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Senate

THURSDAY, SEPTEMBER 10, 1964

The Senate met at 12 o'clock meridian, 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:

Lord of all being, who holdest the world in Thy hand, and to whom all souls are dear: At another day's noontide, as representatives of the public trust come to counsel for the Nation's good, by their dedication make them worthy of these days of world destiny.

In this quiet moment, emptied of the strife of tongues, lifting our eyes to far horizons above the rampart confusions of the present, may today be seen in its true perspective.

Give us to discern that so often the things that disturb and agitate us most, and which loom so close to our eyes, are like the grass which groweth up: In the morning, it flourisheth and groweth up; in the evening, it is cut down and withereth. Save us, we pray, from the paralysis of mistaken magnitudes. Grant us a constant awareness of eternal principles, white and winning, whose paramount and permanent constancy arches the ages.

We ask it in the name whose truth is the same yesterday, today, and forever. Amen.

THE JOURNAL

On request by Mr. MANSFIELD, and by unanimous consent, the reading of the Journal of the proceedings of Wednesday, September 9, 1964, was dispensed with.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate proceed to the consideration of executive business, to consider the nominations on the Executive Calendar.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

EXECUTIVE REPORTS OF COMMITTEE ON ARMED SERVICES

Mr. McINTYRE. Mr. President, from the Committee on Armed Services, I report favorably the nominations of 10 Reserve colonels and 4 Reserve brigadier generals for promotion to the grade of brigadier general and major general, respectively, in the Army Reserve; 1 brigadier general and 4 colonels for temporary appointment in the Army to the grade of major general and brigadier general, respectively; and Prof. John Robert Jannarone for appointment as dean of the Academic Board of the U.S. Military Academy. I ask that these names be printed on the Executive Calendar.

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

The nominations are as follows:

Brig Gen. William Welby Beverley, U.S. Army, and sundry other officers, for temporary appointment in the Army of the United States;

Col. Arthur Frank Brandstatter, Military Police Corps, and sundry other officers, for promotion as Reserve commissioned officers of the Army; and

Prof. John Robert Jannarone, U.S. Military Academy, for appointment as dean of the Academic Board of the U.S. Military Academy.

Mr. McINTYRE. In addition, I report favorably 457 promotions in the Navy in the grade of captain. Since these names have already appeared in the CONGRESSIONAL RECORD, in order to save the expense of printing on the Executive Calendar, I ask unanimous consent that they be ordered to lie on the Secretary's desk, for the information of any Senator.

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

The nominations are as follows:

Paul A. Adams, and sundry other officers of the U.S. Navy, for temporary promotion to the grade of captain.

The ACTING PRESIDENT pro tempore. If there be no further reports of committees, the nominations on the Executive Calendar will be stated.

NATIONAL LIBRARY OF MEDICINE

The Chief Clerk proceeded to read sundry nominations in the National Library of Medicine.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that these nominations be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations will be considered en bloc; and, without objection, they are confirmed.

NOMINATION PASSED OVER

The Chief Clerk read the nomination of Robert Sargent Shriver, Jr., of Illinois, to be Director of the Office of Economic Opportunity.

Mr. MANSFIELD. Over, Mr. President.

The ACTING PRESIDENT pro tempore. Without objection, the nomination will be passed over.

PUBLIC HEALTH SERVICE

The Chief Clerk proceeded to read sundry nominations in the Public Health Service, which had been placed on the Secretary's desk.

The ACTING PRESIDENT pro tempore. Without objection, these nominations will be considered en bloc; and, without objection, they are confirmed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

The ACTING PRESIDENT pro tempore. Without objection, the President will be notified forthwith.

LEGISLATIVE SESSION

On motion by Mr. MANSFIELD, the Senate resumed the consideration of legislative business.

AMENDMENT OF FOREIGN ASSISTANCE ACT OF 1961—CLOTURE MOTION

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, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator from Montana will state it.

Mr. MANSFIELD. Do I understand correctly that the time is limited, to be divided between the distinguished minority leader, the Senator from Illinois [Mr. DIRKSEN], and the distinguished Senator from Pennsylvania [Mr. CLARK], or some Senator representing him?

The ACTING PRESIDENT pro tempore. The Chair is about to make a statement on that subject. It is the understanding of the Chair that the Senator from Minnesota [Mr. HUMPHREY] will have charge of the time of the opponents.

In view of the unanimous-consent agreement controlling the time until 1 p.m. today on the so-called Dirksen-Mansfield reapportionment amendment to H.R. 11380, the Foreign Assistance Act of 1964, the Chair lays the bill before the Senate.

Under the agreement, the Senator from Illinois [Mr. DIRKSEN] has control of time for the proponents, and the Senator from Minnesota [Mr. HUMPHREY] for the opponents.

Mr. MANSFIELD. Mr. President, I ask unanimous consent, pending arrival of the Senator from Minnesota [Mr. HUMPHREY], that the Senator from Wisconsin [Mr. PROXMIRE] be placed in charge of the time for the opponents.

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

Mr. PROXMIRE. Mr. President, I yield 5 minutes to the Senator from Idaho [Mr. CHURCH].

Mr. CHURCH. Mr. President, as the issue before the Senate is of some mo-

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ment, I believe that I should state briefly the reasons why I have concluded to vote against the pending cloture motion.

In the past, I have voted for cloture only after the most extended debate has taken place, and after every aspect of the issue in question has been exhaustively explored. I have favored the blocking of further debate only when it had become irrefutably clear that no other, less drastic course could enable the Senate to reach a vote. In the instant case, neither sufficient time has elapsed, nor has enough evidence been assembled, to warrant the imposition of cloture upon either of these grounds. It must be said, at the very least, that this cloture motion is premature.

But I would be less than candid if I were to account for my vote upon these procedural objections alone. There are also substantive reasons why I cannot vote for cloture on this issue, either now or later. They can be summed up simply enough: I do not favor the Dirksen rider.)

I have pondered the matter; I have reviewed the debate; I have considered the precedents. I have concluded that, regardless of how one approaches it, the Dirksen rider is wrong. It is wrong to force a vote upon it without benefit of committee hearings; it is wrong to attach it to the foreign aid bill, where it has no place, and thus to attempt to coerce the consent of the President. But, above all, it is wrong on its merits, because it seeks to suspend the Constitution of the United States as that document relates to the right of each citizen to have representation in his State legislature which is as equal as possible to that of all other citizens of his State.

I do not believe that it is within the power of the Congress to suspend the Constitution, either in this, or any other particular. If the Dirksen rider were to pass, I believe that it would be promptly struck down by the courts. The folly of our action would then be matched by its futility.

Even if one were to assume, for the purpose of argument, that the Dirksen rider might somehow be upheld as a valid exercise of congressional power, under a forced interpretation of article III, section 1, conferring power upon Congress to establish "such inferior courts as the Congress may from time to time ordain," or of article III, section 2, giving the Supreme Court appellate jurisdiction "with such exception, and under such regulations as the Congress shall make," how could one defend the wisdom of exercising such authority for the purpose of suspending a constitutional right?

It is no answer to say that the rider will suspend the right to equal representation for a period of only 2 years. If we can cross this threshold, what is then to prevent us from extending the suspension for another 2 years, or for 5, or indefinitely?

Nor is it an answer to say that the suspension is justified in this special case, in order that the legislatures of the various States might have time to deliberate whether to comply with the constitutional requirement for reapportionment, or to avoid it altogether by changing the Constitution through amendment. If the Constitution can be suspended by Congress to permit its amendment, it is nothing more than the instrument of Congress, having a stature little different from that of an ordinary statute.

This cannot be permitted.

For, if this were to come to pass, the independence of our judiciary to give force and effect to the Constitution will be thoroughly undermined, and the checks and balances upon which our system of government has long rested will be placed in the gravest jeopardy. The very underpinnings of the Constitution itself will be destroyed, as its efficacy, together with all its precious guarantees of individual freedom, will depend, from day to day, upon the shifting sands of congressional acquiescence.

What is really at issue here is the Constitution of the United States, fortified by an independent judiciary, and interpreted, in the last analysis, by the Supreme Court.

It is not possible to be a fair-weather friend of the Constitution, upholding it when a given Court decision receives general approval, but denying it when a decision proves unpopular. I concede that there is widespread disapproval in my State, in the rural and mountain areas, of the Supreme Court's reapportionment decisions. But I cannot forsake my allegiance to the Constitution, nor my oath to support it, on this account.

I, myself, would prefer to leave the question of legislative apportionment to the people of each State, provided that the people themselves, in each case, are furnished with the opportunity to ratify their system by majority vote through a popular referendum. This would place the decision directly in the hands of the people, where sovereignty properly resides.

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

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the Senator from Idaho may proceed for 1 additional minute.

The ACTING PRESIDENT pro tempore. Without objection, the Senator from Idaho is recognized for 1 additional minute.

Mr. CHURCH. Mr. President, I would support a constitutional amendment designed to accomplish this objective. Such is the remedy we should seek. It is the only course of action which comports with the system of law—and the method of government—which we have traditionally maintained.

The Congress, to be sure, can initiate such an amendment, or any other it sees fit to adopt, and the amendment may then be ratified either by special conventions called for the purpose, or by the legislatures of three quarters of the States. But, in the meantime, the Constitution cannot be set aside. Unless and until it is changed by amendment, it must be observed as the supreme law of the land.

Because the Dirksen rider represents an attempt to set aside the Constitution for a 2-year period, insofar as reapportionment is concerned, it is inherently defective, and, in my judgment, unworthy of support. Therefore, I shall vote against this move to invoke cloture in order to force a vote upon it. And if cloture is approved, I shall then vote against the Dirksen rider itself.

This does not mean that I also oppose the sense of Congress resolution which has been submitted by the senior Senator from New York [Mr. JAVITS] and the junior Senator from Minnesota [Mr. MCCARTHY]. To express our opinion, as a guideline for the courts, that reasonable time should be given the State legislatures to comply with the constitutional requirement for reapportionment, is, in my judgment, an entirely appropriate exercise of congressional discretion. The resolution does not undertake to set aside the Constitution, or to interfere with the power of the courts to implement or enforce it. I intend, accordingly, to vote for the resolution, should the opportunity arise.

Mr. President, I ask unanimous consent that there appear hereafter the text of the Dirksen rider and of the Javits-McCarthy sense-of-Congress resolution so that all who are interested may read and compare them.

There being no objection, the texts of the Dirksen rider and of the Javits-McCarthy sense-of-Congress resolution were ordered to be printed in the RECORD, as follows:

S. 3069

(Mr. DIRKSEN (for himself, Mr. EASTLAND, Mr. LAUSCHE, and Mr. STENNIS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary)

A bill to amend title 28, United States Code, to provide for a temporary stay of proceedings in any action for the reapportionment of any State legislative body

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 21, title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 461. Stay of proceedings for reapportionment of State legislative bodies

"Upon application made by or on behalf of any State or by one or more citizens thereof in any action or proceeding in any court of the United States, or before any justice or judge of the United States, in which there is placed in question the validity of the composition of any house of the legislature of that State or the apportionment of the membership thereof, such action or proceeding shall be stayed until the end of the second regular session of the legislature of that State which begins after the date of enactment of this section, and the court may make such orders with respect to the conduct of elections as it deems appropriate except that no order shall be inconsistent with any apportionment made pursuant to referendum. The court shall not deny any person or persons the right to make such application."

(b) The chapter analysis of that chapter is amended by adding at the end thereof the following new item:

"461. Stay of proceedings for reapportionment of State legislative bodies."

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AMENDMENT NO. 1234

Amendment intended to be proposed by Mr. JAVITS (for himself and Mr. McCARTHY) to the amendment (No. 1215) intended to be proposed by Mr. DIRKSEN (for himself and Mr. MANSFIELD) to H.R. 11380, an act to amend further the Foreign Assistance Act of 1961, as amended, and for other purposes

Strike out all on and after line 1, page 1, and insert in lieu thereof the following:

"SEC. 402. It is the sense of the Congress that in any action or proceeding in any court of the United States or before any justice or judge of the United States in which there is placed in question the validity of the composition of any house of the legislature of any State or the apportionment of the membership thereof, adequate time should be accorded (1) to such State to conform to the requirements of the Constitution of the United States relating to such composition or apportionment consistently with its electoral procedures and proceedings and with its procedure and proceedings for the amendment of the constitution of such State, and (2) for consideration by the States of any proposed amendment to the Constitution of the United States relating to the composition of the legislatures of the several States, or to the apportionment of the membership thereof, which shall have been duly submitted by the Congress to the States for ratification."

Mr. PROXMIRE. Mr. President, I yield 1 minute to the Senator from Rhode Island.

Mr. PASTORE. Mr. President, the senior Senator from Rhode Island will vote against cloture and will vote to lay the Dirksen amendment on the table. He will vote to lay the amendment on the table for the simple reason that it does not belong in the foreign aid bill.

This is an unfair attempt to force upon the President of the United States the dilemma of accepting the amendment or vetoing the foreign aid bill and calling Congress back into session.

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

Mr. PASTORE. May I have 2 additional minutes?

Mr. PROXMIRE. Certainly.

The ACTING PRESIDENT pro tempore. The senior Senator from Rhode Island is recognized for an additional 2 minutes.

Mr. PASTORE. Mr. President, this is an important piece of legislation. I realize that it raises many practical questions that should be resolved. But there is no better place for these questions to be resolved than in committee hearings. There have been no committee hearings.

Without stating all of my reasons for opposing the Dirksen amendment, a very cogent argument is made against the Dirksen amendment and against the application of cloture in an editorial which appeared in the Washington Post this morning. I cannot state the case better than it is stated in this editorial.

Therefore, Mr. President, I ask unanimous consent that the editorial published in the Washington Post of September 10, 1964, entitled "Rotten-Borough Retreat" be printed at this point in the RECORD.

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

ROTTEN-BOROUGH RETREAT

Senator DIRKSEN's cloture motion comes before the Senate today with two strikes against it. In the first place sponsors of the motion have failed to show that this is a proper occasion for the limitation of debate. In the second place, the end which they seek to attain would be highly detrimental to the American system of government.

Cloture is an essential device to cut off discussion after all the arguments have been heard, thus enabling the Senate to work its will on an issue that is properly before it. In the present case, however, the arguments have not all been heard. On the contrary, this scheme to upset the Supreme Court's reapportionment decisions was hatched in secrecy and rushed out of the Judiciary Committee without hearings. In these circumstances extended debate on the floor is necessary to alert the country to what is in the wind.

Full debate is further justified by the sly tactics employed to thwart the President's veto power. Instead of submitting the issue to be determined on its own merits, Mr. DIRKSEN is determined to attach his court-curbing bill as a rider to the foreign-aid bill. This would be an easy way of getting it before the House and of forcing the President to sign it or risk destruction of the foreign-aid program. Certainly there is no obligation on any Senator to support cloture in furtherance of this highly irregular procedure. The limitation of debate is a device to curtail the abuse of power—not to promote it.

On the merits of the Dirksen-Mansfield bill behind the cloture motion the case is equally clear. Senator DOUGLAS accurately characterized this measure when he said: "I believe that what we are asked to do is to suspend for an indeterminate time the constitutional guarantee of the equal protection of the law, and to deny this protection to individuals who may wish to obtain it."

The Supreme Court has found many State legislatures to be so badly malapportioned that they cannot be reconciled with the "equal protection" requirement. These rulings have unquestionably become the law of the land. It is not the function of Congress to set aside that law, even temporarily, or to thwart its operation. The spectacle of Congress trying to use its legislative power to deny or temporarily nullify constitutional rights which the Supreme Court has clearly upheld is such a serious encroachment upon the orderly division of powers that even extraordinary measures would be justified to defeat it.

There is much controversy, to be sure, over the soundness of the Court's edict that both houses of the State legislatures must be apportioned on the basis of population. This is a matter for extended national soul-searching. The next Congress will be free, if it wishes, to propose a constitutional amendment after exhaustive hearings, analysis and debate. Meanwhile, however, Congress should not seek to short circuit judicial decisions or to prejudice a great national issue by resorting to irregular procedures of its own.

It should also be clear to everyone who probes into this controversy that the "rotten borough" system must go. Senator DOUGLAS and others have provided an abundance of details to show how grossly unrepresentative most of our State legislatures have become.

The practical effect of the Dirksen proposal would be to keep this system in operation—temporarily through restrictions upon the courts and then through a constitutional amendment which would enable the "rotten borough" legislators to perpetuate their hold upon the State legislatures forever.

The whole problem needs to be debated, not from the viewpoint of irritations over a Court decision, but with the object of rescuing the State governments from the malaise into which they have fallen. The Dirksen way, like the Tuck bill passed by the House, would be merely a retreat back toward the "rotten borough" system. The Senate can begin its march in the other direction by voting down the cloture motion.

Mr. PROXMIRE. Mr. President, I yield 2 minutes to the Senator from Michigan.

The ACTING PRESIDENT pro tempore. The Senator from Michigan is recognized for 2 minutes.

Mr. HART. Mr. President, as I indicated earlier, it is my intention to vote against cloture. I was delighted to hear the senior Senator from Rhode Island indicate his intention—which is mine—to vote to table the amendment if the appropriate motion is made.

I should like to make one point very clear. As a member of the Committee on the Judiciary, I believe the Senate should understand that there is not one single line of testimony, not one witness, not one piece of paper that was prepared in the careful atmosphere of a committee, on which the judgment of the Senate can be based. While I have not been here very long, it would be my suspicion that this is a most unprecedented procedure. A matter which raises the gravest of constitutional questions is sought to be presented to the Senate without a single moment of hearings.

It is not unfair to suggest that those who seek to have the Senate adopt this amendment wanted to avoid hearings because the hearings would have made the case—which those of us in floor debate have been seeking to establish in the past few days—that the course that is proposed to be taken is extremely unwise.

A written constitution which provides rights for people is worth exactly the cost of the paper on which it is printed if there is no independent judicial review available to insure the delivery of those rights. Many nations in the world have magnificent sounding written constitutions. They are worth precisely what I have indicated—the cost of the paper on which they are printed. They lack an independent judiciary review to insure that the rights announced in the Constitution are, in fact, available to them.

I suggest that the long-term effect of the course advocated by the proponents of this amendment would be to have a Nation in which our Constitution would continue to read magnificently, but it would be a Constitution for which there would be no judicial relief available.

Mr. PROXMIRE. Mr. President, I yield 3 minutes to the Senator from New Mexico.

Mr. ANDERSON. Mr. President, I am going to vote against invoking cloture on this reapportionment rider. Yesterday I set forth at length my reasons for opposing the Tuck bill and the Dirksen amendment. I cited the historical and philosophical basis for apportioning seats in State legislatures on the basis of population with particular reference to the inequities that exist in the apportionment of the State senate in New Mexico.

On several occasions in the past I have sponsored resolutions to liberalize the

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rule by which the Senate might invoke cloture. To date those efforts—and I have had support from many other Senators—have been unsuccessful. But I continue to believe that cloture should be invoked only after an appropriate amount of time for thorough debate and analysis of an issue has passed.

We spent 78 days earlier this year on the civil rights bill and that was more than enough time for Members to determine the pros and cons in this case. We have been discussing the Dirksen amendment for 10 days, but I think we are only now arriving at the point where there is an increasing understanding of just what the Dirksen amendment would do to our system of government and to the representational rights of large numbers of our citizens. The fundamental issue confronting us was set out, I believe, quite clearly by the Chief Justice of the United States in his June 15, 1964, opinion when he said:

> The weight of a citizen's vote cannot be made to depend upon where he lives. Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislators are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.

Mr. President, it is very interesting to note that the financial journals write about the growth factors in stocks. They are very much interested in preserving the growth factors. We talk about the growth factors of our cities and the growth factors of the wilderness areas. We do not seem to worry about the growth factor in the legislative bodies.

I wonder what is so foreign to our ideas of the growth factor in legislative bodies, and the growth factor for wilderness areas and for cities.

I therefore intend to vote against cloture at this time on the theory that we need these growth factors in our legislative bodies.

Mr. LAUSCHE. Mr. President——

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

Mr. LAUSCHE. Mr. President, while the opponents of the Dirksen amendment have made no serious effort to present their arguments, and have allowed other subjects to be considered by the Senate, neverthless I am of the opinion that the time is not now justly at hand to shut off further debate.

I favor the Dirksen amendment, and will at a proper later time vote for cloture, if the debate continues.

Mr. PROXMIRE. Mr. President, would the distinguished minority leader agree to use some of his time now? We have already used much of our time. It would be very helpful if the distinguished minority leader could use some of his time now. We know that he, being on the affirmative, should have the last speech. But it would be helpful if he could speak now.

Mr. DIRKSEN. Certainly.

The ACTING PRESIDENT pro tempore. How much time does the minority leader yield to himself?

Mr. DIRKSEN. Mr. President, I yield myself 15 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Illinois is recognized for 15 minutes.

Mr. DIRKSEN. Mr. President, seldom has an important issue been presented to the Senate that has been so confused and obfuscated in debate. And seldom has there been an issue where there has been such misplaced emphasis as on the matter that now engages the attention of the Senate.

It has been alleged on the floor, and in editorials, that this is an attack on the Court. I could use an inelegant term to describe those allegations. But I shall content myself with saying that nothing could be further from the truth.

It is said that the issue involved here is one man—one vote. That is not the issue. Any legislature in the land can provide for one man—one vote if it undertakes to do so.

It has been said—and I have read it in the columns—that this proposal is designed to save the legislative skins of some of our State legislators. I believe that Mr. Roscoe Drummond ought to know better than to promote a column on that subject.

It has been said that this is a rotten-borough approach. My colleague from Chicago, the senior Senator from Illinois [Mr. DOUGLAS], ought to know. If ever there was an example of one metropolitan area undertaking to dominate a legislature, it will be found there.

It has been said that no hearings have been conducted. There was no hearing on the Lausche amendment when the UN bond issue was before the Senate. No hearings were held on the amendment which removed Indonesia from any benefits under foreign aid. All of those questions were resolved on the floor of the Senate. It is merely a question of circumstance.

Finally it was said that we were acting too hastily, and it was said that we ought to rely on the amending process.

All this started in 1962 with the Baker against Carr case in Tennessee. The only issue in that case was whether or not the case was justiciable in the courts. That was the only question that was decided.

But then came the case of Reynolds against Sims, and with that case the damage started. As a result, that doctrine has been applied to six States, and it will apply to all the rest of them. As Senators contemplate the picture, they will know that time will run out.

That was the reason for the amendment. It was on the 23d of July that I introduced a joint resolution providing for a constitutional amendment—24 Senators were sponsors and cosponsors of that joint resolution. But we could see at once that there would be no opportunity to launch a constitutional amendment in the time that remains for the Congress to be in session; the process would take a longer time.

It is sheer nonsense to say that the proposal is an attack upon the Supreme Court of the United States. With respect to hearings, I have so indicated.

With respect to haste, the three-judge court in Colorado gave the legislature 15 days to come into being at the call of the Governor and to reapportion one of their bodies, only to have their own supreme court declare the measure unconstitutional.

Senators talk about haste. Fifteen days were allowed to get a legislature together and do the kind of job that was done. I should like to know who wishes to talk about haste. If Senators will examine the New York picture, they will see that one election is held to elect members of the legislature for a period of 1 year, when their constitution calls for a 2-year term, the second year another election, and then a third election, notwithstanding the New York constitution, before they go back on a 2-year term basis.

We talk about haste. The decision of the Supreme Court did not come down until June of this year. We had to make the best of the time factor since the clock and the calendar were running out.

Justice Harlan, in his dissenting opinion, which blew the majority out of the water, said on page 32 of his opinion that we can forget about any stay from here on unless something is done. So another 44 States will come under the Federal hammer merely because the Court interpreted the 1st section of the 14th amendment and completely ignored the 2d section and all the historical background that was applied in 1866, not only in this body, but also in the House of Representatives.

What is the basic issue? It is a question of whether the Constitution empowers the Court, the Congress, or any other agency of Government to determine how a State legislature shall be composed. That is the issue, and nothing else. It involves the State-Federal Union or the Federal-State Union, anyway we might wish to put it, and if anyone wishes to be made knowledgeable on the subject, I suggest that he go back and read what Representative Bingham of Ohio had to say with respect to the 2d section of the 14th amendment for there it is clear as crystal as to what the Congress intended. It did not intend to infringe the rights of the States when dealing with suffrage in their own States.

Justice Harlan said that this procedure goes far beyond the authority of the Court, and is actually an interposition into a legislative field.

I was rather interested in a comment that Judge Learned Hand, a great jurist, made with respect to the Supreme Court. He spoke of the Court's tendency to "become a third legislative chamber." That is precisely what was done in the Reynolds case.

There probably has been no greater student of the Constitution than Prof. Edward Corwin, late professor of jurisprudence at Princeton University, who spoke of "the aggressions of the Court." The situation is precisely in that category, and Congress will have to deal with the question.

The amendment before the Senate is a breather. It is nothing more. We had no choice on the question. Our resolution was submitted, but how could we do something about it before the present

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session of the Congress adjourned? It would have to go through two committees and two Chambers before it could be launched, and then it would have to be ratified by the States before it could become effective. The shortest period for any amendment to the Constitution to become a part of the Constitution would be 7 months. Obviously, if 3-judge courts should start working in the other 44 States, the damage would be done and it would be difficult indeed to retrieve it. So we had no course left except the approach that we have taken.

What would the Mansfield-Dirksen or the Dirksen-Mansfield amendment do? An action must be pending in a Federal court; otherwise, there are "no dice." The amendment would not affect State courts at all. An application could be filed for a stay of proceedings. It would not throw the proposal out the window. It could keep us in a state of suspension.

Who could file the application? A State, a Governor, an attorney general, a member of the legislature of a State, or other parties in interest.

Incidentally, my colleague from Illinois [Mr. DOUGLAS] made a great point of the fact that if we amended the Constitution, we would still have to go back to malapportioned legislatures. I suggest that Senators read the amendatory portion of the Constitution, which provides that amendments may be ratified by legislatures or conventions, and it is up to the Congress to determine what language shall go into that kind of resolution. How long shall this last? So long as there is a public interest, and in the absence of highly unusual circumstances, that there be one State election prior to January 1, 1966, and that there be a reasonable opportunity for the State legislature to work its will, if it so desires, in a regular session, in order to cure the problem that is before us.

I have made it as manifest as I could in public and private statements and on the floor of the Senate that I contemplate and have contemplated initiating such a constitutional amendment in the new Congress in January. I am not insensible to what must be done, but a time element is involved. When we speak about haste, we must be in a hurry if we are to meet the problem before Congress adjourns and Members go out on the hustings for the campaign. No other agency in Government can do it, except the Congress. With respect to this amendment and what was said a moment ago about engrafting it into the foreign aid bill, I should say that 3 weeks ago I went to the President of the United States. I submitted proposed language to him. I talked to him in private.

There was a session of an hour and a half. I said, "I will not take you by surprise. I want you to know what is going on." So he is fully advised about it. I made it clear that this proposal would be of no value unless it were put on a measure that was going to the President's desk.

Mr. President, that is not an unusual proceeding. It has been done a good many times. Suppose we managed to get before the Senate the Tuck bill, which has already passed the House. What do Senators think would happen to it at the White House? It would be vetoed. I know that.

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

Mr. DIRKSEN. I yield.

Mr. PASTORE. Should the President be denied that privilege? Should he have on the auction block the foreign aid bill because he does not like the rider?

Mr. DIRKSEN. Oh, I know legislative techniques. I have not been around here for 32 years without knowing the score. I said to the President, "I am going to put it on the foreign aid bill. I want to do so in order that it may be at your desk for either signature or veto."

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

Mr. DIRKSEN. I yield myself 5 minutes more.

What is the use of going through an exercise in futility? What is the use of going through such procedure unless results are obtained? We must be rather practical when we start on this course.

So there we are. I was advised that this "baby filibuster," as it is called by the distinguished majority leader, is to be continued. That is all right with me, because this issue will be here to be voted on, unless a substitute is accepted. There has been proposed an amendment to the amendment. It is a sense of the Congress resolution.

Mr. McCLELLAN. Mr. President, will the Senator yield at that point?

Mr. DIRKSEN. I yield.

Mr. McCLELLAN. May I inquire whether it is the Senator's intention or his contemplation, if this little filibuster to which he refers continues after the vote today, assuming cloture is rejected, to file another cloture petition at a later date, say in a few days perhaps? The Senator says that his amendment is to be voted on sometime before this session ends.

Mr. DIRKSEN. I might.

Mr. McCLELLAN. Will the Senator yield further?

Mr. DIRKSEN. Yes.

Mr. McCLELLAN. The question of voting for cloture gives me some concern. I have been against it. I am still against cloture as a legislative weapon. But the Senate, on the 10th of June, this year, employed cloture as a weapon to compel the enactment of the civil rights law—a law that I opposed and that my people opposed—a law that I think is unconstitutional, a law that I think will be of great detriment to this country. If cloture is to be used and adopted as an instrument, as a weapon, in legislative battles in the Senate, against me and my State, although I deplore the use of it, the logic of such circumstances may very well compel me on occasions to vote for cloture and thus make use of the same weapon as that with which I have been stabbed.

If cloture is to become the practical procedure for the U.S. Senate, then in order to make my vote most effective in representing my State I may desire to use it against those who employ it against me.

So, on a second cloture petition on this measure, I may vote for it.

I may not vote for cloture today, but I am not always going to maintain the position that, irrespective of what the practice may become and what precedents may be established in using this weapon, I shall continue to refrain from using it.

Mr. DIRKSEN. I have heard intimations from the opponents of the Dirksen-Mansfield amendment that this discussion would continue. Very well. I can remain here until Christmas. I can stay here until the 3d of January, when the 89th Congress will come in, if that is the way to reach a vote. But I helped on two occasions to break filibusters. The first one was on the communications satellite bill. I got on my knees on this side to beg Members to vote for cloture.

Mr. PASTORE. Mr. President will the Senator yield?

Mr. DIRKSEN. Not at the moment. My friend will thank me for that.

Mr. PASTORE. Oh, I will not. [Laughter in the galleries.]

The ACTING PRESIDENT pro tempore. The guests in the galleries will please remain in order.

Mr. DIRKSEN. Oh, Mr. President, I do not mind if they snicker a little.

The ACTING PRESIDENT pro tempore. The Chair has the responsibility to maintain order.

Mr. DIRKSEN. I know that.

I got on my knees and begged Members on this side of the aisle to vote for cloture. I hope my friend will approve. He nods his head "yes."

What is proposed is provided for under rule XXII. I am operating under the rules of the Senate; and I believe I know what the rules are. The opponents can take their time, but this amendment will still be here. They can offer a substitute. A substitute has now been proposed. It is a sense of the Congress resolution. I cannot lay my hand on it at the moment, but it expresses the sense of the Congress that the Supreme Court ought to give adequate time.

Is it not wonderful for this legislative, coordinate branch of government to get on its knees and say to the Court, "Please Mr. Court, be gracious, be graceful. Let us give them adequate time"? We are asked to beg a little. I do not propose to beg, because that demeans the dignity and authority and equality of this branch of government.

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

Mr. DIRKSEN. Mr. President, how much time have I remaining?

The ACTING PRESIDENT pro tempore. The Senator has 8 minutes remaining.

Mr. DIRKSEN. I yield myself 1 additional minute.

After all, it was no accident that the legislative branch was provided for in article I of the Constitution. As President Monroe once said, "It is by all odds the most important branch in all the Government, because of the powers that have been conferred on it."

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Mr. President, that is the story. I said yesterday there will be a vote on the amendment one way or the other, or on a substitute, but it is going to be the business. I stood aside for the social security bill. Yesterday I had to say to our very gracious and self-effacing majority leader, for whom I have the deepest affection, that I cannot permit putting this amendment aside any longer, for the Appalachia bill or any other purpose.

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

Mr. DIRKSEN. I yield myself 1 more minute.

When we are through with the vote on cloture, and when we are through with the Mansfield resolution on the McCloskey matter, and the Williams substitute, we shall be back on foreign aid and this amendment will be the pending business. The opponents can talk as long as they like, but it will still be here, and this issue will have to be resolved.

The country is watching, because it was alerted to this issue, starting in 1962, after the Supreme Court decision in Baker against Carr. The legislative conference of the Council of States made this one of the major matters on its agenda.

Mr. PROXMIRE. Mr. President, I yield 2 minutes to the Senator from New Jersey [Mr. CASE].

The ACTING PRESIDENT pro tempore. Will the Senator suspend for a moment until the Senate is in order?

Mr. CASE. Mr. President, I shall vote against cloture on the Dirksen-Mansfield amendment. The real question before us is not cloture but whether the people of the several States shall have the right to govern themselves or shall be compelled to accept the dictates of a relatively small minority.

Mr. PASTORE. Mr. President, will the Senator speak louder, so that we may hear him?

Mr. CASE. The reapportionment decisions of the Supreme Court involve problems which have given real concern to me as they have to many others. Ideally, the political question of how State legislatures are constituted would be much better left to the States themselves. But, in the face of obvious malapportionment resulting from population growth and shifts, many State legislatures have deliberately failed to act. And those affected have no effective recourse other than the courts.

Mr. PASTORE. Mr. President, will the Senator speak so that we can hear him?

Mr. CASE. I wish I had the vocal organs of the Senator from Rhode Island. I shall have to ask that he do his best to increase his hearing power to that of his vocal power, because today I am not able to speak much louder.

Mr. President, I have not been so honored for many years as to have the orator of the Democratic Party sitting at my feet. This is indeed a real switch. [Laughter.]

In my own State, when the legislature called a constitutional convention in 1947, it specifically provided "that the convention shall in no event agree upon, propose or submit to vote of the people, either separately or included among other provisions, any provision for change in the present territorial limits of the respective counties, or any provision for legislative representation other than" the existing basis.

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

Mr. CASE. Mr. President, I ask for 2 more minutes.

Mr. PROXMIRE. Unfortunately we are rather short of time. I yield 1 more minute to the Senator from New Jersey.

Mr. CASE. There is merit to the point that in some cases the lower Federal courts have acted with what seems to be too great haste and have not given State legislatures sufficient time to do a decent job of reapportionment.

The States are not, however, helpless in this situation. Surely the courts would not arbitrarily refuse appropriate relief in this respect upon the application of States endeavoring to bring their legislative apportionment into compliance with the Supreme Court's holding.

And, in any event, the admitted purpose of the Dirksen-Mansfield amendment is not to permit more time to comply with the Supreme Court's reapportionment decisions. Its purpose is to give time for the adoption of a constitutional amendment which would make it unnecessary for any State to reapportion its legislature, regardless of inequalities, however great, in representation of the total population.

There would be considerable justification for this if the constitutional amendment were to be passed upon by the people themselves. But there is no intention that the matter should be submitted to the people of the several States. The effect of the Dirksen-Mansfield amendment is to make it possible for the State legislatures as now constituted to approve a constitutional amendment designed to enable them to perpetuate their present composition and cut off any recourse either to the people or the courts.

Mr. President, back in 1923 Chief Justice Hughes came to Columbia University to pay tribute to Chancellor James Kent. He made a memorable speech. It included this observation on the realities of democratic living:

> Democracy must be its own savior, and security is to be found, if at all, not in the denials of the right of participation in the affairs of government, but in education, public discussion, and the self-imposed restraints of an intelligent and justice-loving people. There is no shorter way.

I repeat that the real question before us is not cloture. It is whether or not the people of the several States shall have the right to govern themselves.

Accordingly, I have come to the conclusion that I cannot support the Dirksen-Mansfield move.

Mr. PROXMIRE. Mr. President, I yield 4 minutes to the Senator from Tennessee.

Mr. GORE. Mr. President, the issues raised by the pending amendment are of great importance to the American people. The amendment involves the fundamental question of representative government at the State level. It involves, also, the concept of separation of powers, which is a hallmark of our form of National Government.

In my view, the amendment in its present form should not be enacted into law.

Recent court decisions directing, and in some cases effecting, reapportionment of State legislatures, have had a serious impact upon orderly procedure in our elective processes.

Mr. President, when reapportionment is so long delayed that representation becomes so disproportionate that Los Angeles County in California, with a population of 6 million people, larger than that of any 1 of 40 States, elects only 1 member of the senate in the State legislature while another senatorial district in the same State with only 14,000 people elects 1 senator, something has gone seriously awry with representative government.

These decisions have been controversial, and to some extent disruptive; but they are predicated on findings that apportionment of representatives in the State legislature in such States is so grossly inequitable as to deprive citizens adversely affected thereby of their constitutional rights. The denial of constitutional rights is a serious matter. It is one which the courts cannot ignore.

Even so, I find considerable merit in, and I have considerable sympathy with, a proposal to provide State legislatures a reasonable period of time in which to make their apportionment and to make adjustment and accommodation to the Supreme Court decisions.

But we are not privileged to reach a decision upon that basis. The proponents have been perfectly candid in saying that they seek an interim period during which a hasty amendment may be made to the U.S. Constitution, in part, by the action of legislatures which have been held to be grossly disproportionate and unconstitutional.

Such a constitutional amendment might seek to freeze into existence, perhaps for all time to come, the grossly disproportionate, inequitable, and declared unconstitutional existing apportionment in certain legislatures.

This I cannot support.

Mr. President, there is nothing sinister about proposing a constitutional amendment. That is the procedure provided for changing our fundamental law. A constitutional amendment may be proposed and acted upon whether or not there is a stay in judicial proceedings affecting apportionment.

The fact remains, however, that if judicial proceedings are stayed, as proposed in the amendment, a constitutional amendment submitted to the States for ratification would be acted upon in some States by legislatures which would already have been judicially determined to be unconstitutionally apportioned. A State legislature resisting change in its apportionment might well be disposed to ratify a constitutional amendment which would permit perpetuation of its existence, even though such action would be

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contrary to the wishes of a majority of the people of that State. A constitutional amendment ratified by legislatures, some of which are unconstitutionally apportioned, would not serve the cause of representative government.

Moreover, in my view, the pending amendment is potentially a dangerous precedent in that it would constitute action by Congress to inject itself deeply into the area reserved by the Constitution to the judiciary. Some have argued that the Supreme Court in its decisions has undertaken to usurp the prerogatives of Congress in the legislative field. However that may be, it seems to me that the pending amendment would certainly put Congress into the field of administration of justice.

The amendment is sweeping in its terms. It directs our judges as to how they shall rule on petitions that may be filed in cases already decided, in cases that are pending, and in cases not even commenced. The courts are directed as to the type of judgment they shall render unless "highly unusual circumstances" which are nowhere defined or spelled out are found to exist. If it is appropriate for the Congress to so dictate to the courts on this question, future Congresses may well find it appropriate to dictate to the courts on other questions. Should such practice become common, we shall have lost one of the cornerstones of constitutional government.

The question immediately pending is the issue of limiting debate on the amendment. I have never voted for cloture. This is not to say that there are no circumstances under which I would regard limitation of debate as being warranted and necessary. But in my opinion, such action should be taken only when overriding considerations of the national interest make the need therefor both clear and compelling.

The right of free and full debate in the Senate is essential to careful, deliberative, legislative process. A vote for cloture is tantamount to approval of the pending question in its present form. Recent experience has demonstrated that meaningful changes in a legislative proposal are not feasible after cloture is invoked.

In my view, the pending amendment, in its present form, does not meet the test of clear and compelling national need which would justify invoking cloture. On the contrary, for the reasons I have stated, I believe adoption of the amendment would be unwise. Accordingly, I shall vote against cloture.

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

Mr. PROXMIRE. Mr. President, I yield 1 minute to the Senator from Missouri.

Mr. SYMINGTON. Mr. President, after thorough study, I support cloture on the Dirksen-Mansfield amendment.

In a brilliant address on the subject of reapportionment and the rights of States to reapportion themselves, the distinguished senior Senator from California [Mr. KUCHEL] stated it was his view that the people of each State themselves should have the continuing right to determine at the polls what basis they wished to use in creating their legislative districts. He stated that as a matter of policy he favored a constitutional amendment preserving to the people of each State a continuing constitutional authority to decide the basis of their State legislative reapportionment as they themselves may choose, with appropriate judicial systems to prevent a frustration of their authority.

I am much impressed with this suggestion; and when he submits such an amendment, I shall be glad to cosponsor it.

Mr. PROXMIRE. Mr. President, I yield 3 minutes to the Senator from Connecticut.

Mr. RIBICOFF. Mr. President, the Dirksen amendment should be opposed for two very simple reasons. First, it stands on the most doubtful constitutional basis. Second, it is being pressed to bring about a result that is plainly unconstitutional.

The first point rests on a doctrine which is normally urged with much force by Members of this body. That is the doctrine of separation of powers. It is a keystone of our form of government. We in this body are rightfully concerned that the legislative power be, as article I of the Constitution prescribes, vested in the Congress. We should be equally concerned that, as article III prescribes, the judicial power shall be vested in our courts.

Yet the Dirksen amendment seeks to blur these constitutional principles. For the first time we are being asked to suspend by legislative action the enjoyment of constitutional rights. We are being asked to tell the Federal judiciary that the equal protection clause of the 14th amendment is to be temporarily suspended.

For the courts themselves to take such action would be unwise. Far better to proceed as they are doing on a case-by-case adjudication of the individual problems that may be encountered in each of the States. But for Congress to impose it own ideas of the proper functioning of the judicial process is not only unwise, it raises constitutional issues of the most serious magnitude.

If there are those who disagree with the Supreme Court's interpretation of the 14th amendment, the remedy is amendment of the Constitution. But the proponents of the Dirksen rider are not content to follow the procedures which the Constitution prescribes for amendment. They ask us to invade the judicial area and tamper legislatively with the vindication of constitutional rights. That is a strange stance to be taken by those who claim to be defenders of the Constitution.

The second objection is even more basic. Those supporting the Dirksen amendment concede with candor that their ultimate purpose is to have the Constitution amended to reverse the Court's apportionment decision. Of course they have a right to press for such an amendment. But they have no right to have their proposed amendment adopted by unconstitutional means. Yet that is what they seek to do in the course they are now urging us to follow.

The plain purpose of the Dirksen rider is to freeze the State legislatures in their present unconstitutional setup so that these malapportioned legislatures will be the ones that vote on whether to adopt a new constitutional amendment. This is unwise, unfair, and unconstitutional.

The Supreme Court has ruled on the application of the 14th amendment to State legislatures. That decision should now be promptly carried out, as most of the States are trying to do in an orderly fashion. Then when State legislatures are reapportioned on the basis of population, it will be time enough to consider whether the Constitution itself should be changed.

Mr. DOUGLAS. Mr. President, I hope the cloture motion will be decisively defeated. It should be defeated for at least three reasons.

First, only a little over 30 hours have been taken in discussing the completely extraneous Dirksen-Mansfield amendment to the foreign aid bill—which has been sprung upon this body without any prior hearings having been held before a Senate committee. In contrast, the opposition to the civil rights bill was given nearly 3 months in which to debate before a cloture motion was invoked and three Senate committees had held many days of hearings on sections of that bill.

And yet the proposed Dirksen-Mansfield amendment, and the forces which it would set in motion, are just as important and perhaps even more important than the civil rights bill. The amendment would freeze indefinitely action under the Supreme Court's decisions on fair apportionment and would suspend indefinitely an important individual right guaranteed by the Constitution. Time is needed to alert, not merely Congress, but also the country, to the issues involved. In fact, we have yet to understand the full implications and the proponents have failed to give evidence in support of their charges that the amendment would prevent chaos. There has already been a significant awakening of public opinion and there will be more if the discussion is only allowed to proceed.

Secondly, Mr. President, when the first Supreme Court decisions on this subject were handed down in 1962, they began to remedy one of the worst abuses of our political system; namely, the gross underrepresentation in the State legislatures of our metropolitan areas. In using that term, I include suburban areas as well as urban areas.

Fifty years ago, those areas included less than one-third of the population. Today they include nearly two-thirds. In future years, they will include three-quarters. Yet until the Supreme Court issued its first decision in March 1962, ver few reapportionments had been carried out by the various State legislatures. Gross abuses abounded, and still abound, in all sections of the country, and in virtually every State. This has been fully documented in material which has been placed in the RECORD during the course of this debate. But the State legislatures had, in the main, refused to cure these abuses. The Supreme Court, in my opin-

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ion, was completely correct in ruling that citizens could not be guaranteed the equal protection of the laws, which is their right under the 14th amendment, unless they were granted substantially equal representation in the very legislatures which made the laws.

Under the stimulus of these decisions, some States are beginning to make progress in reapportionment; and if they are allowed to operate, much further progress will be made.

But the Dirksen-Mansfield amendment would stop all this. It would prevent the court orders from going into effect for an indeterminate period—certainly to January 1, 1966, and probably appreciably beyond that.

During this time, my colleague from Illinois [Mr. DIRKSEN] has stated with admirable frankness that it is his intention and that of his supporters to initiate a constitutional amendment which, if ratified, would forever prohibit the courts from ordering such a reapportionment. If such an amendment were submitted to the States, the present badly apportioned State legislatures could then ratify it with a rush, and seal the present abuses into effect in perpetuity.

As the urban and suburban populations increased both absolutely and relatively, as they will, they would still be under the domination of decreasing rural minorities. This is what lies at the end of the road; and unless we defeat the cloture motion by a decisive vote, it is likely to happen.

Finally, the right to the equal protection of the laws is a constitutional right. It cannot be superceded temporarily. If temporary suspension of constitutional rights is permitted in matters of representation, why can it not be done in the future so far as free speech, a free press, and trial by jury is concerned? Does Congress have the right to reverse and suspend decisions of the Supreme Court? Should it try to do so? How can such action be reconciled with the jurisdiction given to the Federal courts under article III of the Constitution over all cases under the Constitution? I believe that we do not possess that supremacy and that we should not seek it.

In conclusion, let us not muffle the trumpets which sound the alarm upon the battlements of the metropolitan areas. The forces which would seek to abridge the individual liberties of the great majority of Americans are not only at the gate, but are at the point of having their way. Rather, allow the clear notes of those trumpets to sound forth the notes of the truth, so that all may hear and have an adequate opportunity to decide.

The ACTING PRESIDENT pro tempore. Six minutes remain before the close of the debate.

Mr. PROXMIRE. Mr. President, has all time on the side of Senators opposing cloture expired?

The ACTING PRESIDENT pro tempore. The time of the opponents of the cloture motion has expired. The junior Senator from Illinois has 6 minutes remaining; then the debate will be closed.

Mr. DIRKSEN. Mr. President, I listened to the distinguished Senator from Tennessee [Mr. GORE] speak about vindicating abuses. The answers lie in the States. It is proposed, through the Supreme Court, to take a shortcut and not do the job that should have been done by Tennessee. I am familiar with what has happened there. It has lasted for nearly half a century. Why did not the people get on their high horse and go to the legislature to have the job done, instead of going to the Supreme Court of the United States?

My friend from Connecticut [Mr. RIBICOFF] speaks of constitutionality. I do not know how much of an authority he is; but I do know that on the day we left Senator MANSFIELD's office, Archibald Cox, the Solicitor General, from the Department of Justice, and Nicholas Katzenbach, Deputy Attorney General, put the stamp of approval upon this amendment, so far as constitutionality is concerned. The Senate can take its choice as to where it wants to go from here.

The debate will continue, either on this amendment or on a substitute. I do not know how long it will require; frankly, I do not care. If my friends from Pennsylvania, Illinois, Michigan, and Wisconsin care to carry on this "baby" filibuster, it will be quite all right with me. I shall be present all the while. But that would push the adjournment of this Congress well into the future. If cloture does not prevail today, there will be another opportunity to vote on cloture, and I think before too long. Then perhaps the Senate will wish it had put an end to this interminable discussion.

A point was made the other day about how much time had been devoted to hearings and discussions. I had our assistant secretary on this side of the aisle clock the Senate all of Tuesday afternoon, starting with 3 o'clock. This is the way the attendance ran, by 15-minute quarters: Nine on the floor of the Senate; two on the floor; three on the floor, two on the floor, five on the floor. If Senators were so much interested in having a full measure of debate, why was not the Chamber full of Senators at the time? Evidently they had fixed their minds, by dint of newspaper articles and dissertations. They know what the issue was; and the issue is very simple. The people will not be confused when we get back home. They will know what the issue is. It is whether the Federal Government or the Supreme Court is going to ignore section 2 of the 14th amendment, which is an integral part of that amendment, as has been demonstrated by the opinion of Mr. Justice Harlan, and then move in and, by judicial fiat, determine how the States shall compose their legislatures. I shall not be a party to such procedure. I shall rest the case there. No amount of sophistry, no amount of discussion, no fancy words will obscure the issue, because it will be before the people. This is not a "rotten borough" amendment, as my friend from Chicago says. I have before me a little pamphlet entitled, "Is Daley going to control the legislature of the State of Illinois?" This is going to be an issue not only in my State, but in other States, as well.

So Senators may take their choice. Let the discussion continue, if they please. Let the "sense of Congress" resolution be offered as an amendment. But, oh what a business it will be tc stultify this branch of the legislature, to have it get on its knees and say, "Please, Mr. Court, do give the States adequate time. Please, Mr. Court, do not be so capricious; do not be so arbitrary."

I will not do it, because I have pride in this branch of the Government, which is coequal with any other. I do not propose to surrender its dignity or its importance in the governmental scheme. That is all I have to say.

Mr. MANSFIELD. Mr. President, will the Senator from Illinois yield me one-half minute?

Mr. DIRKSEN. Mr. President, I ask unanimous consent that the Senator from Montana may proceed for one-half minute.

The ACTING PRESIDENT pro tempore. Without objection, the Senator from Montana is recognized for one-half minute.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD a statement I made relative to the Mansfield-Dirksen amendment on August 13, 1964, in the CONGRESSIONAL RECORD, on pages 18871 and 18872.

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

Mr. MANSFIELD. Mr. President, I listened with great interest, as I always do, to the remarks of the distinguished minority leader today, regarding the pending amendment. He said, at one point, that the purpose of the amendment was to buy time, and that the purpose of the additional time was to enable the Congress and the States to enact a constitutional amendment to overturn the decision of the Court in Reynolds against Sims.

I wish to say that I agree with the distinguished minority leader when he says that this amendment is to provide time, because there have arisen in several States situations which require additional time to be properly worked out in an orderly manner. However, I do not agree that the purpose of the additional time is to allow the passage of a constitutional amendment to overturn the Reynolds decision. In the first place the time allowed by this amendment, which will in most cases end at the conclusion of the first State legislative session after the election this November, will probably not be long enough to complete the processes required for the adoption of a new constitutional amendment.

Second, although I thoroughly agree that the States should have the opportunity to vote on a constitutional amendment allowing them to apportion their own legislatures as they see fit, I do not believe this chance to vote must come while the State legislatures are still apportioned as they are today. That would give an alleged malapportioned State legislature the power to validate itself, the right to pass upon its own validity, and the ability to perpetuate itself indefinitely. That does not seem just to me. I am certainly in favor of giving the people the opportunity to vote as they wish on such a proposed constitutional amendment. But when that vote comes, it should be on the basis of one man, one vote, as required by the Reynolds decision.

May I say also that, in my opinion, this amendment does not make the granting of the stay mandatory along the percentage stated by the distinguished minority leader—the figure, I believe, was 99⅔ percent—

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but considerably, very considerably less—perhaps 75 to 25 especially in those States well on the way to a successful and constitutional apportionment.

Mr. President, in the amendment before us, everything I am sorry to say—is not as we would like it to be. It is not all black, nor is it all white. There are shades of gray. Men of good will and men who believe in the Constitution can find a meeting of the minds if they will set themselves to it, and if they will not make up their minds before they have a chance to look up the facts and to evaluate the picture.

Last June the Supreme Court of the United States handed down its decision in the historic case of Reynolds against Sims. The decision held that equal protection of the laws, which is guaranteed by our Constitution, required, in the election of a State legislature, that each person in a State have the same value assigned to his vote as every other person. This was stated in the now famous phrase, "one person, one vote."

Since that time the district courts of the United States and the State governments have endeavored to carry out this requirement of the Constitution as speedily and with as little confusion as possible. Generally these efforts have been successful. In several cases, however, because of the demands of time and the nearness of the fall election, the actions taken have been disruptive upon these particular States governing and electoral procedures. It is clear this result was not intended by the Supreme Court which warned against hasty actions of reapportionment where the State election machinery was already in process.

We are met, therefore, with a situation not totally intended or expected and it is a situation which, I believe, the Congress can and should make some attempt to ease, within the bounds of its constitutional power to do so.

The design of the original Dirksen amendment was to put off for two meetings of the State legislatures in any State involved in the apportionment problem, the implementation of the Court rule. In the meantime, supporters of that amendment hoped that a constitutional amendment could be achieved. But, of course, that is a far cry from the proposal which is before the Senate today. It is as different as day is from night. In my opinion, the first amendment was clearly unconstitutional. This one, I believe, is constitutional. As a result of the efforts put forth by the joint leadership, the attorneys attached to the Senate, and the Deputy Attorney General, Mr. Nicholas deB. Katzenbach, we think we have come up with something which is within the requirement of the law, which recognizes the decision of the Court, which does not try to overturn that decision. It does seek through the use of a brief stay where it is necessary to bring about a settling of a situation which has developed to serious proportions in various States.

There is a need for flexibility. No Member of this body will gainsay that fact in view of what is happening in such States as Oklahoma, New York, and Colorado.

The amendment which Senator DIRKSEN has introduced, and of which I am a cosponsor, in my judgment is a great improvement over those proposals which would have, in effect, suspended the constitutional right of equal protection for an extended period of time. The amendment is, under section 5 of the 14th amendment, an exercise of the congressional power to enforce and implement by appropriate legislation the requirements of that 14th amendment. The amendment offered by the Senator from Illinois and myself merely attempts to establish an orderly procedure in the carrying out of the constitutional requirement of the Reynolds against Sims decision in a situation where some congressional guidance may be helpful. This amendment is not in any way an attempt to overturn or subvert that decision. The basic purpose of this amendment is to allow the States one election and one session of the legislature which could be before or after that election, so that the States might be given a chance to solve their own apportionment problem. If at the end of that limited period the State has not by its own governing processes met the constitutional requirement, then section (d) of the amendment requires the district courts to do it for them. Furthermore, the stay of action suggested by this amendment is to be measured in terms of the public interest. In the opinion of many, the public interest and the requirements of orderly government necessitate the States having this opportunity. But the amendment provides that even this chance need not be given where highly unusual circumstances would indicate that it should not be.

There are many who will not be satisfied with this amendment, and I can only say to them that there are also many who were not to be satisfied by anything else.

In my opinion we have not by this amendment interfered with the decision of the Court but have instead helped to implement it in a way which will in the long run add strength to its meaning. It would seem to me that the malapportionment, or misbalance, which existed in some States until this time has been indefensible. In one State, for example, I am informed that every voter in one county had the equivalent power in State elections of 100 voters in another.

In other States, the State legislatures had failed to redistrict and reapportion themselves for many decades despite the plain requirement of their own constitutions to do so.

To those who say that governing initiative in this country has passed from the States to the Central Government, I point out that perhaps this is one of the reasons why. A free people will not long respect nor patiently submit to an unresponsive government. Insofar as some State governments have been grossly malapportioned, it is likely also that they have been unresponsive. It may be that in the end the requirement for fair apportionment in the State governments will bring about a resurgence of strong influence by State governments upon our Nation's affairs.

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

Mr. MANSFIELD. I yield.

Mr. PROXMIRE. The Senator has made a very constructive and helpful statement. It begins to give the kind of meaningful judicial discretion which is mighty important if we are to have an amendment that is not unconstitutional and is workable. I deeply appreciate the fine statement which the Senator has made.

I should like to add one further point. It seems to those of us who believe in one man, one vote that we should not delay apportionment. We should proceed. There are situations such as that in Oklahoma that from a practical standpoint are very difficult. That is why I offered the pending amendment, the Proxmire amendment to the Mansfield-Dirksen amendment. This would provide that the stay, in court action for the period necessary, shall not—I repeat, not—be deemed to be in the public interest in the absence of highly unusual circumstances. But under such circumstances, a court might find in Oklahoma that the highly unusual circumstances would make a stay wise and necessary. There may be difficulties which would cause enormous inconvenience and great difficulty for those running.

It seems that the amendment I have just called up would turn the proposal around and make it in fact as different as night and day from the other proposal. It would still rely on the one man one vote principle. It would say to the court that the court should not stay reapportionment except under unusual circumstances that would cause great difficulty to those involved. I commend the Senator from Montana, our majority leader, for his very helpful statement, which is a characteristic of his whole attitude. I appreciate it very much.

Mr. MANSFIELD. I am deeply grateful to the distinguished Senator from Wisconsin for his remarks.

I point out that when we try to reach an agreement which will be satisfactory to a majority of the Members of this body, it is not an easy task. We spent many days since last Thursday—in effect, until yesterday afternoon—trying to draft an amendment which would uphold the powers of the Court and at the same time bring relief to those States which are in distress because of the Court decision which had been handed down.

I did not get all that I wished in the amendment. The distinguished minority leader did not get all that he wanted. But we arrived at a consensus in the gray area which we thought would face the situation, which would recognize that the courts had powers which should be adhered to, but which also recognized a situation which affected several of the States of the Union, and in which the need for some alleviation seemed to be very apparent.

We have done our best. We hope that the Senate will understand the spirit in which we carried on these bipartisan negotiations.

In response to a statement made by a Senator earlier today, I wish to say that the negotiations were not carried on in secret. I am sure that every Senator knew about what the leadership was doing. The press reported our doings quite carefully. We did not rush out and give them bulletins every hour on the hour, because we were trying to do a constructive and workmanlike job. We think we have accomplished that. It was not easy, but we have laid our proposal before the Senate and now it is for the Senate to decide.

Mr. DIRKSEN. Mr. President, in connection with my remarks, I ask unanimous consent to have printed in the RECORD a letter to the editor of the New York Times written by Morris D. Forkosch, chairman, Department of Public Law, Brooklyn Law School, on August 6, 1964; also an article written by Robert N. Wilkin, a distinguished jurist, and published in the New York U.S. News & World Report in its issue of August 24, 1964, entitled, "A Noted Jurist Says, 'Repeal the 14th Amendment.'"

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the New York Times, Aug. 8, 1964]

CONGRESS VERSUS THE COURTS—POSITION ON DIRKSEN BILL DELAYING REDISTRICTING UPHELD

To the EDITOR:

Your August 6 editorial on "Congress versus the Courts" flays a legally dead horse, albeit the politicking aspect makes sense.

You write that Senator DIRKSEN's bill to delay the reapportionment of State legislative districts, pursuant to the Supreme Court's decision, raises "grave questions of the division of authority between the legislative and judicial branches," that the bill "ought not to be railroaded through" Congress, and that it amounts to "legislative blackmail, not deliberation."

Your final sentence mentions, however, that the reapportionment "timetables for

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change fixed by Federal judges in many States are so immediate" that hostile Congressmen feel they have no choice but "to act with [such] indecent speed before adjournment."

First, on the division of authority:

There are instances too numerous to list, that Congress may not only overrule judicial decisions (and this is found especially in the area of interstate commerce), but that the Court invites Congress so to do.

CONSTITUTIONAL AUTHORITY

Furthermore, the Constitution divides the Supreme Court's power into appellate and original jurisdiction, and article III gives to Congress the ability to control the former. For example, in 1867 Congress broadened the Supreme Court's appellate jurisdiction; the following year McArdle's writ of habeas corpus came up on appeal under this broadened power and the Court assumed jurisdiction; in early March of 1869 the case was argued and taken under advisement; in late March Congress, notwithstanding the President's objections, repealed its 1867 legislation and the Supreme Court thereupon dismissed the appeal for lack of jurisdiction.

Additionally, Congress may control the High Court through the number of justices sitting thereon. For example, in 1870 the Legal Tender Acts were invalidated by a 4 to 3 decision; the same day President Grant sent two nominations to the Senate to fill vacancies on the bench; the two new justices combined with the minority to overrule, in 1871, the earlier decision and uphold the law (this description is simplified).

Finally, congressionally proposed amendments may overrule Supreme Court decisions, as witness the 11th and 16th amendments, and a Civil War may likewise overrule another decision, as with the Dred Scott case of 1857.

LEGISLATIVE SPEED

Second, on the railroading and blackmail aspects: There are many instances of speed in the legislative process, and the famous 100 days of 1933 are still fresh in our minds. So, too, have amendments to the Constitution been speedily proposed and adopted, e.g., the 12th (7 months), the 17th (12 months), the 19th (15 months), the 20th (11 months), the 21st (10 months).

In 1932 the Norris-La Guardia Act withdrew from the Federal judiciary all jurisdiction over injunctions in labor disputes save as these otherwise provided. Since then Congress has relaxed these barriers in certain instances, e.g., the Taft-Hartley and Landrum-Griffin Acts, but the early statute is still effective.

There are many instances where "riders" have been attached to legislation whereby congressional desires in particular instances have been thereby effectuated.

Regardless of the policy reasons (on which I express no personal view), Congress does not deserve to be castigated as you do.

MORRIS D. FORKOSCH,
Chairman, Department of Public Law, Brooklyn Law School.

BROOKLYN, *August 6, 1964.*

[From U.S. News & World Report, Aug. 24, 1964]

A NOTED JURIST SAYS, "REPEAL THE 14TH AMENDMENT"

(By Robert N. Wilkin, U.S. District Judge, retired, Northern District of Ohio)

(NOTE.—Once again the United States is embroiled in controversy involving the 14th amendment—and how it is interpreted by the U.S. Supreme Court. Here, a former Federal judge looks at the history of this amendment and finds it responsible for some dangerous trends.)

Our country is confused and distressed by two prevalent but opposed tendencies. One is a trend to centralization of all political power in the National Government. The other is a trend toward control of all government by mass emotion and public demonstrations. People generally are divided into factions that support one or the other tendency; and some people, without awareness of the inconsistency, support both tendencies.

Both movements, however, are willful rather than lawful. They lead therefore to irrational and violent conduct. Centralization of power leads to tyranny, and mass emotion produces anarchy.

If these two evil tendencies are not corrected, the American Republic will go the way of the Roman Republic. The symptoms of disintegration today are the same as they were during the last century before the advent of the Roman Empire.

The only way in which these evil trends can be arrested is by a return to and restoration of constitutional government. That can be accomplished lawfully only by a constitutional amendment.

The U.S. Supreme Court has been the spearhead of the centralization of power in Washington. It has assumed final jurisdiction over such controversial problems as prayers in public schools, integration in State schools, apportionment of representatives in State legislatures, and determination of what is or is not obscene and immoral in public pictures and printed publications—problems which the Constitution and first 10 amendments "reserved to the States, respectively, or to the people."

Many proposals for constitutional amendments have been made with the purpose of nullifying the objectionable decisions of the Court, but such procedure would not be satisfactory. It would be useless to cancel separate decisions if the statements on which the Court based its decisions were left in the Constitution. Such procedure would produce a crazy quilt of constitutional law. Since the Court has based its assumption of authority on the 14th amendment, that article should be repealed or its pertinent language deleted.

First, it is necessary to analyze and understand what the Supreme Court has done, and how it was accomplished. The analysis is somewhat technical and tedious, but no good can be accomplished until the conditions and their cause are clearly understood.

The first amendment, adopted at the time of the ratification of the Constitution, states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

The 2d sentence of the 14th amendment, which was proclaimed as a part of the aftermath of the War Between the States, says: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," etc.

Although the 14th amendment did not expressly amend or repeal the 1st amendment, the Supreme Court's interpretation has the effect of inserting the words "or a State," so that the 1st amendment is made to read, "Congress or a State shall make no law," etc.

The sole intent and purpose of the 14th amendment was to protect the colored population and secure suffrage to the freedmen. The effect, however, of the Supreme Court's decisions is to extend Federal jurisdiction into the fields of religion and education and impose restrictions on States rights.

Although the Court admitted that voluntary prayer in public schools was not "an establishment of religion," it held that authorized prayer was unconstitutional because it might lead to establishment of a religion The Supreme Court then completely ignored the following phrase in the first amendment which inhibits a law "prohibiting the free exercise" on religion.

The Court also disregarded section 1 of article I, which says: "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." It is clear that a provision of law which extends Federal jurisdiction into a field where formerly it did not exist is a legislative act.

The peace and civil order of the Nation has been disturbed and life kept in turmoil by controversy and strife that surges over and around such questions as:

What is the propriety or benefit of prayer in public schools?

What is the possibility or use of efforts to integrate different races by law?

What is the proper method of apportioning representatives in State legislatures?

What is obscene and immoral?

Consideration of the problems raised by these questions impels the inevitable conclusion that they involve personal, local, social, and State conditions which are different at different times and places. A just solution therefore cannot be made by a decree or command issued out of the National Capital. Specific questions require specific answers. The effort for overall control is prompted by the arrogance of ignorance, is unjust and, in the end, futile.

Current events are revealing to open and fair minded citizens that the real, basic question is: What authority has the Supreme Court or the National Government to interfere in such matters?

"ERROR OF FEDERAL INTERVENTION"

A cursory analysis of the specific problems reveals the error of Federal intervention. It is impossible to separate religion and public action. Religion is an inherent condition of human life. Religious feeling and practice exist wherever humanity is found. Religious feeling and discipline distinguish humanity from the rest of creation.

When the lawful authorities of a State or a local community offer a plan for some voluntary religious expression in public schools, and that plan is acceptable to an overwhelming majority of citizens and is approved by the trial and appellate courts of the State, why should a majority of the judges of the U.S. Supreme Court overrule the action of the State and local authorities and hold at naught the desire of the people of the community at the request of one or two atheists or zealots?

At a time when our technological and materialistic age needs so urgently spiritual enlightment and the moral discipline of religion, why should the Court issue a decree "prohibiting the free exercise thereof"?

There may be a community where secularism is so strong and religious bigotry so rife that it would be inexpedient to try to establish any form of prayer or other religious exercise for public schools. In such a community, public authorities should not favor any religious ceremony. On the other hand, there are many communities where religious feeling is so strong and religious tolerance so general that some form of religious exercise could be established without any substantial dissent.

In any event, therefore, the problem should be solved in the local community, and national controversy and strife would be avoided.

Segregation en masse and integration en masse are both wrong for the same reason. They are efforts to settle the controversial problems as a whole on a racial basis. The position and treatment of a citizen of any race should be, and is generally, controlled by his personal worth and merit, and local conditions. When Government grants citizenship and maintains courts of law to which citizens can appeal for protection of their political rights, it has done about all that should be expected. If it attempts more, it becomes paternalistic and socialistic.

Experience warns against governmental interference in social relationships. Govern-

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ment can, at times of need, improve economic conditions by maintaining a public-works program in fields where private industry cannot enter, but, if it goes beyond that, it develops into state capitalism or communism and free enterprise is then suppressed.

The Negroes were brought to this continent against their will, but their presence here has not been without blessings. Some individuals have made great progress and have been respected and honored. As a race, however, they could hardly attain a development in 300 years which it took other races 3,000 years to attain. As a race they have citizenship and should be given political equality and fair economic opportunity, but they should not expect to be coddled or pampered. Misguided reformers, burdened by messianic and martyr complexes, should cease their emotional drives and insurrections.

The Supreme Court has assumed authority to determine for all the country what is not lewd or lascivious, and to restrain State and local authorities from efforts to protect their communities from what State courts had designated as 'filth for profit." The Supreme Court evidently ignores the element of truth in the ancient, but somewhat cynical and paradoxical, saying that "morality is a matter of geography." It is apparent that what might be a proper exposition or publication for an association devoted to the science of psychology or criminology or art would not be proper for a boys' or girls' preparatory school. It is also apparent that standards of morality and esthetics differ in different communities.

Now, that the Supreme Court has assumed control of apportionment of representatives in State legislatures and also the administration of criminal law by State courts, it becomes doubtful whether there are now any powers "reserved to the States respectively, or to the people." By what the late Judge Learned Hand referred to as the Court's tendency to become "a third legislative chamber," and what Prof. Edward Corwin (late professor of jurisprudence at Princeton University) designated as "the aggressions of the Court," the status of the States in the Union becomes about the same as the status of counties in the States.

A TREND "CONTRARY TO THE CONSTITUTION"

Careful analysis and detached deliberation reveal that the trend of recent events is contrary to the spirit and letter of the original Constitution and universal principles of natural law. Public opinion is aroused and there is grave apprehension that the dual nature of government by the Nation and the States, and the balance of powers among legislative, executive, and judicial departments are being undermined. There is wide fear that the Constitution and government of law are being eroded.

Those who champion the Court's usurpation by interpretation argue that such power is necessary in order to effect needed reforms. A prominent columnist recently advocated that such power is absolutely required when reform is needed and other government agencies fail to act. It was, of course, implied that the Court would determine when reform was needed and other branches had failed. Such political sophistry was emphatically rejected by the Founding Fathers. Washington said, "The spirit of encroachment tends to consolidate the powers of all departments in one, and thus to create, whatever the form of government, a real despotism." Adams, Jefferson, and Madison expressed the same opinion in almost the same terms.

Currently the daily newspapers are reporting public demonstrations that create counterdemonstrations and violence, riots that destroy life and property, bomb-throwing, secret murders and insurrections by sit-down, lie-down and defiance of law and resistance against law-enforcement officers. Conditions today recall the statement made by a perceptive and courageous statesman 2,000 years ago, during the disintegration of the Roman republic. He said:

"Laws are made to be men's defenses not only against others but against their own emotions. They are man's safeguards against man's passions.

"Whenever in the past the great bulwark of the law has been weakened, the consequences have been invariably calamitous. If by any act it should now be seriously impaired, the danger is that it may be ultimately completely overthrown, to the disaster of all within the state."

That pronouncement was abundantly confirmed by subsequent events. Unfortunately, however, history reveals that one generation seldom heeds or profits by the experience of preceding generations.

THE SPECIFIC REMEDY: REPEAL

The prevalent trends to despotism and to anarchy are causing general expressions of alarm and regret, but there is little agreement as to a remedy. Since the Supreme Court has decided that it has authority to make the controversial decisions, there is no other court to which an appeal can be made for a reversal. To indulge in denunciation and disobedience only adds to the general lawlessness. The champions of civil order must proceed by lawful means, and the Constitution specifies the only method available. Article V provides that a movement for amendment may be initiated by two-thirds of both Houses of Congress or by the legislatures of two-thirds of the several States.

Three former Presidents—Hoover, Truman, and Eisenhower—many Congressmen, editors, and commentators have suggested constitutional amendment as the proper and necessary remedy. There has been no specification of the exact terms or purpose of such an amendment. Since the Court has based its assumption of authority on the 14th amendment, the specific remedy would seem to be the repeal of that amendment.

Such a movement would require time, effort, and education. If the issue is clearly defined, its purpose can be accomplished just as the 18th amendment was repealed by the 21st amendment.

The proposal to repeal the 14th amendment would be favored and supported by many citizens. That amendment has never had the respect and reverence accorded to the original Constitution and its Bill of Rights. The 14th amendment was prompted in great part by vindictiveness toward the vanquished Southern States. It was part of the same policy that motivated the carpetbaggers and their deplorable conduct in the South. The repeal would in a way be an act of belated justice.

Furthermore, respected historians have maintained that the 14th amendment never was adopted in accordance with the requirements of the Constitution. When Congress passed the resolution declaring it adopted, the legality of proceedings in some States was questioned, and some States had repealed their resolutions of approval before the action by Congress. The country should welcome another opportunity to act on the amendment. Repeal would naturally be favored in the Southern States, and it would be approved in many Northern States, where there is strong opposition to further centralization of power in Washington.

RESTORING GOVERNMENT OF LAW

The repeal of the 14th amendment would restore constitutional government, government not of men but of law, and local self-government—and national disrupting controversies would subside.

The National Government, however, could still render great public service by maintaining and expanding public works programs, devoted mainly to conservation and development of natural resources, but not competing with private industry or suppressing individual initiative. Such program would improve the economic conditions of all races. They would tend to place idle men on idle land, and, by training dependent citizens in the crafts of science and arts of husbandry, they would create independent citizens of respectability. The popular vortex, which the Founding Fathers feared and which now threatens civil order, would be converted to a spiral of improvement that would support a law-abiding community.

Such developments as the Muskingum Conservancy District [in Ohio] have proved that National State and local agencies, private corporations and individuals can work together harmoniously for the public welfare, national economy and individual security without loss of political freedom. They have demonstrated that scientific capitalism, with its regard for the dynamic spiritual power of religion, can be much more beneficial than can atheistic communism.

People who have lived in both the South and the North know that there are communities in Virginia, Tennessee, the Carolinas, Florida and other States that have much better race relations than the Northern cities have been able to establish since the great influx of Negroes to the industrial centers.

The further industrialization in the South, development of natural resources and technical education will extend the better racial relations of the advanced and enlightened communities to the retarded and undeveloped localities, if the self-appointed reformers cease their intrusion and imposition and direct their efforts to improvement in their home communities.

It is a hopeful sign that people of intelligence and character, who make and express public opinion, are beginning to understand that lawful and constructive programs and work will do more good and less harm than factional demonstrations, racial drives, insurrections and riots. "The Federalist," which John Fiske [the historian] said "is the greatest treatise on government that has ever been written," proclaimed that "it is the reason, alone, of the public, that ought to control and regulate the government. The passions ought to be controlled and regulated by the Government."

Whoever breaks away from the law is a runaway; whoever defies the law is an outlaw; whoever resists or attacks a law-enforcement officer is an enemy of society—he abandons all right to protection by the law; he is still, however, subject to the punishment which the law imposes for the protection of society.

The ACTING PRESIDENT pro tempore. All time has expired.

It now being 1 hour after the meeting of the Senate today, the Chair, under the rule, preparatory to placing before the Senate the cloture motion on the so-called Dirksen-Mansfield amendment to the Foreign Assistance Act of 1964, directs the Secretary to call the roll for a quorum.

Mr. DOUGLAS. Mr. President——

The ACTING PRESIDENT pro tempore. The Senate will be in order.

Mr. DOUGLAS. Mr. President, is this a call for a quorum or is this a call for the yea-and-nay vote?

The ACTING PRESIDENT pro tempore. This is a quorum call.

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Mr. DOUGLAS. I thank the Chair.

The Chief Clerk called the roll, and the following Senators answered to their names:

[No. 563 Leg.]

Aiken	Gore	Moss
Allott	Gruening	Mundt
Anderson	Hart	Muskie
Bartlett	Hartke	Nelson
Bayh	Hayden	Neuberger
Beall	Hickenlooper	Pastore
Bennett	Holland	Pearson
Bible	Hruska	Pell
Boggs	Humphrey	Prouty
Brewster	Inouye	Proxmire
Burdick	Javits	Randolph
Byrd, Va.	Johnston	Ribicoff
Byrd, W. Va.	Jordan, N.C.	Robertson
Cannon	Jordan, Idaho	Russell
Carlson	Keating	Salinger
Case	Kuchel	Saltonstall
Church	Lausche	Scott
Clark	Long, Mo.	Simpson
Cooper	Magnuson	Smathers
Cotton	Mansfield	Smith
Curtis	McCarthy	Sparkman
Dirksen	McClellan	Stennis
Dodd	McGovern	Symington
Dominick	McIntyre	Talmadge
Douglas	McNamara	Thurmond
Eastland	Mechem	Tower
Edmondson	Metcalf	Walters
Ellender	Miller	Williams, N.J.
Ervin	Monroney	Williams, Del.
Fong	Morse	Young, N. Dak.
Fulbright	Morton	Young, Ohio

Mr. HUMPHREY. I announce that the Senator from Washington [Mr. JACKSON], the Senator from Wyoming [Mr. McGEE], and the Senator from Texas [Mr. YARBOROUGH] are absent on official business.

I also announce that the Senator from Louisiana [Mr. LONG] is absent on official business.

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

Mr. KUCHEL. I announce that the Senator from Arizona [Mr. GOLDWATER] is necessarily absent.

The ACTING PRESIDENT pro tempore. A quorum is present.

A quorum being present, the Chair, in further pursuance of the rule, submits to the Senate, without debate, the question, Is it the sense of the Senate that the debate shall be brought to a close?

On this question, the yeas and nays are required by the rule, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. HUMPHREY. I announce that the Senator from Louisiana [Mr. LONG], is 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 Washington [Mr. JACKSON], the Senator from Wyoming [Mr. McGEE], and the Senator from Texas [Mr. YARBOROUGH] are necessarily absent.

I further announce that if present and voting, the Senator from Louisiana [Mr. LONG], and the Senator from Washington [Mr. JACKSON] would each vote "nay."

Mr. KUCHEL. I announce that the Senator from Arizona [Mr. GOLDWATER] is necessarily absent.

The yeas and nays resulted—yeas 30, nays 63, as follows:

[No. 564 Leg.]

YEAS—30

Aiken	Eastland	Monroney
Allott	Fong	Morton
Bennett	Fulbright	Mundt
Boggs	Hickenlooper	Pearson
Carlson	Holland	Prouty
Cooper	Hruska	Saltonstall
Cotton	Jordan, Idaho	Smathers
Curtis	Mansfield	Smith
Dirksen	Mechem	Walters
Dominick	Miller	Williams, Del.

NAYS—63

Anderson	Hartke	Nelson
Bartlett	Hayden	Neuberger
Bayh	Humphrey	Pastore
Beall	Inouye	Pell
Bible	Javits	Proxmire
Brewster	Johnston	Randolph
Burdick	Jordan, N.C.	Ribicoff
Byrd, Va.	Keating	Robertson
Byrd, W. Va.	Kuchel	Russell
Cannon	Lausche	Salinger
Case	Long, Mo.	Scott
Church	Magnuson	Simpson
Clark	McCarthy	Sparkman
Dodd	McClellan	Stennis
Douglas	McGovern	Symington
Edmondson	McIntyre	Talmadge
Ellender	McNamara	Thurmond
Ervin	Metcalf	Tower
Gore	Morse	Williams, N.J.
Gruening	Moss	Young, N. Dak.
Hart	Muskie	Young, Ohio

NOT VOTING—7

Goldwater	Kennedy	Yarborough
Hill	Long, Mo.	
Jackson	McGee	

The ACTING PRESIDENT pro tempore. Two-thirds of the Senators present and voting not having voted in the affirmative, the cloture motion is rejected.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, in accord with the half pledge or promise made to the Senate on yesterday, I should like at this time to ask unanimous consent to call up the resolution which I introduced, unless the distinguished Senator from Delaware [Mr. WILLIAMS] wishes to have his resolution considered first.

I make the last comment because, if I remember correctly, when the Senator from Delaware submitted his resolution yesterday, he had not determined then whether it would be offered as a substitute or as an original resolution.

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

Mr. MANSFIELD. Mr. President, could I get an answer first?

Mr. WILLIAMS of Delaware. Mr. President, I am willing to offer it as a substitute for the resolution of the distinguished majority leader.

Mr. MANSFIELD. Fine.

The ACTING PRESIDENT pro tempore. The unfinished business is the so-called Dirksen-Mansfield amendment. Does the Senator desire to have it laid aside?

Mr. MANSFIELD. Yes, because of the promise made yesterday that on the completion of the cloture vote, the Senate would be given an opportunity to vote on the two resolutions which were submitted yesterday afternoon.

Mr. DIRKSEN. Mr. President, when this matter was discussed yesterday afternoon, the majority leader, the distinguished Senator from Montana [Mr. MANSFIELD], the distinguished Senator from Delaware [Mr. WILLIAMS], and I had a colloquy in the office of the majority leader. I was willing at that time, because of the urgency of the matter, to have the pending business temporarily laid aside in order to dispose of both the Williams substitute and the Mansfield resolution dealing with the McCloskey matter. But, at the same time, I made it abundantly clear that foreign aid would not be set aside for any other measure.

I would have to object. And if a motion were made, I would have to do the best I could to defeat the motion until consideration of the Dirksen-Mansfield amendment and the foreign aid bill has been concluded.

I believe the distinguished Senator from New York [Mr. JAVITS] proposes to offer a substitute. I am quite opposed to it. But, that is neither here nor there.

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

Mr. RUSSELL. Mr. President——

The ACTING PRESIDENT pro tempore. The Senator from Montana has the floor. Does the Senator yield?

Mr. MANSFIELD. I yield to the Senator from New York.

Mr. JAVITS. Mr. President, I propose to offer a substitute for the Dirksen amendment, and then stand aside, pursuant to the commitments of my own leader, so that other measures may be considered.

I should like, if it is in order, and agreeable to the Senator from Montana [Mr. MANSFIELD], to offer a substitute on behalf of the senior Senator from Minnesota [Mr. HUMPHREY], the junior Senator from Minnesota [Mr. McCARTHY], and me, to be laid before the Senate in place of the pending business.

Mr. RUSSELL. Mr. President, I object. If there is no other way, I object.

The ACTING PRESIDENT pro tempore. The question before the Senate is the unanimous-consent request of the Senator from Montana to temporarily lay aside the pending business——

Mr. RUSSELL. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. RUSSELL. Mr. President, I was trying to get into the discussion before it got beyond this stage, in order that we might ascertain what the real purpose is with respect to the so-called Mansfield-Dirksen substitute.

As I stated here yesterday, this has been a "powder puff" filibuster up to now. Only a feather duster has been used to attempt to break it.

I wish to know whether it is proposed to try to obtain a vote on the Dirksen-Mansfield amendment, or whether it is proposed that it shall be laid aside until the Senate is driven by necessity to lay the amendment on the table. I believe that there should be a test of strength in the Senate that will indicate whether or not any substantial number of Senators think that the Senate should proceed with the Mansfield-Dirksen proposal. I am supporting that proposal, although I am not altogether happy about it. I think it is about as weak a proposal as I have seen in some time,

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