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to form a coalition of nations and people on the basis of mutual respect, cooperation, and self-interest which will give us a counterforce to Nasser.

The real problem in the Middle East is that while we are playing ball with Nasser and getting exactly nowhere, and allowing him to do with our resources whatever he chooses in order to buttress his adventures. We are not building up any aggregation of nations or peoples in the Middle East in order to meet the situation which may be created if Nasser finally cuts loose 100 percent and really makes himself the danger to trade and to the whole Middle East which he is capable of becoming.

I urge the State Department, based upon the notice served upon us in this Alexandria meeting, to get about the business of dealing with what will be the next crisis after the crisis which we have had—probably they will be overlapping in the Middle East—which is coming up the pike, as far as anyone can see, as sure as fate.

A nation like ours, with all its resources and power, cannot stand by and wait until crises break. We may be faced with two, three, or more crises in the world at one and the same time. The way to handle those in our case is not to step away from them but to meet them, because in that way we can head off far worse disasters than crises. So I urge the President of the United States to take a personal hand in what is happening in the Middle East now. I believe the State Department is inclined to pursue a policy of appeasement and of placating Nasser on the theory that it will get results. It has not gotten them up until now. The situation is technically peaceful, but this is a very temporary state, and the dangers are overwhelming. Here is one area in which we can head off a real conflagration by acting with intelligence now. That is the reason I have spoken today in the light of news reports which indicate the fact that a storm is brewing in the Middle East and we had better batten down the hatches and handle our resources in such a way as to deal with it.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT OF FOREIGN ASSISTANCE ACT OF 1961

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

Mr. JAVITS. Mr. President, I should now like to address myself to the amendment in the nature of a substitute, which has been offered by the junior Senator from Minnesota [Mr. MCCARTHY], the senior Senator from Minnesota [Mr. HUMPHREY] and myself to the so-called Dirksen-Mansfield reapportionment amendment to the foreign-aid bill.

I wish to state, because I think it is important to clarify it, the basis upon which we have acted and exactly what we are trying to effect, as I understand it.

First, we must appreciate that when we deal with the Supreme Court of the United States, we are dealing with a completely coordinate branch of Government. In the give and take here the other day, my distinguished colleague and personal friend, the minority leader [Mr. DIRKSEN], spoke of a supplication by the Congress to the Court.

One supplicates a superior—he does not supplicate an equal. Neither can one dictate to an equal or order an equal. This is a very important dictinction which must be made. One deals with an equal as an equal. One can express to an equal one's opinion, deeply held, and which one considers persuasive. One can expect that the equal will listen to that opinion, and have every right in good faith to ask that the equal act on that opinion, unless some strong reason to the contrary can be demonstrated.

If the equal will not act in accordance with that opinion, there is not much one can do about it at that level. But there are other things that can be done if one is unhappy about it, because certain relationships exist, either relationships of money—which was evidenced in the dissatisfaction with respect to raising salaries for members of the Supreme Court—or in some other direction. But upon the fundamental point of coordinate power, the Supreme Court has such power.

Whether my judgment in that respect is important or germane or relevant at all, I believe the Supreme Court decided these reapportionment cases under the 14th amendment in the only way in which it could have decided them, under the modern concepts of constitutional law.

Where does that leave us? We are a legislature, to which the decision in the case of Baker against Carr, and as it affected many State legislatures, has come as a matter of first impression. That had not been the law before the decision in Baker against Carr, as we understood it. Those last words are critically important. This doctrine is not written in letters of fire in the heavens which were suddenly pulled apart to reveal it to the earth. This is a situation which matures in the minds of nine judges and in which they, as we do, seek the support of the American people. They do not have to say so, and they do not campaign, but, for all practical purposes, that is what it comes down to.

I see a great analogy between the reapportionment decisions and the decision in the landmark case of Brown against Board of Education, the famous civil rights decision, as it related to segregation in the public schools. Prior to the decision of the Supreme Court in 1954 in the public school desegregation cases, the doctrine of Plessy against Ferguson had been the law of the Nation so far as we all knew. That case had held that separate but equal facilities fulfilled the constitutional mandate of equal protection of the laws under the 14th amendment.

That concept began to be changed in many cases and in many ways before the Brown case decision, but in the final analysis it was the Brown case which made the change solid as a position for the country to observe. The Court realized it, as well as we did, and in that case provided that in the decrees of the lower courts, accommodation should be given to compliance, in the famous words, "with all deliberate speed."

In the apportionment cases, the Court did not provide that standard, spcifically; but even there the Supreme Court did say that it expected some time must elapse until the legislatures could conform to this standard, which the Court had now enunciated in these cases. It contemplated that time would elapse, that good faith to comply would be recognized by the lower courts, and that the process would then proceed to take a measurable period of time. After all, the State legislatures have existed as long as the Republic. This decision had just come down after more than a century and a half of practice which did not accord with that decision. That was the status of law prior to that decision.

Where does the Congress come in? We come in in two ways. First, the lower courts have acted, in the judgment of many, including myself, with undue pressure upon the States—again I emphasize the word "undue"—and have in some cases required what, when we are dealing with the States, is a somewhat undignified procedure.

For example—and I have given these examples before, but I shall repeat them here to illustrate my point—in the case of the State of New York, the Court has bobtailed the legislators' terms from 2 years to 1 year. It has provided for three elections in 3 years, instead of the normal number of elections, which would be two in that period of time. It has provided that the terms of office be curtailed. That, to most citizens, seems like rather an overstrong use of the Court's power when dealing with a State.

In the case of the State of Vermont, the Court has forbidden the legislature to transact any business, except to deal with reapportionment, no matter what the needs of the State may be. Again, I believe that to the normal citizen this seems an overly strong use of the Court's power when dealing with a State that is trying to change a situation which has persisted for 160 or 170 years.

That is the first point.

We wish to call to the Court's attention the fact that we believe the way the lower courts have carried out the Supreme Court's decision in these mandates and in other cases is oppressive. The Supreme Court has full power to correct the situation. It is a matter of judgment as to what is reasonable.

It seems to me, therefore, that we have a right to express ourselves as to what is reasonable, in our judgment, or to urge upon the Court that we consider a number of things that are going on to be unreasonable.

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The second point is that we have a right to press upon the Court the fact that we may wish to do some things under the Constitution to deal with this situation, which may not be entirely congenial to the point of view of citizens in many States. For example, many citizens find it difficult to understand—though perhaps we, as historians, might understand it—why the U.S. Senate can be organized on a basis not of population and the other House on the basis of population, but the individual States, even if their people so elect—which I emphasize, cannot have the same privilege.

I believe that in many States, even in States that have very heavy concentrations of people in the cities and suburbs—like my own—that is likely to be the result when, as, and if the question is submitted to the people.

If we should with reasonable celerity submit such a constitutional amendment to the people of the United States, an amendment which would permit the citizens of the individual States to opt, if they choose, to set up one house on a basis of other than population, there is no reason why we cannot turn to the Court and say, "We are starting a process which will make a change in the situation that you have interpreted. Give us a reasonable opportunity, first, to pass it through Congress and, second, to see how it takes with the States."

At this point I come to the interpretation of the sense resolution which my colleagues, Senators McCARTHY and HUMPHREY, and I have presented to the Senate. The important point about that resolution is that, while it seeks an opportunity to do these things, it does not ask for a stay until they are done; nor does it imply that they will be done. It does not imply that Congress will author and submit a constitutional amendment. It does not imply that the State legislatures will act to conform, in a way satisfactory to the Court, to the individual decrees or to the principles which the Court has laid down in its decisions.

All it says is this: Do not give us a stay for the whole time span necessary to effectuate these acts, because we do not know whether they will be effectuated. Neither do we know that individual legislatures or Congress itself will proceed with celerity in doing what might be done under these provisions of the resolution to which I am referring. All that we say to the Court is: "This is what we have in contemplation. Go along with us, step by step. As we make progress, give us time to make more progress. If we fall down and fail to make progress, then you can stop the process at any stage, either for any State or, so far as we are concerned, for a constitutional amendment."

What does that mean practically? It means the following: Congress will return in January 1965. The Senator from Illinois [Mr. DIRKSEN] has a constitutional amendment proposal. Representative McCULLOCH has a constitutional amendment proposal. I shall introduce as my own, in a few minutes, a revised draft of the McCulloch proposal. I shall ask that it remain at the desk for a week for cosponsorship.

I do not favor the Dirksen constitutional amendment, because I do not believe the legislatures ought to be allowed to decide for themselves whether one house in each legislature should be apportioned on a basis other than that of population. I believe that only the people of each State should decide that question, and that any constitutional amendment should be only permissive in character. To show my good faith, I shall introduce such a proposed constitutional amendment myself today.

Congress will return in January. The various proposed constitutional amendments will be before us. They may or may not be reported by committees. They may or may not be acted on by Congress. But our resolution says to the Supreme Court: "If we do move into this situation and act with respect to it with reasonable celerity, then, as we go along, you will go along." This does not mean, necessarily, 1, 2, 3, 4, 5, 6 months, or a year. The Court should judge when it wants to continue with us, giving us an opportunity to correct this situation or, at least, to make available the means for correction, and when it wants to quit. As the Court goes along with us, we will go along with it. It seems to me that that is the only way in which we can deal with two coordinate bodies in a great Federal system such as ours.

The same is true of the States. We say to the Court: "The States have now learned what is desired. Give the States a reasonable opportunity to reapportion." The Court might say, "All right. We will wait 3 months. See what you can do. If we are satisfied that the States are proceeding in good faith and are submitting the proposal to the people, we might wait 3 months more, or 3 months after that."

The sense of the resolution we have presented is that we will have informed the Court as to our intentions and desires, so that that will become an element of good faith on our side as well as on the side of the Court. The Court would retain the power. We would not give the Court power or deny it power. Nor would we be giving ourselves power or denying ourselves power. There is no presumption of different or greater powers that either we or the Court would have, or that a State legislature or the people of any State would have. The only thing that would happen would be that, just as the Court has advised us of what it deems should be done, so we apprise the Court of how we would like to continue with our process of conforming the practices and procedures of the States of the United States to the law, now the supreme law of the land as enunciated by the Supreme Court.

I emphasize, therefore, that what we are talking about in this "sense" amendment is not a stay of proceedings, in a kind of wholesale way, until all the legislatures have had a chance to act in respect of apportionment and until Congress has had a chance to act in respect of a constitutional amendment, and holding everything to wait until those great events have developed throughout the country. On the contrary, what we are recommending is that, on a case-by-case basis, the Court go along with us as we go along with it, and that the timing be based upon the reasonableness of the timing of the actions that are being taken by Congress and by the State legislatures.

The whole concept of a step-by-step basis by us and by the courts is premised upon one fundamental proposition, namely, that Congress has no power to order the Court. That is the concept of the Dirksen-Mansfield amendment. The concept there is that Congress does have the power to order the Court; that it is thought that we save our act from being declared unconstitutional by a provision which entitles the Court to refuse to grant a stay contemplated by the Dirksen-Mansfield amendment, when it finds highly unusual circumstances which dictate against granting a stay.

In my judgment, the Court would have to construe that phrase to mean any conditions, in its own judgment, which dictate that the stay should not be granted. On the other hand, if the Court wishes to show Congress the respect which it should, it will probably have to declare the Dirksen-Mansfield proposal unconstitutional; because if the Court is really going to construe unusual circumstances to be unusual circumstances as a matter of fact, requiring a factual finding to that effect, I believe the Dirksen-Mansfield amendment would be construed by the Court to be a direction, or what might be called a rule of decision, which, in my judgment, the Court would have to strike down as unconstitutional, exactly as it did in respect to a statute which prescribed a rule of decision in the classic Klein case, a case decided some time ago, but which is much in point in this situation. In the Klein case, the Court said:

> We must think that Congress has inadvertently passed the limit which separates legislative from judicial power.

In United States against Klein, decided in 1872, the Court sharply distinguished from the so-called McCardle case, decided 3 years earlier, and upon which so much reliance is being placed in respect of the Dirksen-Mansfield amendment. In that case, the Court passed on an act by which Congress purported to withdraw jurisdiction from the Court of Claims in a class of pending cases. The Supreme Court thereupon held that that statute sought to change for the Court a rule of decision in a pending case, and was unconstitutional.

The Dirksen-Mansfield amendment makes no distinction between pending cases and new cases; nor, indeed, could it make such a distinction, because, after all, in the normal case, the authors of an amendment would say, "We will change it"; but they cannot. The reason they cannot is that most of the cases in the country now are pending cases. Therefore, the fat is in the fire in terms of jurisdiction of the Supreme Court and of the Courts of the United States, both original and appellate, and very little can be done about it.

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Suits for reapportionment are pending in the following States: Alabama, Arizona, California, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming.

Most of the States are now in litigation. Hence, we face a fact, not a theory. The Mansfield-Dirksen amendment, therefore, cannot be changed to apply prospectively because if it did, it would be discriminatory and wash out, or seek to wash out its applicability to the vast number of pending cases, which involve most of the States.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MODIFICATION OF UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent to modify the unanimous-consent agreement entered on Thursday last, which reads in part as follows:

Ordered, That the Senate on Tuesday, September 15, at 2:30 p.m. proceed to vote on the pending Javits amendment.

Mr. President, I ask unanimous consent that the time—2:30 p.m.—be changed to 2:20 p.m.

The PRESIDING OFFICER. Is there objection?

Mr. MANSFIELD. The unanimous-consent agreement will then read as follows:

Ordered, That the Senate, on Tuesday, September 15, at 2:20 p.m. proceed to vote on the pending Javits amendment No. 1234 as a substitute for the Dirksen amendment No. 1215, with the time between 12:20 p.m. and 2:20 p.m. on that day to be equally divided and controlled by the proponents and the opponents, respectively, and that the Senator from New York [Mr. JAVITS] have the right to modify his amendment until the yeas and nays are ordered thereon.

The reason I make this request is that it will fit in with the plans of certain Senators for that day. It will allow the time to be shortened by 10 minutes between 12 o'clock and 12:20, rather than between 12 o'clock and 12:30. It will also allow for the vote to get underway at 2:20, if the modification is agreed to. I would hope that the vote would be slowly taken at that time.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and the unanimous-consent request is agreed to.

The unanimous-consent agreement was subsequently reduced to writing, as follows:

UNANIMOUS-CONSENT AGREEMENT

Ordered, That the Senate, on Tuesday, September 15, at 2:20 p.m. proceed to vote on the pending Javits amendment No. 1234, as a substitute for the Dirksen amendment No. 1215, with the time between 12:20 p.m. and 2:20 p.m. on that day to be equally divided and controlled by the proponents and the opponents, respectively, and that the Senator from New York [Mr. JAVITS] have the right to modify his amendment until the yeas and nays are ordered thereon. (Sept. 10, 1964.)

Mr. JAVITS. Mr. President, I send to the desk a joint resolution to amend the Constitution of the United States to permit any State to apportion one house of its legislature on factors other than population, with the approval of a majority of the voters. I ask unanimous consent that this resolution may be printed in the RECORD and may lie on the desk for additional sponsors until 1 week from today.

The PRESIDING OFFICER. The joint resolution will be received and appropriately referred; and, without objection, the joint resolution will be printed in the RECORD, and held at the desk, as requested by the Senator from New York.

The joint resolution (S.J. Res. 204) to amend the Constitution of the United States to permit any State to apportion one house of its legislature on factors other than population with the approval of a majority of its voters, introduced by Mr. JAVITS, was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"ARTICLE XXV

"SECTION 1. Nothing in the Constitution of the United States shall prohibit a State having a bicameral legislature from apportioning the membership of one house of its legislature upon the basis of factors other than population, if such apportionment has been submitted to the qualified voters of the State through a statewide referendum held in accordance with law and with the provisions of this Constitution, and such apportionment has been approved by a majority of those voters in that referendum.

"SEC. 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress."

Mr. JAVITS. Mr. President, I introduce this joint resolution not because I expect it to be acted on at this session of Congress. We all know that this subject will come before us next year. It may very well have different sponsorship at that time, although I shall hope to be one of its sponsors.

I have introduced the joint resolution to show my good faith, and to show what I have in mind with respect to this matter. I desire to show how I feel with respect to the people in each respective State deciding what they wish to do. These are the very same people, on the same basis of one person, one vote, to whom the Supreme Court in its decision has given the power in respect to the State legislatures. Under the joint resolution that I introduced, this power could be applied within each State by a majority vote in a referendum to change the way in which one house of that State's legislature is organized.

Mr. President, to sum up my position, this is a unique situation in which Congress and the Supreme Court have coordinate power. Congress has the power to propose an amendment to the Constition under which the legislature of each State would determine what it wishes to do about apportionment. The Supreme Court has the power to declare acts of the States unconstitutional under the 14th amendment equal protection guarantee. I believe the Court has properly exercised such authority in respect to its decisions in Baker against Carr, Reynolds against Sims, and the other cases.

Nonetheless, the time must now elapse, short or long, as the facts may warrant—I emphasize that "short or long as the facts may warrant"—to give the people and the legislature of every State an opportunity to conform to the supreme law of the land enunciated by the Supreme Court.

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

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

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

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

Mr. JAVITS. Mr. President, as I started to say a moment ago, we are in a situation with relation to two coordinate branches of the Government—one coordinate branch in charge of determining what is and what is not lawful under the constitutional mandate of the 14th amendment for equal protection of the laws; the other, under the constitutional mandate to legislate, including constitutional amendments, which may permit a change in the 14th amendment requirement with relation to the apportionment of State legislative bodies. We are turning to the Court at a time when the law has been declared for the first time, after many years, and saying, "Now that you have determined the law, give opportunity, so long as steps are being taken to implement what you have determined, in good faith and with reasonable celerity, to the State legislatures and to the Congress to proceed in accordance with what has now been declared to be the supreme law of the land."

Mr. President, this is not a statute, because it could not be. As I have explained, in the face of all the pending cases for State reapportionment, which represent most of the States of the United States, and the Supreme Court's holding in the Klein case, such a statute requiring the Court to stay its hand, would, in my judgment, be declared unconstitutional unless the Court construed it solely as a request. In respect to the dignity of the two coordinate bodies, we should accordingly make the request, in order to do what the Constitution permits us to do.

I believe that the Supreme Court will honor our desires if they are presented

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with respect for the coordinate equality of the two branches of government—the judiciary and the legislative—seeking the application of a rule of reason to enable implementation of the legal concept to go forward. I base this on what I think is an excellent quotation from the majority opinion in one of the major reapportionment cases, the case of Reynolds against Sims, at page 50 of the pamphlet opinion, which reads as follows:

In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of State election laws, and should act and rely upon general equitable principles. With respect to the timing of relief, a court can reasonably endeavor to avoid a disruption of the election process which might result from requiring precipitate changes that could make unreasonable or embarrassing demands on a State in adjusting to the requirements of the court's decree.

Mr. President, it seems to me that that is an admirable statement when joined with the expression of our intention, which is the resolution which the Senators from Minnesota [Mr. McCARTHY] and [Mr. HUMPHREY] and I have presented to our colleagues. We would express our intention. The Court has said that it is willing to accommodate itself and to make provision against unreasonable or embarrassing demands on a State in adjusting to the requirements of the Court's decree.

Joining our intentions, plus the Court's expressed intention, both parties may be treated with utmost dignity, and may accommodate each to the other's needs and ideas with full respect for the coordinate authority in both bodies of government. If, on the other hand, we order the Supreme Court to do something, and the Court then construes the language "except in the case of highly unusual circumstances" as it ordinarily would construe that language, we run into the danger of an unnecessary confrontation between the Supreme Court and Congress, for the Court knows, as a matter of principle—and this involves very much more than the reapportionment cases—that it would have to strike down such a statute.

Therefore, for reasons of policy and comity between two great branches of government, and for the most fundamental reason of all, the ability to proceed under our own system without governmental paralysis or undue confrontation between two coordinate branches of government, I urge upon the Senate the adoption of the McCarthy-Humphrey-Javits substitute which I have been describing today.

Mr. President, I yield the floor.

Mr. DOUGLAS. Mr. President, does the Senator from New York mean the Javits-McCarthy-Humphrey amendment which was printed and submitted last week?

Mr. JAVITS. The Senator from New York has reserved the right, under the unanimous-consent agreement kindly allowed by the other Senators participating, to modify that amendment if we care to make some modification. I was speaking only of the fundamental principle and thrust which was involved in the substitute for the Dirksen-Mansfield amendment.

Mr. DOUGLAS. Mr. President, in its present form, while the intentions of the sponsors of the amendment are excellent, it is unacceptable to those of us who believe that the decisions of the Supreme Court have been correct and that they should not be interfered with by Congress.

The amendment in its present form would put psychological pressure upon the legislatures to delay reapportionment, even if ordered by the Court, and it would also put psychological pressure upon at least the lower courts not to issue apportionment rulings under the previous decisions of the Supreme Court. Since we believe the reapportionment decisions of the Court, we do not want such pressures to be applied.

Perhaps more important than those two considerations is the effect of the language on page two of the amendment which at present reads as follows:

Adequate time should be accorded * * * 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.

It seems to many of us that this proposal would be a tacit commitment by the Congress to submit a constitutional amendment to the States. I am opposed to any constitutional amendment because I think the courts have been completely correct in this matter, both as regards representation in one house and in both houses of the various State legislatures.

Furthermore, this language would tend to constitute a stay of an indefinite period during the time the amendment was before the States. During this time the malapportioned State legislatures would again have the power to approve the amendment and thus to seal themselves into office almost in perpetuity And during the time that the amendment was before the State legislatures any further action in the way of reapportionment would be stayed and prevented. This could be as long as 7 years.

I appreciate the intentions of my good friend from New York It is my hope that we can reach an agreement upon the language It pains me to have to say this but I must state that in the form in which the amendment was originally presented it is unacceptable.

Mr. JAVITS. In response to my beloved friend's comments—and I shall answer every one of the items to which he has referred—I shall tick them off to be sure I understand them. What he has said is not within the contemplation of this Senator, and I think it should be reflected also that it is not within the contemplation of either Senator from Minnesota, Senator McCARTHY or Senator HUMPHREY. What we have to do, if we can, is to make it clear to our colleagues who entertain these doubts. I hope we can do that. That is why I welcome the opportunity to make any modifications which may be necessary in the language.

With respect to the reference to psychological pressure upon State legislatures, we have no desire to have any psychological impact brought to bear upon them. When I was stating my case for the substitute, I made it clear that we hoped to find a good faith quotient in the way of the time given the legislatures to proceed to conform to the Supreme Court's decrees. I did not state that we were going to deal with a wholesale stay until everything was completed.

The second point is that the Senator does not personally favor any constitutional amendment of any kind and, therefore, does not think we should leave any implication that we are going, in good faith, to respond to the Court's giving time by getting time to have one. I happen to favor some kind of constitutional amendment. The one which I favor and have submitted would require approval by the people of each State before one house of a State legislature could be apportioned on a basis other than population.

The Senator from Illinois does not wish to be committed—neither do I—to the proposition that based upon this "sense" resolution, we are by implication committing ourselves to proposing an amendment to the States, expressly or by implication.

Third, the Senator from Illinois stated that indefinite time would be granted. I pleaded my case on the basis that the best way for the coordinate branches of government to proceed would be step by step. As the State legislatures move forward or as Congress moves forward, at every step the courts, by a series of relatively short steps, can determine whether enough action is being taken to justify further stays, knowing of the intentions of Congress and of the State legislatures. So I do not contemplate any wholesale stay of 1 or 2 or 3 years, but contemplate instead that the courts will take a look at the matters and determine, within the intention of Congress that stays are deserved.

Finally, on the question of malapportioned State legislatures, I point out that nobody—neither the Senator from Illinois nor any of his colleagues, no matter how strongly they may feel about this matter—is saying that the acts of the State legislatures which are malapportioned are invalid. If that were the result, as the Circuit Court of Appeals for the 10th Circuit has said, there would be anarchy. The processes of government have existed for a long time, and must continue. Therefore, the idea is to move forward—I do not even use the words "with all deliberate speed," because those words were used in another context, and I do not want to use them in this context. But we should go forward with all the celerity of which we are capable. I read one of the Supreme Court's own decisions on this subject as to what it means to go forward. It is found at page 50 of the pamphlet decision in the case of Reynolds against Simms:

With respect to the timing of relief, a court can reasonably endeavor to avoid a disruption of the election process which might result from requiring precipitate changes that could make unreasonable or embarrassing

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demands on a State in adjusting to the requirements of the court's decree.

All that we are trying to do by our amendment is to state to a coordinate branch of the Government our desire to afford some period in which to determine the intentions of State legislatures, so that the court may itself determine what are and what are not unreasonable or embarrassing demands on a State.

Answering the four points the Senator has raised—and again I make no plea for the original language of our proposal; it may very well be that it will be very much better expressed, and I hope we can come to that conclusion—the intent of our proposal is certainly no different from what we have just been discussing. It is not intended to put psychological pressure upon the States; there is no intention to guarantee that a constitutional amendment will be proposed; it is not the intention to stay the matter on a wholesale basis; and there is no intention to defer all actions to correct malapportioned legislatures beyond what is required to avoid dealing with States in an unreasonable or embarrassing manner, and within that definition to see that the situation is corrected at the earliest time, but bearing in mind that what the legislatures are doing is not invalid, that we are not in anarchy, and that it is possible to accomplish the purpose in a way that is reasonable and not embarrassing, which is very much the standard that the Court has laid down.

Mr. DOUGLAS. I find myself in general agreement with what the Senator from New York has stated, however, I believe that the language in the present amendment is susceptible of a different interpretation. I am very glad he has made this statement. I suggest that the language needs to be made clearer on this point.

Until there is a definite provision in the Constitution which limits the power of the Supreme Court to interpret the 14th amendment, so far as it refers to the apportionment of State legislatures, I believe the Court should be allowed so to interpret the Constitution, and that the decisions of the Supreme Court should be followed by the lower courts and by the various State legislatures. And I am also opposed to any such amendment since I submit that the Court's decisions have been substantially necessary.

My chief concern is that we should not stay the processes of constitutional interpretation pending the ratification of a supposititious amendment by three-fourths of the States.

If in the meantime the ordinary constitutional process should go on with rulings in various States, but with time given for equitable plans to be worked out, that would be highly desirable. That would as a matter of fact be in conformity with the Court's own standards. However, if the language is to be interpreted as meaning that everything must come to a stop, while an amendment was being proposed and acted upon, which might take years before action was finally completed, it would be in effect a polite form of the Dirksen-Mansfield amendment. As such is should not be supported. But I hope the language may be revised to connote a meaning similar to that which I have suggested.

Mr. JAVITS. I am very grateful to my colleague for his always constructive and informed intercession. I am hopeful that we will find ways in which, having come to a meeting of minds—we need not agree on everything—we may be able to come to an agreement.

Mr. DOUGLAS. I hope that very much.

Mr. JAVITS. I yield the floor.

Mr. INOUYE. Mr. President, since Wednesday, August 12, I have sat in the Senate listening to the proponents and opponents of the Dirksen amendment which seeks to authorize temporary stays in execution of court orders for immediate institution of reapportionment in State legislatures based upon the principle of "one-man, one-vote." Except for a relatively brief period when the distinguished senior Senator from Illinois held forth, the discussions have mainly centered on substantive questions concernings the validity or invalidity of the arguments presented in the series of Supreme Court cases handed down last June. Facts and figures have been cited to prove or disprove, as the case may be, the under or over representation, of rural or urban areas.

I have no particular brief against such discussions for the Supreme Court decisions most certainly are based on concrete and specific cases from Alabama to Colorado, all dealing with substantive questions of the equity or inequity of the prevailing mode of representation in the various State legislatures. Political and other social scientists have for years written scholarly articles analyzing the merits or demerits of a system of apportionment tending to favor the nonurban areas of our various State governments. Historians have pointed to various tracts from American history for the purposes of either proving or disproving whatever line of reasoning they were inclined to follow. Far be it for me to cover ground so well traveled by so many experts.

However, I personally believe that a more constructive approach to the question before us is to face up to the procedural questions involved. Indeed, the Dirksen amendment itself does not raise substantive questions of the propriety or impropriety of the court's decisions, although much has already been implied on this floor. The issue raised is mainly procedural. And that issue is one which goes to the very nerve center of our constitutional form of government.

I am deeply convinced that any tampering with this nerve center is to seriously endanger a system which has enabled this country to endure and survive a multitude of internal and external stresses and strains which have weakened or destroyed a number of governments not as prudently endowed. Were I to be alined against the majority of the Justices in the Supreme Court decisions, I would still have to raise my voice against the present attempt to initiate by legislative fiat an inexorable deterioration of the very structure of constitutional government. For to say that the issue is procedural only underscores the fact that the basic precepts of American constitutionalism are being undermined.

Without any attempt to delve into the motives of the sponsors of the Dirksen amendment, and without trying to analyze what appears to be a puzzling conflict in interpretation of the two major sponsors as to the ultimate purpose behind it, I can only see the effect as being detrimental to the concept of separation of powers. I do not know, at this point, whether the aim is to buy time so as to enable Congress and the States to initiate and ratify a constitutional amendment leaving inviolable existing systems of apportionment, or simply to provide the time necessary for the various State legislatures to work out reapportionment schemes more closely in line with the case of Reynolds against Sims. I do not know that these varying opinions are necessarily germane to the basic procedural question. All that I do know is that the Senate, and the Congress, are being asked to stay an interpretation delivered by the Supreme Court. All that I do know is that this amounts to a temporary restraining order from the legislative arm preventing the due execution of a decision rendered by the judicial branch of our Government. And may I add that the period of validity of the restraining order has also very little to do with the procedural question involved.

The fact of the matter, it seems to me, is that a judicial decision has been deemed to be in dire need of legislative moderation. If this can be done with Reynolds against Sims and Lucas against the 44th General Assembly of Colorado. Why was it not done with Brown against the Board of Education of Topeka? And why cannot it be done with any and all Supreme Court decisions which may run counter to the political interests of those affected?

I am sorry to say that I believe a precedent is being created by this amendment which would wreak havoc with our traditional views that the judicial and legislative functions should be kept separate. What other possible interpretation is there for the proposed amendment? A judicial decision has been made. The Constitution has been held to be violated by the existent system. The Court has said, in effect: Correct that system so as to make it consonant with the Constitution. But correct it within certain reservations, to wit:

> Remedial technique in this new and developing area of the law will probably often differ with the circumstances of the challenged apportionment and a variety of local conditions. It is enough to say now that, once a State's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan. However, under certain circumstances, such as where an impending election is imminent and a State's election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief in a legislation apportionment case, even though

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the existing apportionment scheme was found invalid.

How more reasonable can the Supreme Court be?

The Founding Fathers were very clear about the division of legislative, judicial, and executive powers. As the wording of article III, section 1, of the Constitution states:

The judicial power of the United States shall be vested in one Supreme Court, and such inferior courts as the Congress may from time to time ordain and establish.

Section 2 sets forth the jurisdiction of the Court as follows:

The judicial power shall extend to all cases in law and equity arising under this Constitution.

The only power Congress has over the courts is in the establishment of them and in the approval of appointees. The Founding Fathers were very careful to limit the judicial power of the legislative branch to cases of impeachment only.

Since we are quoting authorities while debating an idea as revolutionary as this amendment. It would be wise to reread the thoughts of the framers of the Constitution on the doctrine of separation of powers. What do they say? Alexander Hamilton, in Federalist Paper No. 78, states:

The complete independence of the courts of justice is peculiarly essential in a limited constitution. By a limited constitution, I understand one which contains certain specified exceptions to the legislative authority, such for instance, as that it shall pass no bills of attainder, no ex-post facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty must be to declare acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

Further on in the same paper Hamilton discusses the questions of supremacy if the legislature and the Constitution are divergent in their views:

The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity, ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Yet by the Dirksen amendment I think we are saying that Congress is supreme. The Supreme Court in Reynolds against Sims and Lucas against the 44th General Assembly of Colorado held that the equal protection clause of the 14th amendment guarantees to all citizens the principle "one-man, one-vote." The Dirksen amendment, by saying that these decisions may not be enforced, at least for a period of time, is overriding the Supreme Court. I am certain that all of us are familiar with the case of Marbury against Madison, which sets forth the principle of judicial review and supremacy of the judicial branch as the proper one to determine the constitutionality of our laws. This proposal comes dangerously close to violating that principle by denying the courts the right to execute their decisions.

In addition, not only would the Dirksen amendment violate the law of the land, it would force others to do the same. By forbidding the execution of the law, it would be hampering the legal process and force law-abiding citizens to live under and vote for unconstitutional governments. In other words, we may be enacting a law to force citizens to live under unconstitutional governments, as it were.

There have been charges that law and order will give way to chaos and uncertainty if the State legislatures followed the Court's decision and reapportioned immediately. But the effect of this measure is far worse—it would validate unconstitutional assemblies, and force, by an act of Congress, the people of the United States, in effect, to disobey and ignore the supreme law of the land.

Another factor to consider is that a dangerous precedent would be set by this proposed amendment. The execution of any reapportionment order could be permanently stayed. The Dirksen amendment could grant stays to January 1, 1966. But what would prevent Congress from changing the year to January 1, 1976, or January 1, 1986? The time limit of this proposal could be extended indefinitely, permanently usurping the power of the Supreme Court to execute its proper functions. What guarantees would there be that this proposal would only be "temporary"? Temporary emergency laws have an unusual habit of taking on the character of permanence.

As I have previously intimated, even if all sorts of guarantees were given that this measure will be a temporary one, that it will not be extended beyond its original duration, it will still set a dangerous precedent. For while this amendment is limited to granting stays only in cases dealing with reapportionment, the principle of the legislature interfering with the functions of the judiciary would have been set. The original purposes, including the "special factors" which compose the situation, may be forgotten in the future.

What is to stop Congress from passing other bills staying the execution of Court orders in any field which any Member of Congress finds repugnant? Reapportionment is the issue today. What is to stop voter registration from being the issue tomorrow, or the practice of certain religions the issue next week? This amendment would strip the courts of their constitutional power and thereby tend to undermine the Constitution. It would tend to reduce the judiciary to a position of subservience to the legislature. It would render it a branch whose pronouncements could only be executed by the grace of Congress. Cases would be decided, claims adjudicated, laws interpreted, but no executions would be allowed without the advice and consent of Congress. Such a situation would make a mockery of the Constitution as the supreme law of the land. We would have, in effect, a system whereby the branch of government enacting a law, would decide the constitutionality and the enforcement of the law, a system which the framers of the Constitution regarded as tyranny, and a complete abdication of the rights of the people.

May I emphasize in closing that my remarks today were not made in haste nor with any intemperance or malice. I have given long and serious thought to the implications of the amendments as I personally saw them. I would be remiss were I to remain silent on the matter. The issue is much too great and far too significant for one who is deeply committed to our system of government. The issue has far too many implications for the future of American constitutionalism to be ignored.

Reapportionment may be right or wrong, but the role of the court and the doctrine of the supremacy of the Constitution can never be, should never be, challenged.

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

Mr. INOUYE. I am glad to yield.

Mr. DOUGLAS. I congratulate the Senator from Hawaii on his able argument. He has proved himself to be as good a lawyer and authority on the Constitution as he was a soldier.

The Senator from Hawaii—although he is modest about this—has one of the most distinguished war records in the Nation. The battalion in which he served, the 442d, had the finest record of any unit in the American Armed Forces. They had more men killed, more wounded, and more decorated than any comparable unit.

The Senator from Hawaii was one of the bravest and most skillful members of that magnificent battalion. He has now shown himself to be a scholarly constitutional lawyer. The position he takes is, in my judgment, completely sound.

The decisions of the Court were substantively correct. The Senator from Hawaii has not gone into that subject, but he has pitched his argument on the ground that it would be really scandalous were the legislature to insist that it interpret the Constitution and put the Constitution in the deep freeze, so to speak, while it proceeded to act upon the matter, or while a constitutional amendment was before the country.

I conclude as I began, in congratulating the Senator for his excellent argument.

Mr. INOUYE. I am most grateful for the generous remarks of the Senator from Illinois. I am happy to be on his team.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DOUGLAS. Mr. President, over the weekend, two significant editorials were published in two great American newspapers.

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The first one was published in the St. Louis Post Dispatch for Friday, September 11, and deals with what the St. Louis Post Dispatch properly entitles "Attack on the Court."

It begins by stating:

Senator DIRKSEN's ride against the Supreme Court has been stalled. Only 30 Senators voted to shut off debate on his plan to restrict the Court's power to support legislative apportionment, while 63 (including Missouri Senators SYMINGTON and LONG) voted against cloture.

Mr. President, it is significant that while it would have required a two-thirds vote to obtain a limitation of debate, we had more than a two-thirds vote against limitation of debate.

The editorial, however, correctly goes on to state:

Unfortunately, the rider to the foreign aid bill is not dead. A motion to table it was defeated by 49 to 38.

Mr. President, parenthetically, let me say that there were 5 Members of the Senate who were absent who would have voted for tabling, so that the true strength was about 43; that the motion to table made by the Senator from Vermont [Mr. AIKEN] came from a Senator whom we all honor, but he was for the Dirksen amendment and then voted against his own motion to table in the belief that by this unexpected move he would throw the forces against the Dirksen amendment into confusion and that the vote to table would be relatively slight.

The fact that 38 stood fast and voted for tabling was, I believe, most indicative.

The editorial continues that "those who are opposed to the plan are free to go on talking against the Dirksen plan."

The editorial states further:

As the debate proceeds, the public should become fully aware of the grave issues involved. Senator DIRKSEN insists he is not attacking the Supreme Court. He says the issue is whether the Constitution empowers the Court to say how State legislatures shall be composed. What he means is that Congress should decide the Court's power; but the Constitution has already decided that.

I reaffirm the able argument which has just been made on the floor of the Senate by the distinguished Senator from Hawaii [Mr. INOUYE].

The St. Louis Post-Dispatch editorial continues:

The Court was enforcing the Constitution in holding that its equal-protection-of-the-laws clause requires both houses of State legislatures to be elected by popular vote.

Mr. President, can we have equal protection of the laws if people are unequally represented in the legislatures, and if groups are grossly underrepresented in the legislatures which make the laws? How can it be said that they will be given the equal protection of the laws?

The St. Louis Post-Dispatch continues:

Senator DIRKSEN is ignoring the Constitution in proposing that Congress, by simple legislation, tell the courts they cannot enforce the equal voting rights principle for a year and more.

It may well be much more than a year.

The St. Louis Post-Dispatch continues:

In that time the Senator hopes for passage of a constitutional amendment to override the Court decision permanently.

This is not the first attack on the Supreme Court, but it is one of the more serious. Only once in history has Congress actually restricted the Court by legislation. In 1868, during a struggle over Reconstruction, Congress withdrew the Supreme Court's authority to hear habeas corpus appeals from lower Federal courts. Even so, Congress did not tell the High Court it could not hear direct appeals on this great writ, and soon a more thoughtful legislature rescinded its ruling. President Franklin D. Roosevelt tried to pack the Court in 1937, when he was dissatisfied with decisions adverse to the New Deal. He proposed that he be given power to name an additional Justice, up to a total of 15, for each one who failed to retire at the age of 70. The Senate of those days was properly outraged, and killed the plan.

As a result of the McCarthy period hysteria, former Senator Jenner, of Indiana, in 1957 tried to remove Supreme Court jurisdiction from cases involving contempt of Congress, Federal loyalty actions and various subversive activities. The Jenner proposals were tabled and never even reached a vote.

Now, for the first time, Congress is asked to interpret the Constitution for itself, taking from the Court that responsibility which the Constitution gives it. Could there be any stronger attack on one branch of Government by another, or any heavier assault on judicial review and separation of powers?

The Dirksen forces have suffered a deserved defeat, with a stalemate as the result. Perhaps Senator HUMPHREY will succeed with his effort to turn the Dirksen command to the courts to advisory legislation only, though there is no great reason for Congress to advise the courts to give States time to comply with the Court decision. The States will have to have time in any case.

The colloquy which we had a few minutes ago with the Senator from New York [Mr. JAVITS] indicates the reasons why we are dissatisfied with the present draft of the Javits-McCarthy-Humphrey amendment. It is not as bad as the Dirksen-Mansfield amendment. But, in its present form, it is dangerous. It could bring psychological pressure to bear on the legislatures and the courts to slow up the process of carrying out the constitutional requirement for substantial equality of representation in the legislatures.

It might well be interpreted to induce courts and State legislatures to freeze the existing apportionment of membership, pending the ratification of a constitutional amendment. It, in a sense, psychologically commits Congress to submit such a statement, because it carries with it the phrase, "which shall have been duly submitted by the Congress to the States." It makes no provision that any amendment thus submitted should be passed upon by the people either by direct referendum or by a constitutional convention chosen specifically by the people. But it would still permit the rotten borough malapportioned legislatures to ratify such an amendment and have it be legal.

As I indicated, there are many of us who cannot accept the Javits-McCarthy-Humphrey amendment in its present form. We hope that the negotiations which are now being conducted for a revision may be satisfactorily completed.

The editorial concludes with this ringing paragraph:

But when Senator DIRKSEN insists that he is willing to fight for his cause until Christmas or after, the champions of the High Court cannot depend on leaving their trenches by Christmas. However long it takes, however long the Senate must remain in session, the authority of the Supreme Court to uphold the Constitution must be maintained.

My colleague from Illinois issued a ringing statement last week that he was prepared to stay here until Christmas to get his amendment passed.

Some of us are equally determined to stay here until Christmas in order to prevent the Dirksen-Mansfield amendment from being passed. We believe that we are fighting on the side of the Constitution. We are very glad to have our position supported by so great a newspaper as the St. Louis Post-Dispatch. Mr. President, I ask unanimous consent that the editorial published in the St. Louis Post-Dispatch of September 11, 1964, entitled "Attack on the Court" be printed in full at this point in the RECORD.

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

[From the St. Louis (Mo.) Post-Dispatch, Sept. 11, 1964]

ATTACK ON THE COURT

Senator DIRKSEN's ride against the Supreme Court has been stalled. Only 30 Senators voted to shut off debate on his plan to restrict court power over State legislature apportionment, while 63 (including Missouri Senators SYMINGTON and LONG) voted against cloture.

Unfortunately, the rider to the foreign aid bill is not dead. A motion to table it was defeated by 49 to 38. So the situation is as it was, with Senator DOUGLAS, of Illinois, and his band free to go on talking against the Dirksen plan. As the debate proceeds, the public should become fully aware of the grave issues involved.

Senator DIRKSEN insists he is not attacking the Supreme Court. He says the issue is whether the Constitution empowers the Court to say how State legislatures shall be composed. What he means is that Congress should decide the Court's power; but the Constitution has already decided that.

It is true, as critics of the Court have said, that the Constitution gives Congress some control of appellate jurisdiction and of lower courts. But the Constitution also creates the Supreme Court, and gives to that Court full jurisdiction in all cases arising from the Constitution.

The Court was enforcing the Constitution in holding that its "equal protection of the laws" clause requires both houses of State legislatures to be elected by popular vote. Senator DIRKSEN is ignoring the Constitution in proposing that Congress, by simple legislation, tell the courts they cannot enforce the equal voting rights principle for a year and more. In that time the Senator hopes for passage of a constitutional amendment to override the Court decision permanently.

This is not the first attack on the Supreme Court, but it is one of the more serious. Only once in history has Congress actually restricted the Court by legislation. In 1868, during a struggle over Reconstruction, Congress withdrew the Supreme Court's authority to hear habeas corpus appeals from lower Federal courts. Even so, Congress did not tell the High Court it could not hear direct appeals on this great writ, and soon a more thoughtful legislature rescinded its ruling.

President Franklin D. Roosevelt tried to "pack" the Court in 1937, when he was dis-

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satisfied with decisions adverse to the New Deal. He proposed that he be given power to name an additional Justice, up to a total of 15, for each one who failed to retire at the age of 70. The Senate of those days was properly outraged, and killed the plan.

As a result of the McCarthy period of hysteria, former Senator Jenner of Indiana in 1957 tried to remove Supreme Court jurisdiction from cases involving contempt of Congress, Federal loyalty actions and various subversive activity. The Jenner proposals were tabled and never even reached a vote.

Now, for the first time, Congress is asked to interpret the Constitution for itself, taking from the Court that responsibility which the Constitution gives it. Could there be any stronger attack on one branch of Government by another, or any heavier assault on judicial review and separation of powers?

The Dirksen forces have suffered a deserved defeat, with a stalemate as the result. Perhaps Senator HUMPHREY will succeed with his effort to turn the Dirksen command to the courts to advisory legislation only, though there is no great reason for Congress to advise the courts to give States time to comply with the Court decision. The States will have to have time in any case.

But when Senator DIRKSEN insists that he is willing to fight for his cause until Christmas or after, the champions of the High Court cannot depend on leaving their trenches by Christmas. However long it takes, however long the Senate must remain in session, the authority of the Supreme Court to uphold the Constitution must be maintained.

Mr. DOUGLAS. Mr. President, this morning, the Washington Post published another very able editorial under the title "Shadow of a Shadow." I suppose this is drawn from the passage in Richard II, when Richard II, who had been dethroned, looked in the mirror and it was said that the shadow of his shadow had displaced the reflection of his face.

The editorial states:

The best that can possibly be said in favor of the administration-sponsored compromise of the Dirksen apportionment rider is that it might help to break a Senate deadlock and that it would do serious damage, really, only to the good name of the Congress.

As one who is very jealous of the good name of Congress, I do not wish to contribute gratuitously to its further denigration.

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

Mr. DOUGLAS. I yield.

Mr. McCARTHY. I suppose the next step would be that we might pass a resolution giving advice to the Senate as to what it should do.

Mr. DOUGLAS. That would be equally appropriate or incongruous. The article goes on to say:

But it is essentially a silly solution, insulting to the Supreme Court and pointless even from the point of view of its supporters; and while it is, to be sure, not nearly so dangerous or offensive as the Dirksen rider itself, it would still trench damagingly on the constitutional separation of powers.

I am very glad that the junior Senator from Minnesota [Mr. McCARTHY] has just made the statement which he did. I take it that he, in a sense, is detaching himself from the amendment, and publicly assented to it only in the sense of harmony and unity.

The editorial goes on to say:

The compromise, introduced by Senators JAVITS and McCARTHY, with an apparent assent from the White House, would express the "sense of Congress" that "adequate time" be afforded to the States "to conform to the requirements of the Constitution." It would also add a more objectionable provision declaring it to be the sense of Congress that the States be given adequate time to consider any proposed constitutional amendment relating to the composition of State legislatures.

The editorial then goes on to say further:

Some of the Senators who have so ably and sensibly led the fight against the Dirksen rider have now proposed a modification of the administration compromise. They would limit it to a reiteration of the Supreme Court's own language allowing flexibility and patience in implementation of the apportionment decision.

I do not know where the Washington Post editors got the information, but they are apparently mind readers. They have stated the general purpose of our efforts fairly accurately. The editorial continues:

There can be no objection to this proposal except that it is an exercise in futility; it amounts to the shadow of a shadow of the Dirksen rider.

It may be remembered that Abraham Lincoln once referred to a promise as being about as substantial as soup made from the shadow of a crow which had starved to death.

The editorial concludes:

It would be better to avoid casting even this shadow of a shadow on the independence of the judiciary. But perhaps it is justified as the price of getting this mischievous matter settled. And it has the virtue of a reductio ad absurdum.

Mr. President, I ask unanimous consent that the editorial published in the Washington Post of September 14, 1964, entitled "Shadow of a Shadow," be printed at this point in the RECORD.

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

[From the Washington (D.C.) Post, Sept. 14, 1964]

SHADOW OF A SHADOW

The best that can possibly be said in favor of the administration-sponsored compromise of the Dirksen apportionment rider is that it might help to break a Senate deadlock and that it would do serious damage, really, only to the good name of the Congress. But it is essentially a silly solution, insulting to the Supreme Court and pointless even from the point of view of its supporters; and while it is, to be sure, not nearly so dangerous or offensive as the Dirksen rider itself, it would still trench damagingly on the constitutional separation of powers.

The compromise, introduced by Senators JAVITS and McCARTHY, with an apparent assent from the White House, would express the sense of Congress that adequate time be afforded to the States to conform to the requirements of the Constitution. It would also add a more objectionable provision declaring it to be the sense of Congress that the States be given adequate time to consider any proposed constitutional amendment relating to the composition of State legislatures.

The first provision serves no purpose whatever. The Supreme Court itself said plainly that "with respect to the timing of relief," an inferior court "can reasonably endeavor to avoid a disruption of the election process which might result from requiring precipitate changes that could make unreasonable or embarrassing demands on a State in adjusting to the requirements of the court's decree." The second provision amounts to nothing less than a demand that U.S. courts suspend application of the equal protection clause of the Constitution until Congress finds time to subvert it altogether.

Some of the Senators who have so ably and sensibly led the fight against the Dirksen rider have now proposed a modification of the administration compromise. They would limit it to a reiteration of the Supreme Court's own language allowing flexibility and patience in implementation of the apportionment decision. There can be no objection to this proposal except that it is an exercise in futility; it amounts to the shadow of a shadow of the Dirksen rider. It would be better to avoid casting even this shadow of a shadow on the independence of the judiciary. But perhaps it is justified as the price of getting this mischievous matter settled. And it has the virtue of a reductio ad absurdum.

Mr. DOUGLAS. Mr. President, I join the Senator from Minnesota [Mr. McCARTHY] in feeling that if we can defend the courts, I am willing to pay the price of appearing somewhat ridiculous.

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

Mr. DOUGLAS. I yield.

Mr. McCARTHY. Mr. President, I would have to differ with the position expressed by the Senator from Illinois. I do not believe that what we propose in the amendment to which he referred is quite as absurd as that which was proposed in the Dirksen-Mansfield amendment.

Mr. DOUGLAS. No. That is correct.

Mr. McCARTHY. We have really backed away a little from the ultimate.

Mr. DOUGLAS. We have reduced the absurdity.

Mr. McCARTHY. That is correct. As I said when I spoke previously, the Dirksen-Mansfield proposal, if it had any authority in it, immediately moved into the area of the unconstitutional. If it had no authority, it was nothing more than a piece of advice or recommendation to the Court. So at least we were honest in our amendment in doing nothing other than to offer advice to the Court; and I would say that that is a less absurd action than it would be if we were to proceed on the assumption that we had authority in a field in which we have no authority. I suggest that this often happens with regard to the Washington Post. I often find myself in agreement with its conclusions and its recommendations, but sometimes we do well not to read too carefully its justification for its position.

Mr. DOUGLAS. I am glad to find that the Senator from Minnesota seems to be in rough general accord with some of the criticisms which some of us have advanced.

Mr. McCARTHY. As I have said to the Senator, I would prefer to have no amendment or resolution.

Mr. DOUGLAS. So would I.

Mr. McCARTHY. I would leave the Court free to act.

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Mr. DOUGLAS. So would I. I hope that the legislative record will be made clear that the current proposal is not a substantive one.

Mr. McCARTHY. The Senator from Illinois and I have discussed the subject before. There are certain areas of confusion because we have let the executive branch of the Government "legislate" in some areas in which I think we ought to act; and we have put too great a burden of the executive responsibility on the Court in a number of critical areas, including civil rights, and now in the area of reapportionment. If we moved each area of responsibility one step to the right, Congress might be left with nothing but a kind of unofficial judicial review as its clear responsibility.

Mr. DOUGLAS. But that has been because of the failure of the Congress and of the various State legislatures to act.

Mr. McCARTHY. In most cases.

Mr. DOUGLAS. In slang parlance, we have "asked for it."

Mr. McCARTHY. In most cases it is the result of our failure to act when we should have acted.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. McCARTHY. Mr. President, the question of reapportionment is an issue in my State of Minnesota, as it is in many other States.

The Minnesota State constitution provides that both houses, the senate and the house of representatives, shall be apportioned equally in proportion to the population, but this provision has not been followed in any strict way.

I requested the attorney general's office in Minnesota to provide me with a brief summary of the judicial action which has taken place over the years in regard to this provision of our State constitution.

I ask unanimous consent that the review may be printed at this point in the RECORD.

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

The judicial construction has been as follows:

In *State ex rel. Meighen* v. *Weatherill* (1914), 125 Minn. 336, 147 N.W. 105, an attack was made on the reapportionment act of 1913, claiming that it was in violation of the above constitutional provisions. The Minnesota court stated that the legislature is vested with wide discretion in forming legislative districts and the courts will not interfere except when there has been a clear and arbitrary departure from the requirement of equality. The court did state that there was a constitutional mandate imposing a duty of reapportionment upon the legislature and that duty continues beyond the legislative session after the decennial census if the legislature had not complied.

In *Smith* v. *Holm* (1945), 220 Minn. 486, 19 N.W. 2d 914, another legal attack was made upon the reapportionment act of 1913. The Minnesota court adhered to the rule in the Weatherill case, supra, and characterized the law as follows:

"In short, if the legislature exercises its judgment and discretion in enacting an apportionment law, the result is not vulnerable to attack in the courts."

The court went on further to say that if a reapportionment act was valid when enacted, it may not be held unconstitutional by reason of subsequent changes in the relative population of the districts, and that it continues in force until superseded by a valid act.

In 1958, an action was initiated in the Federal court, *Magraw* v. *Donovan* (1958), 163 Fed. Supp. 184, similar to that now pending. The plaintiffs argued that unequal representation deprived them of the right guaranteed by the 14th amendment to the U.S. Constitution and that the reapportionment act of 1913 was unconstitutional in 1958.

The three judge Federal court in *Magraw* v. *Donovan* (March 21, 1958), 159 Fed. Supp. 901, held that the action was within the jurisdiction of the Federal court. It should be noted that initially the defendants were secretary of state and the county auditors of St. Louis, Hennepin, Ramsey, and Olmsted Counties, but that subsequently the county auditors of Houston, Grant, and Ottertail intervened. The latter counties were overrepresented on a population basis in the State legislature.

In *Magraw* v. *Donovan* (July 10, 1958), 163 Fed. Supp. 184, the Federal court made a determination that there was substantial inequality in the composition of the Minnesota legislative districts. The court pointed out in the Minnesota case of *Smith* v. *Holm* no question of the equal protection clause under the 14th amendment was presented or considered. The court stated: "* * * it is the unmistakable duty of the State legislature to reapportion itself periodically in accordance with recent population changes. * * * It is not to be presumed that the legislature will refuse to take such action as is necessary to comply with its duty under the State constitution."

The court retained jurisdiction with the provision that following the adjournment of the 1959 session of the Minnesota Legislature the parties could petition the court for such action as they may deem appropriate. The Minnesota Legislature did reapportion in 1959, effective January 1, 1962. Subsequently the plaintiffs moved for an order to dismiss the action without prejudice and the Federal court permitted this in *Magraw* v. *Donovan* (October 26, 1959), 177 Fed. Supp. 803, over the objection of the intervening defendants.

Mr. McCARTHY. Mr. President, the present range of population in Minnesota legislative districts covers extensive differences. If the population of the State is divided by the 67 senatorial districts, the average would be 50,953. The largest district at the present time has a population of 100,000, or nearly twice the proportionate number. The smallest senatorial district has a population of 24,587, roughly one-half what it would be if the average were applied.

The population of the State divided by 135 house districts would average out to 25,288. The largest house district has 56,000, which is roughly twice the size of what it would be if proportionate representation had been achieved. The smallest is only 8,343. It is the result of reapportionment which took place following the census of 1960.

Mr. DOUGLAS. Mr. President, will the Senator yield for a question?

Mr. McCARTHY. I yield.

Mr. DOUGLAS. This followed the census of 1960?

Mr. McCARTHY. Yes; this was the most recent reapportionment.

Mr. DOUGLAS. This was "reform" reapportionment?

Mr. McCARTHY. Following the census of 1960.

Mr. DOUGLAS. I use the word "reform" in quotation marks.

Mr. McCARTHY. I understand the implication.

Mr. DOUGLAS. And is not the State grossly malapportioned? The cities of Minneapolis, St. Paul, and Duluth are grossly underrepresented in relation to other districts. Is that not correct?

Mr. McCARTHY. That is true. I would have to state that, from the viewpoint of being advantageous to Democrats or Republicans, strict reapportionment would be somewhat disadvantageous to the Democrats; but we are acting on principle.

Mr. DOUGLAS. That is correct as to Illinois also, since reapportionment is not going to help the Democrats. In fact, the suburbs are considerably more underrepresented than are the cities, and the suburbs tend to be Republican.

Mr. McCARTHY. And the rural districts are liberal in my State. So in this case we are doing what we think is best for the State of Minnesota.

Mr. DOUGLAS. The Senator is an authority on the Bible, and he is, therefore, familiar with the Biblical quotation:

He that sweareth to his own hurt, and changeth not.

Mr. McCARTHY. I hope we receive credit not only for using Biblical quotations, but also for the action we have taken.

It is estimated that, theoretically, 40.1 percent of the population could control the senate and 34.5 percent could control the house in the Minnesota Legislature.

Following the decision of the U.S. Supreme Court in Reynolds against Sims, a case was filed in the U.S. district court in the district of Minnesota, entitled "Honsey, et al., Against Joseph Donovan, Secretary of State, et al.," asking for reapportionment of the Minnesota legislative districts.

The attorney general of the State of Minnesota and other officials have filed an answer to the plaintiffs' complaint. This matter is now pending before the U.S. district court.

It is possible that the court could render its decision any day, and it is possible that the court decision would enjoin the November 3 election for the Minnesota House of Representatives, or in the alternative, order the election of the representatives from the various districts to be an at-large election. But I am confident that the court will not take such action and that the election will proceed on November 3 under State law.

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The disproportionate representation of our State is rather obvious and clear. I hope that through either the case which is pending in the district court of Minnesota or other action reapportionment may come about in Minnesota.

In any event, I believe it is to be a very serious matter for Congress to attempt to interfere with the decisions which have been made by the court, or in any positive way to try to obstruct the actions which might follow from what we now call the historic decisions, although they have been late in coming.

ADJOURNMENT

Mr. McCARTHY. Mr. President, if there is no further business to come before the Senate, I move that the Senate adjourn until 12 o'clock noon tomorrow.

The motion was agreed to and (at 4 o'clock and 44 minutes p.m) the Senate adjourned until tomorrow, September 15, 1964, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate September 14, 1964:

POSTMASTERS

The following-named persons to be postmasters:

CALIFORNIA

Robert B. Ross, Orinda, Calif., in place of L. G. Mallary, retired.

Salvatore J. Montalbano, St. Mary's College, Calif., in place of J. J. Shanahan, retired.

FLORIDA

Harry R. Collier, Deerfield Beach, Fla., in place of E. V. Morrow, deceased.

MARYLAND

Ralph H. Barrett, Bladensburg. Md., in place of C. H. Brown, deceased.

Evelyn E. Lednum, Tilghman, Md., in place of B. V. Sinclair, retired.

MISSISSIPPI

Mamie L. Holland, Glendor, Miss., in place of M. B. Lowe, retired.

MISSOURI

Catherine J. Sinnott, Wayland, Mo., in place of T. H. Sinnott, deceased.

NEBRASKA

Dorothy M. Turner, Firth, Nebr., in place of Delmer Vandewege, transferred.

NEW JERSEY

Leonard F. Errico, Stockton. N.J., in place of W. J. Ledger, retired.

NEW YORK

Jerome P. Meyer, Corfu, N.Y., in place of Celestine Reynolds, retired.

SOUTH DAKOTA

Jennie M. Swartz, Baltic, S. Dak., in place of C. R. Dregseth, retired.

TEXAS

Annie M. Whittley, Barksdale, Tex., in place of Lillie Perkins, retired.

Austin Skinner, Ferris, Tex., in place of A. T. McCarson, transferred.

MONTANA

Lawrence A. Wendel, Helena, Mont., in place of H. K. Potter, deceased.

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