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from which he emerged with more respect and friendship than he had before the conference.

Mr. LONG of Louisiana. Mr. President, I thank the Senator from New Mexico. I certainly share his viewpoint.

As I said in my speech on the bill when it passed the Senate, the distinguished chairman of the committee, the senior Senator from Virginia [Mr. BYRD], even though he was adamantly opposed to the bill, voted consistently to improve the bill in every respect.

The Senator from Virginia did nothing whatever to impede the action on the measure. In fact, he cooperated so that in the end the measure represents the prevailing view of the Senate, even though there were many items to which he could not in conscience subscribe.

I join the Senator from New Mexico in all of his statements with regard to the Senators mentioned and with regard to all committee members. I am sure it would apply to the Senate as a whole.

I pay tribute to our distinguished chairman for his statesmanship and devotion to duty and to the best traditions of the U.S. Senate.

GRACE PERIOD FOR STATES TO COME INTO CONFORMITY WITH TITLE XIX OF SOCIAL SECURITY ACT

Mr. KUCHEL. Mr. President, I deeply regret that the House-Senate conferees did not see fit to accept all of the amendment which I successfully offered in the Senate pertaining to the public assistance provisions of the Social Security Act.

Amendment 513 added two provisions—a new section 1118 of the Social Security Act—relating to the Federal share of expenditures for public assistance. First, it would permit any State which has in effect a plan approved under the new title XIX, which is the consolidated and expanded Kerr-Mills program, to claim equal Federal participation in its expenditures under all of its Federal-States public assistance programs by application of the new formula contained in title XIX instead of using the varying formulas in the existing titles.

Second, it would permit any State, for the period January 1 through June 30, 1966, which could meet substantially all of the objectives and requirements of the new title XIX under its assistance programs approved under the other titles of the Social Security Act to receive Federal participation in its medical assistance expenditures by application of the formula provided in title XIX and, at its option, to have this formula applied in determining the Federal share for its money payments.

No similar provisions were in the House bill. The House-Senate conferees agreed to the general Federal-State matching provisions of my amendment, but, regretfully, rejected the grace period provision.

This latter provision was an optional provision. It did not require the States to choose that route. They could seek implementing legislation from their State legislatures immediately, rather than choose the route of the grace period through June 30, 1966. The fundamental reason for providing this alternative was that in several States, State senates are under court orders to reapportion. In four instances—Connecticut, Hawaii, Vermont, and Washington—the Federal courts originally held that the legislature or the State senate could not meet except for the purpose of redistricting itself. While these orders were subsequently modified, it is possible in the foreseeable future that as a result of a court order there will be a hiatus or vacuum in political power in several of our States until the reapportionment question is resolved. The result would be that the legislature or part of it could not meet to pass implementing legislation and take advantage of the new and improved Kerr-Mills program which will go into effect on January 1, 1966. The California State Legislature is now under Federal court order to reapportion. Final court decree has not yet been handed down. I do not know what the nature of it may be. That is the reason for providing a grace period which could be utilized by my State or any other State which finds itself in a similar situation.

I regret to say that the California State administration bitterly opposed this provision and were largely responsible for its being deleted. They argued, and I quote from a letter dated July 14, 1965, by Paul D. Ward, administrator of the health and welfare agency, written on behalf of Governor Brown:

> This amendment would not avoid the necessity of action by the State legislature nor would we deem this to be the proper course even if it were possible. For example, the legislature would have to be reconvened to modify present statutory limitation on PAMC.

Mr. Ward goes on to make what essentially are administrative arguments that it would be better to secure the necessary enabling legislation. No one can deny that. But that is not the question. The question is: If you cannot secure a meeting of the legislature because one house or both houses may be under a court order not to meet on substantive matters until they have redistricted, then what do you do? In brief, the State administration, rather than support an alternative procedure, which it could exercise at its sole option, should the court not rule as they think it will, would restrict itself to no alternative but to deprive needy citizens in California of the necessary Federal matching funds, should the court initially rule as they did in these other States. This is a gamble which ought not to be undertaken. Maybe the State administration will be right on its gamble. For the sake of my fellow Californians, I hope so. But I think it is an unnecessary risk to take when people's livelihoods and health needs are at stake.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the House had passed, without amendment, the joint resolution (S.J. Res. 83) to authorize the President to issue a proclamation commemorating the 175th anniversary, on August 4, 1965, of the founding of the U.S. Coast Guard at Newburyport, Mass.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 510) to extend and otherwise amend certain expiring provisions of the Public Health Service Act relating to community health services, and for other purposes.

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2984) to amend the Public Health Service Act provisions for construction of health research facilities by extending the expiration date thereof and providing increased support for the program, to authorize additional Assistant Secretaries in the Department of Health, Education, and Welfare, and for other purposes.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2985) to authorize assistance in meeting the initial cost of professional and technical personnel for comprehensive community mental health centers.

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 7984) to assist in the provision of housing for low- and moderate-income families, to promote orderly urban development, to improve living environment in urban areas, and to extend and amend laws relating to housing, urban renewal, and community facilities.

ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (S. 1321) to amend section 501(e) of title 16 of the District of Columbia Code relating to bond requirements in connection with attachment before judgment.

NATIONAL AMERICAN LEGION BASEBALL WEEK — LEGISLATIVE REAPPORTIONMENT

The Senate resumed the consideration of the joint resolution (S.J. Res. 66) to provide for the designation of the period from August 31 through September 6, 1965, as "National American Legion Baseball Week."

LEGISLATIVE REPRESENTATION: A FUNDAMENTAL RIGHT

Mr. MONDALE. Mr. President, I rise today to address the Senate on a matter crucial to the future health and vitality of this Nation. The very strength of our federal system lies in the constitutional sharing of power by the Federal Government and by the States, under a Federal Constitution which has endured and developed for over 180 years. The rapid urbanization of this Nation has created

severe population imbalances within each State, and the drive for a return to equality of legislative representation first began in the courts. Because of their successful resolution of the problem—because the Supreme Court rightly insisted that the Constitution requires equality in representation—we are today involved in this serious discussion.

The first cases, brought in State courts on the basis of violation of State constitutional provisions, stopped far short of solving the problems presented. State courts felt limited in the relief they felt able to grant. Judges declared themselves unable to order legislatures to take legislative action, unable to order at-large elections, and unable to draw up apportionment plans on their own initiative.

Of course, the Federal courts at first refused to act on the issue at all. In the famous case of *Colegrove* v. *Green*, 328 U.S. 549 (1946), involving Illinois congressional districts, the Supreme Court of the United States refused by a vote of four to three to consider the merits of the case. Three of the four Justices thought that the question was one of those which courts are unable to decide because it involved essentially political rather than judicial issues. On the basis of the Colegrove case, the courts generally refrained from adjudicating apportionment cases until 1962.

But in 1962, the court was faced with a Tennessee legislature which had last apportioned in 1901. In the 60 years following, population growth in the counties in the State had been uneven, causing large discrepancies among legislative district populations. A group of urban voters filed suit in 1959 in the Federal district court charging that the failure of the legislature to reapportion had deprived them of their constitutional rights. They charged that they were denied in particular the right of equal protection of the laws guaranteed against State interference by the 14th amendment to the U.S. Constitution. The lower Federal court dismissed the action on the basis of Colegrove against Green, but the Supreme Court, voting 6 to 2, held that the action was a proper one for judicial consideration and that the plaintiffs could properly bring the action. *Baker* v. *Carr*, 369 U.S. 186 (1962).

During the first year following Baker against Carr, cases challenging legislative apportionments were filed in 36 States, Twenty-five decisions were handed down—19 of which struck down existing apportionment schemes in one or both houses. Some 15 legislatures revised their apportionments to some extent.

Subsequent to its decision in Baker against Carr, the Supreme Court in *Gray* v. *Sanders*, 372 U.S. 368 (1963), invalidated the county unit system employed in Georgia, which counted votes cast for State officers in statewide elections, and, in *Wesberry* v. *Sanders*, 376 U.S. 1 (1964), held that congressional districts must be composed of substantially equal numbers of people. After these decisions, there still remained some uncertainty as to whether the Supreme Court would require that population be the principle of apportionment in both house of State legislatures.

On June 15, 1964, the Supreme Court resolved that question, if not the controversy which later arose, by holding that in both Houses of a bicameral legislature, districts must be "as nearly of equal population as is practicable." *Reynolds* v. *Sims*, 377 U.S. 533, 579 (1964). In all, there were six decisions affecting as many States. The Reynolds case arose out of Alabama, and similar cases were decided in New York, Maryland, Virginia, Delaware, and Colorado cases. One week later, nine other cases pending before the Supreme Court were remanded, per curiam, for further proceedings in the light of Reynolds and its companions. These cases involved Florida, Washington, Idaho, Ohio, Oklahoma, Illinois, Michigan, Connecticut, and Iowa.

The reaction to the June 15 decisions was much more critical than had been the reaction to Baker against Carr. Immediate steps to obtain a constitutional amendment were begun in and out of Congress. Congress found itself engaged at the end of the 2d session of the 88th Congress in extended consideration of measures which would have directed the Federal courts to delay apportionment decisions for periods up to 4 years, thus allowing time for a constitutional amendment to be proposed and ratified. But nothing was enacted.

What involved the Congress also involved the States. As of March 1965, all States but Oregon and South Carolina have been involved in reapportionment struggles or lawsuits. Four States have acted to some extent without being forced by court order. The other 44 States have been directly involved in Federal and State court suits. Four of these latter States were reapportioned by the courts, while 22 others are under order to reapportion one or both Houses of their legislatures. In seven others, suits are presently pending. Fourteen States have reapportioned since initiation of cases or decisions involving them and at this time have no new litigation pending.

Senate Joint Resolution No. 2, the sire of many offspring, provides clearly that a State could apportion one house of a bicameral legislature "upon the basis of factors other than population," and allows legislatures to give "reasonable weight to factors other than population in apportioning a unicameral legislature." This proposal has been vigorously attacked in extended hearings before the Subcommittee on Constitutional Amendments of the Committee on the Judiciary, in March, April, and May of this year. Since then, the progeny of this amendment have been presented to the members of the committee and the Senate for their consideration. The version we consider today was first introduced on the floor last Thursday. It provides that:

> The people of a State may apportion one house of a bicameral legislature using population, geography, or political subdivisions as factors, giving each factor such weight as they deem appropriate, or giving similar weight to the same factors in apportioning a unicameral legislature.

In my judgment and in the judgment of many of my colleagues, this language is no more acceptable than the original proposal.

The rule under the Supreme Court cases is clear. The Federal constitutional picture has been brought into focus and greatly clarified. These cases established that the equal protection clause of the 14th amendment requires substantially equal legislative representation for all citizens of the State. This is the basic concept and the basic rule against which our arguments must be measured. Those cases required that States make an honest and good faith effort to construct districts in both houses of its legislature as nearly of equal population as is practicable.

The Court declared its holding concisely and clearly in Reynolds against Sims:

> We hold that, as a basic constitutional standard, the equal protection clause requires that the seats in both houses of a bicameral State legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for State legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State. (Id., 568.)

> (W)e mean that the equal protection clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly or equal population as is practicable. We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement. (Id., 577.)

The amendment under discussion would clearly strike back at the effect and force of those Supreme Court decisions. It seeks to limit the elective franchise, contrary to the trend and development of legislative and judicial constitutional law. The principle of equal representation is deeply ingrained in the political history and background of this Nation. The entire course of our national constitutional development from the Declaration of Independence to the Voting Rights Act of 1965 is a history of opening up and broadening the scope of elective franchise. A whole series of struggles was fought over removing suffrage qualifications based on ancestry, property, religion, race, sex, and status.

We have adopted five amendments to our Constitution which expand, rather than limit the franchise. The 15th amendment guarantees all citizens of the United States the right to vote, regardless of race or color. The 17th amendment provides for the direct election of U.S. Senators. The 19th amendment extends the franchise to women. The 23d amendment allows the residents of the District of Columbia to vote for President and Vice President of the United States. The 24th amendment outlaws the poll tax in Federal elections.

And, indeed, in this session of the Congress, we have taken another step in the implementation of the guarantees of the 14th and 15th amendments to insure that Negroes in every part of the Union can exercise the right of suffrage. How

ironical it would be for the same Congress which passed the Voting Rights Act of 1965 to approve and submit to the States a constitutional amendment which would make possible the deprivation of Negro and white citizens' right to equal representation in our State legislatures.

I submit that we must stand opposed to measures which would restrict or reduce the rights guaranteed by the Constitution, and the denial or reduction is no less objectionable whether accomplished by the dictation of a single tyrant or a majority.

Regardless of the particular form the proposed amendments take, they all share two fundamental defects. First, they would, at best, permit a bare majority of the voters participating in an initiative or referendum to deny to individual citizens, to others and to themselves, the right to equal representation and to the equal protection of the laws. It is my contention that no majority of whatever size has the right to deprive citizens of the several States of their right to equal protection of the laws any more than can be denied the basic constitutional rights of speech or of religion. If such basic rights, as are enumerated in the first amendment to the Constitution, would be repealed by constitutional amending procedures, the American democracy as we know it now would cease to exist. The same result would follow if we allow the present proposal to be attached to our Constitution. Second, these amendments would continue or make possible in practice minority rule over State governments by giving control of one house of the legislature to an over-represented area, interest group, or class of people. In short, the amendment proposed today is tantamount to legalized ballot-box stuffing. Dilution of the right to have one's vote count is wrong whether done by election fraud, or by legalizing a discount rate on a man's vote. I see little difference between stuffing extra votes into the ballot box and stuffing extra weight into the votes of certain citizens. The result is the same—to pervert our system of representative government.

I do not see how section I of the 14th amendment could be any more clear. It provides:

> 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.

It seems plain to me that allowing one citizen's vote to be 500 times as effective as another citizen's vote is to deny the latter the equal protection of the laws. And this is a result that we cannot and should not tolerate.

In the past history of our Nation, there has been agitation and widespread support for amendments providing that States might limit the freedom of speech of groups advocating violent change in our Government; limit the freedom to assemble of persons who advocate or practice civil disobedience; or provide any system of public education of the respective races which the people may desire. In each of these cases, whatever the majority may have willed, it was determined that these rights should not be sacrificed.

We are dealing with a matter here so fundamental that to state the proposition is to make the most convincing case and argument for it. Senate Joint Resolution 2 and the resolution presently before the Senate abridges one of the most fundamental of political rights, the right of the individual to be equally represented in the legislature which controls public affairs in his State and appropriates his taxes.

John Locke maintained over 300 years ago that a majority must not infringe fundamental rights, even though his doctrine of legislative supremacy held that the legitimacy of governmental actions depended upon the consent of the governed expressed in majority rule. Thomas Jefferson in 1819 wrote:

> Equal representation is so fundamental a principle in a true republic that no prejudices can justify its violation, because the prejudices themselves cannot be justified.

The whole point is that the majority does not have the power, and we must not allow it the power, under our constitutional system, to deprive the minority or any person of rights so basic and so fundamental to our Republic. The political equality of all citizens was eloquently expressed by Thomas Jefferson in the Declaration of Independence:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.

It is not the prerogative of any majority to reduce this right, nor is it the right of any citizen to give up this right for another person. It is as well true that no citizen of the United States may sell himself or his brother to bondage or slavery. In like manner, that person is without power to give up his equal representation in the legislature of his State.

If there is any belief fundamental and absolutely necessary to our Constitution, it is the belief that there are and do exist certain unalienable rights which man cannot contract nor give away, and which a bare majority of citizens cannot deny them. This question is not a proper one for a referendum. It is not subject to an election.

On the other hand, the proponents of the amendment argue that States should be allowed to take into account economic or social interests of minority groups. Although it is true that legislatures represent all economic, social, and political interests within their States, no one of those groups is entitled to special representation. After all, it is the people who have the interests, and what the proponents are doing is certifying certain interests to be the recipients of special representation. Or rather, they seek to allow malapportioned legislatures to do this. They incorrectly assume that interests are identifiable and that everyone having an interest is affected the same way. Each person, however, belongs to a number of interest groups, and people in urban and rural areas share many, many interests today.

It is only when the majority seeks to deprive the minority of fundamental, unalienable, and constitutional rights that we must check the power of the majority. The rights of minorities are to be protected by constitutional guarantees, enforced by the courts, through rules of legislative procedure, through political party operations, and in other ways, but not through unusual representation in the legislature. Unequal representation does not safeguard minority rights, but gives the minority the power to make policy—which cannot be said to be a minority right.

The idea of representation of interest groups was long ago rejected in England with the demise of the "Rotten Boroughs," which were based on just that justification. Prof. Carl Auerbach, of the University of Minnesota Law School, has observed:

> Nothing is more fundamental to representative government—and therefore more constitutional, than the rules governing the electoral process itself. No reason consistent with the democratic ideals of equality and majority—or minorities—rule has been advanced for not effectuating the equal population principle. (See Auerbach, "The Reapportionment Cases," 1964 Supreme Court Rev. 1, 67.)

Can we really believe that the rights of citizens of the several States and of the United States depend upon the vote of the electorate? We do not submit the right of free exercise of religion to the electorate. We do not submit the rights of speech, press, or assembly to the electorate. We do not let the majority decide whether we shall have trial by jury, the right of counsel, or due process of law.

I think that those proponents would not admit that a majority of the people of a State in a referendum could prevent Negroes from voting, even though the majority so voted. For they believe, and sincerely believe, that the right to vote of all citizens is unalienable. They believe that to prevent a minority, whether it be Jewish, Negro, or other, from exercising the right to vote is not within the ability of the majority to prohibit. In like fashion, I believe, and I think the Senate should follow the rule, that the right to be equally represented is also as fundamental, and may not be abridged by a majority, whether in a referendum or by action of a malapportioned State legislature.

In testimony before the subcommittee, Prof. Royce Hanson, American University professor, said:

> Here is the nub of the issue. Of all the decisions about fundamental rights a majority should not make, the question of how the majority can be formed is among the least appropriate of all. Perhaps I could look with sympathy on an amendment abolishing legislatures and permitting the people by referendum to decide directly every issue of public importance. At least, every man would have an equal right to participate and his vote would be equal to that of every other voter. But I must emphatically oppose any system that permits a majority found on a single day to prejudice by a single vote the power arrangement within which all subsequent

decisions must be made, and by which every individual citizen must then abide.

Any representative system which purports to exclude or dilute population from its makeup is a system which inevitably discriminates against some people and in favor of others. It is simply impossible to represent factors other than population without discrimination against people. Only people can be represented. Other factors, such as geography, or political subdivisions, are simply means of manipulating political power to reduce the political equality of some people and to perpetuate incumbents in office.

People elect and authorize representatives to represent them, because they have needs and interests at stake. Cows, trees, and rocks cannot authorize someone to represent them.

In the absence of legislative representation based on population, the drawing of lines for legislative representation will be done by those in power, and such distributing of legislative representation will be the product of political chicanery, fraud, and self-interest. The word "gerrymander" has a long and shameful connotation in American political history, and not without justification. That word is a tribute to those who will use power in a cynical and selfish way to perpetuate their own interests or the interests of a special group, in complete and total disregard of the rights of the majority and minority. And this is not speculation, for the whole history of legislative apportionment reflects the urge of incumbents to perpetuate themselves. We know that it is too much to expect of a politician to vote himself out of office. The very fact that the Tennessee legislature, before Baker against Carr, did not apportion itself for over 60 years is a reflection of this natural human tendency. The real result of allowing State legislatures to draw lines on the basis of factors other than population will not be to give special weight to the interests of rural citizens or farmers, but to allow a privileged few to give greater representation to their friends and to the interests which are most accommodating to them.

It is said that the express purpose of this amendment is to preserve the rights of rural minorities. It is said that they should have a voice in State policies greater than their numbers if they are to survive attempt by nonsympathetic urban dwellers to disregard farm problems and concentrate solely on urban problems. But, I could not be more concerned about the serious plight of the family farmer in the United States today. And I challenge those who favor this amendment to point to any malapportioned State legislature which has done anything significant or of importance to help the farmer.

But today the farmer is low man on our economic totem pole. To drag in the red herring of reapportionment serves no good purpose. It merely distracts our attention from the extremely serious and meaningful task of taking positive steps to improve farm income. And I know what a tremendous task this is, because I sit on the Senate Agriculture Committee, which is now engaged in the very difficult and arduous task of drafting farm legislation.

In my judgment, the arguments of those who seek to justify malapportioned legislatures on this ground are malicious attempts to set farmers against city dwellers, and to encourage suspicion and hostility between them.

In addition, the rural people in Minnesota are not just farmers, they are smalltown dwellers, they are merchants, they are businessmen, bankers, and people from all walks of life with diverse and wide-ranging interests. I would not want an urban majority to have the power to draw population lines or geographic lines or political subdivision lines which would give the urban majority unequal and superior representation in their State legislatures. And, this could happen under the proposed amendment, if an urban majority came into power—and they are and will.

I do not want to see the day when big cities can draw up a legislative scheme which will deprive our farmers of their right to equal representation. That day will come, for the trend is unmistakably toward urban majorities. Within the next 50 years, the number of those in large urban areas will increase from 70 to 80 percent of our population. During the next 15 years 30 million people will be added to our cities. We have to look forward to the future. The amendment proposed today is extremely dangerous to the political health of rural America. The friend of the farmer—those vitally concerned as I am with the health of rural America—should applaud the Supreme Court's insistence on full weight, equal representation for those in the farm areas. Their numbers in proportion to the rest of the population shrink every day.

In addition, it is being suggested that a possible compromise solution to the reapportionment question would be to permit apportionment on the basis of other factors with population if the legislature which draws up the apportionment plan is fairly and equally apportioned on the basis of population. This would be no more satisfactory than the present proposal. It would still permit discrimination against some citizens. The only difference would be that the citizens in danger of being discriminated against would be rural rather than urban or suburban. In short, Mr. President, I am against giving any type of legislative majority—urban or rural—the right to discriminate against the minority. I want to guarantee every citizen—whether he lives in the city, on a farm or in a suburb—his right to fair representation.

My position, and the position of my colleagues in this discussion, is that equal representation must be our most fundamental political commitment. And, we must resist any attempts at discrimination between different voters in our society.

I speak from strength in adopting a position opposed to these reapportionment amendments. For my own State, Minnesota, has always had in its constitution a requirement that both houses of our legislature be apportioned on the basis of population. In article IV, section 2, of our Minnesota constitution, it states:

> The representation in both houses shall be apportioned equally throughout the different sections of the State, in proportion to the population thereof.

This provision has remained unchanged since the adoption of the constitution on August 29, 1857. On that date, two constitutional conventions in St. Paul adopted constitutions substantially similar in which have remained to this day the requirement that both Houses be so apportioned. Henry H. Sibley, president of one convention and a delegate from Dakota County in St. Paul, signed a constitution exactly alike in article IV, section 2 as the other convention signed by Mr. A. D. Balcombe on the same date in St. Paul, Minn.

Our State has always adhered to the requirement laid upon it by the Northwest Ordinance, adopted July 13, 1787, by the Continental Congress of the United States. In section XIV, article 2 of that ordinance, the Congress stated that—

> The inhabitants of the said territory shall always be entitled to the benefits of the writ of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature; and of judicial proceedings according to the course of the common law.

Robert L. Tienken, legislative attorney of the Library of Congress, concluded in a study of the apportionment of territorial legislatures in the Northwest Territory that the Congress developed a policy of general and substantial equality of population and equality of representation.

> Rational policies based generally on population or voter standards were, however, practiced, no matter how roughly. And these, rather than area or other conditions were essentially at the base of apportionments in the Northwest Territory. Perfect apportionment there was not, but apportionment on the basis of persons there was. It may not have been exactly one man, one vote, but it was certainly not premised on arbitrary policies or discrimination.

But despite Minnesota's constitutional provision, my State became malapportioned as had many other States in the Union, through the general shift of persons from rural areas and cities to the suburban areas.

In the century which elapsed between the 1857 Minnesota Constitutional Conventions and the 1959 act, the State's legislative districts were reapportioned generally seven times in 1860, 1866, 1871, 1881, 1889, 1897, and 1913. The 1959 act was, therefore, the eighth reapportionment, but the first in 46 years. It was accomplished in 1959, on the basis of the 1950 census, and, therefore, no redistricting based upon the 1960 census has ever yet been effected. On June 4, 1964, in U.S. District Court, District of Minnesota, the case of Honsey against Donovan was brought. That suit was brought to challenge the validity of the then present apportionment of both houses of the bicameral Minnesota Legislature.

That lawsuit was brought because the population of Minnesota increased 14.5 percent between the 1950 census and the

1960 census. This increase was not uniform throughout the State's 87 counties. The increases varied from 18.9 percent in Ramsey County to 141.5 percent in Anoka County, one of our surburban areas. Our 1960 population, according to the Federal census, was 3,413,800. Based on that number each Senate district in the State should have produced an ideal figure of 50,950, and each House district a figure of 25,280. The population of Senate districts ranges from over 100,000 to under 25,000 and, therefore, the largest district in population had almost twice the average figure and the smallest less than half the average figure.

The malapportionment of the House districts was equally as great. The ratio of the largest House district to the smallest was nearly 7 to 1. The ratio of the five largest to the three smallest was over 5 to 1.

If one used the 1960 census figures, then in 1962 a majority of the State's population was represented by only 26 Senators, or 38.8 percent of the 67 seats, and by only 48 Representatives or 35.5 percent of the 135 seats. In reverse, this means the 34 smallest senatorial districts were represented by a majority of the Senate but contained only 39.1 percent of the population. Again, the 68 smallest House districts were represented by a majority of the House but contained only 35 percent of the population.

The Federal district court declared our 1959 State plan of reapportionment unconstitutional on December 4, 1964. Because of the lateness of the case, the court decided not to require redistricting before the convening of the legislature on January 5, 1965. It warned, however, that if the legislature failed to reapportion both houses in 1965, the court might do so or order elections at large. The suit was filed in June of 1964, following which a citizens' bipartisan reapportionment commission was established by our distinguished Gov. Karl F. Rolvaag by Executive order on July 30, 1964.

The Commission proposed tentative reapportionment plans on December 11, 1964, and included a proposed constitutional amendment to insure periodic reapportionment either by the legislature or by a special commission. The legislature did not accept the plan of the citizens' bipartisan reapportionment commission, but worked out another proposal which was vetoed by our Governor in May of 1965. A court test is now underway to determine the validity of Governor Rolvaag's veto.

Before I begin to discuss some of the practical ramifications of adoption of the proposed amendment, I would like to express my views on what seems to be the last dying gasp of the proponents of the amendment, in their advocacy of the Federal analogy argument.

It is true that the Senate of the United States is apportioned by States without regard to population. This results in 26 States with 52 Senators having a majority of the Senate but representing only 16 percent of the population and, as a matter of fact, 17 States with 34 Senators representing only 7 percent of the population, and under the present rule 22 this group can, by filibustering, prevent a vote.

But, any argument based on this situation ignores the fact that a constitutional compromise was necessary to produce the federal union under which we operate today. The issue of the Federal compromise was clear. Certain smaller States threatened to refrain from joining in union, and to make treaty with foreign powers. At the price of this threat, the larger States were willing to enter into an agreement to form two houses as we have them now.

The large States were given the full weight of their size in the House of Representatives, and the small States retained their sovereignty in the Senate. For the small States and all of the original States were independent political units, and the smaller ones extracted equal representation as the price of union. And I think it was worth it.

But none of this procedure of concession and compromise may be found in the establishment of towns, counties, and other political subdivisions in the several States. For each State and all the States together created the United States. In doing so, they reserved to themselves much authority and power. This principle of federalism is a vital ingredient of our liberty.

But, it would be ridiculous to apply it to counties or towns. I know of no one who pretends that counties or cities or political subdivisions within a State can concede or grant to a State such a residual of power. They are creatures of the State—administrative units that can be abolished or created by the State legislature. They exist to provide an orderly framework for the administration of laws and the provision of services.

If and when they prove too cumbersome or ineffective, they can be, and should be, and often are, replaced by units of government more realistically attuned to the needs of the people. In short, the Nation is a union of States which surrendered a portion of their sovereignty to achieve union. The States on the other hand are not unions of county governments or city governments.

I think we should recognize the fact that between 1790, when Vermont was admitted, and 1889, when Montana was admitted, almost 100 years later, every State admitted to the Union entered with a constitution providing for representation based principally on population in both houses of the legislature. In fact, the original constitutions in 36 of the 50 States provided for representation largely in accordance with population in both houses of the legislature. It was not until late in the 19th century that the States began the movement away from representation in accordance with population, sometimes by a change in formula and sometimes simply by failing to live up to their own constitutional requirements.

By the time Baker against Carr was decided in 1962, the movement was virtually complete. Malapportionment was king nearly everywhere. But even by that date no more than 10 States had formulas even roughly comparable to the alleged congressional model, and even those differed somewhat from Congress and from each other. In short, as the Court noted in rejecting the so-called Federal analogy, reliance on it was an "after the fact rationalization offered in defense of maladjusted State apportionment arrangements." Reynolds against Sims at page 573.

I would also note that 27 out of the 36 States providing for population as the primary basis for representation provided that it should be the sole basis. This has been an extremely difficult bone to swallow for those who contend that the very foundations of the Republic were swept away by the Supreme Court decisions of 1964. Senator PROXMIRE, of Wisconsin, argued this point brilliantly in the hearings before the Judiciary Subcommittee on March 4, 1965, and his statement is reproduced in the hearings. I recommend it to those Senators who are attracted by the Federal analogy argument.

Now I would like to proceed to what we might expect as the result of the adoption of the proposed amendment. First of all, its adoption would weaken our American system, based on grants of power to the Federal Government by the sovereign States, and reservation of certain powers in those States. Our Constitution provides the United States Constitution, in the 10th amendment, adopted in 1791, states:

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

The practical effect of allowing malapportioned and ineffective and stalemated State legislatures to continue will be to increasingly centralize power and control over all phases of social concern in the Federal Government, and allowing the proper role and responsibilities of the several States to slip away and decay.

The plain fact of the matter is that malapportionment of only one house of the legislature, no matter how equally apportioned be the other house, effectively destroys a citizen's equal representation in the legislature. There are two steps in the progress of legislation and appropriation measures through a bicameral legislature. Each of the two houses must pass on them. Therefore, the malapportionment of only one house is sufficient to give a veto of wholly disproportionate influence to those who would delay or dilute progressive legislation and progressive administration.

Those most interested in State's rights in relationship to Federal activities should oppose a constitutional amendment of the type being considered with all their might. Over the past decades, the Federal Government has been forced to assume an ever increasing burden of problems which unfairly apportioned State legislatures have refused or been unable to deal with. Too often the majority of the State citizens must go to Washington and the Federal Government rather than to the State capitals, to lobby for urban redevelopment, air

pollution control, water pollution control, mass transit, public housing, educational assistance, and the like. I think it is interesting to note that many of those who complain about a paternalistic and socialistic Federal Government, expanding beyond all reason, are the very same people who are now trying to perpetuate unequal representation in State legislatures leading to delay, frustration, and inaction.

If they are really serious about State's rights, and about the ability of States to help themselves and not come to the Federal Government for assistance, then they must do everything in their power to insure equal representation of all State interests and citizens before both houses of their State legislatures. Continuing and perpetuating malapportioned representation will destroy rather than enhance State sovereignty.

We have heard many times of the celebrated case of Missouri House bill 106, which provided for a minimum wage of $1 per hour within the State of Missouri. The vote was 68 for and 83 against the bill. The 68 votes came from districts representing 2.6 million while the 83 no-votes came from areas that represented a population of only half or 1.3 million. The supporters of this legislation numbered 15 less than the opponents, but yet represented twice as many people. It is certainly no wonder, then, that the majority which was frustrated in Missouri will come to the Federal Government for assistance.

We already know that the cities and urban areas in the Nation have bypassed the States and made direct cooperative arrangements with the Federal Government in such fields as housing, urban development, airports, and defense community facilities. We could also list public works, health needs, highways, crime prevention, educational assistance, poverty prevention, and the list grows longer and longer every day. I personally would not want to see the day when our States become no more than administrative provinces of the Federal Government, only carrying out Federal aid programs and distributing Federal assistance under strict Federal standards.

I believe strongly in the Federal system. I believe that the role of the States must be strengthened and expanded. But State power will depend, not upon what we say about it, but on what State government can do to meet the legitimate needs of its people. State legislatures must be representative if they are to respond to these needs. As one who served in State government, as former attorney general in Minnesota, I know this to be true, and would much rather see the trend reversed.

Many State legislatures, of course, will need other reforms than mere equality of representation. Some of our antiquated State legislatures are the most out-of-date governmental machinery in our Nation.

The issue of civil rights has dominated this Congress, as it has previous Congresses for many years. The issue of civil rights has been a major issue in American society almost since the beginning of our Nation. I am enormously proud of the progress our Nation has made. We will add to the already impressive list of fundamental court decisions and substantial congressional enactments the Voting Rights Act of 1965, which seeks to assure that every person will have the right to vote regardless of his color. The drive for voting rights followed the Reynolds decision—that each man was entitled to a vote of equal strength with all others.

If it had not been for this decision of our Court, the adoption of the Voting Rights Act of 1965 would be folly. To pass the Voting Rights Act, protecting and assuring the right to vote, and then to follow it with a constitutional amendment undercutting the need for the act is to grant the vote with one hand and to take it away with the other. The issue of the Dirksen amendment, therefore, is not limited solely to the fairness of vote apportionment in the abstract, as important as that is, but is fundamental to the objectives of an America in which all Americans are fully and freely admitted to the American political process.

More than that, I am firmly persuaded that more justice, more fair treatment, and more meaningful progress will stem from the admission of the American Negro to full participation in political life than has followed all previous court decisions and all previous enactments in our States and Congress. I say this because I believe that the American Negro, if given his full political power, will be his own best representative in the political field. For this reason I believe the Dirksen amendment would be a disastrous blow to the cause of human rights, even though I know it is not the intention of some of the proponents of this amendment.

Malapportionment has always struck hard at the political rights of the American Negroes. On May 14, 1965, former Assistant Attorney General Burke Marshall testified before the subcommittee holding hearings on the proposed amendments. He said:

> Apportionment on any but a population basis, for example, has always discriminated against city dwellers, and this fact proportionally deprives Negroes of a political voice more than any other identifiable group. In 1960, over 72 percent of Negro-Americans lived in urban areas. There is every indication that this percentage is increasing, and increasing rapidly. In Alabama, for example, the percentage of non-whites living in urban areas went up to 23 percent between 1950 and 1960, while those living in rural areas went down almost 20 percent. In Mississippi, the comparable figures were 27.6-percent increase against 2.5-percent increase; in Louisiana, over 20 percent as against 8.6 percent. Of all the Southern States, only Florida showed any increase in the nonwhite population of rural areas, and that increase was slightly over 1 percent as against 71.3 percent in urban areas.

Regardless of the undoubted and unchallenged good faith of those who support the proposed amendment, its passage would be a cynical mockery of those who died in Selma, Birmingham, and elsewhere in their battle for equal voting rights. The right to equal representation is just as basic and fundamental as the right to vote. Representation—equal or otherwise—cannot exist without the vote—and the vote is meaningless without equal representation.

I might conclude my statement by observing that we have not let the courts have sufficient time to implement their decision, and to observe the practical effect of fair reapportionment. The court decisions have resulted in substantial progress and I think it would be premature to amend the Constitution in a hasty manner, without seeing the practical effects of the opposite course, which is to allow the courts more time and to let us have more experience under thoroughly and equally apportioned legislatures.

Since the decision in Baker against Carr, March 26, 1962, court cases have been filed in 44 States, seeking declaration of invalidity of the apportionment of one or both houses of those State legislatures. In the June 15, 1964 reapportionment cases, U.S. Supreme Court invalidated apportionments in six States, and 1 week later on June 22, 1964 invalidated the apportionment schemes of eight additional States.

Twenty-four States began in 1965 under Court orders to reapportion. And since that time four more States have joined the list.

A number of States have reapportioned in 1965 to date. Those presently known are Connecticut, Georgia, Hawaii, Idaho, Indiana, Nebraska, New Jersey, New Mexico, New York, North Dakota, South Dakota, Tennessee, Texas, Utah, Virginia, and Washington.

In conclusion, Mr. President, I would like to say that I feel it a distinct honor to participate in this discussion of an issue of high importance to the future course of American democracy. The controversy here is not between rural virtue and urban iniquity—between Republicans and Democrats—between farmers and white-collar workers, but between those who believe that men are entitled to equal representation regardless of their position, and those who feel that certain citizens should be given a greater influence in government than others.

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

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

NO MORNING HOUR TOMORROW

Mr. LONG of Louisiana. Mr. President, it is planned that tomorrow there will be no morning hour, and that immediately after the prayer the Senate will proceed to the consideration of the conference report before the Senate, in the hope of reaching a vote at an early hour.

RECESS

Mr. LONG of Louisiana. Mr. President, I now move that the Senate stand