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challenges we as a nation must face requires not only wise decisions, but prompt and effective action. We believe the present policy of the United States meets these tests and deserves the wholehearted support of the American people.

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills, and they were signed by the Vice President:

H.R. 1771. An act to establish a 5-day workweek for postmasters, and for other purposes;

H.R. 6622. An act to exempt the postal field service from section 1310 of the Supplemental Appropriation Act, 1952; and

H.R. 6675. An act to provide a hospital insurance program for the aged under the Social Security Act with a supplementary medical benefits program and an expanded program of medical assistance, to increase benefits under the old-age, survivors, and disability insurance system, to improve the Federal-State public assistance programs, and for other purposes.

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."

Mr. INOUYE. Mr. President, I feel compelled at this time to question a statement made by the distinguished senior Senator from Hawaii [Mr. FONG] on the floor of the Senate on September 15, 1964, during the last days of the 88th Congress, concerning the effects of the Supreme Court ruling on reapportionment.

It is quite possible that in the last few hectic moments of discussion prior to the vote on the so-called Javits-Humphrey-McCarthy modified amendment on reapportionment during that session, the implications contained in the short speech by my distinguished colleague were not fully grasped nor understood.

I believe that it is highly imperative that the statement be challenged in order to have the record set straight. This is especially so in the light of the new move to push through the constitutional amendment proposed by the distinguished junior Senator of Illinois, an amendment designed to continue malapportionment in our various State legislatures.

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

Drawing upon rather questionable logic and upon even more questionable constitutional interpretation, my colleague was led to remark that ultimately small States such as Hawaii would be deprived of representation in the U.S. Senate. By the Senator's own logic and interpretation, the list could conceivably have included some score or more of the other smaller States of the Union.

I most respectfully feel that the statement by the senior Senator from Hawaii is a rather misleading one.

First, even a superficial reading of the reapportionment cases decided by the Supreme Court would show that it specifically excluded the theory of representation underlying the U.S. Senate from the principle of one-man, one-vote as applied to State legislatures. There is no question in the Court's mind that the Senate of the United States would always have two Senators representing each State of the Union, regardless of size or population. The point made by the Court is that this Federal form of representation cannot be extended to State legislatures which often over-represent rural areas and under-represent metropolitan areas.

For example, the city of Honolulu, containing more than 80 percent of the State of Hawaii's population, is very much underrepresented in the Hawaii State Legislature. The decision would, in effect, redress that imbalance.

Mr. Chief Justice Warren, in delivering the opinion of the majority in Reynolds against Sims, June 15, 1964, stated:

Much has been written since our decision in *Baker* v. *Carr* about the applicability of the so-called Federal analogy to State legislative apportionment arrangements. After considering the matter, the Court below concluded that no conceivable analogy could be drawn between the Federal scheme and the apportionment of seats in the Alabama Legislature under the proposed constitutional amendment. We agree with the District Court, and find the Federal analogy inapposite and irrelevant to State legislative districting schemes. Attempted reliance on the Federal analogy appears often to be little more than an after-the-fact rationalization offered in defense of maladjusted State apportionment arrangements. And the Founding Fathers clearly had no intention of establishing a pattern or model for the apportionment of seats in State legislatures when the system of representation in the Federal Congress was adopted. * * * The system of representation in the two Houses of the Federal Congress is one ingrained in our Constitution, as part of the law of the land. It is one conceived out of compromise and concession indispensable to the establishment of our Federal Republic. Arising from unique historical circumstances, it is based on the consideration that in establishing our type of federalism a group of formerly independent States bound themselves together under one National Government.

That is what the Supreme Court said. How can we possibly infer from this that the Court may ultimately require reapportionment of the U.S. Senate on the basis of population?

Second, anyone who has read the U.S. Constitution knows that any attempt to modify or amend the manner of representation, including that in the U.S. Senate, must first be proposed as a formal amendment to the Constitution. Any student of government well knows that any such proposal must be made and approved by two-thirds of the Senate and the House, or by two-thirds of all State legislatures, which, by then, would be reapportioned, and the amendment itself ratified by three-fourths of State legislatures or State constitutional conventions. Can any responsible person, therefore, seriously say that the ultimate and logical extension of the Supreme Court's decision would be an amendment to the U.S. Constitution requiring reapportionment of the U.S. Senate?

I hardly think so.

In addition, how can this possibly be done in the light of article V, quoted by the Senator himself; namely:

No State without its consent, shall be deprived of its equal suffrage in the Senate.

In fact, students of the Constitution refer to this as the "unamendable clause" precisely because it is highly unlikely that it can ever be amended.

I think that the people of Hawaii and all the States of the Union are far too knowledgeable, and the knowledgeable far too many, to accept any such misleading and misinformed statements.

I also think that the people of all our States know that statements such as these, however sincerely they may be made, have the practicable and undesirable effect of undermining both the concept of separation of powers and the Constitution itself.

At this point I wish to present the views of the Governor of the State of Hawaii, the Honorable John A. Burns, who has stated:

There has been an attempt to justify geographic representation on the basis of paralleling the national legislative plan with that existing in some States under so-called little Federal systems. However, the two U.S. Senators from each State are not geographic representatives. I say allegedly because in fact the geographic representation is only a cover for a scheme to give a minority a stronger vote—in most instances a veto power, which it should not rightfully possess.

In other words, the U.S. Senate was designed by our Founding Fathers consciously to give equal and perpetual representation to sovereign States in matters affecting the national interest. Upper houses of State legislatures do not represent such sovereign entities. They represent county level governments which are not in the same category.

As Roscoe Drummond reported in similar vein in the Washington Post of July 23, 1965:

It is sometimes suggested that the Federal system is applicable to the States, that just as the States, regardless of size, are equally represented in the U.S. Senate, so should counties regardless of size be equally represented in State senates. Plausible, but one answer is that, while the Federal Government is composed of sovereign States, the States are not composed of sovereign counties.

Speaking generally on the topic of malapportionment, the Governor of my State remarked:

Heretofore many State legislatures have been grossly malapportioned in favor of sparsely populated rural areas. As a result, the concern for and response of State legislatures to problems of modern civilization, many of them stemming from urbanization,

have often been inadequate. Consequently, the Federal Government has had to assume more and more responsibility. If a person is sincerely interested in States' rights, I do not think that he would advocate continuing a system of apportionment that has in the past contributed to a forfeiture of States' rights and duties by default, at least not without giving reapportionment a trial.

Governor Burns believes that—

Now that the U.S. Supreme Court has held that the law of the land is that State legislatures must be apportioned substantially on a population basis, I believe that we should abide by the law and give a fair trial to Government by reapportioned legislatures. I feel that, by and large, reapportionment will inject new vigor into State government and make it more responsive to the will of the people.

The Governor went on to say:

The interjection of the constitutional amendment issue at this time when the States are, or should be, attempting to heed the mandate of the equal protection clause of the 14th amendment, is regrettable. It diverts the attention and energies of the people from reapportionment, and only serves to becloud the issue of reapportionment and tends to delay reapportionment and perpetuate malapportionment. If legislatures apportioned on the basis of equality of population prove to be undesirable or unworkable after a reasonable period of trial, there will then be time enough to consider a constitutional amendment. Personally, I do not think that a legislature so apportioned will be undesirable or unworkable.

As the senior Senator from Illinois stated on June 2, 1965, the gist of the problem is fairly simple. We must protect the inalienable right of all Americans to have an equal and meaningful vote. Otherwise, all our efforts to confer civil rights equally to everyone, all our labors to protect the right to register and cast a vote, would be significantly diluted, if not actually contradicted, were we not to vigorously support judicious reapportionment based on the concept of one man, one vote, and not one-man, one-thousand vote, as can be had under certain malapportioned State legislatures. I concur with the senior Senator of Illinois when he says:

Unfortunately, there are those who claim to support the right to vote but who would pass the rotten borough amendments which will drastically reduce the meaningfulness of a person's vote.

Robbing Peter to pay Paul was never more openly apparent than in the inconsistency of positions taken by those who would strongly support voting rights so long as this did not include all Americans.

These questions are being asked in my State as witness an editorial from the Honolulu Advertiser of June 28, 1965. It is asked:

What is to prevent. * * * Southern States from using such a constitutional amendment to freeze out the growing Negro electorate? The liberals argue the proposal flies in the face of the voting rights bill.

I would respectfully urge those who so courageously passed the voter registration bill in this Senate, to ponder and weigh the significance of their position on the constitutional amendment now being proposed.

Consistency per se may never be a mark of valor or a criterion of intellectual honesty. But consistency in this particular question may indicate how much and how deeply we feel about equal rights for all.

Finally, may I quote from the 20th Century Fund Report:

The United States was created by 13 sovereign States, and the Constitution embodies a theory of federalism which divides sovereign power between the Nation and the States. A key device for protecting their residual sovereignty was the equal State voice in the Senate. Thus the Senate was a condition of union among a group of States which the Federal Government created by that union has no power to destroy. Counties, by contrast, were never independent or sovereign. They did not create the States but were created by them. They are wholly creatures of the States and may at any time be merged, divided or abolished by State governments.

Federalism as a political theory has had and continues to have value as a device of compromise permitting the joining of lesser sovereignties into greater unions; an example in process is the European Economic Community. But to speak of federalism within a State is to reduce a great principle to an absurdity. "The U.S. Senate is both irrelevant and improper as a model for representation within a State," Prof. Paul David, of the University of Virginia, has written, because "a State is not a Federal union of sovereign counties." Too often, the argument for a Federal plan of representation in State legislatures is born of simple ignorance of its actual background and implications. At worst, it may be advanced as a disingenuous cover for the disenfranchisement of urban and suburban voters.

I have, so far, tried to analyze an apparent inconsistency of positions taken by those who would vote for a strong voter registration bill but would not support a basically similar principle as one man, one vote.

I should like to spend some time now in trying to analyze the philosophical and substantive questions which the present amendment poses for all those who are seriously concerned to see that our democratic principles be preserved.

The basic philosophical tenet which underlies the entire issue is that the only legitimate and acceptable basis of democratic representation in State legislatures ought to be the people. On that basis, one man's vote should be worth the same as any other man's vote.

It is in the interest of the voters of a State that the legislature presumably must act. If this be the case, the legislature must be so comprised as to effectively represent the entire mass of voters.

Historically speaking, parliamentary institutions in their infancy did not necessarily reflect what we have come to regard in the modern development of democratic legislatures as a necessary adjunct to a free society. Feudal practices and prejudices were mirrored in the composition of the early forms of representative government. This is why these parliaments represented not so much people as great feudal estates, geographic holdings, and accumulations of either title or wealth. After all, feudal society had seen social, economic, and political power concentrated in these entities.

Then, too, where the processes of government had only a very marginal influence on the livelihood of men in the feudal ages, government came to influence and even to control the lives of men in a rapidly developing democratic society with its complex interrelationships of industrial, economic, political, and social forces. Government became the business of every man, and every man became concerned that his interests were fairly represented in government.

It is in this context that we ought to place the current issue before us.

The thinking which went into the establishment of regional and/or titular representation was one reflective of prevailing geographic and/or hierarchical stratifications of society. These times have long passed.

And so the principal argument of those who would want some other basis for representation than population in at least one house of a State legislature has revolved around the contention that certain citizens in a democratic society have peculiar problems which can only be handled fairly through a body which is disproportionately weighted.

Advocates of this position have maintained that minority rights are as important as those of the majority in a democratic society—that the concept of a State senate is nothing more, nothing less, than an embodiment of this basic democratic principle.

But, as attractive and tempting as may be this kind of an argument, the fact of the matter is that such a democratic principle was never meant to block needed municipal reforms, was never intended to favor the rural interests over more thickly populated, and more heavily assessed municipalities, was never designed to intimidate the hopes and aspirations of the larger community of citizens in any State.

The argument of minority rights is a rather misleading one. There are many other legal guarantees and procedures which seek to maintain this principle and which have, traditionally, been successfully resorted to and applied. It was never meant to perpetuate the political control of a few over the many. It was only meant to protect the rights of the minority, not to extend their dominion.

As the political scientists discussing this problem under auspices of the Twentieth Century Fund have so cogently stated:

But surely the problems of cities and suburbs, and their need for Government aid, have been as great as those of rural areas in recent decades; yet no one has been heard to argue that city and suburban voters should therefore have been given disproportionate weight in legislatures. As for the argument that rural citizens are a minority needing special protection, would anyone contend that in the States still predominantly rural—North Dakota, for example, or Mississippi—the urban minorities should be given extra legislative seats?

The junior Senator from Maryland in his excellent maiden speech before this body recently described the situation in his State where 15 percent of the people from basically rural counties control 52 percent of the seats in the State senate. He went on to describe a body which could not act on various crucial items of legislation affecting the interests of all

citizens of that State but which painfully and in detail argued the pros and cons on the burning question of where to locate an incinerator within the capital city of Annapolis.

The State Senate of Maryland has been actually defended on the grounds that rural counties of that State have problems and interests peculiar unto them and that these must be protected in the senate.

However, critics have rightly argued that since Negroes are a slightly larger minority in Maryland as compared to the population of these same rural counties in that they make up approximately 17 percent of the State's population, it should logically follow that Negroes must be permitted to control the lower House of the Maryland Legislature, at least. If we accept the notion that the legislature of our States was designed to protect the rights of the minority against the majority, then it is perfectly reasonable and logical to advance such an argument.

But the problem is confined not only to the State of Maryland. Political scientists have for a long time pointed to glaring instances of malapportionment in various State legislatures across the length and breadth of this land. In Connecticut where apportionment has remained the same ever since 1876, a majority of the house can be elected by 12 percent of the population. The same percentage holds for Vermont, which has not changed apportionment since 1793. The story is the same in other parts of the country although reapportionment battles waged and being won may have already restructured the situation somewhat. Vermont will be reapportioned in November, for example. A majority of 19 percent can elect the New Jersey Senate; 11 percent in the California Senate; 29 percent in the Illinois Senate; and 17 percent in the Idaho Senate.

These are the reasons why publications such as the journal, Christianity and Crisis, have stated:

> This amendment would be the first constitutional amendment in American history to reduce rather than expand the basic rights of citizens. Grossly inequitable patterns of representation are to be imbedded in the Constitution. It would multiply the difficulty States have in dealing with such issues as housing, transit, and welfare.
>
> The amendment would perpetrate a cruel hoax on those who believe that the voting rights bill will secure them equal voice in government, their votes rendered ineffectual by inequitable apportionment.

For the past few days I listened with intense interest to the opponents, and some proponents, of the so-called Dirksen amendment, which, under certain circumstances, would permit States to apportion their legislatures on factors other than population. In the main, discussion has centered around substantive questions such as I have just concluded.

Both this year and last, speakers have brought their oratorical and intellectual powers to bear on this issue, utilizing the words and works of individuals ranging as far back as Alexander Hamilton

I have heard many of my distinguished colleagues speak persuasively on the great political and moral issues involved, using professorial opinions, newspaper editorials, and Supreme Court decisions as proof of their contentions.

No doubt we are all familiar by this time with the more well-publicized issues involved. Senators far more learned than I have discussed the question of the city versus the farm, majority versus the minority rights, and the role of the electorate in a modern democracy.

I believe, however, that we can take another approach to resolving this controversy, an approach which I believe to be equally constructive. The issue involved, I would suggest, is not only substantive in nature; it is also procedural. The issue is one that threatens the very heart of our constitutional form of government.

The amendment has concerned me profoundly, for I believe that it will undermine one of the most basic precepts of constitutional government. I do not believe that the amendment's supporters consciously desire to weaken the Constitution but the fact still remains that one result of the amendment's adoption will be the undermining of the very system which has enabled the United States to grow and adjust to every condition and every new age.

By focusing on the procedural issue at this time, I wish to emphasize that beyond the question of rights is also the matter of the separation of powers, which was ordained by the Founding Fathers and which has remained one of the foundations of our constitutional government. Last year I felt constrained to speak out against the attempt to obtain a stay in the court order requiring reapportionment. Again I feel it vitally neccessary to oppose the so-called Dirksen amendment which would attempt to circumvent the Supreme Court decision in Reynolds against Sims.

In effect, the initiators of the amendment say that a judicial decision ought to be corrected by legislative decree. If this can be done with the reapportionment decision, who is to say what decisions may be reversed whenever a legislator may feel it desirable?

To approve this amendment would run counter to our traditional views that the judicial and legislative functions must be kept separate. For all practical purposes, there is no other interpretation to this amendment. What has traditionally been the law of the land will become the law of the land if only Congress so wills it.

The framers of the Constitution made clear their objective of establishing a division of powers. Article III, section one of the Constitution states:

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

Section two outlines the jurisdiction of the court in the following terms:

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

The only power Congress exercises over the courts is in their creation and in the approval of appointees. Conversely, the courts may not interfere with the legislative processes except in cases of impeachment. Grant that the power to circumvent judicial decisions through constitutional amendments is one which is always present and constitutionally available, the fact remains that such a recourse runs counter to the spirit of both the Constitution and the doctrine of separation of powers.

Before acting hastily on so momentous an amendment, we ought to review the intentions of the Founding Fathers on the doctrine of separation of powers. Alexander Hamilton in Federalist Paper, No. 78 states:

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

Commenting further along in the same paper, he says that if the legislature and the Constitution are divergent in their views:

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

Yet in this amendment we are asked to emasculate a judicial decision and assert almost absolute congressional supremacy. The Supreme Court in Reynolds against Sims and Lucas against the Forty-Fourth General Assembly of Colorado, held that the equal protection clause of the 14th amendment guarantees to all citizens the principle one man, one vote. By permitting States to allow malapportioned State legislatures, this amendment would, in effect, override the Supreme Court.

We are all familiar with the milestone case, Marbury against Madison, which establishes the principle of judicial review and the supremacy of the judicial branch as the only one to judge the constitutionality of our laws. This proposal submitted by the junior Senator of Illinois, would amount to a denial of the Supreme Court to execute its decisions.

I stated earlier that the amendment was a dangerous precedent. What would stop Congress from initiating amendments which would overrule Brown against the Board of Education of Topeka or similar decisions which have established basic rights for all Americans? If Congress is the sole interpreter of the Constitution, who will protect our rights from a possible future Congress which is capricious and precipitate? Indeed, is any judicial decision safe from a Congress which finds it distasteful and so proceeds to initiate an amendment?

The easy recourse to an amendment would tend to weaken the role of the judiciary and thus serve to undermine the Constitution. It would ultimately compel the courts to submit to the legislature and may permit only congressionally approved decisions to be made. In the end we could have, in effect, a system in which a single branch would enact a law, influence decisions on its constitutionality, and perhaps even enforce it, a system which the framers of the Constitution regarded as the very antithesis of democracy.

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

Mr. INOUYE. I am happy to yield.

Mr. MONDALE. I was deeply impressed by the presentation of the Senator from Hawaii. The comments he made in analyzing the so-called Dirksen amendment reflect a great deal of study on his part, and a great deal of courage, because I believe that the entire Senate is aware of the fact that this is a controversial issue, one that inflames the passions and prejudices of people across the land, in part because the nature of the proposal and the nature of the response are not thoroughly understood.

The Senator from Hawaii has performed an important public service in presenting to the Senate, and to this Nation, a carefully considered and profound statement on the proposed so-called Dirksen amendment. I, for one, am very grateful for this contribution.

One of the questions which concern me greatly about the proposed amendment was mentioned in the speech of the Senator from Hawaii. I refer to the strange fact that some who are supporting the Voting Rights Act of 1965 for the purpose of providing the right to vote for disenfranchised minorities are at the same time supporting the Dirksen amendment, which may have the effect of denying those same people the right to an effective vote.

Mr. INOUYE. That is a glaring inconsistency which I do not quite comprehend.

Mr. MONDALE. I was interested to know that some of the proponents of the Dirksen amendment say that while it might be conceded that the incumbent legislators might be interested in drawing an apportionment plan to perpetuate themselves in public office, yet the second aspect of the Dirksen amendment which requires that the proposal be presented to the people protects them from any bias.

I ask the Senator from Hawaii what type of protection from a racially drawn apportionment plan there would be in southern States which discriminate against Negro voters.

Mr. INOUYE. Very little, if any.

Mr. MONDALE. I have just examined the figures appearing in the report of the Judiciary Committee on the voting rights legislation. In that report it is pointed out that in the State of Alabama 66 percent of the voting-age white population are registered, compared to 18.5 percent of the Negro voting-age population.

In Mississippi 66 percent of the white voting-age citizens are registered to vote, compared to only 6.4 percent of the voting-age Negroes.

How could the adult voting-age Negro population of Mississippi protect themselves at a general election at which a proposed apportionment plan was presented to the electorate of Mississippi, one which would have the effect of redistricting the Negro minority out of effective representation? How could they protect themselves in such a general election?

Mr. INOUYE. I do not see how the protection can be had. I hope that Senators who are now supporting the amendment submitted by the junior Senator from Illinois will read the committee report, especially the section just indicated.

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

Mr. INOUYE. I am happy to yield.

Mr. TYDINGS. I am sure the Senator has heard the protestations of the proponents of the rotten borough amendment that they have no wish or desire to permit the amendment to be used to discriminate against racial groups. They have protested loudly and clearly here and through lobbyists throughout the States across the country. But, I ask, if this is the case, why should the distinguished minority leader [Mr. DIRKSEN], the proponent of the amendment, have offered in the subcommittee the following amendment:

> Nothing in this article shall permit an apportionment based upon any factor or combination of factors which has the purpose or effect of discriminating against any group of voters on account of their race, religion, color, national origin, education, or wealth.

Why should the Senator from Illinois have introduced that amendment in subcommittee, and then, when the distinguished senior Senator from North Carolina [Mr. ERVIN] objected to it, stating that his followers would object to it, withdraw the amendment in committee; and when I reoffered his own amendment in subcommittee, vote against it?

Mr. INOUYE. Those are the things that make me fearful of the Dirksen amendment.

Mr. TYDINGS. Mr. President, will the Senator further yield?

Mr. INOUYE. I yield.

Mr. TYDINGS. The Senator, I feel certain, has heard again the protestations of the proponents of the Dirksen amendment, who consistently advocate that we should let the people decide. They point to the provision which would permit a referendum framed by a legislature to be submitted every 10 years to the people.

I ask the distinguished Senator from Hawaii how such a referendum would work when the constitutions of one-third of the States today contain no provisions for referendum, and the constitutions of another one-third of the States contain no provisions for initiative.

Would the proposed constitutional amendment amend the constitutions in States which do not have provisions for referendums, or would those States, in effect, be left completely in the dark? What would be the effect?

Does the Senator from Hawaii feel as I do, that when the last provision was drafted outside the subcommittee and offered on the floor of the Senate, it was merely another example of why there should not be a hasty, ill-conceived, ill-drawn attempt to draft an amendment outside the processes of committee, where there can be fair deliberation?

Mr. INOUYE. I am in complete agreement with the junior Senator from Maryland. He has just cited a good reason why the proposed constitutional amendment should be rejected.

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

Mr. INOUYE. I yield.

Mr. MONDALE. Burke Marshall, who I think can be regarded as perhaps the most knowledgeable, seasoned, and responsible attorney in the country in the field of human rights, and to whom the Nation owes an enormous debt for his magnificent contribution in this field, stated in response to this proposal:

> Further, as I have already pointed out, in several States the electorate that would in fact approve any apportionment system in the next few years will be an electorate which is already in imbalance because of existing or past racial discrimination in registering and voting.

Does the Senator agree with that analysis by Mr. Marshall?

Mr. INOUYE. Absolutely. I believe that Mr. Marshall is perfectly correct.

Mr. President, I thank my distinguished friend for his kind and generous words. I close by saying that I have spent many hours thinking about the implications of the proposed constitutional amendment. Just as I could not sit silent last year, so I must speak now against this dangerous attack on our Constitution. The issue is far too significant and great for me not to become deeply involved.

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

Mr. INOUYE. I yield.

Mr. PROXMIRE. Shortly before the Senator yielded to the distinguished Senator from Minnesota, as I understood him to say, he indicated that a State having a single legislative body could provide for its apportionment on a geographical or political subdivision basis with little regard for population, and then could work its will on the basis of that single body's representation, with population given short shrift.

In saying that, the Senator has hit a crucial weakness both in the Dirksen amendment and in the Javits amendment, which may be offered. I invite attention to the wording of the Dirksen amendment:

> 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 * * *.

The argument has always been made, "Yes; we shall have one house based on area, but the other will be based on population." But the next clause reads: "or giving similar weight to the same factors in apportioning a unicameral legislature."

In other words, after passing the proposed constitutional amendment, we could end with a number of States that wanted to disfranchise the Negro, for example, or any other minority group, or give predominent weight to a rural group or a suburban group or any other group it wished. The State could have a unicameral legislature, with no house representing the people as a whole, the only legislative body being one which was designed expressly for the purpose of giving majority representation to a small minority. This device could be accomplished by apportioning the only house, the unicameral house, on a geographical area basis.

I read a clause from the Javits amendment, which provides the same thing:

> The people of a State may apportion one house of a bicameral legislature, or a unicameral legislature, using geography or political subdivisions as well as population as factors, if such plan of apportionment bears a reasonable relationship to the needs of the State. * * *

Once again, it is obvious that a State legislature could decide how much weight it wishes to give to the population of the legislative house.

In the case of either amendment, we could end with a State legislature consisting of one house with representation based largely on area, which would virtually destroy the opportunity for the citizens to have anything like a reasonable opportunity to influence the election of their State legislatures, which, of course, determine the laws of the States.

The Senator from Hawaii has alluded to that, and in so doing has made a helpful contribution to the debate.

Mr. INOUYE. I have noted with some sadness that many of the proponents of the constitutional amendment proposed by the Senator from Illinois were strong supporters of the voting rights bill. Their support of the proposed constitutional amendment shows a marked inconsistency, an inconsistency which I myself cannot comprehend.

In one bill, we said that all Americans have equal voting rights; but, as explained by the Senator from Wisconsin, the proposed constitutional amendment provides that Americans shall have unequal voting rights.

I hope that the proponents of the amendment will be able to see this inconsistency and resolve it.

Mr. PROXMIRE. The Senator from Hawaii, the Senator from Minnesota [Mr. MONDALE], and the Senator from Maryland [Mr. TYDINGS], in the colloquy just held, clearly spelled out precisely how the Dirksen amendment would, in effect, in all probability, destroy the opportunity for minority groups in the Southern States to have effective representation in their State legislatures.

Furthermore, in many Northern States, where much civil rights work has to be done, as we all know—where now, as a matter of fact, most of the civil rights work outside the South has to be done, because the Negro in the North lives in the cities. In California, 92.5 percent live in the cities. In Illinois, 97.5 percent live in the cities.

The effect of the Dirksen amendment would be to enormously reduce the opportunity for the Negro living in the North to have representation in the State legislature so that he could use his vote to accomplish the kind of fair housing legislation and other legislation which it is important for him to attain in order to achieve the full rights guaranteed to him by the Constitution, and for what the Supreme Court, and the Congress which have worked so hard in his behalf in the last few years.

I again commend the Senator from Hawaii for his excellent speech.

Mr. INOUYE. Mr. President, I express my gratitude to the Senator from Wisconsin, the Senator from Minnesota, and the Senator from Maryland for participating in this discussion in depth.

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

Mr. INOUYE. I yield.

Mr. MONDALE. Mr. President, it seems to me that the point at which the analysis of the so-called Dirksen amendment must begin is the first phrase, which states that States may apportion one of their houses on the basis of population, geography, or political subdivisions, giving each factor such weight as may be deemed appropriate.

I do not believe there is anyone who has analyzed that particular phrase who does not agree that one could do anything he wished, and probably without judicial review. Even if there were to be judicial review, it would be only in terms of the unlimited scope of discretion vested in the legislature.

We have had nearly two centuries of experience with what State legislatures can do in terms of apportionment. I quote from the distinguished legal authority, Carl A. Auerbach, in his article entitled, "The Reapportionment Cases: One Person, One Vote, One Vote, One Value," appearing in the Supreme Court Review, Law School of the University of Chicago, 1964, who stated:

> In fact, the principal obstacles to equitable reapportionment seem to be the individual legislator's desire to preserve himself and the willingness of legislators as a group to cooperate with each other to accomplish this objective. The "safe seat" psychology also dominates congressional districting. For example, Democrats in overrepresented but safe urban districts in Maryland, New Jersey, Illinois, Massachusetts, Pennsylvania, New York, and Michigan have been content to tolerate overrepresented Republican rural districts and their toleration has been more than matched by their Republican colleagues.

That is what we have seen in Minnesota and in virtually every other State of the Union. The safe seat legislators accommodate each other with comfortable seats that are virtually incontestable. It is not only the rural areas that have been overrepresented. Some urban areas have also been over represented. Nothing has been done by the legislators to disturb this situation.

Thus, we have situations involving apportionment such as that in the State of Connecticut, where in one district the vote of a voter accounts for 424 times as much as the vote of a voter in another district.

Justice Frankfurter, in his dissent in the case of Baker against Carr, said that "relief must come through an aroused public conscience that sears the conscience of the people's representatives."

The tragic truth is that not throughout the history of this country has conscience seared legislators enough to get them to destroy their own safe seats.

Thus, the Dirksen amendment returns to the State legislatures the power to preserve themselves regardless of the fairness of the apportionment.

As we pointed out before, the person who is most disadvantaged, the Negro in the South, would not even be able to participate in the referendum at which the issue would be decided, because he has been disenfranchised or has never been enfranchised.

In addition to that, the question of a popular referendum can be confusing as the writing of "H.M.S. Pinafore" in which he said:

> Things are seldom what they seem,
> Skim milk masquerades as cream.

Mr. President, it is not even skim milk. It is close to water. It is to a hungry person as would be the results of boiling the shadow of a pigeon who had starved to death. That is all that this proposal means. The proposal would be prepared by a legislature which wanted to perpetuate itself. The possibilities defy human imagination.

There are instances which I do not believe we should go into today in which these so-called proposals for apportionment based on population have been made so offensive and stated in such an unfair way that the people would almost certainly turn them down, and they did.

Mr. INOUYE. Mr. President, I am most grateful to the Senator from Minnesota for his magnificent contribution to the subject.

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

Mr. INOUYE. I yield.

Mr. TYDINGS. Mr. President, I take this opportunity to pay tribute to the political courage of both young men who have just addressed the Senate, the distinguished Senator from Hawaii [Mr. INOUYE] and the distinguished Senator from Minnesota [Mr. MONDALE].

I know that the position which they take is not a particularly popular one in some areas of the electorate which they represent. I know that the vested interests are pouring lobbyists into our Capital. Some individuals have been financed to come to the Capital from the far reaches of our country and lobby on this measure.

I take this opportunity to pay tribute to the courage of both those Senators for standing up and being counted on what is perhaps the most important constitutional amendment to be considered by Congress in this century.

Mr. INOUYE. Mr. President, I thank the Senator for his very kind and generous remarks.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.