halt all secret or open efforts to force South Korea again into the arms of the Japanese.

DAVID W. W. CONDE.

OAKLAND, CALIF., *May 4, 1964.*

(The writer of the above letter served as staff section chief under Gen. Douglas MacArthur and was a Reuters correspondent in Japan.)

KINCHELOE, AIR FORCE BASE, MICH.,
July 17, 1964.

DEAR SENATOR MORSE: The settlement in Laos was a time-buying device, and now the time we bought is about to run out, with the Communists taking the country over unless we fight them to prevent it. So Laos has come to the same pass as South Vietnam. Both countries are being attacked by North Vietnam, using partly its regular troops and partly irregulars transparently disguised as internal rebels. The disguised nature of the North Vietnamese aggression is taken as giving North Vietnam the status under international law of a neutral, with the protection from counterattack which that status affords. But surely if international law means anything it deals with practical realities, not with polite fictions. We have not the slightest obligation to treat North Vietnam as if it were not at war with South Vietnamese allies and with us. We should prevent North Vietnamese reinforcements and supplies from reaching Laos or South Vietnam, and in doing so there is no reason why we should stay on this side of the North Vietnamese border. I believe Congress should now declare a state of war between the United States and North Vietnam; and we should bomb all of North Vietnam's military installations, factories, rail centers, fuel storage facilities and ports, and destroy all North Vietnamese ships and aircraft. This could be done in a week, and then the situation in South Vietnam and Laos would suddenly take on quite a different aspect.

Ho Chi Minh will not surrender, and we should not expect to be able to end the war quickly. It will be a long and terrible war, whether we counterattack into North Vietnam or not. If we do, it will not be a hopeless war as it is at present.

Respectfully yours,

ROBERT POWELL.

PRINCETON, N.J.,
July 16, 1964.

Hon. WAYNE MORSE,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR: Normally, I would never have thought of writing to you. I am not one of your constituents; indeed, I have never had the good fortune to be in Oregon. But in days such as the present ones I feel that I must let you know how much I respect you for many of the positions which you have taken recently on foreign and domestic affairs.

Now that Senator GOLDWATER has become the Republican presidential candidate the danger increases that many of his opponents will continue to mention him and the forces behind him as excuses for the character of many U.S. policies. I hope that you will criticize anyone who attempts to justify the continuance of bad policies by saying that any attempt to implement better ones would provide political ammunition to the Goldwater forces.

I am sure that you will continue to become increasingly outspoken about such issue as peace, disarmament, Cuba, southeast Asia, and civil rights.

Very truly yours,

Dr. WALTER STRUVE.

PLEASANT RIDGE, MICH.,
July 16, 1964.

DEAR SENATOR MORSE: I have just been reading some of your supporters' letters in the July 9, 1964, CONGRESSIONAL RECORD and I would like to add mine to your collection.

You are doing an outstanding job in the Senate on this issue day after day and deserve the good wishes of all Americans. Keep it up.

Sincerely,

J. B. GORDON.

P.C.—I would appreciate being placed on the mailing list for your newsletters.

SAN FRANCISCO, CALIF.,
July 13, 1964.

Senator WAYNE MORSE,
U.S. Senate Building,
Washington, D.C.

SENATOR MORSE: In what capacity is the United States militarily responsible for the perpetuation of the present South Vietnamese regime? What qualities has this regime which guarantee the freedoms of the South Vietnamese people?

If it is our aim to prevent the spread of communism, perhaps a more practical solution, and certainly a more preferable solution, would be to eliminate the conditions which foster uprising; eliminate the conditions, not the people.

Our position is detestable morally.

Sincerely yours,

Mr. and Mrs. JOHN B. READ.

MOBERLY, MO.,
July 15, 1964.

Hon. WAYNE MORSE,
Senator from Oregon,
Washington, D.C.

DEAR SENATOR MORSE: I want to thank you for your courageous stand and the vigorous way in which you have opposed our Government's intervention in Vietnam. The Post Dispatch recently has given you considerable space, as you probably know. They had a fine editorial praising you for your daily speech in the Senate, voicing your opposition to this immoral and cruel war, and they carried a three-column reprint of one of your speeches in which you pointed out that we have no legal right to engage in this war. I presume you have copies of this material.

You speak for a great many conscientious people, not only on this subject, but on many others. I recall your fight against the Telstar deal which the Government turned over to A.T. & T.; and many other similar positions where you represented the people's interests. It is a great satisfaction to have Senator WAYNE MORSE in Washington to counteract to some extent the Goldwaters, the Smathers, Eastlands, et al. If there were more of you and fewer of the latter, our country and the world in general would be a more just and peaceful place.

Yours very truly,

MARY CHRISTIAN.

PENFIELD, N.Y.,
July 16, 1964.

The U.S. SENATE,
Washington, D.C.

DEAR SENATOR MORSE: I have several times read over your May 27 speech to the Senate and the text of the May 24, 1964, "Face the Nation" television program.

I want to give you every possible encouragement in your good efforts to bring us to our senses as a nation with respect to our southeast Asia policy.

Sincerly yours,

W. EUGENE MOTE, M.D.

WABAN, MASS.,
July 16, 1964.

Senator WAYNE MORSE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MORSE: Just a word of appreciation for the valiant efforts which you are making to keep our country from becoming involved further in military conflict in southeast Asia.

I fear greatly the recent escalation of the conflict, particularly, by our Government.

I am firmly convinced that it is against the best interests of the United States to continue participation in this war. It actually weakens our military security while harming our diplomatic posture.

Again, thank you for your leadership on this issue.

Sincerely,

JEROME GROSSMAN.

PORTLAND, OREG.,
July 11, 1964.

Senator WAYNE L. MORSE,
Senate Building,
Washington, D.C.

DEAR SENATOR MORSE: As an Oregon Democrat, I've been tremendously proud of our State's representation and rather guilty not to have expressed my feeling to you, to EDITH GREEN, and to MAURINE NEUBERGER.

Now, with the bitter truth about Vietnam breaking out at long last, may I thank you and all other courageous protesters who are, I'm sure, standing with you. WILLIAM RYAN's recent speech in the House was heartening. It is most unfortunate that the press, radio, and TV do not give good coverage to controversial speeches and debate. It seems to me and my friends of liberal faith that now is the heaven-sent opportunity for the United States to do the obvious: Demonstrate alleged faith in the United Nations and lead the world toward a real détente. We cannot understand those who want to save face militarily while they refuse to face the realities of the atomic age.

Thank you, Senator, and more strength to you.

Sincerely yours,

ALICE B. PLYMPTON.

PORTLAND, OREG.,
July 9, 1964.

President LYNDON B. JOHNSON,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I realize you are making an intensive study of the situation in South Vietnam, the importance of which you fully realize. I urge you, Mr. President, not to be pressured into making a military commitment that would lead us into war with Red China. I urge you, on the other hand, to explore every avenue available that might lead to a peaceful settlement. The voice of reason and the long view are needed here.

In spite of the fact that you must receive many letters urging immediate military expansion, I know there are many Americans who feel as I do about this.

Very truly yours,

MARY M. FERNANDES.

(Copy to Senator WAYNE MORSE.)

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. McGOVERN. Mr. President, I call up my amendment, which I offer for myself and the senior Senator from Missouri [Mr. SYMINGTON]. I ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The LEGISLATIVE CLERK. On page 13, at the end of section 620 (a) inserted in the bill by Senate amendment, relating to limitation on aggregate authorization

for use in fiscal year 1963, [illegible] period, insert a semicolon, and add the following:

Provided, That an additional $50,000,000 is authorized to be appropriated for the purchase of domestically produced beef, poultry and other meats and meat products, dairy products, rice and other high protein foods, in adequate supply in the United States, for donation to school lunch and similar programs in foreign countries eligible for assistance under this Act.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. McGOVERN. Mr. President, I shall take only a brief time to explain the amendment. I believe it will be accepted by every Member of the Senate. I have discussed it with the distinguished chairman of the Committee on Foreign Relations, the Senator from Arkansas [Mr. FULBRIGHT]. He indicated that he is willing to accept the amendment. I have also discussed it with the leadership and with numerous other Members of the Senate, and they support the amendment.

In effect, the amendment authorizes the appropriation of $50 million under the authority of the foreign aid bill now before the Senate for the purchase of domestically produced beef, poultry, and other meats and meat products, dairy products, rice, and other high-protein foods which are in adequate supply in the United States for donation to school lunch and similar programs in foreign countries which are eligible for assistance under the bill.

I believe the amendment is a perfect combination of our domestic self-interest with the most solid kind of humanitarian program.

We have heard much discussion in the Senate during the past few days about some of the inadequacies of our foreign aid operations. There are inadequacies. There are some parts of the program that should be corrected.

But one aspect of our oversea aid program that should bring pride to every Member of Congress, and to every American, is our oversea school lunch program. We are now feeding about 40 million schoolchildren every day through our food for peace program. The results of that program have been most inspiring, not only in terms of the remarkable improvement in health on the part of the youngsters who receive the food, but also in terms of improved school attendance and improved academic performance.

Some years ago, Prime Minister Nehru, of India, stated that one cannot talk of God to a starving person. By the same reasoning, an effective job cannot be done of educating boys and girls who are hungry, who are too weak and lethargic to sit through classroom instruction. Amazing results have been achieved by [illegible] countries.

One of the limitations of the program has been the lack of high protein food. Under existing authority, we have not had the power to purchase beef and other meat products or the high protein foods that are desperately needed. There is no single lack in the world today that undermines human health more than the lack of protein foods.

There is an extremely critical shortage of such foods all across Africa, Asia, large parts of Latin America, and the Middle East. In fact, some authorities say that almost no child on the entire Continent of Africa escapes the ravages of protein deficiency. There is a terrible disease known as kwashiorkor, which is another name for protein deficiency. It is this tragic lack of protein in the diets of the youngsters of Africa and in most of the other underdeveloped parts of the world that causes the skinny arms and legs, the distended bellies, and the gaunt faces of the children we see when we visit underdeveloped countries.

The only way to correct that condition is by providing additional protein foods, as would be authorized by this amendment.

We should also consider the amendment I have offered from the standpoint of our own interests.

The amendment will be of great value to American producers. We all know that American livestock producers have been in serious economic trouble for more than a year. This amendment offers an opportunity to take off the market some of the surplus beef that is produced in this country. The amendment provides that the beef to be used must be domestically produced and used for the relief of boys and girls overseas through school lunch and similar programs.

Our dairy producers and some of the other producers who would be assisted by the amendment have also had problems of surpluses, which this could help relieve.

At the present time, I am advised that our stocks of nonfat dried milk are quite low. We had only 123 million pounds uncommitted July 24 compared to 472 million pounds at the same time last year. The voluntary agencies, which have asked for 850 million pounds this year, have been assured only 400 million. It would be tragic if this commodity, which is the backbone of some of our school aid projects abroad, should be suddenly cut off or drastically cut back and we should abandon millions of children to want and hunger again.

I do not know of any program in our entire farm aid operation that deserves our support more than does the effort to contribute to the improvement of the health and well-being of schoolchildren in the developing countries.

During the past week, the country has marked the 90th birthday of former President Herbert Hoover. Mr. Hoover is known around the world, not so much because he was President of the United States, important and significant as that honor was, but because he brought America's agricultural abundance to [illegible] ns of world hunger. It is no accident that former President Hoover has devoted a good part of his recent years to the writing of a four-volume work on our oversea food programs. It is a high tribute to President Hoover that he handled that program with the broad vision and deep sense of humanity that he manifested, both in the years during and after World War I and again after World War II, when he was asked by President Truman to direct or advise on the feeding of the hungry people in the war-torn countries of Europe and in Japan.

One of the most remarkable of our post World War II efforts was the school lunch program directed by Gen. Douglas MacArthur in Japan, a program which is paying great dividends to the people of Japan and the people of the United States. The health and well-being of a whole generation of Japanese young people were greatly strengthened by the oversea school lunch programs that were directed by General MacArthur in the postwar period. It is one of the great achievements in the life of that renowned general. Today, thanks in part to that program, Japan is the biggest commercial, hard-money purchaser of American agricultural commodities in the world.

Mr. President, this is a hardheaded program. The schoolchildren we help today with the school lunch program, who learn to enjoy and benefit by American milk, American meat, and American agricultural products, will be our customers tomorrow. This program is definitely in the interest of American agricultural producers. It is in the interest of people who are trying to assist overseas. In the best sense of the word, it is food for peace in action.

I am much pleased that the distinguished senior Senator from Missouri [Mr. SYMINGTON], who is a member of the Committee on Foreign Relations, and who has traveled widely and observed these programs in various parts of the world, has joined me as a cosponsor of the amendment.

I hope the Senate will adopt the amendment.

Mr. SYMINGTON. Mr. President, it is a privilege to be a joint sponsor of the amendment with the distinguished Senator from South Dakota [Mr. McGOVERN]. Not only will the amendment help the people whom we intend it to help under the foreign aid program, it will also help the American farmer.

The fact that we reduced the foreign aid bill last evening by several hundred million is the only reason why we did not include a considerably larger figure for this worthy cause. Nevertheless, I am gratified to know, as I know my able friend from South Dakota is, as a result of the actions of the administration in recent days and weeks, that beef prices, which had been falling in a serious, if not critical fashion, have improved.

It is this type of program that I believe will make it possible for the cattlemen and those engaged in the poultry, dairy products, ricegrowing, and other high-protein food industries, to have a

support program that will be, at the same time, not only in the best interest of the people of the United States, but also of the countries to which the Executive and Congress have decided to send this aid.

It is a privilege to be associated with the distinguished Senator from South Dakota, who, without question, is one of the strongest proponents of American rural life.

I urge the Senate to accept the amendment.

Mr. McGOVERN. Mr. President, I wish to comment on the point the Senator from Missouri made about the relationship of this amendment to our domestic livestock program. The Senator from Missouri has been working on this problem diligently.

Is it not true that this year, according to Department of Agriculture estimates, feed products rose 10 percent above last year, when we were really in serious difficulty?

Mr. SYMINGTON. That is true. What apprehension we had from the standpoint of prices later in the year was over the number of cows which would be slaughtered. In a program of this character, a minimum increase in the price of beef should be important in maintaining the price today, which is the minimum price from the standpoint of the capacity of the beef farmer to make any money out of his operations.

Mr. McGOVERN. I thank the Senator.

Mr. President, I am advised that the production of all beef this year, exclusive of farm slaughter and veal, was 13 percent above last year during the first 6 months. The first 6 months figures were 7.8 billion pounds in 1963, and 8.8 billion pounds in 1964.

The Department of Agriculture anticipates that the year's production will run at least 10 percent over the 16.1 billion total last year, or between 17.5 and 17.8 billion pounds.

Fed steer prices have gone up substantially in Chicago this week for marketings, for the first time this year, dropped below a year ago. This will not continue in view of the overall supply outlook.

We have more than enough beef.

We can absorb about 3 percent increase a year without unreasonable depression of prices. I am sure that beef producers would welcome the export of a substantial quantity of the present oversupply.

Mr. MUSKIE. Mr. President, will the Senator from South Dakota yield?

Mr. McGOVERN. I yield.

Mr. MUSKIE. I listened with interest to the Senator's presentation of his amendment. I note that he specifies domestic beef, poultry and other meats, and dairy products and other high protein foods. The language, "other high protein foods," suggests that the amendment would be broad enough to include fish. The Senator from Alaska [Mr. BARTLETT] of course is interested in this subject also, and I wonder whether my interpretation of that language is correct, in the opinion of the Senator from South Dakota?

Mr. McGOVERN. Let me say to the Senator from Maine [Mr. MUSKIE], and also to the Senator from Alaska [Mr. BARTLETT] who has taken a great interest in this problem over a long period of time, that there is no question in my mind that "other high protein foods" would include fish and fish products.

It is one of the best possible sources of protein. We have conducted a number of experiments in certain countries with the use of fish and fish products as an additive to the diets of children and adults suffering from protein deficiency, and it proved to be extremely valuable food. It would certainly be covered by the term "other high protein foods."

Mr. MUSKIE. I thank the Senator for his explanation.

Mr. BARTLETT. Mr. President, will the Senator from South Dakota yield?

Mr. McGOVERN. I yield.

Mr. BARTLETT. I am very glad that the Senator from Maine asked that question, and I am particularly glad to get the answer from the Senator from South Dakota.

We all know that fish are almost literally bursting with protein. There is no better food protein than that which can be obtained from fish and fish products. I am glad to support the Senator's amendment. I am all the more happy to do so because the Senator has defined fish, in his opinion, as being one of the foods that would be included.

The junior Senator from California [Mr. SALINGER] is also interested in this subject, although at the moment Maine sardines and Alaska salmon are the fish products in surplus. I know that all too frequently California fish are likewise in surplus.

I thank the Senator from South Dakota for yielding to me.

Mr. SPARKMAN. Mr. President, will the Senator from South Dakota yield?

Mr. McGOVERN. I am happy to yield to the Senator from Alabama.

Mr. SPARKMAN. I have not talked with the chairman of the committee, the Senator from Arkansas [Mr. FULBRIGHT], concerning the Senator's amendment, but it is my understanding that he told the Senator from South Dakota that he would be willing to take the amendment to conference.

Mr. McGOVERN. The Senator is correct. He assured me that he would accept the amendment.

Mr. SPARKMAN. That is the word I had heard—that the Senator from Arkansas [Mr. FULBRIGHT], chairman of the committee, would take the amendment to conference. I am prepared to carry out the promise which he made.

The PRESIDING OFFICER (Mr. BREWSTER in the chair). The question is on agreeing to the amendment of the Senator from South Dakota [Mr. McGOVERN].

The amendment was agreed to.

Mr. BARTLETT. Mr. President, I submit an amendment which is at the desk, and ask that it be stated.

The PRESIDING OFFICER. The amendment of the Senator from Alaska will be stated.

The LEGISLATIVE CLERK. On page 17, after line 7, it is proposed to insert the following:

SEC. 403. Section 106 of the Agricultural Trade Development and Assistance Act of 1954, as amended, is amended by adding at the end thereof a new sentence as follows: "When the Secretary of the Interior has determined that a domestically produced fishery product is a surplus agricultural commodity, as defined by this section, the Presi- shall initiate the necessary actions for the sale of such products in accordance with the provisions of this Act."

Mr. BARTLETT. Mr. President, the senior Senator from Washington and the junior Senator from Maine and I submit this amendment because we feel it is absolutely essential to do so. It appears, unfortunately, that the adoption of such an amendment is necessary if a provision we adopted last year is to be implemented. Last year the Senate added fish to the food for peace program. Section 403(c) of the Foreign Assistance Act of 1963 added the following language to title I of Public Law 480:

For the purposes of this title and title IV, the term "surplus agricultural commodity" shall include any domestically produced fishery product (not including fish flour until approved by the Food and Drug Administration) if the Secretary of Interior determines that such product is at the time of exportation in excess of domestic requirements, adequate carryover, and anticipated exports for dollars.

That amendment had the active support of many Senators. Some of them, naturally, represented the chief fishing States in the country—others not. It was supported by the Senator from South Dakota [Mr. McGOVERN]. His interest was particularly aroused because of his former position as Director of the food for peace program. He knew what fish could mean to the program. He wished whenever possible and wherever possible to export fish products in order to supply protein to the nations of the world so urgently in need of it.

The present Director of the food-for-peace program, the Honorable Richard W. Reuter was and is enthusiastic about the proposal. All the great fish products with their high protein content should be made available on a wider scale to the emerging nations which participate in the food for peace program.

The amendment became law 8 months ago. At that time, there were in surplus some 200,000 cases of sardines packed in Maine. There was in surplus approximately 1,500,000 cases of pink salmon, most of which were packed in Alaska. Those surpluses were and are causing the warehouses to bulge, depressing the domestic market and discouraging our fisherman and fishing industry.

According to the terms of last years amendment, it is the duty of the Secretary of the Interior to declare which of our domestic fishery products are in surplus. We know that salmon and sardines are particularly in surplus. We do not know and we cannot determine why no declaration of a surplus has been made. On January 16 I wrote the Secretary of the Interior, asking him to declare pink salmon in surplus. On January 30 I received a reply in which the Secretary stated that there were strong indications that the salmon were in surplus and that he would develop the

necessary commodity recommendations as soon as possible. Three months later nothing had happened. I again wrote the Department and was again assured that a full report could be expected shortly. That was April 24. Nothing more has been heard. I consider this total failure of Secretary Udall a shocking miscarriage of the will of Congress.

Mr. MUSKIE. Mr. President, will the Senator from Alaska yield?

Mr. BARTLETT. I am happy to yield to the Senator from Maine.

Mr. MUSKIE. We have had discussions with representatives of the Department of the Interior and the Budget Bureau, and Mr. Gordon himself. The fact is, on this question there has been no denial of the facts which the Senator from Alaska has just stated, as I recall, and no one disputes there there is a surplus in these canned fishery products.

Mr. BARTLETT. The Senator is absolutely correct. I am glad that the Senator from Maine brought that up.

The senior Senator from Washington, the junior Senator from Maine, and I met with the Director of the Bureau of the Budget and one of his assistants for over 2 hours off the the Senate floor 2 months ago. It was an amazing meeting at which the Director made it quite clear that he personally was of the opinion then that adding fish to the food for peace program would most likely hurt the fishing industry, not help it. Mr. Gordon was willing to substitute his judgment for that of the Bureau of Commercial Fisheries, Food for Peace Administration, the fishing industry, Congress, and the President. As I said, I was amazed.

So far as we could determine, the Bureau thought that this was not a good program. So they did not propose to do anything about it. Whether that is so or not, it is surely a fact that nothing has been done.

Mr. MUSKIE. Will the Senator yield further?

Mr. BARTLETT. I yield.

Mr. MUSKIE. We have discussed briefly one of the criteria that were set out in the legislation last year. That is that there be a production in excess of domestic requirements. Two other criteria were laid down. One was that there be an adequate inventory carryover for the needs of the industry and the domestic market. The other was that we anticipated the possibility of developing exports for dollars.

We have met most of these tests on at least a prima facie basis, and I think on a stronger basis than that. Our facts in that connection have not been disputed by the Bureau of the Budget. And for all practical purposes, so far as we know, the Bureau of the Budget does not dispute that we have met the three criteria laid down under the act. Is that correct?

Mr. BARTLETT. That is absolutely correct. And long ago, at a point in time not too distant from the enactment of the bill last year, all of us concerned started to work—or so we thought—with the Bureau of the Budget and with the Department of the Interior. We worked under the assumption, which we thought we were entitled to entertain, that soon the program would be in effect.

I believe the Senator from Maine [Mr. MUSKIE] has a letter in his file, which he now holds in his hand, dated back in February, from an official of the Department of the Interior. The letter paints a rosy picture in regard to implementation of the program, and paints a gloomy picture in respect to the surplus that exists.

We thought that very shortly after that the Secretary of the Interior would declare these stocks to be surplus, as he is charged with doing under the law. We thought Secretary Udall would recommend to the Director of the Bureau of the Budget, and any other agencies that had to be informed, that the program should be made effective.

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

Mr. BARTLETT. I am particularly glad to yield to the Senator from Alabama. Above all things, I think it is important that the understanding of the committee in regard to the program be made known. I have a feeling that the committee accepted this amendment last year with a notion, idea, hope, and belief that it would be operative.

Mr. SPARKMAN. Mr. President, I supported this amendment in the committee.

Mr. BARTLETT. I know that.

Mr. SPARKMAN. I supported the amendment on the floor of the Senate. I supported it in the conference; and it became law.

I say in the beginning that I hope the Senator will not insist on the present amendment. I believe we can take care of it in another way, by making the record crystal clear that the intent of Congress is that this program be implemented. And that is the trouble. The law is on the books. It just has not been put into effect. We did intend that it be put into effect. And we intend now that it be put into effect.

Let me say furthermore that I support what was said with reference to the amendment of the Senator from South Dakota [Mr. MCGOVERN] that we believe that under the wording of the amendment, fish and fish products would be included. It specifically states: "other protein products."

I am not an expert on these matters. But I believe that fish and fish products are recognized as possessing about as high a protein content as any category of food that we have. I am perfectly willing to say to the Senator that it was our intent to write this provision into the law and that it be activated. That is our intent now. I feel confident that had this matter been called to our attention, we would have made a strong recommendation in the committee report with reference to it.

I state here, as a matter of record on the floor of the Senate that we intended that it be activated. And we still do intend that.

Mr. BARTLETT. I am encouraged by what the Senator from Alabama had to say.

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

Mr. BARTLETT. I yield.

Mr. MAGNUSON. I associate myself with what the Senator from Maine [Mr. MUSKIE], the Senator from South Dakota [Mr. MCGOVERN], and the Senator from Alaska [Mr. BARTLETT] have said. Surely all of us thought we did do something about this program when we enacted it into law. I, too, am alarmed by the lack of attention given to this fine program by the Bureau of the Budget and the Department of the Interior.

I hope that the Senator from Alabama [Mr. SPARKMAN] uses his very great influence in this matter. He has great influence with those engaged in this program. I hope that other Senators use their influence also. If not, the Senator from Washington will have to suggest that when the foreign aid appropriation bill comes along, we designate x number of dollars for that purpose. It would be so much better if they were to do it and abide by the law, than if we were forced to do such a thing.

Mr. SPARKMAN. Mr. President, I agree with the Senator from Washington that the better system, the better way, the orderly way would be to activate the program, as was very clearly the intent of Congress. I feel confident that that will be done.

I give assurance to all Senators that I shall be glad to do whatever I can to see that the program is activated. I cannot speak for the chairman. If I recall correctly, he was an active supporter of the program last year.

Mr. MAGNUSON. He is very active. I know he is very concerned and will be with us all the way.

Mr. SPARKMAN. He was active on the committee, on the floor of the Senate, and in the conference.

Mr. BARTLETT. That is correct. I talked with the chairman this afternoon. He did not have an opportunity to study the specific wording of the amendment, so he did not promise to support it. He did say that he was and is in favor of the program.

Mr. SPARKMAN. This is correct. I feel certain he will lend his support toward getting the proper officials to go ahead and do what they ought to do under the law now on the statute books.

Mr. BARTLETT. Then we shall have two powerful right arms helping us—the right arm of the Senator from Alabama and the right arm of the Senator from Arkansas.

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

Mr. BARTLETT. I yield.

Mr. MUSKIE. I appreciate the reassurance of the Senator from Alabama. It is a restatement of what I know to have been his intent a year ago when this language was incorporated in the bill.

Constantly when we are considering amendments of this nature to a bill on the floor of the Senate, we are asked by administrators of agencies to use flexible language. And yet when we do use the flexible language, the language is used to flout the will of Congress. Here we have language that is flexible. But the intent is clear. It has been clear ever since the bill was enacted into law last year. An agency uses the flexible lan-

guage not to implement the right of Congress, but to thwart it.

Mr. BARTLETT. The agency tries to overcome the will of Congress.

Mr. MUSKIE. That is correct.

Mr. SPARKMAN. Mr. President, I believe we have made our intent even more clear today. I doubt that there is a single Senator who is opposed to it.

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

Mr. BARTLETT. I am happy to yield to the Senator from South Dakota whose support meant so much to us from the inception of what we thought was going to be a worthwhile program. It will be such if we ever get it going.

Mr. McGOVERN. Mr. President, as the Senator knows, I supported this program and have supported it since its inception. I wholeheartedly agree with the Senator from Washington [Mr. MAGNUSON], the Senator from Alabama [Mr. SPARKMAN], the Senator from Maine [Mr. MUSKIE], and the Senator from Alaska [Mr. BARTLETT]. I believe this is an important matter.

There are not very many people in the world who are actually starving to death any more. But we have hundreds of millions of people who have very badly balanced diets and are suffering from malnutrition of one kind or another. The basic cause of that malnutrition is the lack of proper foods.

In most countries, people can find sufficient volume of food to eat, but they do not have the correct mixture. Adding even a modest amount of fish or fish products to a diet can perform almost miraculous results in terms of human health. On humanitarian grounds alone, aside from what the proposal might mean to our own domestic economy, we ought to implement it as quickly and as effectively as we can.

Mr. BARTLETT. I thank the Senator. In view of what has transpired here today, I hope that the Secretary of the Interior within the next week—it should not take until sundown tomorrow, in fact—will declare these stocks of fish in surplus, as he should have done long ago under the law, and that soon thereafter the program will be put into effect.

In the light of what the Senator from Alabama [Mr. SPARKMAN] has said—and I realize that the Public Law 480 is a discretionary program, but I did not realize it would prove to be quite as discretionary as it has—and because of the fine support that he has given, I withdraw the amendment.

AMENDMENT NO. 1215

Mr. DIRKSEN. Mr. President, on behalf of the distinguished majority leader and myself I offer an amendment to the pending bill. I presume the foreign assistance bill is the pending business before the Senate. Am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. DIRKSEN. I offer the amendment to the pending bill. I do not intend to discuss the subject very long tonight. Copies of the amendment have been given to all Senators and the press and, so far as I know, to all Members of the House. The subject has been pending for quite a long time, and it has become something of a volcanic issue in the country.

I believe that interest in the so-called reapportionment question began with the case of Baker against Carr in 1962. That case emanated from the State of Tennessee, and in the course of the Supreme Court's decision there were finally filed at least 60 suits in 37 States. In some cases there was reapportionment, and in other cases there was not.

But overshadowing all of that came another line of decisions by the Supreme Court, the principal one of which is the case of Reynolds against Sims, which came out of Alabama. Jointly with that case, the Court undertook to consider a case from the southern district of New York on appeal, a case from Maryland on appeal, a case from Virginia on appeal, a case from Delaware on appeal, and a case from Colorado on appeal. But the decision in the case of Reynolds against Sims covers the entire question.

First, I ask unanimous consent to have printed at this point in my remarks the dissenting opinion of Associate Justice John Marshall Harlan.

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

DISSENTING OPINION OF ASSOCIATE JUSTICE JOHN MARSHALL HARLAN IN THE CASE OF REYNOLDS *v.* SIMS

(June 15, 1964)

Mr. JUSTICE HARLAN, dissenting:

In these cases the Court holds that seats in the legislatures of six States[1] are apportioned in ways that violate the Federal Constitution. Under the Court's ruling it is bound to follow that the legislatures in all but a few of the other 44 States will meet the same fate.[2] These decisions, with *Wesberry* v. *Sanders*, 376 U.S. 1, involving congressional districting by the States, and *Gray* v. *Sanders*, 372 U.S. 368, relating to elections for statewide office, have the effect of placing basic aspects of state political systems under the pervasive overlordship of the Federal judiciary. Once again,[3] I must register my protest.

PRELIMINARY STATEMENT

Today's holding is that the equal protection clause of the 14th amendment requires every State to structure its legislature so that all the members of each house represent substantially the same number of people; other factors may be given play only to the extent that they do not significantly encroach on this basic "population" principle. Whatever may be thought of this holding as a piece of political ideology—and even on that score the political history and practices of this country from its earliest beginnings leave wide room for debate (see the dissenting opinion of Frankfurter, J., in *Baker* v. *Carr*, 369 U.S. 186, 266, 301–323)—I think it demonstrable that the 14th amendment does not impose this political tenet on the States or authorize this Court to do so.

The Court's constitutional discussion, found in its opinion in the Alabama cases (Nos. 23, 27, 41, ante p. —) and more particularly at pages 26–33 thereof, is remarkable (as, indeed, is that found in the separate opinions of my Brothers Stewart and Clark, ante, pp. —, —) for its failure to address itself at all to the 14th amendment as a whole or to the legislative history of the amendment pertinent to the matter at hand. Stripped of aphorisms, the Court's argument boils down to the assertion that petitioners' right to vote has been invidiously "debased" or "diluted" by systems of apportionment which entitle them to vote for fewer legislators than other voters, an assertion which is tied to the equal protection clause only by the constitutionally frail tautology that "equal" means "equal."

Had the Court paused to probe more deeply into the matter, it would have found that the equal protection clause was never intended to inhibit the States in choosing any democratic method they pleased for the apportionment of their legislatures. This is shown by the language of the 14th amendment taken as a whole, by the understanding of those who proposed and ratified it, and by the political practices of the States at the time the amendment was adopted. It is confirmed by numerous State and congressional actions since the adoption of the 14th amendment, and by the common understanding of the amendment as evidenced by subsequent constitutional amendments and decisions of this Court before *Baker* v. *Carr*, *supra*, made an abrupt break with the past in 1962.

The failure of the Court to consider any of these maters cannot be excused or explained by any concept of "developing" constitutionalism. It is meaningless to speak of constitutional "development" when both the language and history of the controlling provisions of the Constitution are wholly ignored. Since it can, I think, be shown beyond doubt that State legislative apportionments, as such, are wholly free of constitutional limitations, save such as may be imposed by the republican form of government clause (Const., art. IV, sec. 4),[4] the Court's actions now bringing them within the purview of the 14th amendment amounts to nothing less than an exercise of the amending power by this Court.

So far as the Federal Constitution is concerned, the complaints in these cases should all have been dismissed below for failure to state a cause of action, because what has been alleged or proved shows no violation of any constitutional right.

Before proceeding to my argument it should be observed that nothing done in *Baker* v. *Carr*, *supra*, or in the two cases that followed in its wake, *Gray* v. *Sanders* and *Wesberry* v. *Sanders*, *supra*, from which the Court quotes at some length, forecloses the conclusion which I reach.

Baker decided only that claims such as those made here are within the competence of the Federal courts to adjudicate. Although the Court stated as its conclusion

[1] Alabama, Colorado, Delaware, Maryland, New York, Virginia.

[2] In the Virginia case, *Davis* v. *Mann*, post, p. —, the defendants introduced an exhibit prepared by the staff of the Bureau of Public Administration of the University of Virginia in which the Virginia Legislature, now held to be unconstitutionally apportioned, was ranked eighth among the 50 States in "representatives," with population taken as the basis of representation. The Court notes that before the end of 1962, litigation attacking the apportionment of State legislatures had been instituted in at least 34 States. Ante, p. 21, note 30. See infra, p. 24.

[3] See *Baker* v. *Carr*, 369 U.S. 186, 330, and the dissenting opinion of Frankfurter, J., in which I joined, id., at 266; *Gray* v. *Sanders*, 372 U.S. 368, 382; *Wesberry* v. *Sanders*, 376 U.S. 1, 20.

[4] That clause, which manifestly has no bearing on the claims made in these cases, see V. Elliot's "Debates on the Adoption of the Federal Constitution" (1845), 332–333, could not in any event be the foundation for judicial relief. *Luther* v. *Borden*, 7 How. 1, 42–44; *Ohio ex rel. Bryant* v. *Akron Metropolitan Park District*, 281 U.S. 74, 79–80; *Highland Farms Dairy, Inc.*, v. *Agnew*, 300 U.S. 608, 612. In *Baker* v. *Carr*, *supra*, at 277, the Court stated that reliance on the Republican Form of Government Clause "would be futile."

that the allegations of a denial of equal protection presented "a justiciable constitutional cause of action," 369 U.S., at 237, it is evident from the Court's opinion that it was concerned all but exclusively with justiciability and gave no serious attention to the question whether the equal protection clause touches State legislative apportionments.[5] Neither the opinion of the Court nor any of the concurring opinions considered the relevant text of the 14th amendment or any of the historical materials bearing on that question. None of the materials was briefed or otherwise brought to the Court's attention.[6]

In the Gray case the Court expressly laid aside the applicability to state legislative apportionments of the "one person one vote" theory there found to require the striking down of the Georgia county unit system. See 372 U.S. at 376, and the concurring opinion of Stewart, J., joined by Clark, J., id., at 381–382.

In Wesberry, involving congressional districting, the decision rested on article I, section 2, of the Constitution. The Court expressly did not reach the arguments put forward concerning the equal protection clause. See 376 U.S. at 8, note 10.

Thus it seems abundantly clear that the Court is entirely free to deal with the cases presently before it in light of materials now called to its attention for the first time. To these I now turn.

I

A. The language of the 14th amendment

The Court relies exclusively on that portion of section 1 of the 14th amendment which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws," and disregards entirely the significance of section 2, which reads:

"Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

The amendment is a single text. It was introduced and discussed as such in the Reconstruction Committee,[7] which reported it to the Congress. It was discussed as a unit in Congress and proposed as a unit to the States,[8] which ratified it as a unit. A proposal to split up the amendment and submit each section to the States as a separate amendment was rejected by the Senate.[9] Whatever one might take to be the application to these cases of the equal protection clause if it stood alone, I am unable to understand the Court's utter disregard of the second section which expressly recognizes the States' power to deny "or in any way" abridge the right of their inhabitants to vote for "the members of the [State] legislature," and its express provision of a remedy for such denial or abridgement. The comprehensive scope of the second section and its particular reference to the State legislatures precludes the suggestion that the first section was intended to have the result reached by the Court today. If indeed the words of the 14th amendment speak for themselves, as the majority's disregard of history seems to imply, they speak as clearly as may be against the construction which the majority puts on them. But we are not limited to the language of the amendment itself.

B. Proposal and ratification of the amendment

The history of the adoption of the 14th amendment provides conclusive evidence that neither those who proposed nor those who ratified the amendment believed that the equal protection clause limited the power of the States to apportion their legislatures as they saw fit. Moreover, the history demonstrates that the intention to leave this power undisturbed was deliberate and was widely believed to be essential to the adoption of the amendment.

(1) Proposal of the amendment in Congress—A resolution proposing what became the 14th amendment was reported to both Houses of Congress by the Reconstruction Committee of Fifteen on April 30, 1866.[10] The first two sections of the proposed amendment read:

"SEC. 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.

"SEC. 2. Representatives shall be apportioned among the several States which may be included within this Union, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever, in any State, the elective franchise shall be denied to any portion of its male citizens not less than twenty-one years of age, or in any way abridged except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens not less than twenty-one years of age." [11]

In the House, Thaddeus Stevens introduced debate on the resolution on May 8. In his opening remarks, Stevens explained why he supported the resolution although it fell "far short" of his wishes:

"I believe it is all that can be obtained in the present state of public opinion. Not only Congress but the several States are to be consulted. Upon a careful survey of the whole ground, we did not believe that 19 of the loyal States could be induced to ratify any proposition more stringent than this." [12]

In explanation of this belief, he asked the House to remember "that 3 months since, and more, the committee reported and the House adopted a proposed amendment fixing the basis of representation in such way as would surely have secured the enfranchisement of every citizen at no distant period," but that proposal had been rejected by the Senate." [13]

He then explained the impact of the first section of the proposed amendment, particularly the equal protection clause.

"This amendment allows Congress to correct the unjust legislation of the States, so far that the law which operates upon one man shall operate equally upon all. Whatever law punishes a white man for a crime shall punish the black man precisely in the same way and to the same degree. Whatever law protects the white man shall afford 'equal' protection to the black man. Whatever means of redress is afforded to one shall be afforded to all. Whatever law allows the white man to testify in court shall allow the man of color to do the same. These are great advantages over their present codes. Now different degrees of punishment are inflicted, not on account of the magnitude of the crime, but according to the color of the skin. Now color disqualifies a man from testifying in courts, or being tried in the same way as white men. I need not enumerate these partial and oppressive laws. Unless the Constitution should restrain them those States will all, I fear, keep up this discrimination and crush to death the hated freedmen." [14]

He turned next to the second section, which he said he considered "the most important in the article." [15] Its effect, he said, was to fix "the basis of representation in Congress." [16] In unmistakable terms, he recognized the power of a State to withhold the right to vote:

"If any State shall exclude any of her adult male citizens from the elective franchise, or abridge that right, she shall forfeit her right to representation in the same proportion. The effect of this provision will be either to compel the States to grant universal suffrage or so to shear them to their power as to keep them forever in a hopeless minority in the National Government, both legislative and executive." [17]

Closing his discussion of the second section, he noted his dislike for the fact that it allowed "the States to discriminate [with respect to the right to vote] among the same class, and receive proportionate credit in representation." [18]

Toward the end of the debate 3 days later, Mr. Bingham, the author of the first section in the Reconstruction Committee and its leading proponent,[19] concluded his discussion of it with the following:

"Allow me, Mr. Speaker, in passing, to say that this amendment takes from no State any right that ever pertained to it. No State ever had the right, under the forms of law or otherwise, to deny to any freeman the

---

[5] It is fair to say that, beyond discussion of a large number of cases having no relevance to this question, the Court's views on this subject were fully stated in the compass of a single sentence: "Judicial standards under the equal protection clause are well developed and familiar, and it has been open to courts since the enactment of the 14th amendment to determine, if on the particular facts they must, that a discrimination reflects no policy, but simply arbitrary and capricious action." 369 U.S. at 226.

Except perhaps for the "crazy quilt" doctrine of my Brother Clark, 369 U.S., at 251, nothing is added to this by any of the concurring opinions, id., at 241, 265.

[6] The cryptic remands in *Scholle* v. *Hare*, 369 U.S. 429, and *WMCA, Inc.*, v. *Simon*, 370 U.S. 190, on the authority of Baker, had nothing to say on the question now before the Court.

[7] See the Journal of the Committee, reprinted in Kendrick, The Journal of the Joint Committe of Fifteen on Reconstruction (1914), 83–117.

[8] See the debates in Congress, Cong. Globe, 39th Cong., 1st sess., 2459–3149, passim (1866) (hereafter Globe).

[9] Globe 3040.

[10] Globe 2265, 2286.

[11] As reported in the House. Globe 2286. For prior versions of the amendment in the Reconstruction Committee, see Kendrick, op. cit., supra, note 7, 83–117. The work of the Reconstruction Committee is discussed in Kendrick, supra, and Flack, the adoption of the 14th amendment (1908), 55–139, passim.

[12] Globe 2459.

[13] Ibid. Stevens was referring to a proposed amendment to the Constitution which provided that "whenever the elective franchise shall be denied or abridged in any State on account of race or color, all persons therein of such race or color shall be excluded from the basis of representation." Globe 535. It passed the House, id., at 538, but did not muster the necessary two-thirds vote in the Senate, id., at 1289.

[14] Globe 2459.

[15] Ibid.

[16] Ibid.

[17] Ibid.

[18] Globe 2460.

[19] Kendrick, op. cit., supra, note 7, 87, 106; Flack, op. cit., supra, note 11, 60–68, 71.

equal protection of the laws or to abridge the privileges or immunities of any citizen of the Republic, although many of them have assumed and exercised the power, and that without remedy. The amendment does not give, as the second section shows, the power to Congress of regulating suffrage in the several States." [20]

He immediately continued:

"The second section excludes the conclusion that by the first section suffrage is subjected to congressional law; save, indeed, with this exception, that as the right in the people of each State to a republican government and to choose their Representatives in Congress is of the guarantees of the Constitution, by this amendment a remedy might be given directly for a case supposed by Madison, where treason might change a State government from a republican to a despotic government, and thereby deny suffrage to the people." [21]

He stated at another point in his remarks:

"To be sure we all agree, and the great body of the people of this country agree, and the committee thus far in reporting measures of reconstruction agree, that the exercise of the elective franchise, though it be one of the privileges of a citizen of the Republic is exclusively under the control of the States.[22]

In the 3 days of debate which separate the opening and closing remarks, both made by members of the Reconstruction Committee, every speaker on the resolution, with a single doubtful exception,[23] assumed without question that, as Mr. Bingham said, supra, "the second section excludes the conclusion that by the first section suffrage is subjected to congressional law." The assumption was neither inadvertent nor silent. Much of the debate concerned the change in the basis of representation effected by the second section, and the speakers stated repeatedly, in express terms or by unmistakable implication, that the States retained the power to regulate suffrage within their borders. Attached as appendix A heretofore are some of those statements. The resolution was adopted by the House without change on May 10.[24]

Debate in the Senate began on May 23, and followed the same pattern. Speaking for the Senate Chairman of the Reconstruction Committee, who was ill, Senator Howard, also a member of the Committee, explained the meaning of the equal protection clause as follows:

"The last two clauses of the first section of the amendment disable a State from depriving not merely a citizen of the United States, but any person, whoever he may be, of life, liberty, or property without due process of law, or from denying to him the equal protection of the laws of the State. This abolishes all class legislation in the States and does away with the injustice of subjecting one caste of persons to a code not applicable to another. It prohibits the hanging of a black man for a crime for which the white man is not to be hanged. It protects the black man in his fundamental rights as a citizen with the same shield which it throws over the white man. Is it not time, Mr. President, that we extend to the black man, I had almost called it the poor privilege of the equal protection of the law?

"But, sir, the first section of the proposed amendment does not give to either of these classes the right of voting. The right of suffrage is not, in law, one of the privileges or immunities thus secured by the Constitution. It is merely the creature of law. It has always been regarded in this country as the result of positive local law, not regarded as one of those fundamental rights lying at the basis of all society and without which a people cannot exist except as slaves, subject to a depotism [sic]." [25]

Discussing the second section, he expressed his regret that it did "not recognize the authority of the United States over the question of suffrage in the several States at all." [26] He justified the limited purpose of the amendment in this regard as follows:

"But, sir, it is not the question here what will we do; it is not the question what you, or I, or half a dozen other Members of the Senate may prefer in respect to colored suffrage; it is not entirely the question what measure we can pass through the two Houses; but the question really is, what will the legislatures of the various States to whom these amendments are to be submitted do in the premises; what is it likely will meet the general approbation of the people who are to elect the legislatures, three-fourths of whom must ratify our propositions before they have the force of constitutional provisions?

* * * * *

"The committee were of opinion that the States are not yet prepared to sanction so fundamental a change as would be the concession of the right of suffrage to the colored race. We may as well state it plainly and fairly, so that there shall be no misunderstanding on the subject. It was our opinion that three-fourths of the States of this Union could not be induced to vote to grant the right of suffrage, even in any degree or under any restriction, to the colored race.

"The second section leaves the right to regulate the elective franchise still with the States and does not meddle with that right." [27]

There was not in the Senate, as there had been in the House, a closing speech in explanation of the amendment. But because the Senate considered, and finally adopted, several changes in the first and second sections, even more attention was given to the problem of voting rights there than had been given in the House. In the Senate, it was fully understood by everyone that neither the first nor the second section interfered with the right of the States to regulate the elective franchise. Attached as appendix B hereto are representative statements from the debates to that effect. After having changed the proposed amendment to the form in which it was adopted, the Senate passed the resolution on June 8, 1866.[28] As changed, it passed in the House on June 13.[29]

(ii) Ratification by the "loyal" States: Reports of the debates in the State legislatures on the ratification of the 14th amendment are not generally available.[30] There is, however, compelling indirect evidence. Of the 23 loyal States which ratified the amendment before 1870, 5 had constitutional provisions for apportionment of at least one house of their respective legislatures which wholly disregarded the spread of population.[31] Ten more had constitutional provisions which gave primary emphasis to population, but which applied also other principles, such as partial ratios and recognition of political subdivisions, which were intended to favor sparsely settled areas.[32] Can it be seriously contended that the legislatures of these States, almost two-thirds of those concerned, would have ratified an amendment which might render their own States' constitutions unconstitutional.

Nor were these State constitutional provisions merely theoretical. In New Jersey, for example, Cape May County, with a population of 8,349, and Ocean County, with a population of 13,628, each eletced 1 State senator, as did Essex and Hudson Counties, with populations of 143,839 and 129,067, respectively.[33] In the house, each county was entitled to 1 representative, which left 39 seats to be apportioned according to population.[34] Since there were 12 counties besides the 2 already mentioned where had populations over 30,000.[35] It is evident that there were serious disproportions in the house also. In New York, each of the 60 counties except Hamilton County was entitled to one of the 128 seats in the assembly.[36] This left 69 seats to be distributed among counties the populations of which ranged from 15,420 to 942,292.[37] With 7

---

[20] Globe 2542.

[21] Ibid. It is evident from the context of the reference to a republican government that Bingham did not regard limitations on the right to vote or the denial of the vote to specified categories of individuals as violating the guarantee of a republican form of government.

[22] Ibid.

[23] Representative Rogers, who voted against the resolution, Globe 2545, suggested that the right to vote might be covered by the privileges and immunities clause. Globe 2538. But immediately thereafter he discussed the possibility that the Southern States might "refuse to allow the Negroes to vote." Ibid.

[24] Globe 2766.

[25] Ibid.

[26] Ibid.

[27] Ibid.

[28] Globe 3042.

[29] Globe 3149.

[30] Such evidence as there is, mostly committee reports and messages to the legislatures from Governors of the States, is to the same effect as the evidence from the debates in the Congress. See Ark. House J. 288 (1866–1867); Fla. Sen. J. 8–10 (1866); Ind. House J. 47–48, 50–51 (1867); Mass. Legis. Doc., House Doc. No. 149, 4–14, 16–17, 23, 24, 25–26 (1867); Mo. Sen. J. 14 (1867); N.J. Sen. J. 7 (Extra Sess. 1866); N.C. Sen. J. 96–97, 98–99 (1866–1867); Tenn. House J. 12–15 (1865-1866); Tenn. Sen. J. 8 (Extra Sess. 1866); Va. House J. & Doc., Doc. No. 1, 35 (1866–1867); Wis. Sen. J. 33, 101–103 (1867). Contra, S.C. House J. 34 (1866); Tex. Sen. J. 422 (1866 App.).

For an account of the proceedings in the State legislatures and citations to the proceedings, see Fairman, "Does the Fourteenth Amendment Incorporate the Bill of Rights?" 2 Stan. L. Rev. 5, 81–126 (1949).

[31] Conn. const., 1818 art. third, sec. 3 (towns); N.H. const., 1792, part second, sec. XXVI (direct taxes paid); N.J. const., 1844, art. IV, sec. II, cl. 1 (counties); R.I. const., 1842, art. VI, sec. 1 (towns and cities); Vt. const., 1793, c. II, sec. 7 (towns).

In none of these States was the other House apportioned strictly according to population. Conn. const., 1818, amend. II; N.H. const., 1792, pt. second, sec. IX–XI; N.J. const., 1844, art. IV, sec. III, cl. 1; R.I. const., 1842, art. V, sec. 1; Vt. const., 1793, amend 23.

[32] Iowa const., 1857, art. III, sec. 35; Kans. const., 1859, art. 2, sec. 2, art. 10, sec. 1; Me. const., 1819, art. IV–pt. first, sec. 3; Mich. const., 1850, art. IV, sec. 3; Mo. const. 1865; art. IV, sec. 2; N.Y. const. 1846, art. III, sec. 5; Ohio const., 1851, art. XI, secs. 2–5; Pa. const., 1838, art. I, secs. 4, 6, 7, as amended; Tenn. const., 1834, art. II, sec. 5; W. Va. const., 1861–1863, art. IV, sec. 9.

[33] Ninth Census of the United States, Statistics of Population (1872) (hereafter census), 49. The population figures, here and hereafter, are for the year 1870, which presumably best reflect the figures for the years 1866–70. Only the figures for 1860 were available at that time, of course, and they would have been used by anyone interested in population statistics. See, e.g., Globe 3028 (remarks of Senator Johnson).

The method of apportionment is contained in N.J. const., 1844, art. IV, sec. II, cl. 1.

[34] N.J. const., 1844, art. IV, sec. III, cl. 1. census 49.

[35] Ibid.

[36] N.Y. const., 1846, art. III, secs. 2, 5. census 50–51.

[37] Ibid.

more counties having populations over 100,000 and 13 others having populations over 50,000,[38] the disproportion in the assembly was necessarily large. In Vermont, after each county had been allocated 1 senator, there were 16 seats remaining to be distributed among the larger counties.[39] The smallest county had a population of 4,082; the largest had a population of 40,651 and there were 10 other counties with populations over 20,000.[40]

(iii) Ratification by the "reconstructed" States: Each of the 10 "reconstructed" States was required to ratify the 14th amendment before it was readmitted to the Union.[41] The constitution of each was scrutinized in Congress.[42] Debates over readmission were extensive.[43] In at least one instance, the problem of State legislative apportionment was expressly called to the attention of Congress. Objecting to the inclusion of Florida in the act of June 25, 1868, Mr. Farnsworth stated on the floor of the House:

"I might refer to the apportionment of representatives. By this constitution representatives in the legislature of Florida are apportioned in such a manner as to give to the sparsely populated portion of the State the control of the legislature. The sparsely populated parts of the State are those where the are very few Negroes, the parts inhabited by the white rebels, the men who, coming in from Georgia, Alabama, and other States, control the fortunes of their several counties. By this constitution every county in that State is entitled to a representative. There are in that State counties that have not 30 registered voters; yet, under this constitution, every one of those counties is entitled to a representative in the legislature; while the populous counties are entitled to only one representative each, with an additional representative for every thousand inhabitants." [44]

The response of Mr. Butler is particularly illuminating:

"All these arguments, all these statements, all the provisions of this constitution have been submitted to the Judiciary Committee of the Senate, and they have found the constitution republican and proper. This constitution has been submitted to the Senate, and they have found it republican and proper. It has been submitted to your own Committee on Reconstruction, and they have found it republican and proper, and have reported it to this House." [45]

The constitutions of 6 of the 10 States contained provisions departing substantially from the method of apportionment now held to be required by the amendment.[46] And, as in the North, the departures were as real in fact as in theory. In North Carolina, 90 of the 120 representatives were apportioned among the counties without regard to population, leaving 30 seats to be distributed by numbers.[47] Since there were 7 counties with populations under 5,000 and 26 counties with populations over 15,000, the disproportions must have been widespread and substantial.[48] In South Carolina, Charleston, with a population of 88,863, elected 2 senators; each of the other counties, with populations ranging from 10,269 to 42,486 elected 1 senator.[49] In Florida, each of the 39 counties was entitled to elect 1 representative; no county was entitled to more than 4.[50] These principles applied to Dade County with a population of 85 and to Alachua County and Leon County, with populations of 17,328 and 15,236, respectively.[51]

It is incredible that Congress would have exacted ratification of the 14th amendment as the price of readmission, would have studied the State constitutions for compliance with the amendment, and would then have disregarded violations of it.

The facts recited above show beyond any possible doubt:

(1) That Congress, with full awareness of and attention to the possibility that the States would not afford full equality in voting rights to all their citizens, nevertheless deliberately chose not to interfere with the States' plenary power in this regard when it proposed the 14th amendment.

(2) That Congress did not include in the 14th amendment restrictions on the States' power to control voting rights because it believed that if such restrictions were included, the amendment would not be adopted.

(3) That at least a substantial majority, if not all, of the States which ratified the 14th amendment did not consider that in so doing, they were accepting limitations on their freedom, never before questioned, to regulate voting rights as they chose.

Even if one were to accept the majority's belief that it is proper entirely to disregard the unmistakable implications of the second section of the amendment in construing the first section, one is confounded by its disregard of all this history. There is here none of the difficulty which may attend the application of basic principles to situations not contemplated or understood when the principles were framed. The problems which concern the Court now were problems when the amendment was adopted. By the deliberate choice of those responsible for the amendment, it left those problems untouched.

C. After 1868

The years following 1868, far from indicating a developing awareness of the applicability of the 14th amendment to problems of apportionment, demonstrate precisely the reverse: that the States retained and exercised the power independently to apportion their legislatures. In its constitutions of 1875 and 1901, Alabama carried forward earlier provisions guaranteeing each county at least one representative and fixing an upper limit to the number of seats in the House.[52]

Florida's constitution of 1885 continued the guarantee of one representative for each county and reduced the maximum number of representatives per county from four to three.[53] Georgia, in 1877, continued to favor the smaller counties.[54] Louisiana, in 1879, guaranteed each parish at least one representative in the house.[55] In 1890, Mississippi guaranteed each county one representative, established a maximum number of representatives, and provided that specified groups of counties should each have approximately one-third of the seats in the house, whatever the spread of population.[56] Missouri's constitution of 1875 gave each county one representative and otherwise favored less populous areas.[57] Montana's original constitution of 1889 apportioned the State senate by counties.[58] In 1877, New Hampshire amended its constitution's provisions for apportionment, but continued to favor sparsely settled areas in the house and to apportion seats in the senate according to direct taxes paid; [59] the same was true of New Hampshire's constitution of 1902.[60]

In 1894, New York adopted a constitution the peculiar apportionment provisions of which were obviously intended to prevent representation according to population: no county was allowed to have more than one-third of all the senators, no two counties which were adjoining or "separated only by public waters" could have more than one-half of all the senators, and whenever any county became entitled to more than three senators, the total number of the senators was increased, thus preserving to the small counties their original number of seats.[61] In addition, each county except Hamilton was guaranteed a seat in the assembly.[62] The North Carolina constitution of 1876

---

[38] Ibid.

[39] There were 14 counties, census 67, each of which was entitled to at least one out of a total of 30 seats. Vt. const., 1793, amend. 23.

[40] Census 67.

[41] Act of Mar. 2, 1867, sec. 5, 14 Stat. 429. See also act of June 25, 1868, 15 Stat. 73, declaring that the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida, would be admitted to representation in Congress when their legislatures had ratified the 14th amendment. Other conditions were also imposed, including a requirement that Georgia nullify certain provisions of its constitution. Ibid. Arkansas, which had already ratified the 14th amendment, was readmitted by act of June 22, 1868, 15 Stat. 72. Virginia was readmitted by act of Jan. 26, 1870, 16 Stat. 62; Mississippi by act of Feb. 23, 1870, 16 Stat. 67; and Texas by act of May 30, 1870, 16 Stat. 80. Georgia was not finally readmitted until later, by act of July 15, 1870, 16 Stat. 363.

[42] Discussing the bill which eventuated in the act of June 25, 1868, see note 41, supra, Thaddeus Stevens said:

"Now, sir, what is the particular question we are considering? Five or six States have had submitted to them the question of forming constitutions for their own government. They have voluntarily formed such constitutions, under the direction of the Government of the United States. * * * They have sent us their constitutions. Those constitutions have been printed and laid before us. We have looked at them; we have pronounced them republican in form; and all we propose to require is that they shall remain so forever. Subject to this requirement, we are willing to admit them into the Union." Cong. Globe, 40th Cong., 2d sess., 2465 (1868). See also the remarks of Mr. Butler, infra, pp. 19–20.

The close attention given the various constitutions is attested by the act of June 25, 1868, which conditioned Georgia's readmission on the deletion of "the first and third subdivisions of section seventeen of the fifth article of the constitution of said State, except the proviso to the first subdivision. * * *" 15 Stat. 73. The sections involved are printed in Sen. Ex. Doc. No. 57, 40th Cong. 2d sess., 14–15.

Compare *United States* v. *Florida*, 363 U.S. 121, 124–127.

[43] See, e.g., Cong. Globe, 40th Cong., 2d sess., 2412–2413, 2858–2860, 2861–2871, 2895–2900, 2901–2904, 2927–2935, 2963–2970, 2998–3022, 3023–3029 (1868).

[44] Cong. Globe, 40th Cong., 2d sess., 3090–3091 (1868).

[45] Id., at 3092.

[46] Ala. const., 1867, art. VIII, sec. 1; Fla. const., 1868, art. XIV; Ga. const., 1868, art. III, sec. 3, par. 1; La. const., 1868, tit. II, art. 20; N.C. const., 1868, art. II, sec. 6; S.C. const., 1868, art. II, secs. 6, 8.

[47] N.C. const., 1868, art. II, sec. 6. There were 90 counties. Census 52–53.

[48] Ibid.

[49] S.C. const., 1868, art. II, sec. 8; Census 60.

[50] Fla. const., 1868, art. XIV.

[51] Census 18–19.

[52] Ala. const., 1875, art. IX, secs. 2, 3; Ala. const., 1901, art. IX, secs. 198, 199.

[53] Fla. const., 1885, art. VII, sec. 3.

[54] Ga. const., 1877, art. III, sec. III.

[55] La. const., 1879, art. 16.

[56] Miss. const., 1890, art. 13, sec. 265.

[57] Mo. const., 1875, art. 4, sec. 2.

[58] Mont. const., 1889, art. V, sec. 4, art. VI, sec. 4.

[59] N.H. const., 1792, part second, secs. 9–11, 26, as amended.

[60] N.H. const., 1902, part second, arts. 9, 10, 25.

[61] N.Y. const., 1894, art. III, sec. 4.

[62] N.Y. const., 1894, art. III, sec. 5.

gave each county at least one representative and fixed a maximum number of representatives for the whole house.[63] Oklahoma's constitution at the time of its admission to the Union (1907) favored small counties by the use of partial ratios and a maximum number of seats in the House; in addition, no county was permitted to "take part" in the election of more than seven representatives.[64] Pennsylvania, in 1873, continued to guarantee each county one representative in the house.[65] The same was true of South Carolina's constitution of 1895, which provided also that each county should elect one and only one senator.[66] Utah's original constitution of 1895 assured each county of one representative of the house.[67] Wyoming, when it entered the Union in 1889, guaranteed each county at least one senator and one representative.[68]

D. Today

Since the Court now invalidates the legislative apportionments in six States, and has so far upheld the apportionment in none, it is scarcely necessary to comment on the situation in the States today, which is, of course, as fully contrary to the Court's decision as is the record of every prior period in this Nation's history. As of 1961, the constitutions of all but 11 States, roughly 20 percent of the total, recognized bases of apportionment other than geographic spread of population, and to some extent favored sparsely populated areas by a variety of devices, ranging from straight area representation or guaranteed minimum area representation to complicated schemes of the kind exemplified by the provisions of New York's constitution of 1894, still in effect until struck down by the Court today in No. 20, post, page ——.[69] Since Tennessee, which was the subject of *Baker* v. *Carr*, and Virginia, scrutinized and disapproved today in No. 69, post, page —, are among the 11 States whose own constitutions are sound from the standpoint of the Federal Constitution, as construed today, it is evident that the actual practice of the States is even more uniformly than their theory opposed to the Court's view of what is constitutionally permissable.

E. Other factors

In this summary of what the majority ignores, note should be taken of the 15th and 19th amendments. The former prohibited the States from denying or abridging the right to vote "on account of race, color, or previous condition of servitude." The latter, certified as part of the Constitution in 1920, added sex to the prohibited classifications. In *Minor* v. *Happersett*, 21 Wall. 162, this court considered the claim that the right of women to vote was protected by the privileges and immunities clause of the 14th amendment. The court's discussion there of the significance of the 15th amendment is fully applicable here with respect to the 19th amendment as well.

"And still again, after the adoption of the 14th amendment, it was deemed necessary to adopt a 15th, as follows: 'The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.' The 14th amendment had already provided that no State should make or enforce any law which should abridge the privileges or immunities of citizens of the United States. If suffrage was one of these privileges or immunities, why amend the Constitution to prevent its being denied on account of race, et cetera? Nothing is more evident than that the greater must include the less, and if all were already protected why go through with the form of amending the Constitution to protect a part?" Idem, at 175.

In the present case, we can go still further. If constitutional amendment was the only means by which all men and, later, women, could be guaranteed the right to vote at all, even for Federal officers, how can it be that the far less obvious right to a particular kind of apportionment of State legislatures—a right to which is opposed a far more plausible conflicting interest of the State than the interest which opposes the general right to vote—can be conferred by judicial construction of the 14th amendment?[70] Yet, unless one takes the highly implausible view that the 14th amendment controls methods of apportionment but leaves the right to vote itself unprotected, the conclusion is inescapable that the court has, for purposes of these cases, relegated the 15th and 19th amendments to the same limbo of constitutional anachronisms to which the second section of the 14th amendment has been assigned.

Mention should be made finally of the decisions of this court which are disregarded or, more accurately, silently overruled today. *Minor* v. *Happersett*, *supra*, in which the court held that the 14th amendment did not confer the right to vote on anyone, has already been noted. Other cases are more directly in point. In *Colegrove* v. *Barrett*, 330 U.S. 804, this court dismissed "for want of a substantial Federal question" an appeal from the dismissal of a complaint alleging that the Illinois legislative apportionment resulted in "gross inequality in voting power" and "gross and arbitrary and atrocious discrimination in voting" which denied the plaintiffs equal protection of the laws.[71] In *Remmey* v. *Smith*, 102 F. Supp. 708 (D.C.E.D. Pa.), a three-judge district court dismissed a complaint alleging that the apportionment of the Pennsylvania Legislature deprived the plaintiffs of "constitutional rights guaranteed to them by the 14th amendment." Id., at 709. The district court stated that it was aware that the plaintiffs' allegations were "notoriously true" and that "the practical disenfranchisement of qualified electors in certain of the election districts in Philadelphia County is a matter of common knowledge." Id., at 710. This court dismissed the appeal "for the want of a substantial Federal question." 342 U.S. 916.

In *Kidd* v. *McCanless*, 292 S. W. 2d 40, the Supreme Court of Tennessee dismissed an action for a declaratory judgment that the Tennessee Apportionment Act of 1901 was unconstitutional. The complaint alleged that "a minority of approximately 37 percent of the voting population of the State now elects and controls 20 of the 33 members of the senate; that a minority of 40 percent of the voting population of the State now controls 63 of the 99 members of the house of representatives." Id., at 42. Without dissent, this Court granted the motion to dismiss the appeal. 352 U.S. 920. In *Radford* v. *Gary*, 145 F. Supp. 541 (D. C. W. D. Okla.), a three-judge district court was convened to consider "the complaint of the plaintiff to the effect that the existing apportionment statutes of the State of Oklahoma violate the plain mandate of the Oklahoma constitution and operate to deprive him of the equal protection of the laws guaranteed by the 14th amendment to the Constitution of the United States." Id., at 542. The plaintiff alleged that he was a resident and voter in the most populous county of the State, which had about 15 percent of the total population of the State but only about 2 percent of the seats in the State senate and less than 4 percent of the seats in the house. The complaint recited the unwillingness or inability of the branches of the State government to provide relief and alleged that there was no State remedy available. The district court granted a motion to dismiss. This court affirmed without dissent. 352 U.S. 991.

Each of these recent cases is distinguished on some ground or other in *Baker* v. *Carr*. See 369 U.S., at 235–236. Their summary dispositions prevent consideration whether these after-the-fact distinctions are real or imaginary. The facts remains, however, that between 1947 and 1957, four cases raising issues precisely the same as those decided today were presented to the court. Three were dismissed because the issues presented were thought insubstantial and in the fourth the lower court's dismissal was affirmed.[72]

I have tried to make the catalog complete, yet to keep it within the manageable limits of a judicial opinion. In my judgment, today's decisions are refuted by the language of the amendment which they con-

[63] N.C. const., 1876, art. II, sec. 5.
[64] Okla. const., 1907, art. V, sec. 10.
[65] Pa. const., 1873, art. II, sec. 17.
[66] S.C. const., 1895, art. III, secs. 4, 6.
[67] Utah const., 1895, art. IX, sec. 4.
[68] Wyo. const., 1889, art. III, sec. 3.
[69] A tabular presentation of constitutional provisions for apportionment as of Nov. 1, 1961, appears in XIV Book of the States (1962–63) 58–62. Using this table, but disregarding some deviations from a pure population base, the Advisory Commission on Intergovernmental Relations states that there are 15 States in which the legislatures are apportioned solely according to population. Apportionment of State Legislatures (1962), 12.

[70] Compare the Court's statement in *Guinn* v. *United States*, 238 U.S. 347, 362:

"Beyond doubt the [15th] amendment does not take away from the State governments in a general sense the power over suffrage which has belonged to those governments from the beginning and without the possession of which power the whole fabric upon which the division of State and national authority under the Constitution and the organization of both governments rest would be without support and both the authority of the Nation and the State would fall to the ground. In fact, the very command of the amendment recognizes the possession of the general power by the State, since the amendment seeks to regulate its exercise as to the particular subject with which it deals."

[71] The quoted phrases are taken from the Jurisdictional Statement, pp. 13, 19.

[72] In two early cases dealing with party primaries in Texas, the Court indicated that the equal protection clause did afford some protection of the right to vote. *Nixon* v. *Herndon*, 273 U.S. 536; *Nixon* v. *Condon*, 286 U.S. 73. Before and after these cases, two cases dealing with the qualifications for electors in Oklahoma had gone off on the 15th amendment, *Guinn* v. *United States*, 238 U.S. 347; *Lane* v. *Wilson*, 307 U.S. 268. The rationale of the Texas cases is almost certainly to be explained by the Court's reluctance to decide that party primaries were a part of the electoral process for purposes of the 15th amendment. See *Newberry* v. *United States*, 256 U.S. 232. Once that question was laid to rest in *United States* v. *Classic*, 313 U.S. 299, the Court decided subsequent cases involving Texas party primaries on the basis of the 15th amendment. *Smith* v. *Allwright*, 321 U.S. 649; *Terry* v. *Adams*, 345 U.S. 461.

The recent decision in *Gomillion* v. *Lightfoot*, 364 U.S. 339, that a constitutional claim was stated by allegations that municipal lines had been redrawn with the intention of depriving Negroes of the right to vote in municipal elections was based on the 15th amendment. Only one Justice, in a concurring opinion, relied on the equal protection clause of the 14th amendment. Id., at 349.

strue and by the inference fairly to be drawn from subsequently enacted amendments. They are unequivocally refuted by history and by consistent theory and practice from the time of the adoption of the 14th amendment until today.

II

The court's elaboration of its new "constitutional" doctrine indicates how far—and how unwisely—it has strayed from the appropriate bounds of its authority. The consequence of today's decision is that in all but the handful of States which may already satisfy the new requirements the local district court or, it may be, the State courts, are given blanket authority and the constitutional duty to supervise apportionment of the State legislatures. It is difficult to imagine a more intolerable and inappropriate interference by the judiciary with the independent legislatures of the States.

In the Alabama cases (Nos. 23, 27, 41), the district court held invalid not only existing provisions of the State constitution—which this court lightly dismisses with a wave of the supremacy clause and the remark that "it makes no difference whether a State's apportionment scheme is embodied in its constitution or in statutory provisions," ante, page 49—but also a proposed amendments to the Alabama constitution which had never been submitted to the voters of Alabama for ratification, and standby legislation which was not to become effective unless the amendment was rejected (or declared unconstitutional) and in no event before 1966. *Sims* v. *Frink,* 208 F. Supp. 431. See ante, pages 8–16. Both of these measures had been adopted only 9 days before,[73] at an extraordinary session of the Alabama Legislature, convened pursuant to what was very nearly a directive of the district court, see *Sims* v. *Frink,* 205 F. Supp. 245, 248. The district court formulated its own plan for the apportionment of the Alabama Legislature, by picking and choosing among the provisions of the legislative measures. 208 F. Supp., at 441–442. See ante, page 17. Beyond that, the court warned the legislature that there would be still further judicial reapportionment unless the legislature, like it or not, undertook the task for itself. 208 F. Supp., at 442. This court now states that the district court acted in "a most proper and commendable manner," ante, page 51, and approves the district court's avowed intention of taking "some further action" unless the State legislature acts by 1966, ante, page 52.

In the Maryland case (No. 29, post, p —), the State legislature was called into special session and enacted a temporary reapportionment of the House of Delegates, under pressure from the State Courts.[74] Therefore, the Maryland Court of Appeals held that the Maryland Senate was constitutionally apportioned. *Maryland Committee for Fair Representation* v. *Tawes,* 229 Md. 406. This court now holds that neither branch of the State legislature meets constitutional requirements. Post, page 17. The court presumes that since "the Maryland constitutional provisions relating to legislative apportionment [are] hereby held unconstitutional, the Maryland Legislature * * * has the inherent power to enact at least temporary reapportionment legislation pending adoption of State constitutional provisions" which satisfy the Federal Constitution, idem, at 18. On this premise, the court concludes that the Maryland courts need not "feel obliged to take further affirmative action" now, but that "under no circumstances should the 1966 election of members of the Maryland Legislature be permitted to be conducted pursuant to the existing or any other unconstitutional plan." Idem, at 19.

In the Virginia case (No. 69, post, p. —), the State legislature in 1962 complied with the State constitutional requirement of regular reapportionment.[75] Two days later a complaint was filed in the district court.[76] Eight months later, the legislative reapportionment was declared unconstitutional. *Mann* v. *Davis,* 213 F. Supp. 577. The district court gave the State legislature two months within which to reapportion itself in special session, under penalty of being reapportioned by the court.[77] Only a stay granted by a member of this court slowed the process; [78] it is plain that no stay will be forthcoming in the future. The Virginia Legislature is to be given "an adequate opportunity to enact a valid plan"; but if it fails to "to act promptly in remedying the constitutional defects in the State's legislative apportionment plan," the district court is to "take further action." Post, page 14.

In Delaware (No. 307, post, p. —), the district court entered an order on July 25, 1962, which stayed proceedings until August 7, 1962, "in the hope and expectation" that the general assembly would take "some appropriate action" in the intervening 13 days. *Sincock* v. *Terry,* 207 F. Supp. 205, 207. By way of prodding, presumably, the court noted that if no legislative action were taken and the court sustained the plantiffs' claim, "the present general assembly and any subsequent general assembly, the members of which were elected pursuant to section 2 of article II (the challenged provisions of the Delaware constitution), might be held not to be a de jure legislature and its legislative acts might be held invalid and unconstitutional." Id., at 205–206. Five days later, on July 30, 1962, the general assembly approved a proposed amendment to the State constitution. On August 7, 1962, the district court entered an order denying the defendants' motion to dismiss. The court said that it did not wish to substitute its judgment "for the collective wisdom of the General Assembly of Delaware," but that "in the light of all the circumstances," it had to proceed promptly (210 F. Supp. 395, 396). On October 16, 1962, the court declined to enjoin the conduct of elections in November (210 F. Supp. 396). The court went on to express its regret that the general assembly had not adopted the court's suggestion (see 207 F. Supp. at 206–207), that the Delaware constitution be amended to make apportionment a statutory, rather than a constitutional matter, so as to facilitate further changes in apportionment which might be required (210 F. Supp. 401). In January 1963, the general assembly again approved the proposed amendment of the apportionment provisions of the Delaware constitution, which thereby became effective on January 17, 1963.[79] Three months later, on April 17, 1963, the district court reached "the reluctant conclusion" that article II, section 2 of the Delaware constitution, was unconstitutional, with or without the 1963 amendment. *Sincock* v. *Duffy,* 215 F. Supp. 169, 189. Observing that "the State of Delaware, the general assembly, and this court all seem to be trapped in a kind of box of time" (id. at 191), the court gave the general assembly until October 1, 1963, to adopt acceptable provisions for apportionment. On May 20, 1963, the district court enjoined the defendants from conducting any elections, including the general election scheduled for November 1964, pursuant to the old or the new constitutional provisions.[80] This court now approves all these proceedings, noting particularly that in allowing the 1962 elections to go forward, "the district court acted in a wise and temperate manner." Post, p 14.[81]

Records such as these in the cases decided today are sure to be duplicated in most of the other States if they have not already. They present a jarring picture of courts threatening to take action in an area which they have no business entering, inevitably on the basis of political judgments which they are incompetent to make. They show legislatures of the States meeting in haste and deliberating and deciding in haste to avoid the threat of judicial interference. So far as I can tell, the Court's only response to this unseemly state of affairs is ponderous insistence that "a denial of constitutionally protected rights demands judicial

---

[73] The measures were adopted on July 12, 1962. The District court handed down its opinion on July 21, 1962.

[74] In reversing an initial order of the circuit court for Anne Arundel County dismissing the plaintiffs' complaint, the Maryland Court of Appeals directed the lower court to hear evidence on and determine the plaintiffs' constitutional claims, and if it found provisions of the Maryland constitution to be invalid, to "declare that the legislature has the power, if called into special session by the Governor and such action be deemed appropriate by it, to enact a bill reapportioning its membership for purposes of the November 1962, election." *Maryland Committee for Fair Representation* v. *Tawes,* 228 Md. 412, 438–439. On remand, the opinion of the circuit court included such a declaration. The opinion was filed on May 24, 1962. The Maryland Legislature, in special session, adopted the "emergency" measures now declared unconstitutional 7 days later, on May 31, 1962.

[75] The Virginia constitution, art. IV, sec. 43, requires that a reapportionment be made every 10 years.

[76] The 1962 reapportionment acts were approved on Apr. 7, 1962. The complaint was filed on Apr. 9, 1962.

[77] The district court handed down its opinion on Nov. 28, 1962, and gave the Virginia General Assembly until Jan. 31, 1963, "to enact appropriate reapportionment laws." 213 F. Supp., at 585–586. The court stated that failing such action or an appeal to this Court, the plaintiffs might apply to it "for such further orders as may be required." Id., at 586.

[78] On Dec. 15, 1962, the Chief Justice granted a stay pending final disposition of the case in this Court.

[79] The Delaware constitution, art. XVI, sec. 1, requires that amendments be approved by the necessary two-thirds vote in two successive general assemblies.

[80] The district court thus nailed the lid on the "box of time" in which everyone seemed to it "to be trapped." The lid was temporarily opened a crack on June 27, 1963, when Mr. Justice Brennan granted a stay of the injunction until disposition of the case by this Court. Since the Court states that "the delay inherent in following the State constitutional prescription for approval of constitutional amendments by two successive general assemblies cannot be allowed to result in an impermissible deprivation of appellees' right to an adequate voice in the election of legislators to represent them," post, pp. 15–16, the lid has presumably been slammed shut again.

[81] In New York and Colorado, this pattern of conduct has thus far been avoided. In the *New York* case (No. 20, past, p. —), the district court twice dismissed the complaint once without reaching the merits, *WMCA, Inc.,* v. *Simon,* 202 F. Supp. 741, and once after this Court's remand following *Baker* v. *Carr, supra,* 370 U.S. 190, on the merits, 208 F. Supp. 368. In the *Colorado* case (No. 508, post, p. —), the district court first declined to interfere with a forthcoming election at which reapportionment measures were to be submitted to the voters, *Lisco* v. *McNichols,* 208 F. Supp. 471, and, after the election, upheld the apportionment provisions which had been adopted, 219 F. Supp. 922.

In view of the action which this Court now takes in both of these cases, there is little doubt that the legislatures of these two States will now be subjected to the same kind of pressures from the Federal judiciary as have the other States.

rotection" (ante, p. 31). By thus refusing o recognize the bearing which a potential or conflict of this kind may have on the uestion whether the claimed rights are in act constitutionally entitled to judicial pro- ection, the Court assumes, rather than sup- orts, its conclusion.

It should by now be obvious that these cases do not mark the end of reapportionment problems in the courts. Predictions once made that the courts would never have to face the problem of actually working out an apportionment have proved false. This Court, however, continues to avoid the consequences of its decisions, simply assuring us that the lower courts "can and * * * will work out more concrete and specific standards" (ante, p. 43). Deeming it "expedient" not to spell out "precise constitutional tests," the Court contends itself with stating "only a few rather general considerations." Ibid.

Generalities cannot obscure the cold truth that cases of this type are not amenable to the development of judicial standards. No set of standards can guide a court which has to decide how many legislative districts a State shall have, or what the shape of the districts shall be, or where to draw a particular district line. No judicially manageable standard can determine whether a State should have single-member districts or multimember districts or some combination of both. No such standard can control the balance between keeping up with population shifts and having stable districts. In all these respects, the courts will be called upon to make particular decisions with respect to which a principle of equally populated districts will be of no assistance whatsoever. Quite obviously, there are limitless possibilities for districting consistent with such a principle. Nor can these problems be avoided by judicial reliance on legislative judgments so far as possible. Reshaping or combining one or two districts, or modyfying just a few district lines, is no less a matter of choosing among many possible solutions, with varying political consquences, than reapportionment broadside.[82]

The court ignores all this, saying only that what is marginally permissible in one State may be unsatisfactory in another, depending on the particular circumstances of the case," ante, p. 43. It is well to remember that the product of today's decisions will not be readjustment of a few districts in a few States which most glaringly depart from the principle of equally populated districts. It will be a redetermination, extensive in many cases, of legislative districts in all but a few States.

Although the court—necessarily, as I believe—provides only generalities in elaboration of its main thesis, its opinion nevertheless fully demonstrates how far removed these problems are from fields of judicial competence. Recognizing that "indiscriminate districting" is an invitation to "partisan gerrymandering," ante, pp. 43–44, the court nevertheless excludes virtually every basis for the formation of electoral districts other than "indiscriminate districting." In one or another of today's opinions, the court declares unconstitutional for a State to give effective consideration to any of the following in establishing legislative districts:

1. History; [83]
2. "Economic or other sorts of group interests"; [84]
3. Area; [85]
4. Geographical considerations; [86]
5. A desire "to insure effective representation for sparsely settled areas"; [87]
6. "Availability of access of citizens to their representatives"; [88]
7. Theories of bicameralism (except those approved by the court); [89]
8. Occupation; [90]
9. "An attempt to balance urban and rural power." [91]
10. The preference of a majority of voters in the State.[92]

So far as presently appears, the only factor which a State may consider, apart from numbers, is political subdivisions. But even "a clearly rational State policy" recognizing this factor is unconstitutional if "population is submerged as the controlling consideration." [93]

I know of no principle of logic or practical or theoretical politics, still less any constitutional principle, which establishes all or any of these exclusions. Certainly it is that the court's opinion does not establish them. So far as the court says anything at all on this score, it says only that "legislators represent people, not trees or acres," ante, page 27; that "citizens, not history or economic interests, cast votes," ante, page 45; that "people, not land or trees or pastures, vote," ibid.[94] All this may be conceded. But it is surely equally obvious, and, in the context of elections, more meaningful to note that people are not ciphers and that legislators can represent their electors only by speaking for their interests—economic, social, political—many of which do reflect the place where the electors live. The court does not establish, or indeed even attempt to make a case for the proposition that conflicting interests within a State can only be adjusted by disregarding them when voters are grouped for purposes of representation.

CONCLUSION

With these cases the court aproaches the end of the third round set in motion by the complaint filed in *Baker v. Carr*. What is done today deepens my conviction that judicial entry into this realm is profoundly ill-advised and constitutionally impermissible. As I have said before, *Wesberry* v. *Sanders*, supra, at 48, 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; in time a complacent body politic may result.

These decisions also cut deeply into the fabric of our federalism. What must follow from them may eventually appear to be the product of State legislatures. Nevertheless, no thinking person can fail to recognize that the aftermath of these cases, however desirable it may be thought in itself, will have been achieved at the cost of a radical alteration in the relationship between the States and the Federal Government, more particularly the Federal judiciary. Only one who has an overbearing impatience with the Federal system and its political processes will believe that the cost was too high or was inevitable.

Finally, these decisions give support to a current mistaken view of the Constitution and the constitutional function of this court. This view, in a nutshell, is that every major social ill in this country can find its cure in some constitutional "principle," and that this court should "take the lead" in promoting reform when other branches of government fail to act. The Constitution is not a panacea for every blot upon the public welfare, nor should this court, ordained as a judicial body, be thought of as a general haven for reform movements. The Constitution is an instrument of government, fundamental to which is the premise that in a diffusion of governmental authority lies the greatest promise that this Nation will realize liberty for all its citizens. This court, limited in functions in accordance with that premise, does not serve its high purpose when it exceeds its authority, even to satisfy justified impatience with the slow workings of the political process. For when in the name of constitutional interpretation, the court adds something to the Constitution that was deliberately excluded from it, the court in reality substitutes its view of what should be so for the amending process.

I dissent in each of these cases, believing that in none of them have the plaintiffs stated a cause of action. To the extent that *Baker* v. *Carr*, expressly or by implication, went beyond a discussion of jurisdictional doctrines independent of the substantive issues involved here, it should be limited to what it in fact was: an experiment in venturesome constitutionalism. I would reverse the judgments of the District Court in Nos. 23, 27, and 41 (Alabama), No. 69 (Virginia, and No. 307 (Delaware) and remand with directions to dismiss the complaints. I would affirm the judgments of the District Court in No. 20 (New York), and No. 508 (Colorado), and of the Court of Appeals of Maryland in No. 29.

APPENDIX A

Statements made in the House of Representatives during the debate on the resolution proposing the 14th amendment.[1]

"As the nearest approach to justice which we are likely to be able to make, I approve of the second section that bases representation upon voters." (2463, Mr. Garfield.)

"Would it not be a most unprecedented thing that when this [former slave] population are not permitted where they reside to enter into the basis of representation in their own State, we should receive it as an element of representation here; that when they will not count them in apportioning their own legislative districts, we are to count them as five-fifths (no longer as three-fifths, for that is out of the question) as soon as you make a new apportionment?" (2464–2465, Mr. Thayer).

"The second section of the amendment is ostensibly intended to remedy a supposed inequality in the basis of representation. The real object is to reduce the number of southern representatives in Congress and in the electoral college; and also to operate as a standing inducement to Negro suffrage." (2467, Mr. Boyer.)

"Shall the pardoned rebels of the South include in the basis of representation 4 million people to whom they deny political rights, and to no one of whom is allowed a vote in the selection of a Representative?" (2468, Mr. Kelley.)

"I shall, Mr. Speaker, vote for this amendment; not because I approve it. Could I have controlled the report of the committee of 15, it would have proposed to give the right of suffrage to every loyal man in the country." (2469, Mr. Kelley.)

---

[82] It is not mere fancy to suppose that in order to avoid problems of this sort, the Court may one day be tempted to hold that all State legislators must be elected in statewide elections.

[83] Ante, p. 44.

[84] Ante, pp. 44–45.

[85] Ante, p. 45.

[86] Ibid.

[87] Ibid.

[88] Ibid.

[89] Ante, pp. 41–42.

[90] *Davis* v. *Mann*, post, p. 12.

[91] Id., at 13.

[92] *Lucas* v. *Forty-Fourth General Assembly*, post, p. 22.

[93] Ante, p. 46.

[94] The Court does note that, in view of modern developments in transportation and communication, if finds "unconvincing" arguments based on a desire to insure representation of sparsely settled areas or to avoid districts so large that voters' access to their representatives is impaired. Ante, p. 45.

[1] All page references are to Congressional Globe, 39th Cong., 1st sess. (1866).

"But I will ask, why should not the representation of the States be limited as the States themselves limit suffrage? If the Negroes of the South are not to be counted as a political element in the government of the South in the States, why should they be counted as a political element in the Government of the country in the Union. (2498, Mr. Broomall.)

"It is now proposed to base representation upon suffrage, upon the number of voters, instead of upon the aggregate population in every State of the Union." (2502, Mr. Raymond.)

"We admit equality of representation based upon the exercise of the elective franchise by the people. The proposition in the matter of suffrage falls short of what I desire, but so far as it goes it tends to the equalization of the inequality at present existing; and while I demand and shall continue to demand the franchise for all loyal male citizens of this country—and I cannot but admit the possibility that ultimately those 11 States may be restored to representative power without the right of franchise being conferred upon the colored people—I should feel myself doubly humiliated and disgraced, and criminal even, if I hesitated to do what I can for a proposition which equalizes representation." (2508, Mr. Boutwell.)

"Now, conceding to each State the right to regulate the right of suffrage, they ought not to have a representation for male citizens not less than 21 years of age, whether white or black, who are deprived of the exercise of suffrage. This amendment will settle the complication in regard to suffrage and representation, leaving each State to regulate that for itself, so that it will be for it to decide whether or not it shall have a representation for all its male citizens not less than 21 years of age." (2510, Mr. Miller.)

"Manifestly no State should have its basis of national representation enlarged by reason of a portion of citizens within its borders to which the elective franchise is denied. If political power shall be lost because of such denial, not imposed because of participation in rebellion or other crime, it is to be hoped that political interests may work in the line of justice, and that the end will be the impartial enfranchisement of all citizens not disqualified by crime. Whether that end shall be attained or not, this will be secured: that the measure of political power of any State shall be determined by that portion of its citizens which can speak and act at the polls, and shall not be enlarged because of the residence within the State of portions of its citizens denied the right of franchise. So much for the second section of the amendment. It is not all that I wish and would demand; but odious inequalities are removed by it and representation will be equalized, and the political rights of all citizens will under its operation be, we believe, ultimately recognized and admitted." (2511, Mr. Eliot.)

"I have no doubt that the Government of the United States has full power to extend the elective franchise to the colored population of the insurgent States. I mean authority; I said power. I have no doubt that the Government of the United States has authority to do this under the Constitution; but I do not think they have the power. The distinction I make between authority and power is this: we have, in the nature of our Government, the right to do it; but the public opinion of the country is such at this precise moment as to make it impossible we should do it. It was therefore most wise on the part of the committee on reconstruction to waive this matter in deference to public opinion. The situation of opinion in these States compels us to look to other means to protect the Government against the enemy." (2532, Mr. Banks.)

"If you deny to any portion of the loyal citizens of your State the right to vote for Representatives you shall not assume to represent them, and, as you have done for so long a time, misrepresent and oppress them. This is a step in the right direction, and although I should prefer to see incorporated into the Constitution a guarantee of universal suffrage, as we cannot get the required two-thirds for that I cordially support this proposition as the next best." (2539, 2540, Mr. Rogers.)

APPENDIX B

Statements made in the Senate during the debate on the resolution proposing the 14th amendment.[1]

"The second section of the constitutional amendment proposed by the committee can be justified upon no other theory than that the negroes ought to vote; and negro suffrage must be vindicated before the people in sustaining that section, for it does not exclude the nonvoting population of the North, because it is admitted that there is no wrong in excluding from suffrage aliens, females, and minors. But we say, if the negro is excluded from suffrage he shall also be excluded from the basis of representation. Why this inequality? Why this injustice? For injustice it would be unless there be some good reason for this discrimination against the South in excluding her nonvoting population from the basis of representation. The only defense that we can make to this apparent injustice is that the South commits an outrage upon human rights when she denies the ballot to the blacks, and we will not allow her to take advantage of her own wrong, or profit by this outrage. Does any one suppose it possible to avoid this plain issue before the people? For if they will sustain you in reducing the representation of the South because she does not allow the negro to vote, they will do so because they think it is wrong to disfranchise him." (2800, Senator Stewart.)

"It [the second section of the proposed amendment] relieves him [the Negro] from mispresentation in Congress by denying him any representation whatever." (2801, Senator Stewart.)

"But I will again venture the opinion that it [the second section] means as if it read thus: no State shall be allowed a representation on a colored population unless the right of voting is given to the Negroes—presenting to the States the alternative of loss of representation or the enfranchisement of the Negroes, and their political equality." (2939, Senator Hendricks.)

"I should be much better satisfied if the right of suffrage had been given at once to the more intelligent of them [the Negroes] and such as had served in our Army. But it is believed by wiser ones than myself that this amendment will very soon produce some grant of suffrage to them, and that the craving for political power will ere long give them universal suffrage. Believing that this amendment probably goes as far in favor of suffrage to the Negro as is practicable to accomplish now, and hoping it may in the end accomplish all I desire in this respect, I shall vote for its adoption, although I should be glad to go further." (2963–4, Senator Poland.)

"What is to be the operation of this amendment? Just this: your whip is held over Pennsylvania, and you say to her that she must either allow her Negroes to vote or have one Member of Congress less." (2987, Senator Cowan.)

"Now, sir, in all the States—certainly in mine, and no doubt in all—there are local as contradistinguished from State elections. There are city elections, county elections, and district or borough elections; and those city and county and district elections are held under some law of the State in which the city or county or district or borough may be; and in those elections, according to the laws of the States, certain qualifications are prescribed, residence within the limits of the locality and a property qualification in some. Now, is it proposed to say that if every man in a State is not at liberty to vote at a city or a county or a borough election that is to affect the basis of representation?" (2991, Senator Johnson.)

"Again, Mr. President, the measure upon the table, like the first proposition submitted to the Senate from the committee of 15, concedes to the States * * * not only the right, but the exclusive right, to regulate the franchise. It says that each of the Southern States, and, of course, each other State in the Union, has a right to regulate for itself the franchise, and that consequently, as far as the Government of the United States is concerned, if the black man is not permitted the right to the franchise, it will be a wrong (if a wrong) which the Government of the United States will be impotent to redress." (3027, Senator Johnson.)

"The amendment fixes representation upon numbers, precisely as the Constitution now does, but when a State denies or abridges the elective franchise to any of its male inhabitants who are citizens of the United States and not less than 21 years of age, except for participation in rebellion or other crime, then such State will lose its representation in Congress in the proportion which the male citizen so excluded bears to the whole number of male citizens not less than 21 years of age in the State." (3033, Senator Henderson.)

[1] All page references are to Congressional Globe, 39th Cong., 1st sess. (1866).

Mr. DIRKSEN. By all odds the opinion is one of the most devastating dissenting opinions that I have ever read. I believe it tears to shreds the majority opinion of the Supreme Court. To make the point plain in brief compass I need submit only a short editorial published in the Columbus Citizens Journal, which is a Scripps-Howard newspaper published in Columbus, Ohio. The editorial came from the issue of August 8. I shall read the editorial in its entirety:

DIRKSEN'S REAPPORTIONMENT BREATHER

Last June's U.S. Supreme Court decision which propounded the astonishing theory that, regardless of what the people of a State may decide by vote, both houses of all State legislatures must be apportioned on a strict population basis, has led to chaos.

Lower courts, following the Supreme Court's constitutional presumptions, have been making rubble of State constitutions, disrupting State business and generally throwing their weight around.

New York's constitution requires a 2-year term for legislators, but three judges have ordered the voters to elect for a 1-year term both this year and next. In Connecticut three other Federal judges ordered the State to hold three special elections, hold a special session of the legislature which was to do no routine State business, and set up a constitutional convention.

After the Supreme Court ruled out Colorado's voter-approved legislative setup, the legislature reapportioned. But the Colorado Supreme Court says that latest apportionment is invalid under the State constitution.

Senator DIRKSEN, of Illinois, now proposes and a Senate committee has approved, a bill to stay all these proceedings for about 2 years—to give Congress time to decide on a way to preserve the right of State voters to set up State senates on other than a population basis. And to permit States time to try to tidy up the mess.

In the circumstances, this probably is the best Congress can do in a session nearing adjournment. So Congress is, and ought to

be, under great pleasure to pass the Dirksen "breather." Whatever may be wrong with State legislative systems, none can be worse than the predicaments created by the Supreme Court's action.

Mr. President, I take some interest in this question, and approach it from the standpoint of a constitutional resolution, but it had to be measured against the calendar, against the prospective adjournment date, and all the other difficulties that arise in the final hours of the Congress. It was transparently manifest that under no circumstances could a constitutional resolution negotiate, the committees, negotiate both houses, and then be sent off into a constitutional orbit for a period of 7 years awaiting ratification by the States.

What confronts us here as a result of the decision in the case of Reynolds against Sims is really an emergent situation, which can be approached logically only by a statute. The statute that we have devised as an amendment to the foreign aid bill is an effort to buy some time. But to buy time we must do it effectively, so that under no circumstances might an autocratic judicial official undertake to thwart the will of Congress.

In working on the question we had the benefit of the legal staff of the subcommittees of the Committee on the Judiciary on which I labor. The majority leader was very generous in making his competent staff available. In addition, we had officials from the Department of Justice, including the Deputy Attorney General. There have been a great many sessions. We finally wound up our labors at about 3 o'clock this afternoon. The amendment is now in final form, and it will be available to all Senators tonight, so that when the Senate convenes tomorrow we can set aside the amendment until after the disposition of the amendment still to be offered by the distinguished Senator from Alaska [Mr. GRUENING] and I believe an amendment to be offered by the distinguished Senator from Texas [Mr. TOWER]. Thereafter we can come to grips with the problem. I rather anticipate that there will be a great deal of discussion. But there was a general consensus on all sides. I pay high tribute to the majority leader for the consumate patience he has mustered at all times in trying to produce something that in my judgment is at once effective, that will do what we set out to do, and yet can command wide support on the part of Senators on both sides of the aisle.

There is only one further thing to which I wish to allude tonight. We have before us the foreign assistance bill. Nobody is more sensible of the proprieties than is the minority leader; and seldom do I undertake to tack onto a bill a provision that has no particular relation to it. But I was confronted with a reality. That reality is that we are moving, hopefully, toward adjournment, probably a week from Saturday. That is a short period of time in which to get anything done. I knew also that if we undertook to handle this proposal as an independent measure, it would have to go through this body, then through the House, then to conference, and I doubt very much whether the time would be sufficient to do even that. But even then we would have nothing more than a resolution submitted to the States for ratification, and that probably could be a long, drawn-out process.

I therefore had to select a vehicle that I knew had to get to the President's desk. I had a choice of the so-called interest equalization bill, possibly the social security measure, still pending in the Senate Finance Committee, on which there will be no executive session or markup until Friday of this week, or I could take advantage of the bill which is before us, which I know is on the so-called "must" calendar.

That bill was so drawn as to be something of an invitation, because it is divided into four parts, and the caption in part IV reads "Amendments to Other Laws." That was an invitation to come along and offer an amendment at that point as a section in part 4; and the amendment offered by the majority leader and myself will appear as section 402, on page 17, after line 7.

A tremendous amount of work, patience, and skill have gone into the perfection of this amendment. I pay high tribute to my own staff, Neal Kennedy, Bernard Waters, and Clyde Flynn, who labored early and late.

I pay testimony to the Department of Justice for having been so willing to sit in on these sessions.

I pay testimony to the distinguished majority leader and to his staff, particularly Charlie Ferris and Kenny Teasdale. They are good lawyers, and they have been on the job early and late.

They were working toward midnight last night to see whether, at long last, we could not perfect an amendment which would commend itself to the good grace and acceptance of the Senate.

I believe, at long last, that we have contrived exactly that.

I try not to utilize surprise as a legal weapon. That is often done in a court room. Suddenly, out of a clear sky, there is a witness whom the attorney did not anticipate, or a line of testimony that was furthest from the attorney's thoughts. Those surprises can often demolish the lawyer's case.

I knew that the President would have to take a look at this proposal if, hopefully, we put it into this bill. A week ago I spent an hour and a half with the President of the United States. I gave him the original language, although what we have done is a considerable departure from that language. I told him I had no choice except to find a vehicle that I knew had to get to his desk. So I gave him a memorandum and fully advised him, so he would not, under any circumstances, be surprised or astonished.

Without alluding to any other great legislative body, I understand that a kind of round robin has been circulated, to which are appended the names of 70 legislators. They almost took the kind of vow that winds up the Declaration of Independence, in committing their lives, fortunes, and sacred honor against any measure that has this proposal in it.

I am sorry they have to be a little disappointed, because that round robin was circulated as to something that is not absolutely mot, because this amendment is a complete replacement of all the work we have done heretofore. I trust they will not have to circulate another round robin, but in order to be in character, obviously they would have to do so, if they were going to object to the amendment submitted by myself and the majority leader.

Tomorrow we shall be ready to set aside this amendment long enough to complete action on the other amendments. Then the discussion will begin. Unless the Senate is in a mood to discuss this amendment a long time, or unless there is a disposition to filibuster, we could, if we remained in session late enough, probably dispose of it tomorrow. But I know the proposal is going to command the attention of the lawyers in the Senate, or at least a good many. I always regard myself as something of a novitiate or amateur at the feet of great lawyers like Senator ERVIN, Senator RUSSELL, Senator HRUSKA, and even Senator KUCHEL, of California.

I am a bit of a tyro, but at least we have finished the job. So today I think I share the hope of the majority leader that we can come to grips with this question, have it suitably ventilated, and that with good fortune smiling at us, we can wind it up tomorrow.

So I offer the amendment and ask that it be made the pending business.

The Foreign Assistance Act is the pending business, but this amendment will be pending to the Foreign Assistance Act, because I understand no other amendment was pending.

The PRESIDING OFFICER. The amendment offered by the Senator from Illinois [Mr. DIRKSEN] will be stated.

Mr. DIRKSEN. Mr. President, I ask that the amendment not be read, but that it be published in the CONGRESSIONAL RECORD at this point.

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

The amendment submitted by Mr. DIRKSEN, for himself and Mr. MANSFIELD, is as follows:

On page 17, after line 7, insert the following new section:

"SEC. 402. (a) Chapter 21, title 28, United States Code, is amended by adding at the end thereof the following new section:

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

"'(a) Any court of the United States having jurisdiction of an action in which the constitutionality of the apportionment of representation in a State legislature or either house thereof is drawn in question shall, upon application, stay the entry or execution of any order interfering with the conduct of the State government, the proceedings of any house of the legislature thereof, or of any convention, primary or election, for such period as will be in the public interest.

"'(b) A stay for the period necessary—

"'(i) to permit any State election of representatives occurring before January 1, 1966, to be conducted in accordance with the laws of such State in effect immediately preceding any adjudication of unconstitutionality and

"'(ii) to allow the legislature of such State a resasonable oppportunity in regular session

or the people by constitutional amendment a reasonable opportunity following the adjudication of unconstitutionality to apportion representation in such legislature in accordance with the Constitution

shall be deemed to be in the public interest in the absence of highly unusual circumstances.

"'(c) An application for a stay pursuant to this section may be filed at any time before or after final judgment by any party or intervener in the action, by the State, or by the Governor or Attorney General or any member of the legislature thereof without other authority.

"'(d) In the event that a State fails to apportion representation in the legislature in accordance with the Constitution within the time allowed by any stay granted pursuant to this section, the district court having jurisdiction of the action shall apportion representation in such legislature among appropriate districts so as to conform to the constitution and laws of such State insofar as is possible consistent with the requirements of the Constitution of the United States, and the court may make such further orders pertaining thereto and to the conduct of elections as may be appropriate.

"'(e) An order of a district court of three judges granting or denying a stay shall be appealable to the Supreme Court in the manner provided under Section 1253 of this Title, and in all other cases shall be appealable to the court of appeals in the manner provided under Section 1294 of this Title. Pending the disposition of such appeal the Supreme Court or a Justice thereof, or the court of appeals or a Judge thereof, shall have power to stay the order of the district court or to grant or deny a stay in accordance with subsections (a) and (b).'

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

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

The PRESIDING OFFICER. The amendment will be received and printed.

Mr. DIRKSEN. Mr. President, I think I have had submitted for printing in the RECORD the dissenting opinion of Justice John Harlan. I think it is important to have it printed in the RECORD.

Mr. PROXMIRE. Mr. President, will the Senator yield to me very briefly?

Mr. DIRKSEN. I yield.

Mr. PROXMIRE. Did I correctly understand the Senator to say that the amendment which is now being submitted is entirely different from the bill reported by the Judiciary Committee by a 10-to-2 vote earlier?

Mr. DIRKSEN. It is not quite substantially different.

Mr. PROXMIRE. This proposal has not only not had any hearings, but no committee approval of any kind; is that correct?

Mr. DIRKSEN. It is being offered as an amendment to the pending bill.

Mr. PROXMIRE. I understand.

Mr. DIRKSEN. Literally thousands of amendments on which no hearings are held are offered to bills.

Mr. PROXMIRE. Yes; indeed. I will not get into that matter at the moment. I wished to get that information before me, because I believe a vote of 10 to 2 in the Judiciary Committee is a very strong, if not persuasive, recommendation by the Senate's principal advisers on law. As I understand what the Senator has said, this is an entirely different amendment, in substance; is that correct?

Mr. DIRKSEN. Yes; except the basic principle is the same. It involves bringing about by statute, if it can be constitutionally done, the purchase of enough time to meet a chaotic condition which has developed in the States. It has gone so far that in the State of Oklahoma the courts not only invalidated the act of its legislature, but also invalidated the results of the primary election. The Oklahoma Representatives as of this moment, including the majority leader in the House of Representatives, are truly in a fix.

Mr. PROXMIRE. I understand. I do not wish to delay the Senate tonight. However, it will be interesting to see how the amendment will affect Oklahoma, Illinois, and other States.

Mr. DIRKSEN. And Wisconsin.

Mr. PROXMIRE. Wisconsin is as perfectly apportioned as it can be.

Mr. DIRKSEN. It is?

Mr. PROXMIRE. Oh, yes; both Houses are population apportioned by our Constitution. Furthermore, our latest apportionment of a few weeks ago makes the largest district within 3 percent of being perfect, and the smallest district within 3 percent of being perfectly apportioned. Therefore, we have no problem.

Mr. GRUENING. Mr. President, I ask unanimous consent that the pending amendment be temporarily laid aside so that I may call up my amendment to H.R. 11380, and ask for a vote on it.

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

The amendment will be stated.

Mr. GRUENING. It is not necessary to read the amendment. I have spoken at length on it.

The PRESIDING OFFICER. Without objection, the amendment will be printed in the RECORD at this point.

The amendment is as follows:

AMENDMENT No. 1138

On page 17, after line 7, add the following new section:

"TITLE VIII—ACCELERATED PUBLIC WORKS

"SEC. 801. Section 3(d) of the Public Works Acceleration Act (Public Law 87-658; 76 Stat. 542) is hereby amended to read as follows:

"'(d) There is hereby authorized to be appropriated not to exceed $2,400,000,000 to be allocated by the President in accordance with subsection (b) of this section, except that not less than $800,000,000 shall be allocated for public works projects in areas designated by the Secretary of Commerce as redevelopment areas under subsection (b) of section 5 of the Area Redevelopment Act. Appropriations made pursuant to this authorization after the date of enactment of this sentence shall remain available until expended.'"

Mr. GRUENING. The amendment is an amendment to the Public Works Acceleration Act.

I ask the Senator in charge of the bill whether he will take it to conference.

Mr. SPARKMAN. Mr. President, the Senator knows I have strongly supported, in this country, the kind of program that he has in mind. I have voted for it on other occasions. I helped to get it through the committee. I must say, in all frankness, however, that it does not belong on the foreign aid bill. Therefore I am not in a position to accept it.

Mr. GRUENING. I appreciate the statement of the distinguished Senator from Alabama. I understand his sympathy for the purpose. I also understand his feeling that perhaps this is not the place to press the amendment.

Mr. President, I ask for a vote on the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Alaska. (Putting the question.)

Mr. DIRKSEN. Mr. President, I ask for a division.

On a division the amendment was rejected.

ORDER FOR ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until 10 o'clock a.m. tomorrow.

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

AUTHORIZATION FOR COMMITTEES OF THE SENATE TO MEET TOMORROW

Mr. MANSFIELD. I ask unanimous consent that all Senate committees may be authorized to meet during the session tomorrow until 12 o'clock noon.

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

THE ALL-CARGO AIRLINES

Mr. SPARKMAN. Mr. President, a serious crisis has been developing for the small business segment of the airline industry; namely, the all-cargo airlines. These carriers, who properly were certificated by the Civil Aeronautics Board for the carriage of freight, mail, and express, have had their existence threatened by virtue of the competitive inequity which exists between them and the giant, subsidy-eligible airlines.

The Congress in the Federal Aviation Act imposed certain statutory responsibilities upon the Civil Aeronautics Board. Those responsibilities include, among other things, the promotion and development of an overall air transport system—a system which wisely includes specialized all-cargo airlines. The CAB would be remiss in its duties if it did not take steps and measures to allow these specialized carriers—the only airlines that have an obligation and can be counted upon to provide all-cargo service—to survive, develop, and grow.

The CAB's recent policy statement regarding the all-cargo carriers is one which deserves the attention and praise of the Congress. It is a profound and wise statement of policy, and one which should be accepted by all public interest motivated persons.

Our economy is becoming increasingly specialized. I am glad to note that this

trend is manifesting itself in the CAB's decision. I congratulate the Board for its forward looking and courageous decision.

SENATOR FRANK CHURCH'S BRILLIANT MILWAUKEE SPEECH

Mr. PROXMIRE. Mr. President, on August 1, the distinguished senior Senator from Idaho [Mr. CHURCH] delivered a remarkable speech at a testimonial dinner in my honor in Milwaukee.

Senator CHURCH's speech was greeted with enthusiastic approval by a capacity crowd from all over Wisconsin. When he finished he received one of the longest and loudest standing ovations I have heard anywhere.

Mr. President, while the speech of the Senator from Idaho was deeply moving, it was also profoundly thoughtful. Senator CHURCH squarely faced our big problem: how to achieve peace and victory for freedom in the nuclear age, the missile age, the age of a militant communism on the march. His ringing and thoughtful answer deserves the widest possible audience.

For this reason Mr. President, I ask unanimous consent that excerpts from Senator CHURCH's speech in Milwaukee, on August 1 be printed in the RECORD at this point.

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

BATTLE CALL FOR THE REPUBLIC

(Excerpts from an address by Senator FRANK CHURCH, Democrat, of Idaho, at a fund-raising dinner for Senator WILLIAM PROXMIRE, in Milwaukee, Wis., August 1, 1964)

For 2 weeks now, I've been carrying my arm in a sling. I'm glad to be rid of it, because people kept mistaking me for a moderate Republican just back from San Francisco.

The fever of the old frontier captured the Republican convention out there. Looking backward with BARRY had overpowering appeal. They claim he'll carry every State—all 13 of them. They say his platform will win over both parties—the Tories and the Whigs.

Well, as a fellow westerner, I understand the nostalgia for the Old West. I like BARRY GOLDWATER. He's my neighbor in Washington; we share adjoining offices at the Senate—and that's where he should stay.

There is a proven man who sits in the White House—where he should stay—Lyndon B. Johnson. The touchstones of his administration are three: prudence, prosperity, and peace.

Only if prudence prevails—only if the processes of law and order are upheld—will it prove possible for us to remedy what now ails us most, the racial ferment rampant in the land. This is an affliction which breeds extremism among white and black alike. But if men of moderation are swept aside, the problem will soon become a plague, as the virus of violence spreads. For when men of different colored skin clash in anger, none can see that each man's blood runs red.

How, then, do we seek the solution? First, by making sure that the law itself is right—that it implements those guarantees of equal treatment which the Constitution extends to every citizen. Second, by upholding the law and preserving good order against every violator, regardless of race, creed, or color.

This is the prescription of Lyndon B. Johnson. This is why he urged the enactment of the civil rights bill. And both parties responded in Congress; of the 33 Republicans in the Senate, 27 voted for the bill; only 6 Republicans voted against it. But among the six, a tiny minority within the minority, was BARRY GOLDWATER.

Now the time of test is upon us. Will the law be respected? Will good order be preserved? Or will extremists on both sides take charge?

In accepting the nomination at San Francisco, Senator GOLDWATER said, "Extremism in defense of liberty is no vice; moderation in pursuit of justice is no virtue." That amounts to nothing more than a fervent way of saying the end justifies the means. Little wonder that Walter Lippmann should protest, as follows:

"If there ever was a time, it is now, when it is against the public interest to tell men that they may take extreme measures in what they believe to be the defense of liberty and the pursuit of justice. There is a racial conflict in this country and there is a strong tendency to private violence on both sides, among the white and among the black.

"With the private shootings, the private burnings, the private bomb throwings, the private mobs, is it not the duty of every American to rally to the defense of law and order? But how can there be such a rally if we must endure an election in which the challenging contender is telling the flammable crowd that extremism may be no sin and that moderation may be no virtue?"

If this is the choice GOLDWATER offers, then it is the choice between wrong and right. The American people will search their hearts, and I have no doubt they will choose the course which is right. In a massive affirmation, they will uphold the hand of Lyndon Johnson.

* * * * *

After San Francisco, there can be no doubt that the men who have been placed in charge of the elephant are trying to make it walk on its two right feet. They claim that this is in the mainstream of Republican tradition. But it is not. It is, rather, a repudiation of responsible Republicanism, and all for which it stands.

The party whose first President saved the Union, by fighting off the enemies of the Federal Government, now presents us with a candidate for President who talks as if the Federal Government were the enemy.

So let us, as Democrats, take the high ground, where both of our great political parties have stood in the past. Let us prepare to do battle for the Federal Union; to talk sense instead of nonsense; to reason rather than emote. Let us respond to right-wing fanaticism by emphasizing the governing facts of our life and times.

When they berate big, Central Government, let us remind them that the growth of the National Government is not even keeping pace with the growth of the Nation itself; that, in 1952, there were 16 Federal employees for every thousand of population, compared with 13 today; that, from 1952 to 1962, total Federal civilian employment fell 3 percent, while empolyment by State and local governments increased by 63 percent. If "creeping socialism" is measured by the rising tide of Government employees, the sentinels would do better to station themselves closer to home.

When they accuse us of being profligate spenders, let us remind them that President Johnson's budget this year was the lowest, in proportion to our national wealth, to be submitted since the tight Truman budget of 1951; that, despite our burgeoning national growth, the Johnson budget was half a billion under the budget of the previous year, and that 15,000 Government positions have been struck from the Federal payrolls.

When they complain of stifling taxes, let us reply that Federal income tax rates have been twice reduced since the Korean war, and that this session of the Congress, at the behest of Presidents Kennedy and Johnson, has enacted the largest peacetime tax cut in history.

When they wail about the "welfare state," let us confront them with the fact that only 7 cents out of each Federal tax dollar is paid out on all the welfare programs combined, while nearly 80 cents of that same tax dollar goes, in one way or another, to pay, not for welfare, but for warfare. Payment for past war, and preparation for future war, is the principal cause of today's big government.

So, when the doubletalkers call, in the same breath, for a shutdown of government at home, and a showdown with communism abroad, let's have the commonsense to laugh them off the political stage.

Let's pull the sheets off their hobgoblins of "socialism," "subversion," and "sellout." This country of ours is not an old Victorian haunted house, creaking with insolvency, its foundations being eaten away by Red termites, about to be betrayed to the enemy. Our times are not some kind of spook show filmed by 19th Century-Fox.

We are a mighty nation of nearly 200 million free people, rich beyond belief, and stronger than we have ever been before. Since John F. Kennedy ushered in this Democratic administration, less than 4 years ago, our gross national product has grown by a fantastic $100 billion. Wages and profits and family income are at their highest levels in our history. Free enterprise is doing fine.

To be sure, like every generation before us, we have our problems. But they are flesh-and-blood problems, not ghostly apparitions. Only those afraid to face up to these problems prefer fantasy to fact. It is a fact that equal justice must yet be won for our colored citizens; the educational opportunities must be broadened for all; that better medical care for the aged and infirm must be secured; that the needs of the poor must be better attended; that the ends of freedom must be extended, and the peace preserved.

These are the real-life problems with which our dynamic President is grappling from day to day. And the people of this land have the good sense to know it. That's why President Lyndon B. Johnson is going to be overwhelmingly reelected this November.

* * * * *

But if the Goldwater brand of Republicanism is not really relevant to the domestic problems with which we must grapple, it loses all reality when placed in context with the problems which confront us in the outside world.

It is here that he stresses but one theme, belligerency. He charges the Democrats with "cringing before the bully of communism." I say no American President, Democrat or Republican, has ever cringed before any enemy of the United States. Harry Truman wasn't cringing when he sent American forces into Korea to defend against Communist aggression there. John F. Kennedy wasn't cringing when he faced down two Soviet ultimatums at Berlin, or when he ordered the Navy to intercept Russian ships on the high seas, or when he demanded, and obtained, the dismantlement of the launching bases and the removal of Soviet missiles from Cuba. Lyndon Johnson isn't cringing in South Vietnam today. He doesn't know the meaning of the word.

But belligerency alone is not a foreign policy. John F. Kennedy reminded us, in his unforgettable inaugural address, that "We should never negotiate out of fear, but that we should never fear to negotiate." It was in this spirit of statesmanship that the nuclear test ban treaty was achieved, the first thaw on the cold war front in many years. Again, after the most careful consideration, both parties in the Senate voted overwhelmingly for the treaty's ratification. But GOLDWATER voted "no."