silver?" To the uninitiated, this sounds like a reasonable request; and, in fact, bills have been introduced in Congress to do that very thing. But the situation is not that simple.

First, on every $1 silver certificate that is in circulation, there is this inscription:

> This certifies that there is on deposit in the Treasury of the United States of America one dollar in silver payable to the bearer on demand.

If the outstanding silver certificates were redeemed, it would require 96 percent of the 1.4 billion ounces of Treasury silver, leaving only about 45 million ounces for all other purposes, including the minting of small coins.

Second, the Treasury has no choice but to provide silver to industrial users, whether they be United States or foreign, because if it did not make its stocks available, the price would soon be bid above the present ceiling of $1.29. Some of you may think that nothing could be better, believing that the Treasury should get out of the silver business and let the market determine the price.

Looking at figures of demand and supply, it is natural to conclude that the price would immediately rise and thus stimulate increased production. From this point of view, one could become very impatient with Treasury officials. This impatience would be justified if the Treasury were able to let the price of silver seek its natural market level without other disastrous consequences.

In my personal discussions with the Secretary of the Treasury and with other Treasury officials, I find that they would like nothing better than to get out of the silver market. However, serious problems would develop if the Treasury did not hold the price of silver at its present level long enough to work out a plan to protect our present subsidiary coinage against hoarding until it can be replaced with a new coinage system. Let me discuss this in a little more detail.

VALUE OF SILVER NOW EQUALS MONETARY VALUE

In the early days of our country, all coinage was minted on an intrinsic value basis rather than a token basis. This meant that the metal value of each coin, when minted, equaled the monetary value. Every time there was a slight inflationary trend, the coins became worth more as metal than as money, and they were melted down or hoarded.

We are at that same point today. If the price of silver rises significantly above $1.29 an ounce, it will be profitable to melt down silver dollars. Speculative hoarding of dollars has already taken place. You notice that there aren't any circulating. There is also evidence that our subsidiary coins are already being hoarded. If the Treasury were to let the price of silver rise much above $1.38 an ounce, then we would see all of our dimes, quarters, and half dollars disappear.

This, in a nutshell, is our silver problem. Now let us see what is being done about it and what the final solution should be.

LEGISLATION THUS FAR FALLS SHORT OF SOLUTION

Some action has been taken. The Silver Act of 1963 made it possible for the Treasury to replace silver certificates with Federal Reserve Notes and thus use some of its silver for coinage. There has been legislation to permit a continuation of the 1964 date on coins if necessary. Authority has been given to mint new dollars, and the U.S. Mint is doubling its production of coins. None of these actions has done any more than buy time in which a more or less permanent solution can be formulated and some of them will have the result of lessening the time available.

When we consider what is now being done, we find that since this is a legislative matter, many bills have been introduced. All of them thus far, however, have fallen far short of a long-range solution; and some of them, if accepted, would be disastrous. Let us consider some of the bills, briefly.

First. Several were drafted which would immediately double the price of silver. In the absence of prior action to protect our present coinage, we know that to do this would immediately drive all of our silver-bearing money into hoarding or the melting pot.

Second. Another bill was introduced to prohibit the redemption of silver certificates with bullion and the direct sale of Treasury silver. If the Treasury were unable to supply industrial users with their needs in bullion, it would have to be done in silver coins. We have only 3 million silver dollars on hand, and industry uses approximately 60 million ounces a year or an equivalent of 68 million silver dollars. Why burden the American taxpayers with an estimated $1 million minting cost when the newly minted dollars would immediately be melted down for their silver content to be used in photography, tableware, electronics, and the hundreds of other industrial uses?

Third. A measure was introduced and passed by Congress providing authority to mint 45 million new silver dollars. Last year I predicted that our standard silver dollar was "on its way out." I continue to maintain that position; and though I am from a silver-producing State and like silver dollars as well as any other Westerner, I could not support the authorization. I doubt that you will ever see any of the newly minted dollars circulating as a medium of exchange. You may get a few to keep as souvenirs of the first minting of silver dollars since 1935—and probably the last standard silver dollar ever to be minted in the United States. Even if the new dollars do not become a special collector's item, each of them will contain $1 worth of silver at present artificially low prices and thus will be an excellent investment for their silver content.

Fourth. The problem of hoarding was recognized by some Congressmen, and a bill was introduced to reduce the silver content in a dollar from 900 to 800 grams. This would have removed the dollar as a first-line defense of our coins and could have resulted in a withdrawal of all of our present coins because they would have a greater value as silver compared to their monetary value than the new dollars.

SILVER USERS WANT SILVER REMOVED FROM COINAGE

Silver users take an entirely different and opposite approach to the problem. Typical of the silver users' position is a recent speech made by Mr. Stevens of International Silver Co. He made the usual recommendation that all silver be taken from our coinage. This has long been the stand of silver users because it would reduce the demand for silver significantly. With reduced demand, they feel that the price may decline to their advantage.

We have noted earlier that silver demands for industry and art presently exceed world production; so in the absence of action by the U.S. Government to break the price, a hope by users for a decline is going to go unfulfilled. Mr. Stevens goes on to say:

> As long as the Treasury has silver, it would sell it at the present price to protect the existing coins in our monetary system.

In other words, sell every ounce at the present price. This is obviously indefensible.

I have confidence that the Treasury and the Congress will find a solution to

the problem before the ultimate minimum is reached. I do not know what a proper minimum Treasury stockpile should be, but it seems reasonable that it might be about half of our present stock, or about 700 million ounces. I cannot bring myself to believe that those in charge of the only significant world stock of a strategic metal—such as silver—would be so irresponsible as to let it become depleted below a reasonable minimum which must be retained for defense purposes. If such a minimum is retained, there is presently not more than a 1- to 2-year supply before the price would have to rise under present conditions.

DRASTIC TREASURY ACTION COULD CONTROL PRICE

Lest we come to the conclusion that there is no alternative to a price rise in the immediate future, let me point out an unwise and unlikely action that could make it possible to hold the price almost indefinitely and even break it to lower levels. New coins could conceivably be made of a base metal. All present coins could be called in, and holding them made illegal, as was the case with gold in 1933. I am sure that this might solve the problem temporarily.

The PRESIDING OFFICER (Mr. RIBICOFF in the chair). The time of the Senator from Utah has expired.

Mr. INOUYE. Mr. President, I ask unanimous consent that the Senator from Utah may proceed for 2 additional minutes.

The PRESIDING OFFICER. Without objection, the Senator from Utah is recognized for 2 additional minutes.

Mr. BENNETT. Mr. President, all present coins could be called in, and holding them could be made illegal, as was the case with gold in 1933.

While this created a temporary advantage for the gold miners, in the 30 years which have passed it has become a millstone around the neck of the gold mining industry.

With its stock of silver, the Treasury could then force the price even lower for a period of time to bring out all hoarded coins. This could add approximately $1.5 billion worth of silver to present Treasury stocks. If the coins were all turned back to the Treasury and melted, the Treasury would then have about 3 billion ounces. If we did not use any silver for coinage, annual world consumption would drop to about half what it now is, and the world deficit could be covered by Treasury silver for many years, instead of 1 or 2.

So we see that the contest between the producers and the users of silver still continues. The producers are trying to find a way to keep some silver in our coinage system and, at the same time, allow the world price to break through the present artificial Treasury ceiling. The users, on the other hand, are trying to eliminate all silver from our coinage in the hope that the Treasury could then be persuaded to use its enormous supply to break the market and provide them with all the silver they desire at a reduced price.

FINAL SOLUTION SHOULD BE REASONABLE

The final solution will probably lie somewhere between these two positions. Eventually, controlled and planned reduction of the silver content in our coins is the only possible solution to the dilemma. It is desirable, however, to keep some silver in the coins. We have always had silver in our coinage; and although the value of the coins is not dependent on their silver content, silver has had a stabilizing effect and has given confidence in our money. This has been particularly true since gold coins were withdrawn from circulation in 1933. The fact that our coins have always had a reasonable intrinsic value and that it has been possible to redeem paper money for silver has allayed justifiable fears of a system which had nothing in it but printing press money.

If possible, we should also make sure that enough silver is kept in the coins so that the electrical conductivity qualities needed to make them usable in today's coin-operated machines and dispensers will be preserved. But, at the same time, it is important that the silver content be reduced to such a level that no expected increase in silver prices in the foreseeable future would make the silver content in the new coins equal to or greater than their authorized monetary value. If the Treasury can find the right breaking point, it could get out of the silver business and allow supply and demand to operate on prices and bring them to a reasonable level.

SILVER LEGISLATION MUST HAVE PRIORITY NEXT YEAR

I am sure that the Treasury is now thoroughly aware of the problem and is committed to proposing a solution to Congress. A quiet study has been going on behind the scenes for nearly 1½ years, and I hope that specific recommendations will be made to Congress when it meets next year.

Certainly, for the protection of both producers and consumers and to preserve confidence in our coinage system, silver legislation should be at the top of the "must" list and should get priority attention early in the next Congress.

Mr. LAUSCHE. Mr. President, will the Senator from Utah yield?

Mr. BENNETT. I yield.

Mr. LAUSCHE. How would we support the coins which are made up of a base material other than silver?

Mr. BENNETT. They would have no backing. The base material would be token.

Mr. LAUSCHE. We would not have any Federal notes to support anything of that nature.

Mr. BENNETT. The coins would be only token with slight, if any, intrinsic value and no precious metal backing unless legislation was passed to that effect.

AMENDMENT OF FOREIGN ASSISTANCE ACT OF 1961

The Senate resumed the consideration of the bill (H.R. 11380) to amend further the Foreign Assistance Act of 1961, as amended, and for other purposes.

Mr. INOUYE. Mr. President, in suggesting the absence of a quorum, I ask unanimous consent that the time be charged equally to the proponents and to the opponents on the subject matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INOUYE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. INOUYE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INOUYE. Mr. President, I yield 10 minutes to the distinguished Senator from Wisconsin [Mr. PROXMIRE].

Mr. PROXMIRE. Mr. President, yesterday, the distinguished Senator from Illinois [Mr. DOUGLAS]—who has done such a magnificent job in this fight and I believe has won a signal victory in the Congress for constitutional rights and for preserving the dignity and independence of the Supreme Court—summarized well and concisely the arguments from our standpoint in the fight on the Dirksen proposal.

The Senator from Illinois stated that this Mansfield amendment is not a law. It is a "sense" resolution. He said it was the sense of Congress there could be a delay—and I shall come to that point in a moment—limited to a shorter period, a 6 months' total limitation. He said that it applied only to the district courts, and not to the Supreme Court; that no constitutional amendment is implied. It would not be the sense of Congress that there be delays pending a constitutional amendment or after the passage of a constitutional amendment by the House and Senate, and the congressional resolution would emphatically endorse and affirm court action when a legislature lags.

What I should like to add to that excellent summary by our leader on this subject is the very fortunate language used in the amendment.

It provides that in any district court, any order could properly allow the legislature of such State the length of time provided for a regular session on apportionment, or 6 months, whichever is less, to permit the next election of members of State legislatures following the effective date of this act to be conducted in accordance with the laws of such State.

I wish to stress the fact that the language is not "shall delay." It is not "should delay." It is not "may delay." It uses a word of art which is about as gentle, about as modest, and, I believe, about as reluctant a word as one could find. It states, "could properly." It does not state that the courts cannot require apportionment before the legislative session or before the 6 months is up. It states that it is the sense of Congress that the district courts could properly permit a 6-month period, or a lesser period, while the legislature is in session, to apportion representation.

This is a very important distinction, it seems to me. When it is contrasted

with the second paragraph of the amendment, the force of the Mansfield proposal can be particularly understood. In the second paragraph it provides that in the event the legislatures do not apportion during their legislative session, or during the 6-month period, the district court shall apportion. It does not state, "could properly." It does not state "may." It does not state "should." It states "shall apportion." It comes down strongly on the side of apportionment. On what basis? It states that they shall apportion "insofar as is possible consistent with the requirements of the Constitution of the United States."

I affirm that this is a real victory for those who support the Supreme Court of the United States, for those who believe very deeply in the principle of one man, one vote, and for those who feel that this is an ancient, cherished democratic principle. I believe that this is a real victory for us.

We have had a long debate on this matter—not as long, perhaps, as many other debates which have not been called filibusters, but a substantial debate. A legal argument concerning the measure has been brilliantly made by the distinguished junior Senator from Montana [Mr. METCALF]. The constitutional case has been very well made by the senior Senator from Oregon [Mr. MORSE]. It has been made in the newspapers by the dean of the Yale Law School, Mr. Rostow. It has been made in depth. It has been demonstrated that the Constitution made it very clear that the Supreme Court has this authority and this power of judicial review.

What has the opposition had to say in answer to that? There has not been a word said. Not a constitutional expert was summoned to reply to that demonstration. The only thing the opposition did was to refer to the dissent by Justice Harlan. The dissent by Justice Harlan deserves some examination. One of the points that he made was a statement that the States should have the same authority, the same power to establish a house based on some other basis than population, as the Federal Government had in the establishment of the U.S. Senate.

We showed in a recent speech going back and examining all of the debate involved in the Constitutional Convention that our Founding Fathers saw no analogy. They were not interested in a blending of population and area. There were only two reasons why they accepted a compromise with one house on population, one on area. They had a pistol pointed at their heads. It was the only way they could get a Union. They recognized that the States have a sovereignty, an independence, and an identity that should be equally represented in one of the houses. There is not a word by Madison, Jefferson, Hamilton, Jay, Wilson, or any of our Founding Fathers to the effect that the State legislatures should be constituted on any other representative basis than population. There were many statements and many firm expressions that they should be based on one man, one vote as a basic, fundamental, vital democratic principle.

Where is the answer to the argument that we have made? From the supporters of the Dirksen amendment there has not been a single historical reference to our constitutional fathers nor have they referred to any other experts at the time of the founding of the Republic. They have not shown that any of our philosophical leaders, constitutional leaders, or great statesmen believed in any other philosophical principle than representation by population.

The distinguished senior Senator from Michigan [Mr. MCNAMARA] has made what I thought was one of the very finest and most practical speeches on this issue. He showed what has happened in the State of Michigan year after year because of a divided legislature with one branch of the legislature based on area rather than population. He showed that on one specific and vital measure after another, the Governor was for it, the lower house was for it, and the State senators, representing a big majority of the Michigan population were for it. But, because those State senators represented a minority of the State senate by reason of the malapportionment, those measures were blocked.

It is not just a matter of theory. It is not just a matter of fine, philosophical judgment. This is a very practical matter. The States have been paralyzed and still are paralyzed because of malapportionment.

In the 7 years that I have been in the Senate, I have not heard any Senator make a more devastating case than the senior Senator from Illinois [Mr. DOUGLAS] has made in showing the actual population inequities in State after State, documenting it by chapter and verse. He has shown almost incredibly unjust situation that existed in Illinois, California, New Hampshire, and many other States throughout the country. He showed not only that some people have 10 times the representation in their legislatures that other people have, but he also showed that in some instances some people have 1,000 times the representation that other people have in their State legislatures. Who can possibly defend that representation? It is unfair representation. It clashes with the basic, philosophical doctrine of democracy in which our Founding Fathers so fervently believed.

There has not been any answer to that showing. No one has said it is not true. There has not been any answer to that fundamental argument. One of the most recent speeches on this subject was delivered by the distinguished senior Senator from West Virginia [Mr. RANDOLPH]. He gave an excellent talk in which he said that the practical effect in the areas of housing, urban renewal, education, and air pollution, and in many other areas involved in his own committee work, was that States were unable to act or could act only with great reluctance and hesitation because of malapportionment.

That is not merely a theory. That is a fact. That argument has not been answered or met in any way by the opposition.

Where is the practical justification for the Dirksen amendment? The only specific State in which it was said a remedy wast required was Oklahoma.

On next Tuesday, Oklahoma will have an election. No one can pretend that passage of the Dirksen amendment would eliminate the need for this election, or serve any other purpose in Oklahoma. That election will be held subject to an order of the court. It will be held so that the people of Oklahoma can have the kind of constitutional protection of rights under which every citizen has equal representation in the State legislature.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. PROXMIRE. Mr. President, may I have an additional 2 minutes?

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for an additional 2 minutes.

Mr. PROXMIRE. Mr. President, the distinguished Senator from Ohio made his usually impassioned, eloquent, and persuasive speech on this issue this morning. In the course of his speech, he made the argument that with population apportionment labor would be dominant. He made the argument that the big machines of the city would dominate if this proposal were to be approved.

Mr. President, nothing could be further from the fact. The fact is that in many great cities in this country, the central city has actually declined in population. This is one of the great recent phenomena. In the 1960 census, many cities did not gain in population. They declined. This was true in city after city. The areas in the Nation that universally showed a gain in population were the suburban areas. The people who live in the suburban areas do not vote Democratic. They are usually well educated. They are well to do. They pay larger taxes. They deserve equal representation—not more than equal representation, but equal representation.

By permitting malapportionment as the population moves, we deny to the most progressive communities—and, frankly, communities in which the people pay heavier taxes—the right to have equal representation in their State legislatures.

Mr. President, from every standpoint, the Dirksen amendment should not pass. It must not pass. I serve notice—and I know that some other Senators feel the same way—that if the Mansfield amendment is not adopted today, we have no choice except to stay on the floor as long as we can—and that will be a long time—opposing the Dirksen amendment.

Mr. CLARK. Mr. President, will the Senator yield 5 minutes to me?

Mr. INOUYE. Mr. President, I yield 5 minutes to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 5 minutes.

Mr. CLARK. Mr. President, I shall reluctantly support the Mansfield substitute amendment to the Dirksen amendment to the foreign aid bill. My reluctance is due to my strong feeling

that a nongermane amendment should never be permitted to an important bill such as the foreign aid authorization bill, and that as a matter of principle Senators should indicate by their votes their determination that the really vicious practice of attaching nongermane amendments should no longer be permitted.

Yesterday I offered as a part of a comprehensive revision of the Senate rules a change which would bring our practice into line with that of other, somewhat more enlightened legislative bodies, by prohibiting nongermane amendments.

Moreover, I am reluctant to have the whole question of the congressional attitude toward reapportionment and the recent decisions of the Supreme Court handled in so cursory way as by an amendment to a bill dealing with a totally different and yet very important subject, namely, foreign aid.

It has been reiterated over and over, but it bears repetition, that the Dirksen amendment—and, of course, the Mansfield substitute—were subject to no adequate hearings in committee. It is being tacked on to a bill to which it has no pertinence.

Mr. President, that is not the way to legislate. Quite frankly, I believe we should be ashamed of ourselves for permitting the Senate to legislate in that wholly improper way. Nevertheless, the Mansfield amendment would remove practically all of the objectionable features from both the original Dirksen amendment and the substitute Mansfield-Dirksen amendment. The Mansfield amendment would do nothing to indicate any opposition to the point of view of those of us who support the Supreme Court in its decisions and who believe in the rule of one man one vote in both houses of State legislatures.

It is obvious that the Senate—because to my way of thinking it has quite inadequate rules and procedures—finds itself in a box—in a dilemma, if Senators prefer a more stylish word. More than a majority, but less than two-thirds, want to vote in favor of the Dirksen amendment. The other day, by a vote of 42 to 40, the Senate rejected the first compromise. Now we have another opportunity to get out of this dilemma and to go home, where we all belong, in order to touch base with our constituents and to support the candidates of our respective political parties in the important presidential election which confronts us on November 3.

Therefore, with reluctance, feeling that it would do no real harm to the cause of adequate reapportionment of State legislatures, and believeing that the pragmatic requirement that we should close up the Senate session and go home should take precedence over any theoretical objections of the nature I have stated earlier, I shall vote for the Mansfield amendment.

Mr. President, I yield back the remainder of my time.

Mr. INOUYE. Mr. President, I yield 5 minutes to the Senator from Montana.

Mr. METCALF. Mr. President, I thank the acting majority leader.

The PRESIDING OFFICER. The Senator from Montana is recognized for 5 minutes.

Mr. METCALF. Mr. President, I compliment my senior colleague for bringing in the proposed compromise. I opposed the so-called Dirksen amendment as it was originally offered because it was directed to any court in any action in any proceeding.

I call attention to the fact that the Mansfield amendment is not directed to any court in any action. It is directed only to actions in the district courts. There is clearly constitutional power in the Congress of the United States to withhold powers from the so-called constitutionally designated inferior courts; and Congress could even enact a law which would provide that the district courts would not have authority to entertain jurisdiction in the area to which we are referring.

The original Dirksen amendment provided that no court would have authority to entertain a right for an individual action to enforce a constitutional privilege. I prepared a proposed section to add, in the event the original Dirksen amendment was adopted, to any bill in which the constitutionality of the measure was doubtful, which would state that:

> No court of the United States shall have jurisdiction to hear or determine any question concerning the validity of any provision of this act under the Constitution of the United States or enter or enforce any judgment, decree, or order, or restrain, impede, or impair the execution, administration, or enforcement of any provision of this act upon the grounds of its constitutional invalidity.

That language demonstrates that if we had embarked upon the adoption of the Dirksen amendment, it would have been the end of constitutional government in the United States. It would have been the end of the separability of powers. But in the amendment before the Senate we would, first, only direct our attention to the district courts. Second, we would say that it is the sense of the Congress. As the Senator from New York [Mr. JAVITS] said, one coordinate branch of the Government is directing to another coordinate branch an idea that it is our opinion that it should proceed cautiously and slowly. It would be an admonition from one equal to another. There would be no rebuke to the Supreme Court. We would not even be talking to the Supreme Court. We would only be saying to the district courts of the United States that they should carry out the provisions that their own appellate courts have provided. We would only be admonishing the district courts that they should carry out the admonition that has been handed down by the U.S. Supreme Court.

I differ with some of my friends. I feel that after hearings I shall vote for a constitutional amendment. I feel that we have a right in the United States to apportion our legislatures on other than a population basis if we choose to do so. We might apportion on any economic basis, on the basis of rural areas, or on some other basis.

During the course of the debate I have examined the minutes of the Constitutional Convention, Madison's reports, and I reread the Federalist Papers for the first time in a number of years. I enjoyed reading those ancient documents. I believe it was almost unanimous among our Founding Fathers that they intended that the one man, one vote idea be a part of our State legislatures and our State legislative bodies.

I am convinced, from reading the Federalist Papers and the minutes of the Constitutional Convention, that when it was said we would have a republican form of government, it meant apportionment on the basis of population. The only way we can alter that original opinion of the Founding Fathers is to adopt a constitutional amendment, such as that proposed by the Senator from New York. That is an entirely different question from what we are confronted with when an attack is being made by the original Dirksen amendment, which provides that no court shall have jurisdiction to enforce a constitutional right. I see nothing that attacks the Supreme Court in the present proposal.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. METCALF. May I have 3 minutes?

Mr. MANSFIELD. I yield 5 minutes to the Senator fram Montana.

Mr. METCALF. I see nothing that attacks the Supreme Court of the United State. It is not directed to the Supreme Court. It is directed to the district courts. This body has complete authority even to eliminate the district courts of the United States, by an act of law.

The Mansfield amendment, on which we are now approaching a vote, carries out the highest tradition of this body.

We are convinced that we should go more slowly in some apportionment cases. So is the Supreme Court of the United States. In many decisions handed down by it, it has admonished the district courts to go more slowly.

We are convinced that "one man—one vote" is a basic proposition. The Mansfield amendment carries out that program. We are convinced that we should not take away or postpone basic rights of individual citizens that have been sustained by the Supreme Court. The Mansfield amendment protects those rights, and states only that it is the sense of the Congress that certain things should be done.

I urge my colleagues—my colleagues who believe in the Supreme Court decision, my colleagues who believe in constitutional government, my colleagues who believe in the enforcement of individual rights of citizens—to vote for the Mansfield amendment.

Mr. KUCHEL. Mr. President, I should like to ask the acting majority leader to yield to me so I may ask a question.

Mr. INOUYE. Mr. President, before suggesting the absence of a quorum, I ask unanimous consent that the time be equally charged.

Mr. FULBRIGHT. Mr. President, will the Senator withhold that suggestion?

Mr. INOUYE. I withhold it.

FIRST ANNIVERSARY OF SENATE VOTE ON LIMITED NUCLEAR TEST BAN TREATY

Mr. FULBRIGHT. Mr. President, it is deeply gratifying to me to be able to mark this first anniversary of the Senate's approval of the nuclear test ban treaty by reaffirming my conviction that it was a wise and highly significant step.

That approval—by a bipartisan vote of 80 to 19—was the culmination of an exhaustive examination of the meaning, effects, and possible ramifications of the treaty—first by the Committee on Foreign Relations, joined by members of the Committee on Armed Services and the Joint Committee on Atomic Energy, and then by this body as a whole. It followed a careful weighing by each of us of the possible risks and advantages involved, and a thorough consideration of the potential effects of the treaty on our national security and on international affairs.

In opening the debate on the Senate floor last year, I said that the treaty might well prove to be a turning point in history. It symbolized a change in direction. It demonstrated that the two great nuclear powers shared an overriding common interest in the imposition of limitations on nuclear weapons and in reducing the pace of their proliferation.

For these and other reasons, I pointed out that the treaty made sense under world conditions as they then existed.

It makes at least as much sense today. Although it is still too soon to render a definitive judgment, there is ever increasing evidence of significant changes in the character of East-West relations and of the emergence of attitudes more conducive to meeting the overriding challenge of our time—to reduce the risk of nuclear war. While our progress in meeting this challenge has been slow, I am convinced that the test ban treaty has contributed, and will continue to contribute, to facilitating such progress.

And our judgment that the risks involved could be adequately guarded against has been confirmed. I was particularly gratified by the recent report by Senator STENNIS on the results of his subcommittee's continuing scrutiny of the safeguards adopted in conjunction with our ratification of the treaty. It is apparent to me that our relative position in the nuclear field has by no means suffered in the past year, and that our means of protecting ourselves against the risks of violation of the treaty are even more effective than they were a year ago.

Thus I welcome this occasion as an opportunity to express again my conviction that the test ban treaty, though a rather modest step in the quest for peace, was an extremely significant one; and that the wisdom of having ratified it is even more apparent today than it was last September 24.

AMENDMENT OF FOREIGN ASSISTANCE ACT OF 1961

The Senate resumed the consideration of the bill (H.R. 11380) to amend further the Foreign Assistance Act of 1961, as amended, and for other purposes.

Mr. KUCHEL. Mr. President, I ask the acting majority leader to yield me 3 minutes.

Mr. INOUYE. I yield 3 minutes to the Senator from California.

Mr. KUCHEL. Mr. President, yesterday, at the conclusion of the comments made by my able friend from Illinois, indicating the intention or the goal sought to be achieved by the Mansfield sense of Congress substitute, I asked a couple of questions with respect to the specific intention of that substitute. I repeat my question today with a bit more precision, to ask the author of the resolution to confirm, if he will, my understanding of the intention involved in the resolution now pending. I should like to clarify the intent of subsections (1) and (2).

Am I correct, in my understanding that the purposes of the two subsections, taken together, are, first, to give the State legislatures a period of time, not exceeding 6 months, in which to act on reapportionment, despite the pendency of the court action; and second, meanwhile, to permit members of State legislatures to be elected in 1964, to be elected in accordance with State laws in effect on September 20, 1964?

To put the question another way, in view of the maximum of 6 months allowed for State legislative action, I take it the words in subsection (2) "the next election of members of the State legislature following the effective date of this act" mean November 3, 1964, not November 1965, or November 1966, or November 1967 or 1968, or November 1970.

I ask my friend if I am correct in my understanding that that is the intention of the sense of Congress amendment now pending, which he has authored.

Mr. MANSFIELD. Mr. President, in view of the questions asked by the distinguished acting minority leader, my answer is that his interpretation is correct. The intention is to provide for November 1964. It is clearly indicated by providing in (1) a maximum period of 6 months in which the legislatures may act. The whole purpose of the amendment is to encourage and permit State legislatures to act expeditiously to bring their own representation into line with constitutional requirements.

Mr. KUCHEL. I thank the Senator for confirming my understanding of the intention of his amendment. I shall support the sense-of-Congress resolution he has introduced. In my judgment, my able friend from Montana and other Senators on both sides of the aisle have achieved a fine and constructive alternative to the recommendations others have made to shear away part of the jurisdiction of the U.S. Supreme Court in an unconstitutional manner.

Mr. METCALF. Mr. President, will the majority leader yield me 1 minute?

Mr. MANSFIELD. I yield 1 minute to my colleague.

Mr. METCALF. I call to the attention of the acting minority leader the fact that this proposal is directed to the district courts.

Mr. KUCHEL. Exactly.

Mr. METCALF. Other actions that have gone beyond the district court, and are pending in the circuit court or Supreme Court, are not affected by the proposed legislation.

Mr. KUCHEL. In other words, the Congress of the United States—assuming the Mansfield substitute is adopted—makes no comment with respect to the sense of this body on any lawsuits that may be pending before the circuit courts or the U.S. Supreme Court.

Mr. METCALF. That is correct. It makes no comment on actions in either the circuit courts or the Supreme Court.

Mr. KUCHEL. I thank my friend for making that abundantly clear, and I thank the Senator for yielding to me.

Mr. HART. Mr. President, will the Senator yield me 1 minute for the purpose of asking a question?

Mr. MANSFIELD. I yield 1 minute to the Senator from Michigan.

Mr. HART. I was on the telephone and entered the Chamber at the conclusion of the colloquy between the distinguished majority leader and the distinguished majority whip. The question has been asked me—and apparently it goes to the point our distinguished leader was answering in response to a question by the Senator from California, and I shall ask it in this form—with respect to subsection (1) under (a) in the proposed resolution. Does the date against which the 6-month maximum is measured begin to run from the date of enactment of this bill for all States, or is there any accommodation that would require that the 6-month time period would run only after a State's regular session began?

Mr. MANSFIELD. It is my belief that under the resolution now before us the writ would begin to run on the day the Court laid down its order.

Mr. HART. I thank the Senator.

Mr. JAVITS. Mr. President, will the Senator yield me 1 minute so that I may ask him a question?

Mr. MANSFIELD. I yield.

Mr. JAVITS. Is there any magic in the September 20, 1964, date? Should not the RECORD show why that date was chosen? Apparently that is the date fixed in the resolution for the effective date of State laws. Does it refer to a particular date with respect to a State law?

Mr. MANSFIELD. It could have been the date of the enactment of the act, but the intention is to give some finality.

Mr. JAVITS. It has no relationship to a particular State or State law.

Mr. MANSFIELD. No. In one respect that was unfortunate.

Mr. AIKEN. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. AIKEN. I would like to have a clarification of one provision. The amendment authorizes the court to act "in the absence of unusual circumstances." What would be considered unusual circumstances?

Mr. MANSFIELD. I could give no specific answer to that question at this time. I doubt whether any Senator could do so. However, it is my understanding that this is a phrase which is usually considered in a legal matter to

allow for something unforeseen in the proposal under consideration—something that is unusual.

Mr. AIKEN. In the event that the courts have already issued an order to a State to reapportion, and have set a date by which time reapportionment must be accomplished, would that fact, in the mind of the Senator, constitute an unusual circumstance?

Mr. MANSFIELD. Yes; I would say it would.

Mr. AIKEN. Then, in the event that a State—and I am thinking particularly of Vermont, Connecticut, and New York—has already been subjected to unusual circumstances, the district court having jurisdiction would not be authorized to reapportion the legislature under the wording of the amendment. Is that correct?

Mr. MANSFIELD. I should say that the answer to the question raised by the distinguished senior Senator from Vermont is that it would lie within the discretion of the court, and that the court itself would have to make that decision.

Mr. AIKEN. But the amendment only authorizes the court to reapportion in States where there are no unusual circumstances.

Mr. MANSFIELD. But it allows for unusual circumstances at the same time. The language "in the absence of unusual circumstances" works both ways. The courts have wide-ranging discretion in this matter as to what their interpretation should be.

Mr. AIKEN. Does the Senator mean that if the court undertook to redistrict, and if the legislature had failed to reapportion, the court must make that undertaking under other legislation than the pending amendment? The amendment, as I read it, virtually fails to indicate that the district court should reapportion if there are unusual circumstances, such as being already under an order of the court.

Mr. MANSFIELD. Except that it would be a matter that the district court itself would have to determine.

Mr. AIKEN. I am not sure that it does not provide that the district court is not authorized, except in the absence of unusual circumstances, to redistrict a legislature.

Mr. MANSFIELD. It would be the hope, if this "sense" resolution is agreed to, that the court would take into consideration the position of the State legislatures, and that the State legislatures would do likewise.

Mr. AIKEN. Would it be the sense of Congress that States which are already under an order of the Court would be entitled to the same privilege that is allowed to other States? I realize that the resolution merely expresses the sense of Congress and that its terms are not binding legislation. Is it intended to recommend the regular time, plus 30 days, but not to exceed 6 months in all? Our legislature, which will be elected under the laws existing on September 20, 1964, would normally meet in the first week in January. It has been directed to reapportion and to do nothing else, and to be all through by March 31. Normally the legislature would be in session—we have no time limit, of course—until somewhere around the last of June or the first of July, or approximately for 6 months from the time that it convenes. Would the Senator from Montana feel that the resolution would express the sense of Congress that the State of Vermont should be allowed 6 months in all, after convening, in spite of the fact that the Court has ordered it to reapportion in 3 months from January 1.

Mr. MANSFIELD. My answer would be that that matter would be within the discretion of the Court. If the Court so decided, it would be possible.

Mr. AIKEN. But it would be the sense of Congress, would it not, that that be done?

Mr. MANSFIELD. It would be my interpretation, from what the distinguished Senator has said, that it would be possible, but it would be a matter which would be within the discretion of the Court.

There is nothing in the amendment which is binding in any way; it merely expresses the sense of Congress.

Mr. AIKEN. It is rather incongruous that States which are in the bind in which States like Vermont, Connecticut, and New York find themselves, should be required to reapportion within 3 months, while States like Delaware and Rhode Island, where there are no court cases, but which, according to what I have heard in the Senate, are the most malapportioned of any of the States, would have 6 months' time allowed after convening.

Mr. MANSFIELD. It is my belief that if the courts so decide, it is within their discretionary authority to do what the Senator from Vermont has said.

Mr. AIKEN. Would the Senator say that we are extending the same "sense of Congress" expression to judges who are considering cases in certain States as we do with respect to other States?

Mr. METCALF. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. METCALF. As I read the amendment, it is the sense of Congress that the Court could properly suspend any order on reapportionment until the legislatures are allowed to meet, or permit another election to be held under the laws in effect on September 20, 1964. In order to give greater latitude and greater discretion to the Court, we put in the provision about unusual circumstances.

It is difficult for us, on the floor of the Senate, without a knowledge of all the record before the court, to understand the circumstances of each case.

Mr. AIKEN. But does the Senator agree that the same "sense of the Congress" would extend to States which are already caught in a bind, as well as to the State of Rhode Island?

Mr. METCALF. I would agree to that. I believe that is the intention, as I read the amendment. The intention is to say to any district court that has jurisdiction: "We would like you to have the authority to provide a 6 months' opportunity to reapportion."

Mr. AIKEN. As I recall, early in the discussion I suggested on the floor of the Senate that the State of Vermont should have until the first of July, which would be 6 months from the time the legislature convenes.

Mr. METCALF. I would not want my comments to apply to a specific case, because I do not know what unusual circumstances might exist. The court would certainly have discretion to ascertain and determine them. But I agree with the Senator from Vermont that the amendment states that it is the sense of Congress that the States could properly be given this opportunity. That is provided in subsections (1) and (2).

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. AIKEN. I yield.

Mr. MAGNUSON. In the State of Washington a three-judge court decided approximately 60 days ago that the State legislature was to meet and reapportion the State; otherwise the candidates running for the legislature would run on what the court called a weighted-vote basis. The legislature has not met, but the decision of the court stands.

What would this amendment do, first, about a court decision, in view of the language of the amendment:

> The effective date of this act to be conducted in accordance with the laws of such State in effect on September 20, 1964.

The State law stands as it is; but the Court has made a decision. If someone wanted to seek a change in the Court decision under this amendment in the nature of a substitute, would he have to ask the Court to change its decision? What would be the practical legal situation?

Mr. METCALF. The only way in which one can get into court is to file a complaint. The Senator from Vermont has named some States that are allegedly more malapportioned than his own State. The only reason why there has been no action is that no one has filed a complaint with the court. However, if I were handling the case, I would certainly go into court on the basis of this amendment and ask for additional time.

Mr. MANSFIELD. Mr. President, may I ask from which side time is being yielded?

Mr. MAGNUSON. Mr. President, I ask that I be yielded 2 minutes.

Mr. DIRKSEN. I yield 2 minutes to the Senator from Washington.

Mr. MAGNUSON. If the legislature met and changed the apportionment according to the direction of the court, that would be different.

What bothers us in the State of Washington is that a three-judge court has handed down its decision. The decision made the reapportionment legal under color of law at the time it was made. How can it be changed? Obviously, one could go back to the court and ask it to review its decision. But if no one wanted to do that, I suppose the decision of the court would stand, would it not?

Mr. METCALF. The court decision would stand if no one sought a review.

The reason for including the phrase "in the absence of unusual circumstances" is to allow the court to do it. One of the unusual circumstances would be such a decision as that which has al-

ready been made by a three-judge court in the State of Washington.

Mr. MAGNUSON. But it might also say that there are reasons to justify deferring the effectiveness of its decision until the next meeting of the legislature.

Mr. METCALF. It might permit the members of the next legislature to be continued under the laws in effect.

Mr. MAGNUSON. They have already filed and have been nominated. This situation poses a practical political problem in any State where the Court has made a decision.

Mr. METCALF. That is why this language has been included. It would permit absolute discretion on the part of a court to ascertain exactly what the circumstances are under the facts that have been submitted.

Mr. MAGNUSON. I thank the Senator from Montana. Several persons have called me in the past 2 or 3 days and asked for a clarification. My own view is that the Supreme Court decision should stand in every State, and that each State should reapportion in the way the Court and the Constitution say it should be reapportioned. But I understand that some other practical problems may be involved.

Mr. MANSFIELD. Mr. President, I yield myself half a minute.

I move to modify the pending amendment in the nature of a substitute by striking out, on page 1, line 8, and on page 2, line 1, the phrase "including those," and inserting in lieu thereof "or in the presence of circumstances."

The PRESIDING OFFICER (Mr. RIBICOFF in the chair). The request will require unanimous consent.

Mr. MANSFIELD. I ask unanimous consent to so modify the amendment in the nature of a substitute.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. MONRONEY. Mr. President, on page 2, lines 9 through 12, the language reads:

> (2) Permit the next election of members of the State legislature following the effective date of this act to be conducted in accordance with the laws of such State in effect on September 20, 1964.

Does that mean that legislators who are nominated, whichever group might be nominated in my State, would be running under the laws in effect in November, at the time of the general election or under the laws in effect on September 20, 1964? Or does it apply to the next legislature, that normally would run for election in 1966? Is this language designed to take care of cases like those which exist in Virginia and Kentucky only, where the elections will be in 1965?

Mr. METCALF. I should think that this language would apply only to the immediate next election.

Mr. MONRONEY. Which would be in November of this year?

Mr. METCALF. In November of this year.

Mr. MONRONEY. The distinguished Senator from Montana is an eminent lawyer and has worked hard on this subject, trying to bring some degree of logic to it. I should like to have his views concerning the situation in my State of Oklahoma, which has been directed by a three-judge Federal court to cancel the primary elections that had been held as directed by the Supreme Court of the United States.

The court finally got around to redistricting the State of its own volition, and directed that the election in the new districts be held. The Governor called an election to be held on September 29—this month.

Which law applies in the State of Oklahoma? The decision of the three-judge court is on appeal to the Supreme Court, so it is not final. It seems to me that until the Supreme Court makes final, one way or the other, the appealed judgment of the three-judge Federal court, the State law, in the eyes of Congress at least, should normally apply. Of course, in the eyes of the electorate, we are going ahead and are having the court-ordered election without the finality of the appeal. The candidates who will be nominated in the new primary on September 29, which replaces the two primaries that have already been held, will, I presume, go into the November election as the nominees of the parties in those districts.

What I am trying to find out is the meaning of the date, September 20, 1964, and what laws are in effect.

Mr. METCALF. In the first place, this is a "sense of Congress" resolution.

Mr. MONRONEY. I realize that.

Mr. METCALF. In the second place, we are saying to the district courts that we hope they will use the same judicial restraint which the Supreme Court of the United States has used. The decision of the three-judge district court has to be final, whether the resolution passes, or the Dirksen resolution passes, or any other resolution passes. I would hope that if the resolution should pass, the district courts in the various States would heed the admonition to exercise the same judicial restraint which the U.S. Supreme Court has asked.

I cannot answer the question of the Senator from Oklahoma because it may be that even before we get to the Supreme Court and have the decision rendered, the election will be held and the question will be moot.

Mr. MONRONEY. That is what I am afraid of. The September 20, 1964, dateline is what makes it moot.

Mr. METCALF. The September 20, 1964, dateline, in my opinion, would not alter the situation in Oklahoma. That was a line written in when the amendment was drawn up. As my colleague, the Senator from Montana [Mr. MANSFIELD], said, it might well have been the effective date of the amendment, but we tried to put in some specific date.

Mr. MONRONEY. I do not object to the date. I am fearful that the date will result in the application of the laws of the State as changed by a decision of the three-judge Federal court, now on appeal to the Supreme Court. The amendment should express the sense of Congress that Oklahoma would be entitled to be included with the other 49 sister States as having some rights, to be dealt with in the same degree of equity which the other States have enjoyed. This is a crazy-quilt pattern because there is no uniformity on when the Supreme Court's decison of June 15 becomes final with respect to all States.

Mr. METCALF. Let me give the Senator from Oklahoma—so far as I can give it—the same answer I gave the Senator from Vermont.

We say it is the sense of Congress in any action in the district court that any order could properly be set aside to allow the legislature to meet, or to permit the next election immediately following the act under the laws of the State. We could take judicial notice of the laws of Oklahoma—permitting discretion by the district courts. But the sense of Congress is that we would hope, unless there are unusual circumstances, that the three-judge district court would carry out the laws of the State at the next November 3 election and give the legislature up to 6 months in which to reapportion.

Mr. MONRONEY. From what the Senator says, the laws of the State actually are the laws of the State.

Mr. METCALF. The Senator is correct.

Mr. MONRONEY. Not those which have been amended by the three-judge Federal court.

Mr. METCALF. This is not a declaration that they are unconstitutional. This would be applied to the laws of the State of Oklahoma as enacted by its legislature and in existence on September 20, 1964.

Mr. MONRONEY. Even though the Federal court action had been taken and is now on appeal.

Mr. METCALF. The Senator is correct.

Mr. MONRONEY. I thank the distinguished Senator from Montana for his efforts to help shed some light on this problem.

Mr. METCALF. I am sorry that I could not have been more helpful.

Mr. MONRONEY. The Senator from Montana has been most helpful.

Mr. METCALF. Mr. President, I yield 3 minutes to the Senator from Michigan [Mr. HART].

The PRESIDING OFFICER. The Senator from Michigan is recognized for 3 minutes.

Mr. HART. Mr. President, I join in the expressions already voiced in thanking the majority leader for the role he has played in bringing us to this point.

I have every hope that the Senate will adopt the new Mansfield amendment.

I support the amendment, but I do not throw my hat in the air in wild enthusiasm.

I wish very much that even this short step in the direction of seeming to attempt to influence any Federal court need not be taken; that it be made clear, however, under all the circumstances reflected in the RECORD of the debates so far, that the course of prudence and

responsibility supports those who express the hope that the Senate will adopt the amendment.

As the able senior Senator from Illinois [Mr. DOUGLAS] has pointed out, this is an expression of our attitude. It is not a direction by way of enactment of a law. It does not direct even this expression of attitude toward the Supreme Court of the United States. In these senses, then, it avoids the confrontation which could cause a critical constitutional crisis for this country.

It should not be cited as precedent for congressional review of Supreme Court decisions, and certainly not as precedent for a new shortcut method to amend the Constitution or suspend constitutional rights.

In closing, I again make the point which, in the few times I have debated, has been my principal concern: As citizens of a republic, let us understand clearly the implications which are involved, should we at any time take any action which would suspend and therefore deny a constitutional right to a citizen of this country, except as we would amend the Constitution in the form provided.

This, at root, has been the basic concern of all of us. I hope that such concern is shared even by some of those who believe the one man, one vote principle is bad law. Worse than any bad law, it would be a course of action by the Senate which would have the effect some day—tragically—of leaving our Constitution worth precisely the paper it cost to print it, and nothing more. That is a lesson of history we had all better understand, the amendment as proposed would have no effect on the operation of the apportionment procedures in Michigan.

As an expression of confidence, I thank the Senator from Illinois [Mr. DOUGLAS], and all other Senators who joined in bringing us to this moment.

In closing, Mr. President, some days ago I called to the attention of the Senate some communications that I have received from people and groups across the country in opposition to the Dirksen-Mansfield rider. We now are offered a vastly different approach in the sense of Congress resolution which is pending. Yet the RECORD should contain the thoughtful expressions which continue to cross my desk on the basic issue raised. The basic issue may be raised again, in connection with this or some other constitutional right. It would be well to record the cautions voiced in these communications.

Mr. President, I ask unanimous consent that the above-mentioned communications be printed at this point in the RECORD, together with an explanation of each.

There being no objection, the correspondence communications and explanations were ordered to be printed in the RECORD.

Mr. HART. Prof. Malcolm E. Jewell, of the Department of Political Science at the University of Kentucky, is a recognized authority on State government and reapportionment. He has been involved in the successful reapportionment efforts in Kentucky. Following is a statement in opposition to any legislation which would delay enforcement of the Supreme Court's reapportionment decision:

NO NEED FOR DELAY

Perhaps the strongest, as well as the simplest, argument against legislation to delay enforcement of the Supreme Court's reapportionment decision is that it is unnecessary. There is no crisis in the States concerning reapportionment. Ever since the *Baker* v. *Carr* decision, the Federal courts have moved cautiously and moderately. A review of the Federal court decisions and of the views advanced by judges during hearings on reapportionment would show that the Federal judges have approached this issue with restraint and have given State legislatures every reasonable opportunity to reapportion themselves. The standard pattern, repeatedly followed by the courts, has been to give the legislature time to reapportion before the courts have acted. The courts have then reviewed the legislative product. Sometimes they have approved, sometimes they have given tentative approval pending a better apportionment law by the next legislature. Rarely the courts have been forced to put into effect, as in Alabama, a judicially designated apportionment.

The reaction of legislatures in many States, however, has been to seek the minimum amount of change that might satisfy the courts or to make improvements in one house but make the apportionment even less equitable in the other. In many States there has not been an honest effort to comply with judicial requirements. In those States where the legislature has now been given only months instead of years to reapportion, it is largely the fault of legislators who gambled on winning court approval for apportionments that were little better than those of the past. There is no need for delay, beyond the delays granted—in the past and at the present—by the courts. Rather there is a need to settle the apportionment problem, to accept and apply the principle of equality in both legislative houses, and to put an end to footdragging.

There is no evidence that the American public is disturbed by the Court's decisions on apportionment or by the principle of population equality in the legislature. A recent Gallup poll showed a solid majority in favor of basing apportionment in both houses on equality. In fact, there is considerable apathy and ignorance concerning the problem. But leaders of opinion, and the better informed citizens in the metropolitan sections of the country have welcomed the apportionment decisions as long overdue. Editorial opinion has been generally favorable. In those States where the legislature has complied with the judicial decisions, there has been general approval, and no evidence of public dismay. The resistance to the Court's decisions on apportionment comes, instead, from the legislators themselves and from a few of the interests that believe they have more to gain from malapportionment. The legislators' reaction is understandable, and there is no doubt that some political careers will be eclipsed; but the personal interests of a few hundred legislators are hardly as important or worthy of protection as the interests of millions of Americans in an equal voice in government.

THE REAL ISSUE: POLITICAL EQUALITY

The real issue we are debating is not whether the courts should slow down or whether the Congress should interfere with the enforcement of judicial decisions. The sponsors and supporters of this proposal for delay are frank to admit that their objective is to lay the groundwork for measures that would reverse at least some part of the Supreme Court's decisions on apportionment. One plan would be to limit the principle of population equality to one house of the legislature, leaving the States free to use any standard for the second house. The more drastic Tuck proposal would strip the Federal courts of authority to protect citizens in their exercise of voting equality in legislative elections. The real issue is whether we will turn back the clock and undo the reforms that have been undertaken.

It has been argued that the practice of basing apportionment in one house is so widely accepted as to be almost a principle of democratic government at the State level. This claim deserves to be examined closely. Controversy over apportionment dates from the earliest history of the States. During the period of Jacksonian democracy most of the States removed property qualifications for voting and as their constitutions were revised they retained or added provisions using population as the primary base of apportionment. The Northwest Ordinance of 1787 had stipulated that the legislature should be apportioned by population in the territory. The principle of population was only partially diluted by provisions assuring each county a minimum of representation, perhaps in one house. In the early 19th century such recognition of local units of government did not cause serious distortions in apportionment by population because the contrasts between densely and sparsely populated counties were small. It was only when the trend toward the cities began that the problem became acute.

In some States, during the latter part of the 19th century, the rural interests hastened to add constitutional provisions that would perpetuate their control despite the surge of population to the cities. In other States the rural interests succeeded in retaining constitutional provisions that had only recently begun to have inequitable results. In some States the rural interests, still holding a legislative majority, simply ignored State constitutional provisions requiring reapportionment. Sometimes, as in Illinois where the deadlock lasted half a century, urban legislators and voters agreed to compromises that minimized the effect of population in one house in order to win compliance with the constitutional provisions for periodic reapportionment of the other house. Whether they were defending, revising, or ignoring the State constitution, the rural majority in the legislature was simply perpetuating its own power.

It is easy to describe legislative apportionments that give minimum weight to population as balanced plans or compromises that reflect the political philosophy of the State's citizens. In fact, however, these apportionments usually reflect simply the success of a legislative majority in maintaining their power in one or both houses despite the fact that they no longer represent a majority of the State's citizens. Rarely have the voters of a State deliberately chosen a plan of malapportionment unless the alternative was an apportionment that was older or more arbitrary in its effect. The population principle was initially the major principle in the apportionment of most State legislatures, and the effect in the early legislatures was an apportionment that was equitable in practice. The population principle has been eroded by population trends, and by the unwillingness of those in power to yield that power to urban voters.

The issues of majority and minority rights are as old as the history of political thought. It is one of the virtues of a democracy that it respects both majorities and minorities and devises institutions that will make this respect meaningful and realistic. In the debate over apportionment the issue of majority rule and minority rights is often simplified so drastically that it becomes meaningless. It is true, of course, that when a

majority of the voters living in large cities can elect only 15 or 20 percent of the legislators a majority is being reduced to a minority voice in government. It is also true that in many States the rural voters would have only a small minority of legislators under an equitable apportionment. But the debate over majorities and minorities often assumes that both urban (or metropolitan) and rural (or nonmetropolitan) legislators vote as a bloc. This is simply not true. Several studies of rollcall voting in legislatures have demonstrated that such cohesion of urban and rural forces is rare. Urban interests, in particular, are divided because of the wide variety of viewpoints represented in a large metropolitan area. Nor is it true that, in States like Oregon and Massachusetts that have had quite equitable apportionments, the urban legislators have either voted as a bloc or have ridden roughshod over the rights of the small cities and counties. This simply has not happened, and no one who understands the legislative process in the States would expect it to. In fact our metropolitan areas are becoming more diverse all the time. The growth of modern suburbia to a majority position in some metropolitan areas means that the largest beneficiary of reapportionment will be those voters who are least likely to be cohesive in their views and voting, least likely to be bossed or managed.

In reality the political struggle in any legislative body, as in political society as a whole, is a conflict among groups—all of which are minorities. Legislation is, in part, a result of the arguments and political strength of these various groups. Some of these groups have greater access, are more effective and influential, when rural legislators are in a majority or are more numerous than an equitable apportionment would permit. When the rural voter is overrepresented, the interests that may benefit are not necessarily rural; they may be businesses located in a distant city. The legislative process is too complex to measure precisely the effect of any particular apportionment on various interests. For this reason, the effort to protect certain groups—such as the farmer—by overrepresentation of certain counties, is not necessarily successful.

The conflict over apportionment is not really a conflict over majority and minority rights—because there is not, in any of our States, any cohesive, identifiable majority. The question is whether certain minorities should have more votes in legislative elections than others do. When the cities and suburbs are underrepresented, certain minorities lose a part of their voice in government. One of these is the suburban dweller, who is so indefinable a type that we might more properly divide him into various subgroups. Another minority is the labor union member. Another member clearly discriminated against by malapportionment is the Negro. Most Negro voters live in metropolitan areas, North and South.

We have many ways of protecting minority groups in this country. The U.S. Constitution and the State constitutions contain bills of rights that serve this purpose. The recent civil rights law is one example of legislative protection for a minority. But there is no reason why one minority, residing in the least populated counties, should be singled out for a special kind of protection. As Justice Warren said in the apportionment decision: "Our constitutional system amply provides for the protection of minorities by means other than giving them majority control of State legislatures."

Many persons have been disturbed by the Court's willingness to reverse decisions on reapportionment taken by the voters in a State, such as Colorado. It can be argued, as the Court did, that the issue in an apportionment referendum is seldom clear cut and voter understanding of such questions is often not great. But the fundamental reasons why the courts cannot be bound by a public vote on apportionment involve this issue of minority rights. The question of apportionment reached the Supreme Court under the 14th amendment, and the Court's decision was based squarely on the equal protection clause of that amendment. This constitutional provision has been consistently used to protect minority rights. As the Court has said: "A citizen's constitutional rights can hardly be infringed upon because a majority of the people choose to do so." It does not matter that a majority of voters in every other county in California voted against increasing the representation of Los Angeles County, for example. Voters have a right to an equal vote, whether they are a minority (like the 40 percent of Californians living in Los Angeles) or a majority (like the majority in Florida's six largest counties). The issue is not a conflict of majority and minority. There is, in political reality, no meaningful majority bloc—urban or rural. What is at stake is the votes of individuals.

There is no more reason why a majority of voters in a State should be able to devalue the votes of citizens in a few large cities than there is why a majority of voters should be permitted to disenfranchise Negro voters. And there is no more reason for Congress to intervene in judicial decisions protecting the value of the vote than for Congress to intervene in judicial decisions protecting the right to vote itself. The right to vote is a fundamental right, recognized by those Senators from the South who dispute the importance of other aspects of the civil rights bill. If the right to vote is fundamental, the right to have substantially an equal vote must be nearly as basic. If a constitutional amendment were passed to reverse some or all parts of the apportionment decisions, this would be the first time in American history that Congress had sought by constitutional amendment to restrict the rights, and specifically the voting rights, of American citizens.

ONE HOUSE OR TWO?

The Supreme Court's decision that the population principle must be applied to both houses of the legislature has been the subject of the most intense criticism and it is this aspect of the apportionment decision that is the target of a proposed constitutional amendment. The comparison of the State legislature with Congress, the so-called Federal analogy, has been so often disproved that it needs little comment. The States are not Federal systems, the counties lack the rights and prerogatives enjoyed by States in a Federal system, and the system of representation in the U.S. Senate is the product of historical compromise that is not pertinent to the experience or the needs of the States. The Federal analogy has no basis in law, in history; in constitutional theory. It is but a debating point.

If the case for reapportionment rests on equality of political power, of access to the legislature, for all citizens, it is impossible to make a distinction between one house and the other. If our citizens needed protection from government, it might be enough to grant equality of vote in a single house, but the role of government is positive and not negative. Today voters seek benefits from government, measures of health, education, welfare, measures to assist cities in meeting their responsibilities, and the distribution of State funds to localities. For these purposes, equality of representation in one house is not enough. There must be an equal voice in both houses, or a minority may be able to exercise a legislative veto to block measures desired by a majority.

In those States where only one house is based on population, the consequence is not compromise and a balancing of interests, usually. The result is deadlock, buckpassing, and irresponsibility. Sometimes the result of a single malapportioned house is that one political party cannot hope to win both houses even though it elects a Governor and wins a majority of the votes cast for legislative office. Under these conditions the voters have a limited choice. They may elect a Governor and a legislative majority that are Republican, or they may choose a divided government, but they may not choose a Democratic legislature.

In other States it is the Republican Party that is similarly discriminated against. In fact it is not a political organization that is discriminated against in such States; it is the majority of voters who are unable to translate their votes into a partisan majority in the legislature. The result of divided government, so often encouraged by malapportionment, is irresponsibility. If the legislature acts unwisely, or fails to act, the average voter—and often even the best informed voter—is unable to determine which party, or which house, is to blame. Deadlock becomes the order of the day. And if compromise is achieved under these circumstances, it is likely to be the consequence of patronage and logrolling rather than an adjustment of views and interests in the best sense of the term "compromise."

Increasingly our States are developing two-party systems that are actually competitive. In many of these States party cohesion in the legislature is high, or at least growing. An apportionment system that guarantees or encourages deadlock or that excludes one party (but not the other) from the chance of winning control of government (which is the very reason for a party's existence) is a system that undermines the two-party system itself.

THE CONSEQUENCES OF EQUITABLE APPORTIONMENT

No man can predict exactly what changes would result from equitable apportionments in those States that have been malapportioned. The precise political and policy results are often unclear. But a few predictions can be made, and these point up the necessity of permitting this reapportionment movement inspired by the courts to continue unchecked.

Increasingly the problems of our States are urban ones, the problems of rapid metropolitan growth, of crowded cities, expensive urban highway systems, greater demands on the educational and welfare services that are heavily concentrated in the cities. Reapportionment will not solve these problems or assure that any particular approach to them will be adopted. It will, however, guarantee that a greater proportion of legislators have knowledge and understanding, first-hand, of the problems of urban America. No single step will strengthen the States more or enhance their ability to deal with these problems. No greater encouragement to urban citizens to seek Federal help for their problems could be imagined than destroying their chances for an equitable voice in the State legislature. It is not reasonable to assume or expect that urban citizens will give up in their efforts to deal with their needs. If they cannot be met in the State capitols there will be even greater pressure for action in Washington. The States have a role, a major role, to play in the federalism of the next few decades, but they will not play this role well if the legislatures are ill-equipped to respond to the demands of the voters.

Thirty years ago the rural defenders of the status quo warned that big city machines would dominate the State. These machines are increasingly a myth or a hollow shell. But the major beneficiaries of reapportionment are going to be the suburbanites, whose votes are rarely controlled by any machine, urban or rural. Reapportionment will have

at least short-run effects on political parties that can be predicted. It will help the Democrats in some States and the Republicans in others. It will tend, in most States to intensify party competition at the State level by helping minority parties. But, in political terms, reapportionment on the basis of population equality will increase the representation of those areas that are most marginal, most competitive. In the longer run, traditionally strong one-party areas, both urban and rural, will lose representation, and more legislators will be chosen from genuine two-party districts. This in itself is a healthy thing, a step in the direction of revitalizing our political system and increasing the interest of voters.

Following are statements made by representatives of the League of Women Voters of Wisconsin in support of fair apportionment in that State:

STATEMENT BEFORE THE JOINT JUDICIARY COMMITTEE OF THE WISCONSIN LEGISLATURE BY MRS. F. A. MOTE, LEAGUE OF WOMEN VOTERS OF WISCONSIN, IN SUPPORT OF BILLS 813S AND 770A (IDENTICAL) AND 812S AND 771A (IDENTICAL) RELATING TO APPORTIONMENT OF SENATE AND ASSEMBLY DISTRICTS

The League of Women Voters of Wisconsin supports bills 813S and 770A (identical) and 814S and 771A (identical). 813S is the bill drafted by a subcommittee of the legislative council of the 1959 session made up of Republican and Democratic legislators and five public members. Bill 813S is based on 812S and contains amendments to provide divisions of the multidistrict counties based on the 1960 population figures that were not available to the legislative council subcommittee. The League of Women Voters supports 813S or 812S (with amendments to apportion districts in the multidistrict counties) because they both more fully carry out the principle of representation based on population than does 815S. Bill 813S provides many more districts nearer the ideal size than does 815S. Under 813S there would be 26 assembly districts within 1,000 of the ideal (39,500) while there are only 13 (exactly half as many) within 1,000 of the ideal size in 815S. There are 48 districts within 3,000 of the ideal size in 813S and only 32 within 3,000 in 815S. In the Senate, 813S creates 4 districts within 3,000 of the ideal size while there are none within this range in bill 815S. Bill 813S contains 18 districts within 9,000 of the ideal size. Only 14 fall in this range in 815S. Bill 813S, as demonstrated by the number of districts it has created nearer the ideal size, has done a more complete job of reapportioning the whole State than has 815S.

In addition, 815S does not provide Milwaukee County with fair representation. The framers of the bill have evened the districts in Milwaukee County to range in size from about 40,000 to 45,000. There are, however, fewer districts near the ideal size in 815S than in 813S. It also results in leaving over 87,000 Milwaukee County residents without representation in the legislature. If you multiply the ideal sized assembly district by the 24 districts allowed Milwaukee County under 815S and subtract this total from the population of the county, you find that over 87,000 people in the county are not adequately represented. This number more than equals the number necessary for two more assembly districts. In no other part of the State is there a district with even half that number unrepresented. In fact there are 7 counties with under 86,000 people that have 2 legislative districts each.

There are constitutional restrictions which make it impossible to give some districts the representation to which they are entitled, but these same restrictions make it necessary to overrepresent other areas and in some cases grossly overrepresent them. In Milwaukee County these restrictions do not create such problems in the same magnitude and there is an opportunity to create districts of almost ideal size. We believe that 813S (770A) apportions Milwaukee County more fairly as well as creating more districts for the whole State nearer the ideal size.

The League of Women Voters began its study of apportionment in the early 1930's and has supported population apportionment since that time. Our studies have confirmed the belief that equality of representation gives people more respect for government. Recently, Roscoe Drummond of the Christian Science Monitor reiterated arguments made by the League of Women Voters in support of population apportionment. He says that if State legislatures are representative of the people and responsive to voter opinion, the trend of the disenfranchised city voter to go to Washington for everything will be halted. States rights will be strengthened because the capacity of fairly apportioned legislatures to discharge State responsibilities will be strengthened. It is interesting to note Drummond's final point—he suggests that if States were fairly apportioned perhaps there would have been no agitation to establish a Cabinet post of Department of Urban Affairs.

The League of Women Voters looks to the present legislature to reaffirm the people's respect for State government by recommending bills 813S and 770A or bills 812S and 771A (with amendments) for passage.

STATEMENT BEFORE THE JOINT JUDICIARY COMMITTEE OF THE WISCONSIN LEGISLATURE BY MRS. H. A. LARDY, DIRECTOR, LEAGUE OF WOMEN VOTERS OF WISCONSIN, IN OPPOSITION TO JOINT RESOLUTIONS 116S, 117S, 152A, 155A, AND 156A, RELATING TO CHANGING THE CONSTITUTION TO INCLUDE AREA IN APPORTIONMENT OF SENATE DISTRICTS AND IN CASE OF JOINT RESOLUTION 155A IN APPORTIONMENT OF ASSEMBLY DISTRICTS

The League of Women Voters of Wisconsin opposes Joint Resolutions 116S, 117S, 152A, and 156A which amend the constitution to include area in apportionment of State senate seats and 155A which includes area in apportionment of assembly seats. Proponents of area representation argue that because the U.S. Senate has two Members from each State, regardless of size, that State legislative bodies might also constitute one house that way and, in fact, many do. The League of Women Voters would like to remind you that these divisions of government are not comparable. The Thirteen Colonies were independent sovereign States, but counties are arms of the State government and not entitled to representation as independent sovereignties might be.

Wisconsin can be proud indeed that it did not follow the example of many States that adopted the Federal system without realizing the fundamental differences between State and Federal Government. Wisconsin was the 30th State to be admitted to the Union and was one of the Midwestern States, which because of an increasing appetite for democracy broke the pattern of adopting the Federal system. The people of Wisconsin wisely chose representation based on population in both houses of our legislature.

It would be ironic if, at this juncture in history when the U.S. Supreme Court is setting States on the road to more representative apportionment, Wisconsin would step backward down the path to less representation by changing the constitution to include area.

The League of Women Voters of Wisconsin urges you to maintain Wisconsin's proud place in the history of population apportionment by rejecting Joint Resolutions 116S, 117S, 152A, 155A, and 156A.

STATEMENT BEFORE SENATE JUDICIARY COMMITTEE OF THE WISCONSIN LEGISLATURE BY MRS. MARSHALL BEAUGRAND, DIRECTOR, LEAGUE OF WOMEN VOTERS OF WISCONSIN, IN OPPOSITION TO JOINT RESOLUTION 12, S (AMENDING THE CONSTITUTION TO DENY FEDERAL COURT JURISDICTION OVER STATE LEGISLATIVE APPORTIONMENT)

I am Mrs. Marshall Beaugrand of Racine, appearing on behalf of the League of Women Voters of Wisconsin in opposition to Joint Resolution 12, S. The league has for many years supported redistricting and reapportioning of legislative seats on a population basis at regular intervals, as provided in our State constitution. We have recently strongly reaffirmed this position.

Naturally we, too, are very interested in the decision of the Supreme Court in the Tennessee case and have watched to see what effect it would have in other States, as well as in our own. If we understand it correctly, in the Tennessee case the Court has said, in effect, that State legislatures are not free to deprive the citizens of a State of their rightful representatation in their State legislatures. And if we understand correctly the intent of Joint Resolution 12, S, it says, in effect, that State legislatures are free to do this very thing. Further the resolution says that the people of a State may never appeal to the Federal court in the matter of representation, no matter how serious their grievance might be. People who do not have their just measure of representation in the legislative bodies that make decisions affecting their lives are not free people. To the extent that we are deprived of this right, we have a grievance. In our State courts, and in the laws and Constitution of the United States, we are entitled to redress of grievance. But this resolution would take away this right under the U.S. Constitution, as it relates to the representation of citizens in their State legislatures, an area of continuing controversy, since we could not petition a silent court.

Over the years, we have learned something of the problems of reapportionment, and understand that there are difficult, personal, partisan, and economic questions involved in this issue, and that it truly is something over which reasonable men may disagree. We followed the session last summer and saw that the disagreement among legislators can be bitter, almost violent at times. As a matter of fact, ordinary citizens can get quite upset over it, too. But a controversy can be taken in stride when it's all in the framework of our government. The rules for our protection are there, and the game is played out according to the rules that we know and respect. This joint resolution would change those rules.

Those of us who watch the operation of State government and who know a little of government in other States take great pride in Wisconsin. We are confident that we can break through our problems in Wisconsin, rather than breaking down under them. We aren't perfect, of course, but as many textbooks on State government point out, Wisconsin has often been the first State to take this or that constructive action for good government. It seems unlikely that proposals such as those embodied in this group of joint resolutions could ever have originated in Wisconsin—they are unlike Wisconsin ideas. In our opinion, they urge us to take rash and excessive action. In this connection, we note that the courts have not acted rashly or excessively—they have acted with considerable restraint. We earnestly hope that this committee, and the legislature, will act with restraint and prudence,

and will refuse to recommend or to adopt joint resolution 12, S.

STATEMENT TO ASSEMBLY COMMITTEE ON ELECTIONS BY MRS. WILLARD HURST, LEAGUE OF WOMEN VOTERS OF WISCONSIN, IN PARTIAL SUPPORT OF JOINT RESOLUTION 77A, RELATING TO A SUPPLEMENTARY AGENCY FOR LEGISLATIVE REAPPORTIONMENT

The League of Women Voters of Wisconsin favors amending the State constitution to provide a supplementary agency to carry out legislative reapportionment if the legislature fails to act. In our studies of apportionment procedures we considered also the possibility of taking the responsibility for this painful job entirely out of the hands of the legislature by providing automatic reapportionment, as six States do. But most of our members preferred merely to establish a supplementary agency. It would either be a spur to action by the legislature or it would do the job itself.

Eight States now provide an alternate procedure if the legislature fails to act. Five of these alternate procedures are commissions. They have 5 to 10 members, some or all of whom are State officials as provided in the proposal before us.

While the league supports the main point of this resolution, we question one provision. That is to have the chief justice as a member of the reapportionment commission. Even before *Baker* v. *Carr*, the Wisconsin Supreme Court reviewed the constitutionality of Wisconsin apportionment acts. So it seems the chief justice should not be involved in the process at another stage than that of court review.

We do, however, clearly support a supplementary agency to reapportion if the legislature fails to do so within the time provided in the State constitution.

Prof. Harlan Hahn, now on the faculty at the University of Michigan, has done extensive research on Iowa government and politics. This is his statement based largely on the reapportionment situation in Iowa:

THE UNIVERSITY OF MICHIGAN,
SCHOOL OF PUBLIC HEALTH,
Ann Arbor, Mich, August 28, 1964.

Senator PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SIR: I received a letter yesterday from William J. D. Boyd, senior associate of the National Municipal League, asking me to send you a statement on State legislative apportionment which the Senator might use in the current debate on this subject on the Senate floor. Although I have recently accepted a joint appointment at the University of Michigan as a research associate in the school of public health and as an assistant professor in the department of political science, most of my previous research on reapportionment was done in the State of Iowa in connection with my Ph. D. dissertation on Iowa politics which I wrote at Harvard University.

I am, therefore, enclosing a short statement on legislative apportionment based largely upon data which I obtained in Iowa. As you will note, most of this material has previously appeared in two articles which I wrote, "Reapportionment, the People, and the Courts," Iowa Business Digest, XXXIV August 1963), pages 19–22 and "Urban versus Rural Split Shows in Vote," National Civic Review, LIII (March 1964), pages 146–147. I hope that you might find the enclosed statement useful.

Thank you very much.

Sincerely yours,

HARLAN HAHN.

MYTHS IN THE REAPPORTIONMENT CONTROVERSY

To gain a clearer understanding of the arguments which have developed since the recent Supreme Court decisions on reapportionment, it is necessary to examine carefully the propositions advanced by both sides of the controversy. This statement seems to be particularly important with regard to the claim that desired advantages would accrue to various sectors of the population through the postponement of the implementation of the Court decision requiring that all persons shall be equally represented in both houses of a State legislature. If this assertion is to be sustained, one must first discover which segment of the population will receive the greatest advantage from the failure to adopt an equitable apportionment plan promptly, and then determine whether or not this segment has supported such a delay.

Evidence on this subject can be obtained from the State of Iowa. Although the constitution of that State requires the reapportionment of both houses of the legislature decennially solely on the basis of population, prior to 1964 the Iowa General Assembly had not been reapportioned in nearly 50 years. In 1963 the legislature passed and submitted to a popular referendum a constitutional amendment, commonly known as the Shaff plan, which would have postponed equal apportionment by freezing only a slight improvement in the disparity of population and representation into the State constitution. Although this amendment was overwhelmingly defeated at the polls, both the Shaff plan and the apportionment of the Iowa Legislature prior to 1964 provide an opportunity to determine which group obtained the greatest advantage under those systems and whether or not this group supported the postponement of an equal apportionment plan.

It has often been assumed that an unequal apportionment of legislative seats gives greater representation to farmers and to geographic area. Yet the 55 least populous counties, which constituted a majority in the apportionment of the lower house of the Iowa Legislature before 1964, represent only 51.8 percent of the area and 46.5 percent of the farm residents in the State. The 50 least populous counties, which would have controlled a majority in the Iowa House under the Shaff apportionment plan, represent only 45.5 percent of the area and 40.9 percent of the farm residents in the State.

Even more striking perhaps is the fact that farm residents do not have a majority within the 50 or 55 least populous counties of the State. Statistics reveal that farm residents constitute only 40.7 percent of the people living in the 50 least populous counties and 40.6 percent of the population of the 55 least populous counties.

What group, then, would have controlled a majority in the Iowa Legislature? The Shaff plan or the apportionment before 1964 would have given the residents of small towns majority representation in the Iowa Legislature. According to the 1960 census, people living in small, incorporated towns accounted for 52.1 percent of the total population of the 50 least populous counties and 52.6 percent of the population of the 55 least populous counties. None of those counties contain towns of 10,000 or more population. Yet the population of the 20 counties having cities larger than 10,000 is 53.1 percent of the total population of the State. Within those 20 counties the people living in towns of 10,000 or more represent 71.8 percent of the total population of the counties. Thus the residents of towns of more than 10,000 population are probably the most underrepresented segment in the Iowa Legislature, while the towns smaller than 10,000 are probably the most overrepresented group.

One might therefore anticipate that voters in towns of less than 10,000 population would have provided the strongest support and that voters in cities larger than 10,000 would have evidenced the strongest opposition to the Shaff plan. Since a Federal court had already declared the apportionment which existed in 1963 unconstitutional, support for the Shaff plan in the referendum could only be interpreted as evidence of a willingness to postpone an equal apportionment scheme. As expected, cities of more than 10,000 population demonstrated the greatest opposition to the Shaff plan; and the plan was largely defeated in the 17 counties in Iowa which contain cities larger than 10,000. However, support for the Shaff plan did not follow the anticipated pattern.

Although the Shaff plan would have given majority representation in the State legislature to small towns rather than farm areas, farm townships in 19 counties supported the plan with a 70.2-percent majority. On the other hand, the county seat towns in these 19 counties opposed the plan by 56.4 percent.

In one county the farm townships recorded a majority vote against the plan. In Cerro Gordo County the farm townships opposed the plan by 52.4 percent, while Mason City, the only town in the 19 counties studied of more than 10,000 population, was 82.4 percent in opposition. When the votes from Cerro Gordo County are omitted from the total, the vote in opposition to the Shaff plan was 29 percent in the farm townships and 45.7 percent in the county seats.

Apparently voters do not always consult their self-interest when balloting on this issue. The vote on apportionment in Iowa was probably influenced more by the general configurations of urban-rural conflict than it was by the interests of the sectors of the population involved. Farmers were apparently deluded by the belief that the Shaff plan would give them majority representation in the Iowa Legislature; and small towns seemed to identify more with the viewpoint of their larger urban counterparts than with their own interests in this election.

Thus the above evidence, which has been largely compiled from two articles in the Iowa Business Digest and the National Civic Review, indicates that there are several myths in the reapportionment controversy which should be dispelled. Neither farmers nor geographical area would always gain majority representation in a State legislature through a delay in equal apportionment. And the segment of the population which would obtain the greatest advantage through the postponement of equal apportionment has not supported such a delay. There were no groups which would both gain an advantage and which have supported the failure to reapportion State legislatures promptly on the basis of population. Therefore, there would seem to be few reasons for further delay in the implementation of Supreme Court decisions.

Mr. Irving Achtenberg, an outstanding attorney of Kansas City, Mo., made the following statement on reapportionment before the Democratic platform committee:

KANSAS CITY, MO.,
August 28, 1964.

Senator PHILIP A. HART,
Senate Office Building,
Washington, D.C.

MY DEAR SENATOR: Mr. William Boyd, of National Municipal League, indicates that you are interested in public statements on the subject of reapportionment.

I enclose herewith a statement which I made before the Democratic platform com-

mittee last week, which I would be very happy for you to use for any purpose which it might serve.

We are all very appreciative of your efforts in behalf of equal representation and I personally want to cheer and urge you on in this most important political effort for equal representation.

Sincerely yours,

IRVING ACHTENBERG.

STATEMENT ON REAPPORTIONMENT BY IRVING ACHTENBERG BEFORE THE DEMOCRATIC PLATFORM COMMITTEE, AUGUST 20, 1964

Mr. Chairman, I appear before you this afternoon to urge you to consider a plank in the Democratic Party platform affirming the principle of equality of representations under the 14th amendment; supporting the magnificent decisions of the U.S. Supreme Court calling for legislative reapportonment; decrying current congressional efforts at delaying and destroying legislative reform and calling upon the States to voluntarily comply with the spirit of the Supreme Court's mandate of "one person—one vote."

The Court, by its momentous decisions in *Baker* v. *Carr* and *Reynolds* v. *Sims* has opened the judicial gates through which we can return to equal representation by population, with which our country began, but which have been eroded in the past century.

When the Thirteen Colonies became States in 1775, most of them adopted constitutions employing population as the basis for election of legislators. Through the first half of the 19th century the tendency toward political equality of persons regardless of origins or economic position, continued. The original constitutions of 36 States required that representation be based totally or substantially on population.

However, there was a shift from this pattern in the second half of the century. The growth of cities and the shifts of population from the farms became appreciable and there began to develop differences of economic and political philosophy between the citizens in rural areas and those of the cities. Despite the change to an urban-oriented economy, legislative apportionment and legislative apportionment formulas have failed to reflect the change—this has been because of the resistance of rural legislators, not anxious to vote themselves, or their friends, or political point of view, out of office.

Today over 135 million Americans—3 out of 4 of us—live in cities and suburbs. We an urban society. Yet the undisputed figures show that in most States the rural voters are overwhelmingly in control of one legislative house and overweighted, if not dominant, in the other house. In my own State of Missouri 20 percent of the voters of the State elect a majority of the lower house and 69 of the 89 rural counties favored in the lower house are also favored in the senate. The smallest county, with a population of under 4,000 has 1 representative just as does the largest district with over 55,000 people—an unfair weighting of the rural vote over the urban vote of 13.5 to 1. In each of your States you know that a somewhat similar malapportionment exists.

What is the significance of all of this? Simply that our State legislatures are not adequately handling the problems of economic and social change resulting from our 20th century life. Representative government is not working well at the State level. As a result the cities are looking elsewhere for solutions to their problems. The States are ceasing to play their proper, important role in the governmental sector of our society.

The Supreme Court has met this issue directly and forcefully. On June 15, 1964, in the case of *Reynolds* v. *Sims*, Chief Justice Warren, speaking for the majority, said:

"We hold that, as a basic constitutional standard, the equal-protection clause requires that the seats in both house of a bicameral State legislature must be apportioned on a population basis. Simply stated, an individual's right to vote is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State. The equal-protection clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable."

If I may summarize the rule laid down, it is that both houses of every State legislature must be on a population basis and each State must make an honest and good faith effort to form legislative districts as nearly of equal population as possible.

These are principles we must defend, not destroy.

Equality of the vote is not a partisan issue. It may help the Democrats in New York or the Republicans in Texas; the liberals in the large cities or the conservatives in the suburbs. The truth is that today the most underrepresented geographic group is not the voters of the central cities, but those in the burgeoning suburbs.

The fact remains that the only fair standard of representation in a democracy is people—not mountains, or acres, or economic interests. This means, and requires, equality of representation in both houses of the legislature.

The Republican Party platform proposes tampering with this fundamental democratic principle by supporting a constitutional amendment enabling States to apportion one house on a basis including factors other than population. Do not be misled by arguments that this is a fair compromise, balancing the votes between the rural interests and those of the cities. This proposal would totally resist any real change. The power of a rural group, or any other economic minority, to control one house is the power to block and destroy the voice of the majority in the other house. What other factors does the other party suggest, if not population? What virtue is possessed by those who reside in the sparsely populated areas, which is not possessed by those in more densely populated areas? Many minorities besides the farmer have special problems in their relation to their government. Organized labor is concerned with legislation affecting its dealings with management, and industry likewise is concerned with its relationship to labor; the Catholic is concerned with the growing costs of parochial education; other groups are concerned with the relationship between church and state; and resort areas want laws preserving parks and recreational areas; central cities need help with the decaying slums and problems of sewage, water supply, mass transit, zoning and urban sprawl; the Negro is concerned with civil rights and his position at the bottom of the economic ladder. Which of these economic, religious or geographic groups would have a greater voice in your State if factors other than population may control one house? If the rural voter with his special problems is entitled to a heavy weighting of his vote, why not one or all of these?

The answer is simple and absolute. Once we depart from the principle of "one person, one vote" there is no rational standard, if we are to retain our American form of representative government first proclaimed in the Declaration of Independence.

We are now confronted with a major congressional attempt either to destroy the power of the Federal courts to require equal representation or to delay and impede the implementation of court decrees. These efforts are ill-conceived tampering with fundamental, democratic, constitutional rights. We must not as a party sanction or favor any such attempts.

All of this is not to claim that equitable reapportionment will solve all our legislative ills. It is reasonable to suggest, however, that it will produce greater awareness in at least two of the great problem areas of today—the fields of human rights and urban affairs.

We are the party which in 1796 in America's first contested national election campaigned under the leadership of Thomas Jefferson on the principles of "the rights of man." We are the party that in 1960 in its platform concerned itself with the issues of human rights and human dignity—the right to useful employment, minimum wages, a decent living for the farmer, the right to a decent home, adequate medical care and protection from the economic fears of old age, sickness and unemployment, the need for better education for our children and equal opportunity for all men.

When you again this year deliberate on these specific rights of the individual, which our party defends and supports, remember that the right to vote is the most cherished and fundamental right of all, underlying, supporting and protecting all the rest.

We must not temporize, we cannot compromise the right of all Americans to an equal voice in the legislative branches of their government.

IRVING ACHTENBERG,
Kansas City, Mo.

(Attorney for plaintiffs from the underrepresented urban areas of Missouri now seeking reapportionment of the State legislature in the Federal court case of *Jonas* v. *Hearnes*.)

Following is a letter I have received from Mr. M. L. Borawick, of Midway, Wash., who has served as counsel in the reapportionment case in that State. He describes the confusion that would be created in that State by passage of the Dirksen-Mansfield rider:

MIDWAY, WASH.,
September 4, 1964.

Hon. PHILIP A. HART,
U.S. Senator, Senate Office Building, Washington, D.C.

DEAR SENATOR HART: The National Municipal League requests that those interested in opposing Senator DIRKSEN's pending bill concerning the Federal judiciary to write you since you are spearheading the efforts to defeat this measure. Since I feel strongly about this matter, I send this letter for whatever assistance it may be in your struggle.

In June 1962, I had the occasion to file the Washington State reapportionment case in the U.S. District Court in Seattle. This court was chosen because it offered a distinct advantage over filing in the State courts. The three-judge court called for by the United States Code and the direct appeal to the U.S. Supreme Court meant a faster and less expensive action than a comparable suit in the State system. As it turned out, the advantages I recited were soon apparent to all parties. The case was filed on June 6, 1962. It was decided on the merits on December 13, 1962. A decree was entered in May 1963, the delay due to the court giving the legislature an opportunity to apportion itself during its regular session in 1963. This the legislature failed to do in both regular and special session. The State appealed, and the U.S. Supreme Court affirmed the lower court on the merits in June 1964. *Thigpen* v. *Meyers*, 211 F. Supp. 826 (1962); *Meyers* v. *Thigpen*, 377 U.S. ——, 32 Law Week 3442 (1964). Thus a final decision was rendered in just 2 years after the original complaint was filed, and the preparation of extensive and expensive briefs which would have been necessary, in all probability, had the action gone from the superior court to the State supreme court to the U.S. Supreme Court was avoided.

If the Dirksen bill is passed, a litigant in this type of action will be denied these very

real advantages. Litigation will be more expensive and time consuming. In the final analysis, the public will suffer.

On the merits as applied locally, the Washington State Legislature has not apportioned itself of its own volition since 1901. Even in that year, the apportionment was but a completion of the original apportionment called for by the State constitution. Our State constitution provides for legislative reapportionment after every Federal census "according to population." An initiative measure which would have placed legislative districts close to numerical equality was passed in the mid-1950's, but the legislature emasculated the initiative.

A State court challenge to the districting failed because of failure of proof as to population figures. By 1960, the differences in population between legislative districts was as high as 8 to 1. Recent population studies show these discrepancies are widening as more and more people leave the rural and central city areas and move to the suburbs. Admittedly the discrepancies in Washington State are not nearly as bad as Vermont, Connecticut, New Mexico, and California, for example, but 8 to 1, and growing, when 1 to 1 is called for by the State constitution is bad enough.

So for the first time in 60 years, we are on the verge of obtaining not only Federal constitutional guarantees, but guarantees of our State constitution through the action of our 3 judge Federal court. A hearing is scheduled on September 14 in Seattle at which time we expect the Court to hand down a final decree implementing the Court's prior rulings that the legislative districts are unconstitutionally drawn.

If the Dirksen bill is passed, 2 year's work will go for naught, and we will probably be in a situation where an action to reapportion will be brought in the State courts resulting in a duplication of effort and creation of unnecessary and additional political uncertainty.

While I have not read of anyone articulating it on the floor of Congress, there seems to be a feeling that Congress may properly withdraw all jurisdiction from Federal courts in the State legislative apportionment area because of the precedent set down in ex parte *McCardle*, 7 Wall. (74 U.S. 506). (1869). None of the writings I have seen in connection with the Dirksen bill have pointed out that McCardle concerned itself with the withdrawal by Congress of jurisdiction from the Supreme Court of appeals from lower Federal courts in a given area while the Dirksen bill, if I correctly understand it, would deny Federal appellate jurisdiction in the review of State court decisions. This is a horse of an entirely different color. It seems that the Dirksen bill, if successfully negotiated through Congress, would bring about a fundamental change in the character of the Federal system.

Finally, the Dirksen bill would operate retrospectively to impair or deny vested rights. The analogy of this type of legislation to ex post facto laws is clear.

For the foregoing reasons, I heartily support your opposition to the Dirksen bill. If there is any further assistance I can give, please do not hesitate to let me know.

Sincerely yours,

M. L. BORAWICK.

Following is a statement made before the House Judiciary Committee by the Honorable Herman Goldner, mayor of St. Petersburg, Fla., and chairman of the Florida Mayors' Conference on Fair Apportionment:

REMARKS BY MAYOR HERMAN GOLDNER, OF ST. PETERSBURG, IN TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE, WEDNESDAY, AUGUST 5, 1964

Mr. Chairman, members of the Judiciary Committee, ladies and gentlemen, I am here today as the representative of the U.S. Conference of Mayors, as chairman of the Florida Mayors' Conference on Fair Apportionment and as mayor of St. Petersburg, Fla.

My purpose is to attempt to shed some light on a problem facing the burgeoning urban areas of this Nation which, if not given a sympathetic hearing by you and by the entire Congress, will result in further shame and shambles such as we have witnessed most recently in the heavily populated areas of New York's Harlem, Rochester, and Jersey City.

The proposed constitutional amendment you are considering would, if approved, deprive a majority of the citizens of this Nation the opportunity of fair representation in the State legislatures. This has been the case during the first 64 years of this century in a majority of States in this country.

Without fair representation in State lawmaking bodies, the needs of urban areas have been shunted aside for pork barrel programs that exist on urban-earned tax dollars and perpetuate the dynasty of rural-oriented legislators who cannot or will not face up to their responsibilities to the large numbers of people in our cities.

Bringing this matter close to home for me is the situation in Florida right now.

A strong rural power structure, elected by less than half of the qualified voters of the State, has a death grip on the helm of both houses. This power group comprises a majority of the voting body of the senate and an equally potent portion of the house of representatives.

Instead of correcting this situation to give the people the rights guaranteed under our U.S. Constitution, the people serving in these bodies have offered token plans that merely shift the districts in a manner so that their control is never lost.

This situation has become a cancer on our Nation's body politic. It is getting larger instead of smaller. It is a roadblock for urban growth that has caused the cities to take over, more costly and time-consuming means to meet the problems inherent with a large population.

To further illustrate, let us take a close look at Florida's history in reapportionment. Since 1925, Florida's State Legislature has been confronted with four constitutionally required reapportionment sessions. To date there has been a negligible amount of progress. In 1925, the creation of four new counties created four new house seats; the senate, meanwhile, through expansion and addition of counties, added six seats in the period from 1923–25. This brought the totals for the 2 houses to 38 senators and 95 representatives. These figures were not to change again until 1963.

In the intervening period, apportionment action was severely limited. In 1935, four house seats were reshuffled. In 1945, two house seats and two senate seats were reshuffled.

In 1955, with Florida beginning to swing into the most dynamic growth period any State in this Nation has ever experienced, the legislature made a vain attempt to assure forever minority control of the senate. A move to make each of Florida's 67 counties a senatorial district was soundly defeated by the people at the polls. Two other apportionment bills were vetoed by then Gov. Leroy Collins because they didn't do the job. In 1957, a special session of the legislature offered a "daisy chain" amendment that was quickly invalidated by another vote of the people.

Our first successful reapportionment was achieved in early 1963. By successful I mean only that at least something was done, although it was by no means enough to even approach fair apportionment. In the previous legislative session, 1961, a majority of the Florida Senate was elected from counties having 12.3 percent of the State's population. A majority of the house was elected from counties having 14.7 percent of the population. A plan for realinement was presented by this body for ratification by the people. This failed at the polls and shortly thereafter, a special legislative session was called by Gov. Farris Bryant.

The special session of November 1962 failed in its mission to come up with a reapportionment formula which would be more palatable than the one which had been defeated at the polls.

Another special session was called in late January of 1963, approximately 2 months before the regular legislative session was slated to open. This third special session within 18 months came up with a proposal that was immediately implemented by statute and at the same time offered as a constitutional amendment to be considered in the November 1964 general election.

Quickly acting on this plan, a new legislature was elected which offered a slightly improved but wholly inadequate representation of the majority of Floridians. The 1963 legislature was so constructed that 27.4 percent of the population elected the house of representatives while 14.5 percent of the people elected a majority of the senate.

Today these figures are a little worse as our urban areas have continued to grow larger.

Malapportionment is not an evil designed by these people who refuse to give the majority a fair voice. It is merely a convenient tool that was created by rapid growth in concentrated areas.

As the growth in our population centers has continued upward, the needs of these areas have increased. There is one major item that is most vital to people living in these populous areas—taxation.

Most people don't object to carrying their fair share of the tax load. And yet the battlecry of our Founding Fathers during the American Revolution has come back to haunt many of us who have the responsibility of leadership in large cities. That being "Taxation without representation is tyranny." In our cases, we cannot say we aren't represented. We just aren't farily represented.

An illustration: Today in Florida, a State senator from Dade County (Miami) represents 467,500 people. A State senator from the district made up of Levy, Dixie, and Gilchrist Counties represents 17,700 people. They both have the same lawmaking and voting privileges, but the senator representing Levy, Dixie, and Gilchrist Counties actually has more than 25 times the voting power of the Senator from Dade County.

There exists, therefore, not only a great deficiency in representation for our cities in State legislatures, but a definite tax imbalance which continues to get more topheavy in favor of the less populous areas.

Those who would point to the U.S. Congress and say that this is the way our forefathers meant the State lawmaking bodies to be made up also are not looking closely enough at their history books.

In 1838, Florida's first constitutional convention proposed a legislature which had a Senate and a House with districts divided as nearly equal in population as possible.

This constitution was approved by the people and was the document under which Florida was governed when it entered the Union in 1845. In the years that followed, Florida had four more "new" constitutions—yet always the principle of fair representation in both houses prevailed in the language of the documents.

There is no magic number which will give us complete fair apportionment. No equal units of population can be designated in order to do this because of the political subdivisions known as counties. We ask that within the bounds of reason, however, that those areas with massive populations be given the full right to vote and not be relegated to positions of partial citizenship through denial of representation.

The result of the malapportionment is the very thing our rural-controlled legislatures decry as the socialistic drift of the Nation through welfare and aid programs.

If the legislatures of the respective States faced squarely the apportionment responsibilities that are theirs by law, the cities would not have to continue to go to the Federal Government for help in meeting the needs of their growing populations.

In Florida, cities have no tax powers other than ad valorem property taxes. Therefore, we are pinned down very tightly on just what we can do and can't do for the people we represent. As mayor of St. Petersburg, I am in a better position than most because of some excellent management of our city affairs and because of the wonderful patience of my constituency.

However, in most cities, there is a growing unrest for those things which have been due for so long but which population centers of this Nation are only doing what must be done in order for them to survive. Take away our chances of fair apportionment and you will be thrusting on the people of this country a burden that may, in the final analysis, break our backs.

Reapportionment must be required, and it must come quickly. We proudly boast of being the most modern and dynamic nation in the world yet we are attempting to govern this great Nation through a system at the State level that is a smothering cover of mediocrity.

We had a constitutional amendment in the early part of this century that reflects what happens when people out of tune with the majority gain control. Prohibition was a mistake. Countless lives and a great many tax dollars were wasted enforcing a law that people didn't want. Don't make the same mistake with this amendment prohibiting court intervention in State apportionment. You will seal off the only chance we have left to gain our rightful place in the affairs of our State. You will be making the same mistake that our English ancestors made. Taxation without representation cannot and will not be tolerated in this country.

Mr. METCALF. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Montana is recognized for 1 minute.

Mr. METCALF. Mr. President, in the course of colloquy with the Senator from Vermont and the Senator from Oklahoma, the question was raised as to the application of the proposed Mansfield amendment to an existing court order.

I invite attention to the language. We are not only expressing the sense of Congress as to the function of a district court in any action, but also "Any order affecting the conduct of a State government." That would be specifically applicable to a situation in the State of the Senator from Vermont.

Mr. AIKEN. Mr. President, I believe that the Senator from Montana is correct in his interpretation of the language. If the court observed the sense of Congress at all, it would be helpful to our State. We have given our legislature, which meets in January——

The PRESIDING OFFICER. The time of the Senator from Montana has expired.

Mr. AIKEN. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Vermont is recognized for 5 minutes.

Mr. AIKEN. We have been given until March 31 to complete reapportionment. In the meantime, however, because of the Court's order, the Governor—who is now running for reelection—indicated that he might call a special session of the old legislature after election.

I do not know what they would do. They could conceivably vote the new legislature, which would be elected the first week in November, out of business. I do not know what the situation would be. But it would be handled much more smoothly, and a better job would be done if the legislature could meet as usual. And I am sure it could complete its work within the time which the sense of the Congress establishes as a reasonable time.

Mr. METCALF. I believe that is exactly what we are trying to do.

Mr. AIKEN. I thank the junior Senator from Montana for his interpretation. It makes sense. It was what I hoped he would say.

Mr. METCALF. Mr. President, I yield to the senior Senator from Illinois [Mr. DOUGLAS] such time as he may require.

Mr. DOUGLAS. Mr. President, the original Dirksen amendment, which in a sense, is still before this body, was aimed at delaying, and, if possible, overthrowing the apportionment decisions of the U.S. Supreme Court. I believe that those decisions were long overdue, and are basically correct, so that they should be affirmed, and not reversed. That was the fundamental reason that I am opposed to the original Dirksen-Mansfield amendment.

The population districts for the election of members of the State legislature were laid out long ago, when the States were primarily rural and agricultural, with their populations relatively evenly spread over a particular State. And the apportionment schemes which were laid down go back in certain States to the period before there was even a United States of America. For the constitutions of Vermont, New Hampshire, and New Jersey laid out a system of representation, for at least one house, based on the population situation which existed almost two centuries ago.

In a great many other States, the apportionment pattern was laid out before 1900. In general, I think that the decade 1900–1910 was the period, or almost the latest period, in the majority of the States, when the legislative pattern of representation was formed. Since those times, there has been a tremendous shift of population, both to the cities and to the suburbs.

I introduced figures early in the debate to show that, whereas even as late as 1910, only 31 percent of the population lived in areas which could be regarded as metropolitan, by 1960, 62 percent lived in these metropolitan areas. Today, probably the figure is close to two-thirds. With the rapid movement toward the cities and suburbs, this percentage will shortly become 70 percent, 75 percent, and then 80 percent. But the States have been held to the legislative system of apportionment based on conditions which have long since disappeared. Of course, those who benefit from this malapportionment do not want to change it. The politicians in the small communities and small counties do not want to change it. It would mean diminishing their power. The big corporations and private utilities do not want to change it, in the main, because they find it easier to control the legislators from those districts than they would the legislators from the cities and suburbs. So there are powerful forces in opposition to the decisions of the Supreme Court.

The Supreme Court acted only after no other practical remedy was presented or possible. The existing, malapportioned legislators have refused to reapportion themselves.

The State courts had refused to intervene, even when, as in many cases, including my own State of Illinois, the State constitutions prescribed a reapportionment every 10 years according to population. This injunction was violated decade after decade. And the State courts stated that they were powerless to interfere. The Federal courts withheld action for a long time.

In the famous case of Colegrove against Green, with a somewhat divided opinion, the Supreme Court refused to interfere. But, when it became apparent that there was no other remedy, that the legislatures would not act and the State courts would not act, then the Supreme Court stepped into the breach.

It has now been charged that it did so in a legislative fashion because they thought it was proper to reapportion. And, I dare say they did so believe. It has been charged that they did not do so under the Constitution. I deny that.

There is an amendment to the Constitution which a great many people try to ignore. It is the 14th amendment. And the 14th amendment provides that no State shall deprive any person of the "equal protection of the laws." That is a part of the Constitution. The Supreme Court reasoned, "How can people be granted the equal protection of the laws if they have grossly unequal representation in the legislative bodies which make the laws?" If they are substantially underrepresented, they will not be accorded the equal protection of the laws.

I do not see that there is any answer to that logic under the Constitution. Some have quoted Justice Harlan's dissent. But, I would remind the Senate that Justice Harlan was almost the sole dissenter as far as the logical and constitutional aspects of the issue are concerned.

It is true that the present pattern of apportionment demands change. We have placed some of these figures in the RECORD. But, they are worth repeating again. Let me take the case of the lower house of the various bodies. We have cited the horrible example of Vermont, where a town of 36 people has the same representation as a city of 38,000.

In Vermont, it is not merely a question of disparity between the most overrepresented and the most underrepresented towns. But, 12 percent of the population

of Vermont can elect a majority of the lower house.

In Connecticut, 13 percent of the population can elect a majority of the lower house. I see in the chair the distinguished junior Senator from Connecticut [Mr. RIBICOFF]. He presided with great efficiency as Governor of that State. He knows what I am talking about.

In Delaware, 18 percent of the people elect a majority of the house. In Florida, it is 30 percent. And until recently, it was only 15 percent. The figures which I have, as of June 21, show that Kansas elects a majority of the house with 19 percent. I believe that has been changed since June. But there are any number of States in which a relatively small proportion elect a majority of the members of the lower house of the State legislatures.

In Georgia, it is 22 percent of the population. In North Carolina, it is 27 percent. In Alabama, it is 38 percent. In Louisiana, it is 33 percent. In Texas, it is 39 percent. In Oklahoma, it is 32 percent. In Arkansas, it is 33 percent. In Missouri, it is 20 percent. In South Dakota, it is 38 percent. In Utah, it is 33 percent. In Nevada, it is 29 percent. And in Washington, prior to the recent apportionment, it was 35 percent.

In New York, 35 percent of the population controls the lower house; in Ohio, 29 percent; and in my own State of Illinois, 40 percent. Even in the lower houses, which in general, outside of New England, are supposed to be the popularly elected body, a relatively small minority of persons living in rural areas controls even the lower house.

When we come to the State senates, the situation is even worse: In Nevada, 8 percent can elect a majority of the State senate; California, 10 percent; Arizona, 14 percent; New Mexico, 14 percent; Florida, 15 percent; Maryland, 14 percent; New Jersey, 19 percent; Montana, 16 percent; Idaho, 17 percent, and so on. In Illinois, it is 29 percent.

Mr. President, our time is drawing to a close. It is interesting that the proponents of the Dirksen amendment and the opponents of the Mansfield substitute have really not taken the floor today.

Many of us were reluctant to accept the proposed change, but we are confident that it will not interfere with the decisions of the Supreme Court. The only adjustment that might possibly be made would be to give the legislatures a little more time in which to reapportion. But this is not to exceed 6 months.

The resolution would not be a law. It would not be mandatory. It would merely make a suggestion to the lower courts but not to the Federal circuit courts or to the Supreme Court. It would state that in our opinion any delay should not be more than 6 months at the outside, and if the States do not act in that time, the courts, in our judgment, should proceed to apportion in accordance with the decisions of the Supreme Court. I agree with the able discussion by the senior Senator from Wisconsin [Mr. PROXMIRE], who pointed out that all it says is that these lower courts "could properly" take the need for a slight delay into consideration "in the absence of unusual circumstances."

I hope very much that the present Mansfield amendment will be adopted by a big majority. It is the best which we can obtain in an imperfect world.

Mr. AIKEN. Mr. President, for purposes of clarification, I have a couple of additional questions that I should be glad to have answered in the time that might be available to me.

Mr. METCALF. I shall be glad to try to answer them.

Mr. AIKEN. I do not know how much time remains. I believe there is time enough for all of us.

The first question is as follows: Would the Senator consider a court order directing the State Legislature of Vermont to do something that had been prohibited by the Vermont constitution since 1793 as constituting "unusual circumstances" within the meaning of the pending amendment? If a court called upon the State legislature to do something which is prohibited by the State constitution, would that constitute an "unusual circumstance"?

Mr. METCALF. A State constitution could be as unconstitutional under the 14th amendment as a State statute. When the constitution of Montana was adopted, a provision was inserted in the constitution providing that each county shall have not more than one senator. At that time one of the greatest constitutional lawyers in Montana said, "That provision is a violation of the 14th amendment of the Federal Constitution." That statement was made 75 years ago. He said, "This is not a republican form of government."

Mr. AIKEN. Would it be an "unusual circumstance" for a court to order a State to do something which has been recognized as unconstitutional within that State since 1793? That is 171 years. Would that not be a rather unusual circumstance?

Mr. METCALF. That is the reason that the clause containing the words "unusual circumstances" is included in the amendment. It would give a three-judge court some latitude in determining whether or not strict enforcement of an order should follow. But that would be up to the judges to ascertain under the facts of the particular case. There would be more facts involved than the Senator has presented. I have objected all along to moving in and permitting Members of the Congress to take the position of judges.

Mr. AIKEN. I am speaking of the meaning of the amendment rather than any decision of the judges. I am asking whether, within the meaning of the amendment, a violation by a State of provisions of a constitution which it had held for 171 years would constitute an "unusual circumstance"?

Mr. METCALF. That would be the opinion of the Senator. That might be my opinion. That might be or might not be the opinion of the judge. I repeat that, as I understand the amendment, we would say to any district court having jurisdiction that any order heretofore entered should be postponed until the legislature had an opportunity to meet or waive an election, unless there are unusual circumstances.

Mr. AIKEN. Another question has arisen which perhaps the Senator might be able to answer. The pending amendment provides that the court could properly permit a legislature to reapportion only in the absence of unusual circumstances. Why not permit the legislature to reapportion if there are unusual circumstances, particularly when the legislature has been so directed by the court?

Mr. METCALF. I do not believe that the amendment so provides. The amendment is directed to a district court in any action that is pending or any order that has been issued affecting the conduct of the State government, and provides that that court may properly permit the legislature to meet and permit the next election to be held.

Mr. AIKEN. Then it is the understanding of the Senator from Montana that the intent of the amendment would be to permit a State legislature to reapportion its legislature even though unusual circumstances might exist.

Mr. METCALF. If there are unusual circumstances that would cause the court to decide otherwise, the amendment would give discretion to the court. But unless they were unusual circumstances, it is our intention, if we adopt the amendment, to say that it is the sense of Congress that legislatures should properly be permitted to meet in not more than 6 months and reapportion themselves.

Mr. AIKEN. Whether or not "unusual circumstances" prevail.

Mr. METCALF. The provision relating to "unusual circumstances" is intended to give special discretion to a court in cases in which the ordinary admonition that we are putting into the sense of Congress resolution should not prevail.

Mr. AIKEN. If the legislature refused to reapportion, or was unable to reapportion—I believe at a recent session the legislature of Connecticut found itself in that position—the district court could step in to reapportion.

Mr. METCALF. The Senator is setting forth some of the facts that might be taken into consideration.

Mr. AIKEN. It is the intent, then, of the amendment that a State legislature should be permitted to reapportion whether or not "unusual circumstances" prevail, and if they are unable to do so for any reason, the district court may take over.

Mr. METCALF. I cannot agree to that. It is the intention of the amendment to admonish the various district courts that have jurisdiction of actions or have entertained orders that they should give the legislatures the right to meet. An election should be held at the next election under the existing laws of the State, unless there are unusual circumstances that would require some other action.

Mr. AIKEN. The Senator has already indicated that directing a State to violate a constitution which has been observed for 170 years might be an unusual circumstance, or the fact that a Federal court had already directed a State to reapportion within a certain time might be an unusual circumstance. I would say that if those are unusual circumstances, the legislature would have to be permitted to reapportion rather than turn the question over to the district court.

Mr. METCALF. The Senator reads the amendment differently from the way in which I read it. I would say that the general rule that would be laid down under the amendment would be that the legislatures should be permitted to meet and reapportion.

The general rule laid down is that the next election be permitted to be held under the laws of the State, unless there are some special or unusual circumstances that should prohibit it. So the general rule the Senator is trying to have laid down is that the legislature of Vermont should be permitted to apportion in the next general session of the legislature unless the judge decides, in his discretion, that there is something that would prevent it.

Mr. AIKEN. And the members of the legislature elected November 3 would be meeting in January.

Mr. METCALF. Under the laws in existence on September 20.

Mr. AIKEN. I believe that we have become about as involved as it is possible to be.

Mr. METCALF. The Senator from Vermont is using the expression "unusual circumstances" to try to justify something. As I understand, the unusual circumstances would be taken into consideration only to prevent the operation of the sense-of-Congress resolution that the legislature shall meet and reapportion, and that an election shall be held on November 3.

Mr. AIKEN. What the Senator from Vermont is asking, what he hopes the sense of Congress resolution provides, is that the legislature of Vermont which will be elected November 3 and which will meet the first week in January, is given 6 months' time to reapportion.

Mr. METCALF. That is what the resolution provides.

Mr. President, I should like to reserve the rest of my time. May I ask how much time I have left?

The PRESIDING OFFICER. There are 9 minutes remaining on the side of the proponents.

Mr. METCALF. How much on the side of the opponents?

The PRESIDING OFFICER. The opponents have 48 minutes.

Mr. METCALF. Mr. President, I should like to have a quorum call and be allowed to retain our 9 minutes.

Mr. AIKEN. Mr. President, the only request I have is for 10 minutes by the Senator from Illinois [Mr. DIRKSEN], but not until after 2 o'clock, because he is trying to have lunch.

Mr. METCALF. Mr. President, I ask unanimous consent that there may be a quorum call, and that the proponents will still have 9 minutes remaining.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. AIKEN. Mr. President, I do not anticipate any further requests for time. I will not say there will not be any. Therefore, I would not want to yield back my time; but let us have a quorum call without charging the time to either side.

Mr. METCALF. With the understanding that the proponents still have 9 minutes.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT REQUEST

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, immediately after the vote on the Mansfield amendment, not to exceed one-half hour be allowed for various possible motions to table which might be offered before the time would begin to run on the motion to refer to the Committee on Foreign Relations the conference report on S. 2687.

I have cleared this request with interested Senators, including the distinguished chairman of the Foreign Relations Committee, the Senator from Arkansas [Mr. FULBRIGHT].

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

THE ROLE OF THE FEDERAL COURTS IN THE REAPPORTIONMENT OF STATE LEGISLATURES

Mr. DIRKSEN. Mr. President, I try to take as even an approach to the problem of reapportionment and the effect of the court decisions on this problem as I can, and take account of the scholarly literature in this field. I ask, therefore, that there be printed at this point in my remarks the winning essay in the 1964 Ross Prize Essay Competition, conducted annually by the American Bar Association pursuant to the bequest of the late Judge Erskine M. Ross. The contest was open to all members of the association and it closed prior to the Supreme Court's decisions in the June 15 Supreme Court decisions in the reapportionment cases. The judges were Sylvester C. Smith, Jr., of West Orange, N.J., who, I believe, is a past president of the American Bar Association; Judge Richard H. Chambers of the U.S. Court of Appeals for the Ninth Circuit; and Dean F. D. G. Ribble of the University of Virginia School of Law.

This article is entitled "The Role of the Federal Courts in the Reapportionment of State Legislatures" and appears in the American Bar Association Journal for September 1964.

I call attention particularly to the following passages:

The equality of voter influence implicit in the "one person, one vote" concept is invalid when it is not limited to equality in the correlation between voters in a common constituency. The true issue involving a voter's due respecting his representation is primarily whether he has an equal voice in the choice of the representative of hm and his fellow constituents; it is only secondarily involved with the relative influence of his representative in shaping legislation compared with the influence of other representatives.

* * * * *

But, it is insisted that insofar as the Federal Courts, by implementation of *Baker* v. *Carr* of otherwise, impose upon the States an obligatory formula of geographically equal districting it will irretrievably dilute and weaken State government.

* * * * *

Baker v. *Carr* moves inecapably to confirm that observation. It does more than move from the States to the Federal Government jurisdiction over problems now of national scope. It tends to undermine the health of State governments, and its consequences should not be underrated.

The contest was won by R. W. Nahstoll, a practicing attorney of the Oregon bar. It is certainly a scholarly and documented piece of work. With some modesty, I am happy to note that the thinking of the author is not too far a departure from my own thoughts on this general subject.

I believe, therefore, as a part of the literature of this discussion it ought to be included in the RECORD. Accordingly I make that request.

There being no objection, the essay was ordered to be printed in the RECORD, as follows:

[From the American Bar Association Journal, September 1964]

THE ROLE OF THE FEDERAL COURTS IN THE REAPPORTIONMENT OF STATE LEGISLATURES

(By R. W. Nahstoll, of the Portland (Oreg.) bar)

(This is the winning essay in the 1964 Ross Prize Essay Competition, conducted annually by the American Bar Association pursuant to the bequest of the late Judge Erskine M. Ross. The contest was open to all members of the association (except officers and employees), and it closed prior to the Supreme Court's' decisions in the reapportionment cases. The judges were Sylvester C. Smith, Jr., of West Orange, N.J.; Judge Richard H. Chambers of the U.S. Court of Appeals for the Ninth Circuit; and Dean F. D. G. Ribble of the University of Virginia School of Law.)

During the latter part of the 18th century, men of good will concerned themselves with the theory and structure of government. It is immaterial that the period cannot be precisely defined, but surely from 1776 to the adoption of the Bill of Rights in 1791 these were matters of coffee house concern. Public attention to the "state of the Union" was sometimes skeptical, sometimes defiant, sometimes incredulous, but rarely apathetic. If general public interest did not ultimately supply the delicate phraseology which is the statement of the Constitution, nor yet the basic principles, it nevertheless furnished a crucible in which the ideas of the political sophisticates were refined for articulate explanation through The Federalist and similar communications.

Probably the interest in apportionment problems, congressional and legislative, has provoked currently more widely spread reflection on political theory than at any time since the founding of this country.

During the Reconstruction Period, to be sure, there was high popular interest in these affairs. But, the attendant climate of postwar hositility, despair and fatigue, aggravated

by calculated vindictiveness of some elements of congressional leadership, tended to abort, at that time, development of any valid political theory.

From time to time, issues arousing intense public responses have arisen in relatively restricted issues, e.g., President F. D. Roosevelt's New Deal, the extension of executive power, and his "courtpacking" effort of 1937. However, despite the heat generated by these issues, they provoke no significant general reanalysis of the theory of government.

And then came 1962—and *Baker* v. *Carr*.[1]

This offering proposes no effort to review the niceties of *Baker* v. *Carr*, vis-a-vis its predecessors, nor to examine the positions assumed by the several members of the Court. To anyone aware of the copious compendium already published to those ends, no conceivable purpose could justify another effort. Also, the nature of *Baker* v. *Carr* and its spawn commends the suggestion of Mr. Justice Holmes, who, in a different context, observed that "at this time we need education in the obvious more than investigation of the obscure".[2] As a milestone on the tortuous path of constitutional policy, the significance of the case is nowhere to be denied. It marks a turn that will have it live in the company of *McCulloch* v. *Maryland*[3] and *Marbury* v. *Madison*[4] which is assurance, indeed, that it likely will not be disregarded. But the disturbing effect of the Baker case results from the narrowness of the path from this turn as restricted by the labored effort of the majority to justify Federal judicial intervention in this problem on the basis of the equal protection clause of the 14th amendment and to reject the basis of the guaranty clause of article IV. I submit that the result of that election of the Court interjects the Federal Government beyond appropriate limits into internal affairs of the States by according to the Federal Government an unjustifiable power to require uniformity in the structure of State governments. The result includes potential harm by reducing or destroying the viability and genius of the "republican" form of government which is constitutionally presumed for each State.

One hundred sixty-two pages of the U.S. Reports are devoted to the collective opinions in *Baker* v. *Carr*, but the reader may indulge a private suspicion that, after the dust had settled from the Court's in camera skirmish, it might have served the purpose to rule briefly the essence of the case: To claim for the Federal Government, acting through its courts, the power and duty to intervene, on the petition of individual voters,[5] in a matter of legislative apportionment. In short unless he is to be understood as joining his brethern of the majority in limiting jursdiction to the 14th amendment, Justice Stewart's opinion might well have sufficed.

LITTLE RESISTANCE TO BAKER PRINCIPLE

There has been little resistance expressed by writers to the Baker principle that legislative apportionment is an appropriate area for Federal judicial concern and action; nor is it suggested here.[6] Indeed, one's predisposition to acknowledge the necessity of Federal jurisdiction over matters of legislative apportionment is so strong that it is astonishing to what difficulty Justice Brennan believed himself committed in order to persuade his reader to not change his mind. Few could have anticipated that the Court, when at last it faced the problem, should, or might have, ruled otherwise. The realities of our times render vain the continuing protestation of some that, "Come weal or come woe, our status is quo." Whatever may be one's attitude toward the prospect of more of the same, it is unrealistic to believe that the future holds any significant retreat from past changes tending toward centralization of authority in the Federal Government.[7] Many of the affairs of men once thought to be of only local or intrastate concern have become of concern to those in other States, adjoining and remote, and must be now resolved in the context of the several states. These interstate interests are founded, in part, on the moral responsibility of caring about the welfare of fellow countrymen. They are founded also on the realities of interstate business and the fluidity of our people. It does make a difference to a Californian that a child in Mississippi is educated today, for tomorrow they may be neighbors. It does make a difference to a New Yorker that industry is not attracted elsewhere by submarginal wages. It does make a difference to an Oregon lumberman whether West Virginia's economy sustains a market for lumber products. Moreover, Federal attention to such matters may be regarded as necessary if one accepts the cynical assumption that States consciously control the rate at which they "solve" their social problems to retard interstate flow of residents. Does any State consciously deter its solution to problems of its needy, its aged or its minorities lest solution of the problems invite the welfare and employment burdens of other states? The practical recall that the public image of prosperous California enticed droves of dust bowl needy who became a welfare and employment burden. But precisely because such matters have come within the Federal concern there is need to respect as a hazard a possible "tyranny of the majority."[8]

COURT REFUSES TO EVADE RESPONSIBILITY

Properly, it seems, the Court refused to evade responsibility for decisive action by taking refuge behind the "political question" doctrine of *Colegrove* v. *Green*.[9] If Federal protection is due the individual, where but the courts can he look for that protection? It is not satisfactory to leave the solution, as would Justice Frankfurter, ultimately to the "conscience of the people's representatives".[10] If a voter is deprived today, it is no answer to tell him that at some indefinite future time things may worsen sufficiently to evoke curative action.[11] To refuse to be limited by the "political question" theory does not require that the courts remove from the judicial arsenal the doctrine of equitable restraint to act in those cases where satisfactory State action is manifestly under way. Retained for appropriate use, it can serve an obvious function to withhold judicial action pending the State's opportunity in lieu of dismissal of the litigation.

But the unfortunate results of Baker flow from the incongruity of its unpersuasive proclamation that: (a) Under the guaranty clause of article IV, legislative apportionment as an element of the republican form of government is a nonjusticiable "political question"; and (b) Under the 14th amendment, legislative apportionment as an element of equal protection is not a "political question", and is justiciable. This distinction is based upon the Court's adoption of reasoning which began with *Luther* v. *Borden*,[12] and has now come full circle. Chief Justice Taney wrote for the Court in Luther that Congress rather than the courts, had exclusive right to decide which of two disputing State governments was the established one. The Court assumed, without explanation, that Congress was charged under article IV "to decide what government is the established one in a State * * * before it can determine whether it is republican or not."[13] The Court disregarded the distinction between (a) the choice of recognizing as the established government one of two claimants and (b) the issue of deciding as to only a single government whether it was "republican" in form, and suggested, in what was dictum with reference to the second issue, that the problem was a "political question * * * to be settled by the political power" and accordingly was committed to Congress.[14] From this origin, ensuing cases perpetuated and expanded the notion until any issue raised under the guaranty clause was judicially spurned as a "political question".[15] Now we are told by Justice Brennan that issues arising under the guaranty clause are committed to a coordinate branch of the Federal Government and respect for the separation of powers requires courts to regard

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[1] 369 U.S. 186.

[2] Collected Legal Papers 292–293 (1920).

[3] 4 Wheat. (17 U.S.) 316.

[4] 1 Cranch (5 U.S.) 137.

[5] The standing of "any person whose right to vote is impaired" appears properly resolved against the contention that such a claimant is without standing because his right is not peculiar to him, but is shared in common with all others. *Baker* v. *Carr*, 369 U.S. 186, 204–208; *Gray* v. *Sanders*, 372 U.S. 368, 375.

[6] A valuable contribution to the literature on this subject is Prof. Alfred de Grazia's book, "Apportionment and Representative Government (1962). The author says: "The least disputable general determination of the Supreme Court in *Baker* v. *Carr* appears to have been that State apportionment systems, whether contained in the State constitution or in legislation, could be admitted to examination in a case before a Federal court to determine whether they violate the equal-protection provision of the 14th amendment of the Federal Constitution (page 154)." Professor de Grazia does not, in his book, consider article IV, and in his apparent acquiescence in the Court's position excluding the guaranty clause, he is not joined by this writer.

[7] See Jackson, "The Supreme Court in the American System of Government" (1955), especially chapter III: "It is the maintenance of the constitutional equilibrium between the States and the Federal Government that has brought the most vexatious questions to the Supreme Court. That it was the duty of the Court within its own constitutional functions, to preserve this balance has been asserted by the Court many times; that the Constitution is vague and ambiguous on this subject is shown by the history preceding our Civil War. It is undeniable that ever since war ended we have been in a cycle of rapid centralization, and Court opinions have sanctioned a considerable concentration of power in the Federal Government with a corresponding diminution in the authority and prestige of State governments" (pp. 65–66).

[8] De Tocqueville, "Democracy in America," ch. XVI (for a similar warning, see The Federalist, No. 51).

[9] 328 U.S. 548.

[10] 368 U.S. 270.

[11] As Justice Goldberg observed in *Watson* v. *Memphis*, 373 U.S. 526, 533: "The basic guarantees of our Constitution are warrants for the here and now and, unless there is an overwhelmingly compelling reason, they are to be promptly fulfilled."

[12] 7 How. (48 U.S.) 4.

[13] 7 How. (48 U.S.) 42.

[14] 7 How. (48 U.S.) 46. Justice Brennan approaches acknowledgment that this part of Luther is dictum, in stating: "But the only significance that Luther could have for our immediate purposes is in holding that the guaranty clause is not a repository of judicially manageable standards which a court could utilize independently in order to identify a State's lawful government (369 U.S. 223)."

[15] E.g., *Highland Farms Dairy* v. *Agnew*, 300 U.S. 608, 612, holding that even if a State statute were a denial of a republican form of government as guaranteed by article IV, "the enforcement of that guaranty, according to the settled doctrine, is for Congress, not the courts," citing *Pacific States Telephone & Telegraph Co.*, 223 U.S. 118; *Ohio ex rel. Davis* v. *Hildebrant*, 241 U.S. 565; and *Ohio ex rel. Bryant* v. *Akron Metropolitan Park Dist.*, 281 U.S. 74.

such as nonjusticiable "political questions". But this "bootstrap" reasoning which began with Chief Justice Taney's dictum in Luther is something short of Justice Brennan's standard that a "political question" involves a "textually demonstrable constitutional commitment of the issue to a coordinate political department".[16] Luther says the questions are nonjusticiable because they are "political questions" and, as such, committed to Congress. Baker says the questions are committed to Congress and, as such, are "political questions". Then, with implicit recognition that the guaranty clause was not satisfactorily explained away, Justice Brennan undertook to nail down its coffin lid with a bewilderingly small tack:

"This case does, in one sense, involve the allocation of political power within a State, and the appellants might conceivably have added a claim under the guaranty clause. Of course, as we have seen, any reliance on that clause would be futile."[17]

It seems equally clear, that, as a guaranty clause issue, legislative apportionment is not a fortiori rendered nonjusticable by Justice Brennan's alternative standard that a political question exists where there is a lack of judicially discoverable and manageable standards for resolving the issue.[18] If standards of legislative apportionment are judicially discoverable for equal protection purposes, are they less so for purposes of article IV? And, if there were serious doubt regarding the judicial capacity "to decide the limits of the meaning of republican form" as Justice Brennan suggests in a footnote, where is greater capacity to be found?[19]

Is it a significant difference that the courts treat legislative apportionment as a factor of equal protection rather than as a factor of the guaranty clause? This involves consideration of the source and nature of the right which the Federal courts have undertaken to enforce. It is necessary to respect the distinction between congressional apportionment and legislative apportionment. The former is clearly a Federal matter, contemplating definition by Federal statute. If congressional apportionment is improperly defined by Congress or insufficiently implemented by adequate State action, and falls short of satisfying constitutional standards, it is clearly a matter of Federal remedy. Whether that remedy should come from courts or wait congressional action is an issue on which there is strong difference of judgment, but none disputes that a Federal right is in issue.

THE PROBLEM OF LEGISLATIVE APPORTIONMENT

The Court's position respecting the source of the required standard for legislative apportionment is more bothersome. On its facts, Baker might have been limited to protection by Federal concern of a right vested in the individual voters by a constitutional dictate of the State. This restraint would have left for future consideration the status of a claim of right to voter-parity in the absence of State provision, either constitutional or statutory, or against the claim that the State provision does not satisfy acceptable standards of voter-parity. Also, further consideration could have been accorded the question whether the recognized right is a federally protected right to be secure in such rights as the State has undertaken to define as the due of all its voters, or a federally protected right to federally defined voter-parity. Similarly, Baker might have been confined to situations where, as in Tennessee, there exists no provision for popular initiative.

The lower court found the Tennessee apportionment statute repugnant to the State constitution and violative of something ambiguously described as "the rights of the plaintiffs."[20] The majority of the Supreme Court expressly disregarded "rights guaranteed or putatively guaranteed by the Tennessee constitution" and, in a footnote which belied the significance of the point, boldly classified the enforceable right as one derived exclusively from the equal protection clause.[21] And there's the rub.

We must acknowledge that rights of an individual to participate in his State government on acceptable voter-parity (bearing in mind the need for definition of that term) is by its source a Federal right. But to acknowledge Federal interest in and power to enforce the individual's relation to his State government is not to define it. Nor does it suply the definition to bespangle the concept, with labels which are attractive, inviting, euphemistic, and familiar—and meaningless. Once the right is classified as a part of the equal protection principle, epithetical jurisprudence supplies labels sufficient to confuse the problem and the solution: "equal apportionment," "fair representation,"[22] "equal representation," "equality among voters,"[23] one person, one vote."[24] Through label-fixing, the problem is oversimplified and appears plausibly satisfied by judicial insistence upon a system of geographical subdivisions of practically equal population.

This solution has the appeal of relative certainty and precision. What, after all, is more certain than geography and arithmetic? But, it is also unimaginative, doctrinaire, and stifling of the representation it purports to protect.[25] Thus, one sympathizes with the frustration implicit in Justice Stewart's remark to counsel during argument of *WMCA* v. *Simon*:

"I'm only suggesting that the problems in these cases are somewhat more complicated and subtle than the briefs suggest, and cannot be solved by eighth-grade arithmetic."[26]

The Court has abandoned its actual duty to protect an equal right to share participation in a republican form of State government.[27] It undertakes, instead, to establish a Federal standard of participation in State government without allusion to whether something less, or different, would qualify as a republican form of government. Indeed, the Court consciously advoided reference to the republican structure as the measure of acceptability and gratuitously adopted the substitute test of voter equality, brooking no "invidious discrimination." It might have been possible, in the absence of further expression, to speculate that the States continued free and viable to invoke different or modified techniques of realizing representational government. But, this freedom is manifestly in jeopardy, and with its restriction the genius of republican government is seriously prejudiced, inasmuch as the essence of the individual's relation to his State is no longer voter representation. It is now voter power to influence legislative action.

The Supreme Court appears persuaded that exigencies of present society require that a theory of relatively uniform representation be adopted, found or fabricated. It has refused to recognize that the applicable standard should test whether a challenged State system is republican in form.

In its inception, the guaranty clause contemplated that the several States are interested in the republican character of their governments and those of their sister States, and the Federal Government was acknowledged as the repository of power to enforce that interest.[28] Though the guaranty clause in form is a statement of assurance to the several States, it is not confined to a Federal promise to hold the States free of antirepublican encroachment by the Central Government or extraneous forces. As expressed by Madison, the assurance contemplates that the States "may choose to substitute other republican forms" with the indulgence and protection of the Federal Government. Concurrently, the States are restricted by the obligation that their respective governments shall be "republican" in character. The significance of this continuing requirement is as surely a matter of concern to and right of the individuals within a State, as to the totality of the State's citizenry.[29] Accordingly, the pre-14th amendment Constitution should be recognized as a valid source of Federal guarantee of the right of individuals to participate in, and live under, a republican State government. The 14th amendment reaffirmed that Federal interest and duty. At least this has been clear since the overruling of the doctrine of the Slaughter-House cases,[30] which held that applicability of the 14th amendment was limited exclusively to the rights and status of Negroes.

The central issue is whether the 14th amendment did more than assure to each citizen that, in common with others in his State, he shares a right of equal protection under a "republican" State government. Until Baker, there had been no indication that the 14th amendment had changed or broadened the guaranty clause right.[31] What is that right? That the individual is due a "republican form of government" answers nothing without definition of that term.

THE SEMANTICS OF THE SCIENCE OF GOVERNMENT

We have been too long careless of the semantics of the science of government. Though the U.S. Constitution guarantees us a "republican" form of State government, of habit we have come to think of our government as "democratic." What "democracy" imports to us, respectively, probably is more closely correlated to subjective criteria of

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[16] 369 U.S. 217.

[17] 369 U.S. 226, 227.

[18] 369 U.S. 217.

[19] See note 48, 369 U.S. 222.

[20] 179 F. Supp. 828.

[21] 369 U.S. 194.

[22] See *Wesberry* v. *Sanders*, 376 U.S. 1.

[23] Mr. Justice Goldberg during argument of *WMCA* v. *Simon*, 32 Law Week 3189.

[24] See *Gray* v. *Sanders*, 372 U.S. 368, 381; *Wesberry* v. *Sanders*, 376 U.S. 1.

[25] For a congressional apportionment case referring to other factors justifying consideration, see *Lund* v. *Mathas*, 145 So. 2d 871 (Fla. 1962).

[26] 32 Law Week 3189.

[27] Justice Frankfurter, dissenting in *Baker* v. *Carr*, recognized the issue as a "guaranty clause claim masquerading under a different label." 369 U.S. 297.

[28] Madison, The Federalist, No. XLIII.

[29] See *Hoxie School Dist. No. 46 of Lawrence County, Arkansas* v. *Brewer*, 137 F. Supp. 364 (E. D. Ark. 1956).

[30] 16 Wall. (83 U.S.) 36.

[31] It is one of those interesting quirks of legal literature that *Luther* v. *Borden*, on which the majority in *Baker* v. *Carr* principally rely to hold the guaranty clause inapplicable contains language which recognizes the power of the States to remodel their governmental structures, subject only to the limitation of congressional determination that it continues "republican" in form. Chief Justice Taney said: "No one, we believe, has ever doubted the proposition that, according to the institutions of this country, the sovereignty in every State resides in the people of the State, and that they may alter and change their form of government at their own pleasure. But whether they have changed it or not, by abolishing an old government, and establishing a new one in its place, is a question to be settled by the political power. And when that power has decided, the courts are bound to take notice of its decision, and to follow it [7 How. (48 U.S.) 46]."

freedom of the citizens under the government than to any connotation respecting either the structure of that government or the precise implementation of voting influence. Considered apart from the concept of freedom, democratic government is variously understood. The term can, of course, refer to a direct democratic form, of the town meeting type, in which each citizen participates and votes his will.

Surely there are few, if any, serious advocates of this as a vehicle for present-day government. The term can also refer to a representative democratic form. Such is the republican government contemplated by the Constitution. Representative democracy involves the element of consent of the governed expressed in popular selection of those charged with administration of government, including assurance that the selection is subject to some acceptable mode of review by the governed. It contemplates that diverse interests and points of view will be communicated and considered in the implementation of government. It requires a balance of power for protection of those who, of the moment, constitute the minority. It connotes an orderly system of law to which the government, as well as the governed, is responsible and responsive.

Proper legislative apportionment of a representative democracy is necessarily related to the role or charge to which the elected official is committed as a "representative" of his constituency. As long as representative government has been considered, writers have espoused one or the other alternative of the familiar dichotomy. Is a representative chosen to determine the will of the majority of his constituency and to express that will through his vote? If this is the extent of his responsibility, it could be accomplished better these days by utilization of opinion sampling and computers. Certainly the representative is chosen for a higher and more exacting task. Despite the premise of democracy, "the people" cannot be enlightened on all intricacies of modern government, informed as to the details of governmental affairs or sophisticated to the handling of them.

This is not to suggest that public inquiry and interest should be discouraged; nor is it to discount lay expertise respecting limited areas in the public concern. But, it is unrealistic to suppose that individual voters, much less an aggregate of those in a constituency, have an informed and formulated judgment to which their representatives are, or should be, bound. Accordingly, we must accept the alternative theory that the representative is charged to become informed and then to vote his informed judgment and conscience. His judgment is not informed by any inherent omniscience. It must become so through reflection on information and attitudes of others. To broaden the base of that reflection, the widest possible variety of responsible opinion should be available before decision. To effect this fundamental purpose of supplying that diversity of opinions is the end of representation.

Mindful of this simple principle, Baker and its successors measure distressingly wide of the mark. In extending itself beyond Justice Stewart's recognition that Federal jurisdiction lies, and undertaking to establish an arithmetically and geographically oriented definition of acceptable standards of equal protection, these cases tend to adopt two invalid predicates: (a) a definition of constitutionally sufficient representation cast in terms of the power consequences indirectly effected by the voter through his representative; and (b) an assumption that geographical subdivisions are reliable, and perhaps exclusive, bases of the several interests properly in need of articulate representation.

These two predicates are commingled in the misleading principle adopted as the goal of reapportionment under the grossly oversimplified shibboleth, "one person, one vote," which dominates the Court's theme. So committed are we to respect for "equality" that we tend to prompt, unchallenging and reverent acceptance of any idea couched in terms suggesting absence of discrimination. It is not inappropriate to exact "equality" among the several voters within a defined constituency, so that the representative of that group may be selected by a majority. But, it is a quite different thing to require that the several constituencies shall be so defined that the arithmetical prospect of influencing ultimate legislation shall be equalized between a voter in constituency "A" and a voter in constituency "B".[32] If this were the true goal, a myriad other factors of great practical influence logically would require similar equalization. Should each expect that, in common with every other voter, he is entitled to have his representative function as chairman of the most powerful committee in the legislative body? Should a voter be constitutionally offended if the representative of another constituency is more politically sophisticated, articulate, competent, or successful? Has he a constitutional right to expect that there shall be no disparate committee assignments? The equality of voter influence implicit in the "one person, one vote" concept is invalid when it is not limited to equality in the correlation between voters in a common constituency. The true issue involving a voter's due respecting his representation is primarily whether he has an equal voice in the choice of the representative of him and his fellow constituents; it is only secondarily involved with the relative influence of his representative in shaping legislation compared with the influence of other representatives.[33]

Without discounting the unfortunate emphasis assigned to the promise that each voter must have equal ultimate influence, an even more disturbing consequence of the cases is their apparent ultimatum that constituencies be geographical divisions of equal population.

Of habit we have become accustomed to geographical districts. It is a familiar scheme, and we have not troubled ourselves seriously to consider alternatives.[34] But alternatives there are, and because of their relative validity as vehicles to implement representative government, we should be astonished, concerned, and perhaps outraged that they seem to have been eliminated from adoption, or even consideration, as variations from the Court's preconceived commitments to representation by cohesive geographical districts. It is one thing for the Court to restrain the States from invidious discrimination against fair representation. It is quite another thing for the Court to indicate that prima facie avoidance of unacceptable discrimination must commence with constituencies defined as cohesive geographical districts practically equal in population.

In the first place, the obligation can require shifting of voters from a constituency with which they have been traditionally allied, and with which their felt interests are to some extent associated, to a different constituency with which there is relatively less community of interest for the rather artificial reason that the districts will then be equal in population. Within the purposes the Court professes to serve, the shifted group is disserved, and its influence on ultimate legislative action, in fact, is diminished.

In the second place, there is not a rational justification for adopting a definition of constituencies which is committed to a geographical essence. It is conceivable that in some past day the interests of voters in public affairs were reasonably correlated to geographical residence, and segregation of interest groups by the vertical division of geography may have had acceptable validity. If it were so in the past, it is doubtful that this obtains today. The mere circumstance of a voter's place of residence may well be one of the least of the reasons which arouse his interest in the public concerns. Is it not conceivable, or even likely, that a Democratic millworker with no school-age children and a leaning toward public power, though he resides in geographical district X, has more in common with a similarly oriented millworker residing in district Y, than he has with his neighbor in district X, a Republican utilities employee and the father of four public-school students?

Should the two millworkers, by the chance of their remote residences, be denied opportunity to choose a common representative? Or, suppose that in districts "X" and "Y," respectively, there are 5,000 of our hypothetical millworkers and 4,000 of our hypothetical utilities workers. If more numerous millworkers elect the representative in each of the districts, 8,000 utilities employed would be without a legislative spokesman. The "tyranny of the majority" of which De Tocqueville warned, and against which the essence of republican government is directed, can then become a foreboding potentiality.

In the third place, an uncompromising requirement of geographical representation virtually precludes the possibility of providing within the legislative framework for selection of representatives from among available persons of competence, respected over the State, but not "politically known" in their districts of residence and unprepared to engaged in the rigors of a campaign for localized support. It will be an expensive error for us to aggravate the tendency, upon which John Stuart Mill and others have commented, for representative government to attract to its assemblies persons who are less than the best qualified.[35]

Some of the alternatives to the geographical-arithmetic representation base have been rather specifically expounded or employed. Professor de Grazia has classified the systems by which constituencies are apportioned as involving one or more of the following criteria: "territorial surveys; governmental boundaries [cities, counties, town, etc.]: official bodies [e.g., the electoral college, or election of a mayor by the popularly elected city council]; functional divisions of the population [i.e., "nonterritorial aggregates of persons who share social or economic interests," including taxpaying groups, nationality groups, university groups, professional groups, factory groups. and general occupational groups]; and free population alinements."[36] The most com-

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[32] See concurring opinion of Justice Stewart in *Gray* v. *Sanders*, 372 U.S. 368, 381.

[33] See, for conscious adoption of both goals, *Moss* v. *Burkhart*, 220 F. Supp. 149, 151 (W. Okla. 1963).

[34] de Grazia, op. cit. supra note 6, at 153: Some State courts have been charged with the review of apportioning procedures for years. Mr. Arthur L. Goldberg has cited 54 cases in which apportionments were invalidated, prior to *Baker* v. *Carr*. There is even a smattering of theory about representation and apportionment to be found in court decisions going back to earliest times. At the same time, almost all of these cases may be shown to be highly tentative and apologetic incursions into the province of the legislature. Moreover, the great number of affected voters have remained, until *Baker* v. *Carr*, generally oblivious and unaroused.

[35] J. S. Mill, "On Representative Government," c. 7. See also, "de Tocqueville, Democracy in America," c. XIII; Bryce, "The American Commonwealth," c. XLV.

[36] de Grazia, op. cit. supra note 6, c. 2, pages 20–26.

prehensive free population plan is that proposed by Thomas Hare in 1859 [37] and enthusiastically championed by John Stuart Mill as a system of "personal representation * * * among the very greatest improvements yet made in the theory and practice of government." [38]

It is not suggested here that all, or any one, of the schemes heretofore tried or espoused would be advisable for adoption by any of the United States. But, it is insisted that insofar as the Federal courts, by implementation of *Baker* v. *Carr* or otherwise, impose upon the States an obligatory formula of geographically equal districting it will irretrievably dilute and weaken State government.

The hazard from diminution of State government is not primarily the risk of offense taken by the States on account of some vague invasion of sovereignty. The hazard is that it will preclude or discourage pragmatic experimentation into political ways and means which characterizes a viable government. In an earlier day, the Court observed:

"The science of government is the most abstruse of all sciences; if, indeed, that can be called a science which has but few fixed principles, and practically consists in little more than the exercise of a sound discretion, applied to the exigencies of the state as they arise. It is the science of experiment." [39]

The significance of that experimentation was dramatically revealed by the talented British observer, James Bryce:

"It has been truly said that nearly every provision of the Federal Constitution that has worked well is one borrowed from or suggested by some State constitution; nearly every provision that has worked badly is one which the convention, for want of a precedent, was obliged to devise for itself." [40]

Dicey once characterized the United States as "A nation concealed under the form of a federation," [41] *Baker* v. *Carr* moves inescapably to confirm that observation. It does more than move from the States to the Federal Government jurisdiction over problems now of national scope. It tends to undermine the health of State government, and its consequences should not be underrated.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. Does the Senator yield time?

Mr. MANSFIELD. Mr. President, will the Senator from Illinois yield time from his side?

Mr. DIRKSEN. I yield time.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. McINTYRE in the chair). Without objection, it is so ordered.

Mr. DIRKSEN. Mr. President, on the 12th day of August the Senate began consideration of the Dirksen-Mansfield amendment to the pending bill. That was 6 weeks ago. For 6 weeks, with some variation, we have been on this matter.

For a good many weeks the Senate has done exactly nothing except to consider the pending business. The majority leader was kind enough to agree with my contention that it should not be set aside for any other business, including the Senate calendar.

So, at long last, we are up to the point where, perhaps, God willing, we can dispose of this matter one way or the other. We have witnessed the filibuster during all this time by the very Senators who have always found the filibuster to be a hideous device. It depends entirely upon whose ox is gored.

We—speaking for myself and other Senators—would not accept the bill without this amendment. They, on the other hand, would not accept the bill with the amendment. Therefore, we experienced the ensuing stalemate.

I must say that the action has not been willful. But at least there has been a misrrepresentation of what I believe is the basic issue. We have never obscured it. We have endeavored not to permit it to be obscured, if we could help it.

We started with the premise that was laid down in the dissenting opinion of Justice John Marshall Harlan, that the 14th amendment did not clothe any agency in the Federal Establishment—or even the Supreme Court for that matter—with the authority under the equal protection clause to dip into a matter of the composition of State legislatures. It was that simple. That was the burden of the Harlan decision. It was supported, I believe, by all the historic documents that any decision ever required.

We were not able, in the compass of time within which this Congress would still be alive, to maneuver a constitutional amendment. In view of the fact that the shortest period of time within which to secure ratification of an amendment is 7 months, it could not be consummated. Therefore, we had to resort to a statutory proposal to make the Supreme Court decision in the Reynolds against Sims case inapplicable where there was an application to stay it from being applied under certain circumstances.

That was the burden and the purport of the original Dirksen-Mansfield proposal. It is that condition which brought about the stalemate in the proceedings of the Senate.

We had intended to follow it up in the next Congress, immediately, with a joint resolution calling for a constitutional amendment; and that we shall still do. We have not seen anything yet, so far as this decision is concerned. Only a handful of States have thus far been affected. Wait until the rest of the States become involved.

Justice Harlan put it very clearly when he said that this is the beginning of a trend or a movement that must reach out into the other 44 States of the Union. When all of them are affected, I believe we shall discover that this is indeed an incandescent national issue. And it will remain that way until it has been resolved.

It has been stated that in terms of the language offered by my distinguished friend the senior Senator from Montana [Mr. MANSFIELD] in the Mansfield substitute, the court can do nothing other than act reasonably in view of all the debate. Let us examine that statement for a moment.

This debate started on the 12th day of August, 6 weeks ago. Only last Friday a three-judge court in the State across the river, the Commonwealth of Virginia, hacked up the senate of that State, cutting in two the terms of senators who were elected in 1962 for a 4-year term, under the law and the Constitution of the Commonwealth of Virginia. Yet, this debate had been going on for 6 weeks. That court chamber is within a stone's throw of this Chamber. If the justices of that court had not taken account of the debate by last Friday, I ask in all conscience whether they ever will take account of all the debate that has taken place here.

The substitute of my friend the senior Senator from Montana is predicated on a false hope and an illusion that will never become a reality. The court will do precisely what it did in the Oklahoma case.

In that case, the court made that clear in language that was unmistakable, when it said, "This is a matter not of our doing, and we intend to apply the decision of the Supreme Court of the United States."

The rest is very simple. The resolution, in its first sentence, begins, "It is the sense of Congress"—we do not have to read further. It makes no difference what else is written in that resolution. It has no validity. It has no legal effect. That was amply demonstrated in the Soviet wheat case. The Attorney General researched all the cases and said that if Congress intended to take positive and affirmative action, it would have said so instead of relying upon the language that it is a declaration of policy, or the sense of Congress.

My regard for my distinguished friend, the senior Senator from Montana, being what it is, I can only say, if I propose to be candid with the Senate, that this document is not worth the paper upon which it is printed, so far as concerns its impact or binding effect upon the Supreme Court, or any other Federal court. It is a prayer. It is a hope. It is an entreaty. It is as much as to say, "Please, sir"— and then to be ignored as the Commonwealth of Virginia was ignored last week when the blow fell. It was a blow, indeed, as everyone who reads the press knows.

So what we shall vote on directly will be the substitute proposed by the distinguished majority leader for what he and I originally proposed, the Dirksen-Mansfield proposal, which had some teeth in it and made it possible for a Governor, an Attorney General, and a member of the State legislature to go before a court and file an application for a stay of proceedings until two things could happen: First, that a regular session of the legislature would act——

The PRESIDING OFFICER. The time of the Senator has expired.

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[37] Hare, "The Election of Representatives."

[38] J. S. Mill: "On Representative Government," c. 7. For current support to a comparable plan, see Prof. Charles V. Laughlin's article, "Proportional Representation: It Can Cure Our Apportionment Ills," 49 A.B.A.J. 1065 (1963).

[39] *Anderson* v. *Dunn*, 6 Wheat. (19 U.S.) 204, 226.

[40] 1 Bryce, "American Commonwealth," 35 (3d ed.).

[41] Dicey, "Introduction to the Law of the Constitution," (9th ed. 1939) App. 604.

Mr. MANSFIELD. Mr. President, I yield 2 additional minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 2 additional minutes.

Mr. DIRKSEN. Second, that there would be an election under the State constitution and State law. The language of the amendment is meaningless so long as it is nothing more than an expression of the sense of the Congress.

So I earnestly hope that the Senate this afternoon will vote down the Mansfield substitute, first, because it is meaningless; second, because it would settle exactly nothing; third, because the issue would continue to engross the attention of every State of the Union. That is no way to resolve the question.

So I can only hope that the amendment will be voted down and that we can recur to the original Dirksen-Mansfield proposal and have it approved before the afternoon runs out.

I had intended to offer a motion to table the amendment. I have decided not to do so. I think it is just as well for the Senate to vote on the merits of the Mansfield substitute and resolve it once and for all.

I am grateful for the time yielded to me by my distinguished friend, the majority leader.

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. DIRKSEN. If I have any time remaining, I yield.

Mr. HOLLAND. As the Senator knows, I returned from Miami. When I left there my understanding was that the Senator from Illinois would move to lay on the table the amendment of the Senator from Montana. Why has the distinguished Senator decided not to make such a motion?

Mr. DIRKSEN. Because there might be two rollcalls covering the same amendment. There might be a motion to table, and then another rollcall on the merits of the amendment. Instead of going through that process, we thought it would be just as well to vote on the substance of the resolution, because I believe Senators know what is in it.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HOLLAND. Mr. President, will the Senator from Montana yield a minute to me?

Mr. MANSFIELD. I yield 1 minute.

Mr. HOLLAND. So far as I am concerned, I would rather have the two issues presented, because I would like to vote on a motion to table the Mansfield substitute. I believe it is much weaker and much less desirable than the original Dirksen-Mansfield amendment. Then if we should lose on that measure, we might have to take something much weaker than we want to take.

Mr. DIRKSEN. The Senator may have that opportunity. My understanding is that the distinguished Senator from Oregon [Mr. MORSE] proposes to move to table the original Dirksen-Mansfield amendment. So there will be a vote on that question.

Mr. KEATING. Mr. President, will the Senator yield to me?

Mr. MANSFIELD. I yield 1 minute to the distinguished Senator from New York.

Mr. KEATING. I support the Mansfield resolution expressing the sense of Congress that Federal courts should allow the State Governments more time for redistricting of legislative seats. This resolution is a necessary and responsible affirmation both of the need for legislative reapportionment in certain cases and of the practical difficulties of accomplishing equitable reapportionment under a restrictive time schedule. This resolution seems to me the only feasible method of resolving the impasse which has developed.

I also favor and will support a constitutional amendment to permit apportionment of one house of the State legislature on a basis other than strict population statistics. If the voters of a State choose to make provision in one house of the legislature for special town, county, or city representation through a statewide referendum or other equitable procedures, I believe they should not be barred from taking such action. The vitality of local government often depends upon the ability of local governmental bodies as well as individual citizens to make their voices heard in legislative councils.

The Supreme Court's action stems directly from the failure of Congress and State legislatures to take appropriate action themselves, to remedy gross abuses in legislative districting. In the 87th Congress, I authored a resolution with Senator CLARK, DOUGLAS, HART, JAVITS and SCOTT to provide for a complete study of population disparities in congressional and State election districts. Had my resolution been adopted, the study might well have culminated in congressional initiative to remedy inequitable districting and thus might have obviated the need for judicial intervention.

Since the Congress and the legislatures did not act, the Supreme Court performed a necessary service in bringing this issue to the forefront of U.S. political thinking. Nevertheless, the words of the Supreme Court Justices must be viewed not as the end but as the beginning of a responsible national review of legislative apportionment.

This sense of Congress resolution will allow the people of the United States, the 50 State legislatures, and the Congress full opportunity to review the terms of proposed constitutional amendments. It will encourage full-fledged national debate on the underlying principles of legislative authority.

It therefore becomes the obligation of those with knowledge and experience in public and particularly legislative life to study the questions raised by the Supreme Court decision. This can be done better by a thorough and judicious debate of proposed constitutional amendments than by hastily contrived makeshifts. Certainly, the Mansfield resolution should make clear to all Federal courts that reapportionment is an issue which will demand national attention for some time to come.

Mr. MANSFIELD: I yield 1 minute to the Senator from Ohio.

REAPPORTIONMENT: LETTER OF CHARLES P. TAFT

Mr. YOUNG of Ohio. Mr. President, the debate on the pending amendment regarding the Supreme Court reapportionment decisions is one of the most important and far-reaching legislative proposals ever to come before the Senate. Within the past few weeks this important matter has engaged the attention of thoughtful Americans throughout the Nation and has assumed the proportions of a great national debate.

How the Senate disposes of this legislative proposal will shape the form of our State and Federal Governments and the lives of all Americans for generations to come. In effect, it is a civil rights bill of the highest magnitude, for it affects the voting rights of well over half of the citizens of our Nation.

My position is clear. I favor the Supreme Court decision, although I regret that it was necessary for the Federal courts to intervene. However, had the States taken the necessary corrective action, it would not have been necessary for the Supreme Court to rule on this matter. The people who are being deprived of fair representation—for the most part Americans living in metropolitan areas—had no alternative but to appeal to the Federal courts once their petitions were rejected by their State courts.

My opponent, in Ohio, for election as U.S. Senator voted for the Tuck bill. It would attempt to strip the Supreme Court of its power to rule on reapportionment cases. In effect, this was not only a bill affecting reapportionment, but also a direct attack on one of the three coordinate branches of our Federal Government and therefore an attack on the very composition of our Government. He has also indicated that he favors the amendmenut pending before the Senate.

Mr. President, on September 8, 1964, there appeared in the Columbus Citizen-Journal, a great newspaper of my State, a letter to the editor from Charles P. Taft, an outstanding American who has served his community, State, and Nation well over the years. Charles P. Taft is the brother of the late Senator Robert Taft and the uncle of my senatorial opponent. His letter is a cogent and concise summary of the one-man, one-vote concept central to the debate. It is a strong defense of the Supreme Court decision. I commend this letter to my colleagues and ask unanimous consent that it be printed in the RECORD at this point as part of my remarks:

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CHARLES P. TAFT DISSENTS

DEAR MR. EDITOR: I note with interest your editorial on apportionment of State legislatures. Your argument is summarized in the last paragraph, which read as follows:

"Why shouldn't it be made constitutional for the voters of Ohio, for instance, if they so choose, to set up one house of its legislature on an other-than-population basis to keep Cuyahoga County from dominating its legislature?"

You neglect one very important historical fact. The Constitution provided for two

Senators from each State as the "great compromise" essential to secure the ratification of the Constitution. The smaller States would not have gone along except on this basis.

The great compromise has been damned at frequent intervals since 1787, especially after events like the defeat of the League of Nations by the Senate in 1920, or the kowtowing to the "silver" Senators at various times in the last 30 years before silver became scarce.

Your suggestion of one house not based on population, designed to protect the rest of the State from Cuyahoga County, clearly implies that the people of Cuyahoga County are somehow second-class citizens.

In 1647, the famous Putney debate took place between Cromwell and the Levellers who were the representatives of Cromwell's army. Cromwell claimed that if anything but property qualifications qualified a man to vote, then those without property, being more numerous, would take the property away from those that had it.

The Levellers insisted that the poorest man in England had a life to live as much as the richest man, and "Therefore, sir, I think it is clear that no man should be under a government except by his own consent."

Cromwell has been proven wrong, and the Levellers right.

This is the heart of our democracy, and your proposal rejects it.

Mr. MANSFIELD. I yield 1 minute to the Senator from Missouri.

Mr. SYMINGTON. Mr. President, I support the revised Mansfield reapportion amendment.

It has now become clear that, should the Senate fail to approve this amendment, in all probability Congress would not act in this area during the present session.

The pending amendment would express the sense of Congress that the next election of members of the State legislatures, following the effective date of this act, be conducted in accordance with the laws of such State which were in effect on September 20, 1964.

In addition, the amendment would give the State legislatures an opportunity to reapportion themselves.

By adopting this amendment, we would also avoid serious constitutional questions raised by other proposals; and, clearly, nothing would be gained by now adopting an amendment which later might be declared unconstitutional by the courts.

My support for this proposed substitute amendment does not, in any way, change my intention to cosponsor, or, if need be, to introduce, a constitutional amendment which would allow the people of each State, if they so desired, to apportion representation in one house of their legislature on some basis other than population alone.

Mr. MANSFIELD. I yield 2 minutes to the Senator from Iowa.

Mr. HICKENLOOPER. Mr. President, in the August issue of the Farm Journal, the largest of our farm publications, appeared an article relating to the Supreme Court decision. I would like to read a few paragraphs from that article.

In one sweeping, historic gesture, the U.S. Supreme Court has voted (6 to 3) to:

Reach down into each State and remake the State legislatures across the land.

The Court has ordered that States must stir themselves to district both houses of their State legislatures on the basis of population—and the population in each district must be "substantially equal." This is likely to force 40 or more States to revamp their legislatures.

This will toss into the ashcan one of the basic, time-honored cornerstones of our system of American representative government.

Since colonial days, States and the Federal Government have selected one house on the basis of population, and the other house partially or entirely by area. It has been one of the vital parts of our check-and-balance governmental system.

The new Court decision shears farm people of a good share of the influence they've had in their State governments.

A State senate based largely on area permits representatives of farm sections to better serve widely scattered farm people and their economic and minority interests.

Also it has served as a brake against population centers running off with all the marbles, or imposing the "tyranny of the majority"—a point held dear by the Founding Fathers.

If this Court decision stands, it will bring one of the most sweeping overnight changes in American government since the Revolution. Farmers and rural areas will feel it most.

Mr. President, I do not believe that farmers should be confused about who is doing what to whom.

Judging by the vote on the previous McCarthy, Javits, Humphrey substitute for the Dirksen amendment, the overwhelming support for leaving the Supreme Court decision undistrubed is the Democratic Party and the leadership of the Democratic Party.

Many of those who profess to be the best friends that farmers have are behind this effort to curtail farmers' influence in State legislatures.

I had welcomed the assistance of the distinguished majority leader, in his cooperation with the minority leader, to give the people, the States, and the Congress a little time to analyze this issue and to perhaps find a better answer to the situation created by what Justice Harlan called the Draconian decision of the Supreme Court.

I must express my disappointment that the majority leader has now switched sides and is supporting action which is little better than no action so far as any influence it may have on the future course of events is concerned.

The President has been silent on this matter. Yet, what conclusion can we draw with respect to his position when we note that the Senate majority leader and the Senate assistant majority leader, the Democratic candidate for the vice-presidency, are the leaders in the effort to set aside meaningful action and substitute the feeble admonishment of the substitute now offered.

It is a great disappointment to me that the President and the Democratic vice-presidential candidate could not have taken what I would consider to be a broad gage statesmanlike approach to the issue, even though it may be their personal view that the Supreme Court decision should stand undisturbed. It seems to me that consistent with this view they might have advocated a procedure that would give the people of the United States an opportunity and a little time to look at the issue and to reach a consensus of national opinion by this process.

The people are to have nothing to say about this issue if the counsel of the Democratic leadership is to prevail. By the time this Congress meets again and is organized to do anything, the courts will have foreclosed the issue in many States.

It seems to me that under these circumstances the President and the Democratic vice-presidential candidate might well have said to the country: This is an exceedingly important issue. It involves a basic reorganization of State legislatures in most of the States. It apparently involves, too, a basic reorganization of the structure of many county and city governing boards. It involves the most important and far-reaching constitutional change of our time.

We need not therefore hurry. We should proceed to debate the issue at every level. After all, our government structure has existed for 170 years, and it has not been an unsuccessful structure. So we should hold the issue in abeyance for a short time—giving an opportunity to debate the issue—to reach a consensus of national opinion. Let the democratic process prevail.

Yes, I think the President and the Democrat vice presidential candidate might have and should have advocated this approach, even though it may be their personal opinion that representation on both bodies of every State legislature and on the governing boards of local units of government should be on a strictly population basis.

I think this approach to the problem would have brought commendation from all concerned, would have been welcomed by almost everyone, irrespective of what their individual views might be.

So let us not be confused—let us recognize that it is the leadership of the Democrat Party that is telling us today that the issue should be settled now—as it would probably be settled by the proposed substitute offered us today—that the people and State governments should be foreclosed from having any say as to the disposition of the matter, that there shall be no national debate of the issue before it is settled. This proposal offered us today is not in my view the way the most important constitutional issue of our time should be decided.

So let us not be confused. Those who hold out to farmers one hand in friendship, but who stab them in the back with a pitchfork with the other, cannot consistently pose as their friend. No talk of how much they love farmers can hide what they propose to do to farmers and the manner in which it is proposed to be done.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President——

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. MANSFIELD. Mr. President, yesterday, when I introduced the pending substitute amendment—and I was under no illusion—I gave the background which dictated the necessity of making a further effort in changing the original language in view of the total stalemate that had developed in this body. When the will to talk shows no sign of waning, when the listeners demonstrate the inability to invoke cloture, when the body as a whole refuses to table the measure, it is clear the rules provide no further remedy; then reasonable and responsible men must at that point make some further effort. The distinguished majority leader did just that. We sat down in an attempt to rework our original language to take into account the criticism that had been directed at it. We did this, but we found that even the new language promised more weeks of educational debate.

I conferred again with the distinguished minority leader; he has had strong views on this measure from the beginning. He had demonstrated on two separate occasions his willingness to adjust greatly his original views in the effort to work out a solution.

It would have been unreasonable of me to insist at this point for the minority leader to go to the well with me again when on our last two trips we found it dry.

I regret that some have interpreted the proposals on this matter offered by the minority leader and myself constituted an uneasy alliance. Nothing could be more untrue. The minority leader's intentions in this matter have been made very clear on several occasions. They have, I must admit, differed from mine. The language we worked out, however, did injustice to neither of our intentions.

I have been interested from the beginning in extending to the States the hand of reasonableness, on a deliberate speed basis, in adjusting to the Constitution as interpreted by the Supreme Court, while at the same time confirming the basic precepts of our land that the Supreme Court is vested with the final authority in interpreting our Constitution and that the Constitution cannot be suspended for any period of time, for any purpose without the adoption of a constitutional amendment. The language we worked out on both occasions would clearly effectuate this purpose without abusing these basic precepts. The language presently before us is entirely consistent with this purpose and this responsibility. I have chosen this path—to offer this substitute alone—because I realize the realities of the present parliamentary stalemate and the responsibility of the leadership position which dictated a third and somewhat difficult trip to the well.

I am convinced that this present substitute will both express the keenness of the congressional interest in the reapportionment problem and show what course of action this deliberative body considers most effective in permitting the States to adjust to this constitutional mandate.

I urge the adoption of the substitute.

Mr. DIRKSEN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DIRKSEN. Do I correctly understand that the question will be on the Mansfield substitute for the original Dirksen-Mansfield amendment, and that the substtiute is a "sense of Congress" resolution?

The PRESIDING OFFICER. The Senator is correct.

Pursuant to the unanimous-consent agreement entered into yesterday, the hour of 2:30 p.m. having arrived, the Senate will now proceed to vote.

The question is on agreeing to the modified amendment of the Senator from Montana [Mr. MANSFIELD] in the nature of a substitute for the Mansfield-Dirksen amendment to the Foreign Assistance Act of 1961. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia (when his name was called). On this vote I have a pair with the Senator from Washington [Mr. JACKSON]. If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay."

Mr. SMATHERS (when his name was called). On this vote I have a pair with the senior Senator from Minnesota [Mr. HUMPHREY]. Were he present and voting, he would vote "yea." Were I at liberty to vote, I would vote "nay." I therefore withhold my vote.

Mr. SYMINGTON (when his name was called). On this vote I have a live pair with the senior Senator from Louisiana [Mr. ELLENDER]. If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." I therefore withhold my vote.

The rollcall was concluded.

Mr. MANSFIELD. I announce that the Senator from Idaho [Mr. CHURCH], the Senator from Louisiana [Mr. ELLENDER], the Senator from Minnesota [Mr. MCCARTHY], and the Senator from Alaska [Mr. GRUENING] are absent on official business.

I also announce that the Senator from Massachusetts [Mr. KENNEDY] and the Senator from Alabama [Mr. HILL] are absent because of illness.

I further announce that the Senator from Nevada [Mr. CANNON], the Senator from Mississippi [Mr. EASTLAND], the Senator from Minnesota [Mr. HUMPHREY], the Senator from Washington [Mr. JACKSON], and the Senator from Oregon [Mrs. NEUBERGER] are necessarily absent.

I further announce that, if present and voting, the Senator from Alaska [Mr. GRUENING], the Senator from Idaho [Mr. CHURCH], and the Senator from Massachusetts [Mr. KENNEDY] would each vote "yea."

On this vote, the Senator from Nevada [Mr. CANNON] is paired with the Senator from Oregon [Mrs. NEUBERGER]. If present and voting, the Senator from Oregon would vote "yea," and the Senator from Nevada would vote "nay."

On this vote, the Senator from Mississippi [Mr. EASTLAND] is paired with the Senator from Massachusetts [Mr. KENNEDY]. If present and voting, the Senator from Massachusetts would vote "yea," and the Senator from Mississippi would vote "nay."

On this vote, the Senator from Minnesota [Mr. MCCARTHY] is paired with the Senator from Texas [Mr. TOWER]. If present and voting, the Senator from Minnesota would vote "yea," and the Senator from Texas would vote "nay."

Mr. KUCHEL. I announce that the Senators from Kansas [Mr. CARLSON and Mr. PEARSON], the Senator from Arizona [Mr. GOLDWATER], and the Senator from Texas [Mr. TOWER] are necessarily absent.

On this vote, the Senator from Texas [Mr. TOWER] is paired with the Senator from Minnesota [Mr. MCCARTHY]. If present and voting, the Senator from Texas would vote "nay," and the Senator from Minnesota would vote "yea."

If present and voting, the Senators from Kansas [Mr. CARLSON and Mr. PEARSON] would each vote "nay."

The result was announced—yeas 44, nays 38, as follows:

[No. 580 Leg.]

YEAS—44

Anderson	Hayden	Muskie
Bartlett	Inouye	Nelson
Bayh	Javits	Pastore
Beall	Keating	Pell
Brewster	Kuchel	Proxmire
Burdick	Long, Mo.	Randolph
Case	Long, La.	Ribicoff
Clark	Magnuson	Salinger
Dodd	Mansfield	Scott
Douglas	McGee	Smith
Edmondson	McGovern	Walters
Fulbright	McIntyre	Williams, N.J.
Gore	McNamara	Yarborough
Hart	Metcalf	Young, Ohio
Hartke	Moss	

NAYS—38

Aiken	Hickenlooper	Mundt
Allott	Holland	Prouty
Bennett	Hruska	Robertson
Bible	Johnston	Russell
Boggs	Jordan, N.C.	Saltonstall
Byrd, Va.	Jordan, Idaho	Simpson
Cooper	Lausche	Sparkman
Cotton	McClellan	Stennis
Curtis	Mechem	Talmadge
Dirksen	Miller	Thurmond
Dominick	Monroney	Williams, Del.
Ervin	Morse	Young, N. Dak.
Fong	Morton	

NOT VOTING—18

Byrd, W. Va.	Goldwater	McCarthy
Cannon	Gruening	Neuberger
Carlson	Hill	Pearson
Church	Humphrey	Smathers
Eastland	Jackson	Symington
Ellender	Kennedy	Tower

So Mr. MANSFIELD's substitute amendment, as modified, for the amendment proposed by Mr. DIRKSEN and Mr. MANSFIELD (No. 1215), was agreed to.

Mr. ANDERSON. Mr. President, I move to reconsider the vote by which the amendment to the amendment was agreed to.

Mr. MANSFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MORSE. Mr. President, I have a brief statement which I shall read preparatory to moving to lay on the table the Dirksen amendment as amended by the Mansfield substitute as modified.

I assure Senators that I shall not make my motion without providing adequate time to other Senators to discuss the motion. I wish to make a brief statement, and then I should like to have an understanding with the leadership that I may withhold my motion to lay on the table for the purpose of debate. After that I shall have an opportunity to make my motion.

The PRESIDING OFFICER (Mr. McINTYRE in the chair). The Chair informs the Senator from Oregon that under the unanimous-consent agreement entered into previously the time is controlled, with 15 minutes allowed to each side.

Mr. MORSE. I shall need only 3 or 4 minutes to read my statement.

Mr. President, whenever I drive down a highway that carries a billboard screaming: "Impeach Earl Warren" I renew my determination that so long as I am able, I shall do all in my power to defeat and offset all such assaults upon this great Chief Justice and the Court he heads, from whatever source.

During the 1940's, when the Supreme Court was also reversing decisions of long standing and opening new areas of personal liberty for the American people through application of the Bill of Rights and the 14th amendment, it was known as the Roosevelt Court. It was known for the man who appointed the Justices.

But the Court of the 1950's and 1960's is known for the man who is its chief. It is called the Warren Court, not the Eisenhower Court.

Under the magnificent leadership of Earl Warren, the Federal judiciary has been the protector, advocate, and guardian of the personal liberties of American citizens. It has, despite all the distortions to the contrary, advanced the personal liberty of individuals by protecting them from encroachments by all levels of government, both local and Federal.

The courts have come under attack only because they have extended judicial protection to many liberties not previously protected by the courts. The Supreme Court has come under attack only because it has upset some long-practiced and long-established infringements upon personal liberty that another significant body of citizens profited from in one way or another.

The courts came under attack when they put to an end many actions and practices of State, local, and Federal Governments that infringed upon or denied to individuals or to whole classes of citizens personal freedoms that theoretically were theirs under the Constitution.

Despite all that is being said in this election campaign about alleged encroachments of "big government," all allegations that the Federal Government is taking away all our personal freedoms, the fact remains that the U.S. Supreme Court has in the last dozen years greatly advanced and expanded the personal freedoms of the American people.

Many did not think so because it was the liberty of others than themselves that was advanced. In many cases, it was the personal rights of minorities over whom the majority long enjoyed some sort of wardship, or guardianship. The Court met with disapproval for advancing the rights of persons whose rights the critics did not want advanced.

But every protection of free speech, every protection of freedom of religion, every protection of freedom of the press, every protection of due process of law, every protection of the right to assemble peacefully and to petition Congress, every protection of equality before the law, advance the freedom of every citizen in these areas.

In nearly all cases, these freedoms were advanced against government, often the Federal Government.

We are engaged in a presidential campaign in which the Supreme Court has become a major target for bombardment, although because of our historic tradition, its members cannot and do not reply.

Every day, in this political campaign attempts are made to gain votes at the expense of the Supreme Court. He knows there will be no reply and no defense from its members.

Attackers of the Court know that this is the cheapest possible way to campaign, because they are able to beat a horse that is tied, gagged, muzzled, and hobbled.

In attacking the Supreme Court, they are not attacking a McNamara, or a Johnson, who not only can answer but can make some attacks of their own. Enemies of the Court are maligning for their own political purposes the one branch of our Federal Government that is outside of campaign politics.

This attack comes from those who have been trying to convince the American people that big government is taking away all their liberties. If any group or institution is going to protect the American people from governmental infringment upon their liberties, it is not the enemies of the Court, but the very Supreme Court and lower courts they are so anxious to discredit.

Last Sunday, there appeared in the Eugene Register-Guard, of Eugene, Oreg., an Associated Press story entitled: "Earl Warren Still Presides in Silence and Serenity." It is a summary of the reasons why the Supreme Court is a central point of political attack in this presidential campaign, and I ask unanimous consent that it be printed in the RECORD at the conclusion of these remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MORSE. Mr. President, the Mansfield substitute approved today can be called a victory only to the extent that it is not as bad as the Tuck bill, the Dirksen amendment, and the Javits substitute.

But it still is an interference by way of gratuitous advice from Congress into the jurisdiction of the Federal courts. That is why I voted against it. That is why I continue to hope that it will disappear from the foreign aid bill before that bill reaches the President's desk.

No matter how it is sliced, this language is still a slap at the Supreme Court because its passage carries with it the understanding that the Federal courts require supervision and advice from Congress. I say they do not. I say that until Congress writes statutory language enforcing the 14th amendment, which is our only constitutional function in this area, the Supreme Court is entirely able to supervise the application of the equal protection clause to the State legislatures. That is its function, in the absence of enforcement legislation, just as it was the function of the Federal courts to supervise the application of the equal protection clause to racial discrimination during the 10 years when there was no enforcement legislation.

I plead with Congress not to aid and abet the current campaign against the Federal judiciary by tossing off, without the benefit of so much as 1 day of public hearings, this unwarranted rebuke of the Supreme Court.

Let Senators not forget that Earl Warren is not Chief Justice of the Supreme Court, but Chief Justice of the United States. He is the top judicial officer of the Federal court system. Senators who have been saying that the Mansfield substitute is directed only at the district courts and not at the Supreme Court at all seem to be uninformed of the fact that the Chief Justice and the Supreme Court are responsible for the administration of justice all the way down through the district courts.

The Mansfield amendment interdicts that authority. It substitutes the curbstone opinion of the Senate for the rightful, constitutional authority of the Chief Justice and the Supreme Court. I submit that Earl Warren does not need any reminder of his duty or any pointers on equity from a Senator DIRKSEN, or MANSFIELD, or DOUGLAS, or GOLDWATER, or MORSE, or from all of us together in a collective action.

A recent television program on the history of the Presidency referred to disputes between the President and Congress. It included the words of President Jackson, when he said:

I'll not accept any resolution from those damned rascals in the Senate.

Earl Warren might say the same of this sense-of-the-Congress statement, and he would be right.

The amendment should be tabled. Therefore, I shall move to lay on the table the Dirksen amendment as amended. However, I withhold my motion to table until time has been taken to discuss my statement or anything else, if it is understood that before the matter is disposed of I shall have the privilege of moving to table the Dirksen amendment as amended by the Mansfield substitute as modified.

EXHIBIT 1

[From the Eugene Register-Guard, Sept. 20, 1964]

TEN STORMY YEARS FOR SUPREME COURT: EARL WARREN STILL PRESIDES, IN SILENCE AND SERENITY

(By Bem Price)

(EDITOR'S NOTE.—The Supreme Court has had 10 stormy years since the famous school desegregation decision, but Earl Warren still

presides over it, in silence and serenity. And the storm signals are still flying as the Court, recently concluding a momentous session, opens a new term October 5 and prepares to grapple with civil rights issues.)

WASHINGTON.—There are billboards scattered along some of the Nation's highways which exhort:

"Impeach Earl Warren."

Earl Warren is, of course, the 13th Chief Justice of the United States, a three-time Republican Governor of California, and the Republican's 1948 vice-presidential candidate.

He is also head of the Commission investigating the assassination of President John Kennedy, and personally heard dozens of witnesses. The report of the Commission is expected shortly.

Warren took this assignment, perhaps one of the most solemn duties he will ever perform, only at the insistence of President Johnson.

Warren was 73, eligible for retirement from the Supreme Court at full salary of $35,000 annually, when the President assigned him the task. Warren accepted, though it violated his own firm belief that Supreme Court Justices should not take outside assignments.

As for the highway signs, they are indicative of the deep controversy which Warren and the Court he has headed for 11 years has stirred among countless Americans.

Hotly defended as a protector of individual rights against the encroachment of authority, Warren and the Court have been just as hotly criticized as, among other things, "being soft on communism," usurping the legislative powers of Congress, and basing decisions on emotion and sociological findings rather than on legal fact.

Senator BARRY GOLDWATER, the Republican presidential candidate, has stated his opinion of the Court. A week ago he told the American Political Science Association that the Court had abandoned the principle of 'judicial restraint with respect to acts of Congress with which it disagreed but which are founded on legitimate exercise of legislative power."

GOLDWATER said he was weighing his words carefully when he said that of the three branches of Government "today's Supreme Court is the least faithful to the constitutional tradition of limited government."

The next day President Johnson said he could see "nothing to be gained" by involving the Court in the campaign. Reminded that the Court had been a live issue in the days of Franklin Delano Roosevelt, Johnson said that was because specific proposals had been made (enlarging the Court) and "I know of no such proposals now."

On his first campaign swing into the South GOLDWATER hit the Supreme Court issue hard. He said that if elected he would use his power of appointment to Federal courts to "redress constitutional interpretations in favor of the public."

He strongly attacked the Supreme Court decision ordering reapportionment of State legislatures. He said he would work to overturn a series of Supreme Court decisions on rights of defendants in criminal prosecutions. He said he believed in States rights and would use his "influence and power to see that law-enforcement officers, on the State and local level, get back the power to carry out their job."

Two decisions which fostered bitterness against Warren were the decision 10 years ago ordering desegregation in schools and another the following year which declared that desegregation must be accomplished "with all deliberate speed."

In both cases, the rulings were unanimous.

There is little likelihood that Warren will be impeached. Even the John Birch Society, which has been a leader in the movement, doesn't expect it to happen.

Says John Rousselot, official spokesman for the society:

"Actually, we know Earl Warren won't be impeached by the Senate. What we want is a trial there as provided by the Constitution that will result in reestablishing where the legislative authority resides—in Congress, not in the courts."

While arousing the ire of rightist groups, Warren has always considered himself a man of the center in politics. He has described his philosophy as "progressive conservatism," and while he was in politics he urged the Republican Party to repudiate "extremists of the right."

Warren's views once prompted Harry S. Truman to say, "He's really a Democrat and doesn't know it."

That some men would disagree vehemently with the Court's interpretation of the Constitution was foreseen long ago by the fourth Chief Justice, John Marshal, when he wrote:

"A constitution is framed for the ages and is designed to approach immortality as nearly as human institutions can approach it. Its course cannot always be tranquil. It is exposed to storms and tempests."

But whatever can be said of the present Court—called the most important in the 100 years—several things appear quite clear:

It has been a stanch advocate of individual freedom, including the freedom to dissent; it has been a vigorous foe of governmental encroachment upon those freedoms, and a notable number of decisions in important cases have been unanimous.

The Court has made it quite plain it feels that before the law, all men are equal, that none can claim privileges denied to others by reason of race, creed, or national origin.

Warren's concern with individual rights has been manifest in a number of opinions.

He has written:

"The abhorrence of society to the use of involuntary confessions does not turn alone on their inherent untrustworthiness. It also turns upon the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves."

And again:

"The privilege against self-incrimination is a right that was hard earned by our forefathers. The privilege was generally regarded then, as now, as a privilege of great value, a protection to the innocent through a shelter to the guilty, and a safeguard against heedless, unfounded or tyrannical prosecutions."

In the 11 years, come October 5, Warren has served as Chief Justice, few men in judicial history have been damned and denounced quite as much.

The new term of Court, opening October 5, offers little promise of peace between the Court and its critics. The court has agreed, as its first act of business, to review the public accommodations section of the new Civil Rights Act.

The particular case involves the barring of Negroes from the Heart of Atlanta Motel in Atlanta, Ga., and, by extension, the Pickrick Restaurant, also in Atlanta, which closed its doors rather than serve Negroes.

Later, the Court also has on its docket a case from Florida in which a white woman was fined for living with a man described as a Negro. A decision in this case will affect miscegenation laws in all Southern States.

In still another case, the Court will decide whether States are barred by the Constitution from using trespass laws to keep Negroes from business establishments.

In the days when Warren was a practicing politician an attack would have brought a devastating counterattack.

"A Senator or a Governor," he once told an interviewer, "may explain or defend his position publicly but not members of the Supreme Court. We can't be guided by what people think or say, except in legal discussion. We can't be guided by public appraisal. If we did, we'd be deciding cases by other than legal means."

If the white-haired Warren is perturbed by any of the criticism it rarely shows. He still turns a sunshiny smile upon the world and finds refuge amid the highly partisan crowds at football and baseball games where he carefully refrains from booing the umpires.

On one occasion, however, when he was asked whether he sometimes wished he might reply to attacks upon the Court, he replied: "Oh, boy. Sometimes it makes you cringe, to see what other people say and write."

There is no doubt that in the 11 years Warren has occupied the highest judicial post in the land, the Court has set in motion vast changes throughout its majority opinions—opinions which go to the root of American life.

It has ruled that:

Legislatures represent people, not trees or acres and hence State legislatures should be apportioned on the basis of population.

States may not segregate school children on the basis of race, color, creed, or national origin.

The fifth amendment's protection against self-incrimination applies to State as well as Federal courts.

Indigent persons are entitled to legal representation provided by the courts in both State and Federal jurisdictions.

Bible reading and state-composed prayers as required exercises in public schools clash with the Constitution's guarantee against governmental interference with religious.

Racial imbalance in schools does not violate the Constitution.

A Federal law denying passports to Communists was unconstitutional on its face.

These were just some of the decisions which stirred the passions of some men throughout the Nation. In the last session alone, the Court reviewed 2,410 cases—highest in the Court's history.

One decision of the past session which aroused wide reaction, mainly among politicians, was the ruling that State legislatures must be apportioned on the basis of population.

What this decision does, in effect, is to end rural domination of State legislatures.

The House of Representatives has already passed and sent to the Senate a proposal which would strip the Federal courts of jurisdiction in apportionment cases. The bill, by Representative WILLIAM TUCK, Democrat of Virginia, would leave intact the Supreme Court's ruling that both houses of a State legislature must be apportioned on a population basis. But it would give the Court no enforcement powers.

Senate Minority Leader EVERETT DIRKSEN, Republican of Illinois, has given the Tuck measure little chance of passage in the Senate. DIRKSEN has his own measure which would delay enforcement of the reapportionment decision for a year or two.

Whether either the Dirksen or Tuck proposals can be acted upon in this session of Congress is problematical.

Warren also wrote the 1954 school desegregation decision. In that decision, which upset some 250 years of Southern tradition, he declared:

"Education is perhaps the most important function of State and local governments. It is the very foundation of good citizenship.

"We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

But whatever the opposition, Supreme Court decisions have a way of hardening into the law of the land. The passage of the 1964 civil rights legislation is indicative.

In all his 11 years on the Bench, Warren has only once come close to answering the Court's critics. That was in 1963 before the California Bar Association meeting at San Francisco.

In that speech Warren said the landmark cases of the past 10 years had been charged with emotion, but then so were decisions of the 1930's and 1940's.

Those earlier decisions, he said, "are now shorn of emotion and are a part of the settled jurisprudence of the Nation."

Then Warren said:

"There are many people, and, I fear, some lawyers, who believe that whenever the Court disapprove of some facet of American life, it reaches out and decides the question in accordance with its desires.

"We can reach for no cases. They come to us in the normal course of events or we have no jurisdiction. When they do come to us, we decide them or we do not do our duty."

As for those who say the Court is invading the rights of States, Warren had this to say:

"Where the supreme court of a State is vigilant in its protection of constitutional rights, as is the Supreme Court of California few differences arise between it and the Supreme Court of the United States."

Warren concluded that speech by saying:

"Too often we find people who believe fervently in that portion of the rule that protects them in their own sphere of activity but are intolerant of that portion which protects other people.

"When we say we have a government of laws and not of men, we mean at the very least, that the law protects all men equally in their property and individual rights, regardless of their race, religion, color, or wealth."

The lawyers cheered.

To the buffeted Warren, it must have been a rare balm.

Mr. RUSSELL. Mr. President, I should like to have 2 or 3 minutes yielded to me by whomever is in control of the time.

Mr. DIRKSEN. I yield 5 minutes to the Senator from Georgia.

Mr. RUSSELL. I thank the Senator.

Mr. President, I shall vote in favor of the motion of the Senator from Oregon to table the amendment, but for an entirely different reason from that which he has assigned. I believe that the adoption of the amendment in the form in which it is presented would be demeaning to the Senate of the United States. I shall, therefore, vote to table this sense-of-the-Congress amendment.

If we may judge from some of its more recent opinions, the Supreme Court does not have a very high regard for the sense of the Congress in the first instance. Indeed, if we abandon so completely our legislative responsibility and the power vested in this body under the Constitution and assume an attitude of obeisance, subservience, and supplication when we have the power to pass effective legislation in this field, then the Supreme Court is justified in believing that Congress has no sense.

To me, this is a regrettable state of affairs. I did not initiate the original amendment. I am not sure the foreign aid authorization bill was the proper measure to which to offer it. But after the matter was brought before the Senate, it had my heartiest support, and for that I apologize to no one.

Congress is supposed to be a coequal and coordinate branch of the Government. Legislative power is supposed to be vested in this body and not in any judicial branch, anywhere, even though it be as exalted as the Supreme Court of the United States. That Court has lost sight of the fact that the States created the Federal Government. The States are not creatures of the Federal Government; they are the creators of the Federal Government. Not a single one of the legislative bodies of the Original Thirteen States was apportioned purely on a basis of population. I agree that one house of each State legislature should be apportioned purely on the basis of population. But there are sound reasons in the whole history of human affairs, of government, of its management, and of society to take into consideration factors other than the population in determining the representation of the other body.

It is impossible for every interest and element of our people to have their voices heard and their interests protected if our ever increasing urban centers are to have the power to elect all members of both legislative bodies. The peculiar problems of an ever decreasing rural population will have no attention whatever. They will be lost in the maneuvering as the political leaders of the great centers of population jockey for position and power.

Indeed, Mr. President, if both houses of the State legislatures are to be chosen on the basis of population alone there is little reason to retain the bicameral system—a one house legislature would be more economical and arrive at the same result.

To say that both houses of a State legislature should be apportioned purely on the basis of population is to invite the creation of political bosses of political machines in the great centers of population, such as we have seen in the past—machines which give rise to corruption, graft and crime and cause people to hang their heads in shame for many years. When other factors are taken into consideration, there are checks and balances, and city machines cannot control the States. When all factors other than a counting of heads are destroyed, a rule by mob—by a majority of one of the moment—is created. That is the very thing that the Founders Fathers sought to avoid when they wrote the Constitution of the United States.

It was never contemplated by the Founding Fathers that the courts should have any such authority as to require both houses of a State legislature to be apportioned strictly on a basis of population. It is an act of cowardice on the part of Congress to back away from its responsibility and permit the Court to assume the powers it has in this instance.

Rather than to be put in a position of subservience to the Supreme Court, I shall vote to table this poor, weak, futile gesture of Congress—a Congress that once was respected throughout the United States.

Mr. MANSFIELD. Mr. President, I yield 2 minutes to the distinguished Senator from New York.

Mr. JAVITS. Mr. President, I shall vote against the motion to table. I believe that in good faith toward the people of the country, who have watched this battle go on in Congress, where the middle position has finally been successful—as it so often is in this country—we should go through with what we have finally decided as the consensus of this body.

The reason is that it takes as much strength to respect a coordinate branch of the Goverment as it does to try to override it when we have no power to override it. The Congress has no power to override a constitutional interpretation by the Supreme Court, except by a constitutional amendment. In my judgment, the argument for tabling is invalid because we have a remedy. We have a remedy under the supreme law, which would have the same authority as that which justified the Supreme Court's decision, namely, a constitutional amendment, and we have the power and the right to start such an amendment in motion. In my judgment, if we seek to assert an authority over the Supreme Court that we do not have, we are guilty of exactly the same kind of tyranny which those who argue for the tabling motion have argued against the Supreme Court. This is not strength; it is weakness or pique. I hope the Senate will not do it.

Mr. MANSFIELD. Mr. President, I first yield 4 minutes to the distinguished Senator from Florida [Mr. HOLLAND], and then I shall yield 4 minutes to the distinguished Senator from Ohio [Mr. LAUSCHE].

Mr. HOLLAND. Mr. President, I agree with everything the distinguished Senator from Georgia [Mr. RUSSELL] said except one thing. I do not agree with his conclusion.

I shall vote against the motion to table because I believe the Senate and the House have a positive duty to perform. When the Supreme Court goes astray, in the judgment of any Senator or any Member of the House, I do not know anywhere else that the people of the States of our Nation can turn for any voice to be raised in defense of a system they believe in and have operated under since 1789, or prior thereto, except to Congress.

Another reason why I oppose the motion is that I do not care to be placed in the position of maligning the Supreme Court. I stood on the floor of the Senate and suggested, when there was trouble in Mississippi, that the Governor of Mississippi should obey an order of the Supreme Court or of a Federal court. I have always stood for obedience to the courts. But I also stand for the responsibility of Congress in a matter which does not enable the people to turn anywhere else.

It seems to me that while we are given a very milktoast sort of amendment now—and I am only sorry that my distinguished leader lost faith in his original proposal and has gone backward to this weak, spineless proposal——

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. HOLLAND. At the same time, I must vote for that, if that is all that he

could offer, because I believe that the Senate and House must express their complete disapproval of a departure from constitutional principles, which reach back to the very inception of the Constitution.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. HOLLAND. I know, because I have read every word of the debates on the submission of the 14th amendment, that it was stated by the sponsors of the amendment to others on the floors of both Houses, that Congress was leaving out the power to do what the Supreme Court has done in this case, and for the very definite reason that Congress felt that if such power were included in the 14th amendment, the amendment would not be ratified by the States. Of course, Congress was correct in that conclusion.

I do not favor the Supreme Court's amending the Constitution; yet that is what it is doing in this particular matter. I do not know where the people can go, except to us, to have us lift our voices against a procedure that we are deeply convinced is wrong and unconstitutional.

I am not trying to impeach or to malign anyone; I am standing for what I think, in good conscience, is right. I think it is the duty of the elected representatives of the people of the States to stand up for the constitutional privileges and rights of the American people and the States.

I regret that we are now reduced to a very weak handling of this subject; but I would rather do that than to sit here and make no effort at all, offer no voice at all, against an encroachment that I think marks the breakdown of important constitutional rights and privileges. I feel it so deeply that I shall vote for anything that we have an opportunity to vote for, which addresses itself to opposing what I think is a teriffic abuse of constitutional authority by the Supreme Court.

Mr. LAUSCHE. Mr. President, I contemplate voting against the motion to table that will be made by the Senator from Oregon. I would have preferred the adoption of the Dirksen amendment. Since it has been eliminated, I have concluded that acceptance of the status as it is now is better than nothing at all.

I direct my remarks to the possibility of the court listening to the suggestion which has been made. It was argued earlier today that the court will listen to what we have to say. I wish I could feel confident about the correctness of that statement. I am somewhat dubious about that, but although I am dubious I still have hope and, therefore, wish to see the Mansfield amendment, as modified, adopted.

Mr. President, to illustrate what I have in mind, I should like to discuss the Landrum-Griffin bill. In 1959, we had before us the issue: Shall secondary boycotts be prohibited in economic strikes of labor and management?

The Senate concluded that there shall be no prohibition. The House decided that secondary boycotting shall not be allowed. Inasmuch as the House and Senate were in conflict, a conference committee was appointed. That conference committee made its decision. The former President, Senator John F. Kennedy, was chairman of the Senate conferees. He reported to the Senate that the conference had agreed. Under the agreement, secondary boycotting of a neutral place of business was to be prohibited.

What was permitted was the giving out of handbills or information for radio use. Former Senator Kennedy reported that it was agreed that secondary boycotting should not be allowed. When that statement was made by former Senator Kennedy, the Senator from Oregon [Mr. MORSE] obtained the floor and made the statement:

> The bill does not stop with threats and with legalizing the hot cargo agreement. It also make it illegal for a union to coerce or restrain. This prohibits consumer picketing at a neutral place of business.

After the Senator from Oregon was finished, former Senator Kennedy took the floor and made the statement:

> We were not able to persuade the House conferees to permit picketing in front of any secondary shop.

Those were the statements made to the Senate. The Senator from Minnesota [Mr. HUMPHREY], the Senator from Oregon [Mr. MORSE], former Senator Kennedy, and other Senators concluded that secondary boycotting was not allowed.

Then began a strike in the State of Oregon. Secondary boycotting was resorted to, but secondary boycotting was resorted to in a peculiar way. Pickets were thrown around the Safeway Stores. They carried signs, "Do not buy the products of X company." The case went to the Supreme Court. The Supreme Court, in the face of what the Senator from Oregon had said, what former Senator Kennedy had said, and what the Senator from Minnesota [Mr. HUMPHREY] had said, issued the pronouncement that secondary boycotting was allowed.

How can I, who was on the floor of the Senate at that time, and heard the arguments of the Senator from Oregon, the Senator from Minnesota, and former Senator Kennedy, forget the fact that the Supreme Court said that we did not do what everyone else said we did: It is an indefensible unexplainable judgment reached by the Court on the basis of its wishes and contrary to the clear intent of the Congress.

The proposal in the Mansfield amendment is better than nothing. It is for that reason that I shall vote for it, hoping that the courts will understand that the Nation is alarmed about what was done and that reasonable time should be accorded to the States to amend their constitutions, if they so desire.

Mr. DIRKSEN. Mr. President, how stands the time?

The PRESIDING OFFICER. Nine minutes remain.

Mr. DIRKSEN. I yield 1 minute to the Senator from Vermont [Mr. AIKEN].

The PRESIDING OFFICER. The Senator from Vermont is recognized for 1 minute.

Mr. AIKEN. Mr. President, I am disappointed that the Mansfield amendment was adopted. Nevertheless, it is an expression on the part of the Senate of disapproval of the action of the Federal courts of this country; therefore, I shall vote not to table it.

We must take some action in Congress and make it our business next session. What the courts have done is to take this country a long way away from the democratic form of government it previously enjoyed for 170 years.

The action of the courts makes the Government of the United States unique among the nations of the world, in that the United States will be virtually the only nation in which a tribunal appointed by one branch of Government can nullify and reverse the acts of the legislative branch of the same Government.

Mr. DIRKSEN. Mr. President, I yield myself 4 minutes.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 4 minutes.

Mr. DIRKSEN. Mr. President, I shall support the motion to table, as the distinguished Senator from Georgia [Mr. RUSSELL] has stated, for reasons quite other than those ascribed by the distinguished Senator from Oregon [Mr. MORSE].

When the vote is taken, and assuming, of course, that the motion to table fails, the very facile gentlemen sitting above us in the Chamber, who have an expertise in somehow winnowing truth from the superfluities and sending it out on the transmission channels all over the country, will probably headline their stories: "The Dirksen-Mansfield Proposal as Amended by the Mansfield Substitute Was Approved by the U.S. Senate This Afternoon." The people who will read it will forget that it is nothing more than the sense of Congress, without validity, without legality, and without any real admonition to any Federal court in the land to pay the slightest attention.

If they were going to pay attention, let me say to the distinguished chairman of the Finance Committee, they would have done it in his State, because we have been discussing this issue for 6 weeks; but last Friday the three-judge court tore his State senate apart and cut their terms in half.

One dares suppose that the members of the three-judge court read the newspapers. One dares assume that they know what is going on in the Senate. From that assumption, they did not pay the least attention to any intent or purpose or objective of the sense of Congress that may have been uttered and expressed upon this floor in the last 6 weeks.

People will read the newspaper stories, and some will find comfort in them. They will say, "The Senate finally came to the rescue of the State legislatures." But it will be a deception. It will be an illusion. I am not going to be a party to fooling the people of the United States, if I can knowingly avoid it. That is all we will get. That is all the "sense of Congress" resolution is. That is all the impact it will have on the Court, even as it did in the State of Oklahoma. The Court said, "It was not of our making,

and we expect you to apply the law." They did.

It should be tabled, but not for the reasons assigned by the distinguished Senator from Oregon [Mr. MORSE].

Mr. MORSE. Mr. President, I shall take only 30 seconds.

Senators have the right to criticize the Court on the floor of the Senate and on the political platforms of America; but I leave them when they seek to use the legislative process to rebuke the Court, because when they do that I claim it to be a violation of the separation of powers doctrine of the Constitution. That is the reason why I oppose it.

I move to table the Dirksen amendment, as amended by the Mansfield amendment, as modified, in the nature of a substitute. I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the senior Senator from Oregon to lay on the table the Dirksen amendment, as amended by the modified amendment of the Senator from Montana [Mr. MANSFIELD] in the nature of a substitute. The yeas and nays have been ordered; and the clerk will call the roll.

The Chief Clerk called the roll.

Mr. MANSFIELD. I announce that the Senator from North Dakota [Mr. BURDICK], the Senator from Idaho [Mr. CHURCH], the Senator from Louisiana [Mr. ELLENDER], the Senator from Alaska [Mr. GRUENING], the Senator from Minnesota [Mr. MCCARTHY], and the Senator from Ohio [Mr. YOUNG] are absent on official business.

I also announce that the Senator from Alabama [Mr. HILL] and the Senator from Massachusetts [Mr. KENNEDY] are absent because of illness.

I further announce that the Senator from Nevada [Mr. CANNON], the Senator from Mississippi [Mr. EASTLAND], the Senator from Minnesota [Mr. HUMPHREY], the Senator from Washington [Mr. JACKSON], and the Senator from Oregon [Mrs. NEUBERGER] are necessarily absent.

I further announce that, if present and voting, the Senator from Alaska [Mr. GRUENING] would vote "nay."

Mr. KUCHEL. I announce that the Senators from Kansas [Mr. CARLSON and Mr. PEARSON], the Senator from Arizona [Mr. GOLDWATER], and the Senator from Texas [Mr. TOWER] are necessarily absent.

If present and voting, the Senators from Kansas [Mr. CARLSON and Mr. PEARSON] and the Senator from Texas [Mr. TOWER] would each vote "yea."

The result was announced—yeas 27, nays 56, as follows:

[No. 581 Leg.]

YEAS—27

Allott	Jordan, Idaho	Robertson
Bennett	McClellan	Russell
Byrd, Va.	Mechem	Saltonstall
Cotton	Miller	Simpson
Curtis	Morse	Sparkman
Dirksen	Morton	Stennis
Dominick	Mundt	Talmadge
Hickenlooper	Pastore	Thurmond
Hruska	Pell	Young, N. Dak.

NAYS—56

Aiken	Hart	Metcalf
Anderson	Hartke	Monroney
Bartlett	Hayden	Moss
Bayh	Holland	Muskie
Beall	Inouye	Nelson
Bible	Javits	Prouty
Boggs	Johnston	Proxmire
Brewster	Jordan, N.C.	Randolph
Byrd, W. Va.	Keating	Ribicoff
Case	Kuchel	Salinger
Clark	Lausche	Scott
Cooper	Long, Mo.	Smathers
Dodd	Long, La.	Smith
Douglas	Magnuson	Symington
Edmondson	Mansfield	Walters
Ervin	McGee	Williams, N.J.
Fong	McGovern	Williams, Del.
Fulbright	McIntyre	Yarborough
Gore	McNamara	

NOT VOTING—17

Burdick	Goldwater	McCarthy
Cannon	Gruening	Neuberger
Carlson	Hill	Pearson
Church	Humphrey	Tower
Eastland	Jackson	Young, Ohio
Ellender	Kennedy	

So Mr. MORSE's motion to table the Dirksen amendment, as amended by the Mansfield amendment, as modified, in the nature of a substitute, was rejected.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois [Mr. DIRKSEN], as modified by the amendment of the Senator from Montana [Mr. MANSFIELD].

The amendment was agreed to.

ORDER OF BUSINESS

The PRESIDING OFFICER. Pursuant to the unanimous-consent agreement entered into yesterday, the Senate will next proceed to the consideration of the question of referring the conference report on the bill (S. 2687) extending the Agriculture and Trade Development and Assistance Act of 1954, and for other purposes, to the Committee on Foreign Relations for hearing and study, the time to be equally divided and controlled by the proponents, the Senator from Arkansas [Mr. FULBRIGHT], and the opponents, the Senator from South Carolina [Mr. JOHNSTON]. The time of 1 hour has been allotted under the agreement, one-half hour to each side.

Mr. MANSFIELD. Mr. President, the time is not to exceed 1 hour.

Mr. President, I send to the desk a unanimous-consent request and ask for its immediate consideration. The request has been cleared with all interested Senators, I believe. Those I might have missed have not been overlooked arbitrarily. I hope the Senate will see fit to agree.

The PRESIDING OFFICER. The proposed unanimous-consent agreement will be stated.

The Chief Clerk read as follows:

UNANIMOUS-CONSENT AGREEMENT

Ordered, That, during the further consideration of the bill (H.R. 11380), to amend further the Foreign Assistance Act of 1964, as amended and for other purposes, debate on any amendment, motion, or appeal, except a motion to lay on the table, shall be limited to 1 hour, to be equally divided and controlled by the mover of any such amendment or motion and the majority leader: *Provided,* That in the event the majority leader is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or some Senator designated by him:

Ordered further, That on the question of the final passage of the said bill debate shall be limited to 4 hours, to be equally divided and controlled, respectively, by the majority and minority leaders: *Provided,* That the said leaders, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, motion, or appeal.

The PRESIDING OFFICER. Is there objection?

Mr. HICKENLOOPER. Mr. President, reserving the right to object, I should like to ask a question of the leadership.

I should like to ask the leadership for any information available about what amendments are to be on file and are likely to be controversial or which would require any particular discussion—other than the unfortunate situation that we just failed to cure by not tabling the Dirksen amendment, as amended.

Mr. MANSFIELD. Mr. President, to the best of my knowledge, there are three amendments at the desk. One, submitted by the Senator from Kansas [Mr. PEARSON], relates to sugar. A second amendment relates to loyalty, and has been submitted by the Senator from Vermont [Mr. AIKEN]. A third amendment has to do with antisemitism in the Soviet Union, and has been submitted by the Senator from Connecticut [Mr. RIBICOFF].

Mr. HICKENLOOPER. Mr. President, I do not intend to object to the unanimous-consent request. However, I believe that before we become tied up in a constricted situation we ought to know what we are getting into. I do not know how much debate the sugar situation will require.

Mr. MANSFIELD. Not too much, I understand.

Mr. HICKENLOOPER. I am not trying to inhibit the procedure. I have no objection.

Mr. DIRKSEN. Mr. President, reserving the right to object, I should like to know a little about the so-called loyalty oath amendment which my distinguished friend, the Senator from Vermont, proposes to offer.

Mr. AIKEN. I have a very fine amendment to offer to the bill. The amendment would require the recipients of all contracts under the aid program to take the same loyalty oath as dropouts in high school, paraplegics, and poor children would have to take under the poverty bill. I believe the amendment is an excellent one. I cannot conceive of any Senator not voting for it. I would be glad to offer it now and have it accepted, although it would be a wonderful amendment upon which to have a record vote.

Mr. MANSFIELD. Would the Senator from Vermont be agreeable to a unanimous-consent request in relation to his amendment?

Mr. AIKEN. Yes. I do not believe that it would require 5 minutes to "sell" the amendment.

Mr. RUSSELL. Mr. President, if we are to vote on an amendment, may we have it stated?

Mr. MANSFIELD. The amendment has not yet been offered.

The PRESIDING OFFICER. Is there objection to the unanimous-consent agreement proposed by the Senator from Montana?

Mr. RUSSELL. Mr. President, I should like to have the unanimous-consent request restated. I did not understand that part about voting immediately on an amendment without debate.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. RUSSELL. I yield.

Mr. MANSFIELD. We have asked for an agreement that debate on each amendment be limited to 1 hour, the time to be equally divided and controlled by the mover of any such amendment or motion and the majority leader, provided that in the event the majority leader is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or some Senator designated by him. Four hours would be allotted for debate on the bill.

Mr. RUSSELL. The proposed unanimous-consent agreement would not preclude the offer of other amendments than the ones stated.

Mr. MANSFIELD. No.

The PRESIDING OFFICER. Is there objection?

Mr. HICKENLOOPER. Mr. President, to which measure does the request apply? I am uncertain as to which bill this request applies to.

Mr. MANSFIELD. The foreign aid bill, which has been the pending business for 35 days, more or less.

Mr. HICKENLOOPER. I am glad to get that information, and I appreciate it. I would like to be brought up to date. I thought it was on the Public Law 480 bill.

Mr. MANSFIELD. No There is an hour's limitation on that matter.

Mr. HICKENLOOPER. That is, on the conference report.

Mr. MANSFIELD. Yes. The provisions of this request will take effect following action on that matter.

Mr. HICKENLOOPER. Does the unanimous-consent request apply to the majority leader's substitute, which was just adopted?

Mr. MANSFIELD. No; it applies to the same bill to which that substitute is attached.

Mr. HICKENLOOPER. The substitute is already in the bill?

Mr. MANSFIELD. Yes.

Mr. HICKENLOOPER. So the question will not recur on the Senator's substitute? That has already been adopted.

Mr. MANSFIELD. Yes.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? The Chair hears none, and the unanimous-consent request is agreed to.

EXTENSION OF AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACT OF 1954—CONFERENCE REPORT

The Senate resumed the consideration of the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2687) to extend the Agricultural Trade Development and Assistance Act of 1954, and for other purposes.

Mr. FULBRIGHT. Mr. President, before Senators leave, I ask for the yeas and nays on my motion.

The yeas and nays were ordered.

Mr. FULBRIGHT. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. FULBRIGHT. As I understand, I have 30 minutes, and the Senator from South Carolina [Mr. JOHNSTON] has 30 minutes.

The PRESIDING OFFICER. That is correct.

Mr. MANSFIELD. Mr. President, I have taken some of the time of the Senator from South Carolina, I am sure with his consent, and the approval of the Senator from Vermont.

Mr. FULBRIGHT. How much time has the Senator from South Carolina left?

Mr. JOHNSTON. I should like to know. I did not know I was giving away any of my time.

The PRESIDING OFFICER. Five minutes have been taken from the time of the Senator from South Carolina, so there remain 25 minutes to the Senator from South Carolina and 30 minutes to the Senator from Arkansas.

Mr. JOHNSTON. Mr. President, several Senators desired to say something on this matter. I am sorry that time was taken from my side.

Mr. HOLLAND. Mr. President, will the Senator from Arkansas yield for a parliamentary inquiry?

Mr. FULBRIGHT. I yield, but not on my time.

The PRESIDING OFFICER. Time is now running.

Mr. FULBRIGHT. I cannot yield now.

I yield one-half minute to the Senator from Florida.

Mr. HOLLAND. I thank the Senator.

Mr. President, a parliamentary inquiry. Suppose the Senate should unwisely adopt the motion and send the conference report to the Foreign Relations Committee, which has no relation at all to this particular conference report or this field of jurisdiction. What, if anything, would the Committee on Foreign Relations be instructed to do?

The PRESIDING OFFICER. The Parliamentarian informs the Chair that all the committee could do would be to hold hearings. That would be it. It could taken no action.

Mr. FULBRIGHT. Mr. President, the committee could make recommendations. The Foreign Relations Committee could hold hearings and make recommendations to the Senate in regard to those matters in the bill within its jurisdiction.

Mr. President, the question before the Senate involves a basic issue of foreign policy and also of the Senate's procedure in its approach to matters involving our foreign policy.

We have before us the conference report on the extension of the Agricultural Trade Development and Assistance Act, popularly known as Public Law 480. This act is supposed to do what its name implies—that is, promote the development of trade in agricultural commodities and thereby dispose of some of our burdensome surpluses. It is not supposed to be a vehicle for casually making fundamental changes in our foreign policy, and for restricting by law the legitimate discretion of the President who bears the primary responsibility for the conduct of our foreign relations. This, however, is what the conference report seeks to do. It contains several provisions which have little, if any, relevance to the purpose of Public Law 480 but which, on the contrary, impinge directly and adversely on the foreign policy of the United States.

The most obnoxious of these provisions is that which, in effect, prohibits sales for local currency under title I to Yugoslavia and Poland.

There have been no hearings on this proposal in either the House or the Senate. It was not considered by the Senate Committee on Agriculture and Forestry, nor—so far as I know—by the House Committee on Agriculture. It was not considered on the floor of the Senate during Senate debate on the bill. It was adopted on the floor of the House, and it has unfortunately been retained by the conferees. I hardly need add that it has not been considered at all by the Committee on Foreign Relations—nor the House Committee on Foreign Affairs—nor has the Department of State had an opportunity to be heard, despite the fact that the Department is strongly opposed.

This provision would negate one of the most important principles of our foreign policy—the principle that we treat different Communist countries differently. This principle has been applied consistently and with good results for 15 years, under Presidents Truman, Eisenhower, Kennedy, and Johnson. In this period, Yugoslavia has successfully asserted and maintained its independence of the Soviet Union. This independence, in the opinion of Mr. George Kennan, our distinguished former Ambassador to Yugoslavia, has been "conducive to the peace and stability of the Balkan and Adriatic areas generally."

The Yugoslav example has also, quite clearly, been contagious in Eastern Europe. Since 1956 Poland has moved significantly toward independence from Moscow. More recently, Rumania has apparently set out on the same course. It sent a trade commission here for preliminary discussions. There have even been stirrings in Hungary and Czechoslovakia.

Surely, our interests are more advanced in Eastern Europe today than they would have been if these things had not happened. Although it would be too much to say that our policies, by themselves, have brought about these changes, it is certainly not too much to say that our policies have helped. They have made it easier for the Yugoslavs to pursue a policy independent of Moscow. They have made it easier for the Poles to assert a modicum of independence. They have made it easier for the Rumanians to expand their relations with the West.

To put it the other way, if we had not followed these policies, if we had not come to the aid of the Yugoslavs in 1950 and of the Poles in 1957, who can say with any assurance that Eastern Europe would not today still be a monolithic buttress of the Soviet Union? Reason and logic indicate that it would be. Would we be better off if the 15 or 20 Yugoslav divisions were under Soviet command?

Let me quote again from a recent statement by former Ambassador Kennan, who probably knows Eastern Europe better than any other American:

> The Yugoslav Government is dominated by a party which uses the name "Communist"; but that government differs in certain very fundamental respects from other governments that go by that name. Not only does it differ in its institutions but it differs even more in its practices, and particularly its practices in matters that determine its relations with us. It is not linked with any other Communist power by bonds of military alliance. It is not a member of the Warsaw Pact or of any other Communist military political grouping. In its bilateral relations with us, during the period of my recent service as American Ambassador there, it showed itself consistently correct and proper. It did not default on any obligations to us. There was no evidence that it was conducting either independently or in association with any other country, improper activities in this country. No Yugoslav official I ever asked to see refused to see me or treated me otherwise than with complete courtesy. Americans, official and unofficial, were treated with exceptional warmth and kindness throughout the country.
>
> What more do we want, and what is our complaint? We disagree with the Yugoslav leaders, certainly, on many questions of international affairs. But they have as much right to disagree with us as we have to disagree with them. Are we supposed to demand agreement with all our views, as the price of normal relations? If so, why do we start with the Yugoslavs?
>
> Yugoslavia occupies an extremely sensitive and strategic position, between the countries of the Soviet bloc and the Adriatic. It commands some of the strongest armed forces in Europe outside of Soviet control.
>
> For over 15 years its Government has pursued an independent course in its international relations. This course has not been identical with ours; but it has also not been identical with that of Moscow. The policy implied by the amendment can have only one conceivable effect: to convey to the Yugoslavs that they have no favorable prospects in their relations with us, no matter how they treat us, and to impel them, for lack of alternative, in the direction of a closer relationship with Moscow. There is no one—but literally no one—who could benefit from a movement of the Yugoslavs in that direction except policymakers in Moscow. What is at stake here is not just Yugoslavia alone, but also the policies of other Communist governments which have been, and will continue to be, importantly influenced by the Yugoslov example.

How, Ambassador Kennan asks, can "a policy having such effect conceivably be defended on the grounds that it is anti-Communist?"

That is a good question, Mr. President, and an unanswerable one. This is sham anticommunism. It will please no one except the Communists in Moscow and the superpatriots in the United States.

What more eloquent testimony could we want that people who call themselves Communists are different; that selling wheat to one group does not mean selling out to another?

Aside from the large effect which the ill-considered provision of the conference report will have on our overall relations with Eastern Europe, there is another effect which it will have in terms of individual human beings. It can only mean that millions of Poles and Yugoslavs will be hungrier—through no fault of their own but only because we disapprove not of their actions but how they describe their Government.

And all of this—I repeat, Mr. President—has been done without hearings and without consideration by the Foreign Relations or any other committee. It is directly contrary to the stand Congress took a year ago when—after consideration by the Foreign Relations Committee and debate in the Senate—we voted to repeal, in effect, a provision of the Trade Expansion Act prohibiting the extension of most-favored-nation treatment to Poland and Yugoslavia.

For the life of me, I cannot understand why the Congress, or certain Members of it, persist in gratuitously insulting countries with whom we would like to maintain normal and hopefully improving relations.

There is another matter in the conference report which would have deleterious effects on our foreign relations. This is the provision for subsidizing the export of long staple cotton. This is certain to impair our relations with Peru, and probably with the United Arab Republic and Sudan as well. It is probably also in violation of GATT, and it will invite retaliation against our other nonsubsidized exports. It is the kind of action which would cause us to apply countervailing duties and invoke the Anti-Dumping Act if it were taken against us by another country.

There is a further reason this conference report should be referred to the Committee on Foreign Relations. The report adds a new sentence to section 103(a) of Public Law 480 as follows:

> In presenting his budget, the President shall classify expenditures under this act as expenditures for international affairs and finance rather than for agriculture and agricultural resources.

We may pass over, for the time being, the question of the propriety of the Congress telling the President how to classify expenditures in his budget. Congress may, of course, act on the budget or rearrange it in any way that Congress desires; but in the first instance, it is the President's budget, not Congress.

The significant aspect of this provision of the conference report is that here is as plain a statement as one could make that the Agriculture Committees themselves view the activities under Public Law 480 as primarily affecting international affairs and finance rather than agriculture. The advocates of this conference report cannot have it both ways. Either Public Law 480 deals primarily with U.S. agriculture, in which case it ought not to deal with the U.S. foreign policy; or it does deal primarily with U.S. foreign policy—with "international affairs and finance," in the words of the conference report itself—in which case it comes under the jurisdiction of the Foreign Relations Committee. In either case, given the provisions of the conference report, it ought to be referred to Foreign Relations.

These are matters of serious import, Mr. President. They should not be acted on hastily without adequate consideration by the committees most directly concerned. I have no wish to delay the matter indefinitely. Senators may argue that if my motion is agreed to, the bill is dead for this Congress. As I said yesterday, even if that were true, it would not be a calamity. The present law continues in force until December 31. A new Congress will be here January 3. We could certainly pass another bill—hopefully, a better bill—within a month or two.

However, Mr. President, referral of the conference report to the Foreign Relations Committee does not necessarily kill the bill. I assure the Senate that the committee will consider the matter. We will have hearings immediately. We will report our recommendations, and the Senate can work its will upon them—after we have had the benefit of testimony and after these very serious questions have received the attention they deserve.

In conclusion, Mr. President, I want to impress upon the Senate the seriousness of the issue that is involved here. It goes to the heart of our relations with the Communist third of the world, and, therefore, to the heart of our whole foreign policy. The issue, simply stated, is whether we proceed on the assumption that there is any hope of ever improving, or even ameliorating, those relations, or ever encouraging even the slightest diversity within the Communist world; or whether we proceed on the assumption that any such hope is illusory, that all Communists—be they followers of Tito, Gomulka, Khrushchev, or Mao—are alike in their implacable hostility to us, and that consequently our only safe course lies in implacable hostility to each and every one of them. The end result of this latter course is likely to be nuclear war. If we should adopt a policy—as implied by this conference report—of never agreeing to anything, this in itself amounts to an ominous agreement—in a suicide pact.

The question now before us is the same issue which was involved in the question of most-favored-nation treatment for Poland and Yugoslavia a year ago. It is the same issue which was involved in the sale of wheat to the Soviet Union. It is indeed the same issue which was involved in the test ban treaty.

In each of these cases the Senate decided the issue in favor of hope and reason and against fanaticism and despair.

Mr. President, I urge the Senate to support my motion.

MODIFICATION OF MOTION TO COMMIT

It has been suggested that there could be some question about the committee reporting the conference report to the Senate. I am perfectly willing to modify my motion. I assure Senators that the committee will report it back with a rec-