in a vacuum. They must be tackled by skilled people fully acquainted with all the facts and dedicated to finding sound and workable solutions. The broad and enthusiastic support given to S. 2 is a testimonial to the wisdom and popularity of this approach.

Perhaps more than most States, Nebraska has water resource problems. There are several irrigation projects either under construction or in planning in the Lower Loup Valley. It is important to know their ultimate effect upon the streamflow in the lower reaches of this river after these projects are completed. Nebraskans need to know what effect, if any, these and other projects will have on domestic water supplies. We want to know more about our underground water supply. If signs appear that we are overpumping from that supply and depleting it, we want some technical advice and assistance on what to do. All of these and many other subjects and problems will fall within the areas of inquiry supported by this legislation.

As a land-grant college, the University of Nebraska is eligible for participation in the program established by this year's act. Officials of the school have assured me of their keen interest in cooperating in this new effort and have already given a great deal of thought to the plans and proposals that will be submitted for approval.

The work that has been and is being done at the university both in Lincoln and throughout the State in the field of water research and related disciplines enjoys international recognition. The care and diligence with which the people there have approached this new program is in keeping with the clear thinking that has guided all their undertakings.

Our soil and water conservation programs in Nebraska are internationally recognized and admired. Many people in the State have contributed to their success. Our university has made a significant contribution and we Nebraskans take pride that the perimeters of that institution's obligations and responsibilities are not the boundaries of its campuses in Lincoln and Omaha but the boundary lines of the State itself. Once the expected research institute in Nebraska is established and operating smoothly, no community, no watershed, indeed no Nebraskan will be without a place where information and counsel can be obtained.

The need for sound planning even in the initial stages of the implementation of the new act must be clearly recognized by all. If our new research programs are to provide maximum benefits, the planners in each State must carefully think through what they want to do with the funds that will be made available to them. They must ask themselves, where do we want to go and what problems do we want to study.

In this regard, those administering the program on the Federal level must take pains not to encourage the States to shortcut the processes of sound thinking and careful planning. The States must not be led to believe that when an application for a grant is filed is more important than what the application contains.

I have been very pleased to learn that officials at the agency within the Department of Interior responsible for moving this program forward are aware of the dangers I have outlined. It is my understanding that discussions with water resource leaders in all the 50 States are planned and that these should be completed by January. These talks undoubtedly will contribute much toward building a solid basis on which a meaningful long-range program can be constructed.

Once the deliberations on the appropriations request for this program have been completed, the Congress will be able to judge what funds are needed to assure that good progress is made. The guidelines provided by the Appropriations Committee will be very useful in this regard. To insure that no time is lost and that the Department will be in a position to start receiving applications for grants at the earliest practicable time, every consideration should be given to providing needed staff and facilities.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum, the time to be charged equally to each side.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed, without amendment, the following bills of the Senate:

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

S. 1737. An act for the relief of Arthur Wendell Bolta;

S. 1966. An act for the relief of Glenda Williams;

S. 1986. An act for the relief of Hattie Lu;

S. 1999. An act for the relief of Francisco Navarro-Paz;

S. 2205. An act for the relief of Giuseppe DiCenso;

S. 2629. An act for the relief of Czeslaw (Chester) Kaluzny; and

S. 2812. An act for the relief of Joanne Irene Taylor.

The message also announced that the House had agreed to the concurrent resolution (S. Con. Res. 66) withdrawing suspension of deportation of Joe Quons.

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. CURTIS. Mr. President, on behalf of the minority leader [Mr. DIRKSEN], I yield 3 minutes to the distinguished Senator from Ohio [Mr. LAUSCHE].

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

Mr. LAUSCHE. Mr. President, I shall not support the substitute amendment, for the following reasons.

In Ohio, in 1903, the Constitution was amended so as to give each county within the State one member in the lower house. The size of the population was not at all considered in making that allocation of one member to each county to represent it in the lower house of the legislature.

In 1903 an amendment was adopted by the people of Ohio which further provided for an increased number of representatives for the larger counties.

The argument has been made on the floor that State legislatures have refused to reform the law dealing with representation, so as to conform more closely to population representation, and therefore something had to be done by the courts.

I point to the situation as it prevails in Ohio.

In 1913 a constitutional convention was held. One of the issues discussed in the convention was whether there should be an amendment of the constitution to provide representation on the basis of population in both houses of the legislature. In that convention the proposal was disapproved.

In 1932, in accordance with the provisions of the constitution of Ohio, the following question was submitted to the people: "Shall there be a constitutional convention?"

City political bosses, labor leaders, and others argued that equality of representation did not exist in the legislature. It was argued that the big cities did not have an adequate voice, and that therefore the constitution ought to be amended.

The appeal was made to the voters of Ohio that a constitutional convention should be held, and that the constitutional convention should reform the State law. That issue went to the voters. The voters rejected it overwhelmingly. They declared that they wanted no tampering with the constitution of Ohio as it then existed.

Now we come down to 1952, 20 years later. I was Governor of the State at the time. The issue again was on the ballot. It was submitted to the people of Ohio, then about 8 million. The question was: "Shall there be a constitutional convention?"

The proponents argued that it was needed to procure equity in representation in the legislature.

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

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

Mr. LAUSCHE. Again the proponents were those who said that the big cities did not have adequate representation. The opposition argument was that it was impossible to have good government if the legislature was dominated by the big city political bosses and the labor leaders. That was in 1952. Good government is obtainable only when there exists the moderating influence of city

and rural representation—one upon the other.

There are 88 counties in Ohio. Canton, an industrial city, is located in Stark County. Akron is located in Summit County. Akron is also an industrial center. Cleveland, our large industrial center, is located in Cuyahoga County. Lucas County has located in it the city of Toledo, an industrial community. Dayton is located in Montgomery County. Hamilton County contains in it Cincinnati, another industrial center.

The query could be made: How did the people of Ohio vote in 1952 on this issue? The answer is that not one county in the State—and that included the counties in which Cincinnati, Dayton, Cleveland, Toledo, Steubenville, Columbus, Lima, Youngstown, Canton, and Akron are located—voted in favor of that measure.

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

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

Mr. LAUSCHE. The people of Ohio felt that their legislature was properly apportioned. They did not wish to change, Mr. President. If they wanted to change, they had the opportunity to effectuate the change. They rejected the proposal.

It is on this basis, representing the views of the people of my State, that I shall not vote for the substitute amendment which is now before the Senate.

Mr. JAVITS. Mr. President, I yield myself 30 seconds to inform the majority leader that we have reserved as much of his time as possible, except that the Senator from Nebraska [Mr. CURTIS] yielded 3 minutes to the Senator from Ohio [Mr. LAUSCHE], and that in order to equalize the time I also yielded 3 minutes to the Senator from Ohio.

I yield myself 1 minute.

Mr. President, it has been said that the "sense" resolutions to which I referred in my preliminary presentation were directed primarily to foreign affairs.

I used the analogy only to demonstrate that where we do not have the power to tell the President what to do in a given situation, the only way we can communicate our intention and desire to a coordinate branch of the Government is to adopt a "sense" resolution.

These resolutions are very serious matters. Under a "sense" resolution the Marines went into Lebanon. The 7th Fleet defended Taiwan under a "sense" resolution. The United States stood firm, in the face of the danger of atomic war over Berlin, under a "sense" resolution.

I point out also that where a coordinate branch of the Government is concerned, we do not hesitate to adopt a "sense" resolution on domestic as well as foreign policy matters. For example, I have before me Senate Concurrent Resolution 53, which expresses the sense of the Senate and the House of Representatives that Government employees should travel on U.S. flag air carriers. This is a matter within the province of the executive branch.

Therefore, Mr. President, a "sense" resolution is a technique expressly designed for this kind of situation.

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

Mr. JAVITS. I yield myself 1 additional minute.

Before my good friend the distinguished minority leader came into the Chamber I said what I think he should hear and what I think is fair to say, namely, that those of us who support the amendment which we have proposed do not feel that we have the power to mandate the Supreme Court in pending cases. That is what it comes down to. In at least 34 of the 50 States cases are pending in the Federal courts right now. Therefore, we do not have the power to mandate because it is unconstitutional to try to write a rule of decision for a coordinate body. The only other alternative we have is to express our intention and desire. I am deeply confident that the Supreme Court would listen to us, just as the President on many occasions has listened to us. He did so because it represented the will and the view of the Congress.

This is the only course we can follow and the only way in which we can express ourselves to a coordinate body.

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

The PRESIDING OFFICER. The Senator will state it.

Mr. DIRKSEN. How stands the time with respect to the proponents and opponents?

The PRESIDING OFFICER. The proponents have 18 minutes remaining, and the opponents have 13 minutes remaining.

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

I pointed out earlier today what the Attorney General of the United States said about sense-of-Congress items in any kind of measure, insofar as their binding effect is concerned. I am sure my friend from New York [Mr. JAVITS] will readily admit that these resolutions are wholly advisory, even in the international domain. The President of the United States, in his capacity as Commander in Chief under the Constitution, could have done everything that the Senator recited without having come to Congress. Our action had only a shoring-up effect, in order to put some steam into it, to show that there was unanimity of purpose as between the executive branch and the legislative branch. But as the Attorney General said, Congress could, of course, have embodied its policy in a provision of positive law, to which the executive branch would have been bound to adhere. That, Congress did not choose to do. So it is significant, not only in establishing that section without legal effect, but in determining its proper interpretation and application as policy.

Out of that, the Attorney General said, with respect to the wheat deals, that what was written into the 1961 act had no binding effect, and the executive proceeded accordingly.

Either we are going to do something that will have a positive, affirmative effect, or we shall leave it on an advisory basis. But the Supreme Court had already indicated to the lower courts, and particularly to the three-judge panels, that they could exercise discretion, they could exercise reason; but they did not do so.

The Senator from Colorado [Mr. ALLOTT] is in the Chamber. He knows that Colorado had 15 days in which to convene its legislature. The three-judge court said, "The confusion is not of our making." Its order is before us. So the court fairly washed its hands of the matter and took an arbitrary position with respect to redistricting—and some of the districts are amazing, to say the least.

The same thing happened in Oklahoma. I presume the same thing will happen everywhere. Although the Supreme Court said that the lower courts should use the rule of reason, still the lower courts did not do so. In consequence, it is necessary to provide some teeth.

I remember a story about an English rector who was describing the glories of heaven and all the felicity there. He said there would be ambrosia and nectar for everybody; no cares, no worries, no anxieties. When he had finished his sermon, an old man came up and said, "Rector, what am I going to do when I get to heaven? I don't have any teeth."

The rector looked at him and said, "Mister, teeth will be provided."

That is what we are trying to do. We are trying to put a few teeth into this matter. That is why the substitute of my friend from New York [Mr. JAVITS] is, in my judgment, meaningless. In fact, it is a little more than meaningless in the sense that the first part expresses the sense of Congress; but the second part states that in framing any kind of future decree, the courts shall consider whether or not a constitutional amendment has been initiated. Obviously, that will require the organization of a new Congress, the filling in of gaps on committees, the establishment of subcommittees, the holding of hearings, the reporting of a proposed amendment to the Senate and the House; and then launching it to the country. How long will that take? In that time, the Court could freeze a pattern in so many States as to cause no end of trouble.

Mr. ALLOTT. Mr. President, will the Senator from Illinois yield?

Mr. DIRKSEN. I yield.

Mr. ALLOTT. The Senator referred to the Colorado situation, which is as bad as any situation as a result of the Sims decision. It is only fair to say—and it also demonstrates the ridiculous situation in which various elements of the country are put—that the same three-judge court that was subsequently forced to give the Governor 15 days in which to convene the legislature to reapportion the State had previously declared the constitutional amendment in Colorado constitutional by a 2-to-1 majority. That decision was appealed to the Supreme Court, and as a result of the Sims case the same lower court was required to follow the decision of the Supreme Court. It finally declared the new apportionment constitutional; but it was immediately declared unconstitutional by the State supreme court.

Mr. DIRKSEN. It is an impossible situation.

I allude to a letter I received from a State senator in Oklahoma. The Okla-

homa primary election law was invalidated, and the constitutionality of the legislature was invalidated. The senator to whom I refer was elected in 1960 for a 4-year term. The invalidation took away half of his term. He had engaged in the primary contest and spent what money he had. He has no more to spend. Now he will have to run in a second primary. What an amazing state of affairs.

I wish to allude to one other event. Only a few days ago, in the great State of Michigan, according to the Washington Star of September 12 and the Washington Post of Sunday, September 13, a decision by the circuit court of Kent County, Mich., was reported. The court ruled that, pursuant to the decision of the Supreme Court, there must be a reapportionment on the basis of one man, one vote, the Kent County Board of Supervisors must be reapportioned. Mr. President, this situation could be carried out to apply to park districts and irrigation districts. I do not know where it might lead but it is what Justice Frankfurter referred to, when he was a member of the Supreme Court, as the "political thicket" that we get into when the Court assumes legislative responsibility.

This is serious business. I earnestly hope that the substitute amendment offered by my good friend from New York will be voted down and that, at long last, we may have a vote on the Dirksen-Mansfield provision, which has been before the Senate for a good many weeks.

Mr. JAVITS. Mr. President, I yield myself 4 minutes. I do so in order to answer several points made by the distinguished Senator from Illinois. He has constantly referred to the amendment as my amendment. It is not.

Mr. DIRKSEN. I am sorry.

Mr. JAVITS. That is quite all right. The amendment is joined in by the two Senators from Minnesota [Mr. HUMPHREY and Mr. MCCARTHY]. It is very much a bipartisan effort. The language that has now been substituted has been developed—and I say this with their permission—by the Senator from Illinois [Mr. DOUGLAS] and the Senator from Wisconsin [Mr. NELSON]. We have had the intermediation of a number of other Senators, including the junior Senator from Montana [Mr. METCALF].

What does our proposal come down to? It comes down to this practical question: If one does not agree that the Supreme Court has the power to make the decisions that it made in Baker against Carr and in Reynolds against Simms, and if one feels that Congress has the power to mandate the Supreme Court as to how to decide pending cases, then obviously this "sense" amendment is meaningless. But if one believes, as I do, and as I deeply believe a majority of the Senate should, that the Supreme Court has the power to decide cases under the 14th amendment and that the Supreme Court has power to deal with pending cases, notwithstanding any mandate we may give the Court to the contrary, then we face a problem of power as between two coordinate branches of Government. In my judgment, it is essential to the security of this Republic that each branch respect the other as it would itself wish to be respected, and that the legislative branch not seek to assert power which would compel the Supreme Court to say, if it is to be left as an institution at all, and to have any self-respect, that we do not have.

It is the function of governance to avoid dreadful confrontations. That is the reason we take the position we do; and, also, because there is a doctrine in the courts, secure in law, known as equitable abstention. I shall be happy to give the citation to sustain my view. There is the case of *Louisiana Power & Light Company* v. *City of Thibodaux City*, 360 U.S. 25, and also the case of *Harrison* v. *N.A.A.C.P.*, 360 U.S. 167. Both cases invoke the doctrine of equitable abstention, which means that the Court, dealing with equity cases—and the apportionment cases are all equity cases—has the power to stay its hand, and will stay its hand, for whatever reason it believes equity dictates.

One of the classic reasons for doing so is in a case involving the construction of State statutes, to give an opportunity to the State courts to decide that issue in the first instance, without in any way surrendering Federal power. Another instance, which we are now invoking, is to give the States and the Federal Government a reasonable opportunity to work their will. By passing the "sense" resolution, we inform a coordinate branch of government as to what we wish done in this regard.

I do not believe that we have the power to tell the Supreme Court how it must decide a great majority of State apportionment cases, because they are all pending cases. The precedents, in my judgment, are clear that it represents a rule of decision which the Court would have to strike down.

We face another practical question. There are not enough votes in the Senate for cloture. We realized that recently.

The PRESIDING OFFICER (Mr. BAYH in the chair). The time of the Senator from New York has expired.

Mr. JAVITS. Mr. President, I ask unanimous consent that I may proceed for 2 additional minutes.

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

Mr. JAVITS. Cloture failed not by a yard, but by a mile. There are not enough votes to table the Mansfield-Dirksen proposal. The country is standing still right now in terms of our activities. It is our duty as legislators to find some honorable way out. I believe that we have given the Senate an honorable way out, consistent with the powers of coordinate branches of government, consistent with respect and dignity of each body, and consistent with the needs of the situation.

The Senator from Colorado, the Senator from Illinois, and I, complaining about the New York case, state that we believe some lower courts have gone haywire in this matter and it needs to be corrected by the Supreme Court. What better way to correct it than by declaring to the Court exactly what we propose to do, step by step, from now on—whether a constitutional amendment in the Federal Establishment, or State action to meet the standards set by the Supreme Court on apportionment.

Finally, our country is growing into an urban society. More than 70 percent of the American people now live in urban centers. This, it seems, is but a sociological certification of the march of time and the march of progress. What we need is the opportunity to conform to it. What we need is to give the people of each State the opportunity to decide, if they choose; and they may choose to have one house of their legislature not apportioned by population. They may take a Federal constitutional amendment. This takes time, so that the decision as between Senators who will vote for our substitute and those who will vote against it, I believe in all fairness, is one between those who agree or disagree with the fundamental premise of the Supreme Court. We seek the time to bring that about. They feel that it is wrong. They want to direct the Court not to do it. I do not believe that they can do that constitutionally, except by a constitutional amendment.

I seek to avoid that dreaded confrontation. Hence, this substitute.

Mr. President, I reserve the remainder of my time.

Mr. DIRKSEN. Mr. President, I yield myself 3 minutes.

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

Mr. DIRKSEN. I wish I could share the optimism of the distinguished Senator from New York as to the impact the sense of Congress will have on thinking. In the realm of the decision of Reynolds against Sims, it seeks to invoke the lower court to be reasonable, to take into account the extraordinary circumstances. But did they do it? Let me read from the final order in the Oklahoma case:

> If confusion and hardship results from the vacation of the primary elections, it is not of our making.

They washed their hands of it.

Continuing further:

> Our duty is to reapportion the Oklahoma Legislature in accordance with the established law of the land.

If we look to that final order, what does the three-judge court say?

> There is ample time and sufficient funds for the special elections. In these circumstances, we decline to withhold the immediately available remedy to which the plaintiffs are clearly entitled. We accordingly vacate the primary elections conducted under the Oklahoma court's standby order, and we find and hold that a vacancy exists in all of those offices, within the meaning and as contemplated by (a decision).

Yet in Reynolds against Sims, the Chief Justice himself stated, "be reasonable."

There is the example of reasonableness. That is why it requires something more than to say, "Pretty please, Mr. Court. Do this. Do that. Be reasonable. Go slow."

I should like to see it nailed down and have some teeth in it, until we can get around to the constitutional amending process.

Mr. JAVITS. Mr. President, I yield 3 minutes to the Senator from Minnesota [Mr. McCARTHY].

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

Mr. McCARTHY. Mr. President, I hope that the Senate will support the modified amendment of the Senator from New York [Mr. JAVITS], which has been sponsored also by the senior Senator from Minnesota [Mr. HUMPHREY] and myself.

I believe that it is a prudent and practical solution to a rather difficult problem. The effect of it should be satisfactory to everyone who is concerned about the problem of reapportionment.

The adoption of the amendment would help to get the Senate on its way toward passage of the foreign aid bill and completion of the other unfinished business which lies before us before we can finish this session of Congress.

There is a practical problem as to what would be the effect of the Court's decision on the structure of State legislatures, in the long run and in the short run. Most Senators are concerned that State legislatures should not be elected at large in the next election, if it can possibly be prevented. In this amendment we are proposing a reasonable accommodation of the position taken by many Members of this body and of the House who are concerned over their State legislatures.

I have some concern as to what might happen in my own State, because there is a case in court in Minnesota relating to this problem. I believe that if we have a reasonable time—it should mean not more than 2 years during which the legislature of the State could act—the problem could be taken care of; whereas, if action were taken so as to force an election at large in this November's election, it would certainly cause undue hardship in the State of Minnesota.

Therefore, I believe that any Senator concerned merely with the practical and prudent approach to this problem should be able to see his way clear to support this amendment.

Those who wish to express some kind of legislative declaration that the Court should be reasonable and orderly in its approach to reapportionment will find enough in this amendment to merit their support.

Then there are those who support a constitutional amendment as the proper way to proceed in meeting the problem of apportionment and representation in the States.

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

Mr. JAVITS. Mr. President, I yield 3 additional minutes to the Senator from Minnesota [Mr. McCARTHY].

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 3 additional minutes.

Mr. McCARTHY. The "sense of Congress" amendment we are proposing would enable those who are actively opposed to the Court's decisions to express—as much as Congress has the power—what their intention is: to try to secure action on a constitutional amendment. If Congress, following public hearings and proper procedures, were to propose a constitutional amendment in the next session, and if it should be ratified, then it would be the law of the land and the States could proceed to establish legislative districts in accordance with its provisions.

I therefore believe that this modified amendment offers to any Senator—no matter what his point of view may be with regard to the problem of apportionment—a place in which he can find a justifiable home and a proposal which he can support.

It does no violence to the Supreme Court or to the judicial system of our country. It does no violence to the House of Representatives or to the U.S. Senate. It in no way intrudes upon or interferes with the operation of the State legislatures of our land.

This is sometimes not the case in actions which we take. It seems to me it would not have been the case if we had proceeded with the original Dirksen amendment, or if we adopted the Mansfield-Dirksen modification.

I urge all Senators to support this amendment.

Mr. JAVITS. I thank my colleague for his cooperation on this occasion, which I consider to be historic in the history of our Nation.

I yield 1 minute to the senior Senator from California.

Mr. KUCHEL. Mr. President, the American system of government is unique. The American system provides for an independent judicial establishment.

I urge the Presiding Officer and all my fellow Senators to reject any type of rider which would destroy the independent American judiciary.

There is a way to provide that that kind of a rider will not be attached to the foreign aid bill and that is to support the proposal offered by the senior Senator from New York [Mr. JAVITS], the senior Senator from Minnesota [Mr. HUMPHREY], and the junior Senator from Minnesota [Mr. McCARTHY].

My personal desire is to object to any kind of attempt to restrict the independence of the judiciary. But I am not in the position of being completely free in this Chamber. I cannot ask the Senate to do what I want it to do. So I am taking what I frankly feel is the lesser of two evils. I shall support the proposal offered by my colleagues because it is, in the order of magnitude, far less than the other alternatives presented to us.

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

The PRESIDING OFFICER. The Senator from New York is recognized for 1 minute.

Mr. JAVITS. Mr. President, it has been said time and again that this is a grave constitutional test. I believe that it is a grave constitutional test, because it calls upon the Senate to exercise that spirit of self-discipline which alone can make this Government work.

That spirit of self-discipline inheres in the fact that a particular body of Congress will restrain itself from exercising authority which it believes to be contrary to the Constitution, because it believes in the coordinate powers of the Government to such a degree.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. JAVITS. Mr. President, may I have 1 additional minute?

The PRESIDING OFFICER. The Senator from New York is recognized for 1 additional minute.

Mr. JAVITS. Mr. President, in this particular case we have a unique reason for staying our hand. That reason is that it seems to be the overwhelming, prevailing weight of opinion that under the Constitution, the Supreme Court has the right to act as it did in these particular reapportionment cases.

If that is the case, the only way in which we can act to assert ourselves in the face of what we consider to be the abuses of discretion in the lower courts is in this fashion. The history of our Government, in terms of comity extended by one coordinate branch to the other, is well known. The difference between this case and the case that the Senator from Illinois [Mr. DIRKSEN] has been using, of the shipment of wheat into the Communist bloc, is that in that instance we had the power to act by law, and in this instance, the basic premise under which we are proceeding, we who propose the amendment, is that we do not have the power to mandate the Supreme Court in respect to these respective cases. Therefore, we are doing what respect for the other coordinate branch of the Government requires that we do, in the only way we can do it.

Mr. DIRKSEN. Mr. President, I yield 1 minute to the distinguished Senator from Hawaii.

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

Mr. FONG. Mr. President, I oppose this amendment.

The logical extension of the Supreme Court's decision would be an amendment to the U.S. Constitution or a Supreme Court decision requiring reapportionment of the U.S. Senate on the basis of population in spite of the prohibition "that no State without its consent, shall be deprived of its equal suffrage in the Senate" under article V.

The Supreme Court may rule this provision has been superseded by the 14th amendment.

Hawaii has only 700,000 of our Nation's 192 million people. On the basis of population, with 100 Senators, Hawaii would be entitled to but one-third of a Senator—in other words, none.

As a Senator from Hawaii, I must vigorously protect Hawaii's voice in the Senate and oppose any moves which might deny or diminish that voice.

The State of Hawaii did not send me here to liquidate the representation of the State of Hawaii in the Senate of the United States.

A move to so amend the U.S. Constitution is not at all farfetched. Recently the New Republic, a well-known liberal publication with nationwide circulation, cited Hawaii as a State which is grossly overrepresented in the U.S. Senate. It further stated that the "wildly malapportioned U.S. Senate, like the British House of Lords, has got to be reformed."

Therefore I ask my colleagues to vote down this proposal.

Mr. JAVITS. Mr. President, I yield 1 minute to the Senator from Illinois [Mr. DIRKSEN].

Mr. DIRKSEN. Mr. President, I yield 2 minutes to the distinguished Senator from Colorado.

Mr. ALLOTT. Mr. President, I should like to raise two or three points. First of all, the Mansfield-Dirksen amendment is not a mandate to the Supreme Court. It is a substantive piece of law which would prevent the continuation of a decision which is utterly wrecking the legislative process in the legislative systems of the country.

I believe Senators should understand that this is not a matter of telling the Supreme Court what to do. We cannot do that. It is, rather, a piece of substantive law to prevent the decision of the Supreme Court from going into effect.

Second, I wish to make the point that I have just read article V of the Constitution. We are asked now to act upon a totally meaningless amendment. It has no meaning. It has no substance. It is a "sense" amendment. In fact, it is a negative amendment. If we were to pass it, we would be saying that we did not have the will or the courage, as the case may be, to vote on a substantive amendment that meant something.

The real significance of the amendment now being offered and of the Dirksen-Mansfield amendment, is that they assume that the Congress of the United States will, in the next few months, submit, by a two-thirds vote of each House, a constitutional amendment to the legislatures of the States. By that time, the legislatures of the country will be legislatures which have been built up under the one man, one vote principle in both Houses. No one in the country can possibly be so foolish as to believe that they would adopt a constitutional amendment which would legislate themselves out of office.

Mr. JAVITS. Mr. President, I yield 1 minute to the Senator from Wisconsin.

Mr. NELSON. Mr. President, I join in the comments made by the senior Senator from California [Mr. KUCHEL]. I would prefer that there be no amendment or no resolution pending.

I believe the issue at stake is not whether a Senator is for or against a population apportionment of both houses of the legislature. No matter what a Senator's position may be on that issue, he ought to stand firm against any resolution which requests the Supreme Court to suspend temporarily, or which expresses the sense of Congress that the Supreme Court suspend any constitutional right for any period of time.

This resolution does not do that. It expresses our concern that a reasonable time be given in which to comply with the Constitution. That is what the Supreme Court has done, anyway. It simply says that in the event a constitutional amendment is submitted to the States, the Supreme Court should take that into consideration in drafting their decree.

It is a perfectly reasonable, sensible resolution. It does not compromise the integrity of the Supreme Court.

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

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for 1 minute.

Mr. PASTORE. Mr. President, I shall vote for this amendment, not because I believe it belongs in the bill. I believe that it has no place in the foreign aid bill. But I believe it is the only way out of the impasse that the Senate finds itself in.

I wish to make one observation to the Senate. This is no decision of a packed Court. Two of the Judges who decided this matter, 8 to 1, were appointed to this Court by Franklin Roosevelt. One of them was appointed to this Court by Harry Truman. Some were appointed to this Court by General Eisenhower, some were appointed by John F. Kennedy. Eight members of the Court were appointed by four Presidents. To sit here and say that this is an awful decision, I believe is a reflection upon the free expression of the Supreme Court of the United States.

I do not believe they are disrupting anything. They are merely saying that ours is a representative form of government, and every man is entitled to the full force and effect of his vote. That is the reason I am voting for it—not because I like it, but because it is innocuous and it is the way out of this impasse.

The PRESIDING OFFICER. The sponsors of the amendment have 1 additional minute remaining.

Mr. JAVITS. Mr. President, I yield the remainder of my time to the Senator from Minnesota [Mr. HUMPHREY].

First, I ask for the yeas and nays.

The yeas and nays were ordered.

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

Mr. HUMPHREY. Mr. President, in the minute that remains I should like to underscore what I believe is involved in the amendment offered by my colleague from Minnesota [Mr. MCCARTHY], the Senator from New York [Mr. JAVITS], and myself, and which I know is widely supported by other Senators.

First, the amendment would protect the integrity of the Senate.

Mr. MANSFIELD. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. The Senator from Minnesota may proceed.

Mr. HUMPHREY. First, it would protect the integrity of the Senate as a parliamentary body.

Second, it would protect the integrity of the Court in its responsibility under our Constitution to interpret and apply the constitutional provisions.

Third, it would respect the doctrine of the separation of powers between the different branches of our Government.

Finally, the amendment is one of reason. It would express the sense of the Senate, asking that the Court take into consideration some of the factors which are involved in the time that is necessary for reapportionment by the State legislative bodies. It also takes into consideration the possibility of a constitutional amendment.

I hope that the question may now be decided by an affirmative vote for the amendment.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the amendment of the Senator from New York [Mr. JAVITS] and the Senators from Minnesota [Mr. HUMPHREY and Mr. MCCARTHY], as modified, to the so-called Dirksen-Mansfield amendment. On this question, the yeas and nays have been ordered.

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

The PRESIDING OFFICER. The Senator will state it.

Mr. DIRKSEN. My understanding is that the vote comes upon the new language which was offered in place of the earlier substitute by the same authors who reserved the right to change their amendment.

The PRESIDING OFFICER. The question is on agreeing to the modified amendment offered by the Senator from New York [Mr. JAVITS] and the Senators from Minnesota [Mr. HUMPHREY and Mr. MCCARTHY] to the so-called Dirksen-Mansfield amendment. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The rollcall was concluded.

Mr. HUMPHREY. I announce that the Senator from Idaho [Mr. CHURCH], the Senator from Alaska [Mr. GRUENING], the Senator from Indiana [Mr. HARTKE], and the Senator from Utah [Mr. Moss] are absent on official business.

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

I further announce that the Senator from Washington [Mr. JACKSON], the Senator from Wyoming [Mr. MCGEE], and the Senator from Missouri [Mr. SYMINGTON] are necessarily absent.

I further announce that, if present and voting, the Senator from Indiana [Mr. HARTKE] would vote "yea."

On this vote, the Senator from Kansas [Mr. CARLSON] is paired with the Senator from Massachusetts [Mr. KENNEDY]. If present and voting, the Senator from

Massachusetts would vote "yea," and the Senator from Kansas would vote "nay."

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

On this vote, the Senator from Alaska [Mr. GRUENING] is paired with the Senator from Iowa [Mr. MILLER]. If present and voting, the Senator from Alaska would vote "yea," and the Senator from Iowa would vote "nay."

On this vote, the Senator from Washington [Mr. JACKSON] is paired with the Senator from Massachusetts [Mr. SALTONSTALL]. If present and voting, the Senator from Washington would vote "yea," and the Senator from Massachusetts would vote "nay."

Mr. KUCHEL. I announce that the Senator from Kansas [Mr. CARLSON], the Senator from New Hampshire [Mr. COTTON], the Senator from Arizona [Mr. GOLDWATER], the Senator from Idaho [Mr. JORDAN], the Senator from Iowa [Mr. MILLER], the Senator from Massachusetts [Mr. SALTONSTALL], the Senator from Pennsylvania [Mr. SCOTT], and the Senator from Texas [Mr. TOWER] are necessarily absent.

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

On this vote, the Senator from Pennsylvania [Mr. SCOTT] is paired with the Senator from Idaho [Mr. JORDAN].

If present and voting, the Senator from Pennsylvania would vote "yea," and the Senator from Idaho would vote "nay."

On this vote, the Senator from Iowa [Mr. MILLER] is paired with the Senator from Alaska [Mr. GRUENING]. If present and voting, the Senator from Iowa would vote "nay," and the Senator from Alaska would vote "yea."

On this vote, the Senator from Massachusetts [Mr. SALTONSTALL] is paired with the Senator from Washington [Mr. JACKSON]. If present and voting, the Senator from Massachusetts would vote "nay," and the Senator from Washington would vote "yea."

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

The result was announced—yeas 40, nays 42, as follows:

[No. 573 Leg.]

YEAS—40

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

NAYS—42

Aiken	Ervin	Morton
Allott	Fong	Mundt
Bennett	Hickenlooper	Pearson
Bible	Holland	Prouty
Boggs	Hruska	Robertson
Byrd, Va.	Johnston	Russell
Byrd, W. Va.	Jordan, N.C.	Simpson
Cannon	Lausche	Smathers
Cooper	Long, La.	Sparkman
Curtis	Mansfield	Stennis
Dirksen	McClellan	Talmadge
Dominick	Mechem	Thurmond
Eastland	Monroney	Williams, Del.
Ellender	Morse	Young, N. Dak.

NOT VOTING—18

Carlson	Hill	Moss
Church	Jackson	Saltonstall
Cotton	Jordan, Idaho	Scott
Goldwater	Kennedy	Symington
Gruening	McGee	Tower
Hartke	Miller	Walters

So the amendment of Mr. JAVITS, Mr. MCCARTHY, and Mr. HUMPHREY, as modified, to the DIRKSEN-MANSFIELD amendment, was rejected.

Mr. DIRKSEN. Mr. President, I move to reconsider the vote by which the amendment to the amendment was rejected.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now recurs on the Dirksen-Mansfield amendment.

Mr. THURMOND. Mr. President, on behalf of the Senators from Virginia [Mr. BYRD and Mr. ROBERTSON], the Senator from Nebraska [Mr. CURTIS], the Senators from Mississippi [Mr. EASTLAND and Mr. STENNIS], and myself, I offer the amendment which I send to the desk and ask to have stated.

The PRESIDING OFFICER. The amendment offered by the Senator from South Carolina, for himself and other Senators, will be stated.

The Chief Clerk read the amendment, as follows:

At the end of the bill, add the following new title:

"TITLE V—DEFINING THE JURISDICTION OF THE UNITED STATES SUPREME COURT AND ALL FEDERAL COURTS INFERIOR THERETO, IN CERTAIN INSTANCES

"SEC. 501. Following section 1258 of title 28 of the United States Code (28 U.S.C., sec. 1258) add a new section as follows:

"'1259. Supreme Court, limitation of appellate jurisdiction

"'The Supreme Court shall not have the right to review the action of a Federal court or a State court of last resort concerning any action taken upon a petition or complaint seeking to apportion or reapportion any legislature of any State of the Union or any branch thereof.'

"SEC. 502. Amend title 28, section 1331 of the United States Code (28 U.S.C., sec. 1331) by adding at the end thereof a new subsection to read as follows:

"'(c) The district courts shall not have jurisdiction to entertain any petition or complaint seeking to apportion or reapportion the legislature of any State of the Union or any branch thereof.'"

Mr. THURMOND. Mr. President——

Mr. MANSFIELD. Mr. President, will the Senator from South Carolina yield, without losing his right to the floor?

Mr. THURMOND. I yield.

Mr. MANSFIELD. May I have the attention of the Senate? I am about to propound a unanimous-consent request.

I ask unanimous consent that there be a time limitation on the pending Tuck amendment of 2 hours, 1 hour to a side.

Mr. DOUGLAS. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. THURMOND. Mr. President, I would have no objection to the request that was propounded. However, I do not think it would take an hour to a side. I have only about a 15- or 20-minute speech. Perhaps other Senators would like to say a word about it.

Mr. HOLLAND. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HOLLAND. Is this an amendment to the Dirksen-Mansfield amendment or a substitute for that amendment?

Mr. THURMOND. Mr. President——

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. This is a substitute for the Dirksen-Mansfield amendment.

The PRESIDING OFFICER. The amendment is a substitute.

Mr. HOLLAND. Is that the ruling of the Chair?

The PRESIDING OFFICER. That is the ruling of the Chair.

Mr. HOLLAND. I thank the Chair.

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

Mr. THURMOND. I am pleased to yield to the Senator from Virginia.

Mr. ROBERTSON. Has the Senator from South Carolina listed the junior Senator from Virginia as a cosponsor of this amendment?

Mr. THURMOND. Yes.

I will ask the clerk again to read the names of the sponsors of the amendment.

The PRESIDING OFFICER. The clerk will read.

The CHIEF CLERK. An amendment offered by Mr. THURMOND for himself and Messrs. BYRD of Virginia, ROBERTSON, CURTIS, EASTLAND, and STENNIS.

Mr. ROBERTSON. Mr. President, will the Senator yield again?

Mr. THURMOND. I am pleased to yield.

Mr. ROBERTSON. If we could get the unanimous consent of the Senate to grant 30 minutes to the Senator from South Carolina and 30 minutes to the opposition, we could get to a vote. This is an issue we have been debating for a month. I do not think the debate is going to change any Senator's viewpoint, and it seems to me we might be permitted to vote if we had a short debate.

Would the Senator be willing to have a unanimous-consent agreement for 30 minutes on a side and then vote?

Mr. THURMOND. The majority leader has already obtained unanimous consent for 1 hour to the side.

Mr. MANSFIELD. No.

Mr. ROBERTSON. There was objection.

Mr. THURMOND. Excuse me. There was objection to it.

I would not object to 30 minutes to a side. I do not want to cut any Senator off. I do not think I will take more than 15 or 20 minutes, but I would like to give any other Senator an opportunity to debate it.

Mr. ROBERTSON. Will the majority leader make such a request?

Mr. MANSFIELD. It would not do any good. I tried to obtain a unanimous-consent agreement. I think the time is propitious for it. I tried to get 1 hour on a side, but there was objection.

Mr. RANDOLPH. Mr. President, will the esteemed Senator yield?

Mr. THURMOND. I am pleased to yield to the Senator from West Virginia.

Mr. RANDOLPH. Is this the amendment, sponsored by Representative TUCK, of Virginia, which was passed in the House, and is now advocated by the junior Senator from South Carolina, and other Senators?

Mr. THURMOND. That is correct. It passed the House by a very large margin, and it is almost identical to a bill I introduced on June 16 of this year, which was referred to the Judiciary Committee of the Senate and is still pending, I believe, in that committee.

Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. THURMOND. Mr. President, the amendment is identical to H.R. 11926, the so-called Tuck bill, which has been passed by the other body, and is now on the Senate Calendar. The purpose of the Tuck bill and this amendment is to withdraw from the Supreme Court the appellate jurisdiction which the Court has assumed in cases arising from the apportionment of State legislatures. The appellate jurisdiction of the Supreme Court would be withdrawn whether the case was attempted to be appealed from the highest State court or a lower Federal court. In addition, the amendment withdraws all jurisdiction in reapportionment cases from the Federal district courts, in the same manner as the Tuck bill. This would leave the decision affecting the apportionment of any State legislature with that State's courts, the State legislature itself, or the people of the State—where such matters rightfully belong.

There is sound constitutional authority for Congress to withdraw jurisdiction from all Federal courts in the field of apportionment of State legislatures. Article III, section 2, clause 2 of the Constitution reads as follows:

> In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

Only in the three specific grants of original jurisdiction is Congress denied the authority to make exceptions to the jurisdiction of the Supreme Court. In all other cases the Congress can modify, regulate, or completely withdraw appellate jurisdiction of the Supreme Court, as it sees fit.

This interpretation was made irrevocable in the case of ex parte McCardle, an 1868 case in which Congress withdrew the appellate jurisdiction of the Supreme Court in certain habeas corpus proceedings after the case had been argued before the Supreme Court, but before a decision had been rendered. The McCardle case is an extreme example, but it has been frequently reaffirmed and approved. The result is to vest an unrestrained discretion in Congress to curtail and even abolish the appellate jurisdiction of the Supreme Court, and to prescribe the manner and forms in which it may be exercised.

The power of Congress to vest, withdraw, and regulate jurisdiction of the lower Federal courts is derived from the power to create tribunals under article I of the Constitution, the necessary and proper clause, and article III, section 1 which vests the judicial power of the United States in the Supreme Court and "in such inferior courts as the Congress from time to time may ordain and establish." The Supreme Court itself has interpreted article III of the Constitution to mean that Congress has plenary powers over the jurisdiction of any inferior Federal court which it has established by statute. The first case which so held was Turner against the Bank of North America, a 1799 case. The most clearly stated decision on this point, however, is the case of Cary against Curtis, an 1845 case where it was stated that the judicial power of the United States is dependent for its distribution and organization entirely upon the action of Congress, which possesses the sole power of creating inferior courts and "of investing them with jurisdiction, either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good." No clearer and more definite statement could be found, and no clearer or more compelling occasion for the exercise of this power by Congress in the public good can be found than exists now.

Just as there can be no question as to the authority of Congress over the jurisdiction of the Federal courts, there can be no question that the Supreme Court has overstepped its jurisdictional bounds. Beginning with its first decision on reapportionment of State legislatures in the case of Baker against Carr, March 1962, down through the decisions handed down on June 15 of this year, the Supreme Court has been treading in a political no man's land. In discussing the reapportionment decisions, there is no need, and indeed no way, to become involved in legal technicalities. This is because the fundamental issue involved is not a legal question. It is purely a political question, and as such is not within the jurisdiction of the Court. In this regard a statement by Chief Justice Chase speaking for the Court in Ex parte McCardle is fitting:

> Judicial duty is not less fitly performed by declining ungranted jurisdiction than in exercising firmly that which the Constitution and the laws confer.

Unfortunately this well stated philosophy seems to have escaped the attention of the majority of our present day Supreme Court Justices.

Political questions are not given to judicial determinations. They are for decision of the people exercised by the ballot and through legislative bodies. Justice Harlan, dissenting in the Alabama case said:

> What is done today deepens my conviction that judicial entry into this realm is profoundly ill-advised and constitutionally impermissible. I believe that the vitality of our political system, on which in the last analysis all else depends, is weakened by reliance on the judiciary for political reform.

Justice Harlan has pinpointed the key to the apportionment decisions—the Supreme Court is undermining the structure of our political system. In so doing, the Court is usurping the power which has been reserved to the States and to the people under the 10th amendment to the Constitution.

To understand the full consequence of these decisions, we must, however, look even beyond the Court's usurpation of power of the people to decide a political question. The substance of the new rule of political order sought to be imposed by judicial fiat must be carefully examined.

The new political principle sought to be imposed by the Court is commonly characterized as "one person, one vote." This catchword phrase, "one person, one vote," which the apologists for the Supreme Court have now adopted as their battle cry, is a vast oversimplification of the issue involved. It is by no means descriptive of the result of the reapportionment decisions of the Court. It is, however, a noble sounding oratorical gimmick with which it is difficult to argue, because it is difficult to define as it applies to any given situation. In application, this "one person, one vote" doctrine means that a State must alter the weight given to each individual vote. At the present time the Court is interested in requiring the State to assure that the vote of an individual in an urban area has the same influence in an election as the vote of an individual in a rural area. If this theory were applied nationwide in presidential elections, for example, the present electoral college system would also be ruled unconstitutional by the Supreme Court. To illustrate this point, a single individual in the State of New York casts only one vote in an election for President and Vice President. However, his vote influences the election of 43 presidential electors. A voter in South Carolina also casts one vote, but his one vote influences the election of only eight electors. Yet, Mr. President, there is no hue and cry on the part of the advocates of "one person, one vote" for the application of this principle in presidential elections. As a matter of fact the opponents of sound reform in this area, which has been pending before Congress for a number of years in the form of a proposed constitutional amendment, are by and large the same ones who are most vocal in their support of the Supreme Court decisions as they affect the States. I have been a stanch advocate of electoral college re-

form based on the district plan preferably, but if not, then the proportional plan, to bring about a more equitable voice on the part of individuals in the smaller States since I became a Member of the Senate. However, I have not advocated resort to the courts to solve this pressing problem, because I have felt that the Federal courts have no jurisdiction in such political questions.

Population is, of course, the principal basis for apportionment of legislative representation in all States. But the various States have found it practical, workable, just, and beneficial to weight the apportionment of legislative representation with various other factors in their own States, just as was done in framing the structure of the Central Government. One factor which has been considered in many, if not most, States has been the integrity of local governing units, such as the counties. Their independence of action and ability to best serve the needs of their own people is guaranteed by their separate representation in both bodies of the State legislature.

The Supreme Court seemed to be overly sensitive when it was considering the apportionment of the upper bodies of the State's legislatures, which they found to be constituted in such a way as to favor the rural areas.

Let me point out that such departures from apportionment based only on population result in purely defensive powers to those so favored. The U.S. Congress provides a good example. Each State has equal representation in the Senate, regardless of its population. Thus Delaware has equal representation in the Senate with New York, although New York has at least 35 times more population. But Delaware, even with its equal representation in the Senate, nor even in combination with other small population States which might give them a majority in the Senate, does not have the affirmative power to pass legislation; for the House of Representatives must also concur, and its membership is based on population, or "one person, one vote." Thus the equal representation of Delaware in the Senate gives it at most an increased defensive power to what it would have were representation in Congress based solely on "one person, one vote."

Similarly, the weighting of representation in favor of rural residents gives them an increased defensive power, leaving them less vulnerable to the whims of a majority.

Agricultural areas are necessarily less densely populated than nonagricultural areas. We in the United States, with our consistent departure from the concept of "one person, one vote," have progressed to the point where approximately 8 percent of the population of the Nation produces the entire food and fiber for its consumption, with a large margin for export. This progress has been undoubtedly due in part to the fact that the agricultural sector through its defensive power stemming from its weighted representation has managed to protect its vital interests in the intertwined political and economic order.

Nor is the nature of agricultural enterprise such that those engaged therein can protect their vital interests outside the formal political structure by combined economic action through organization, as is done by industrial labor through the means of labor unions. So long as political issues have been left to the decision of the people, where they rightfully belong, these factors have been recognized, and the departures from the "one person, one vote" concept have not only been tolerated, but affirmatively approved by the majority of the people.

Mr. President, it has been stated on the floor of the Senate that the structure of the States differs in substantial degree from the structure of the Central Government. In some cases this is true, but in most States, there is a striking similarity; for example, in my own State of South Carolina each county is represented by one senator regardless of its population, and a number of representatives according to its population. This is, of course, in the same pattern as the Central Government.

Benjamin Franklin, when asked what form of government was established by the Constitution, said that it was a republican form. Since its basic structure has not been changed since the Constitution was adopted, the Central Government still is a republican form. It is only logical, therefore, that those States whose structure of government is patterned upon the Central Government have a republican form of government. Article IV, section 4 of the Constitution provides:

> The United States shall guarantee to every State in this Union a republican form of government.

Rather than guaranteeing a republican form of government in these States, the Supreme Court is depriving them of the republican form of government which they already have.

Mr. President, there is a necessity for urgent action on this question. Almost all of the States of this Union can be reconstructed by judicial fiat if these decisions are implemented across the board. The resulting chaos would be detrimental to the continuance of sound governmental practices in these States.

I urge that the Senate adopt my amendment to guard against this impending upheaval.

Mr. ROBERTSON. Mr. President, I support the motion to substitute the Tuck bill as an amendment to the foreign aid bill. This amendment would exercise the authority vested in the Congress by article III of the Constitution to give appellate jurisdiction to the Supreme Court, with such exceptions and under such regulations as the Congress shall make, and to ordain and establish inferior courts, and in doing so to prescribe the jurisdiction of such inferior courts.

For more than 170 years, up to the 1962 decision in Baker against Carr, it was universally agreed that questions relating to the organization of States, including particularly the composition of State legislatures, were political questions beyond the power of the Federal courts.

The internal organization of States and the relationship between the several States and their inhabitants are clearly matters reserved to the people and to the States by amendments 9 and 10 of the Constitution. Equally clearly, amendment 14 was not intended to change this principle or to authorize the Federal Government, including particularly the Supreme Court, to interfere with the internal organization of States. None of the congressional sponsors of that amendment and none of the State legislators who ratified it ever dreamed of its being misused for any such purpose, either by the Congress, which was given power to enforce it, or by the Supreme Court which was given no power either to rewrite it or enforce it.

Now, in Baker against Carr and in subsequent cases, the Supreme Court has engaged in judicial legislation of an extraordinary nature, overturning 170 years of history; tossing aside, as scraps of paper precedents by such formerly respected Judges as Felix Frankfurter; and embarking on a new course of constitutional amendment and statutory enactment.

Each year, in celebration of the birthday of our great first President, his Farewell Address is read to the Senate. We all believe it is worth while to be reminded of the parting comments of our first President; and I should like to call attention to George Washington's views on amendments to the Constitution—words which are just as applicable today as they were when first read:

> The basis of our political systems is the right of the people to make and to alter their constitutions of government. But the constitution which at any time exists, until changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all.
>
> * * * * *
>
> If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.

The Supreme Court, by entering into the political field of the internal organization of States, has engaged in changing the Constitution by usurpation. I believe we can best carry out George Washington's recommendation by removing this field entirely from the jurisdiction of district courts and courts of appeal and from the Supreme Court's appellate jurisdiction. This would be done by the proposed amendment.

I ask unanimous consent that an article entitled "Heartbreaks and the Constitution," written by S. Bruce Jones, Esq., of the Virginia Bar, and published in the 1964 issue of the American Bar Association Journal, be printed in the RECORD.

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

HEARTBREAKS FOR THE CONSTITUTION

(By S. Bruce Jones)

(NOTE.—A look at the changes wrought by the Federal courts in the meaning of the Federal Constitution is a heartbreaking ex-

perience, Mr. Jones writes. He points out the numerous fields in which these decisions have made the Federal courts the supervisors of the States' affairs, contrary to the basic principle that the meaning of the Constitution was fixed when it was adopted.)

"The basis of our political system is the right of the people to make and to alter their constitutions of government. But the constitution which at any time exists till changed by an explicit and authentic act of the whole people is sacredly obligatory upon all * * *.

"If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way the Constitution designates. But let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed."—GEORGE WASHINGTON, Farewell Address.

Thomas M. Cooley wrote: "A cardinal rule in dealing with written instruments is that they are to receive an unvarying interpretation, and that their practical construction is to be uniform. A constitution is not to be made to mean one thing at one time and another at some subsequent time when the circumstances may have so changed as perhaps to make a different rule in the case seem desirable. A prinicpal share of the benefit expected from written constitutions would be lost if the rules they established were so flexible as to bend to circumstances or be modified by public opinion. It is with special reference to the varying moods of public opinion, and with a view to putting the fundamentals of government beyond their control that these instruments are framed, and there can be no such steady or imperceptible change in their rule as inheres in the principles of the common law." [1]

To those lawyers who were taught and believed in this fundamental principle a look at the changes made by the Federal courts in the meaning of the Federal Constitution is a heartbreaking experience. They find that at one time the courts say the Constitution means one thing and at another time they say it means something else or even the exact opposite. The clauses interpreted remain the same; only the meaning is changed.

INTERSTATE COMMERCE'S MEANING IS CHANGED

The power to regulate commerce between the States and with the Indian tribes was changed by a divided Court to mean the power to regulate wages, hours, and working conditions of persons engaged in the manufacture of goods destined for interstate commerce.[2] As late as 1935 commerce meant commerce. It did not mean processing or the wages and working conditions of those engaged in processing before reaching the stage of commerce.[3]

For 70 years the courts held that insurance was not commerce [4] but in 1946 it held that it was commerce.[5] Even products raised on a farm for consumption on the same farm are now held to be subject to regulation by Congress under the interstate commerce clause. Under this interpretation of the power to regulate commerce, farmers are now being fined or imprisoned for raising wheat on their own farms for use on the same farm. Under this extension of power the latest wage-and-hour statutes practically disregard the commerce clause and look chiefly to the type or volume of business as the basis for Federal control—for example, Mrs. Murphy's boarding house.

On this question Woodrow Wilson wrote:

"May it [Congress] also regulate the conditions under which the merchandise is produced which is presently to become the subject matter of interstate commerce? May it regulate the conditions of labor in field and factory?

"Clearly not, I should say; and I should think that any thoughtful lawyer who felt himself at liberty to be frank would agree with me. For that would be to destroy all lines of division between the field of State legislation and the field of Federal legislation. Back of the conditions of labor in the field and in the factory lie all the intimate matters of morals and of domestic and business relationship which have always been recognized as the undisputed field of State law; and these conditions that lie back of labor may easily be shown to have their part in determining the character and efficiency of commerce between the States.

"If the Federal power does not end with the regulation of the actual movements of trade, it ends nowhere, and the line between State and Federal jurisdiction is obliterated. But this is not universally seen or admitted. It is, therefore, one of the things upon which the conscience of the Nation must make test of itself, to see if it still retain that spirit of constitutional understanding which is the only ultimate prop and support of constitutional government. It is questions of this sort that show the true relation of our courts to our national character and our system of government.

* * * * *

"No one can doubt that it was necessary for the maintenance of the system that the courts of the Federal Government should be the arbiters of all questions of disputed jurisdiction or conflicting authority. But of course such a principle constitutes the courts of the United States the guardians of our whole legal development. With them must lie the final statesmanship of control."

BILL OF RIGHTS APPLIED TO STATES

The first eight amendments were limitations on the powers of the Federal Government and were expressly held not to be limitations on the powers of the States. Beginning with *Gitlow* v. *New York*, 268 U.S. 652 (1925), the courts began the process of making these limitations applicable to the States by applying the doctrine of their incorporation into the 14th amendment.

In 1949 the Supreme Court held in *Wolf* v. *Colorado*, 338 U.S. 25, that in a prosecution in a State court for a State crime the 14th amendment does not forbid the admission of evidence obtained by unreasonable search and seizure. But in 1961 Wolf was expressly reversed by *Mapp* v. *Ohio*, 367 U.S. 643, which held that the prohibition against unreasonable search and seizure in the 4th amendment does apply by virtue of the 14th amendment to the admission of evidence in a State court. In another case the Court had stated, "We think that the Wolf decision should not be overruled." [6] And the Wolf case was overruled although appellants' counsel expressly disavowed such purpose (dissenting opinion, footnote 6). The Court recognized that it was imposing a new rule of exclusion on the States, some of which had a nonexclusionary rule.

LEGISLATIVE APPORTIONMENT NOW COURT CONTROLLED

The power of the States to apportion their representatives is now subject to review by the Federal courts under their own rules.

Until 1962 the Constitution was held to mean that State apportionment statutes did not present a justiciable question. In *Baker* v. *Carr*, 369 U.S. 186 (1962), the exact opposite was held. No guidelines were given as to what relief the courts would afford. As was said by Justice Frankfurter in his dissenting opinion: "In effect, today's decision empowers the courts of the country to devise what should constitute the proper composition of the legislature of the 50 States. If State courts should for one reason or another find themselves unable to discharge this task, the duty of doing so is put on the Federal courts or on this Court, if State views do not satisfy this Court's notion of what is proper districting."

What the Court's notion may be is immaterial here. The point is that the Court is writing into law its own notions, which will be followed by all the lower Federal courts and will take the place of the express provisions of the Constitution. That they are notions is shown by the majority opinion in *Wesberry* v. *Sanders*, 376 U.S. 1 (1964), and that they are not law is demonstrated by the dissent.

The first amendment provides that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. This is an express limitation on Federal power, but it is now interpreted by the courts to be an express limitation on State power. By this interpretation the Court practically added an amendment that James G. Blaine had unsuccessfully attempted to have included in 1876 and which was defeated in both the House and the Senate.[7]

FEDERAL COURTS BECOME SUPERVISORS OF STATES

The incorporation of the Bill of Rights into the 14th amendment so that a Federal constitutional question is raised has resulted in the Federal courts becoming the supervisors of all procedures in the State courts.

In *Griffin* v. *Illinois*, 351 U.S. 12 (1956), in a 5-to-4 decision, the Supreme Court held that an indigent defendant in a noncapital case in a State court should be furnished without cost a transcript of the record, although apparently a narrative bill of exceptions was available.

In another case, *Naim* v. *Naim*, 350 U.S. 891 (1955), it vacated judgment and remanded a case to the Virginia Supreme Court of Appeals in order that it might be "returned" by it to the circuit court for rehearing, when no such procedure is possible. It is also requiring the State courts to provide counsel for indigent defendants when the Federal courts have no provision to compensate counsel who are appointed to defend indigents in a Federal court.

By applying its own definition of due process of law and its own concept as to evidence that is admissible, the Supreme Court reviews appeals from the State courts of convictions under State laws and lays down rules inconsistent with the laws and constitutions of the State from which the appeals are taken.

This power of review of State courts formerly was exercised only in cases that had been appealed from the State court. It did not affect convictions obtained many years ago. Now by a completely new and unique use of the writ of habeas corpus the Federal courts are reviewing State convictions of many years ago. In *Lane* v. *Brown*, 372 U.S. 477 (1963), Indiana felt the use of this power. In *Fay* v. *Noia*, 372 U.S. 391 (1963), decided the same day, New York encountered the same supervision.

In Tennessee a man released from a Texas prison kidnaped and shot the driver and killed the driver's wife, for which in a State

[1] 1 Cooley, "Constitutional Limitations," 123 (8th ed. 1927).

[2] *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

[3] *Schechter Poultry Corp.* v. *United States*, 295 U.S. 495 (1935).

[4] *Bothwell* v. *Buckbee, Mears Co.*, 275 U.S. 274 (1927).

[5] *United States* v. *South-Eastern Underwriters Association*, 322 U.S. 533 (1944).

[6] *Irvine* v. *California*, 347 U.S. 128, 134 (1954).

[7] Baker, "The Supreme Court and the Freedom of Religion Melange," 49 A.B.A.J. 439, 440 (1963).

court, after trial by jury, he received a sentence for a term of years. Ten years later, with his surviving victim in Sweden, a Federal district court ordered a new trial because his court-appointed attorneys refused to appeal his conviction.

The Federal district courts are now being flooded with writs of habeas corpus filed by prisoners who pleaded guilty or were long ago convicted of State crimes by State courts after jury trials. The Federal district courts have now been appointed supervisors over the actions of all the State courts where alleged unlawful detention can be claimed.[8]

FEDERAL POWERS ARE INCREASED

These interpretations of the Federal Constitution extend the power of the Federal Government, particularly its courts, and decrease the powers of the States. They have invalidated parts of State constitutions and stand ready to invalidate others. On the three subjects of schools, courts and State legislatures, the Federal courts are making their own rules and then changing them from time to time as they please.

By their own action the Federal courts have extended their jurisdiction to fields they formerly refused to enter because they said they had no right to enter them. Without the aid of legislation of any kind, they have taken over the supervision of apportionment of representation in the State legislatures, attendance at public schools, supervision of State court procedures and Bible reading. Since there were no statutes, the courts are now engaged in writing legislation in the form of court opinions that will supersede the State laws and constitutions and even their own former opinions. The Supreme Court imposed its restrictions on Bible reading, although the first amendment imposes its limitations on Congress alone and an attempt to put the same limitation on the States by express amendment had been defeated. This attempt and defeat occurred after the 14th amendment (which the Court says makes the first amendment applicable) was in effect, but the Court now construes the Constitution to reach the same result as if the defeated amendment had been adopted.[9]

Each change of the Constitution by judicial fiat is usually looked on with favor by those who like the particular change and with disfavor by those who dislike it. Sometimes the praise reaches a crescendo—calling the Court the keeper of the peoples' conscience, praising the Justices as activists, and berating those who believe the Constitution means what it says. The evil is that the Court changes the meaning of the Constitution by what its apologists call interpretation. The real amendatory processes are thus circumvented in violation of the Constitution itself. Thus the changes are made by persons who have no constitutional power to amend and who by later decisions may amend it again.

These decisions are not the law of the land but they become precedents binding on all the lower courts and the determination of the case. right or wrong, must be written into all future decisions of the lower courts. The rule established by the Supreme Court cannot be changed by the lower courts and it cannot be reversed or modified except by the Supreme Court itself in another case subsequently involving the same question. The only reason these decisions remain unchallenged is that there is no higher court to which an appeal can be taken.

HOW FEDERAL JUDGESHIPS ARE WON

The freehold estate referred to by Jefferson as held by the judges in the Federal Establishment has been received by them in some instances as a reward for political activities or as a result of a political trade. Some are kicked upstairs to create a vacancy somewhere else. All are recommended by the Department of Justice, which will later appear and litigate before them hundreds of Government cases. If they expect promotion it will be only upon recommendation of the same department. All are expected to be in reasonably near accord on basic Government theory with the administration that appoints them.

The majority of Federal judicial appointments comes from the membership of the party in power. Some have been appointed although the American Bar Association or even the State bar association has certified they were not competent. For their high office there is no specific qualification of education, judicial experience, or ability. Being human beings, they must have at least some of the bias, predelictions, and frailties of other humans.

Impeachment being the only remedy and seldom used, they hold their jobs for life. Once on the bench they can influence decisions for years without accountability to anyone. Public opinion is ignorant or indifferent, it has been shaped by the press and the schools to believe that the courts can do no wrong. Even to question the correctness of their pronouncements is to court ostracism. In their own opinions they have stated that the only limitation upon their power is their own restraint.

The great Cooley had his own opinion about making the Constitution mean one thing at one time and another at a subsequent time: "A court or legislature which should allow a change in public sentiment to influence it in giving construction to a written constitution not warranted by the intention of its founders, would be justly chargeable with reckless disregard of official oath and public duty; and if its course could become a precedent, these instruments would be of little avail. The violence of public passion is quite as likely to be in the direction of oppression as in any other; and the necessity for bills of rights in our fundamental laws lies mainly in the danger that the legislature will be influenced by temporary excitements and passions among the people to adopt oppressive enactments. What a court is to do, therefore, is to declare the law as written, leaving it to the people themselves to make such changes as new circumstances may require. The meaning of the Constitution is fixed when it is adopted, and it is not different at any subsequent time when a court has occasion to pass upon it."

Mr. DOUGLAS. 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. DOUGLAS. 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. McNAMARA. Mr. President——

Mr. MANSFIELD. Mr. President, will the Senator from Michigan yield first?

Mr. McNAMARA. I am happy to yield to the Senator from Montana.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I should like to propound a unanimous-consent request, if it meets with the approval of all concerned.

I ask unanimous consent that there be 30 minutes on the pending Thurmond substitute, 15 minutes being under the control of the Senator from South Carolina [Mr. THURMOND], and 15 minutes being under the control of the Senator from Illinois [Mr. DOUGLAS].

Mr. DIRKSEN. Mr. President, reserving the right to object, is the time 30 minutes altogether?

Mr. MANSFIELD. Yes. Then the Senate will vote. The yeas and nays will be asked for.

Mr. DIRKSEN. That is not much time, is it?

Mr. MANSFIELD. Mr. President, I modify the unanimous-consent request to make it 1 hour on the pending Thurmond substitute, with 30 minutes to a side, under the control of the same two Senators.

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

Mr. McNAMARA. Mr. President, in an earlier speech——

Mr. MANSFIELD. Mr. President, will the Senator from Michigan yield to me again?

Mr. McNAMARA. I am happy to yield to the Senator from Montana.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on the pending amendment.

The PRESIDING OFFICER. The yeas and nays have already been ordered.

Mr. THURMOND. Mr. President, I have already obtained the yeas and nays on my substitute.

The PRESIDING OFFICER. Will some Senator, under the unanimous-consent agreement, yield time to the Senator from Michigan [Mr. McNAMARA]?

Mr. McNAMARA. Mr. President, I do not wish to speak on the Tuck amendment, I wish to speak on another subject, the substance of the Supreme Court bill now before the Senate.

Mr. President, I yield the floor.

Mr. DOUGLAS. Mr. President, I yield 10 minutes to the Senator from Pennsylvania [Mr. CLARK].

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 10 minutes.

Mr. CLARK. Mr. President, perhaps I should note for the RECORD that until about 30 seconds ago, I had had no intention of speaking against this incredible amendment. In fact, so unlikely did I think it was that any Senator would seriously propose it, that I have only now had an opportunity to read it. Accordingly, I would hope that Senators would indulge me if my speech in opposition to the amendment is less erudite and less closely reasoned than it perhaps could have been had I had at least a little time for preparation.

Needless to say, I regret very much that the substitute amendment proposed by the senior Senator from New York [Mr. JAVITS], the senior Senator from Minnesota [Mr. HUMPHREY], and the junior Senator from Minnesota [Mr. MCCARTHY] was defeated a short while ago. It had seemed to me that that proposal presented a face-saving way—which would have been acceptable to all parties—out of the ridiculous dilemma in which the Senate finds itself. Unfortunately, a majority of those Senators present and voting decided otherwise.

[8] See, *Urbano* v. *New Jersey*, 225 F. Supp. 798 (D. N.J. 1964).

[9] Baker, supra note 7 at 440.

So, we are now back where we were a few days ago, with the Dirksen amendment undisposed of, and with an overwhelming majority of the Senate unwilling to impose cloture, but with a clear majority of the Senate unwilling to table the Dirksen amendment. There are hopeful procedures and techniques available to us by which, in due course, that dilemma can be resolved.

I point out again how fantastic it is to be operating under rules which permit a nongermane amendment dealing with reapportionment—one of the most important questions ever to come before Congress—to be added to the foreign aid authorization bill. No other legislative body in the civilized world would permit such chaotic procedure. The only way out of this situation in the long run, and the only way out of the problem of the filibuster, is a drastic revision of the rules of the Senate.

If anything could make this clear, it was the 3 months and 10 days we spent on the civil rights bill earlier this year, as a result of which we are still here when we should have gone home months ago. But, before we can get to an effort to come to some solution of the Dirksen amendment, we must dispose of the Thurmond amendment.

It seems to me that, to most Senators, it should be enough merely to read the amendment in order to make clear why it should never be passed. It is very short. It contains only two clauses, really.

The first clause reads:

> The Supreme Court shall not have the right to review the action of a Federal court or a State court of last resort concerning any action taken upon a petition or complaint seeking to apportion or reapportion any legislature of any State of the Union or any branch thereof.

I suggest that this is a bald-faced and patent effort to repeal the 14th amendment. It is true that the proponent of his amendment, my good friend the Senator from South Carolina [Mr. THURMOND], believes that the 14th amendment was illegally adopted and is therefore null and void. But, I suggest that that viewpoint is shared by few, if any, of his colleagues.

I believe that we must assume for purposes of this discussion that the 14th amendment is a valid part of the Constitution of the United States and that the appropriate interpretation of that amendment is not for the Congress of the United States as a last resort, but for the Supreme Court of the United States, the judicial branch.

This has been the history of the interpretation of the Constitution of the United States ever since it was adopted in 1789. I see no reason to believe that it has been changed since that time. I would therefore take a curbstone view, because I have not had an opportunity to review the cases. But I suspect that my good friend the senior Senator from Oregon [Mr. MORSE], who is a far greater constitutional lawyer than I shall ever pretend to be, will in a few moments have something to say on the constitutional question. I believe that the first clause of the Thurmond amendment—which is, in effect, the Tuck bill, a bill which was passed in a hurry by the House without adequate consideration—is unconstitutional.

The argument will be made that Congress has the power under the Constitution to determine the jurisdiction of the various courts of the United States. It is suggested that under that provision, the 14th amendment can be ripped out of the Constitution, the Supreme Court can be deprived of jurisdiction over a matter of this sort, and Congress can usurp the judicial power by a technical device which would deprive one of the three coordinate branches of our Federal system of the power to interpret the law, or the Constitution, on a matter of great importance to every citizen of the United States. Whether this provision is unconstitutional or not, it is clearly unwise, more than it is presumptuous. It was in a fit of pique that this amendment was proposed seriously, in an attempt to chastise and punish the Supreme Court of the United States by removing its jurisdiction over a matter with which it is clothed with jurisdiction, and with respect to which it has issued a series of excellent opinions. The Supreme Court has asserted what the 14th amendment is supposed to mean, that the equal protection of the law has to do with the right to vote, and the equal right to vote is given to every citizen under the Constitution of the United States. So, beyond that presumption, I believe it is folly to seriously consider the adoption of this amendment.

I turn now to the second clause of the Thurmond amendment which reads:

> The district courts shall not have jurisdiction to entertain any petition or complaint seeking to apportion or reapportion the legislature of any State of the Union or any branch thereof, nor shall any order or decree of any district or circuit court now pending and not fully disposed of by actual reapportionment be hereafter enforced.

My comment with respect to the first clause applies with equal validity to the second clause. It, too, I believe to be unconstitutional. Very clearly, it is unwise. Equally clearly, it is presumptuous.

I would hope very much that the Senate would defeat this amendment which, in effect, is the Tuck bill, passed by the House, I say again, in a fit of pique against the Supreme Court of the United States.

Mr. President, I yield back the remainder of my time so that that great constitutional lawyer, the senior Senator from Oregon [Mr. MORSE] may be heard.

Mr. DOUGLAS. Mr. President, I yield 11 minutes to the senior Senator from Oregon.

Mr. MORSE. Mr. President, I wish to say to my teacher on constitutional law, the senior Senator from Pennsylvania [Mr. CLARK], that I share completely the views he has expressed on the 14th amendment vis-a-vis both the Tuck bill and the Dirksen amendment.

Some time earlier today I listened to the distinguished Senator from Illinois [Mr. DIRKSEN] speak in support of his amendment. In my opinion, he is overlooking and ignoring the fact that a constitutional amendment does not require a stay in court decisions first, but rather a program by way of his amendment that seeks a constitutional amendment does not require a stay of court decisions first. Of course, that is what the Senator from Illinois wishes to prevent. He wishes to prevent the implementation of court decisions carrying out this historic decision of the Supreme Court in regard to reapportionment.

Mr. President, under the Court decision all States could be reapportioned by the courts. If there is a desire on the part of the people of this country for area apportionment—for apportionment based on area rather than population—the people can go back to that malapportionment system by way of a constitutional amendment.

I am at a loss to understand how in the name of logic it is constantly represented to the Senate by the proponents of the Dirksen amendment that someway, somehow, we must stay the application of the 14th amendment in order to protect what the people may ultimately decide is their desire.

God forbid that the day shall ever come when such a constitutional amendment is adopted. But if that day ever comes, carrying out the rotten borough system that the Dirksen amendment seeks to shackle as a yoke around the people of this country, the people, through that constitutional amendment will in effect be able to set aside the decisions of the Court. That is the check that the Constitution gives to the people. It was never contemplated under our system of three coordinate and coequal branches of Government that the Congress should exercise a check upon the U.S. Supreme Court in its exercise of its constitutional powers decreed in the land-mark decision of Marbury against Madison in 1803. What the senior Senator from Oregon has been protesting in this case, as I have protested on the floor of the Senate for the past 10 years—and I shall shortly refer to some of those incidents—is the so-called court "busting" bills that have been attempted to be steamrollered through the Senate in the dying days of Congress, without a single hour, without a single minute of committee hearings on such bills.

What I have been trying to point out is that under our Constitution we are exceeding our legislative authority when we seek to enact the kind of proposed legislation which the Dirksen amendment represents, because it seeks to dictate to the Supreme Court how its procedure shall operate.

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

Mr. MORSE. I yield.

Mr. DOUGLAS. Should not every Senator—indeed, every citizen—read section 2, article 3, of the Constitution which begins as follows:

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

Mr. MORSE. The Senator is so correct.

Mr. DOUGLAS. Article 2, section 1, states:

> The judicial power of the United States, shall be vested in one Supreme Court—

Mr. MORSE. The Senator is so correct.

Mr. DOUGLAS. The Constitution does not provide that the Congress shall have judicial power or can suspend the operation of the Constitution. It is the Supreme Court and the inferior courts that have jurisdiction over subjects which involve the Constitution. Is that not true?

Mr. MORSE. The Senator is correct. As the Senator will recall, earlier in the debate—a couple of weeks or so ago—I made my major legal argument against the Dirksen amendment. One of the major premises of that speech was the very section of the Constitution that the Senator from Illinois now cites.

Mr. President, I say most respectfully that in my judgment all the Senator from Illinois [Mr. DIRKSEN] is saying in effect is that he does not want the people to have a test of equal representation because when they do, they will never go back to the rotten-borough system. As I said earlier in the course of the debate, I speak in behalf of the people of the first State in this Nation to eliminate malportionment. The people of Oregon led this Nation in doing away with the rotten-borough system. The people of Oregon did it because the most direct democracy under the control of the people in this whole Nation exists in my State under the so-called Oregon system of initiative, referendum, and recall.

Back in 1951 the people of the State of Oregon by initiative brought to an end the rotten-borough system of my State. The people of my State, by an initiative election, brought to an end an area apportionment system that exists still in too many States of this country. So I know whereof I speak, based upon the experience of my State, of the improvement in government that flows from the application of the Court's decision of one vote to one person.

As I said a couple of weeks ago in a major speech I made on the subject, there are areas in States in which the vote of 1 citizen has the weight of 40 votes in a city.

We cannot reconcile that with all our professing about a democratic system of government, for that is not democracy. It is not representative government. That happens to be a polluting of the stream of democracy. We are seeking to preserve the judicial functions of the U.S. Supreme Court without uncalled for encroachment by the legislative branch of the Government.

I shall close, since my leader tells me that the debate on the Tuck amendment is about to close. That is what the Thurmond amendment really is. This is not the first time in 10 years that the senior Senator from Oregon, during the dying days of a session, has been willing to stand on the floor of the Senate and talk until Christmas, if necessary, for I believe it is important, if necessary, that the Congress remain in session, election or no election, until Christmas rather than write a precedential record in an attempt on the part of the legislative body to invade the constitutional prerogatives of the U.S. Supreme Court. In that 10 years the senior Senator from Oregon, along with a little band—and we had all kinds of unkind names directed at us—stayed on the floor of the Senate and made clear to the leadership that we would talk until Christmas in order, for example, to defeat the attempt to invade the rights of the courts in connection with habeas corpus. We stood on the floor of the Senate and made it clear that we would fight until Christmas against an attempt to repeal the Mallory rule when there had not been a moment of committee hearing on the Mallory rule.

There was an attempt on the part of the Senate of the United States to reverse the Supreme Court; to substitute itself for the Supreme Court. We stood on the floor of the Senate when an attempt was made, in the dying days of one session of Congress, to steamroller through this body, without committee hearings, a complete revision of the passport system of this country because there were those in this body who resented decisions of the Court which protected the constitutional rights of free Americans.

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

Mr. DOUGLAS. I yield one-half minute to the Senator from Oregon.

Mr. MORSE. Those were Court "busting" bills. The Dirksen amendment and the Thurmond amendment and other similar measures are Court "busting" bills and attempts on the part of Congress to supersede the U.S. Supreme Court and to change our Government from one of three coordinate, coequal branches of government into a government of legislative supremacy.

So to the American people I say, if that happens they will have lost a share of their freedom.

Mr. DOUGLAS. Mr. President, in view of the fact that the proponents of the Thurmond-Tuck amendment have taken very little time, and that most of the time has been used by the opponents, I think the proponents ought to state their case at this time.

The PRESIDING OFFICER. Who desires the floor? Who yields time?

Mr. CLARK. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum, without the time being charged to either side.

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

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

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

Mr. STENNIS. Mr. President, I have been designated by the Senator from South Carolina [Mr. THURMOND] to have charge of the time that is allotted to the proponents of this proposed substitute. I allot myself 5 minutes or such additional time as I may see fit to use.

We are dealing now with a matter that has already been debated to some extent, but certainly has not been overdebated, nor has the time spent on it been enough, in the opinion of the Senator from Mississippi, considering the importance and the consequences of the constitutional question before us.

I speak not in derogation of the Court as an institution, but I speak in the performance of my responsibility as a Member of this body. As I was saying, this matter is so far-reaching and so important that I think the Senate has not only been justified, but doubly justified, in the time it has used in the consideration of this question. With great deference to the Court as an institution of our Government, and a highly important one, I think it clearly extended its basic constitutional jurisdiction when it first went into the matter of apportionment of State legislatures. I said so at the time. I said, when the Baker case was decided in 1962, that it spelled trouble. I meant by that that it spelled the most serious kind of trouble not only for the Court, but for the Congress and for every State and every State legislature in our great system.

Mr. Justice Frankfurter, one of the great, strong minds on the Court, pointed out with great force at that time, with great learning and lucidity, the problem involved and the consequences that would follow from the decision of the Court's going into the matter of legislative apportionment.

It was shown at that time, and it has been shown by the Senator from Illinois and others, that there have been abuses in the system; that the State legislatures have been tardy; that they have not performed in an ideal way; that they have delayed apportionment that in some cases has been long overdue.

But if that is to be the reason for damaging our system in important aspects, then, if it had a mind to do so, the Court could rewrite our system on any basis it desired.

Our system is not designed for perfection. Our system is not designed to carry everything out with ultimate precision and in a completely and most satisfactory way to all people.

More recently when the Court went further into this forest, in the Reynolds against Sims case, decided this year, 1964, it gave a further illustration of the trouble and further confusion and further problems that are irreconcilable and which should be left for solution by the State legislatures.

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

Mr. STENNIS. I yield myself 5 additional minutes.

In the great State of New York, for example, a Federal district court has actually changed the term of the members of the State legislatures to a 1-year term, when they were elected for a 2-year term.

In the great State of Illinois, according to what I read last evening, a special election has been called wherein all members of the legislature will run at large, and each voter will therefore be required to vote for all 177 members of the legislature. These are illustrations of the trouble and confusion which have resulted from the Reynolds decision. They

constitute a sweeping aside, by the Federal courts, of the constitutional provisions of these States merely because the reapportionment was not satisfactory to the Court. It is a great exercise of implied powers, if it can be said to be based on any constitutional authority. Here we have two cases in which the people of these States are thrown into complete confusion as to how they shall select the membership of their legislative bodies.

The provisions we have been debating and voting on would have delayed the application of this principle, but the proposal we now have before us would bring in the constitutional powers of Congress, not to be quickly exercised, of course, but to meet the problem head on, and to furnish a solution to it.

I find, too, that a great many thinking and impartial people, even those who can accept the first decision in Baker against Carr, do not accept the second decision, this year, by any stretch of reasoning or imagination. The average American cannot accept as a sound constitutional principle the decision of the Court in Reynolds against Sims that the least numerous legislative body of the State legislature may not be apportioned by the authorities of the State in any way except on a one-man-one-vote basis. It is beyond the grasp of the average American and beyond his imagination and beyond his logic. One reason is that it is in direct contradiction to the theory of our Federal system which has been in use until this day, and in direct contradiction of the pattern that was in effect when the Constitution was adoped. It was in effect then. It was in effect when the 14th amendment was adopted. It is in effect today, or at least it was until it was disturbed without any authority by the Supreme Court in the Baker case.

Congress not only has the power, but also the duty and responsibility, to bring into this forest of confusion, this trouble area, order out of chaos, and, in the next place, has the responsibility to make a bold, clear-cut assertion of the legislative authority under our Constitution to clear up this matter.

I yield the floor.

Mr. DOUGLAS. Mr. President, I yield 3 minutes to the Senator from Michigan.

Mr. HART. Mr. President, it has been said before in the course of the debate, and I believe accurately, that few of us will be permitted service in this body over a period of years sufficient again to be confronted with a more basic question than the one that confronts us in this series of efforts to put our thumb in the eye of the Supreme Court.

Much of the debate has dwelt on the question of whether the apportionment of State legislatures on the formula of one-man-one-vote is good or bad.

The junior Senator from Michigan feels that this indeed is the correct application of the 14th amendment's guarantees of equal protection of the laws. I think, however, that more time should and well could be devoted to a consideration of what is even more basic than the argument as to whether it is desirable or is not desirable to assure that one man's vote in a State does not carry 10 times the weight of another man's vote, even if that man is 10 times smarter. Of course that is not the basis on which he is given 10 times the vote.

Whatever one's attitude may be with respect to the effect of the Reynolds case decision, I suggest that we are confronted in the Thurmond amendment with a far more fundamental concern. It would be the first step on the road which would result, sooner or later, in the discovery that the written Constitution, with its guarantees of rights, is worth exactly the cost of the paper on which it is written. That is a lesson of history which our society should clearly understand.

Other nations have magnificent written constitutions. They read beautifully. The trouble is that life in those nations is not desired by free people. Why? It is because there is no independent judiciary available to enforce the guarantee of rights in that beautifully written Constitution.

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

Mr. DOUGLAS. I yield 2 more minutes to the Senator from Michigan.

Mr. HART. What is proposed here is to say that the Court shall not be allowed to review this particular matter of State apportionment.

If that is done, it is possible to add 10 more constitutional rights and say that the courts shall not have an opportunity to review those rights, or, for that matter, to review anything, except within the jurisdiction which was given to the court as basic jurisdiction in the Constitution. We could say to the court: "You are not to pass upon apportionment," and then we could add 10 or more rights on which the court could not pass. Having enjoined the court thus far, we are in a position to deny it other jurisdiction also.

Do not Senators realize where we are going?

We have a written Constitution. A formula is provided for changing the Constitution. It is by way of constitutional amendment. We have three independent branches of government. The Congress is one of them. Any more than we would want the Supreme Court to tell us to stop legislating in the area of civil rights, or in any other area, we have no business telling the court, "Do not sit as judges in matters like civil rights or reapportionment."

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

Mr. HART. I yield.

Mr. METCALF. Except that the Supreme Court is the weakest branch of government. It is a branch that has neither the sword nor the purse. The executive branch has the power of administration. We have the power of the purse.

So we should be careful, in order to preserve the separation of powers, that we adhere to a proper confidence in the dignity of our coordinate branches.

The PRESIDING OFFICER. The 2 minutes of the Senator from Michigan have expired.

Mr. HART. I hope that the vote on the Thurmond-Tuck amendment will be decisive and will reflect the deep conviction that although there may be times when I or some other Member of the Senate may not like a decision of the Supreme Court, we are not the reviewing authority of the Supreme Court, and we are not supposed to put the Supreme Court out of business. The day we do that, history will mark as the day when this Republic began to disintegrate.

The PRESIDING OFFICER. Who yields time?

Mr. DOUGLAS. Mr. President, the Senator from South Carolina is not in the Chamber.

Mr. STENNIS. I am representing the Senator from South Carolina.

Mr. DOUGLAS. I shall be happy to yield back the remainder of my time if the Senator from Mississippi will yield back the remainder of his time.

Mr. STENNIS. Mr. President, on my time, 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. THURMOND. 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. THURMOND. I yield 3 minutes to the Senator from Mississippi.

Mr. STENNIS. Mr. President, the Senator from South Carolina in his presentation of this amendment has already cited, as a part of his presentation, a part of article III of the Constitution to show the authority as well as the responsibility of Congress to pass on the question presented by the proposed amendment. I now read from article III, section 2, which I believe will complete the record on this question:

> The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

That outlines the entire judicial power of the Federal courts.

The section relating to the original jurisdiction of the Supreme Court has already been quoted.

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

Mr. THURMOND. I yield 3 more minutes to the Senator from Mississippi.

Mr. STENNIS. The second sentence of the third paragraph of article III provides:

> In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

So this is a case in which Congress has the authority and responsibility to pass on the question of whether we shall

make this exception. Thus the argument of the junior Senator from Michigan [Mr. HART], with all deference to him, that Congress should not touch this subject, regardless of the subject matter, will not hold up in the face of the plain language of the Constitution of the United States.

If we adopt that formula, we can never go into any subject, grave, serious and far reaching as it might be. Thus, our constitutional authority is clear and positive. Our duty is clear and positive.

I am delighted to support the amendment of the Senator from South Carolina [Mr. THURMOND].

Mr. THURMOND. Mr. President, in closing the argument, there is no question about the Senate and the Congress having the constitutional authority to adopt this amendment. Under the Constitution, Congress has the clear power to restrict the appellate power of the Supreme Court. This amendment would restrict that power in apportionment cases. It is clear that the field of apportionment of State legislatures has never been delegated to the National Government. It is reserved to the States. Since the Supreme Court has seen fit to go into the field of apportionment and hand down its decision, as it has done on this question, this amendment would merely put the matter back as it was before the Supreme Court handed down its decision.

Our National Government is so constituted that Senators come from large and small areas. A small State such as Rhode Island, for instance, has two Senators, just as many Senators as the State of Texas, a big State, or the State of Alaska, the biggest State. To counterbalance this, the House of Representatives is based on population.

What is wrong with allowing the people of a State to say whether they wish to have the kind of system similar to the National Government, or whether they wish to have a unicameral system, or some other kind of system?

The people of each State, in my judgment, should have that power. If they did not have it already under the Constitution—which they clearly do—I would favor giving that power to the States of the Nation.

We must remember that in this country there are 51 governments. We do not have a United States composed of subdivisions. We have 50 sovereign States which have all the powers in the world except certain specific powers which the States have delegated to the National Government. They have not delegated the field of apportionment. Therefore, they have reserved it to themselves. But the Supreme Court has entered the field and has deprived the States of their authority in this field.

Thus, my amendment is intended to correct that decision of the Supreme Court.

As I stated, we have 50 States and we have a Central Government. There are functions for the States and there are functions for the Federal Government. The function of State legislative apportionment should be left to the States. That was the intention of the Founding Fathers. It was left with the States throughout the 173 years of American history until the Supreme Court handed down its initial decision. It is strange that it took the Supreme Court of the United States down through history, all the years of the existence of our National Government, before it acted in this field. Previous Supreme Courts have not dared to enter this field because there was no jurisdiction for the Supreme Court to act in the field of apportionment. But the present Supreme Court has seen fit to do so.

My amendment is intended to correct that situation. It is intended to leave the field of jurisdiction with the States just as those who wrote the Constitution, our Founding Fathers, intended, in the first instance.

Mr. President, if the Senator from Illinois speaks, I may wish to reply to him.

Mr. DOUGLAS. I had not intended to speak on the proposal of the Senator from South Carolina.

The ACTING PRESIDENT pro tempore. The Senator from Illinois has 4 minutes remaining.

Mr. DOUGLAS. Mr. President, I had not intended to speak on the amendment of the Senator from South Carolina, but certain of his recent statements demand a reply.

The Senator from South Carolina is assuming that there have been no amendments to the Constitution after the 10th amendment, which provided that:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

We are all aware, or should be aware, that there is a 14th amendment. The 14th amendment provides, in section 1:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

That is as much a part of the Constitution as any other feature—indeed, it supersedes other features.

As the Supreme Court has properly asked, how can we have equal protection of the laws if we have grossly unequal representation in the legislatures which make the laws. I believe that the Supreme Court was completely correct in its decisions, both in the Tennessee case and in the Alabama case, because if we have grossly unequal representation in one house, that can be a power of veto over the State's laws.

The Tuck amendment would close off both the Supreme Court and the courts of lower Federal jurisdiction from considering any reapportionment cases, and would perpetuate the existing, unequal, unjust situation which the State legislatures have refused to correct.

Mr. ROBERTSON. Mr. President, will the Senator from Illinois yield?

Mr. DOUGLAS. Not on my time, but the Senator may do so on the time of the Senator from South Carolina.

Mr. ROBERTSON. I need only 30 seconds.

Mr. THURMOND. Mr. President, I am happy to yield to the Senator from Virginia, and ask unanimous consent that the Senator may proceed for 30 seconds.

The ACTING PRESIDENT pro tempore. The Senator from Virginia is recognized for 30 seconds.

Mr. ROBERTSON. Does the Tuck amendment apply to the house or to the senate of the State?

Mr. DOUGLAS. What is before us is the proposal of the Senator from South Carolina.

Mr. ROBERTSON. Does the amendment apply only to the senate? I do not know whether the amendment applies to both house or senate of a State.

Mr. CLARK. It does not apply to either. It strips the Court of all jurisdiction. It has nothing to do with either senate or house.

Mr. DOUGLAS. The Senator from Pennsylvania is correct. If we can deny——

Mr. THURMOND. Mr. President, I wish it understood that I am not yielding any more time while the Senator from Illinois continues.

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

Mr. DOUGLAS. If we can deny jurisdiction to the Supreme Court, or to the district or circuit courts, on any matter dealing with reapportionment, then we can deny jurisdiction on any other matter—such as the right to vote, and the other feature of equal protection of the laws. Thus, I hope that the amendment will be soundly beaten.

I wish that we might have been able to discuss this amendment for a longer period of time. In a moment of good fellowship, I agreed to a limitation of debate. I now regret that I did so, but it was done in a desire to oblige.

Mr. PASTORE. Mr. President, will the Senator from Illinois yield for a question?

Mr. DOUGLAS. I am glad to yield to the Senator from Rhode Island.

Mr. PASTORE. How can we legislate to deprive the Supreme Court of authority which it has under the Constitution?

Mr. DOUGLAS. I cannot understand it.

Mr. PASTORE. This amendment is absolutely unconstitutional.

Mr. DOUGLAS. If the amendment should be adopted, it would require 3 or 4 years for the Court to pronounce it unconstitutional; in the meantime it would have done vast damage.

Mr. PASTORE. Apart from that, I do not believe that any Member of the Senate should vote for any amendment which is patently unconstitutional.

Mr. DOUGLAS. Mr. President, so far as I am concerned, I am ready to yield back the remainder of my time.

Mr. THURMOND. Mr. President, it has been suggested that my amendment is unconstitutional. That is not true. As I stated in my original statement, article III, section 2 of the Constitution provides:

> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme

Court shall have original Jurisdiction. In all the other Cases—

I repeat—

in all the other Cases—

That includes reapportionment—

before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

It is absolutely clear that Congress has the power to remove jurisdiction in the field of apportionment from the Supreme Court if it wishes to do so. I am amazed that some Senators should wish to deprive the people of their own States—the people of Illinois, the people of Rhode Island, the people of Wisconsin, or of any other State—of the right to decide on the type of legislation they want. They want to let the Supreme Court decide it.

I am willing to trust the people. I am willing to trust the people of South Carolina. If they want a unicameral legislation, they ought to have the right to have it. If they want some other kind of general assembly, they ought to have the right to have it.

I do not believe that the Supreme Court of the United States ought to dictate to any State the type of legislative body it should have. I do not believe the Supreme Court should say to the States: "You are compelled to have this type of legislative body, although you desire another type of legislative body."

This amendment would merely give the decision to the people of the States, and let each State have the type of legislature it desires.

There is no question as to the constitutionality of this amendment. I hope the Senate will see fit to adopt it. That would remove the jurisdiction in apportionment cases from the Supreme Court, as those who wrote the Constitution intended it in the first instance.

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

The ACTING PRESIDENT pro tempore. All time has been yielded back. The question is on agreeing to the amendment of the Senator from South Carolina.

The yeas and nays have been ordered; and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WALTERS (when his name was called). Mr. President, on this vote I have a pair with the Senator from Missouri [Mr. SYMINGTON]. If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." I withhold my vote.

The rollcall was concluded.

Mr. HUMPHREY. I announce that the Senator from Idaho [Mr. CHURCH], the Senator from Alaska [Mr. GRUENING], the Senator from Indiana [Mr. HARTKE], the Senator from Utah [Mr. Moss], and the Senator from Missouri [Mr. LONG] are absent on official business.

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

I further announce that the Senator from Washington [Mr. JACKSON], the Senator from Wyoming [Mr. McGEE], and the Senator from Missouri [Mr. SYMINGTON] are necessarily absent.

I further announce that, if present and voting, the Senator from Idaho [Mr. CHURCH], the Senator from Alaska [Mr. GRUENING], the Senator from Indiana [Mr. HARTKE], the Senator from Washington [Mr. JACKSON], the Senator from Massachusetts [Mr. KENNEDY], and the Senator from Missouri [Mr. LONG] would each vote "nay."

Mr. KUCHEL. I announce that the Senator from Kansas [Mr. CARLSON], the Senator from New Hampshire [Mr. COTTON], the Senator from Arizona [Mr. GOLDWATER], the Senator from Idaho [Mr. JORDAN], the Senator from Iowa [Mr. MILLER], the Senator from Massachusetts [Mr. SALTONSTALL], the Senator from Pennsylvania [Mr. SCOTT], and the Senator from Texas [Mr. TOWER] are necessarily absent.

Also, the Senator from Utah [Mr. BENNETT], the Senators from Nebraska [Mr. CURTIS and Mr. HRUSKA], and the Senator from Delaware [Mr. WILLIAMS] are necessarily absent.

On this vote, the Senator from Utah [Mr. BENNETT] is paired with the Senator from Idaho [Mr. JORDAN]. If present and voting, the Senator from Utah would vote "yea" and the Senator from Idaho would vote "nay."

On this vote, the Senator from New Hampshire [Mr. COTTON] is paired with the Senator from Nebraska [Mr. HRUSKA]. If present and voting, the Senator from New Hampshire would vote "yea" and the Senator from Nebraska would vote "nay."

On this vote, the Senator from Nebraska [Mr. CURTIS] is paired with the Senator from Pennsylvania [Mr. SCOTT]. If present and voting, the Senator from Nebraska would vote "yea" and the Senator from Pennsylvania would vote "nay."

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

If present and voting, the Senator from Kansas [Mr. CARLSON], the Senator from Iowa [Mr. MILLER], and the Senator from Massachusetts [Mr. SALTONSTALL] would each vote "nay."

The result was announced—yeas 21, nays 56, as follows:

[No. 574 Leg.]

YEAS—21

Byrd, Va.	Johnston	Simpson
Byrd, W. Va.	Jordan, N.C.	Smathers
Eastland	Long, La.	Smith
Ellender	McClellan	Sparkman
Ervin	Mundt	Stennis
Hickenlooper	Robertson	Talmadge
Holland	Russell	Thurmond

NAYS—56

Aiken	Clark	Humphrey
Allott	Cooper	Inouye
Anderson	Dirksen	Javits
Bartlett	Dodd	Keating
Bayh	Dominick	Kuchel
Beall	Douglas	Lausche
Bible	Edmondson	Magnuson
Boggs	Fong	Mansfield
Brewster	Fulbright	McCarthy
Burdick	Gore	McGovern
Cannon	Hart	McIntyre
Case	Hayden	McNamara
Mechem	Neuberger	Ribicoff
Metcalf	Pastore	Salinger
Monroney	Pearson	Williams, N.J.
Morse	Pell	Yarborough
Morton	Prouty	Young, N. Dak.
Muskie	Proxmire	Young, Ohio
Nelson	Randolph	

NOT VOTING—23

Bennett	Hill	Moss
Carlson	Hruska	Saltonstall
Church	Jackson	Scott
Cotton	Jordan, Idaho	Symington
Curtis	Kennedy	Tower
Goldwater	Long, Mo.	Walters
Gruening	McGee	Williams, Del.
Hartke	Miller	

So Mr. THURMOND's amendment, in the nature of a substitute for the Dirksen-Mansfield amendment, was rejected.

Mr. MCNAMARA obtained the floor.

HEALTH CARE FOR THE ELDERLY UNDER SOCIAL SECURITY

During the delivery of Mr. MCNAMARA's speech,

Mr. CLARK. Mr. President, I desire to propound several parliamentary inquiries to the Chair with respect to the appointment of Senate conferees on the social security bill. In order that the Chair may understand the inquiries, I ask the Chair to turn to page 22 of the calendar of business for Tuesday, September 15, on which are listed the Senate conferees appointed on September 3. I call the attention of the Chair to the generally recognized rule that a majority of the conferees representing the Senate on any legislative controversy must have supported the position of the Senate on questions in disagreement with the House of Representatives. I suggest to the Chair—and if the Chair is in disagreement with me, I have no doubt that he will so advise me—that the principal matter in disagreement between the House and the Senate in relation to the social security bill was the Gore amendment, which established health care for the elderly under social security.

Then I call attention to the voting record of Senators listed as conferees. I note that Senator BYRD of Virginia voted against the Gore amendment. Senator LONG of Louisiana voted against the Gore amendment. Senator SMATHERS of Florida voted against the Gore amendment. Senator WILLIAMS of Delaware voted against the Gore amendment. Senator CARLSON of Kansas voted against the Gore amendment.

Of the seven Senators listed as conferees, only two—Senators ANDERSON and GORE—voted for the Gore amendment, which is the principal matter in disagreement between the House and the Senate.

My first parliamentary inquiry, with respect to which I would ask the Presiding Officer to turn to page 172 of "Senate Procedure," authored by our Parliamentarians Messrs. Watkins and Riddick, is to ask whether it is not the precedent in the Senate that conferees are designated by the friends of the measure who are in sympathy with the prevailing view of the Senate, and with consideration for the usual party ratio.

The ACTING PRESIDENT pro tempore. The Senator is reading from page 172 of the manual entitled "Senate procedure," which states that conferees are