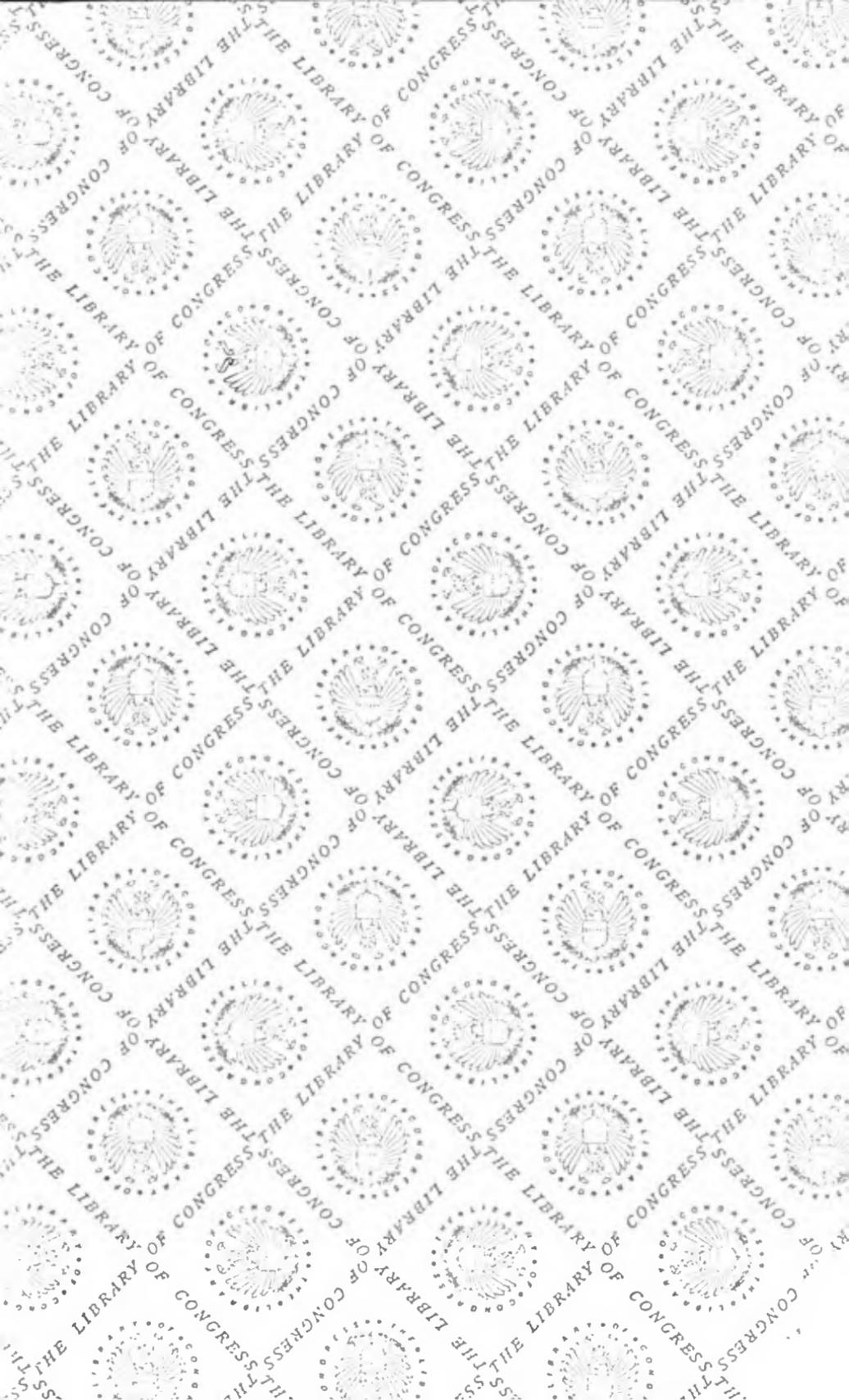


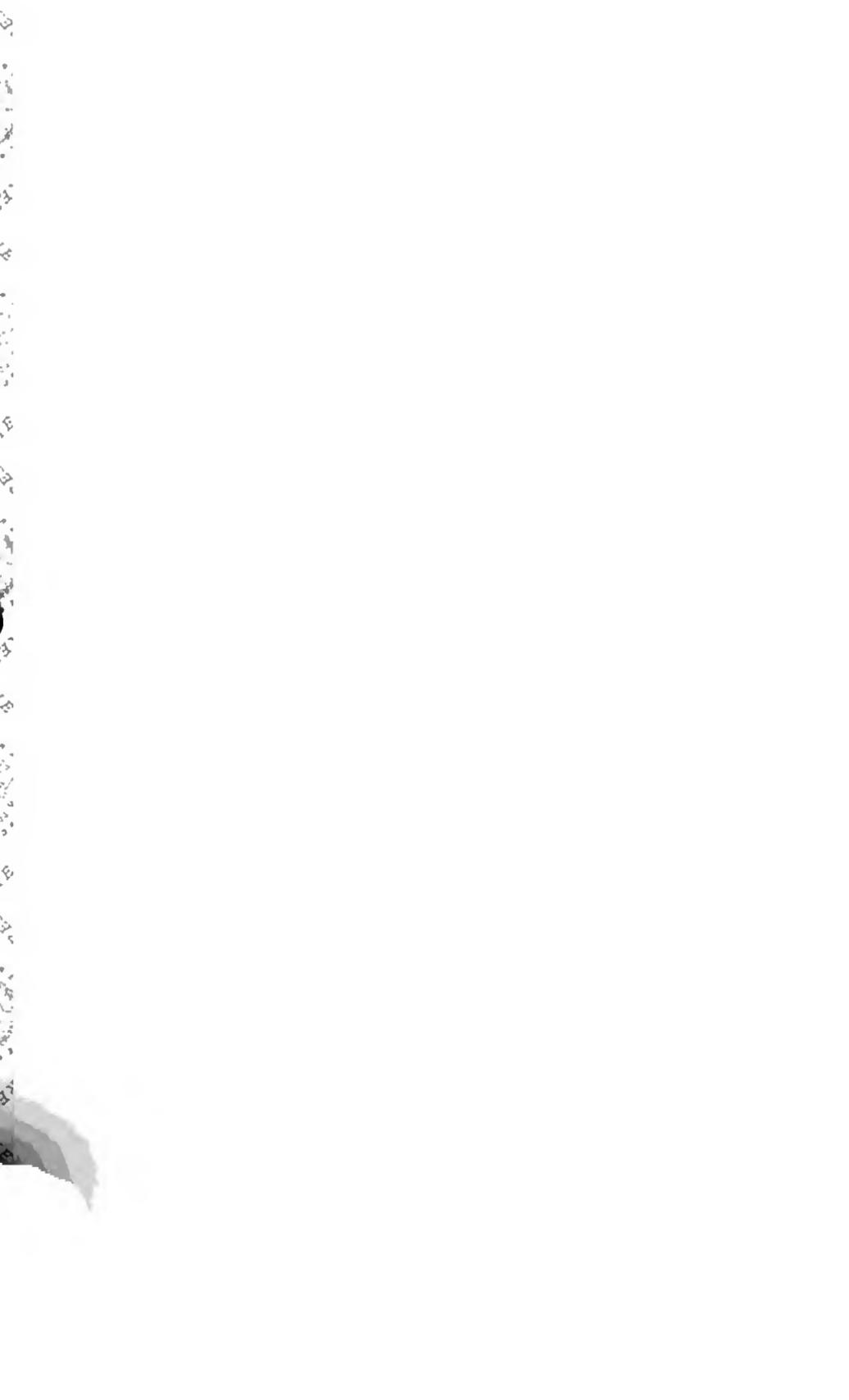
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CONGRESSIONAL REDISTRICTING

HEARINGS

BEFORE



SUBCOMMITTEE NO. 5

U.S. Congress. House. OF THE

→ COMMITTEE ON THE JUDICIARY.]

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH CONGRESS

SECOND SESSION

CARD DIVISION

ON

**H.R. 699; H.R. 1128; H.R. 2836; H.R. 4340 and
H.R. 7343**

PROPOSALS TO REQUIRE THE ESTABLISHMENT, ON THE
BASIS OF THE NINETEENTH AND SUBSEQUENT DECENNIAL
CENSUSES, OF CONGRESSIONAL DISTRICTS COMPOSED
OF CONTIGUOUS AND COMPACT TERRITORY FOR THE
ELECTION OF REPRESENTATIVES

MARCH 18-19, 1964

Serial No. 8

Printed for the use of the Committee on the Judiciary

60 - 12517



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1964

KF27
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CONGRESSIONAL REDISTRICTING

WEDNESDAY, MARCH 18, 1964

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 5 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:15 a.m., pursuant to call, in room 346, Cannon Building, Hon Emanuel Celler (chairman of the subcommittee) presiding.

Present: Representatives Celler, Rodino, Rogers, Donohue, Kastemeier, McCulloch, and Meader.

Also present: William R. Foley, general counsel, and William Copenhaver, associate counsel.

The CHAIRMAN. The subcommittee will come to order.

We are assembled this morning to consider a number of congressional redistricting bills and the Chair would like to read a brief statement.

The Congress now has before it the unique opportunity to act so that all doubt and confusion can be removed in the problem of the formation of congressional districts.

The recent decision in the case of *Wesberry v. Sanders* makes it clear that we can no longer postpone a solution. To avoid a multiplicity of suits, to provide States with Federal standards for congressional districts so that the States may be guided accordingly, it is essential for Congress to accept its responsibility.

If the Congress does not act, the courts will. Certainly, it is far better to permit the States rather than the courts to draw the lines.

Since the early 1950's, I have endeavored to bring about the enactment of legislation which would set up Federal standards for congressional redistricting.

If State legislatures would draw the line for each congressional district, which under my proposal must be composed of contiguous territory, reasonably compact as to form, and contain a population not more than nor less than 15 percent of the population for the average congressional district in the State, there would be no insoluble problems.

I also provide in my proposal judicial review by a Federal district court of each State legislature's enactment of redistricting statutes.

My bill, as it now stands, would not become effective until after the Nineteenth Decennial Census, but in view of the recent decision of the Supreme Court I believe that date should be made effective at an earlier time, perhaps in time for the election of the 90th Congress. I believe in the light of the language of the Supreme Court in its recent decision that congressional districts should be composed of populations

as nearly equal as practicable, the enactment of my proposal providing for a 15-percent deviation above or below a State average would be of assistance both to State legislatures and also to courts in deciding whether or not congressional districts met constitutional requirements. (The bills are as follows:)

[H.R. 699, 88th Cong., 1st sess.]

A BILL To require the establishment of congressional election districts composed of contiguous and compact territories, and to require that the districts so established within any one State shall contain approximately the same number of inhabitants

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 22 of the Act entitled "An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress", approved June 18, 1929, as amended (2 U.S.C. 2a), is amended by striking out subsection (c) and inserting in lieu thereof the following:

"(c) Each State entitled to more than one Representative in Congress under the apportionment provided in subsection (a) of this section, shall establish for each Representative a district composed of contiguous and compact territory, and the number of inhabitants contained within any district so established shall not vary more than 10 per centum from the number obtained by dividing the total population of such States, as established in the last decennial census, by the number of Representatives apportioned to such State under the provisions of subsection (a) of this section.

"(d) Any Representative elected to the Congress from a district which does not conform to the requirements set forth in subsection (e) of this section shall be denied his seat in the House of Representatives and the Clerk of the House shall refuse his credentials."

[H.R. 1128, 88th Cong., 1st sess.]

A BILL To require the establishment of congressional districts composed of contiguous and compact territory for the election of Representatives, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 22 of the Act of June 18, 1929, entitled "An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives" (46 Stat. 26), as amended, is amended as follows:

(1) Subsection (c) is amended to read as follows:

"(c) In each State entitled in any Congress to more than one Representative under any apportionment hereafter made pursuant to the provisions of subsection (a) of this section, there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled; and Representatives shall be elected after such apportionment only from districts so established, no district to elect more than one Representative. Each such district hereafter established shall at all times be composed of contiguous territory, in as compact form as practicable; and, under apportionments made upon the basis of the nineteenth and subsequent decennial censuses, no district established in any State for the Ninety-third or any subsequent Congress shall contain a number of persons, excluding Indians not taxed, more than 20 per centum greater or less than the average obtained by dividing the whole number of persons in such State, excluding Indians not taxed, as determined under the then most recent decennial census, by the number of Representatives to which such State is entitled under the apportionment made upon the basis of such census."

(2) Such section 22 is further amended by inserting at the end thereof the following new subsections:

"(d) Any establishment of congressional districts in any State shall be subject to review, at the suit of any citizen of such State, by the district court of the United States for the district in which such citizen resides; and any court before which a case involving the establishment of such districts may be pending shall give precedence thereto over all other cases or controversies, and if such court be not in session, it shall convene promptly for the disposition thereof.

"(e) Unless a State is redistricted in the manner provided by the law thereof after any apportionment hereafter made, the Director of the Bureau of the Census shall redistrict such State in conformity with subsection (c) for the election of the Representatives to which such State is entitled. Nothing in this subsection shall prevent the redistricting of any State by State action at any time in the manner provided by the law thereof; and such redistricting by State action, when effective, shall supersede any redistricting by the Director of the Bureau of the Census under this subsection, except that such redistricting by State action shall not supersede any redistricting by the Director of the Bureau of the Census with respect to any election of Representatives, unless such redistricting by State action becomes effective on or before January 1 of the year in which such election occurs."

[H.R. 2836, 88th Cong., 1st sess.]

A BILL To require the establishment, on the basis of the nineteenth and subsequent decennial censuses, of congressional districts composed of contiguous and compact territory for the election of Representatives, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 22 of the Act of June 18, 1929, entitled "An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives" (46 Stat. 26), as amended, is amended as follows:

(1) Subsection (c) is amended by striking out all of the language in that subsection and inserting in place thereof the following:

"(c) In each State entitled in the Ninety-third Congress or in any subsequent Congress to more than one Representative under an apportionment made pursuant to the provisions of subsection (a) of this section, there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled; and Representatives shall be elected only from districts so established, no district to elect more than one Representative. Each such district so established shall at all times be composed of contiguous territory, in as compact form as practicable; and, under apportionments made upon the basis of the nineteenth and subsequent decennial censuses, no district established in any State for the Ninety-third or any subsequent Congress shall contain a number of persons, excluding Indians not taxed, more than 15 per centum greater or less than the average obtained by dividing the whole number of persons in such State, excluding Indians not taxed, as determined under the then most recent decennial census, by the number of Representatives to which such State is entitled under the apportionment made upon the basis of such census."

(2) Section 22 is further amended by inserting at the end thereof the following new subsection:

"(d) Any establishment of congressional districts in any State pursuant to the preceding subsection (c) shall be subject to review, at the suit of any citizen of such State, by the district court of the United States for the district in which such citizen resides; and any court before which a case involving the establishment of such districts may be pending shall give precedence thereto over all other cases or controversies, and if such court be not in session, it shall convene promptly for the disposition thereof."

[H.R. 4340, 88th Cong., 1st sess.]

A BILL To provide for fair representation of all areas of the United States in the House of Representatives

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in each State entitled to more than one Representative in the House of Representatives, the Representative to the Ninety-third and each subsequent Congress shall be elected by districts composed of contiguous and compact territory, no district containing more than 115 per centum or less than 85 per centum of the whole number of inhabitants of such State divided by the number of Representatives to which it is entitled. The number of said districts shall be equal to the number of Representatives to which such State may be entitled in Congress, no district electing more than one Representative.

[H.R. 7343, 88th Cong., 1st sess.]

A BILL To require the establishment of congressional districts within any one State containing approximately the same number of inhabitants

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 22 of the Act of June 19, 1929, entitled "An Act to provide for apportionment of Representatives" (46 Stat. 26), as amended (2 U.S.C. 2a), is amended by adding at the end thereof the following new subsection:

"(d) (1) No district heretofore or hereafter established in any State for the Eighty-ninth or any subsequent Congress shall contain a number of persons (excluding Indians not taxed), as determined by the eighteenth and each subsequent decennial census of the population, more than 20 per centum greater or less than the average obtained by dividing the whole number of persons in such State (excluding Indians not taxed), as determined under the then most recent decennial census, by whichever is the smaller, (A) the number of Representatives to which such State is entitled under the apportionment made upon the basis of such census, or (B) the number of districts then prescribed by the law of such State.

"(2) Before the first meeting of the Eighty-ninth Congress, the Ninety-third Congress, and each fifth Congress thereafter, the Director of the Bureau of the Census shall transmit to the Clerk of the House of Representatives a statement showing whether or not the districts created within each State for the election of Representatives conform to the requirements set forth in paragraph (1) of this subsection.

"(3) If any Representative is elected in the Eighty-ninth Congress or in any subsequent Congress (other than a Member elected from a State at large) from a district which does not conform to the requirements set forth in paragraph (1) of this subsection, as determined by the Director of the Bureau of the Census, then all of the Representatives of that State within which the district lies shall be elected from the State at large in subsequent general elections until such time as the Director has determined that all districts within the State have been conformed to the requirements set forth in paragraph (1) of this subsection. The Director shall make such determination within thirty days after the State has redistricted for the purpose of conforming with the requirements of such paragraph. The Clerk of the House of Representatives shall send to the executive of each State a statement to the effect that the State must elect its Representatives at large and, when the State has met the districting requirements, a statement to that effect."

The CHAIRMAN. We now find that one of the coordinate branches of Government has entered that legislative thicket which was looked upon with at least great concern by a number of the Justices of the Supreme Court of the United States.

Our first witness this morning is a distinguished member of this Judiciary Committee whose contributions are always valuable, the Honorable Charles Mathias of Maryland.

We are very glad to hear from you.

Mr. McCULLOCH. Mr. Chairman, may I interrupt at this point off the record?

(Discussion off the record.)

Mr. MATHIAS. I hope the gentleman from Ohio will give my regards to those farm members. I have a number of their colleagues in my district.

Mr. McCULLOCH. I might say, Mr. Mathias, the chairman knows this, having been in Congress a bit longer than you, one of these gentlemen comes from that great county of Darke in the great Miami Valley in Ohio, from which went the first case to the Supreme Court of the United States testing the original AAA Act.

The CHAIRMAN. Mr. Mathias, we are very glad to hear from you.

STATEMENT OF HON. CHARLES McC. MATHIAS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. MATHIAS. Mr. Chairman, I appreciate your statements and those of the distinguished ranking minority member of the committee and the opportunity to appear this morning to discuss this legislation.

I would first like to pay tribute to the chairman's foresight in introducing legislation over a period of years which would have prevented the necessity for the Supreme Court entering into the "legislative thicket," as the gentleman from Ohio has quoted the words of the Justices of the Court.

The reproach that the House of Representatives defied but must have anticipated is now upon us. The Supreme Court's decision last month in the case of *Wesberry v. Sanders*, settled any doubt that may have existed as to the Court's views on its jurisdiction over and the justiciability of the issue of fair congressional representation.

Now, more than ever, we are provided with the impetus to act on a problem which the Congress has been avoiding for years. With the issue of equitable representation in this House for every American citizen placed squarely before us, I am hopeful that at long last Congress will set its house in order before there is further occasion for judicial action.

I can speak very feelingly on that subject because it is a matter in which I can confess personal interest at this moment.

I think that we should act before there is further occasion for the constant and continual involvement of the judges in the political questions which are involved in redistricting and the judges may be ousted from the Halls of Congress, if Congress will do its duty as it is set forth in the Constitution of the United States.

I have long believed that the propriety of the composition of congressional districts is appropriately within the prerogative and responsibility of the States and the Congress, not the judiciary. Involved here is a very fundamental issue of separation of powers between coequal branches of the Federal Government.

On the other hand, however, the question of equal representation also involves a very basic issue of civil rights; a right to have one's vote given at least roughly equal weight to that of others. This is a right as guaranteed under the equal protection clause of the 14th amendment, as well as under the provisions of article 1 upon which the Court relied very heavily in the *Wesberry* case. It is a protection against discrimination by a State which chooses those who shall be given a full vote, and those given a half or quarter vote.

The rights of voters on the one side of a scale long counterbalanced, and the reluctance of the Court to inject itself in the internal affairs of the Congress—the danger caused by the abuse to the former finally outweighed the hesitancy to act and the scales were tipped in favor of the right to vote. The Court, no longer able to acquiesce in the continued gross inequities which prevail today, was finally constrained to act.

Quite frankly, I view the humiliation which we have subsequently sustained as a result of the Court's decision to be a deserved one warranted by the extremes to which we have allowed the situation to deteriorate.

Let us look at the background of this problem and the basis for my conclusion.

Historically, the House of Representatives was intended to be the "Grand Depository of the Democratic Principle," in that it embodied the symbol of equality of representation in our Federal Government. Even its name was chosen to be descriptive of its intended nature. Unfortunately, however, the increasing problem of malportionment of congressional districts reveals a great divergence from the original goal of true representation.

Under the Constitution, article I, section 2, "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. The actual enumeration shall be made within 3 years after the first meeting of the Congress * * *, and within every subsequent term of 10 years, * * *."

Clearly the Constitution calls for the apportionment of Representatives among the States based upon the popular census. A cursory examination of the census figures as applied to the congressional districts within each State now reveals the widespread inequality between the population segments represented by the Members of the House of Representatives.

Though relative equality of representation among the people is not specifically prescribed by the Constitution, this ideal is basic to our concept of American democratic government. This is patent in the numerous historical records and writings of these men who framed and ratified the Constitution.

Precise equality of representation is impractical, if not impossible. Even if the formulation of congressional districts with mathematical precision were possible, I would question them as undesirable for such districting would fail to allow for a relatively small but very necessary degree of flexibility required to meet the intricate social, economic, and political situations peculiar to each State. But, I heartily approve a reform which would bring about a much greater degree of voter equality than exists in many States today.

Under the practices of a century of representative government responsibility for the inequities that exist lie with the various State legislatures. Instead of making the periodic districting adjustments in response to population changes, far too many States have frustrated the fundamental principle of equality of representation—either through neglect or purposeful design. Many States are guilty of the usual abuses; gerrymandering or the partisan tracing of district lines, the packing of single districts with opposition party voters in order to make surrounding districts safer for one's own candidates, and, in general, doing whatever possible to give the greatest political advantage to the party controlling the State legislature.

Congress must share some of the responsibility for it has failed to fully exert its constitutional authority. Although virtually unexercised, there is no question that Congress has the power to implement a districting reform by making any requirements it deems necessary. Article I, section 4, of the Constitution provides that, "The times, places, and manner of holding elections for * * * Representatives, shall be prescribed in each State * * *, but the Congress may at any

time by law make or alter such regulations, * * *." Presently, though, there are no laws pertinent to this crucial subject.

Through the years, the States have been allowed practically unbounded freedom in establishing congressional districts, but the tragic results seen today leave no doubt that such responsibility can no longer be left to their uncontrolled discretion. Even among the 25 States which have redistricted since the 1960 census, 12 still contain from 1 to 9 districts which vary by more than 20 percent, greater or smaller, from the State's average district population.

Employing the liberal standard of a 20-percent maximum variation above or below the average population of the districts within a given State, I would like to cite just a few examples where this maximum is now exceeded.

Disproportionate representation may be seen in Arizona where two of the three districts vary from the State average by more than 52 percent.

In California, eight districts exceed or fall short of the State average by 20 percent, one doing so by 42.4 percent.

Two of Colorado's four seats are malportioned, one being 49 percent larger and one 55 percent smaller than the average.

Mr. ROGERS. Would the gentleman permit me to interrupt him there and ask him a question dealing with the problem that exists in Colorado?

Our colleague from the Fourth District there represents more mountains and more peaks and valleys than anybody else in the United States, and half of the State of Colorado is encompassed in that district. Now, unfortunately, he only has 195,000 people while the Second District has 653,000. That is what completely surrounds me.

Now, the good people of the State of Colorado, in consideration of the economic and homogeneous nature of districts set aside a particular district, like my colleague from the Fourth has all the mountains and all the peaks, and continues to represent them and be within the confines of the Supreme Court decision.

Mr. MATHIAS. I would answer the distinguished gentleman from Colorado with some diffidence because I would hesitate to cite law to my senior on this committee and the former distinguished attorney general of the State, but I think that certainly the tone of the Supreme Court's decision in the *Wesberry* case would say that the criteria for setting up congressional districts is population.

The CHAIRMAN. The case says "One person, one vote." It does not say anything about peaks or valleys or geography.

Mr. MATHIAS. I might say that I am peculiarly sympathetic to this problem. I have almost a monopoly on peaks and valleys within the great State of Maryland and I know the difficulty of campaigning over an extended area which is sparsely populated. It looks as though I might get more extended as a result of what is going on in Maryland. It is a difficult problem but I think the Court leaves no doubt, as the chairman has suggested.

Mr. ROGERS. You mentioned in the first part of your statement that the Constitution as set up makes the apportionment to the State according to population. Well, now if the Constitution makes that apportionment to the State and the Congress says you elect Members from that State as you so desire, isn't that in compliance with the allocation according to the Constitution?

Mr. MATHIAS. No. I would respectfully suggest it is not.

I think you have to look at this whole problem on the context of history. In the early Congresses, it is my understanding that the Members of the House were elected at large from the several States, but at that time the population of the country was so small that perhaps a Member even elected at large, prorating the population of the State, would not represent more than 30,000, 40,000, or 50,000 people, something of that order. They were all elected at large and this was done permissively by the Congress because the Congress could have decreed otherwise if it wished to do so. It was allowed because the Congress didn't stop it.

Then, about 1840, the Congress provided for districts and this became the law of the land and the States complied by it except in cases such as we have here.

The CHAIRMAN. Would the gentleman yield?

Mr. ROGERS. Yes.

The CHAIRMAN. Isn't it true that under section 4, article I, the times and places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature but the Congress may at any time by law make or follow such regulations except as to the places it chooses Senators.

Now, if that *Wesberry* case were told that that supervisory power of Congress is exclusive so it does not lie within the whole power of the States to determine the situation, Congress has the last say on this matter.

Mr. MATHIAS. Congress has merely allowed the States latitude as long as the States exercised it satisfactory.

Mr. ROGERS. If I may get back to it, the point is this: That the Constitution apportions to the State according to population.

Now, the Congress, as you have outlined, in 1840, said to the States, you apportion the districts and you ask them to do it; but if they don't do it or if they do, then what right has anybody other than the Congress to say who should be seated? What would keep us from enacting legislation to the States and say, now you elect your apportionate member of Maryland; you have nine; and you elect nine whichever way you want; that is your responsibility. You elect them and when we do we will see to it.

Now, would that comply with the Constitution?

Mr. MATHIAS. Well, I believe that we have gone beyond that point.

I believe that not only the Court, but the general public in America, have gone beyond the point of saying that, and I think we are back to the rule of one man, one vote.

Mr. ROGERS. But the point that I am trying to get over is——

Mr. MATHIAS. I understand the gentleman's point.

Mr. ROGERS. Then, do you go further——

Mr. MATHIAS. But I would suggest to the gentleman that there are other provisions of the Constitution that support the one-man-vote principle.

The CHAIRMAN. Otherwise, the equality of representation as the Constitution prescribes.

Mr. ROGERS. What are those Constitution provisions?

The CHAIRMAN. Equality of representation.

Mr. MATHIAS. I have suggested that the 14th amendment might be one.

The Court in the *Wesberry* case didn't choose to hang its hat on that, but I think it was available had the Court chosen to do so.

Mr. FOLEY. Isn't it a fact, Mr. Mathias, that for many years we have had congressional standards in the statutes reasonably compact, as nearly as possible?

Now, the gentleman from Colorado's point is that he is talking about the geographic problem which the Court didn't touch upon because it was not involved. But, under the chairman's proposal, you have got to have it reasonably compact. That takes into consideration geography, topography, economic interests. That is what we mean by reasonably compact.

In the State of New York—the State legislature—we have that provision and it has been tested in the courts so that it is not something that has been taken out of the air. There are judicial precedents for this.

The CHAIRMAN. To go back, if I may, Mr. Rogers, you speak of what other provisions of the Constitution?

The other is article I, section 2, that "Representatives be chosen by the people of the several States."

The Supreme Court says that means, as nearly as is practicable, one man's vote in a congressional election is to be worth as much as another.

So, you have cut into the situation the equality of representation principle of the Constitution.

That ought to be in answer to your query.

Mr. ROGERS. That is true, that kind of a suggestion, but, as I understand, even Thomas Jefferson said that we would one time be confronted with this situation, that the Supreme Court would be telling us what the apportionment should be, and so forth, as they have in this decision.

Mr. MATHIAS. Well, I would say to the gentleman I think the Court moved into a vacuum.

Mr. ROGERS. What is that?

Mr. MATHIAS. I think the Court moved into a vacuum.

Had we acted affirmatively and positively and fairly, I don't believe we would have a *Wesberry* case.

Mr. ROGERS. Then we will follow through.

Your statement, as I understand it, is what the Constitution provides. After you make the census, you apportion the State according to population. That is the representation criterion.

Mr. MATHIAS. That is one of them.

Mr. ROGERS. It is the only one.

Mr. MATHIAS. It is the one providing for the protection of the States in the Constitution. You and I both know because we both sat in that kind of a group where the Members who ratified the Constitution and the people who wrote it were not going to provide anything else but what was in there.

Mr. ROGERS. If the framers of the Constitution intended—as the Supreme Court says they intended—that the representation should be from the State and as they put forth in the *Sanders* case, they say yes; you had to have two Senators in order to get equal representation but as to the other when you take the census then you make the allocation to the State. Now, that allocation once being made to the State by the Constitution, who has a right to disturb that allocation?

Mr. MATHIAS. The Congress has the right to disturb it.

Mr. ROGERS. All right; they have acted. Having acted on it, they have acted by passing the responsibility to the State to redistrict, have they not, since 1840?

Mr. MATHIAS. Well, we have had various statutes since 1840.

Mr. ROGERS. Surely; and they have acted on it.

Mr. MATHIAS. But the Congress has not, nor under the *Wesberry* case could the Congress give a blank check to the States to do whatever they wanted.

Mr. ROGERS. Outside the Supreme Court saying no on it, suppose we passed a piece of legislation that said this apportionment goes to the State. Now, you elect them whichever way you want to and when you send a certificate down that the nine Members from Maryland have been elected according to the Secretary of State, we guarantee that they will be seated.

Now, if we passed a piece of legislation like that, what could anybody do about it?

Mr. MATHIAS. Would the gentleman suggest that we could pass an act here which would authorize the States to elect and send in election certificates on people who were constitutionally ineligible to be Members of Congress; perhaps they are aliens? The same principle would apply.

Mr. ROGERS. The Congress has the right to make the point; the Congress has the right to make the determination.

Mr. MATHIAS. Only within the Constitution, if I may add.

Mr. ROGERS. What I am outlining, it is within the Constitution because the Constitution says, "The apportionment shall be to the State."

The CHAIRMAN. Yes; but the Constitution is construed by the Supreme Court. Congress has no carte blanche to do anything it wishes in that regard; it must act within the Constitution as defined by the Supreme Court.

Mr. ROGERS. I don't want to belabor the thing, but the point is that the Congress has acted and said the States should do it. Now, the State has not done it and the Supreme Court substitutes itself and says what the State has failed to do we will set aside; an act of Congress has told them to do it. Now, that is what it amounts to.

Mr. FOLEY. If we enacted that legislation, Mr. Rogers, saying we will accept your certificates of election, how can it—88th Congress bind the 89th Congress membership because each Congress is a judge of its own Members under the Constitution, how could we bind it?

Mr. ROGERS. The answer to that is that we would have to start out and pass pieces of legislation dealing with everything if that theory follows through because we now provide a method and say to the State that they should apportion and when they didn't the Supreme Court stepped in.

Mr. FOLEY. Well, Congress provided in section 22 of the act of June 18, 1929, that after each apportionment the States shall, if they gain a Member and don't redistrict, then those new Members must run at large. It says if you lost a Member, whichever number you have, the remainder must run at large.

Mr. ROGERS. Sure; they have told them, but the Supreme Court then has stepped in and said that if they didn't, where they lost or where

they didn't gain on the apportionment, then you have to run all at large as they said in the *Sanders* case.

Now, Georgia didn't lose or gain, and that set it. Georgia had made its apportionment some time ago. Now the Supreme Court steps in and says the Federal court has jurisdiction.

Mr. MATHIAS. In mentioning the State of Colorado, I was not singling out the gentleman's State for single attention.

I would hasten to go on and point out my own State of Maryland has districts which vary in population from 37 percent fewer to 83 percent more than the average which is a more aggravated situation than the gentleman's State.

I would further go on and confess that my own district, of which I am very proud, is nevertheless 57 percent larger than the average for the State of Maryland.

In Texas, there are 16 districts which exceed a 20-percent variation, the smallest being 50 percent underpopulated to the largest containing 118 percent overpopulation.

Of course, we could go on and on but these are the typical examples of the situations which I hope may soon be alleviated.

As long as there was any chance that the States would promptly act to provide equitable representation in the House of Representatives and thus preserve this traditional area of State legislative activity, I was reluctant to propose that the Federal Government should assume yet another role in American political life. With the studied indifference of State officials to this problem combined with the apparent confusion and inability of many States to agree on a workable plan, it appears that there is little likelihood of State solution of this problem without the aid of congressional prompting.

With a view toward ameliorating present conditions, I have introduced a bill, H.R. 7343, which will lend guidance to the State legislatures in their establishment of congressional districts so that we may more nearly approach our goal of a truly representative House.

The CHAIRMAN. May I ask at that point. Does your bill set standards other than in numerical population standards?

Mr. MATHIAS. No, sir.

In brief, the bill provides that in the 89th and subsequent Congresses, no congressional district in any State shall contain a number of persons more than 20 percent greater or less than the average obtained by dividing the population of the State, as determined by the most recent decennial census, by whichever is the smaller, (a) the number of Representatives to which such State is entitled, or (b) the number of districts then prescribed by the law of such State. Unless or until Representatives are elected from conforming districts, all Representatives from that State shall be elected from the State at large in subsequent general elections until all the districts within the State have been conformed.

The CHAIRMAN. May I ask at that point: The Supreme Court having recognized controversy and that the question is judicial and not legislative or political, they have attached the question of fair degree of numerical equality.

Now, having thus embarked into that, what former Justice Frankfurter called "political thicket," don't you think that occasions are bound to arise in the future concerning the lack of compactness and

lack of contiguity of some of the districts, and I use those words because those are the words that were in our statutes for a great many years and were taken out and dropped from the 1929 automatic proportion of the statute.

Now, if we lay population guidelines down, don't you think we should anticipate what may be done in the Supreme Court with reference to contiguity and compactness and lay guidelines down for those two factors?

Mr. MATHIAS. Well, I believe, Mr. Chairman, that those words came into our law perhaps during the reconstruction legislation on the subject of congressional representation and that they went out of our law as sort of a reaction as to the reconstruction legislation. My history may be somewhat faulty on this but this is my recollection. I deliberately left those words in.

The CHAIRMAN. They were in the statute until 1929?

Mr. MATHIAS. Yes.

The CHAIRMAN. Of course, you probably know the history there. The whole business was eliminated. I use the word "business" advisedly, to help our late Speaker Sam Rayburn in Texas and that is the real reason for the elimination. There is no other reason for it. You know the date on it. I was in the House at the time.

We were derelict all these years as to population. Now the time has come when I think we should address ourselves to these other two factors because they are important.

To give you an illustration with reference to my own district, my district is not contiguous. I have just the southeastern part of Brooklyn; then I am dragged across a sheet of water, Jamaica, some 10 miles, and I am tagged onto a piece of land that jets into the Atlantic Ocean for 20 miles. My district is not contiguous.

It happens to be a good Democratic district and I should not mind but, nevertheless, it does not satisfy what I deem to be a proper guidepost of the district being contiguous.

We used to have a situation in New York where we had Staten Island which is an island in New York Bay. They used to drag that island all the way up the Hudson River some 100 miles and tie it onto a little city called Nyack. That was not contiguous. That was done for the purpose of gerrymandering.

Now, I imagine there are many other districts of that similar sort which are sort of East Pakistan, West Pakistan. Now, I think we ought to address ourselves to that.

Then, as you know, we have these districts that look like jigsaw puzzles or crazy quilts; somebody recently said like a "beetle" haircut; and they are laid out for purposes of political purpose of bordering both the Democrats or for the Republicans, depending upon which party is in power in the legislature. I think we ought to address ourselves to that because sooner or later those cases involving either one of those two factors is going to come up before the Supreme Court; the door is open for them.

Mr. MATHIAS. I am very sympathetic with the chairman's personal situation with this. I am facing a somewhat similar situation in this in the redistricting which is now somewhat haltingly being conducted in Maryland.

There is a little fringe along the Mason-Dixon line that I may represent, a district which would stretch along the entire Mason-Dixon line from the Delaware border over to practically the Ohio, along the entire route that Mason and Dixon so painfully traced in the mid-18th century.

It took them several years to traverse the whole course of that area and draw the line, and I am sure it would take me fully 2 years to get from one end to the other in the course of any campaign. I would spend more time than Mason and Dixon did. The whole purpose is, of course, because my colleagues don't want those few Republicans who are scattered up there along that area.

Mr. ROGERS. Would that make your district contiguous?

Mr. MATHIAS. In part; as one part of a shoestring is contiguous to the other parts.

Mr. FOLEY. Then it is not compact.

Mr. MATHIAS. It is certainly not compact.

As far as the point the chairman raises is concerned, let me say I am fully in agreement and I agree that contiguity and compactness should be a part of the law. They have been and they should be again. I did not put them in my bill because I felt that at the time I introduced the bill, prior, in fact—this is the bill which I had introduced in the last Congress and reintroduced in this Congress.

The resistance which the chairman has experienced for so long, the kind of legislation was such that I thought if we could get just the population question resolved we would be making a great advantage.

The CHAIRMAN. Don't you think we have arrived at that psychological moment where we might be able to do something on it?

Mr. MATHIAS. If the committee in its wisdom would decide that we could get some action on the other questions, I would support with great enthusiasm the addition of that language.

There is one factor in this bill, however, that I would call the committee's attention to because in H.R. 7343 the districting prescription is self-triggering and is enforced by the House of Representatives, itself, with the aid of the Bureau of the Census.

In my judgment, I would respectfully submit that this is preferential to the method of enforcement that has been suggested in some of the other bills.

Including our distinguished chairman's bill which calls for judicial review, I think that internal action by the House of Representatives is certainly just as effective as action by the courts, and I believe it is more expedient. It does not involve the judiciary in a matter which, under our fundamental theory of the separation of powers, should be left exclusively in the hands of the Congress except when circumstances are so extreme as to initiate the play of our system of checks and balances which is what I believe we have just seen in classic form in the *Wesberry* case.

Certainly the passage of this bill would be difficult for it will be opposed by the States which may be forced to reorganize and also by those who cry "States rights" while ignoring States' duties and obligations.

I believe enactment, although more than seasonable, will require a good deal of statesmanship on the part of the House. There are those among us who would restrain the Congress from taking action now

in solution of this situation who are hopeful that recent court decisions and the multitude of lawsuits which they have spawned will shortly force State redistricting; that is, redistricting by the State in response to a court order or redistricting by judicial decree which is now a question pending in the State of Maryland.

Mr. FOLEY. Congressman, that is the very problem Mr. Saylor faced in 1951. The history is one of lack of enforcement in the Congress.

Mr. MATHIAS. Therefore, I think that the self-triggering mechanism within my bill which simply says that when the Clerk of the House is advised by the Bureau of the Census that you have conforming districts, whether you adopt 20 percent as the standard or some other standard, then automatically the Clerk simply would notify the States involved that their delegation either had to be reformed or run at large.

Mr. FOLEY. Well, the theory behind the Celler proposal providing for judicial review, which I might say I anticipated what was decided last month, is a threat to the States that here are the standards; you are going to be subject to judicial review as to those standards and then if you don't meet those standards you strike down the State districting statute.

Mr. MATHIAS. I think that, of course, is a practical answer to a situation which presented itself.

Mr. FOLEY. You would be supplying guidelines to the court in place of the vacuum you have today.

Mr. MATHIAS. I believe, however, that we have been restrained in other questions involving the size of the House.

As the present members of the committee will recall, our experience in the last Congress when there was a move to enlarge the House because of the difficulties that some of our colleagues found themselves in as a result of the 1960 census, that was avoided and I think it took some restraint, some self-discipline, on the part of the House to get into that sort of a situation. We did it under the guidance of a rather positive direction in the 1929 act.

I believe if we had that same kind of positive direction which was self-triggering, the Bureau of the Census and the Clerk of the House just acting automatically, we could do it within our own walls.

Mr. ROGERS. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. ROGERS. What assurance have you, Mr. Mathias, that the State legislatures will do any different under the chairman's proposal than they have heretofore?

Mr. MATHIAS. Well, of course, the situation has become very practical.

I think either under the chairman's proposal or under my proposal, where presumably when you reach an impasse, everybody is going to run at large.

Mr. ROGERS. All right.

If this legislature makes the apportionments and if they are unequal, do you propose that the Clerk of the House shall not receive the certificate from the secretary of state and that he shall not be permitted to submit himself to take the oath so that the House can determine its own membership?

Mr. MATHIAS. That would be my feeling of the way this bill ought to operate if the districts within the State do not conform. Then the delegation should run at large and they can get a certificate of election.

Mr. ROGERS. Well, suppose they didn't run at large and that the State continued to elect them according to the selection.

Mr. MATHIAS. Then I believe it should be beyond the power of the Clerk to accept the certificate.

Mr. ROGERS. And they submitted themselves with a certificate from the secretary of state saying "This man is duly elected from this district."

Mr. MATHIAS. He cannot be duly elected from the district if the district does not conform with the Congress.

Mr. ROGERS. But he has a certificate from the secretary of state that he has been duly elected; he submits himself to take the oath. Now, can he be denied the right to take the oath, and would the entire State then be denied representation in the Congress?

Mr. MATHIAS. I think the significant word in the gentleman's question is "duly elected."

I would say that if he were not elected in accordance with the act of Congress, standards proposed in the chairman's bill or one of the other bills or my bill, then he is not duly elected.

Mr. ROGERS. Then, the Supreme Court says that 87 percent of us are not duly elected under that language, so what kind of a House of Representatives do we have?

Mr. MATHIAS. Well, we are trying to make it a better House.

Mr. MEADER. Mr. Chairman, I am glad the committee is going into this subject.

I don't think there is a subject within our jurisdiction that bears the importance that this one does because it goes to the very structure of our Government.

When *Baker v. Carr* was handed down on March 26, 1962, reported in 369 U.S. 355, I recognized that this was a departure from long-standing precedents with respect to the separation of powers and was an intrusion by the judiciary into the legislative field which I thought was a far-reaching development as far as the basic structure of our Government is concerned.

That led me to suggest to the committee that we employ attorneys to make a penetrating study of this whole area. This, unfortunately, was not done. I was sufficiently concerned about it that I made remarks on the floor of the House on July 16, 1962, which appears on page 13745 and following pages of the Congressional Record.

On August 17, 1962, I wrote a letter to my constituents and I want to read it now because it states pretty well my position on this very basic issue.

The most historic development this year and possibly in our lifetime is the attempt by the judiciary to assume the power to establish legislative districts in private litigation to which legislatures have not been a party. This movement started with the U.S. Supreme Court decision in *Baker v. Carr*, March 26, 1962, and has quickly broken out in a rash of litigation in some 30 States and may well extend to each one of the 50 States.

In Michigan we have two such cases—one dealing with districts for the State senate, *Scholle v. Hare* in the Michigan Supreme Court, and one dealing with congressional districts before a three-man Federal court entitled "*Calkins*

et al v. Hare." In both cases plaintiffs and defendants are on the same side—that is, against the State legislature. But the rights of nearly 8 million people will be determined by the courts' decisions.

Mr. Chairman, let me say with respect to the case of *Calkins v. Hare*, that case started before the 1962 elections and the plaintiffs in that case asked that the secretary of state be enjoined from holding congressional elections on a district basis and that all 19 Michigan Congressmen run at large.

The Court refused to grant that temporary injunction on the grounds that the election was almost upon us in Michigan. Therefore, the case was held in abeyance.

After the Georgia decision of the Supreme Court, *Wesberry v. Sanders*, February 17, 1964, plaintiffs in that Michigan case amended their pleadings and contended that the 1963 reapportionment act in Michigan for congressional districts was unconstitutional because there was a variation from the average of 26 percent below the average for the district which comprised the Upper Peninsula in Michigan and 20 percent above the average for one of the districts in Wayne County.

At the preliminary hearing, 10 days or so ago, two of the judges of the three-judge court indicated that they believed that the Michigan Reapportionment Act was unconstitutional in light of the Georgia decision.

Next Monday, March 23, there will be a hearing on the merits of this case, as I understand it. The time is now so short that the secretary of state says that if the Michigan Legislature has to do this redistricting all over again, they will have to change the date of our primary election and whatnot. Now, this is how serious this matter is.

Now I would like to go on with this next paragraph which is outdated now because of the Georgia decision. I quote again from my letter:

The U.S. Supreme Court has not yet held that inequality in population in legislative districts constitutes a denial of equal protection of the laws under the 14th amendment.

I guess the Georgia case opposed that.

Nor has the Supreme Court of the United States decided that the courts may, as a remedy for denial of a constitutional right, either issue mandatory orders to a State legislature compelling it to redistrict or themselves assume the legislative function of establishing legislative districts and draw boundaries as the judges think right.

Many lower courts, however, have, in effect, issued mandatory orders to legislatures and have undertaken, where the legislatures failed to establish districts in accordance with the court's views, to exercise the legislative function of establishing legislative districts.

In my view, this dangerous excursion by the judiciary into the exercise of legislative powers strains the equilibrium sustaining our tripartite governmental system, weakens the autonomy and vitality of the elected, policymaking branch of our Government, and will either cripple or destroy the republican form of government as we have known it over our history.

The determination of its membership, its organizational structure, and its procedures affect the very heart of the legislative body. If the composition of the membership of the legislative body is determined by any agency outside that body or the sovereign people who create it, it then becomes the subordinate instrument of whatever agency determines its composition—in this case the judiciary.

As Justice Frankfurter wisely said, the courts ought not to enter this "political thicket."

Let us all hope that this controversy can be settled without seriously impairing, if not ultimately destroying, a system of government which, with its checks and balances, has given our citizens more freedom and self-government than has ever been enjoyed by any people anywhere.

Now, let me say that I have no doubt that the Congress of the United States has the authority to adopt the chairman's bill or any bill relating to congressional districts, certainly we have that authority.

What I resent is the intrusion of the judiciary into a legislative function. For that reason, Mr. Chairman, on February 27, 1964, I introduced H.R. 10181 which would exercise our authority over the jurisdiction of Federal district courts to get them out of this business of redistricting congressional districts or legislative districts and would also exercise the authority of the Congress to regulate the appellate jurisdiction in the Supreme Court to get them out of this business.

I would like to introduce a copy of this bill at this time in the record.

(The bill follows:)

[H.R. 10181, 88th Cong., 2d sess.]

A BILL To provide that district courts of the United States shall not have jurisdiction to enjoin or modify the operation of State laws respecting legislative districts where comparable relief is available in State courts, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 85 of title 28 of the United States Code is amended by adding at the end thereof the following new section:

"§ 1361. Legislative districts

"A district court shall not have jurisdiction of any civil action—

"(1) to enjoin, suspend, or modify the operation of any State law respecting the boundaries of, or the number of persons to be elected from, any district to be represented in the legislature of such State or in the Congress of the United States; or

"(2) for damages arising out of the operation of any such State law; if an action for comparable relief would be within the jurisdiction of, and justiciable in, a court of such State."

(b) The table of sections at the beginning of chapter 85 of title 28 of the United States Code is amended by adding at the end thereof the following:

"1361. Legislative districts."

SEC. 2. (a) Chapter 81 of title 28 of the United States code is amended by adding at the end thereof the following new section:

"§ 1259. Exception to appellate jurisdiction in cases involving legislative districts

"The Supreme Court of the United States shall not have appellate jurisdiction of any civil action of any type described in paragraph (1) or paragraph (2) of section 1361 of this title regardless of whether such action was originally brought in a State or Federal court."

(b) The table of sections at the beginning of chapter 81 of title 28 of the United States Code is amended by adding at the end thereof the following:

"1259. Exception to appellate jurisdiction in cases involving legislative districts."

HOUSE OF REPRESENTATIVES,
Washington, D.C., August 17, 1962.

DEAR FRIEND: The most historic development this year and possibly in our lifetime is the attempt by the judiciary to assume the power to establish legislative districts in private litigation to which legislatures have not been a

party. This movement started with the U.S. Supreme Court decision in *Baker v. Carr*, March 26, 1962, and has quickly broken out in a rash of litigation in some 30 States and may well extend to each one of the 50 States.

In Michigan we have two such cases—one dealing with districts for the State senate, *Scholle v. Hare* in the Michigan Supreme Court, and one dealing with congressional districts before a three-man Federal court entitled *Calkins et al; v. Hare*. In both cases plaintiffs and defendants are on the same side—that is against the State legislature. But the rights of nearly 8 million people will be determined by the court's decisions.

The U.S. Supreme Court has not yet held that inequality in population in legislative districts constitutes a denial of equal protection of the laws under the 14th amendment. That proposition will undoubtedly be argued and decided after the Court convenes for the October term.

Nor has the Supreme Court of the United States decided that the courts may, as a remedy for denial of a constitutional right, either issue mandatory orders to a State legislature compelling it to redistrict or themselves assume the legislative function of establishing legislative districts and draw boundaries as the judges think right.

Many lower courts, however, have, in effect, issued mandatory orders to legislatures and have undertaken, where the legislatures failed to establish districts in accordance with the court's views, to exercise the legislative function of establishing legislative districts.

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As Justice Frankfurter wisely said, the courts ought not to enter this "political thicket."

Let us all hope that this controversy can be settled without seriously impairing, if not ultimately destroying, a system of government which, with its checks and balances, has given our citizens more freedom and self-government than has ever been enjoyed by any people anywhere.

Sincerely,

GEORGE MEADER.

The CHAIRMAN. In other words, if I may ask the gentleman from Michigan, you feel that it would be far better for the Congress to lay down guidelines for the States to act so that we take it out of the courts; the courts should not interfere with what the States should do?

Mr. MEADER. That is my opinion.

My opinion is that if anything is to be done to the power of the State legislatures to set up legislative districts or congressional districts, the remedy or appeal should be in a legislative forum rather than in a judicial forum.

The CHAIRMAN. Of course, you know through the years we tried to get something done and we could not get anything done and it was only because the Supreme Court took the action in the Baker against Carr case and the case of Wesberry against Sanders that Congress, itself, has been awakened to the sense of responsibility, and I hope that we get some action on it.

Mr. MEADER. I hope so, too. I want to work with the chairman. I want it to be done without doing damage to the fundamental basic structure of our Government, on this question of apportionment.

I hope the members of the committee before they pass on any

legislation will take the trouble to read a very excellent book by Alfred de Grazia called "Apportionment and Representative Government."

Mr. ROGERS. Who is he?

Mr. MEADER. Alfred de Grazia, a professor of government at New York University, and editor and publisher of the American Behavioral Scientist. He is the author of several articles and books, including "Public and Republic," "Elements of Political Science," "Western Public," "The American Way of Government," and "Welfare in America."

I would like to insert in the record at this point a brief description of the contents of this book on "Apportionment and Representative Government."

The CHAIRMAN. That shall be done.
(The statement follows:)

ESSAY ON APPORTIONMENT AND REPRESENTATIVE GOVERNMENT

(By Alfred de Grazia)

The flurry of litigation following the Supreme Court's decision of March 26, 1962 in *Baker v. Carr* has spotlighted the important questions of representation and apportionment. Disturbed by "deplorably shallow and unobjective" legal briefs and research reports he has read since that decision, Dr. de Grazia complains that American history "has been rummaged largely with an eye toward illustrating the feelings for numerical equality to be found among the people." This literature, he feels, "cannot be permitted to represent all that political science has to say about apportionment and representative government." Therefore, Dr. de Grazia has written this study to help restore perspective to the analysis of apportionment, hoping that it "will serve in this present political emergency until more systematic, empirical, and elaborate studies will have appeared."

After defining "apportionment" (pp. 18-19), Dr. de Grazia reviews historical and comparative apportionment theory and points out the complex blend of formulas and criteria that make up apportionments. Then he differentiates among three schools of thought on apportionment (p. 33), focusing his attention on the "egalitarian-majoritarian" school.

In Dr. de Grazia's opinion, an egalitarian-majoritarian doctrine threatens the Federal system. Advocates of that complex of ideas are "providing the leading doctrines and slogans for the present offensive on apportionment that is agitating political and judicial leaders around the Nation. Examples of its slogans are: 'One man—one vote'; 'equal representation'; 'voting equality'; 'equal apportionment'; and so forth." Adherents of the egalitarian-majoritarian viewpoint hold that apportionment is basically a mathematical proposition, whereby a legislative body is apportioned in such a way that all districts represented therein would contain roughly equal populations. They maintain that any deviation from this rule is unequal or unfair since it means that voters in districts with smaller population have inordinately greater influence over their representatives and, therefore, over public policy formulation, than those in more heavily populated districts. A practical consequence, they say, is that sparsely populated rural areas, constituting a small minority of a State's population, benefit at the expense of large cities and metropolitan areas. They contend that only reapportionment along the lines of equal-population districts can bring about equitable treatment for urban dwellers and result in solution of the burgeoning problems of expanding metropolises.

Dr. de Grazia dissents from the egalitarian doctrine and asserts that the complaints of its adherents, especially allegations that urban dwellers are being discriminated against, are unjustified in fact. He argues that apportionment in American theory and practice is more than simple mathematics and involves a mixture of formulas including those based on representation of functional and community interests as well as of individual citizens.

As to the complaint that cities are underrepresented in State legislatures and consequently discriminated against in favor of sparsely populated rural

areas, Dr. de Grazia offers a number of responses. First, citing the greater need of many poorer rural communities for roads, schools, and services as the reason why State governments favor these localities with financial assistance, he comments that this "is fully in keeping with the theories of spending cherished by the liberal advocates of the equal-populations principle" (p. 118). Second, he points out that the alleged rural-urban conflict is an oversimplification: "If there is a demographic conflict * * * it is between upstate-downstate city interests (as, Buffalo versus New York City), or small city versus large city (as Peoria versus Chicago). Most important of all is the development of suburbs which turn out to contain the districts most unequal in population size on the 'underrepresented' side" (pp. 119-120). Finally, Dr. de Grazia cites evidence, presented by political scientists, showing that the viewpoint of urban areas can prevail in State legislatures if urban delegations are united on issues of interest to their constituencies (pp. 125-126).

With respect to the complaint that urban dwellers lack remedies to correct the injustices alleged to exist in apportionments, Dr. de Grazia comments that the constitutions of most States are susceptible to easy amendment (ch. 4). Furthermore, he observes that the "one man—one vote" principle has not generated much popular support, and he cites Michigan's experience where the electorate in 1952 rejected a pure equal population district plan (pp. 128-129).

Dr. de Grazia contends that the egalitarian-majoritarian doctrine of apportionment derives from an obsession with "equality" and "a belief in the magic of numbers," apparently because "equal numbers are better magically than unequal numbers." He charges that what the egalitarian doctrine's adherents really want is greater power for this own interests and less power for opposing interests, "and the slogan of equal representation is one of many slogans standing for different instruments of achieving a more favorable position in the internal struggle for valued goals that mark the political process."

Carried to its logical conclusion, Dr. de Grazia believes, the mathematical idea of equal representation is dangerous:

"There is a widespread psychological feeling, inherited from history, that the mass of people is discriminated against; if the mass, which is the great majority, could gain equality and act by its majority against the enemies of the people, it would arrive at truth and mass happiness. Rigid leveling of people to the status of numbers is deeply and psychologically associated with both advocacy of the masses and the desire to dominate them. True mass leaders of equality movements almost always aim at dictatorships. This view and desire are also associated with a closed-minded belief that truth on earth exists and is known. Historically it has never wanted more than a slight shift of emphasis to have this truth become the exclusive possession of the leader or an elite. The majority principle, as dogma, is seen as the next best thing to unanimity, even autocracy. It is common in Greek, Roman, and European history—even world history—for the Caesars, Napoleons, Mussolinis, and Lenins to be preceded by the dogmas of equality and right of the majority. The leader then becomes the head of the majority on its way to absolute rule."

Discussing the current litigation on apportionments, Dr. de Grazia warns that if the courts hold that voters are being denied equal protection of the laws because of alleged inequality of voting power, they would revolutionize American government at all levels, thereby upsetting a delicate political equilibrium. He expects the courts to prescribe corrective measures in cases of obvious malapportionment such as flagrant gerrymanders, but he doubts that the courts will embrace the "one man—one vote" principle and lists several reasons for his conclusion (pp. 162-164).

In closing, Dr. de Grazia looks ahead to future apportionment in terms of the question, "Can something more important be done to improve the representative structure of American State and local governments?" "An apportionment system," he asserts, "should be aimed at facilitating the tasks of government in a way that will preserve the basic principles of representative government * * * [which are] a pervasive doctrine of the consent of the people as the basis of government, provision for the entry of various kinds of opinions and interests into the political process and legislations, limits on the extent to which dissenting groups can be coerced, and a rule of law."

Dr. de Grazia is professor of government at New York University and editor and publisher of *The American Behavioral Scientist*. He is author of several

articles and books, including "Public and Republic," "Elements of Political Science," "Western Public," "The American Way of Government," and "Welfare in America."

Mr. MEADER. I would like to read a couple paragraphs.

Mr. MATHIAS. Would the gentleman—

Mr. MEADER. Just a minute. Did you have a comment on what I said?

Mr. MATHIAS. Just before the gentleman came in, I was commenting that my bill does very much what your bill does, that it is desirable to keep this whole thing within the legislative halls and not to let it go to the courts. I think it is repugnant to have the courts draw district lines unless there is no alternative.

The thrust of my statement I hope has been that we have got to provide the alternative. I think it is left to us to provide a fair and equitable solution to the problems of apportionment and redistricting that exist.

I hope the full committee and subcommittee will act and act promptly to resolve at the congressional level what has become a very difficult aspect.

The CHAIRMAN. Do you mind if my good friend from Michigan asks you a couple questions?

Mr. MATHIAS. No, sir.

Mr. MEADER. The only problem I have with H.R. 7343 is the authority given to the Director of the Bureau of the Census; on page 2 of your bill, starting at line 17, you provide that the Director of the Bureau of the Census shall make some finding and then all Representatives have to run at large and you feel the Director of the Bureau of the Census has to make a determination within 30 days after the State has redistricted for the purpose of conforming with such paragraph.

I would prefer that any such determination be made by the House Administration Committee or some special commission created by the Congress rather than to vest this authority in the executive branch of the Government which I think is just as undersirable as putting it in the judicial branch of the government.

Mr. MATHIAS. The only object of that was to try to make this a self-operating and self-triggering mechanism.

If the gentleman would prefer a commission or something of that sort to be worked out with this committee, I have no objection to that. I see the merit of the gentleman's suggestion. It just appeared that the Bureau of the Census was the source of all these figures regardless of who applies them and that they might be applied directly.

Mr. MEADER. You see, the basic thing that concerns me with this whole problem of establishing legislative districts, both for State legislatures and the Congress, is that that is so fundamental to the independence of the legislative branch of the Government that no one outside the legislative branch or the people should have control over it.

It seems to me if we don't have any existing agency such as the House Administration Committee that we—well, in Congress or in the House of Representatives, because the Senate is not concerned with this problem—set up a commission to carry out any policy that we determine in Congress with respect to the size or compactness or contiguity or population of congressional districts.

The CHAIRMAN. Would the gentleman yield?

Can we completely check away the jurisdiction of the Supreme Court in the light of the decision in Baker against Carr and the other case? They have said it was a justiciable question assumed jurisdiction over the controversies. Can we, without constitutional amendment, do that?

Mr. MEADER. The gentleman may recall in the 83d Congress we had a constitutional amendment to divest the Congress of its power to regulate the appellate jurisdiction of the Supreme Court. So far as I know, the Congress did that only in one instance shortly after the Civil War. They told the Supreme Court they could not take an appeal in a certain case which stuck, and the Constitution expressly gives us power to regulate and make exceptions to the appellate jurisdiction of the Supreme Court.

I think we have the authority to say to the Supreme Court, you shall not consider appeals on the reapportionment cases.

Mr. FOLEY. What if it involves a constitutional right?

The CHAIRMAN. In Baker against Carr, you have the first article of the Constitution involved. I think you are on rather tenuous ground.

Mr. MEADER. I am going to insert in the record—I don't have it with me today; I am sorry I don't—a memorandum prepared by one of the legislative counsel, Mr. Menger, when he drafted this bill for me some 2 years ago in which he raised that very question; that they have asserted that this is a personal constitutional right, denial of equal protection of the law, and it is justiciable.

There must be a forum to provide a remedy for the denial of this right.

My bill provides that the district court shall not have jurisdiction where there is a remedy in the State court, and it also prohibits the Supreme Court from taking jurisdiction on appeal of that decision.

Now I would hope that we could make a legislative forum where any denial of rights could be heard such as a commission or the House Administration Committee. This is not an easy problem to solve.

The CHAIRMAN. And would make it impervious to any kind of an attack by proceeding in the Supreme Court?

Mr. MEADER. I don't know what the Supreme Court will do. Anyone is a reckless person who predicts what this Court will do.

Mr. MATHIAS. May I comment at that point, and then may I ask the members' indulgence to be excused to go out on a mission of self-preservation here?

I would think that although I have some question whether we could oust the Supreme Court of jurisdiction entirely in all matters related to representation, yet I have a firm belief—and it is in that belief that I have introduced this bill—that if the Congress will speak and speak affirmatively to the question, the Court is going to be much more reluctant to inject itself into the picture.

The CHAIRMAN. That is right.

Mr. MATHIAS. The time for us to act is now, and then perhaps the question of courts' jurisdiction may be moot for generations to come.

The CHAIRMAN. I am sorry we held you so long. You better take care of your other chores. Thank you. Have you completed?

Mr. MATHIAS. Yes, sir.

I appreciate the committee's patience with me and I appreciate the opportunity to testify.

Mr. KASTENMEIER. I am sorry we have had so much debate up here with the examination of the witness.

In your bill, you use the 20 percent as a figure. Now, obviously, consideration of these several bills, throughout the years in these proposals there have been a number of variations.

What I am wondering is where you got your figure and why you think this is a preferable figure, 20 percent, because this is going to be a serious question.

Mr. MATHIAS. It is going to be a serious question.

I find it difficult to rationalize any particular figure, and I think that the Supreme Court stated the case well in its opinion in Westberry when it said we should approach the goal of equality.

Now when I introduced this bill originally in the last Congress, I adopted the figure 20 percent because in the light of our experience in Maryland it seemed as though this was the area of flexibility that might be required considering geography, considering questions which the gentleman from Colorado raised earlier in our discussion, the colloquy here that there does need to be some flexibility.

I felt that 20 percent perhaps approached the goal of equality without enforcing too rigid a rule on the State.

I must confess perfectly frankly, I would find it difficult to argue that there was any great difference between 17½ and 20 or between 15 and 17½, but I think it is a rule of practicality where the Congress can exercise the rule of reason.

Mr. KASTENMEIER. One final question.

You don't refer to at-large representation other than as a remedy to equal districts.

Would you permit at-large elections, for example, as you now have in Maryland, not as a result of forcing the entire delegation in that regard, but, rather, as an alternative?

Mr. MATHIAS. The additional member that a State might pick up?

Mr. KASTENMEIER. Yes.

Mr. MATHIAS. I would personally not feel that that is a happy experience. I would rather see it avoided. I would rather see the State go to redistricting. That is not always easy but it is better.

Mr. KASTENMEIER. I thank the gentleman for his testimony.

Mr. RODINO. I just want to ask one question.

Mr. MATHIAS. In further response to the gentleman's question, I put some figures in the Congressional Record on June 27, 1963, which have some practical bearing on the 20-percent question. They would indicate that under a 20-percent permissible variation 107 seats in the House would be affected as we are now looking at the picture. These figures may have to be updated a little bit.

With 15 percent, you affect 140 existing seats; and 10 percent you affect 235 existing seats. These are some elements of the practical aspects to the 20 percent.

Mr. RODINO. Mr. Chairman, just recognizing the fact that Congress should set some standards because of the human cry that has been raised, but, nonetheless is not the very admission that we have to find a lot of variation, say that the 20 percent or 15 percent might properly be the formula, that that in itself is an admission that we are never going to arrive at the millennium that one man's vote is equal to another and that this question is going to be raised time and time again.

Mr. MATHIAS. The gentleman is exactly correct. As the Supreme Court said, it is utterly impossible to get exact mathematical precision on the question.

Mr. RODINO. The fact, then, there may be a 20-percent variation, isn't that in itself disproportionate as to just arrive at the conclusion that no matter what you do you are not going to rectify the situation that exists now?

Mr. MATHIAS. No, sir; I don't believe that is the case. I think, as the gentleman from Colorado argued a little earlier, if the Congress acts within the scope of the Constitution and lays down some standards and speaks affirmatively—affirmatively and reasonably, not arbitrarily—then I believe that this will pretty well quiet these questions.

Now you are going to have somebody that will nit-pick and quibble and say it should be 15½ percent instead of 17 or 17 instead of 20.

I think the fact that the Congress is exercising its responsibilities under the Constitution in setting up some of these standards, you are going to lay to rest the nit pickers.

Mr. RODINO. That may be true, but I don't consider it is going to put to rest the quarrel of the Supreme Court decision when it tried to impress upon the people that what we must do or what should be done is to try to make one vote equal to another because it continually harped on this very guideline that there should be in one district, no disproportionate recommendation by making one vote in one district more important than in another district.

Now I don't think we are ever going to correct that situation because whether by geography, whether by economic situations, whether by educational situations, there are people who live in certain areas who just won't vote. Therefore, if you have the 400,000 people that is required, the population standard, if you have people who are economically such that they are not going to be interested in voting, if they are not registered to vote, if they don't care to vote, you are going to have a district where you get 60,000 people electing a representative and in another district where they feel that it is more important to vote and they are going to get 150,000 people.

So, I don't see where you are ever going to reach this millennium.

Mr. MATHIAS. If the gentleman will just bear with me, I think the Court used rather happy language in saying that these are difficulties; these are problems; you can't make it mathematically precise but that that is no excuse for ignoring the Constitution's plain objective, the objective of making equal representative for equal numbers of people the fundamental goal for the House of Representatives.

The CHAIRMAN. Isn't it true they are only guidelines; that is all they are?

Mr. MATHIAS. All we would be doing here is setting up, as the chairman suggested, guidelines which would be helpful to our colleagues in State government in doing what I am sure they all want to do but for various reasons have not been able to do.

The CHAIRMAN. If you are going to address another group, your audience is melting away.

Mr. MEADER. I don't care whether we ask this question of Mr. Mathias but I would like to raise this problem because it was suggested by the gentleman from New Jersey, Mr. Rodino.

You are talking about one man, one vote, an equal vote to each electoral vote. Would it not be more accurate and proper and just to count only those eligible registered voters when we try to get one man, one vote?

Let's get specific. In Blackman Township in Jackson County, in my district, the 1960 population is shown as 16,000, but I think 5,000 of those are in Jackson Prison and they don't vote; they are not residents of Jackson County. Now, should they be counted?

Take Ann Arbor, Mich., where we have the University of Michigan. They have 25,000 enrolled students. Now, they are not residents of Ann Arbor, eligible to vote in elections but we count them in the population figure.

Mr. ROGERS. I think when they take the census of the students they allocate it back to their hometown.

Mr. MEADER. No; for the benefit of State allocation.

The CHAIRMAN. All those prisoners—they ought to vote for you.

Mr. MEADER. If they would vote for me, I would be in favor of letting them vote.

Mr. MATHIAS. I think the answer to the gentleman's question is very clear.

Mr. MEADER. Disproportionate number of children or for some other reason they don't have the sixth grade education.

If you are going to be accurate about the elector, the weight of his influence upon Government, you ought to count only the people who register to vote.

Mr. MATHIAS. I think the answer to the gentleman's question is clearly contained in the Constitution which says, "The people shall be enumerated except Indians not taxed."

If you have any Indians not taxed in your district, then you can eliminate them.

The CHAIRMAN. Not only that, but the Representative represents not only those who vote but those who do not vote.

Mr. MEADER. I am an expert on section 2 of the 14th amendment. There are some other people excluded, those engaged in rebellion and whatnot.

Mr. ROGERS. May I point out the original article I, section 2, says:

May be included within the union according to their respective number which shall be added to the whole number of free persons.

Now, "free persons" were the ones that were first set forth in the Constitution and that meant the ones that were free and not slaves that could go ahead but they changed that in the 14th amendment.

The point I am trying to emphasize is that we started out in the adoption of the Constitution and we said that it would be according to allocation of free people to the State.

Mr. MATHIAS. If I may make just one final remark off the record.

(Discussion off the record.)

Mr. MATHIAS. Thank you very much.

The CHAIRMAN. Thank you very much.

Mr. MATHIAS. I enjoyed the privilege.

Our next witness is Mr. Saylor.

STATEMENT OF HON. JOHN P. SAYLOR, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. SAYLOR. Mr. Chairman and members of the committee, I deem it a privilege to appear before this distinguished committee composed of the most eminent lawyers of the Congress and some of the most eminent lawyers in the United States.

I am delighted, Mr. Chairman, and I take this opportunity to congratulate you as the chairman of this great committee for holding hearings on this most important matter. This has been a matter which I have been interested in long before I came to Congress because of the situation that existed in my home State, the Commonwealth of Pennsylvania.

The State legislature refused to redistrict the State senatorial districts from 1910; and inequities the likes of which have never existed in congressional districts have existed in our State senatorial districts and finally under the pressure of the court cases.

In the Federal courts, our State has taken some action and redistricted their State senatorial districts.

I would like to recommend to this committee that they do report a bill and ask the Members of the House of Representatives to pass it which will establish the ground rules under which the State legislatures must act. I think that in view of the Supreme Court decision we must set a time limit within which all States must act to comply with the requirements of the statute.

I think the second section of the bill should provide that if a State has two or more Representatives and the State legislature does not act to divide it into legislative districts for their Representatives in Congress, that the House of Representatives establish a committee composed of equal numbers of majority and minority members and call upon the Speaker to preside and call upon the Director of the Bureau of the Census for his assistance in helping each State or this committee, and that if the State does not act within the time specified, this committee of the House of Representatives would act in its stead.

Now, as to what the requirements are going to be—

Mr. MEADER. Would the gentleman just emphasize that he means the committee of the House of Representatives and I presume he would ask that the House approve the committee's action which would set up the boundaries of congressional districts within a State, itself?

Mr. SAYLOR. If the State does not act, this, I would say, is the requirement of the House of Representatives. I do not believe that our Founding Fathers ever thought that the State legislatures would be so derelict in their duty that they would not attempt to give equal representation but they surely have.

Mr. MEADER. It would have to be action by the House; is that correct?

Mr. SAYLOR. That is correct, but I would expect that the House committee would make the recommendations to the House of Representatives and the House, itself, should act.

Mr. ROGERS. May I point out that the Founding Fathers never intended—the Constitution says that the State legislature should do it; that is, the drawing of the districts. We provided in the legislative act by Congress that they should do it.

Now, your proposal is that we should amend that and go further and say that they didn't do it. Then the Congress has the authority to go ahead and actually apportion within the State.

Mr. SAYLOR. That is correct.

Mr. ROGERS. If we do that, then we won't have to be bothered with the Court's action in any manner whatsoever, but you first would give the State the opportunity to do it. If they didn't do it, then the Congress has the authority to do it and you recommend that they should.

Mr. SAYLOR. I recommend that they should.

Mr. RODINO. Any judicial review of the legislature to see if it conforms?

Mr. SAYLOR. I would not ask that they conform exactly. In other words, as long as they conform substantially with the recommendations of the Congress, then I think it would be perfectly all right.

Now, I would like to point out that the bill that I have been introducing in the last number of sessions of Congress calls for the establishment of districts within 15 percent. Now, there is no magic in the figure of 15 percent, but I think there are some reasons that I can give you that I have chosen this number of 15 percent.

First, let me say that it will be absolutely impossible to ever have equal representation for every vote in the House of Representatives. That grows out of the fact of the very nature of the size of some of our States. For example, the State of Alaska in 1960 only had 226,167 people that were taken in this census. The State of Nevada only had 285,278 people, and the State of Wyoming only had 330,066 people in the entire State.

This is compared with the largest district that we have down in Texas where they have almost a million people in one district.

Mr. RODINO. Pardon me. Do you know the population of the State of Alaska now?

Mr. SAYLOR. It has grown. Mr. Rivers, the Representative from Alaska, tells me that there is probably a 15-percent increase in the size of the State of Alaska from 1960 until 1964.

Mr. RODINO. In other words, if there were 220,000 then—

Mr. SAYLOR. 226,000 then; it is about 30,000 more.

Mr. RODINO. So it would come to about—

Mr. SAYLOR. 250,000.

Mr. RODINO. 250,000.

So, whatever we do, we have to be mindful of the fact that the State of Alaska would certainly be underrepresented insofar as population is concerned.

The CHAIRMAN. But the Constitution provides that every State must have one Representative.

Mr. SAYLOR. The Constitution provides that every State must have one Representative.

If you recall, the Census Bureau in following the act which this committee reported out a number of years ago, which is a guideline for the Census Bureau, they take and allocate 1 Congressman to each State and then begin to divide the remaining 386, and they can tell you which State got each one of the remaining Members of Congress.

Now, I considered first in dealing with this problem whether or not there should be an arbitrary differential when you got two or more Congressmen and figure it at 50,000. This sounds very reasonable. In view of the fact that it has taken Congress a long time to act, and I am sure that when this Congress acts it will take succeeding Congresses a long time to change it, the arbitrary figure of 50,000 might be suitable today with Congress refusing to increase the size of the House, an arbitrary figure 50 years from now will not meet the situation and therefore what should be the variation.

I tried to work it out on a percentage basis. The first thing that I considered was 10 percent. Now, a variation of 10 percent indicates that there could be anywhere from the medium down to 90 percent or up to 110 percent. If you actually get to taking these figures, that allows you more than that, and, rather than 20 percent, it is possible that the larger district is 1.22 times the smaller district of 90 percent.

If you go to 12½ percent, it indicates that between the smallest and the largest districts you could have a differential of 1.29 times the smaller. The one would be 29 percent larger than the other.

If you go to 15 percent, there could be between the largest district and the smallest district a differential of 35 percent.

Now, I think that if you go above 15 percent, because of the ratio between the largest and the smallest districts, you are getting beyond what the Supreme Court has pointed out as to the reasonableness of the districts in attempting to set up the guidelines.

The CHAIRMAN. You know we have had actual precedent for the 15 percent in the old act which was repealed in 1929 and that, as I understand it, was recommended by the American Political Science Association. Excuse me. I am error there. I am told it was a recommendation of the American Political Science Association; it was not in the act.

Mr. SAYLOR. Mr. Chairman, I was not going to make any comment, but in my recollection they recommended this 15 percent, the reason being that there could be a 35-percent differential between the highest and the lowest even at 15 percent.

Now, one of the reasons probably that I got so much interested in this, I have in my district a man who took his master's degree in this field, and while he happens to belong to the opposite political party, he has been very, very much interested in this. Even though my district complies with the 15 percent, there are a number of districts in the State of Pennsylvania that do not.

The State of Pennsylvania would have to go back, if this bill were passed, and redistrict probably the whole State, and one of the districts that would probably suffer most is mine. But this I still believe is what should be done.

I believe that the reason the courts have taken jurisdiction of this matter is because of the void which they have found that exists because Congress has not taken any action. If Congress takes action, I think it will settle—I don't say for all time, and give the Supreme Court the opportunity to say that Congress has spoken, Congress has acted in a reasonable manner, and therefore we will dismiss cases which do not violate the principles which Congress, themselves, have set down.

The CHAIRMAN. The Court said in a way the converse, that since Congress didn't act we are going to act.

Mr. SAYLOR. That is right; that is what they say.

I now say to you that if Congress does not, it will return to Congress some of the prerogatives that I think they should have.

While I am before this great committee, I might say that I hope this committee will be the forerunner in the committees which will not worry too much about what the departments downtown say.

The CHAIRMAN. They are in favor of this bill.

Mr. SAYLOR. They may be in favor of something but I don't care whether they are in favor or not.

Mr. MEADER. I join with the gentleman and say it is not any of their business downtown.

Mr. SAYLOR. I firmly believe this is a matter for the House of Representatives, and I think the House of Representatives has placed it in the hands of this great committee. I expect this committee will report a bill to the floor and that the House will act on it. I hope they will act favorably.

I am sure that the Senate will not pay any attention to it because they will say this is a matter that affects the House and this is a matter of housekeeping for them.

Mr. DONOHUE. Mr. Chairman, I would like to get your observation on whether or not this is going to be solved only on the population basis alone; that is, the injustices that are being practiced today.

Mr. SAYLOR. Well, let me say to you, Mr. Donohue, that I think it can be solved on the basis of population alone where you have two or more Congressmen.

Mr. DONOHUE. What about this gerrymandering that exists in certain States? They carve up the State and there will be enough people within the State of a particular political persuasion; in other words, compactness and contiguousness.

Mr. SAYLOR. I think one of the ground rules that this committee should lay down for the State legislatures is to say that the districts must be contiguous and compact.

Mr. DONOHUE. How would you define contiguousness and compactness?

Mr. SAYLOR. Well, let me take a specific case of a district.

The CHAIRMAN. Tell him what it isn't; that might give us an idea of what it is.

Mr. SAYLOR. Pardon me?

The CHAIRMAN. I say it is probably well to tell him what it is not and we can get an idea of what it is.

Mr. SAYLOR. I will tell you what it isn't. It isn't what the State of California did to create a district when they went up one side of a street and down the other side of the street without taking any houses so that they could go and connect two districts, two areas, by a long narrow stretch where they had no people on either side.

The CHAIRMAN. May I give you another illustration of what compactness isn't?

We have a district in New York which is like the hub of a wheel and the spokes of the wheel jut out in all different directions. Between the spokes, they didn't want those particular kind of voters because of their political complexion so they just take the hub of the

wheel and they take the spokes which jet out north, east, west, and south, so we have a wheel district. That is what compact is not.

Mr. SAYLOR. I think that Congress should say to the State legislatures it must be both contiguous and compact. If the State in its wisdom does not choose to follow those rules and regulations, then the right given for Congress to establish those rules and regulations exists and that the commission which I have suggested which is to be made up of Members of the House shall present for that State a redistricting.

Mr. ROGERS. Now, you raise a question of compactness.

Is there such a thing as a community interest in a particular district? I make specific reference to my own State. As you know, our colleague from the Fourth District has a great area and, as I have mentioned a moment ago, he has all the peaks and the valleys and half the State.

Mr. SAYLOR. All right. I think the State of Colorado presents an unusual problem.

Chairman Wayne Aspinall who represents the Fourth District of Colorado has better than half of the State. His district represents all of the people who have the same basic interests.

Now, I believe that if you take the 15-percent formula you might still come very close; you may have to take a little more into his district, but there may be some places where you will have to include areas that do not have the same interests and Colorado may be one of them.

I am sure that for every case that you can point out where such an inequity exists, you will be able to point out at least a dozen cases where you have eliminated a serious situation.

Mr. ROGERS. But you would not have any objection to an amendment to the legislation that, if possible, the compactness should also lead to community of interest, so to speak, with the district. Would you not think that we should go that far?

Mr. SAYLOR. I am very frank to tell you, Mr. Rogers, that is a facet that I have never examined. I would have to think about that before I would be willing to say I want to go along with that proposition.

Mr. ROGERS. Thank you.

The CHAIRMAN. Any other questions?

Mr. MEADER. Yes.

Do you think that one of the factors that logically could enter into the determination of the congressional district should be local units of government; that is, should county lines be observed where practical or municipalities, or should we split municipalities in two just to meet the criteria of compactness and contiguity? What should we do about recognizing local units of government?

Mr. SAYLOR. Well, I believe that you should divide local units of government. I think you should divide local counties.

Now, for example, if we did not, you would have in the city of Philadelphia five people that would have to run at large in the city of Philadelphia.

In the city of Pittsburgh, where the population is sufficient to assure four representatives, you would have to have four representatives run at large even though they run within the city limits.

Now, if this holds true for large municipalities, why does not the same reasoning hold true for smaller municipalities and smaller units?

I think that you will find historically that many States at one time or another did cut up counties. Now they try to keep units as compact as possible, but where you have a county area such as you do surrounding the city of Philadelphia you have two counties, one which has 552,000 population in the 1960 census and they tell me that in all probability at the present time it now has over 600,000 people in that same county, Montgomery County.

South of Philadelphia, you have Chester County that at the time of the 1960 census had 558,000 and now has probably 625,000.

Now, unless you cross country lines or divide parts of counties, you are going to have an inequity that just will exceed 15-percent variation.

Mr. FOLEY. On that point, in California—I know it is in the Constitution that you can't cross county lines, and yet the statute in California permits redistricting. The same is true in New York. It is true in a lot of other States. It is the local that fixed the congressional.

Mr. SAYLOR. That is correct.

Mr. MEADER. Don't you think that should be recognized? That is, municipalities or State senatorial or State legislative districts should be considered in establishing the congressional district?

Mr. SAYLOR. This should be considered by the State in view of the State legislature, in view of the limitations which this committee will enact and report out in a bill.

Now, for example, you talk about community of interest. The gentleman from Michigan has a real problem in his State. The peninsula of Michigan has always been recognized as a separate entity and yet it is probably the smallest congressional district in the United States. The State legislature has realized that now you must go beyond that and that you are going to have to combine two congressional districts.

They do not have community interests; they have some interests in common but they have interests that are widely separated.

I wish the gentleman from Colorado were still here because I would like to call it to his attention that Michigan has the same kind of a situation.

Mr. MEADER. Let me just take a hypothetical case.

Suppose the Michigan Legislature does not apportion its congressional districts to the satisfaction of the House of Representatives and you have your committee set up. The Democratic Party has an overwhelming majority in the House of Representatives, if you don't recognize local units of government such as county, State legislative districts, they could take the State of Michigan and start with Detroit and the Detroit River and fan out in triangular shaped districts from the city of Detroit and encompass enough of the population of Detroit to control practically every congressional district in the State.

Still, they would be compact, contiguous territory if you consider a triangular-shaped district compact and contiguous, and they could divide up the population equally enough.

If they could gerrymander in that fashion in the House of Representatives with a majority of one party, they could really change the complexion of the Congress if you disregard any local units of government or county lines or State legislative district lines.

Mr. SAYLOR. What you have pointed out is a possibility. To eliminate that possibility, if you will recall when I made my recommendation of what the committee should be composed of which would make recommendations to the Congress, it was composed of equal numbers of both parties.

Mr. MEADER. That would be fine, but do you think this Congress is ever going to set up a committee like that?

Mr. SAYLOR. Yes. Mr. Meader, I am satisfied that when this Congress realizes that they must either step up and assume their responsibilities as Members of the House of Representatives or let the Court step in and take over the job of legislating, the Members of Congress are going to measure up to their responsibility.

Mr. MEADER. I hope your confidence is well founded; I would like to see it.

Mr. SAYLOR. I would hate to think I am a member of a group elected to represent the people of the United States and the group that goes out every 2 years and lays their record on the line to tell the people what they have done, they get sent back here and that they are afraid to assume the responsibilities for establishing the rules and regulations of who should be a Member of Congress or what the ground rules should be and allow the third branch of Government, the judicial branch of Government, to step in and fill the void that we have created.

The CHAIRMAN. Of course, you know what has happened over the years.

The Republicans that were in charge of certain State legislatures had representatives here who were loath to adopt any kind of legislation of this character.

The Democrats who would control certain legislatures sent representatives down here who in turn didn't want to have their rights encroached upon. These legislatures wanted to have the carte blanche to gerrymander and what have you.

Therefore, we were stymied. We could not do a thing on this bill for the many years that I have tried to get it considered and many other Members tried to get legislation considered, but I think the Nation is now awakened to its responsibility here.

The Supreme Court decision has acted, if I might put it this way, like a picador to the bull.

Mr. SAYLOR. I think you might refer to them rather than as picadores and the bulls as to the catalyst that has caused the people to realize the responsibility that belongs to the House of Representatives. If the people in the rest of the country are the same as the people in my district, they expect us to act.

The CHAIRMAN. You are absolutely right; I am in accord with it.

Mr. KASTENMEIER. Mr. Chairman, I have a question.

I would like to observe that while Mr. Mathias, Mr. Saylor, and two or three others may be shining exceptions, and while I agree that the Nation is aware of this problem, there is apparently quite a bit of apathy in the Congress. Apparently, from the list of Members and

others who testified before us, this will be a less numerous, less formidable, perhaps, group than testified in 1961 or on previous occasions when there seemed to be less likelihood of realizing some legislation out of this.

So, I suspect that the House of Representatives is still somewhat loath to come to grips with this problem and that we, Mr. Saylor, in this committee have a job to do to probably get our own colleagues interested in legislation of this type.

Mr. SAYLOR. Mr. Kastenmeier, I don't doubt at all there are many Members of the House on both sides of the aisles who don't want to rock the boat because it might affect their district.

I think the members of this committee must realize that what is involved is whether or not the legislative branch of Government, which I still think the Founding Fathers intended to be the most important branch of the Government, is going to assume its responsibility. Sometimes you sweep things under the rug and forget about them for a long, long time, but eventually even that rug gets lumpy.

That is what I think has happened today and the people are looking for a housecleaning. If we don't do it, they are going to look to the courts to do it for us.

Mr. KASTENMEIER. I have one question I would like to ask, fairly technical one, and I wonder if you have given any thought to it.

I note that in your own bill you provide for no district containing more than 115 percent or none less than 85 percent of the whole number of inhabitants of such State, et cetera.

You do not refer to the Federal decennial census. I assume that is what you would refer to; most bills do. But do we not have the problem that there are some States and some areas in which population changes are so dynamic as to render them disproportionate until, let's say, a decade has passed?

Is there anything you have foreseen that we could do or ought to do in that event, and how do you read your own language?

Mr. SAYLOR. No; I do not expect it to be done except every 10 years.

Now, the reason I state that is historically there have been areas that have had the so-called concentration of population. At the time our Founding Fathers wrote the Constitution, the largest city in the United States was Philadelphia. Today, Philadelphia is not the largest city.

Within a very short time after that, because of the change of the New York Harbor, New York became the largest city.

Chicago for a long time had a tremendous exploding population.

When the immigrants came from the northern part of Europe, particularly Germany, France, Sweden, Denmark, and the people came from that area for a 10-year period, there was inequity. There will be inequity in southern California; there probably is today. There have been areas in the outskirts of Philadelphia that would require a complete change if it were made today.

For example, one of the changes that occurred in the city of Philadelphia, Congressman Byrne happened to represent a district that had a large redevelopment proposition taking place and many of the homes that had been in that area had been destroyed, taken out. Since that time, a large number of apartment houses and new and modern homes have been built.

In all probability, if there is any one district in Pennsylvania that has a complete change, it is Mr. Byrne's district in downtown Philadelphia.

Now, these changes are going to take place in every community, either an exodus or an influx of people, and I think that once every 10 years is sufficient.

Mr. KASTENMEIER. I appreciate your answer.

You have 15 percent which by some standards may be a little difficult for some States that may cause special problems, at least to comply within the year or within 2 or 3 years.

Do you think there might be any merit in having a phase-in percentage of 20 or 25 and then a 15-percent, let's say, permanent percentage after the 19th Decennial Census?

Mr. SAYLOR. One of the reason I worry about anything as high as 25 percent, it means that then you could have a differential of 67 percent between the highest and the lowest district. Now, this, I think, is beyond what the Supreme Court has said that they would like to have in districts.

If you get 20 percent, you can have as much as 50 percent differential and even State legislatures in most instances have tried to get away from anything that is that big.

One of the 27 in Pennsylvania, we have 20 that comply with the 15-percent rule. Three are just below it by a fraction, about one-tenth of 1 percent, but the four that are above it are about 20 percent. This is one of the things that makes it really difficult. The reason that they are above it is one of the reasons that the gentleman from Michigan has pointed out, they didn't cross county lines. These are just county areas that are just growing in the outskirts of Philadelphia.

Mr. KASTENMEIER. But if we had even 20 percent temporarily, it would require in terms of Congress, at least as reported by Mr. Mathias, 107 districts to be changed.

Mr. SAYLOR. 107 districts that would be changed; that is correct.

I think if this matter were called to the State legislatures' attention, that they would make the change. I think in the bill as reported out we should give them time to meet and make the change.

Mr. KASTENMEIER. Thank you.

Mr. MEADER. Mr. Saylor, your bill does not provide for this bipartisan committee.

Mr. SAYLOR. The bill does not.

This is a matter, Mr. Meader, that I have thought of and I have offered to the committee as one that is not in my bill but one in which I sincerely believe. I think that it should be adequate. If I introduce another bill, I will have it as a part of that bill.

Mr. MEADER. In other words, you would set these criteria and you would set a time limit for the State legislatures to comply with these criteria. In the event they did not comply within that time limit, you would make it mandatory for the House of Representatives to take action.

Mr. SAYLOR. Yes, sir.

Mr. MEADER. Am I correct in understanding that you reject any local units of Government and their boundaries as one of the guidelines that should be considered in the congressional districts?

Mr. SAYLOR. No, Mr. Meader. I do not reject them but I feel that they cannot be binding. I think that the State legislatures should consider them where possible and if they can consider those boundaries and get within the limitation of 15 percent or whatever percentage that this committee establishes in the bill, that they were perfectly justified in doing it. But where you cannot, then you just must disregard arbitrary county lines.

Now, while I do not know the setup in all of the 50 States, in each county in Pennsylvania we have townships and we have borough lines. I am satisfied that it would be perfectly possible to comply with any statute which this committee reported and was passed and became law that would require a State to come within 15 percent above or below the mean for each State by sticking to township or borough lines.

Mr. MEADER. Let me ask you this question, Mr. Saylor.

If the courts have the right, have the power and authority, the jurisdiction, to determine the proper boundaries of congressional districts and State senatorial and State legislative districts, do they not also have the jurisdiction to determine the composition of the county governments, the boards of supervisors, the municipal governments, the alderman's districts?

Mr. SAYLOR. No; they do not, because there is nothing in any constitution that says that they have to be equal.

Mr. MEADER. Well, you deny—

Mr. SAYLOR. No.

Mr. MEADER. If I lived in a ward of the city of Ann Arbor that has a population of 5,000 and we elect one councilman and there is next door a ward that has population of only 1,000 and they elect one alderman, am I not denied equal protection of the law just as much in my representation on the city council of Ann Arbor as I am in the congressional district or in a State senatorial or State legislative district?

Mr. SAYLOR. If you have the type of town government in your area that allows the election of members of the council from specific wards, and such a system, I am told, exists in some States, then I am satisfied that it will be necessary to change; it could be made necessary to change the boundary lines of some of your wards so that the people who lived in them had equal representation.

This would be a matter for your State legislature to determine. If the State legislature did not determine it and the constitution of the State provided that you should have equal representation as the Federal Constitution does, then your State court would have the right to interfere.

Now, to get around that situation that you talked about, the State of Pennsylvania a number of years ago amended its constitution and provided that there would be no election in wards, that all elections of city officials would be citywide.

The CHAIRMAN. Thank you very much, Mr. Saylor.

Mr. SAYLOR. Mr. Chairman, I would like to have put in the record, if I may, a summary of certain of these factors from Albert L. O'Connor, Jr., who is a constituent of mine and who has done some work on this matter, and I think might be of assistance, at least for reference matter, for your committee.

The CHAIRMAN. We would be very happy to have it.

(The summary follows:)

PROPOSING THAT ALL CONGRESSIONAL DISTRICTS SHALL NOT VARY BY MORE THAN 15 PERCENT FROM THE AVERAGE CONGRESSIONAL DISTRICT IN EACH STATE, AND SUGGESTING ENFORCING LEGISLATION

(By Albert L. O'Connor, Jr., Principal, Adams-Summerhill High School,
Johnstown, Pa.)

The question of fair representation in the National House of Representatives must be approached from the viewpoint: What is a reasonable plan for providing fair and equitable representation? Each State should be divided into as many districts as there are Members of the House of Representatives from the State. This seems to be the intent of the Constitution in allocating Representatives to the States. As a result of recent decisions of the Supreme Court, pressure now exists to require that each Member of the House of Representatives represent approximately the same number of people.

That a large disparity in population of the districts exists, there is no dispute. That reapportionment does not occur in some instances is due often to personal interest of incumbent Members of Congress; to political considerations within the States. A number of States having more than one Representative have Representatives at Large. This situation, while permissible, tends to defeat the plan—that each Representative shall represent approximately the same number of people.

The question before the committee is: How can it best devise a reasonable plan which can be easily executed? It seems that Federal legislation is the only way that uniformity can be procured in all States.

Districts containing exactly the same number of people are impossible. Districts that have approximately the same number of people are the goal. One of the chief barriers to equalizing districts is the fact that the vast majority of States are "county minded." Counties are usually divided only when the county itself is entitled to two or more representatives. While the county's relation to the State is not that of sovereignty, yet the treatment given by most States to their counties approaches the idea of sovereignty when it considers the question of apportionment. There is a great reluctance to divide counties for the purpose of setting up congressional districts.

It is well to note that there are States which have divided counties to form congressional districts—wherein parts of counties have been combined with other counties or parts of counties. Some of these exist in Connecticut, Illinois, Louisiana, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, Ohio, and Washington. In most of these a minimum is divided for this purpose. Only in Massachusetts are county lines almost completely ignored.

Each State has different problems in establishing congressional districts. Arizona is entitled to three Representatives. One-half of the State's population is in one county. Obviously a portion of this county should be combined with other counties to form a district.

Such is not the case at present. Seventy-nine percent of the population of Hawaii lives in Honolulu County. Hawaii is entitled to two Representatives, but presently elects both at large. To divide the State into two districts will require the division of Honolulu County. Numerous other similar instances can be cited. The list would be quite long. If population is to be equalized among the districts, it must be understood that many more counties are going to be divided in the formation of congressional districts in the future.

The best solution to the problem seems to be legislation which limits the variation in population per Representative in each State. Such variations can be expressed in terms of numbers of people; e.g., no district shall vary by more than 50,000 from the State average. Other figures might be suggested; 50,000 may be 11 percent of the average population in one State and 15 percent of the average population per Representative in another State. Such figures would mean different things in each State.

Such variations can also be expressed in percentages of the average population per Representative; e.g., no district shall vary by more than 20 percent from the State average per Representative. Using this example districts could vary between 0.80 and 1.20 times the average per district in each State. The actual numbers involved would vary from State to State.

Limits can best be expressed by percentages. These are relative figures and can be applied to any census at any time. Absolute population limits (such as a 50,000 variation) might be adequate at present but might not be suitable for the situation 50 years from now. Population in 50 years is expected to soar. Percentages will automatically adjust the population variances to meet the occasion.

Having established that some form of reasonable population variance is the method best suited to guide apportionment, How large should be the permitted variation? A variation of 10 percent from the average for each State seems small. So also does a variation of 15 percent. However, it must be realized that this variation works in both directions, above and below the average. This variation is magnified above the actual percentage difference between the permissible extremes.

A variation of 10 percent indicates that it would be acceptable for the largest district to be 10 percent above the average or 1.10 times the average; and the smallest district would have 10 percent less, or 0.90 times the average. The arithmetical difference between 1.10 and 0.90 is 0.20 times the average. By dividing the largest permissible population for a district by the smallest permissible population (using 1.10 and 0.90 as examples) it is determined that the largest district possible is 1.22 times the smallest district possible—not 20 percent larger but 22 percent larger.

This same pattern applies to any percentage suggested. The larger the percentage of variation permitted, the larger the variation is magnified by these figures. If districts are allowed to vary from the average by 33 1/3 percent, the largest district possible would have twice as many people as the smallest district possible. The following chart illustrates the point :

Variation (percent)	Largest district permitted	Smallest district permitted	Ratio of largest district to smallest district
10.....	1.10	0.90	1.22
12 1/2.....	1.125	.875	1.29
15.....	1.15	.85	1.35
16 2/3.....	1.16 2/3	.83 1/3	1.40
20.....	1.20	.80	1.50
25.....	1.25	.75	1.67
33 1/3.....	1.33 1/3	.66 2/3	2.00

It is evident that the smaller the percentage of variation, the more ideal the apportionment. What is reasonable? A study of these figures leads to the opinion that a 15-percent variation is reasonable. This would permit the largest district to be 1.35 times the smallest.

The actual population difference in real numbers of people will vary with each State. The allocation of Representatives to the States by the "Method of Equal Proportions" is the fairest yet devised. Yet, even this method will permit the average number of people per Representative to vary greatly among the States. For this reason it is impossible to establish a national norm. A norm must be established for each State. Percentage variances from the average number of people per Representative are the only means of equating representation within each State. A supplement to this statement is a chart showing the largest and smallest populations congressional districts would be permitted in each State—based on a 15-percent variation.

A study of this chart indicates that this percentage figure permits considerable margin in forming congressional districts. The narrowest gap permitted on this chart between the smallest and largest districts is in the State of New Hampshire—where the difference is 91,000. The widest gap between the extremes is in the State of Maine—where it is 145,000. These figures cannot be considered too binding on the apportioning authority. They give ample opportunity for taking into account such factors as political boundaries, ethnic interests, community background, urban and rural interests in establishing districts.

In any plan there will be counties, cities, or other units of government whose population will fall immediately below the lowest permissible figure and immedi-

ately above the highest permissible figure of variance by a small and negligible margin. Usually these are contiguous to other units of government whose interests are similar. It should be a minimal problem to add territory and population to a unit of government which is near the lower limit to form a district of acceptable size in population. In most cases the addition of territory and population to the unit of government whose population is immediately above the highest limits of variance will make it easy to form more than one district consisting of people whose interests are similar, even though this larger unit of government must be divided in the process for the purpose of establishing congressional districts.

One could not oppose a proposal which would set the limits of variance at a figure less than 15 percent. Any such figure would be more ideal than 15 percent. But would such figures be more practical? Any figure higher than 15 percent continues, in perhaps some reduced measure, the problem currently existing—an imbalance in representation, where each citizen is not equally represented in Congress.

As long as State lines represent sovereign limits, complete equality of representation is impossible. The best that can be achieved within the framework of our Federal republican Constitution is to equate the representation within each State. This can best be done by placing a limit on the variation—a percentage limit—from the average number of people per Representative within each State. Nor will any system prevent gerrymandering in some form, as long as such gerrymander is within the limits specified by law.

While the matter of limitation on apportioning powers is being considered, there ought to be some provision in law to provide for alternatives, if the State legislative body does not apportion. The existence of Congressmen at large in States entitled to more than one Congressman should be prohibited. One such Congressman at large now serves in Connecticut, Maryland, Michigan, Ohio, and Texas. The purpose of the apportioning of Congress is defeated by such a maneuver. Such States are in effect electing a third Senator who serves in the House of Representatives. This device is often used to provide the dominant political party of the State with an extra Member of Congress, which might not be the case, if all were apportioned in districts.

This same objection applies to Hawaii and New Mexico where each elects its entire delegation of two Congressmen at large. The election of a larger amount of Congressmen at large, such as happened in Alabama in 1962, only indicates that the apportioning power refused to accept its responsibility.

Some States now have apportionment commissions which (1) act only if the legislature does not, or (2) are empowered to apportion. One of the chief reasons reapportionment does not occur at any level lies in the fact that no one wants to vote himself out of office. Apportionment commissions consist of persons who are not members of the legislative bodies of the States. They are better able to omit from consideration personal interests. This type of alternative should be established to apportion congressional districts. A Federal Reapportionment Commission could be established to act in all States whose districts did not conform to the variance rules. It should be empowered to act in all States which have not brought their districts into conformity with the limits by a certain time after each census. The Director of the Bureau of Census could be assigned this duty. In either case apportionment would be accomplished and popular representation secured.

I, therefore, urge the enactment of legislation which would do two things to bring about fair representation in the House of Representatives of the Congress of the United States.

1. Place a limit of 15 percent on the variation a congressional district may have from the average congressional district in each State.
2. Set up alternatives to act, if the State apportioning agencies do not act within a specified time after each census.

ALBERT L. O'CONNOR, JR.

Chart showing the minimum and maximum acceptable populations for congressional districts in each State based on 1960 census; the maximum variation is 15 percent from the average for the State

State	Population	Average district	Minimum district	Maximum district
Alabama.....	3,266,740	408,343	347,092	469,594
Alaska.....	226,167	226,167	.....	.....
Arizona.....	1,302,161	434,054	368,946	499,162
Arkansas.....	1,786,272	446,568	379,583	513,553
California.....	15,717,204	413,611	351,570	475,652
Colorado.....	1,753,947	438,487	372,714	504,260
Connecticut.....	2,535,234	422,539	359,158	485,920
Delaware.....	446,292	446,292	.....	.....
Florida.....	4,951,560	412,630	350,745	474,525
Georgia.....	3,943,116	394,431	335,267	453,595
Hawaii.....	632,772	316,386	268,920	363,843
Idaho.....	667,191	333,596	283,558	383,634
Illinois.....	10,081,158	420,048	357,042	483,054
Indiana.....	4,692,498	423,863	360,284	487,442
Iowa.....	2,757,537	393,934	334,845	453,023
Kansas.....	2,178,611	435,722	370,364	501,080
Kentucky.....	3,038,156	434,022	368,919	499,125
Louisiana.....	3,257,022	407,128	346,060	468,196
Maine.....	999,265	484,633	411,939	557,327
Maryland.....	3,100,689	442,956	376,514	509,398
Massachusetts.....	5,148,578	420,048	364,602	493,404
Michigan.....	7,823,194	411,747	349,986	473,508
Minnesota.....	3,413,864	426,733	362,724	490,742
Mississippi.....	2,178,141	435,628	370,285	500,971
Missouri.....	4,319,813	431,981	367,184	496,778
Montana.....	674,767	337,384	286,777	387,991
Nebraska.....	1,411,330	470,443	399,877	541,009
Nevada.....	285,278	285,278	.....	.....
New Hampshire.....	606,921	303,461	257,942	348,980
New Jersey.....	6,066,782	404,452	343,785	465,119
New Mexico.....	951,023	475,512	404,186	546,838
New York.....	16,782,304	409,324	347,926	470,722
North Carolina.....	4,556,155	414,196	352,067	476,325
North Dakota.....	632,446	316,223	268,790	363,656
Ohio.....	9,706,397	404,433	343,769	465,092
Oklahoma.....	2,328,284	388,047	329,841	446,253
Oregon.....	1,768,687	442,172	375,847	508,497
Pennsylvania.....	11,319,366	419,347	356,445	482,249
Rhode Island.....	859,488	429,744	365,283	494,205
South Carolina.....	2,382,594	397,099	337,535	456,663
South Dakota.....	680,514	340,257	289,219	391,295
Tennessee.....	3,567,099	396,343	336,892	455,794
Texas.....	9,579,677	416,508	354,033	478,983
Utah.....	890,627	445,313	378,517	512,109
Vermont.....	389,881	389,881	.....	.....
Virginia.....	3,966,949	396,695	337,191	456,199
Washington.....	2,853,214	407,602	346,462	468,742
West Virginia.....	1,860,421	372,084	316,272	427,896
Wisconsin.....	3,951,777	395,178	336,402	453,954
Wyoming.....	330,066	330,066	.....	.....

The following are the norms :

Average Pennsylvania district.....	419,347
15 percent below the average.....	356,445
15 percent above the average.....	482,249

The following districts meet the norms proposed above and are not altered :

District :	Population	District—Continued	Population
1.....	418,192	19.....	415,058
2.....	397,995	20.....	404,997
3.....	406,993	24.....	456,157
4.....	387,156	25.....	434,522
5.....	392,176	26.....	426,035
14.....	390,512	27.....	423,787
18.....	409,291		

The remaining districts (although some do meet the norms) shall be altered as follows:

District 6:	
Berks County.....	271, 414
Schuylkill County.....	173, 027
Total.....	<u>448, 441</u>
District 7: That portion of Delaware County not contained in District 13.....	
	<u>477, 438</u>
District 8:	
Bucks County.....	308, 567
Part of Montgomery County:	
Abington Township.....	55, 831
Rockledge Borough.....	2, 587
Jenkintown Borough.....	5, 017
Cheltenham Township.....	35, 990
Springfield Township.....	20, 652
Lower Moreland Township.....	5, 731
Upper Moreland Township.....	21, 032
Hatboro Borough.....	7, 315
Bryn Athyn Borough.....	1, 057
Total.....	<u>463, 779</u>
District 9:	
Lancaster County.....	278, 359
That portion of Chester County not contained in District 13.....	182, 194
Total.....	<u>460, 553</u>
District 10:	
Bradford County.....	54, 925
Sullivan County.....	6, 251
Susquehanna County.....	33, 137
Wyoming County.....	16, 813
Lackawanna County.....	234, 531
Wayne County.....	28, 237
Pike County.....	9, 158
Monroe County.....	34, 567
Total.....	<u>417, 619</u>
District 11:	
Luzerne County.....	346, 972
Carbon County.....	52, 889
Total.....	<u>399, 861</u>
District 12:	
Blair County.....	137, 270
Huntingdon County.....	39, 457
Somerset County.....	77, 450
Bedford County.....	42, 451
Fulton County.....	10, 599
Franklin County.....	88, 172
Total.....	<u>395, 299</u>

District 13:

That portion of Moutgomery County not included in District 8...	361, 470
Part of Delaware County:	
Radnor Township.....	21, 697
Haverford Township.....	54, 019
Part of Chester County:	
Teddyffrin Township.....	7, 836
Easttown Township.....	3, 811
Phoenixville Borough.....	12, 932
Schuylkill Township.....	3, 835
Total.....	<u>465, 600</u>

District 15:

Northampton County.....	201, 412
Lehigh County.....	227, 536
Total.....	<u>428, 948</u>

District 16:

Mifflin County.....	44, 348
Junlata County.....	15, 874
Perry County.....	26, 582
Dauphin County.....	220, 255
Lebanon County.....	90, 853
Total.....	<u>397, 912</u>

District 17:

Northumberland County.....	104, 138
Union County.....	25, 646
Snyder County.....	25, 922
Lycoming County.....	109, 367
Tioga County.....	36, 614
Columbia County.....	53, 489
Montour County.....	16, 730
Total.....	<u>371, 906</u>

District 21:

Westmoreland County.....	352, 629
Armstrong County.....	78, 524
Total.....	<u>431, 153</u>

District 22:

Cambria County.....	203, 283
Indiana County.....	75, 366
Jefferson County.....	46, 792
Clearfield County.....	81, 534
Total.....	<u>406, 975</u>

District 23:

Venango County.....	65, 295
Warren County.....	45, 582
Forest County.....	4, 485
Clarion County.....	37, 408
McKean County.....	54, 517
Elk County.....	37, 328
Cameron County.....	7, 586
Clinton County.....	31, 619
Potter County.....	16, 483
Centre County.....	78, 750
Total.....	<u>379, 053</u>

BACKGROUND INFORMATION, ALBERT L. O'CONNOR, JR.

Degrees: St. Francis College, Loretto, Pa., 1937, A.B.; University of Pittsburg, 1939, Ed. M.

Undergraduate major: Social science with emphasis on political science.

Teaching experience:

1937-42: Teacher of problems of democracy and American history at Beaverdale High School.

1942-45: Principal of Blacklick Township High School.

1945-49: Teacher of speech at Monessen High School, Monessen, Westmoreland County.

1949-64: Principal of Adams-Summerhill High School, Sidman, Pa.

1948-52: One of seven national directors of National Forensic League of which Senator Karl E. Mundt was, and still is, the president. Certified parliamentarian recognized by the American Institute of Parliamentarians with headquarters in Chicago.

1962 to date: Listed in "Who's Who in the East."

Mr. KASTENMEIER. He is the Democrat you referred to?

Mr. SAYLOR. Yes.

Mr. MEADER. Mr. Chairman, I obtained the memorandum prepared by Mr. Menger, legislative counsel of the House, explaining the bill that I put in the record earlier which I would like to have inserted in the record immediately following the bill.

The CHAIRMAN. That shall be done.

(The memorandum follows:)

HOUSE OF REPRESENTATIVES,
OFFICE OF THE LEGISLATIVE COUNSEL,
Washington, D.C., April 13, 1962.

I am enclosing a draft bill designed to withdraw original and appellate jurisdiction from Federal courts to hear and determine cases involving the boundaries of election districts or the number of persons to be elected from such districts.

SECTION 1

The first section of the bill adds a new section, designated as section 1361, to title 28 of the United States Code, withdrawing jurisdiction from the Federal courts to hear certain election cases. Because of a somewhat unusual problem that may arise in these cases, the proposed new section 1361 states that the district courts shall not have jurisdiction over civil actions involving election districts "if an action for comparable relief would be within the jurisdiction of, and justiciable in, a court of such State."

The Supreme Court in *Baker v. Carr* (Mar. 26, 1962), held that the complaint in the case presented a justifiable issue involving an alleged deprivation of a Federal constitutional right under a State law providing for apportionment of the Tennessee Legislature. In such a case, if State courts cannot grant relief to the complainant, then a withdrawal of jurisdiction from Federal courts to hear such cases would leave the complainant with no forum for the protection of Federal constitutional rights of the type involved in *Baker v. Carr*.

The language of many Supreme Court decisions appears to indicate that the power of Congress over the jurisdiction of Federal courts is sufficiently broad to make valid an unrestricted withdrawal of jurisdiction to hear such cases. However, such a withdrawal may be held invalid if the withdrawal operates to deprive a claimant of any forum for protection against State action which is alleged to deprive him of a Federal constitutional right.

For example, the Portal to Portal Amendments of 1947 presented a question similar to the above. That act, in substance, abolished the liability for wages and overtime compensation imposed upon employers by reason of Supreme Court decisions¹ holding certain activities of employees to be "employment" for purposes of the Fair Labor Standards Act of 1938. The act went further,

¹ *Tennessee Coal Co. v. Muscoda Local* (321 U.S. 590 (1944)); *Jewell Ridge Corp. v. Local No. 6167* (325 U.S. 161 (1945)); and *Anderson v. Mt. Clemens Pottery Co.* (328 U.S. 680 (1946)).

and in section 2(d) thereof, withdrew jurisdiction from all courts, State as well as Federal, to hear and consider cases involving liabilities within the scope of the act. The Federal courts uniformly upheld the act, and the Supreme Court never passed upon its validity. However, many of the district courts and courts of appeals considered the validity of the legislation insofar as it was alleged to have destroyed vested rights. For example, in *Battaglia v. General Motors Corp.* (169 F. 2d 254, 257 (1948), cert. den., 335 U.S. 887), the Court of Appeals for the Second Circuit stated as follows:

"We think, however, that the exercise by Congress of its control over jurisdiction is subject to compliance with at least the requirements of the fifth amendment. That is to say, while the Congress has the undoubted power to give, withhold, and restrict the jurisdiction of the courts other than the Supreme Court, it must not exercise that power so as to deprive any person of life, liberty, or property without due process of law or to take private property without just compensation. *Graham and Foster v. Goodcell*, 282 U.S. 409, 431; cf. *Brinkerhoff-Paris Trust and Savings Co. v. Hill*, 281 U.S. 673, 682; see also *Lynch v. United States*, 292 U.S. 571, 580; *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 589. Thus regardless of whether subdivision (d) of section 2 had an independent end in itself, if one of the effects would be to deprive the appellants of property without due process or just compensation, it would be invalid."

In other words, although the Congress has the power under the Constitution to limit the jurisdiction of Federal courts, if the exercise of that power operates in such a fashion as to deprive an individual of any means of obtaining protection of a constitutional right, it is possible that the courts will either declare the statute unconstitutional or engraft exceptions upon it. See, e.g., *Allen v. Regents of the University of Georgia*, 304 U.S. 439 (1938); *Miller v. Standard Nut Margarine Co.*, 284 U.S. 498 (1932).

Two decisions of the U.S. Supreme Court are often cited for the proposition that the power of Congress to limit the jurisdiction of Federal courts is virtually unrestricted, *Cary v. Curtis*, 44 U.S. (3 How.) 236 (1845), and *Sheldon v. Sill*, 49 U.S. (8 How.) 441 (1850). In the case of *Sheldon v. Sill*, the issue was whether or not Congress could prevent certain cases from being transferred from State courts to Federal courts. In that case, and in every Supreme Court decision citing it since it was first decided, other forums than Federal courts were available for the adjudication of the controversy in question.

The other case mentioned above, *Cary v. Curtis*, and many cases citing it, frequently involve one of two issues—a withdrawal of jurisdiction from the courts, or a withdrawal or limitation by the United States of its content to be sued—or often both issues. *Cary v. Curtis* involved the question of whether Congress could constitutionally abolish the right of a taxpayer to sue a Federal tax collector for recovery of taxes paid under protest. The court held that the right could be and had been abolished, but stated, in part, "The claimant, moreover, was not without other modes of redress, had he chosen to adopt them * * *. The legitimate inquiry before this court is not whether all right of action has been taken away from the party, and the court responds to no such inquiry." *Id.*, at 250.

Congress has, at times, limited rather stringently the access of citizens to the courts to test the validity of Federal action. For example, the Emergency Price Control Act of 1942 (56 Stat. 23) withdrew jurisdiction from all courts, State and Federal, to test the validity of price control regulations and orders, and vested exclusive jurisdiction of actions to contest such regulations in a new court, the Emergency Court of Appeals. The validity of this restriction was upheld in *Lockerty v. Phillips*, 319 U.S. 182 (1943), and the validity of such regulations was not permitted to be attacked in a criminal prosecution for their violation. *Yakus v. U.S.*, 321 U.S. 414 (1944).

To the extent that the facts of cases containing assertions of an unrestricted congressional power over jurisdiction of courts involve the power of Congress to specify the remedies available for contesting the validity of Federal action, or to withdraw consent of the United States to suit, the cases do not bear directly on the question involved in the proposed new section 1361 of title 28. This point is discussed in "The Constitution of the United States of America," prepared by the Legislative Reference Service, Library of Congress (1953), edited by Edward S. Corwin, on page 622, as follows:

"JUDICIAL POWER EQUATED WITH DUE PROCESS OF LAW

"Although the cases point to a plenary power in Congress to withhold jurisdiction from the inferior courts and to withdraw it at any time after it has been conferred, even as applied to pending cases, there are a few cases in addition to *Martin v. Hunter's Lessee*¹ which slightly qualify the cumulative effect of this impressive array of precedents. As early as 1856, the Supreme Court in *Murray v. Hoboken Land and Improvement Co.*² distinguished between matters of private right which from their nature were the subject of a suit at the common law, equity, or admiralty and cannot be withdrawn from judicial cognizance and those matters of public right which, though susceptible of judicial determination, did not require it and which might or might not be brought within judicial cognizance. Seventy-seven years later the Court elaborated this distinction in *Crowell v. Benson*,³ which involved the finality to be accorded administrative findings of jurisdictional facts in compensation cases. In holding that an employer was entitled to a trial de novo of the constitutional jurisdictional facts of the matter of the employer-employee relationship and of the occurrence of the injury in interstate commerce, Chief Justice Hughes, speaking for the majority, fused the due process clause of amendment V and article III, but emphasized that the issue ultimately was 'rather a question of the appropriate maintenance of the Federal judicial power,' and 'whether the Congress may substitute for constitutional courts, in which the judicial power of the United States is vested, an administrative agency * * * for the final determination of the existence of the facts upon which the enforcement of the constitutional rights of the citizen depend.' To do so, contended the Chief Justice, 'would be to sap the judicial power as it exists under the Federal Constitution and to establish a government of a bureaucratic character alien to our system, wherever constitutional rights depend, as not infrequently they do depend, upon the facts, and finally as to facts becomes in effect finality in law.'⁴"

For the above reasons, the proposed new section 1361 provides, in substance, that the Federal courts are not to have jurisdiction of legislative apportionment cases except where State remedies are not available. This follows somewhat the pattern of sections 1341 and 1342 of title 28 of the United States Code.

There is, of course, no way to tell in advance just how the courts will construe the phrase "action for comparable relief" in the proposed new section, but I believe these words fairly evidence a congressional intent to constrict Federal jurisdiction to its minimum constitutionally permissible scope in this area.

SECTION 2

Section 2 of the bill proposes to add a new section 1259 to title 28 of the United States Code, providing that the U.S. Supreme Court shall not have appellate jurisdiction of any civil action described in clauses (1) or (2) of the proposed new section 1361, whether such civil action arises in the Federal courts or in any of the State courts.

This provision of the bill does not operate to deprive any plaintiff of a forum, and should present no particular constitutional difficulty under the doctrine of *Ex Parte McCardle*, 74 U.S. (7 Wall.) 506 (1869), which held valid a withdrawal of appellate jurisdiction from the Supreme Court to consider appeals in certain habeas corpus proceedings, even as applied to cases then pending in the court.

Respectfully submitted.

JAMES M. MENDER, Jr.,
Assistant Counsel.

Mr. SAYLOR. I wish to thank the chairman and members of the committee.

The CHAIRMAN. We will adjourn and meet tomorrow morning at 10 o'clock. We have quite a variety of witnesses and I hope they will be here promptly at 10.

The meeting will now adjourn.

(Whereupon, at 12:15 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Thursday, March 19, 1964.)

¹ 1 Wheat. 304 (1816).

² 18 How. 272 (1856).

³ 285 U.S. 22 (1932).

⁴ *Ibid.* 56-57. Cf., however, *Shields v. Utah, Idaho R. Co.*, 305 U.S. 185 (1933).

CONGRESSIONAL REDISTRICTING

THURSDAY, MARCH 19, 1964

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 5 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:15 a.m., pursuant to call, in room 346, Cannon Building, Hon. Emanuel Celler (chairman of the subcommittee) presiding.

Present: Representatives Celler, Rodino, Rogers, Donohue, Brooks, Kastenmeier, McCulloch, Cramer, and Meader.

Also present: William R. Foley, general counsel, and William H. Copenhaver, associate counsel.

The CHAIRMAN. The committee will come to order.

We have with us our very distinguished colleague from Maryland, Brother Carlton Sickles.

Mr. Sickles, we are glad to have you.

STATEMENT OF HON. CARLTON R. SICKLES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. SICKLES. Thank you very much, Mr. Chairman.

I have a prepared statement which I believe is before you. I was not planning to read from that statement and would rather just make a few comments in the interest of time and ask that the statement be made a part of the record.

The CHAIRMAN. It will be made a part of the record.

(The statement follows:)

STATEMENT OF CONGRESSMAN CARLTON R. SICKLES

Mr. Chairman, I appreciate the opportunity to testify this morning in support of H.R. 1128 which deals with the establishment of congressional districts and has been estimated to effect redistricting in 28 States which have a total of 306 Representatives in the House. Although reluctant to restrict the States in this matter, I do believe we should give guidance to the States and not have this responsibility preempted by a coequal branch of government—the Federal judiciary.

I have two basic reasons for urging quick action on this legislation. The recent Supreme Court decision in the case of *Wesberry v. Sanders* did not offer definitive guidelines for the establishment of congressional districts. Although the general principle that districts should be as equal "as practicable" in population was enunciated by the Court, much clearer guidelines must be established.

Also, in view of the experience in Maryland and other States, it may be necessary that some sort of interim mechanism be developed to realize the goal of equitable redistricting should the State legislatures fail to act within a reasonable period of time.

To put this matter in proper context, it may be helpful to review briefly the Maryland experience to illustrate some of the difficulties in securing the elusive goal of equitable districts.

The unusual geography of Maryland complicates the difficult job of establishing congressional districts. Regarding this diverse geography, Maryland is sometimes called "America in Miniature" because it embraces the mountains of the Alleghenies on the west and runs to the sandy shores of the Atlantic Ocean on the east.

When Maryland was awarded an additional congressional seat after the 1960 census, the question of how to effectively redistrict the State has posed a thorny political problem. After consideration of various proposals, it was finally decided to split the State's largest district, which at that time contained 711,000 people, and leave the rest of the State untouched. This bill was approved by the Maryland General Assembly and subsequently petitioned to a referendum. At that time the Maryland attorney general ruled that until the referendum was decided in the November 1962 general election Maryland's eighth Congressman would be elected at large. In November 1962 Marylanders rejected the proposed redistricting plan by a vote of 211,904 to 115,557. This vote was widely interpreted as a mandate to the general assembly to redistrict the whole State and create districts substantially equal in population.

In 1963, the Maryland General Assembly again adopted a plan that did not redistrict the entire State nor remove population inequities. Seemingly the 1962 referendum had no real effect on the willingness of the State legislature to draw up a plan in which the districts were substantially equal in population. The 1963 redistricting law was also petitioned to referendum by citizen groups favoring equitable redistricting.

Subsequently on December 20, 1963, another group of Maryland citizens with an eye on the *Wesberry* case petitioned the U.S. district court asking that the court declare the numerical inequalities in the existing Maryland district and the proposed redistricting law violate the 14th amendment to the Constitution which forbids the States from denying citizens equal protection of the laws.

The U.S. District Court for Maryland met in the latter part of January and early February to hear arguments regarding this case. On February 4 the court issued a memorandum indicating that both the existing Maryland districts and the proposed redistricting law placed on referendum fail to meet the test of constitutionality. It further indicated that if the situation was not altered an at-large election would be ordered by the court. A few weeks later on February 17, the Supreme Court handed down its decision in the case of *Wesberry v. Sanders*. The Governor of Maryland immediately indicated that he would call a special session of the general assembly to redistrict the State. It was felt that the impetus from this decision and the reluctance of requiring all eight of Maryland's Congressmen to run at large would stimulate the State legislature to effective action. However, in the recent special session of the Maryland General Assembly, the house of delegates and the Maryland senators were unable to agree on a new redistricting plan. Thus the matter is now thrown back in the lap of the U.S. district court. The court may reluctantly decide to establish congressional districts itself if only for a temporary period or order all of the 68 Maryland congressional candidates to run at large, creating a chaotic situation. The House of Representatives was established to be close to the people and it seems to me that this is better done when States are divided into equitable districts.

Speaking from personal experience I feel that, while certain advantages do accrue to a Congressman at Large, the obvious difficulties of serving a large population over a diverse geographical area are recognizable. As you know the House of Representatives itself does not recognize the unique problems that face the staff and the budget of the Congressman at large.

Rather than let the courts develop national policy on the issue of congressional redistricting, it seems to me that the Congress has both the authority and the responsibility to enact legislation which would set forth in law an allowable variation in the population of congressional districts so that other factors can be considered and set up machinery to establish interim districts should the State legislatures fail to act. Therefore, I urge this committee to take favorable action on H.R. 1128 or similar legislation designed to accomplish these purposes.

Mr. SICKLES. Thank you.

Mr. Chairman and members of the committee, I appear before you as an example of what can happen under the current system and perhaps why we need some legislation.

According to Mr. Justice Harlan in the *Wesberry* case, I am one of the 37 constitutional Members of the House of Representatives so I thought maybe you ought to hear from one of the constitutional Members of the House.

Mr. ROGERS. I understood from the morning paper you worked it out in Maryland.

Mr. SICKLES. We are at a point where it may be worked out. Something will be established on Friday when the Baltimore court meets and decides what to do.

In the meantime, I ran in the last election for the post at large and sit in that post.

I know that Congressman Mathias appeared before you yesterday and I don't want to duplicate what he said.

The history is we acquired one more Representative in 1960 as a result of that census. The State legislature, because of its composition and also because of the peculiar geography of our State, had a very difficult time trying to locate this new district. Without any attempt on the part of anybody to think of gerrymandering and the like, it was almost an impossible job to properly carve up our State into eight fairly equal districts.

The result was that the State legislature, and I was a member there at the time, finally took the largest district, the one represented by Congressman Lankford, the Fifth District, which had over 700,000 people in it and cut that one in half. Under a provision in our State constitution, this law was petitioned to a referendum by the people.

Just by the fact that it was petitioned removed the law from the books, and it meant, at least for this term, there would be a Representative at Large. In the referendum election that was held, the citizens voted overwhelmingly against this proposed bill.

When the State legislature met in the following year, in 1963, it again did not resolve the entire problem but again took that same large district and with one minor modification cut it in half, this time a different way, and again the people have petitioned the bill to a referendum.

The net result is that except as affected by the court case which is now before us in Maryland, the Representative at Large still exists. There will be a question on a ballot in November trying to resolve whether that law would stay on the books.

Mr. ROGERS. Has the court indicated that they would do the job?

Mr. SICKLES. We met with the court on Monday. It was an informal meeting, and they had the party litigants, the attorney general on behalf of the State and those who brought the action, the plaintiffs. The court also invited the Members of the House of Representatives to appear, and we were all there.

In a discussion of the issues, the court action broadened the issues and indicated they would hear argument as to whether they had the authority to judicially district the State and also would consider all other possibilities. I am sure you well understand if they don't create the districts themselves, they could require that all of us have to run

at large this time or that we will allow the current districts to stay as they are, which is seven districts and one at large, hoping that the State legislature would resolve the problem the next year when it met again.

Mr. ROGERS. They indicated those three alternatives.

Mr. SICKLES. I think in the course of discussions those alternatives were indicated, but I am sure they didn't indicate that they were going to do any particular one of them or that they would not necessarily come up with a combination.

One of the things that has been suggested is that the primary be held as the law stands now but that in the general election then everybody would run at large.

The first bill that I introduced when I appeared here last January was H.R. 1128, which was modeled after the chairman's bill. I had made a campaign promise in the course of my campaign that I would introduce such a bill, because it was my judgment until the Congress came up with this kind of legislation or unless the court were to take jurisdiction, that, barring either of these two solutions, we would not resolve the problem and we would have wide variations in representation.

Now I appear here, of course, as a Representative from Maryland, and I indicated earlier that Mr. Mathias was here yesterday.

I notice in one of the newspapers this morning an indication that there is not much interest in this legislation.

I hope that the fact that I am here, and I notice that my colleague, Mr. Pool, who is another Representative at Large, is here with a delegation behind me, that there is not the misunderstanding that this is only a problem for Georgia, Maryland, and Texas. There are actions pending or about to be pending, as I understand it, in Colorado, Connecticut, Idaho, Kansas, Michigan, and Tennessee.

I looked in Congressional Quarterly, and in an article that they recently put out they indicate that if there is a 20-percent variation allowable that there would still be 28 States affected and there would be 306 seats that could be affected.

If the variation were 15 percent, 33 States could be affected with 370 seats involved.

If it were a 10-percent variation, it would affect 37 States with 400 Representatives affected.

So, it is not just a problem for those of us who are right in the middle of it at this point, but it is a potential problem for many of our colleagues who are sitting with us today.

We being in the middle of the problem now perhaps think about it more than most folks.

When the *Wesberry* decision came down, we were very pleased that we now had judicial interest because we felt the problem would not be resolved absent either congressional legislation or the judicial interest. The fact that the case did not specify a population percentage variation that still left the entire problem in the air, so that it seems to me that we need congressional legislation to resolve this percentage variation.

Also, we need some legislation in order to carry out the effect of such legislation. If we establish a 20-percent variation, then there has got to be some kind of policing or we will merely have a law on the books

and it will just sit there. For that reason, in my bill I give the authority to the Director of the Bureau of the Census in those cases where it is found that the percentage variation is not adhered to; then the Director could redistrict the State.

Of course, this would not preclude the State from then in turn redistricting back to the way it wants it if in so doing it stays within the 20-percent variation.

The history in Maryland should indicate that when this problem occurs, when it is close to an election time you end up with a chaotic situation.

When the final date for filing came in Maryland, as a result of this court case, the potential candidates did not know whether they were all going to be running at large, whether they were going to be running in the same districts, or whether there were going to be new districts created by the State legislature. As a result, there were some—I believe the figure is 70-some—who were candidates for the eight seats. As of today, they still don't know where they are going to run. This is a chaotic situation.

It seems to me that the legislation should be passed now before we end up with a series of court cases.

We just happen to be in the middle of this right now and that is why it is so emergent for us, but it will become emergent for the other States if we don't try to help resolve the problem by establishing some standards.

Mr. FOLEY. Does the constitution or any statute of Maryland state how congressional district lines must be drawn?

Mr. SICKLES. The statute is what establishes the district lines and they just specifically establish each district not how they will be drawn.

Mr. FOLEY. Again, for instance, under your statute or your constitution, must you follow county lines?

Mr. SICKLES. We have no legislative requirement that we follow county lines, but we have a very long history of the predominance of counties in the State of Maryland and we have a very strong emotional attachment to try to keep the counties as whole as possible. One county in the State is too large to be a district, itself, so it would have to be carved up.

Mr. FOLEY. For instance, in many States we find that congressional district lines are predicated upon State legislative districts, either senatorial or lower house districts, whatever you want to call them. Is that the custom in Maryland, too?

Mr. SICKLES. In Maryland, we have no congressional district which is coexistent with a State legislative district but that is because of size, I believe.

We have one State senator from every county and six from Baltimore City. Then we have varying from 2 to, I believe, 13 members of the house of delegates based upon the population of the different counties.

We have legislative districts for the City Council in Baltimore City and they differ from the way the congressional seats are set up. There is a completely different alinement.

Mr. DONOHUE. Mr. Chairman.

Are your senatorial districts and your districts as far as the lower house is concerned based upon population?

Mr. SICKLES. We are in the process of a court suit on that, too.

Mr. DONOHUE. At the present time, those districts are not set up on the basis of population?

Mr. SICKLES. The senatorial seats certainly are not because each county, no matter what its size, has one State senator and Baltimore City is broken down into legislative districts and there are six State senators from Baltimore City.

Mr. DONOHUE. What yardstick do they use or what type of criteria?

Mr. SICKLES. For the house of delegates, the lower house, there has been a formula that had been established but we got to the point where many of the counties had the maximum which was six.

In an attempt to reapportion the State, the State legislature could not do it and we had a court case which compelled us to reapportion our lower house.

Mr. DONOHUE. How did you arrive at those six that you mentioned?

Mr. SICKLES. I don't have the figures in front of me and I don't recall at the moment, but you would get two for a certain population and then you would acquire one more for every so many thousand. Then when you got to the point of six, that was so far from the—we have almost a half million in one county now and you have one county that might have 60,000 or 70,000 that would have had six at the same time.

As the counties got bigger and bigger and we didn't change that formula, then the house of delegates got more and more like the senate with every large county having six delegates.

Mr. DONOHUE. What is the basis of the formula? Population?

Mr. SICKLES. Population; yes.

Mr. DONOHUE. Or size?

Mr. SICKLES. Population.

Mr. KASTENMEIER. Mr. Chairman.

From personal experience, you can speak on this next question.

How do you feel about at-large seats? That is to say, without having examined your bill in detail, I don't know whether you provided for at-large seats or militated against it in your bill, but do you feel a mixed relationship; that is, those States with one or more at-large districts is a suitable and is a good situation?

Mr. SICKLES. Are you talking about my current situation as a mixed situation?

Mr. KASTENMEIER. Yes.

Mr. SICKLES. I would say it has been difficult. I never worked so hard in my life. I do enjoy it, but I think maybe part of my problem is that my district is right next door and I am very close to my constituents.

The fact I am representing the entire State means I become involved in every major problem in every area of the State, and I have the same staff that any person who has over 500,000 has.

My relationship with the other Congressmen in the Democratic areas is one where we cooperate as much as possible. As far as the Republican areas is concerned, we again cooperate as much as possible but in this area, because I am the Congressman at large, I become the adviser to the Post Office Department with respect to post office appointments, and I become really the Democratic Congressman for the Republican areas.

We have six Democratic and two Republican Congressmen. In this area, I try to be as cooperative as I can. I try to dispense the patronage where there is a Republican Congressman. I would assume, under normal circumstances, this would be in the U.S. Senate because I assume that our Republican members do not give much advice as far as the appointment of the postmasters in that area. This is my assumption.

Mr. KASTENMEIER. Other than from personal experience, objectively speaking, political sciences, do you think we would be better off if all States had regular districts where there are more than two Congressmen, where there are at least two Congressmen for the State than for the mixed situation such as your State and a number of others, Connecticut, Texas?

Mr. SICKLES. Well, I think that you can make a good argument for at-large Congressmen because I think that I have the opportunity of being less parochial in my views, particularly in the State of Maryland. I don't represent any one economic interest or one segment of the State; I represent a very complex State.

I can take any position on any bill before this House and find many supporters, but the converse is true, too. I can find many people who would oppose the position I take. I think the broader the population base and the broader the economic and social interests, the broader you may be in coming to a decision. Let's say assuming that none of us are parochial in our view—

Mr. KASTENMEIER. Of course, you are now describing the colleagues in the other body as opposed to ourselves.

Mr. SICKLES. That is right. I end up usually referred to as the third Senator from the State of Maryland because I find my thinking and voting pattern is almost identical with the pattern of theirs. There are some definite disadvantages to the Congressman at Large.

No. 1, we estimate in the State of Maryland it would cost approximately \$25,000 to run in a primary in a district. If an individual were going to run statewide by himself, I am not talking about any particular arrangement he might make with a ticket and is going to make enough noise so the people are going to notice him, and pay for the billboards and radio and TV and the like, he is going to have to spend at least \$200,000. If he does not spend that amount of money, he is going to have difficulty getting to the people so they know he is running.

There is a difference in the physical endurance contest you go through. If you have a reasonable-sized district, you just don't have to be running night and day every day; but when you campaign statewide in the State of Maryland, you just have to give up months at a time as you go from one county to another and are escorted through by the local people.

So, there is a time involvement and money involvement in just campaigning for the office.

Then, once you have the seat, you have a continuation of trying to keep contact with the people all over the State so that you can properly service them.

As I indicated earlier, we at-large Representatives don't have any increased staff nor do we have any increase of money allowances as far as stationery is concerned, the costs, and the like. We don't have any increased space allowance, either.

These are all the problems that would accrue to any Representative at Large whether he is the only one or whether they are all Representatives at Large because once the citizens understand that you represent them, they are going to contact their local representative.

I am sure that if you had a Representative from Alabama before the committee, he would tell you that in their case everyone who has a problem would write to every one of his Representatives. They then have the problem of each individual trying to service many or some way trying to coordinate their activities.

Our attempts at coordination in Maryland have been fairly successful because sometimes you spend more time coordinating and working on the problem than it takes action to resolve the problem and get on to the next one.

Mr. KASTENMEIER. Thank you very much.

I take it you are not oblivious of this. In other words, you oppose a provision in the bill which would, in fact, prohibit at-large elections except where the whole State delegation must run at large?

Mr. SICKLES. I would not oppose that.

Mr. KASTENMEIER. You would not oppose that?

Mr. SICKLES. No.

Mr. KASTENMEIER. Thank you very much.

Mr. McCULLOCH. Mr. Chairman, I would like to ask our colleague a question or two because I come from a State where we apparently have the very highest regard and feel some necessity for Congressmen at Large.

As I recall, out of the last five decades we have had a Congressman or more than one at large for almost the entire 50 years.

I was surprised at your statement that there was no additional provisions for clerk hire for a Congressman at Large, and a Congressman at Large does not have the same additional clerk hire that a district Congressman has in accordance with his population.

Mr. SICKLES. The breaking point is 500,000.

What I meant by my answer was I would have no more than any Congressman who would have over 500,000 constituents. In my case I have over 3 million constituents.

Mr. McCULLOCH. I understand, and in Ohio Robert Taft has over 10 million constituents.

How many first-class letters per business day, 6 days a week, would you get from the State of Maryland, a rough average?

Mr. SICKLES. This would be very difficult for me to say. I think that rather than tell you off the top of my head I ought to check with the office and supply it to the committee. I just don't know offhand.

I asked this question about 2 months ago, and maybe this was not the proper answer to be accepted, but the secretary turned to me and said, "Who has time to count?" It is a kind of chaotic situation.

I ask you to come and visit my office sometime to see exactly how we have tried to operate. I can say this, though, to explain what my current situation is: I can't keep up with my mail with my current staff. Because I live so close to my district, I have at least one and more than one volunteer in my office, ladies who come to the office and sit all day at the typewriter and type or file cards. We accept all volunteers. If it were not for the fact we have volunteers in the office, we would get behind in our mail; just months behind.

Mr. McCULLOCH. Mr. Chairman, I know that this is not within the realm of our authority or jurisdiction, but I think this is of so much importance that I feel justified in asking this question: Has the House Administration Committee been advised about your situation?

Mr. SICKLES. I have not discussed it with anyone except Mr. Friedel who is a Representative from the State of Maryland on the House Administration Committee. His indication was that he felt that there was no provision for that and none would be forthcoming.

Now, I don't want to be unfair to him; this was not a formal presentation, it was an informal discussion at lunch. I was of the opinion that the House feels that the resulting Congressman at-large is not really the fault of the House, if there is a fault, and that if the State legislatures and the State governments would properly redistrict their States, then they would fall within a normal pattern.

As far as the House would go, it would make that breaking point at 500,000 because of that possible variation, but since it did not recognize any necessity for a Congressman at large, this results primarily—although in your case it may be different; it may be desired—but primarily of a failure to be able to resolve a problem that it would not take any interest in.

I have toyed with the idea, and if I am a Congressman at Large and am fortunate enough to be reelected to the post if it continues this way, I am either going to make some request through the House Administration or I am going to in some way through the Governor of my State see if they could provide some additional funds so that I could adequately perform the job.

Mr. ROGERS. Why don't you do like some Congressmen, when you get a letter from the district that is represented by somebody, say, "This is your Congressman; let him take care of it."

Mr. SICKLES. Except that I am a Congressman from that area, too, and I only have a 2-year contract and have to come back and renew it every 2 years.

I understand there is a certain value in providing constituents service. I do try to coordinate with the local Congressman.

Mr. McCULLOCH. Could I answer in part for our colleague who is able to answer for himself?

I have found that sometimes there are some people, and I hope it is on lessening occasions, that perhaps would prefer to write to the Congressman at Large than to me, and that is particularly true under certain conditions where the Senators are both of the same party that the district Congressman is and there are some political overtones or manifestations.

I repeat: It isn't a good situation, at least theoretically speaking, but people of the State of Ohio apparently have liked it rather well because we have the initiative in Ohio, the legislative initiative.

As I recall, the State of Ohio had at least one Congressman at Large in the twenties; we had two Congressmen at Large throughout the decade of the thirties, and the two major parties were in complete control of both the executive and the legislative department in Government one time or another in both those decades. In the forties, as I recall, we had a Congressman at Large throughout that decade, and we have one now.

I just give you that as another manifestation of the desires of people.

Mr. SICKLES. I think the point is well taken. The public attitude in Maryland toward me sort of runs the gamut from those who feel this Representative at Large is some sort of a substitute who can only go in and vote when somebody does not show up and others feel it is more important than others and feel they have to contact me; since I represent the whole State, I have more influence. You know nothing is further from the truth than that but the feeling exists.

Mr. BROOKS. Mr. Chairman, I want to just make the observation that when I first came to Congress we had a Congressman at Large whose home was in my district. We had a Representative in our district for some years, Mr. Martin Dies; you may have heard of him. As Congressman at Large, I found him really very pleasant company. We did not always vote alike, but on matters of service to the constituents, my own and his as well, I found him particularly helpful in that he was willing to go along with anything I wanted to do for him and he did not intrude himself or interfere with my election or the projects I was working on. On some very few occasions he had some of his old friends work on me, we had little minor differences, but it was really a very pleasant tenure. It seemed to be successful for him because he apparently not only got along with me from the district where he had resided. You understand we did not vote alike exactly but he got along with all the other members of the Texas delegation.

The truth of the matter is I think everybody sort of enjoyed having Martin here. He was Congressman at Large. He did not assume the duties of the third Senator; I don't want to imply that; but neither did he interfere with what we considered more direct representation of the individually elected Congressmen.

So, I would say you might want to consider it if it eventually does continue because Mr. Dies handled it very nicely. I think the entire delegation voted various matters with him and for him and against him and all found him very pleasant as a colleague for that reason.

Mr. SICKLES. I could not testify as far as my acceptability by the other members of the Maryland delegation, but they are very easy to get along with, anyway. I don't believe I would have any problem with them personally.

We were talking in terms really of the problems that are generated and the volume of problems that are created by trying to represent the entire State.

Mr. McCULLOCH. I would like to ask this question: Might we then conclude that if there is to be redistricting other than by the State legislatures, that there had better be some guidelines at the congressional direction rather than have the Federal courts enter this political thicket and set up the districts?

Mr. SICKLES. I would agree with that. I think by Federal legislation we can do it fairly soon rather than waiting for a case-by-case decision and the time involved and the uncertainty that would be involved in the meantime.

At 11 o'clock today, or when I get there, the Maryland delegation is still trying to resolve our problem, at least make suggestions to the court tomorrow. We don't know what population variations they are going to allow and they didn't indicate that Monday when we met with them.

Mr. RODINO. Might I ask: Is the court taking judicial notice of the fact that the Judiciary Committee is meeting and trying to help this situation along and in taking this into consideration might defer action until proper time lags are set down?

Mr. SICKLES. I am not sure this was brought to their attention, but I will be there tomorrow and I will bring it to their attention.

Mr. RODINO. Your dilemma might be resolved if this were brought to their attention.

Mr. SICKLES. That is right; it would perhaps resolve the problem for everybody but me.

Mr. RODINO. I would not want to suggest that your problem not be resolved.

Mr. COPENHAVER. Mr. Sickles, in your bill H.R. 1128, I notice that you provide that if a State does not redistrict according to guidelines set down, you give the authority to the Bureau of the Census to do that.

I want to ask you whether you believe that that would be the proper source to give it to, keeping in mind that the Bureau of the Census may not have as detailed knowledge of the political, economic, and social ramifications of the State and thereby might not be capable to draw districts which not only would be fair but which would be realistic as far as the particular conditions of the State.

In that regard, yesterday we had some discussion. Mr. Meader discussed the idea that perhaps the Congress or an official commission appointed by Congress have the authority to look into this. Of course, Mr. Mathias was of the opinion that the whole State run at large with the idea this may be a sufficient inducement for the State to redistrict.

Mr. SICKLES. If I may speak to your last point, it was not sufficient inducement in Maryland because this court case has been going on. In a memorandum opinion the court made it very clear what was about to happen if there was not a redistricting by the State legislature which was called in at a special session primarily for this. There were other functions, but primarily for this function. In spite of the fact that the court was sitting back and waiting for them to have a proper redistricting of the State with the threat of everybody running at large. The State legislature still did not do it so I am not sure that is a real threat. Politics being what it is, sometimes the State legislators are not really as much concerned with seats of the congressional Representatives as they might be with some other problems. If they have, as in Maryland, such a difficult problem because of geography, adding that other factor of no immediate concern, I am not sure that making Representatives run at large will be that much influence on the State legislatures to do the job. That is why I felt we should go somewhere else for the solution.

It seemed to me the Director of the Bureau of the Census, probably better than any other official, would have at his fingertips the geography, the head count, the kind of people, the economic and social conditions. It may be true that he may not be aware of all the political problems and feelings in the State, but maybe it is that part of the political problem which makes the problem so difficult for a State legislature. It might even make it easier for the Director to resolve the problem than it would be for the local political figures because he could do it based upon the actual composition of the State rather than the political overtones of the State.

Now, even though the Director would do the job, if the State legislature didn't like it then it could come back and redo the State as long as it stays within the 20-percent variation that I put in my bill.

Mr. COPENHAVER. As you know, there has been a good deal said about allowing the judiciary to interfere with a legislative matter.

Mr. SICKLES. I just feel that somebody has got to get into it. It would seem to me that since these decisions are only going to be temporary decisions that you ought to give it to the one being the closest to the scientist in that area. The census department is the one that is concerned with the numbers of people and where they live, and they could perhaps come up with a solution to the problem.

Mr. RODINO. Mr. Chairman, I merely want to state I hope there was no misconstruction placed on my remarks with respect to the gentleman and the admiration I have for him in the way he represents his district. I don't want to pose any more onerous burden than you have but I was thinking in terms of solving this problem. I do realize that people are in an awful dilemma there. From what I hear and what I read, I don't know if you are going to come out of it.

Mr. SICKLES. I hope we come out of it.

Mr. RODINO. I hope so.

The CHAIRMAN. Thank you very much, Mr. Sickles. We appreciate your coming.

Mr. SICKLES. Thank you, Mr. Chairman.

The CHAIRMAN. Our next witness is Mr. Roland I. Perusse, chairman of the Maryland Citizens Committee for Fair Congressional Redistricting.

We have quite a number of witnesses and I hope that those that appear will be brief. They can submit additional data for the edification of the committee.

Mr. Perusse.

STATEMENT OF ROLAND I. PERUSSE, CHAIRMAN, MARYLAND CITIZENS COMMITTEE FOR FAIR CONGRESSIONAL REDISTRICTING

Mr. PERUSSE. Mr. Chairman and members of the committee, my name is Roland I. Perusse. I am a professor of political science and chairman of the Maryland Citizens Committee for Fair Congressional Redistricting. This is a statewide, bipartisan citizens' group pressing for congressional districts of equal size in the State of Maryland.

We are the group that brought the suit that is now pending before the court in Baltimore and will be heard tomorrow morning. Congressman Mathias is a member of its board of directors, along with Congressman Morton and Senator Beall. I am grateful for the opportunity of appearing before you today to tell you of the Maryland experience.

Maryland has often been called America in miniature. The State is part northern, part southern, part colonial, part modern, part conservative, part progressive, part agricultural, part industrial, part rural, part urban, and part suburban.

We have numerous nationality groups. We are mainly Protestant but with a large Catholic population; and 16 percent of our population is Negro.

Maryland has 23 counties, which vary in population from 15,000 to half a million, and a city, Baltimore, of a million people.

The State is one of the most irregularly shaped in the Nation, split almost in half by the Chesapeake Bay, with a string of four counties running west for 100 miles nearly to the Ohio border, looking like clothes hanging on a line.

I point out the great divergencies and peculiarities in the State because they have a bearing on attempts to divide the State into eight equal congressional districts. The Eastern Shore of the Chesapeake Bay has always wanted to remain apart from the rest of the State. It has insisted on its own Congressman despite the fact that its population is only 243,000. Also contiguity becomes a problem if one seeks to bring this Eastern Shore district across the bay.

Also, it is impossible to form a compact congressional district in the western part of the State because of its elongated shape. Baltimore City is too small in population for three Congressmen but too large in population for two. And the underrepresented suburban counties are amount the fastest-growing in the United States—Prince Georges, Montgomery, and Baltimore.

At present, Maryland has eight Congressmen, seven elected from districts and one elected at large. One Congressman is assigned to the Eastern Shore, one to the counties of Baltimore, Carroll, and Harford. three to Baltimore City, and one each to southern and west Maryland.

The three congressional districts which have large suburban counties—the second, fifth, and sixth—have two to three times the population of three of the others. Overrepresentation in Maryland occurs in the rural areas and Baltimore City, and underrepresentation in those districts with fast-growing suburban counties.

Following the 1960 census, the Maryland Legislature attempted to redistrict on three separate occasions. The first two measures were petitioned to referendum by the League of Women Voters. The third attempt ended in failure when a special session adjourned last Saturday without passing a bill.

The main obstacle to equitable congressional redistricting in Maryland has been malapportionment of the State legislature. Those areas overrepresented in the Congress are also overrepresented in the State legislature and are in a position to perpetuate the inequities.

Tomorrow morning, in Baltimore, the Maryland Citizens Committee for Fair Congressional Redistricting will ask a Federal court to draw congressional districts for the State of Maryland for the 1964 elections. We reached this decision reluctantly, after all possibilities for relief from the executive and legislative branches of the State government were exhausted. We turned to the court as a last resort to protect our individual rights.

On the basis of the Maryland experience, I can testify as to the urgent need for guidelines on the part of the State legislature in its efforts to redistrict properly. Far from resenting Federal interference, proponents of fair redistricting in the legislature have begged for guidance from the courts or the Congress.

I am concerned about newspaper reports that this hearing is losing momentum. Guidelines should be given to the States now in order that the situation can be corrected for the 90th Congress. Legislatures will meet early in 1965 and this is the time for them to pass such legislation in order to affect the 1966 election and the 90th Congress.

The Maryland experience indicates that the State machinery moves very slowly.

Of the bills before this committee, I would prefer H.R. 699 and H.R. 7343, because they would take effect at once. I assume some of the others could be modified to take effect at once, in order to influence the 90th Congress.

I don't think that this House should wait until after the next census.

The small variation allowable under H.R. 699—10 percent—does not disturb me. In the divergent and geographically irregular State of Maryland which I described to you a moment ago, it was possible for one State senator last week to devise a good redistricting plan with a variance of only 3 percent from the desired population average for a Maryland congressional district.

H.R. 2836 has the attractive feature of judicial review which proved our salvation in Maryland. So does H.R. 1128. But H.R. 1128, in my opinion, has an inherent weakness in presupposing that the States and the U.S. Congress would ever permit the Director of the Bureau of the Census to draw congressional districts.

I favor the provision in several of the bills which would permit States to elect representatives only from districts. This supports the philosophy that a Congressman should represent a minimum number of people. If one, several, or all Congressmen run at large, this tends to favor the majority party.

I should point out something which may be quite obvious, but, nevertheless, needs emphasizing:

Provisions for compactness, contiguity, and equal or near-equal population will not, in themselves, preclude gerrymandering. In the last session of the Maryland General Assembly, legislative leaders drew up compact and contiguous congressional districts of no more than 8-percent variance which, nevertheless, stacked the political cards in favor of the party in power. But setting standards should at least make the practice more difficult.

In conclusion, I should like to say that I consider the bills now before the committee to be among the more important pieces of legislation before this session of the U.S. Congress. A realignment of congressional districts along population lines could have a profound change in our national policies. I think this is desirable if we truly believe in representative government.

Thank you.

The CHAIRMAN. Yes, sir?

Mr. DONOHUE. I would like to ask the gentleman addressing the committee why you went into the Federal court. Why didn't you take it into the State court?

Mr. PERUSSE. This was as a result of the experience of another group that did bring a reapportionment case in the State courts.

The Maryland Committee for Fair Representation, concerned with reapportionment of the State legislature, did turn to a State court and the whole process got confused and bogged down.

Mr. DONOHUE. What was the decision of the State court?

Mr. PERUSSE. The State court allowed a temporary stopgap apportionment only and this case is now pending before the supreme court with a view of getting guidelines that would enable a permanent measure to be enacted.

Mr. DONOHUE. How long has it been before the State supreme court?

Mr. PERUSSE. About 1 year. It was filed about a year ago.

The whole process by going through the State court, has taken about 2 or 3 years.

We filed our redistricting suit December 20 of last year and were heard January 30 of this year. It moved very rapidly. Since there is the possibility of appeal to the Supreme Court in all events, we felt that we could get more prompt and better attention from the Federal court.

Mr. DONOHUE. Did the State court decide that you were a party to the case that was brought to the State court, I take it your organization?

Mr. PERUSSE. Our organization did not bring the suit before the State court on reapportionment.

Mr. DONOHUE. Who brought that action?

Mr. PERUSSE. That was the other committee.

Mr. DONOHUE. What other committee?

Mr. PERUSSE. We are specialized in Maryland. We have one committee that has worked on trying to equalize the State legislature, and our committee has been concerned only with the representation to the U.S. Congress. There are two committees in Maryland.

Mr. DONOHUE. What is the name of the other committee?

Mr. PERUSSE. The other one has a similar name, Maryland Committee for Fair Representation.

Our committee is the Maryland Citizens Committee for Fair Congressional Redistricting.

Mr. DONOHUE. What is the objective of the other committee?

Mr. PERUSSE. That committee has the objective of equalizing representation in the Maryland State Senate and the Maryland House of Delegates.

Mr. DONOHUE. Why did it limit itself to fair representation in the State legislature rather than to carry it to full districts?

Mr. PERUSSE. It was a question only of means, sir, talent and available funds and personnel. They could not take on a second major task, which was the reason that I formed this second committee to work on this second problem.

Mr. DONOHUE. Now, what was the decision of the lower court in this case that is now pending before the supreme court?

Mr. PERUSSE. A stopgap measure was permitted.

Mr. DONOHUE. By way of an injunction?

Mr. PERUSSE. I am not too familiar with the State reapportionment problem, sir. I only followed it tangentially. I have been concerned with the U.S. House of Representatives almost exclusively.

The CHAIRMAN. Any other questions?

Mr. DONOHUE. What standards do you think we should follow?

Mr. PERUSSE. I think these bills follow the standards very well of compactness, contiguity, and equal population, as nearly as practicable. These are the three standards.

I think the last, the population standard, should be foremost and I think that all bills do handle that situation very well.

The range of deviation allowable under these bills is from 10 to 20 percent. I think 15 percent is a good compromise figure myself, but I would accept 10 or 20.

Mr. DONOHUE. I should point out something which may be quite obvious but, nevertheless, needs emphasizing [Reads:]

Provisions for compactness, contiguity, and equal or near-equal population will not in themselves preclude gerrymandering.

Mr. PERUSSE. That is right.

Within 10, 15, or 20 percent divergence you have a great deal of room for gerrymandering. There was an instance a couple of weeks ago in Maryland where the districts were brought down to 8 percent variance, and it was evident they were gerrymandered. A new fifth district was proposed which took in all or parts of five counties—two whole counties and parts of three others.

Now, this brings up an interesting question about the importance of keeping counties intact in drawing up these district lines. I, myself, think it is quite important, especially in those States where the county is the basic unit of local administration as it is in Maryland. Perhaps in New England it is not quite as important. But it is possible in the State of Maryland to draw congressional districts which would meet the criteria of all your bills and not cross county lines except in one case because one county, as Congressman Sickles pointed out, is too large to be a district by itself. That is Baltimore County. If you sought to make it a district, Baltimore County would have plus 27 percent deviation. So something has to be done to that one. But that is the only place in the State of Maryland where county lines need to be crossed.

Mr. DONOHUE. You say that these guidelines will not prevent gerrymandering.

What thoughts do you have in the matter of preventing gerrymandering which is something that is not good?

Mr. PERUSSE. Well, I think this is largely a question of public opinion and public education and the public not standing for an effort by the party in power to perpetuate itself in power by finagling rather than by choosing good candidates and good issues.

I think if we have an educated electorate which insists on fairness in delineating district lines, letting each man run on his own merits and may the better man win, then a party that seeks to gerrymander will get a black mark for the effort and will go down to defeat at the polls. When this happens, then there will be a greater tendency, I think, for fair play on the part of both parties in drawing up congressional and other districts.

Mr. DONOHUE. You think that should be brought about by public opinion?

Mr. PERUSSE. I think it is an education process, basically.

Mr. DONOHUE. Gerrymandering has gone on in this country for how long?

Mr. PERUSSE. As long as our Nation has existed, sir; but I think there is less of it today than there has been in the past. I do think that your lowering the percent deviation makes it more difficult to gerrymander.

Mr. DONOHUE. Thank you very much.

The CHAIRMAN. Any other questions?

Mr. MEADER. Mr. Chairman.

I was interested in your comments on the recognition of local units of government.

Do you think that should be added as a criterion or a standard to the standards of contiguity, compactness and relative equality in population, that, where practicable, local units of government should be recognized in congressional districting?

Mr. PERUSSE. Yes; I think so, with the words "where practicable." I think that would be very helpful.

It is very confusing when you draw additional lines on a map that you need not draw. It is confusing to the voter who has to figure out just exactly what Representative is representing whom in what area. It is complicating to the local authorities who must check with several rather than one Congressman. It is complicating to the Congressmen who have several local authorities to coordinate with rather than a minimum number.

Mr. MEADER. Would it not also possibly lead to problems in the holding of elections?

Mr. PERUSSE. Indeed, yes.

It complicates the electoral process.

Mr. MEADER. I would like to ask your comment on a suggestion made by Congressman Saylor before this committee yesterday. He suggested, although it is not contained in his bill and we don't have any language before us at the moment, that after the Congress establishes these guidelines for State legislatures in creating congressional districts a reasonable time after the decennial census be allowed for the legislatures to comply with these standards in creating congressional districts and in the event they failed to do so by that deadline that the House establish a bipartisan committee and make a study of the congressional districts in those States which have not complied and that the House of Representatives, itself, establish congressional districts in the States.

Mr. PERUSSE. I think this is a very sound suggestion, sir.

I think it is important that the House, itself, put its house in order. I think these bills, all of them, are a move in that direction.

Mr. MEADER. Do you have any question in your mind about the power of the House of Representatives or the authority of the House of Representatives to make such a provision?

Mr. PERUSSE. No, I don't. I think it has full authority under the Constitution to set the rules and regulations for the seating of its Members.

Mr. MEADER. Do you agree with the statement that many witnesses have made that it is far preferable, if not more legal, more constitutional, for any congressional redistricting to be done by the legislative body rather than by the courts?

Mr. PERUSSE. Absolutely. Absolutely. To a certain extent, our committee has been criticized for going to the court and asking if they would consider drawing lines. This was a difficult decision for me to make last weekend in a very short time, but I felt the moral responsibility to do so as head of a statewide organization pressing for redistricting, and I think that it will not set a bad precedent if the court should decide to redistrict.

On the contrary, I think it will set a good precedent. The good precedent will be that when a legislature after 3 years, after three failures, cannot act to give the citizen equal representation in the U.S. Congress, then the citizen is entitled as a last resort to apply to the last bulwark safeguarding his individual rights, the judicial branch of Government, for relief.

Now, there was nothing to prevent the Maryland General Assembly from meeting this week to preempt the court and render our case moot.

If the court redistricts this weekend, there is nothing to prevent them Monday morning from assembling and passing a law which would supersede the court redistricting. The basic power still remains with the legislature. It is only when the legislature and the executive branch of Government cannot perform their constitutional functions for one reason or another that the citizen, in my view, is entitled to go to the courts for the relief.

Mr. MEADER. At what institution are you a professor?

Mr. PERUSSE. University of Maryland.

Mr. MEADER. Are you familiar with Professor de Grazia's book, "Apportionment and Representative Government"?

Mr. PERUSSE. Yes; I am familiar with it. I don't agree with it, but I am familiar with it.

Mr. MEADER. I might say that we, in Michigan, have had this problem and we now have a case pending which will be argued Monday, March 23, before a three-judge Federal court. This matter, as you point out, is one of the most difficult legislative problems there is. It is not easy to draw congressional district lines or legislative district lines. It seems to be one of the most controversial types of legislation with which any legislative body has to deal.

In Michigan, we tried twice with a Republican legislature and a Democratic Governor to redistrict. We were not successful; both bills were vetoed.

Last year, we passed one which is now charged to be unconstitutional in a suit pending in Detroit.

I think we make assumptions sometimes that it is easy for courts or for the Congress to do something that the State legislatures have not been able to do. This has been a problem ever since we have had representative government.

I think perhaps I might disagree with you about the De Grazia book. I think he very, very effectively deals with this notion of one man, one vote in his book and on that part you disagree with him, his comments on the one man, one vote concept.

Mr. PERUSSE. I believe in the concept of one man, one vote to the extent that it is practicable to arrange your districts in that fashion. I think that this is basic to our democratic philosophy. There have been attempts elsewhere to arrange a different basis of representation in other nations and the experience has been deplorable.

Mr. MEADER. I would like to ask one more question.

Would you recommend that anything be done about population shifts or growth between the census?

Mr. PERUSSE. Well, I think that population forecasts should be taken into consideration as a factor in drawing up congressional districts. Since these are at best educated guesses, they cannot be definitive, but I think they definitely should be a factor.

Those areas which the last census proves to be fast growing, which political scientists and social scientists expect to continue growing, should be on the minus side and those areas that are losing population should be on the plus side as much as possible.

Mr. MEADER. But you would not recommend that any congressional redistricting be required by any law that we pass other than the 10-year intervals of the decennial census?

Mr. PERUSSE. It might be desirable to add a phrase saying, again, "insofar as practicable," future trends in population should be taken into account. Now, this gives you elasticity, does it not, that phrase, and it does put you on record as believing that this is a factor that should be considered.

Mr. MEADER. That is all.

Mr. KASTENMEIER. Mr. Chairman.

I have just one or two questions.

I was rather surprised to hear you say that while Congress ought to set standards—I would certainly agree that they ought to go back to State legislature with the standards that if the State legislature failed, then you would come back to the House of Representatives because they ought to set their own house in order.

I am surprised, if that is your view, in view of your own experience which has been pretty negative in terms of a legislative body being able to do justice, and I think you know for what reasons they have been unable to do this. This is why I fail to see why you recommend that the House in the final instance, Congress, should again be called on to deal with its own problems of reapportionment, particularly after the legislature has failed.

Mr. PERUSSE. I think you should set the overall standards and limits—this, I think, is desirable—and then allow the States to work within that framework. There have been no guidelines for the past 3 years—well, a long time before that—until we got the Supreme Court decision, which never did set a figure, and that is subject now to various interpretations. Some are population perfectionists who feel the variations should be no more than 1 or 2 or 3 percent. The swing in the State of Maryland is in that direction.

I have been passed in the last month by virtually all the legislators. Those who argued in the past that population was not important in the State of Maryland, that common interests should be the major factor, who allowed population deviation of 50, 60, or more percent according to the bills that they did pass in the past, bills that were petitioned to referendum—these same people, within 24 hours of the Supreme Court decision, became purists to the extent that the Governor's legislative committee came up with the bill that I mentioned of only 8-percent deviation.

One senator came up with a bill of no more than 3-percent deviation, and his was better than the 8-percent bill, incidentally. There has been a swing now to the opposite extreme in the State of Maryland.

I think the bills that you have before you set a very reasonable standard of from 10 to 20 percent; that gives you a good deal of room to consider the other factors, so far as practicable.

Mr. KASTENMEIER. My point was, and you may have missed it, that I gather you recommend these standards.

Mr. PERUSSE. Yes.

Mr. KASTENMEIER. Then in the second instance the State legislature following these standards would reapportion congressional districts for the State as in the case of Maryland. However, if they fail to do this, then following your agreement with Congressman Meader you would have the House of Representatives then do it which in view of your own experience with legislatures I would question in terms of it being the ultimate in terms of resolving particular instances.

You would have us in the House of Representatives reapportion the State of Maryland for you rather than the courts or some other body; is that correct?

Mr. PERUSSE. Well, we have had success by bringing our case to the court so far. I think that if you had had such a body within the House of Representatives to work on this problem that we might have achieved similar success, earlier success through this body and not had to press for court action. As a matter of fact, you may know that the congressional delegation of the State of Maryland has been working for the past 2 days, will continue to work, on what they term to be an equitable redistricting plan for the State of Maryland. This is, in fact, very similar to what might take place if you did have an office here to go into the matter, because I am sure you would consult with the entire congressional delegation of that State and might even permit them to initiate the solution and would probably adopt the solution that the State delegation came to unless it grossly violated your standards.

To phrase it another way: If the Maryland congressional delegation, several months ago, had been able to come up with a plan and had submitted that plan to the legislature, and if the Governor had said he would identify himself with it and support that plan, there is a good possibility that the legislature would have passed that plan and we would have good districts in Maryland today.

I don't think there is a conflict here. I think the court can remain as your last resort. What you would be doing is giving us another avenue of appeal that we as a citizens group would have welcomed throughout our entire history of this case.

Mr. KASTENMEIER. Don't you think ordinarily you find greater difficulty in having a body reapportion itself? I say this; there may be some question about it, that it is more difficult for a State legislature to reapportion itself than it ought to be for them to reapportion for congressional purposes.

Mr. PERUSSE. Yes.

Mr. KASTENMEIER. This is true in Wisconsin, incidentally. We have the best reapportionment in the United States; top. I think our variance is something like 4 percent, I have forgotten precisely what it is, but, according to the Congressional Record, the best of all States. Now, they were able to do this but the State of Wisconsin Legislature cannot report itself and that is why I question having the Congress literally reapportion itself in ultimate terms of each particular instance.

Let us leave that point.

I would like to go on to one other point at the risk of opening a Pandora's box, and that is to ask what your views might be toward including another standard that no district shall be created with regard to, say, race, color, religion, or nationality.

Have you ever thought of that ?

Do you have any views on such a proposal ?

Mr. PERUSSE. I have given some thought to that question.

There was a case before the Supreme Court that you may be aware of in the State of New York where the plaintiffs charged that there was discrimination on the basis of race.

Mr. KASTENMEIER. That is why I raised the question.

Mr. PERUSSE. Yes.

You could introduce that standard into your bills, but I think it would be a very difficult provision to enforce because we are a mixture of races and nationalities, even though we do, some of us, congregate on the basis of race and religious and nationality groups, so that wherever you draw the line there would be room for someone to say: My rights have been violated; I am discriminated against.

Again I repeat, you could put it in, but I think it would be hard to enforce either by the House of Representatives or by the courts.

Mr. KASTENMEIER. Thank you very much for your testimony.

Mr. PERUSSE. Yes, indeed.

The CHAIRMAN. Thank you very much, sir. We appreciate your testimony.

Mr. PERUSSE. Thank you.

The CHAIRMAN. Our next witness will be introduced by our very distinguished colleague from Texas, Representative Graham Purcell.

Brother Purcell.

Mr. PURCELL. Mr. Chairman, it is my pleasure to introduce to the committee Senator George Moffett, State senator from Texas.

I would like to say first that Congressman Joe Pool and I are both here this morning, and I believe Congressman Ray Roberts is coming in. Mr. Roberts and I would like to point out that Congressman Pool is a constitutional congressman. In case we need anybody to vouch for our seat, we have brought the one that is not disqualified or questioned in Texas. So, we are glad to have Mr. Pool with us here this morning, also.

Senator Moffett is chairman of the legislative council committee that has been set up and he is accompanied by Mr. Bob Johnson who is executive director of the Texas Legislative Council and his assistant, Mr. John T. Potter. It may be that Senator Moffett will ask that they participate, also.

I am proud to introduce my own State senator, Senator Moffett of Texas.

The CHAIRMAN. We will be glad to hear from you, Senator.

**STATEMENT OF HON. GEORGE MOFFETT, TEXAS STATE SENATOR,
CHAIRMAN, LEGISLATIVE COUNCIL COMMITTEE; ACCOMPANIED
BY ROBERT JOHNSON, EXECUTIVE DIRECTOR; AND JOHN T.
POTTER**

Mr. MOFFETT. Mr. Chairman and members of the committee, I have had some background experience in this matter.

I have been a member of the House of Representatives of Texas 8 years and a member of the State senate for 26 years, and have had a part in framing redistricting bills that have passed during that period, not only for Congress but for the State legislature.

I am the author of a constitutional amendment to the constitution of the State of Texas that requires that the legislature redistrict after each Federal census and if the legislature does not do it that it be done by an ex officio board composed of the Lieutenant Governor, the speaker, the attorney general, the commissioner of the general land office, and the State controller of public accounts.

That board has never had to act because the legislature thought that they ought to do their own redistricting. It has worked very, very good.

One of the reasons I am here this morning, and I want to go definitely on record as being favorable to the type of bills that are before your committee wherein the Congress lays down the guidelines or at least a good many guidelines as to how the congressional redistricting should be done after each census.

I am definitely opposed to redistricting, whether it be congressional or legislative, being done by the courts.

I live in a border county between Texas and Oklahoma. A three-judge Federal court in Oklahoma drew a complete redistricting law for the legislature of that State, both branches, and at the present the candidates are running in obedience to that law.

I think there is a definite need that the National Congress should as soon as possible enact legislation that would provide as many reasonable guidelines as possible in respect to congressional redistricting.

Mr. MEADER. Could I interrupt the witness to ask about this Oklahoma case?

Was that a Federal district court case?

Mr. MOFFETT. Three-judge court.

Mr. MEADER. Federal court?

Mr. MOFFETT. Yes, sir.

I almost fell out of my tracks when I heard what they had done. I could not conceive of a court going that far.

Mr. MEADER. How did that case come about? Who were the parties to it?

Mr. MOFFETT. I am sorry, sir, that I can't answer that question.

Even while I border on the State of Oklahoma, I don't take any of the newspapers over there; I have enough to do reading my own papers, but I talked to the speaker of the house over there and he told me just what I related; in fact, he sent me a copy of it.

I don't know how the case arose; I don't really have any idea. I will say this: That the speaker of the Oklahoma Legislature is from Oklahoma City which is underrepresented in the legislature at this time, but, yet, he was against what the court did and said so publicly.

Mr. MEADER. Senator Moffett, you have litigation pending in Texas with respect to congressional districts?

Mr. MOFFETT. The Texas litigation is as to the time and not as to the manner.

Do you want me to go into that?

Mr. MEADER. I think we should have in the record the actual situation.

Mr. MOFFETT. I will be glad to do it although I didn't intend to do that particularly.

A suit was filed in a Federal district court in Houston last summer seeking, I think, maybe to—yes; I know it was the Governor and the secretary of state and someone else, were made respondents or defendants to compel the legislature to be called into session to redistrict the State. That suit was set for trial and was heard. It was a three-judge Federal court, and the court handed down a decision to provide that all Congressmen from Texas should be elected at large at this current 1964 general election unless the Governor should call a special session.

That decision was appealed to the Supreme Court, U.S. Supreme Court, and some 3 weeks ago, maybe 4, the U.S. Supreme Court reaffirmed the decision in the Georgia case and upheld the decision of the Federal three-judge court in Texas but added that the defendants in that Texas case have until April 1, 1964, to plead for a postponement of an effective date of their decision until after the current election.

Our filing date in Texas expires on the first Monday in February, and that date had already passed when the U.S. Supreme Court affirmed the Texas court's decision.

The CHAIRMAN. That is sort of a moratorium in Texas?

Mr. MOFFETT. That is right.

The general belief is, and I believe it has some substance, that the Texas court will on March 27 agree to pass over the effective date of their decision until after the general election of this year, so the case there is one of timing and not of the manner of redistricting.

Do I make myself clear?

The CHAIRMAN. The Members of the House will be elected as they have been heretofore?

Mr. MOFFETT. That they continue to be elected as they have been heretofore.

The CHAIRMAN. In the coming election?

Mr. MOFFETT. Yes, sir.

Mr. BROOKS. Let me interrupt there to say that if this Federal court which is scheduled to meet on the 27th stays its concurrent order on the basis of the representations of the State, that is about right, isn't it, Senator?

Mr. MOFFETT. Yes, sir.

Mr. BROOKS. They have not done this yet. Until they do, we are still on the hook.

Mr. MEADER. Let me ask—

The CHAIRMAN. Excuse me.

So it is possible that the court may take it upon itself to go below the lines, nonetheless, for this coming election?

Mr. BROOKS. Of course, it is possible and they have a three-man court. We have no way of knowing what they are going to do. We have 2 Republicans and 21 Democrats. They may want us all to run at large.

Mr. MOFFETT. Well, if you permit me to pursue that a little further, the Governor, in his—well, I think the secretary of state drew up the pleading, but when the case was tried down there the pleading of the defendants was the Governor and the secretary of state and I believe the State chairman of the two major political parties; I believe they were defendants. I am a little mixed up on that.

Mr. BROOKS. The original case, Senator?

Mr. MOFFETT. Yes.

Mr. BROOKS. Was *George H. W. Bush, et al., v. Crawford Martin, Secretary of State; Attorney General, et al., of Texas.*

Mr. MOFFETT. I was not certain of that. I am not a lawyer, I am just a common citizen.

A part of their defense, in fact, I would say probably the strongest point in their defense, was this: That there were no guidelines through and by which the legislature could be guided in drawing the pattern of congressional districts. We have four counties, metropolitan areas, in our State and without crossing county lines you could not conform to the U.S. Supreme Court's decision.

Crossing county lines, as has been brought out heretofore, in our judgment, members of the legislature, is a thing to be put off just as long as you possibly can. That is another reason why I am for a bill that provides for tolerance as these bills do.

Frankly, I think the tolerance should not be less than 15 percent. I think that this H.R. 2836, which is 15 percent, if it were amended to 18 percent I think would be almost an ideal bill. The reason I say 18 percent is because the staff—and we have two members here; we have a very well-equipped staff in our legislative council in Texas; they do a tremendous lot of work—the staff has furnished me with the statistics which show that in the apportionment of members of the National Congress, as between the States, there is departure from the mathematical ideal as much as 18 percent above the ideal to 26 percent below the ideal figure.

Obviously, if the U.S. Supreme Court has done nothing, said nothing about that, how could they reasonably invalidate a bill passed by this Congress relating to redistricting within a State if it had no greater variation or tolerance than 18 percent?

It is for that reason that I would plead or recommend that H.R. 2836 be changed from 15 to 18 percent and then change the date of the effective date which I understand is after the next Federal census. Obviously, we would want to change it to, I assume, the 1966 election. That seems to me the way it ought to be done and then passed. I think it would be a very fine solution to the problem.

Mr. CRAMER. Could I ask a question there?

Could Texas live with an 18-percent variation formula?

Mr. MOFFETT. We were doing it.

Frankly, if they had that guideline now, I think the Governor would have already called a special session. I think he would have done it long ago. We fumbled around with this thing in the regular session. We have not been dilatory.

I can speak from experience. I am the vice chairman of the committee in the senate and have been on the committee more than 20 years; I don't remember how long. We have tried to work out this thing; it is not a matter of being dilatory and it is not altogether a matter of rural against city in our State, either.

We have every conceivable condition almost in Texas that you can think of in any State. We have 700 miles of coastline. We have an international boundary of 650 miles.

In our State, out of 254 counties, at least a third of them are larger in size than the State of Rhode Island, and I think that you could probably say half of them are larger than the State of Rhode Island.

I represent 12 counties and 8 of them are larger than the State of Rhode Island.

We have metropolitan problems. We have problems of sparsely settled areas where there is only one person to a square mile or less in a county. We have oil problems. We have timber problems. We have variations of climate from the subtropical to almost the same as Nebraska. We have transportation problems. God only knows what kind of problems there are that we don't have.

It isn't a question in our State so much—while, of course, the metropolitan areas are going to gain, I am not going to say they don't, but that is not the reason we are having redistricting. The main reason is we are seeking a formula to bring about the best balance of representation that is possible to attain in a practicable manner.

Mr. CRAMER. Senator, may I ask a question on that?

Do you agree with the formula established in H.R. 2836, when total tolerance of 15 percent—which you say should be 18 percent—is authorized where the areas are to be composed “of contiguous territory” in as “compact a form as practicable”?

Mr. MOFFETT. Let me say this, and I speak from experience.

I have had a hand in drawing redistricting bills. I believe that I have had a hand in four, maybe five. Three of them passed and the others didn't but we also observed this compactness and contiguous idea. We never thought it ought to be done any other way. I honestly thought the Federal law already had that in it. It did at one time, I know, because I traced it up.

Mr. FOLEY. From 1862 to 1929.

Mr. MOFFETT. That is my understanding; yes. In 1929, didn't they leave out the word “population”? Before that, they had “population” in the law and then they left it out. I have used that argument. Frankly, if it had not been abused, I think it would have been a good idea to leave it out.

I agree with the Governor on it and he is a lawyer, too, and a pretty good one. I think he was on a sound foundation when he said that we could not tell whether to slice off half of a county, a third of a county, or a corner of a county and attach it to a rural district, and we are faced with that problem if you follow this mathematical ideal figure. We are faced with it in a big way and it brings on a terrible lot of problems.

Our staff has checked with the attorney general's department in our State because we realize that this Houston court on the 27th may throw it in our face and we may have to do it quick and in a hurry even to the extent of revising the date of our election.

When you go to crossing county lines and taking certain election precincts here in the corner of a county and attaching to a bunch of rural counties where you have no machinery for filing, for reporting the election or a dozen other instances that might come up, and furthermore the election precincts are subject to being changed by the local commissioners court at any time; then, if they do so, we would probably have to have a special session of the legislature to conform to the change in the election precincts.

Of course, I realize that very likely there will be two counties in our State and possibly three where we may have to cross county lines. I hope that it does not come out that way.

If the Congress wanted to put it in their bill that these districts should not cross county lines, as far as I am concerned I think it would be a big improvement. I can see your difficulties on it and maybe you don't want to do it that way, but I do think that at least 15 percent tolerance ought to be allowed and I would say 18 is much better. It would fix up our State to where we could pass a law and we would not have too much difficulty in so doing.

Mr. CRAMER. Senator, if you can live with the 15 percent tolerance within the test in the bill, why isn't the legislature then willing to go ahead and apply those tests at the present time rather than waiting for the congressional action?

Mr. MOFFETT. I am not a lawyer but I will tell you this: That I think the Governor is on firm ground when he said he didn't know what tolerance the Supreme Court would finally approve. In the absence of some definite guidelines, I think his position is very sound.

I think—well, I know that his statement on that point was widely accepted as being on a sound basis.

Mr. CRAMER. Yes.

Do I understand, then, that your expectation is that out of this next Court hearing on the 27th of this month, there will come some kind of a standard to be applied?

Mr. MOFFETT. No, sir. I may have left the wrong impression and Congressman Brooks is probably as well posted on it as I am.

The expectation is, from whatever clues that you can use or depend on, that the Court is going to decide to postpone the effective date of their decision until after the general election this year, in which case we will go ahead in the manner we have been doing until the election of 1966. I hope between now and then that the Congress will give us some guidelines on it and I certainly think they are the ones to do it rather than the Court.

Mr. CRAMER. Your point is, then, that the courts have not provided guidelines and the State has no test that it can apply.

Mr. MOFFETT. We have nothing more than what we had 20 years ago.

Is that right, Mr. Brooks?

Mr. BROOKS. I didn't get the question.

Mr. MOFFETT. I stated we have no more guidelines in Texas now than we had 20 years ago.

Mr. BROOKS. No, sir. That would be about right.

Would the gentleman yield?

Mr. CRAMER. I would be glad to yield.

Mr. BROOKS. Senator Moffett has, as he stated, long been a defender of redistricting and forthrightly tried to do that job for the State.

I remember in 1956 or 1957 they had a minor redistricting bill that was a step in the right direction. I wrote a letter in 1960. Senator, I sent you a copy—you just think back—and sent it to all the State senators and representatives, and told them I wanted to bring them up to date on the bill being considered in the House. H.R. 7343 had been to regulate in several important regards redistricting of congressional districts by the State legislatures.

For example, this proposed bill would establish regulations regarding both the number of persons in a congressional district as well as the location of counties to be included in each district.

Now, both as a former member of the Texas House and as Congressman from the Second District, I have always firmly believed that the Texas Legislature was entirely competent to outline congressional districts in the best interest of our people without any interference from the Federal Government, and I did my dead-level best to defeat this here in the Judiciary Committee here in Washington. I wrote you I was enclosing a copy with this letter and would appreciate any comments that you might have after reading the bill.

That is what I wrote on June 11, 1960, because I had faith in the legislature and I still do. You think now, Senator, that some Federal legislation would be helpful?

Mr. MOFFETT. We need guidelines; there is no question about that.

Mr. BROOKS. The whole problem is if we pass a bill—and I don't know if it can be done or not—if we passed a bill and said 15 or 18 or 10, how do we know that the Supreme Court will find that that is in accordance with the Constitution any more than the individual independent action of the State legislature?

Mr. MOFFETT. Well, you may not know but certainly it is a horse-sense approach and I hope that the U.S. Supreme Court has enough of this old down-to-earth wisdom in its thinking to let the Congress lay down the guidelines rather than the Court.

Mr. BROOKS. You don't think there would be any reaction from the State legislatures that the Congress was interfering with you in their prerogative in setting up congressional districts?

Mr. MOFFETT. No, sir; I sure don't, as far as Texas is concerned.

Mr. BROOKS. I don't want to have any trouble with you; we have been getting along too well.

Mr. MOFFETT. Let me say this, Mr. Brooks: As I related here in the beginning of my remarks, I am the author of the constitutional amendment of the constitution of the State of Texas which sets up an ex officio board to redistrict the legislature if the legislature does not do it, and they will never act, I will tell you that.

I have been asked why didn't I do the same thing with reference to congressional redistricting. My reply has always been that that is a Federal matter and that I didn't think the State constitution ought to have some language in it relating to the congressional redistricting.

Now, I have been asked, oh, at least a dozen times, why I didn't include congressional redistricting in that legislative amendment which was passed and adopted by the people of Texas.

Mr. BROOKS. That is a good explanation but to get your answer straight, Senator, you feel like legislation setting up a guideline on a population basis, 15, 18, some percentage of population, would be desirable and well received by the State legislature?

Mr. MOFFETT. I think there would be a very minimum complaint in the State of Texas if you made this 15 and preferably 18 percent. You see, I think we need flexibility or tolerance or elasticity, whatever you call it, probably as bad as any State needs it because we have 254 counties. If you turn Texas over on the top of the Panhandle as an axis, Brownsville, Tex., will land 40 or 50 miles inside the State of North Dakota. If you whip it around on the Sabine border, El Paso will land about 100 miles out in the Atlantic Ocean.

Now, we need flexibility in this thing and I am with the Governor when he says, "I am not going to call a special session until I find

some guidelines to go by." This guideline of the ideal figure of 410,000 or 16,000—I believe in our State it is 16,000—I think the national ideal is 410, but we have got enough above for the 23 Representatives to make our average 416.

Let me point out to you gentlemen now, you know as well as I do, that it is a terrific argument out on the stump—New Hampshire has 2 Members of the House with about 606,000 people. Maine has 2 Members of the House with somewhere around 969,000 or 970,000 people; and that was broadcast in the newspapers down there in Texas. When you look at that and then say, "Well, but as between districts you have got to be just less than one-tenth of 1 percent," it does not hold water.

There are one or two other points that I want to bring out.

Mr. CRAMER. Before you get into that, Senator; would you say what your largest and smallest population is?

Mr. MOFFETT. Yes.

The largest is Congressman Alger's district and the smallest is former Speaker Rayburn's. Well, I believe his is third from the bottom, now represented by Congressman Roberts.

Mr. CRAMER. What are those figures?

Mr. MOFFETT. I think Mr. Roberts' district is 213,000. It is either 213,000 or 214,000; and the Dallas Congressman's district is 957,000, I believe. I may be 10,000 off, but not more than that.

Mr. CRAMER. The reason I ask is that Florida has a situation where the smallest district is about 247,000 and the largest district is about 669,000.

Now, in reasonably redistricting, how can you as a legislator say that is proportionate representation under any formula?

Mr. MOFFETT. I don't condone it. In fact, we passed a bill through the Senate in the closing days of our last regular session which gave Dallas County another member and I voted for it very wholeheartedly and would do so again. We are not going to have any trouble in passing it. I say no trouble; we will have some trouble, of course, but we will pass a bill if you give us guidelines to go by and we won't have too much static about it.

Let me reinforce what the gentleman who preceded me, I believe it was, mentioned about the need for tolerance because of certain areas being in a growth area and certain other areas being in a decreasing population area. There is another reason why you need tolerance in this thing. Of course, the counties that border our metropolitan counties are growing, whereas we have 140 out of our 254 counties that are decreasing, some more than others, of course. If you have a tolerance, you can say to these counties that are growing fast, "We will make your district under the ideal average a bit because you are going to grow into it in a very short time, when you can go the other route with the other candidates."

Just from a common horsesense standpoint, and that is what all good legislation ought to be based on, there is a definite need for tolerance here. I think that the States ought to be allowed the minimum tolerance in their redistricting that is allowed to the reapportionment of the membership of the House between the States, and that is the reason I have mentioned this 18 percent.

Mr. CRAMER. I assure the gentleman from Texas that my position would be that I would prefer the State legislatures to do the job. I would hope the legislatures will do the job. Our practical problems at the moment is, of course, if the legislatures do not do the job and your differences continue such as in Florida from 247,000 to 669,000 and in Texas from about 213,000 to 957,000, then it seems to me that the legislatures are inviting someone to step in; the Court has already stepped in, and the question now is, Should Congress do anything if the legislatures do not? I would prefer to see the legislatures do something.

Now, your position appears to be that the Legislature of Texas should not do anything until someone sets a guideline.

Mr. MOFFETT. Well, obviously, you should have guidelines and I think the logical place to set them is the National Congress. If I understand your theory of government, I cannot arrive at any other conclusion.

Mr. BROOKS. Senator, could I say, sir, that on behalf of the committee and you, Mr. Chairman, that we have enjoyed having you here.

I wonder, Mr. Chairman, if we might see if there was anything further. We have two other Members of the Congress here who are vitally concerned in this matter; one of them is our Congressman at large and he is a pretty good size, might want to add a comment, and possibly Congresswoman Ray Roberts, who are both here.

I don't know if we can possibly let them put a statement in now before we conclude.

Mr. MOFFETT. Mr. Chairman, I would like to request permission to file a prepared statement gotten up by our staff.

Mr. DONOHUE (presiding). Without objection, it will be incorporated in the record.

(The statement is as follows:)

The U.S. Supreme Court, on March 3, 1964, affirmed the ruling of a special court sitting in Houston, Tex., declaring that the present apportionment of congressional districts for the State of Texas is unconstitutional and ordering that all Members of Congress for the State of Texas be nominated and elected from the State at large pending enactment by the State of Texas of substitute legislation in place of the present State statute apportioning the State into congressional districts.

In view of the action of the Supreme Court, the Honorable John Connally, Governor of the State of Texas, requested the Texas Legislative Council to undertake immediately a study of congressional redistricting. Acting on his request, the Honorable Preston Smith, Lieutenant Governor of Texas and chairman of the legislative council, and the Honorable Byron Tunnell, Speaker of the House of Representatives of Texas, and vice chairman of the council, directed that the proposal be presented to the membership for vote, an action necessary under the rules of the council. The proposal was approved, and the chairman of the council immediately appointed a seven-member committee, with myself as chairman, to undertake the study. The committee consists of four legislators residing in congressional districts having populations greater than the mathematical average for the State; two from districts having populations smaller than the mathematical average, and one from a district near average in population.

The decennial census taken in 1960 determined that there were at that time, 9,579,677 people in the State of Texas. Under the present apportionment, Texas has 23 Congressmen, of which 22 are elected from designated districts and one from the State at large. The mathematical average obtained by dividing the whole number of persons in Texas by the number of Representatives to which it is entitled is 416,508.

In approaching the redesignating of district boundaries in light of the recent Supreme Court ruling, a question of major import which arises is that of the maximum deviation permitted from the average population on which Texas congressional districts must be based. In the majority opinion of the Supreme Court in *Weber v. Sanders*, it was recognized that it may not be possible to draw congressional districts with mathematical precision, but the opinion does not answer the question of how precisely the districts must be drawn. This question should be answered by Congress for the benefit of the States. Otherwise, State legislative bodies may in good faith redistrict their States only to find their actions challenged in the courts because of a deviation above or below the average.

Four counties in Texas are entitled to more than one Representative because of their large populations. They are Bexar (population 687,151), Dallas (population 951,527), Harris (population 1,243,158), and Tarrant (population 38,495) Counties. Harris County is presently divided into two congressional districts. A precise division of these counties by the mathematical average would result in apportioning 1.65 Congressmen to Bexar County, 2.28 to Dallas County, 2.98 to Harris County, and 1.29 to Tarrant County.

Obviously, strict application of the equal representation for equal numbers of people mandate dictates that, for the first time in the history of the State of Texas, county boundaries must be ignored in apportioning the State into congressional districts.

In the process of dividing heavily populated counties into more than one district, especially when it is necessary to combine a part of one county with adjoining counties to form a district, an allowable deviation would facilitate the inclusion of the whole of satellite cities or municipalities where in a given situation this would be desirable.

Although cutting metropolitan areas into several districts and crossing county lines is probably done as a matter of course in some of the heavily populated eastern areas of the United States, it should be emphasized that Texas is plowing new ground in this respect.

Texas, with its 262,840 square miles of land area, presents a unique problem because of population distribution factors. Census figures for 1960 reveal that 63.4 percent of the total population was situated in 29 counties comprising only 11.16 percent (29,343 square miles) of the total land area. The remaining 225 counties, totaling 233,343 square miles, or 88.84 percent of the total land area, accounted for the remaining 36.6 percent of the total population. The four larger counties (Bexar, Dallas, Harris, and Tarrant), with 1.79 percent of the total land area, had 35.7 percent of the total population.

Outside these centers of high density, population per square mile diminished rapidly. While Texas in 1960 had an average of 36.4 persons per square mile, the average for the four largest counties was 726.18 persons per square mile. The average for the 29 counties with the largest population was 206.9 persons per square mile, while the remaining 225 counties had 15.01 persons per square mile. One county with a land area of 1,407 square miles had a population of 884, and another with 647 square miles had only 226 people. One present congressional district encompassing 27 counties, with a land area of 31,775 square miles, had a population of 262,742. Texas currently has seven congressional districts with land areas in excess of 15,000 square miles.

Although the Court has ruled that population is the only criteria to be used in designating districts, certainly the large land areas which must be included to reach the average population cannot be ignored. Some deviation below the average could logically be considered in carving out districts of this type.

Another factor pointing to the need for more definite guidelines on tolerances per congressional district is that of population growth and loss areas. Although Texas had a substantial increase in population between 1950 and 1960, the increases were not equally distributed throughout the State. Of Texas' 254 counties, 143 lost in population during the 10-year period and 111 experienced increases. Thirteen counties, including the two most densely populated had increases of more than 50 percent during the decade. At the other extreme, 19 counties experienced population losses of more than 25 percent.

Population increases and decreases in Texas can also be related to economic areas. Population growth in the different State economic areas between 1950 and 1960 ranged from an increase of 55 percent in one west Texas area to a decline of 11 percent in a north Texas area.

Generally, areas showing a decline in population are basically agricultural sections, while most of the growth in increasing areas may be attributed to location of major cities, industrialization and increased irrigation of farmland. All of the seven State economic areas having population gains in excess of 100,000 during the decade had major population centers which accounted for most of their increases.

If permanency and stability of districts are considered to be desirable characteristics, it might be advisable to draw boundaries in rapidly growing areas so that present population would be near the maximum permissible deviation below the average. Estimated rate of growth could determine what deviation would be advisable for each such district. Conversely, in areas which are losing population, the present population of the districts might be adjusted within the permissible deviation above the average.

Weight might also be given to the number of students in some centers having large institutions of higher education. For example, the University of Texas, located in Travis County, had a 1960 enrollment in excess of 21,000. According to census procedures, these students were counted in the population of Travis County and the present 10th Congressional District, although the bulk of them did not permanently reside in the county or district. The impact of these numbers could be considered in the apportionment process to the extent that affected districts would deviate above the average.

A study of the mathematical average of population per Congressman by States based on the last apportionment of Congress reveals that, excepting those States with the minimum of one Congressman, the number of people per Congressman varies from the national mathematical average, that is, the figure obtained by dividing the total population of the United States by 435 Congressmen, by from 18.06 percent above the national norm to 26.07 percent below.

If representation apportioned to the States can vary by those amounts, it appears that H.R. 2836, which provides that no district shall deviate by more than 15 percent above or below the average, is a fair and logical approach and would provide a definite guideline for the States. It is not intended to endorse the indiscriminate utilization of the maximum deviation but rather to approve a benchmark which would give the States a necessary leeway to apply in irreconcilable situations.

STATEMENT OF HON. JOE POOL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. POOL. I am Joe Pool, Congressman at Large from Texas, and I support Senator Moffett's statement entirely.

Mr. DONOHUE. Thank you very much.

Any other questions?

STATEMENT OF HON. RAY ROBERTS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. ROBERTS. Mr. Chairman, I am Ray Roberts, Fourth Congressional District of Texas which, by the way, happens to be the smallest district in the State of Texas.

I support Senator Moffett in his statement and certainly ask that some guidelines be established. As he told you, we have a great problem. I have the smallest district in Texas, which happens to surround Dallas on three sides.

The growth factor is such that if you redistricted on the basis of the 1960 census, the increase in the population to date would make the district much too large than the 410,000 national average.

For example I cite you three little towns: In the 1950 census Plano, which is in my district, had 2,126. In the 1960 census, it had 3,695,

and it now has more than 10,000; Garland in Dallas County, one of the adjoining towns, was listed at 38,501 in 1960, but now has 51,000; Mesquite, in Dallas County, in 1950 was listed as 1,696, but now has a population of 38,900. People are just spilling over from Dallas County into the Fourth District.

So, my district is not only a problem now, it will be a problem as a result of the next census. It will be too large due to the population increase if Senator Moffett and the State legislature maintain the Fourth District.

I think this information shows that we do need some guidelines. I will be as brief as I can.

Dallas County has a population of 951,527, which would be more than required for 2 Congressmen, but not enough for 3.

Now, if you go in and break off the surplus population and assign them to the Fourth Congressional District or one of the other adjacent districts, it will be as the Senator told you. A bill had been passed in the senate and was ready to pass the house, but they were not sure that it would comply with the requirement of the courts and they had to adjourn without passing the bill.

There is one other factor involved. This is simply a matter of space. Take for example District 21. Congressman Fisher now represents an area covering 31,775 square miles with a population of 262,742. This area is larger than the combined area of the States of Maine, Delaware, Massachusetts, New Jersey, and Rhode Island.

To get the required 410,000 population would necessitate the addition of at least 7,000 square miles, an addition of more than the combined area of Delaware and Connecticut. This would make the 21st District slightly larger than the entire State of Indiana.

The fact that the new district would be larger than 12 of the States points out that consideration must be given to more than population alone.

Thank you for letting us appear.

Mr. DONOHUE. Thank you.

We will now hear from Mr. James Weaver, director of the development appraisal department from Wilmington, Del., who will be accompanied by Mr. Sidney W. Hess, also of Wilmington.

STATEMENT OF JAMES B. WEAVER, DIRECTOR, DEVELOPMENT APPRAISAL DEPARTMENT, ATLAS CHEMICAL INDUSTRIES, INC., WILMINGTON, DEL.; ACCOMPANIED BY SIDNEY W. HESS, MANAGER, OPERATIONS RESEARCH, ATLAS CHEMICAL INDUSTRIES, INC., WILMINGTON, DEL.

Dr. Hess. Mr. Chairman and gentlemen, I am Dr. Hess, and this is Mr. Weaver on my right. We are here to acquaint you with a radically new technique for redistricting which could help the legislation you are considering.

We support this legislation which puts limits on the deviation from equal population and adds the principles of compactness and contiguity.

Our technique using the very same principles makes it possible also to avoid elections at large when legislatures reach an impasse in redistricting.

Through use of a computer, our technique shows that set of congressional districts which is most compact for a given State in terms of both population and geography. If the State legislature reaches an impasse in its attempt to meet districting requirements other than compactness such as population equality, the law could put the computed ideal districts into effect instead and thereby avoid completely at-large elections.

The computer makes such districting a rapid and mathematically accurate process. The set of most compact districts provides a standard against which existing districting or proposed plans can be compared.

Legislatures might be more likely to accept districting by traditional means if they knew that otherwise the ideal set would be put into effect. We recognize that this approach may be considered revolutionary and perhaps politically unacceptable. As scientists and businessmen without political motivation, we feel the technique is as useful as it is moved and should be seriously considered for the proposed legislation as a new last resort in place of at-large elections.

Details are contained in the seven-page statement and the article from the Yale Law Journal, which have been distributed, and which we trust will be made part of the record.

The technique for districting applies analogies from the physical sciences and, of course, the computer, one of the means of modern scientific management, to accomplish districting without political bias. We use only the principles of population equality, compactness, and contiguity. Our definition of compactness adds population as well as geographic compactness.

Just to summarize what we say in our prepared statement, the first two paragraphs summarize the techniques and its advantages. On pages 2 and 3, we describe actual use of the techniques for the Governor's Committee in New Castle County, Del.; a possible use as a result of a district court order in Connecticut; and a forthcoming use by the plaintiffs in the Delaware reapportionment suit.

Page 4 discusses the need for further definition of compactness to avoid gerrymandering and proposes the inclusion of nonpartisan districting in the legislation as an alternative to at-large elections.

A two-page appendix shows how recognition of county and municipal boundaries may force differences in district populations of as much as 2 to 1 or 3 to 1.

We can read, paraphrase, or discuss the complete statement, as you wish.

Thank you.

Mr. DONOHUE. Thank you.

Your statement will be made part of the record.

(The statement follows:)

APPLICATION OF NONPARTISAN COMPUTER TECHNIQUES TO U.S. CONGRESSIONAL DISTRICTING

Testimony by James B. Weaver and Sidney W. Hess, Atlas Chemical Industries, Inc., Wilmington, Del.¹

District boundaries can be drawn in many ways, even within limitations of population equality, geographic compactness, and contiguity. An objective, mathematically based procedure is now available to provide contiguous districts nearly equal in population and more compact than present methods can provide. The technique was developed for State legislative districting, as described in the attached reprint from the Yale Law Journal.² However, it is equally applicable to State districting for the U.S. House of Representatives. It is particularly recommended as a preferable alternative to at-large elections, as a last resort, when legislatures do not propose districts meeting other requirements of the final legislation.

These districting principles are not new, but no means has been available to apply them objectively; past districting has been based largely on individual judgments. Legislatures could have avoided many compromises and delays, had objective, mathematical techniques been available. High-speed computers calculate good districting solutions quickly and also minimize chance of arithmetic error. Existing districts or other proposals can be compared by the same available techniques, in terms of the same principles.

Since the aforementioned publication, we have had the opportunity to use the described techniques in preparing councilmanic districts for New Castle County in Delaware. This work was at the direction of the Committee to Study Reorganization of the Government of New Castle County, appointed by Gov. Elbert Carvel to draw up a proposal for the Governor to submit to the Delaware State Legislature.³ Utilizing the computer technique, we were able to provide compact and contiguous districts in New Castle County, the population of which differed from the average by no more than 12 percent.⁴ The efficiency of computer districting enabled us to district for various possible numbers of councilmanic districts.

As a result of this application of the computer procedure, certain technical improvements and efficiencies have been made in the computer program which make us even more confident of the feasibility of our approach. Further details of this use cannot be revealed at this time because the committee is now considering our results; no choice has yet been made among the various plans we proposed.

In a recent Federal court order on redistricting in Connecticut⁵ the majority

¹ Mr. James B. Weaver, director of the Development Appraisal Department, Atlas Chemical Industries, Inc., Wilmington, Del., is a registered professional engineer in the State of Delaware and has a B.S. and M.S. in chemical engineering from Massachusetts Institute of Technology. He is a member of the Committee of Thirty-nine, a nonpartisan group encouraging good government in the Wilmington area. He is chairman of that committee's reapportionment team and is also a member of the American Institute of Chemical Engineers, American Chemical Society, American Society for Engineering Education, and American Association of Cost Engineers.

Dr. Sidney W. Hess, manager of the Operations Research Section, Atlas Chemical Industries, Inc., Wilmington, Del., has a B.S. in chemical engineering from Massachusetts Institute of Technology and a Ph. D. in operations research from Case Institute of Technology. He is chairman of the Philadelphia Operations Research Society and a member of the Operations Research Society of America, the Institute of Management Sciences, Operational Research Society (United Kingdom), Institute of Electrical and Electronics Engineers, Research Society of America, and American Association for the Advancement of Science.

Although the Committee of Thirty-nine is not a litigant in the Delaware redistricting suit,⁶ Mr. Weaver and the committee's reapportionment team assembled facts and figures, including detailed population data, which were provided the court, litigants, and State legislators. The possibility of nonpartisan districting by computer was conceived as a result.

² *Sincock v. Duffy*, 215 F. Supp. 169 (D. Del. 1963).

³ "A Procedure for Nonpartisan Districting: Development of Computer Techniques," 73 Yale Law Journal 288 (1963), James B. Weaver and Sidney W. Hess.

⁴ "Carvel Vetoes 11-Man Levy Court Bill—To Name Bipartisan Study Unit," Morning News, Wilmington, Del., Dec. 14, 1963; "County Government Study Retains U. of D. Expert," Morning News, Wilmington, Del. Jan. 31, 1964; "Computer Assists Governing Study," Morning News, Wilmington, Del., Mar. 12, 1964.

⁵ The computations were done on an IBM 7040 computer with the help of Messrs. Jack Whelan, Harry Siegfeldt, and Paul Zitlau, all computer and operations research experts from the E. I. du Pont de Nemours & Co., Inc.

⁶ *Butterworth v. Dempsey*, Civil No. 9571, U.S. District Court, New Haven, Feb. 10, 1964.

opinion suggested that counsel consider "the feasibility of utilizing an appropriate electronic computer technique to minimize partisanship in the redistricting and reapportionment ordered by the court."⁶ Messrs. Gumbart, Corbin, Tyler & Cooper, counsel for the plaintiff have studied our techniques and in their proposed form of decree pointed out its advantages in providing a measure for compactness and developing in a bipartisan manner compact and contiguous districts of nearly equal proportions.⁷ They recommended that the court appoint a special master to do the districting, and that he consider the advantages of the proposed technique. Oral arguments on proposed decrees were held Monday, March 16, 1964; the court has not yet issued its final decree.

The district court in the Delaware case⁸ held for the plaintiffs. The case has now been argued before the Supreme Court and a decision concerning constitutionality of existing Delaware districting is anticipated shortly. In anticipation of a favorable decision, plaintiffs asked us to prepare State legislative districts for Delaware by the technique described in our article. These will be available to propose to the Court if and when it asks for plans to provide constitutional relief.

The mathematical technique described in the attached reprint uses the same three principles cited as applicable in most proposed bills, i.e., population equality, compactness, and contiguity. We support the applicability of all these three principles.

However, these three principles alone do not prevent gerrymandering unless further restrictions are applied, or a slightly more specific definition of compactness is used. Two bills¹⁰ even say, "as compact form as practicable," however, we believe the lack of any present measure of compactness makes such a provision unenforceable.

Our definition of compactness, derived from a principle of physics, permits quantitative measurement and, therefore, the comparison of compactness from one districting proposal to another. It measures the proximity of the district's population to the district center; the closer the population to the center, the more compact is the district. Use of our definition and districting technique tends to create districts with population as close to the centers of districts as possible. Experience indicates that good geographic compactness is also the usual result.

Population equality and compactness are both aided by a minimum of restrictions concerning larger political units, such as incorporated towns or counties. We note that none of the proposed bills require adherence to county boundaries; we support this position¹¹ since such boundaries force population deviations between districts of 2 to 1 or 3 to 1. Clearly defined natural or physical boundaries are advantageous in legislative districts of all sorts, and such boundaries are characteristics of the census data units used by our proposed procedure.

Only two of the bills recognize that agreement on new districts may not always be reached. One imposes a penalty;¹² the other permits at-large elections.¹³ Legislation should incorporate at least that much.

If new districts are not accepted by the legislature well before the next congressional election, election at large has been the only acceptable alternative. New requirements of population equality will increase the frequency of redistricting, and the likelihood of an impasse in the legislatures.

Alabama is the most recent example; eight Congressmen were elected at large in 1962 after extended discussion failed to establish new district boundaries required by the apportionment after the 1960 census. Twenty-four Illinois Congressmen will probably be elected at large this fall. Statewide elections seem difficult for Congressmen accustomed to running from a smaller area, and also difficult for the voters because more choices must be made between relatively unfamiliar candidates. At-large elections also tend to send a one-party delegation to Congress.

⁶ *Ibid.*, p. 10.

⁷ "Plaintiffs Proposed Findings of Fact, Conclusions of Law, and Form of Final Decree, With Comment." in *Butterworth v. Dempsy*, Mar. 2, 1964, note 5, *supra*.

⁸ See note 1, *supra*.

⁹ 88th Cong., H.R. 699, 1128, 2836, and 4340.

¹⁰ 88th Cong., H.R. 1128 and 2836.

¹¹ See *app.*: "Prior Geographic Boundaries as a Limit on Population Equality in Districting."

¹² 88th Cong., H.R. 699.

¹³ 88th Cong., H.R. 7343.

We believe the proposed technique for redistricting is preferable to such at-large elections. It could be made a part of the proposed legislation, to avoid at-large elections in the future. A cutoff date could be provided in the bill (such as January 1 in H.R. 7343). If by then the legislature has not legally redistricted, automatic provisions could take effect. Within a month, census data could be utilized for nonpartisan districting at almost any computer center, inside or outside the State (State universities have such computers in increasing numbers). The resulting district boundaries could then be widely publicized, primaries could be held within the districts, and final elections would determine the new congressional delegation from the new districts.

If the Committee on the Judiciary is interested, we would be glad to consult with them in the phrasing of appropriate provisions to introduce the required definition of compactness in such a circumstance. The clause should require districts to be as compact as possible (by our modified definition), within the same maximum population deviation which applies in the rest of the bill.

APPENDIX. PRIOR GEOGRAPHIC BOUNDARIES AS A LIMIT ON POPULATION EQUALITY IN DISTRICTING

When redistricting, it is convenient to use existing town, city, and county lines wherever possible. Several recent decisions have advised maintenance of such boundaries, for historic and other reasons. Such a requirement, however, may so restrict the districting alternatives that nearly equal population (e.g., ± 15 percent) is impossible and deviations of ± 50 percent or more are the best attainable.

To see how population inequities result from preservation of geographic boundaries, it is only necessary to consider the 1960 apportionment of the 435 U.S. House of Representative seats to the 50 States. Maine is most poorly represented (on the average) with 484,632 people per Representative, 18 percent above the average ratio. Alaska is most favorably represented with 226,167 people and 1 Representative, 45 percent below average. Thus, Alaska has 2.14 times the representation of Maine. Even if it were constitutionally permitted, this population inequity could not be reduced by combining for apportionment purposes two contiguous, sparsely populated States, for none of the States whose total population is less than the U.S. average per Representative are contiguous.

Where there are many political units to be maintained, such as the 169 Connecticut towns, unit populations will vary widely. The largest deviations can be expected between representation in those districts having one-half to $1\frac{1}{2}$ times the ideal average population per Representative. Frequently contiguous districts with less than the ideal can be combined to have a single legislator.

As in the example of the U.S. House of Representatives apportionment, units with population less than the ideal may not be contiguous. It is entirely possible that one or more low-population Connecticut towns surrounded by high-population towns would have to be a representative district of population substantially below the ideal.

The maximum sized district with one legislator will have a population approximately $1\frac{1}{2}$ times the ideal, too small to be subdivided into two districts, yet 50 percent over the ideal. At very best, the ratio of its population per legislator to that of the smallest district will be 1.5 to 1.0. Two such units, one just large enough to warrant two Representatives and the other not quite large enough, would have a ratio of population per legislator of 1.5 to 0.75 or 2 to 1. And if the population of the smallest district were, for example, 50 percent of the ideal, the ratio would be 1.5 to 0.5 or 3 to 1.

As the number of political units to be maintained becomes a large fraction of the number of representative districts, deviation may become still more serious. As an extreme, picture an area made up of two counties which is to have two Representatives. If one county has 10 times the population of the other, there is no way to maintain the boundaries of both counties without a 10 to 1 population deviation unless the legislator is elected at large. Similar examples in small States can be shown to require deviations higher than 50 percent.

**A PROCEDURE FOR NONPARTISAN DISTRICTING:
DEVELOPMENT OF COMPUTER TECHNIQUES**

By

JAMES B. WEAVER and SIDNEY W. HESS

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*Reprinted from the Yale Law Journal
Volume 73, Number 2, December 1963*

PROCEDURE FOR NONPARTISAN DISTRICTING

by J. B. Weaver and S. W. Hess

This paper proposes an objective, mathematically based procedure for districting state legislatures that produces contiguous districts nearly equal in population and more "compact" than present methods can provide. It locates a given number of districts within a preset area, by combining smaller areas of known population. It could also be modified to reflect other appropriate principles of representation.

Districting principles are not new but no means has been available to apply them objectively; past districting has been based largely on individual judgments. Legislatures could have avoided many compromises and delays, had objective, mathematical techniques been available. Objective techniques are needed especially since the Supreme Court has recognized federal-court jurisdiction over apportionment and districting. The court wants to avoid personal and partisan influence when it must redistrict a state after a legislature has disregarded its orders.

Two important principles of representation, population equality and contiguity, are self-explanatory and measurable. This paper proposes a quantitative measure of compactness, as well, which will tend to minimize perimeter and locate districts around population centers. Courts can use these measurable definitions to set minimum acceptable standards of deviation from an ideal. Other factors such as area might also be considered.

High-speed computers calculate good districting solutions and also minimize chance of arithmetic error. Existing districts or other proposals can be compared by the same available techniques. With expected improvements in computer techniques, states may be districted as well as possible, using chosen definitions and principles.

(Abstract of article appearing in Yale Law Journal, December, 1963)

A PROCEDURE FOR NONPARTISAN DISTRICTING: DEVELOPMENT OF COMPUTER TECHNIQUES

JAMES B. WEAVER† and SIDNEY W. HESS††

IN the landmark case of *Baker v. Carr*¹ the Supreme Court held that federal courts have jurisdiction to review the constitutionality of state legislative apportionments. The Court left many questions unresolved, most significantly what constitute appropriate standards for testing the constitutionality of apportionment and districting.² Sundry standards have since been suggested, ranging from equality of population³ to the broad requirement that an apportionment and districting be rational—a consistent application of an intelligible policy.⁴ But *Baker v. Carr* left unresolved another, less discussed issue, equally unsettled and increasingly important. Once having decided that a particular

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The authors wish to acknowledge with thanks the encouragement and creative participation of Professor Ruth C. Silva, Pennsylvania State University; Professor John D. C. Little, Massachusetts Institute of Technology; Mr. Jack N. Whelan, E.I. duPont de Nemours & Co., Inc., especially for assistance in the computational aspects of this article; and the members of the group which initiated their interest, Wilmington's Committee of 39. See note 54 *infra*.

1. 369 U.S. 186 (1962).

2. It appears that the Court will examine the question of appropriate standards during the current term. A number of cases involving both congressional and legislative apportionment have been appealed. Some of these cases have already been argued. See N.Y. Times, Nov. 13, 1963, p. 1, col. 5 (city ed.); and N.Y. Times, Nov. 14, 1963, p. 29, col. 4 (city ed.). Others have been set down for argument. See 32 U.S.L. WEEK 3110 (Oct. 1, 1963). Several recently appealed cases have not yet been acted upon or set down for argument. *Ibid*.

3. See, e.g., *Mann v. Davis*, 213 F. Supp. 577 (E.D. Va. 1962); *Moss v. Burkhardt*, 207 F. Supp. 885 (W.D. Okla. 1962); Hanson, *Courts in the Thicket: The Problems of Judicial Standards in Apportionment Cases*, 12 AM. U.L. REV. 51 (1963); American Civil Liberties Union Weekly Bulletin, Mar. 20, 1961, pp. 1-2.

4. See, e.g., Israel, *On Charting a Course Through the Mathematical Quagmire: The Future of Baker v. Carr*, 61 MICH. L. REV. 107 (1962); Bickel, *The Durability of Colegrove v. Green*, 72 YALE L.J. 39 (1962).

For other approaches to the troublesome problem of constitutional standards for apportionment, see Comment, *Baker v. Carr and Legislative Apportionments: A Problem of Standards*, 72 YALE L.J. 968 (1963); McCloskey, *The Supreme Court 1961 Term, Foreword: The Reapportionment Case*, 76 HARV. L. REV. 54 (1962); Emerson, *Malapportionment and Judicial Power*, 72 YALE L.J. 64 (1962); Neal, *Baker v. Carr: Politics in Search of Law*, 1962 SUP. CT. REV. 252; Dixon, *Legislative Apportionment and the Federal Constitution*, 27 LAW & CONTEMP. PROB. 329 (1962); McKay, *Political Thickets and Crazy Quilts*, 61 MICH. L. REV. 645 (1963).

representation scheme is unconstitutional, courts must determine how to administer relief. Courts and commentators have agreed nearly unanimously that courts ought initially to refrain from granting direct relief and allow the state legislature another opportunity to reapportion in accord with the federal constitution.⁵ Should such a response not be forthcoming, however, a court may be forced to grant direct relief. Again, a whole range of solutions may be open to the court.⁶ This paper concerns one alternative, affirmative judicial apportionment and districting.⁷

5. See, e.g., *Sincock v. Duffy*, 215 F. Supp. 169 (D. Del. 1963); *Mann v. Davis*, 213 F. Supp. 577 (E.D. Va. 1962); Comment, *Baker v. Carr and Legislative Apportionments: A Problem of Standards*, 72 YALE L.J. 968, 1033-35 (1962).

6. For cases in which courts have been disposed to grant direct relief, at least in the absence of legislative response, see *Sims v. Frink*, 205 F. Supp. 245 (M.D. Ala. 1962); *Scholle v. Hare*, 367 Mich. 176, 116 N.W.2d 350 (1962), execution stayed pending appeal, 31 U.S.L. WEEK 1018 (July 31, 1962).

Elections at large are a commonly mentioned form of direct relief. Indeed, it was this form of relief which appealed most to pre-*Baker v. Carr* commentators. See, e.g., Lewis, *Legislative Apportionment and the Federal Courts*, 71 HARV. L. REV. 1057, 1087-90 (1958). Since *Baker v. Carr*, it has been applied by some courts. See, e.g., *Scholle v. Hare*, *supra*; *Mann v. Davis*, *supra* note 5 (execution stayed by the district court pending appeal). The chief advantage of this form of relief is the tremendous incentive it would afford to legislators, whose political careers would be at stake in an election at large, to reapportion the state themselves. Moreover, an election at large, if it did occur, would result in a perfect application of the equal population principle applied to the entire state.

Yet there are reasons why a court might reject this form of direct relief and instead actively reapportion a state. Should the incentive for legislators to reapportion themselves be insufficient and consequently an election at large actually be held, there would be nearly insurmountable problems of administration, such as the printing of ballots with as many as one hundred candidates for each party. Moreover, a legislature elected at large would not conform to our usual notions of representation. See Black, *Inequities in Districting for Congress: Baker v. Carr and Colegrove v. Green*, 72 YALE L.J. 13, 15 (1962). Many other problems might arise. See Comment, *Baker v. Carr and Legislative Apportionments: A Problem of Standards*, 72 YALE L.J. 968, 1037-38 (1962).

7. While reference will be made throughout to *judicial* apportionment, the proposal made in this paper could be utilized by legislatures as well as courts.

There are two approaches which affirmative judicial apportionment can take. That advocated by Mr. Justice Clark in *Baker v. Carr*, 369 U.S. 186, 259-61 (1962), is to improve somewhat the existing unconstitutional apportionment and districting by eliminating some of the grossest disparities, while generally adhering to the existing district lines. The theory of this approach is that the resulting improvement in the apportionment and districting, together with the threat that the court will more thoroughly apportion and district the next time, will be sufficient to "break the stranglehold" of the minority areas in the legislature and after the next election to enable that body to apportion and district equitably. See *Sims v. Frink*, 208 F. Supp. 431 (M.D. Ala. 1962).

The other approach to active judicial reapportionment, and that with which this article is concerned, requires the court to reapportion the state without regard to existing district lines. This approach has the advantage not only of awarding underrepresented citizens prompt relief but also of ending the litigation, which by this time will usually have dragged on for an extended period of time.

Since redistricting usually affects the political balance of a legislature, a court undertaking affirmative apportionment and districting is likely to become the subject of highly partisan appeals and criticism. Such criticism may create the appearance that the court is acting from political motivation with the desire of benefiting a particular partisan interest.⁸ To avoid this "political thicket,"⁹ a court may desire to limit its own discretion in creating new legislative districts. One means of accomplishing this end could be to adopt a mechanical formula which makes the actual drafting of district lines non-discretionary once general principles of representation have been determined. It is at the stage of drafting district lines, after all, that the decisions having the most immediate political impact must be made—for example, when deciding whether a particular precinct should be included within district A or district B. If a court decided on this course, it might attempt it by basing its apportionment and districting on the principles of equal population and contiguousness—that is, territorial continuity.¹⁰ Even when following these two principles, however, district lines can be drawn in many ways, each with different political repercussions.¹¹ Courts, therefore, may seek additional principles which when combined with contiguity and equal population more sharply limit judicial discretion in drawing district lines.

Legislatures also might find it useful to adopt a procedure which limits discretion in drawing district lines. Because of the volatile side-effects of alternative redistricting proposals, legislatures are frequently unable to adopt any representation scheme. Deadlocked legislatures might break the political impasse if agreement could be reached on a districting procedure which divorces the results reached from the claims of partisan interests.

Compactness is potentially a principle which, when combined with contiguity and equal population, could produce a non-discretionary districting procedure. Although the value of using compactness as a guiding principle has frequently been suggested,¹² no precise definition of the term has been gen-

8. *Wisconsin v. Zimmerman*, 205 F. Supp. 673, 209 F. Supp. 183 (W.D. Wis. 1962), is an example of an apportionment case in which the court became embroiled in a partisan debate and the subject of partisan attack. See, e.g., *N.Y. Times*, June 20, 1962, p. 19, col. 4; *N.Y. Times*, July 4, 1962, p. 7, col. 1.

9. *Colegrove v. Green*, 328 U.S. 549, 556 (1946) (opinion of Frankfurter, J.).

10. A contiguous legislative district is one in which it is possible to travel between any two locations within it without leaving the district. The presence or absence of contiguity can be determined simply by glancing at a district map. There is no concept of "best" contiguity.

11. See Black, *Inequities in Districting for Congress: Baker v. Carr and Colegrove v. Green*, 72 *YALE L.J.* 13, 15-16 (1962). There is a vast literature on the interaction of politics and districting and the problem of the gerrymander, a deliberate manipulation of districting to maximize a partisan advantage. See, e.g., JEWELL, *POLITICS OF REAPPORTIONMENT* 14-17, 27 (1962); GRIFFITH, *THE RISE AND DEVELOPMENT OF THE GERRYMANDER* (1907); SCHMECKEBIER, *CONGRESSIONAL APPORTIONMENT* ch. IX (1941); note 31 *infra*.

12. Statutory requirements of contiguity and population equality in congressional districting were introduced by Congress in 1842. 5 Stat. 491 (1842). The requirement of

erally accepted. Usually compactness has been conceived as solely a geographic relationship, which might be mathematically expressed as requiring the maximization of the ratio of a district's area to its perimeter.¹³ If this were the definition, the most compact district would be a circle, since it is in that figure that the maximum area within a given perimeter can be enclosed.¹⁴ Although

compactness, while not defined, was added by the Reapportionment Act of 1901, 31 Stat. 734 (1901). This tripartite requirement (contiguity, compactness and population equality) was repeated in the Act of 1911, 37 Stat. 13 (1911), but was dropped in subsequent enactments. The current law is found at 46 Stat. 26 (1929), as amended, 2 U.S.C. § 2a (1958). See generally *Wood v. Broom*, 287 U.S. 1, 7 (1932); Celler, *Congressional Apportionment—Past, Present, and Future*, 17 LAW & CONTEMP. PROB. 268 (1952).

Representative Celler has sought in the past to have the three requirements re-enacted into law. H.R. 73, 86th Cong., 1st Sess. § 22(c) (1959) would have required congressional districts to be drawn up in "as compact form as practicable." See *Hearings Before Subcommittee No. 2 of the House Committee on the Judiciary*, 86th Cong., 1st Sess., ser. 10, at 22-23 (1959); Celler, *supra* at 274.

Despite Congress' omission of the requirement of compactness, as well as those of contiguity and population equality, most state constitutions maintain these three requirements for state legislative districting. EDWARDS, INDEX DIGEST OF STATE CONSTITUTIONS 627-35 (1959). Political scientists have also recommended that compactness be a requirement of districting. See, e.g., Roeck, *Measuring Compactness as a Requirement of Legislative Apportionment*, 5 MIDWEST J. POL. SCI. 70 (1961); Vickery, *On the Prevention of Gerrymandering*, 76 POL. SCI. Q. 105 (1961); Krastin, *The Implementation of Representative Government in a Democracy*, 48 IOWA L. REV. 549, 570-72 (1963).

13. There have been few rigorous attempts to define "compactness"; in 1959, for instance, Congressmen seemed unable to explain what the term meant. *Hearings Before Subcommittee No. 2 of the House Committee on the Judiciary*, *supra* note 12, at 22-23. Where definitions have been given, however, they have usually been of the geographic nature referred to in the text. See, e.g., Roeck, *supra* note 12; Vickery, *supra* note 12. Cf. Krastin, *The Implementation of Representative Government in a Democracy*, *supra* note 12, at 570-72. See also Professor Kallenbach's suggestion, the ratio of east-west measurement to north-south measurement, *Hearings Before Subcommittee No. 2 of the House Committee on the Judiciary*, *supra* at 64.

An interesting attempt to give different content to the term "compactness" has been made by Representative Celler:

As to the requirement of compactness, such elements as economic and social interests of an area, its topography, means of transportation, the desires of the inhabitants as well as their elected representatives and finally the political factors should all be considered.

Celler, *supra* note 12, at 274. Representative Celler conceded to the state legislatures the task of pouring content into this political definition. *Ibid.*

14. A circle of one-mile perimeter encloses $1/4 \pi = 0.795$ square miles. Regular hexagons, all of the same perimeter, would provide the highest area per unit of perimeter for geographical shapes that fit together in unlimited number. A regular hexagon of one-mile perimeter encloses 0.722 square miles. Similar figures for a square and a triangle are 0.625 square miles and 0.621 square miles respectively.

One commentator has proposed a measure taking advantage of the circle's compactness. He would test the compactness of a legislative district by comparing the area of the district to the area of the smallest circle completely circumscribing the district. Roeck, *supra* note 12.

this definition is useful for comparison of already formulated districting plans, further study would be needed to determine whether it could be adapted to a procedure for creating districting proposals which are as compact as is possible consistent with other desired goals, such as contiguity and equal population.

As defined in this article, compactness is not solely a geographic measure. Because we are attempting to reflect at least to some extent popular interests¹⁵ in districting and because population patterns may coincide with interest patterns, the principle of compactness is here defined as a measure of population as well as geographic concentration.¹⁶ Under this definition a district's boundaries will not necessarily approach a circle as a limit as greater compactness is achieved. But constructing districts using this compactness definition will tend to locate districts of maximum compactness around centers of population, whereas, under prior definitions, "compact" districts would as likely divide population centers as respect them. And the expanded definition tends to favor districts coincident with communities of economic or other interests, insofar as these interests coincide with areas of high and low population densities.¹⁷ Granted, comparison of districting plans by the proffered definition will require the use of more complex mathematical techniques than where only geography is considered. But use of this definition is fortunate in more than its tendency to favor interest-oriented plans; ready-made computer programs can be adapted to permit creation as well as comparison of districting plans based upon it.

Apportionment and Districting Procedures

Before courts or legislatures can draw district lines, certain decisions must be made.¹⁸ The first of these, normally made in the state constitution, is the

15. The argument has been made that in our pluralistic society, a legislative body should reflect its various constituent communities—that districts should be drawn to encompass one particular "community" so as to reflect its interest in the legislature. See de Grazia, *General Theory of Apportionment*, 17 *LAW & CONTEMP. PROB.* 256 (1952). Some of this "reflective" philosophy is apparent in Representative Celler's statement, *supra* note 12, with its emphasis on social and economic factors, and in *Wright v. Rockefeller*, 211 F. Supp. 460, 465 (S.D.N.Y. 1962), where New York created a Manhattan congressional district that was nearly 100% Negro and Puerto Rican in population. Of course, it may be impossible to represent all possible diverse social interest groups and still adhere to the equal population principle, and attempts to account for such constituencies involve the courts to some degree in political matters.

16. Technically, the definition of compactness proposed here is a mathematical one, based on the moment of inertia principle. For this definition, see notes 34-40 *infra* and accompanying text.

17. For a more complete discussion of this phenomenon, see paragraph immediately preceding text accompanying note 40 *infra*.

18. These decisions can be made in one or more ways. Usually, some, if not all, will be made in the state constitution. Without a constitutional amendment, a legislature could not alter those decisions. Nor could a court, unless it found the state constitutional provisions violated the fourteenth amendment of the federal constitution. Some or all of these

number of legislative houses.¹⁹ Next, the number of legislators in each house must be determined. Where this number is not fixed in the constitution, even a court might change it during apportionment and districting.²⁰ Perhaps most crucial is the decision as to principles of representation for each legislative house. If population, the most frequently mentioned principle, is adopted, then several population measurements are available: total population, population of voting age, population excluding aliens, or registered or actual voters. The choice among these population measures can have a considerable effect on the final pattern of representation.²¹ In this article total population is assumed to be the appropriate population measure. Non-population principles of representation have also been used. Thus, area has been adopted by some states, as have such principles as community of economic or other interests.²² The districting proposal as made in this paper assumes a choice of population equality, compactness, and contiguity as the only principles for representation, although modifications could probably be made to accommodate other principles.

decisions may be made by general statute or long-accepted practice. A legislature could then amend those statutes or ignore the practices while apportioning and districting. But a court, if it were apportioning, would probably feel constrained to apply the general statute, if not the consistent past practice, assuming neither violates the federal constitution.

19. All states have two houses except Nebraska, which has one. 12 *BOOK OF THE STATES* 29 (1958).

20. Only in Virginia and Washington is the number of legislators established by the legislature entirely apart from the constitution. In Maine and Rhode Island, however, the number of senators is set by a sliding scale based on population, as is the number of representatives in Connecticut. Many constitutions specify only ranges, minimum or maximum numbers, for one or both houses, or a ratio between the numbers in the houses. See *NATIONAL MUNICIPAL LEAGUE, COMPENDIUM ON LEGISLATIVE APPORTIONMENT* (1962).

Where a formula for determining the number of members is found to violate the fourteenth amendment of the United States Constitution, a court might choose a number of members differing from that derived from that formula. Such a situation would have faced the federal district court in *WMCA v. Simon*, 208 F. Supp. 368 (S.D.N.Y. 1962), had it found unconstitutional the challenged provision of the New York Constitution, a complicated formula for determining the number of senate seats. See *N.Y. CONST.* art. 3, § 4.

21. See Silva, *The Population Base for Apportionment of the New York Legislature*, 32 *FORDHAM L. REV.* 1 (1963); Committee of 39, Wilmington, Del., Notes and Statistics on Overlay Maps, pp. 1-2 (mimeographed materials). Two legislative houses could retain some difference in bases, and retain population as the primary principle of representation, if one house were based on total population and the other on, say, actual voters. See Silva, *Legislative Representation—With Special Reference to New York*, 27 *LAW & CONTEMP. PROB.* 408, 409-14 (1962).

22. Michigan recently has amended its constitutions to recognize explicitly the principle of area. *N.Y. Times*, April 3, 1963, p. 24, col. 3. And in *Wright v. Rockefeller*, 211 F. Supp. 460, 465 (S.D.N.Y. 1962), the district court seemed to give credence to an argument upholding Manhattan's congressional districting on a "community" theory. See also note 15 *supra*.

Once principles of representation have been chosen it must be determined whether to respect boundaries of existing political units, such as cities or counties, in subsequent districting. If any such units are recognized, a number of legislators is then "apportioned" to each, using pre-established formulae reflecting some of the principles of representation adopted.²³ Such boundaries immediately restrict the population equality achievable through later districting and therefore may violate a constitutional standard of equal population, should one be adopted.²⁴ For example, even in tiny Delaware, which has but three counties, the apportionment of the thirty-five representatives among these counties on a population basis results in a minimum deviation between the counties of seven per cent in population-per-representative.²⁵

23. Congress, for example, distributes representatives amongst states, in accordance with the principle of equal proportions, an adaptation of the equal population principle. New York uses a more complex formula recognizing pre-existing political units, in this case, counties. See Silva, *Apportionment in New York*, 30 *FORDHAM L. REV.* 581, 595-650 (1962). See note 55 *infra*.

In its technical sense, apportionment refers to the allocation of legislative seats among pre-defined units. Districting, on the other hand, is the process of drawing the geographic boundaries within those pre-defined units. Thus, Congress "apportions" representatives among the states while the states "district" by drawing congressional district lines.

24. For this reason the American Political Science Association recommends against recognition of such units. See ZELLER, *AMERICAN STATE LEGISLATURES* 46 (1954).

25. Since there are 35 representatives in the Delaware House, the ideal population for a legislative district in 1960 was $446,292 \div 35 = 12,751$. But no solution giving effect to the county lines (*i.e.*, by requiring every district to be wholly within one county) could avoid an average population deviation per district of 7% (from the average in Kent to the average in Sussex):

<i>Area</i>	<i>Popu- lation</i>	<i>Pop. ÷ 12,751</i>	<i>No. of Reps. (to closest one-half)</i>	<i>Pop. ÷ No. of Reps.</i>	<i>% Deviation from 12,751</i>
New Castle Co.	307,446	24.1	24	12,810	-0.5%
Kent County	65,651	5.2	5	13,112	-2.8%
Sussex County	73,195	5.7	6	12,199	+4.3%
Total Delaware	446,292	35.0		12,751	

In fact, it is remarkable that these county populations, divided by 12,751, come even this close to assigning whole representatives to one county or the other.

The next important boundary in Delaware is the major city of Wilmington, which is within New Castle County. However, the same calculation indicates that a major deviation in population must be encountered unless one representative is assigned half to Wilmington, half to the remainder of New Castle County.

Wilmington	95,827	7.5	7½ @ 7 reps.	13,690	+7.4%
			@ 8 reps.	11,978	-7.1%
Other New Castle Co.	211,619	16.6	16½ @ 17 reps.	12,448	-2.4%
			@ 16 reps.	13,226	+3.7%

Acceptable district boundaries within the existing political units must also be determined so that the full set of inviolate lines is known. These boundaries might be county, ward or precinct lines, which normally follow such recognized features as highways, rivers or railroads.²⁶ A legislature, although probably not a court, could alter county and precinct boundaries while redistricting, if it so chose. As with the recognition of major political units, such minimum area restrictions may limit achievement of population equality. And since census data is usually not collected for smaller political units, such as election districts and precincts,²⁷ such restrictions may also make approximations necessary in estimating the degree of population equality.²⁸

The final step in this process, to be dealt with at length in this paper, is the actual drawing of district lines. In the past, principles of representation chosen by legislatures have not significantly limited their freedom to do almost whatever they wished.²⁹ Exercising the available option, legislatures have generally

Since the county would be allocated only 24 representatives (7 + 17 or 8 + 16), based on 1960 population, either the city or the rest of the county must accept under-representation or both will have to share a representative with the other part of the county. If no legislator can be shared between Wilmington and New Castle County, a minimum deviation of 10% (7.4 + 2.4 or 7.1 + 3.7) is automatically required within this single county.

Likewise, further improvements are possible if county lines are not observed as the determining boundaries. The city of Milford (1960 population, 5,795) lies partly in Kent and partly in Sussex County. By considering the population of Milford entirely with Sussex County for apportionment purposes, the deviation between the two counties could be reduced below 2%.

	Population	Pop. ÷ 12751	No. of Reps.	Pop. ÷ No. of Reps.	Deviation From 12751
Kent less Milford (Part)	63,403	4.97	5	12,681	-0.6%
Sussex incl. all Milford	75,443	5.91	6	12,574	-1.4%

26. For example, the amendment to the Delaware Constitution approved January, 1963, and declared unconstitutional in *Sincock v. Duffy*, 215 F. Supp. 169 (D. Del. 1963), contained the following provision: "Each new Representative District shall, insofar as is possible, be formed of contiguous territory; shall be as nearly equal in population as possible to the other new districts being created within the existing Representative District; shall be bounded by ancient boundaries, major roads, streams, or other natural boundaries; and not be so created as to unduly favor any person or political party" (Section 5, in part, modifying Section 2A of the Constitution). In Delaware, several election districts are now merely lines on a map (as are most state boundaries) which do not coincide with the streets and communities developed since the election districts were first established.

27. UNITED STATES BUREAU OF THE CENSUS, *THE DEFINITION OF CENSUS ENUMERATION DISTRICTS BY LOCAL AUTHORITIES 2* (rev. ed., 1959) recognizes only the following political boundaries: congressional districts, counties, all incorporated communities, wards, and certain unincorporated communities. See also notes 42-44 *infra* and accompanying text.

28. If actual or registered voters were used as the basis of representation rather than total population, an exact count would be available.

29. See notes 8-11 *supra* and accompanying text.

districted on a partisan basis, often with the goal of re-electing as many incumbents as possible. While population, registration and voting data have been used to some extent, political goals are most frequently served.³⁰ Gerrymandering³¹ remains a frequent complaint.

But courts and legislatures may in certain circumstances regard the making of such political judgments as undesirable when actually drafting district lines.³² The proposal which follows assumes courts and legislatures have chosen contiguity, population equality and compactness as guiding principles before the districting stage is reached and have also decided to minimize the discretion exercised during districting itself. Application of this procedure creates alternative proposals and permits direct comparison of those and other proposals for adherence to these three principles. This comparison permits immediate rejection of proposals deviating more than others as to both population equality and maximum compactness, or deviating excessively in relation to one of those principles. Nevertheless, there may be several proposals not excludable by that test, and some discretion may be necessary to choose among those remaining.³³

Development of a Compactness Measure

Consider the data points plotted as circles in Figure 1. On the graph, X might represent passage of time and Y population during consecutive periods. What is illustrated here is a common statistical problem. If there is some reason to believe a straight line will best fit a series of data points, one can take a straight edge and move it through the points to "eyeball" a good line. Better statistical practice is to utilize the "least-squares" technique.³⁴ This technique

30. See JEWELL, *POLITICS OF REAPPORTIONMENT* 14-17, 27 (1962); GRIFFITH, *THE RISE AND DEVELOPMENT OF THE GERRYMANDER* 21, 100, 124 (1907). It has been suggested that the failure of state legislatures to establish equitable representation schemes, and the socio-economic effects of that failure, were among the chief factors leading to the Court's decision in *Baker v. Carr*, 369 U.S. 186 (1962). See Comment, *Baker v. Carr and Legislative Apportionments: A Problem of Standards*, 72 *YALE L.J.* 968, 979-81 (1963); Wheeler & Bebout, *After Reapportionment*, 51 *NAT'L CIVIC REV.* 246 (1962).

31. Gerrymandering is "the formation of election districts, on another basis than that of single and homogeneous political units as they existed previous to the . . . (redistricting), with boundaries arranged for partisan (or factional) advantage." GRIFFITH, *THE RISE AND DEVELOPMENT OF THE GERRYMANDER* 21 (1907). There are two principal means of gerrymandering: (1) distributing the opposition party's vote among a number of districts so that it is diluted and the opposition can carry few, if any, districts; (2) concentrating the opposition's vote in a few districts so that it is dissipated in the form of large margins in these few districts. Districts can be absolutely equal in population and still be gerrymandered. *Id.* at 15-21. Nor will a gerrymandered district always be identifiable by its shape, in spite of the usual connotation of the term.

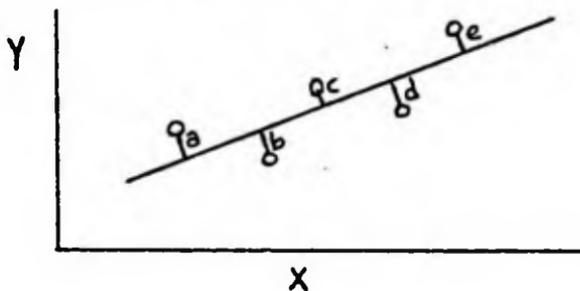
32. See notes 1-12 *supra* and accompanying text.

33. This is a methodological outline of the proposal put forth in this article. A more complete development of this procedure will follow in the subsequent text and notes.

34. CROXTON & COWDEN, *APPLIED GENERAL STATISTICS* 260-70 (2d ed. 1955); EZZEKIEL & FOX, *METHODS OF CORRELATION AND REGRESSION ANALYSIS* 61-63 (3d ed. 1959); KEY, *A PRIMER OF STATISTICS FOR POLITICAL SCIENTISTS* 78-81 (1959).

mathematically locates the line which minimizes the sum of the squared distances³⁵ from the points to the line ($a^2 + b^2 + c^2 + d^2 + e^2$).

FIGURE 1
"LEAST SQUARES" FIT OF LINE TO DATA



The least-squares line on a graph is analogous to the center of gravity in a physical body. Both are measures of average location. The former has points averaged into a line; the latter has weight of the body averaged into a central point.

The example of the center of gravity in a physical body brings us closer to a concept immediately relevant to the question of representation than dispersion about a line.³⁶ In studying the properties of rotating bodies, physicists find it useful to have a measure of the dispersion of the body's weight about an axis of rotation. This measure is called the moment of inertia.³⁷ The physical

35. The effect of squaring the distance may be clarified by a practical problem involving a least-squares solution. Assume two people live two miles apart, and it is desired to build a road perpendicular to the line between their houses. It is possible to put the road adjacent to one of the houses or equidistant between them. In either case the total man-miles from the highway are two: In the former case, one person two miles away $[(1 \times 2) + (1 \times 0) = 2]$, and in the latter, two people each one mile away $[(1 \times 1) + (1 \times 1) = 2]$. A decision rule which merely minimizes the total deviation would be indifferent to the choice. Intuitively, we can argue that the alternative represented by the latter best distributes man-miles over the whole community, while keeping the total at a minimum. It would also be the selection under a least-squares criterion, for the sum of the squared deviations in the former case would be $2^2 + 0^2 = 4$ while for the latter, it would be $1^2 + 1^2 = 2$.

36. Dispersion, or minimum variance, as applied to population equality, has also been proposed as a single measure of districting. PRAY & MANER, *THE NEW PERSPECTIVE OF LEGISLATIVE APPORTIONMENT IN OKLAHOMA 27-28* (1962). A districting proposal embodying this procedure was submitted to a referendum in Oklahoma, but was defeated by a two-to-one margin. *Id.*

37. The moment of inertia of a mass about an axis of rotation is defined as the product of the mass and the square of the distance to the axis (the name was first suggested by Euler in 1765). It plays the same role in rotational motion that mass alone does in linear motion. In linear motion

$$\text{Force} = \text{Mass} \times \text{Acceleration}$$

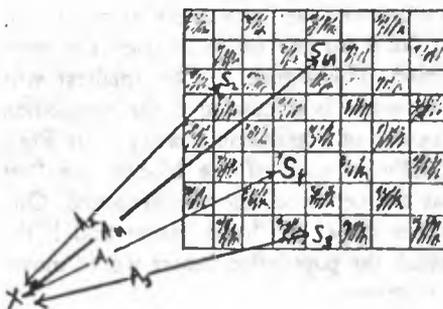
and

$$\text{Kinetic Energy} = 1/2 \times \text{Mass} \times (\text{Velocity})^2.$$

body consisting of the five points in Figure 1 has a moment of inertia about the illustrated line equal to $(a^2 + b^2 + c^2 + d^2 + e^2)$, assuming each point has a mass of one unit.³⁸

If a body has only two dimensions and an axis of rotation is perpendicular to its plane, one can talk about the moment of inertia of the body about the point where the perpendicular axis intersects the plane. For purposes of computation the moment of inertia about that point X is defined as the weight of the body times the square of the distance from it to X. Thus, in Figure 2, the moment of inertia of the small shaded square labeled S_1 about point X is its weight W_1 times the distance A_1 squared—that is, $W_1A_1^2$. If the body is large with respect to the distance (the whole checkerboard in Figure 2, for example) its moment of inertia is computed for each of the segments of the body (each small square here) and added together to obtain the entire body's moment of inertia. This procedure is necessary because the small squares are different distances from X and may have different "weights" (e.g., $W_1, W_2, W_3, \dots, W_{64}$). Thus, the moment of inertia about X for the whole checkerboard is $(W_1A_1^2 + W_2A_2^2 + W_3A_3^2 + \dots + W_{64}A_{64}^2)$.

FIGURE 2



For bodies of equal weight but differing distribution of the weight, the moment of inertia for an axis running through the center of gravity is smallest when the weight is concentrated at the center, i.e., when the body is compact.³⁹

In rotational motion

$$\text{Torque} = \text{Moment of Inertia} \times \text{Angular Acceleration}$$

and

$$\text{Kinetic Energy} = 1/2 \times \text{Moment of Inertia} \times (\text{Angular Velocity})^2.$$

That it takes more energy to stop a weight swirled about by a two foot string than one of equal weight swirled at an equal number of revolutions per minute (angular velocity) at the end of a one foot string is indicative of the fact that the moment of inertia of the first string and weight is greater.

38. SEARS, MECHANICS, HEAT AND SOUND 202-13 (2d ed. 1958); 1 SHORTLEY & WILLIAMS, PHYSICS 193-98 (1950); WHITE, MODERN COLLEGE PHYSICS 178-80 (3d ed. 1956).

39. See authorities cited in note 38 *supra*.

To grasp this idea, consider three objects: a bicycle wheel, a flat disk, and a top. If all have equal weight, the moment of inertia about the vertical axis through the center of each is least for the compact top, where weight is concentrated near the axis, and most for the wheel, where weight is concentrated at the rim, distant from the center. By the same token the moment of inertia about an axis of rotation for any particular object will be least if the axis passes through the body's center of gravity. For example, if the moment of inertia of the top were measured from a point one foot from the top's center of gravity, the calculation might give a result about equal to the value for the wheel calculated about its center of gravity. Thus, in the checkerboard of Figure 2, assuming the weight is equally distributed throughout, the moment of inertia is smallest about the checkerboard's center.

Moment of inertia provides a possible measure of compactness in legislative districting, involving both area and population. Assume that the checkerboard in Figure 2 represents one legislative district. By dividing the district into sixty-four rectangular blocks, it becomes possible to make a calculation analogous to moment of inertia about any point in the plane of the checkerboard. For each block, this calculation, which hereafter will also be called moment of inertia, would be the product of the block's population times the square of the distance between the block and that point. To obtain the moment of inertia about that point for the entire district, the moments of inertia for each block are summed. This figure will be smallest when the point about which the moment of inertia is calculated is the population center of the district—that is, the "center of population gravity." In Figure 2, if the people were distributed equally in each of the blocks, the "center of population gravity" would be at the center of the checkerboard. On the other hand, if there were a city in the upper left-hand corner and if the remaining blocks were sparsely populated, the population center would move from the center of the board toward that corner.

Now assume that the checkerboard in Figure 2 is to be divided into several legislative districts of equal population. If there is some concentration of population, one or more of these districts can be made relatively "compact"—its moment of inertia can be made small—by locating the legislative districts so that their population centers will be near the center of the population concentration. The remaining districts will be larger and have greater moments of inertia, however. To achieve a balance, and thereby guarantee that all the districts are somewhat compact, one could compare the summed moments of inertia of many different districting plans and choose that which produces the lowest sum. The compactness of a districting plan would then be defined as the sum of the moments of inertia of each proposed district about its own center of population gravity, the most compact plan being the one having the lowest sum.

Application of this definition of compactness would tend to discourage districts of extremely elongated shapes, since the farther a part of the district is

from the population center of that district, the more it will add to the moment of inertia. Similarly it would tend to create districts the population centers of which coincide with areas of high population density, since the closer that high density area is to the population center of its district, the smaller will be the distance squared factor by which the population figure will be multiplied, and consequently the lower will be the moment of inertia. Since it is the sum of these moments of inertia of each district in the plan which is minimized, these phenomena are tendencies and not certainties.

Districting By the Compactness Measure

As already described, before districting is begun by this or any other method, certain choices must be made.⁴⁰ The number of houses, the number of legislators in and the principles of representation for each house, and the larger political units within which districting will occur must be determined. Finally, it must be decided what are the minimum units which must be wholly contained in any district. This last decision will both determine and depend upon the types of boundaries deemed acceptable for the final districts. In the example in Figure 2, these minimum units correspond to the sixty-four rectangular blocks. If population equality is a principle of representation, accuracy dictates that these units be ones for which population figures are available. Since census figures do not ordinarily provide population counts of precincts or election districts, these units are not apt for this purpose.⁴¹ On the other hand, if equality of registered or actual voters were a basis of representation, then precinct or election units could be used.

The smallest unit of population count provided by the United States Census is the "enumeration district"⁴² (hereinafter abbreviated ED), and these have been chosen as the minimum unit here. This unit has natural boundaries of the type usually desired for legislative districts (hereinafter abbreviated LD), such as rivers, highways, or railroads.⁴³ And since ED population averages under 1,000,⁴⁴ LDs will generally be sufficiently large to permit quite precise equalization of population even though each ED must be wholly contained within an LD.

40. See notes 18-28 *supra* and accompanying text.

41. See note 27 *supra*.

42. An enumeration district is a clearly defined geographic area, to be covered by one census enumerator during the decennial census. For large cities, population data per city block is also available. UNITED STATES BUREAU OF THE CENSUS, UNITED STATES CENSUSES OF POPULATION AND HOUSING, 1960: PRINCIPAL DATA-COLLECTION FORMS AND PROCEDURES (1961); UNITED STATES BUREAU OF THE CENSUS, THE DEFINITION OF CENSUS ENUMERATION DISTRICTS BY LOCAL AUTHORITIES (rev. ed. 1959).

Population statistics and maps of the enumeration districts are available for all areas within the United States, and may be purchased from the Bureau of the Census.

43. See note 26 *supra*.

44. In Delaware, the state to which the proposed formula will later be applied, the average population per ED is approximately 700: individual EDs range from 0 to 2200 in population.

Other units for which population data is available could also be used. Census tracts, which consist of several EDs, are readily adaptable to this formula. Counties could also be used where several counties are to be combined to create each LD. If larger minimum units are used, however, greater population inequalities will be necessitated and, consequently, constitutional standards may be violated.

Since districting by minimizing moment of inertia involves numerous calculations, application of this procedure by hand would require considerable time and introduce significant probability of arithmetic error.⁴⁵ To overcome these problems, we have used electronic computers, which very quickly perform the necessary calculations by applying an intricate set of logical rules—the computer “program”—to the data supplied them.⁴⁶ No available programs or computer techniques are known which will give a single, best answer to the districting problem, though such a solution seems possible if enough funds and efforts are put to the problem, especially considering the rapid advances in size and sophistication of available computers.

Despite a press of time and dearth of funds, it has still been possible largely to solve this problem through computers. The chosen measure of compactness makes it possible to take advantage of certain mathematical similarities between the redistricting problem and a problem already programmed on computers—that of assigning customer orders to specific warehouse locations so as to minimize freight costs.⁴⁷ This program, supplemented for this specific use by various additional steps and subcalculations, assigns EDs (customers) to LD centers (warehouses) in a manner minimizing moment of inertia (freight

45. Arithmetic error in reapportionment has been regularly troublesome. As early as 1790 when Thomas Jefferson made hand calculations for legislative apportionment and districting, several errors were carried over into the original congressional apportionment. SCHMECKERIER, *CONGRESSIONAL APPORTIONMENT* Ch. VIII (1941). A recent opinion demonstrates similar problems exist today, even in a small state like Delaware:

Upon analysis of plaintiffs' submissions the court has found a number of errors that illustrate vividly the extreme difficulty of apportioning a State in a mathematically correct and workable fashion.

Sincock v. Duffy, 215 F. Supp. 169, 194 (D. Del. 1963).

Automatic computation minimizes chance of such errors, in spite of many tedious manipulations required, and permits automatic checks of population totals and other figures at each stage.

46. For a general description of the operation of computers, see BERKELEY & WAINWRIGHT, *COMPUTERS, THEIR OPERATION AND APPLICATION* (1956); KOZMETSKY, *ELECTRONIC COMPUTERS AND MANAGEMENT CONTROL* (1956); CANNING, *ELECTRONIC DATA PROCESSING FOR BUSINESS AND INDUSTRY* (1956); GRABBE, RAMO & WOOLDRIDGE, *HANDBOOK OF AUTOMATION, COMPUTATION, AND CONTROL*, VOL. 2 (1958); STIBITZ & LARRIVER, *MATHEMATICS AND COMPUTERS* (1957).

47. Mathematically, this is the transportation problem of linear programming and has been solved exactly in many kinds of applications. CHURCHMAN, ACKOFF & ARNOFF, *INTRODUCTION TO OPERATIONS RESEARCH* 279-98 (1957); GARVIN, *INTRODUCTION TO LINEAR PROGRAMMING* 85-104 (1960).

cost). This procedure will now be described in detail, followed by an illustrative example.⁴⁸

The first step in this procedure is to feed the computer the data to which it will apply the formula, or "program." Since census data does not establish the location of individuals within each ED, all people are assumed to be located at the geographic center of their respective ED's. The centers of all the EDs within the unit to be districted are then located on a coordinate grid and the north-south, east-west coordinates of each ED center, along with its population, are fed into the computer.⁴⁹ This enables the computer to calculate the distance between any point and each of the ED centers, and in turn calculate the moment of inertia of the ED about any point. The number of LDs to be created, and their average population, must also be fed into the computer.

At this point it is necessary to make a set of initial guesses of the population centers of each LD (warehouse location), and then to feed the coordinates of those guesses into the computer. The computer assigns each ED (order) to an LD center in a way that minimizes the sum of the moments of inertia about the hypothesized centers for the entire unit being districted. A characteristic of the existing program requires exactly equal population in the LDs; therefore, the computer generally will assign parts of one or more EDs to different LDs.⁵⁰ To counteract this phenomenon, a supplementary computer program reunites split EDs so that the entire ED is assigned to the LD having the largest share of the ED's population. Based on this reassignment of EDs to LDs, the computer then calculates the population and moment of inertia of each LD and totals the moment of inertia of the entire unit districted.

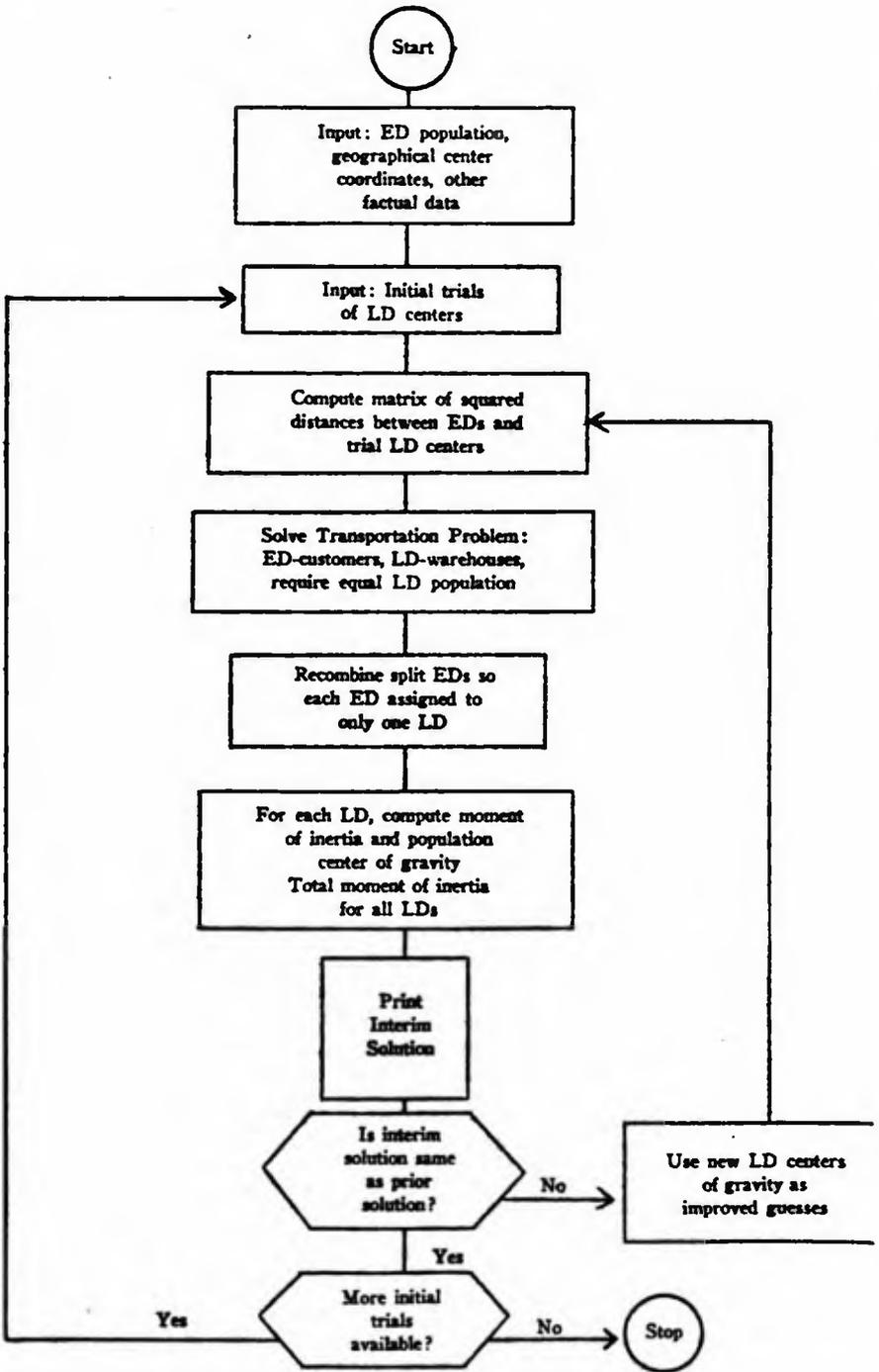
Since the assignment of split EDs to one LD will likely alter the population centers of the LDs affected, the computer is also directed to determine the actual LD population centers at this time. If the actual population centers of the LDs are different from the trial centers, the districting cannot be assumed the same as when districts are assimilated around the calculated centers. Consequently, the calculated centers are now used as new trial population centers for a new redistricting by the procedure just described. If this results in a different ED assignment to LDs, the actual population centers of these new LDs are again calculated and, if they are different from the ones previously calculated, the entire process is repeated. This procedure is continued until no change in ED assignment results from use of calculated as opposed to trial LD centers.

At this point, we have a series of possible districting plans with calculated population deviations and moments of inertia of each. Comparison of these

48. The following flow chart may be of some assistance in understanding this procedure. Except where indicated by arrows, the procedure flows vertically, step by step, down the chart. (See facing page, 303.)

49. See note 56 *infra*. In some areas the available coordinates of the ED centers will be so similar that it is possible to give only one set of coordinates, using the sum of the EDs' populations as the weight of the combined district.

50. It may be shown mathematically that the maximum number of EDs split will be one more than the number of LDs to be created. GARTIN, *op. cit. supra* note 47, at 87.



will allow rejection of those plans which are inferior to others in both categories. The plans remaining are then outlined on a map to check for contiguity, for which the present computer program does not account, and the non-contiguous ones are rejected.⁵¹ This entire process is then repeated using different initial guesses. There is no rule as to when trials should be stopped, but since additional trials can be promptly processed with high speed computers, a sufficient number should be used to obtain a good cross section of alternative districting plans.⁵²

This procedure, supplemented by the manual rejection of solutions having both higher population deviations and greater moments of inertia than other possibilities, will eventually produce a collection of possible plans, among which there is no formalized process for choosing. Some of these plans can probably be rejected intuitively as being especially bad as regards one of two criteria. Thus, the plan with the lowest moment of inertia may have a district deviating as much as fifteen or twenty per cent from the average district population.⁵³ There may be a few plans which cannot be rejected on this basis, however. Among these, a court or legislature could decide to make an *ad hoc* judgment as to which is most desirable. Alternatively, it could decide beforehand to apply the plan having the lowest moment of inertia within some minimum population deviation, say ten per cent.

We have applied the above computational procedure to develop districting proposals for two of Delaware's three counties.⁵⁴ Following present practice,

51. The computer program could also be modified to check for contiguity, though the one outlined here does not do so.

52. Since the moment of inertia formula will tend to center LDs in areas of high population densities, it is natural that one's first sets of initial guesses will correspond with those areas. It is necessary, however, to include later sets of initial guesses which place LD centers in other areas. In Figure 3, for example, the best districting resulted from initial guesses different from the population centers.

53. Several population criteria have been suggested. The one used here measures the maximum population deviation as a percentage of the mean district population. Thus, if the mean district population in a state is 10,000 while the population of individual districts ranges from 8,000 to 11,000, the maximum deviation is 2,000, or 20%.

A second measure of population equality is the ratio of the most populous district to the least populous district. In the above hypothetical example, then, the most populous district (11,000) is 1.38 times as large as the least populous district (8,000). A third measure, the so-called Dauer-Kelsay scale, is the smallest percentage of a state's population that could elect a majority of the legislative body in question. See Dauer & Kelsay, *Unrepresentative States*, 44 NAT'L MUNIC. REV. 571 (1955).

For a more extensive discussion of various mathematical measures of population equality, see Goldberg, *The Statistics of Malapportionment*, 72 YALE L.J. 90, 96-101 (1962).

54. The interest of the authors, an engineer and an operations research analyst, developed from studies on reapportionment by a Wilmington, Delaware, civic group, The Committee of 39. The group gathered historical statistics, general information on apportionment criteria in other states, and applicable census and election statistics which were used by the court, the plaintiffs and the defendants in *Sincock v. Duffy*, 215 F. Supp. 169 (D. Del. 1963). The Committee, represented by Mr. Bruce Stargatt, petitioned for recognition as a friend of the court in late January, 1963. The possibility of districting via

each county was dealt with separately, so that county lines would not be crossed by the districting. The current number of thirty-five legislators was maintained and apportioned among Delaware's three counties according to the "method of equal proportions," which is now used to apportion seats in the United States Congress among the states after each decennial census.⁵⁵ Figure 3 and the following table of data illustrate the best districting solution obtained for Sussex County using this computer procedure.⁵⁶ Sussex County is not a good example for demonstrating this formula's tendency to center districts around areas of high population densities, since it is predominantly rural, containing no towns of sufficient size to create significant contrasts in population density within the county. The EDs in this county are shown in Map A, in Figure 3. Approximately twenty sets of initial guesses as to LD centers were examined. The set of centers which ultimately resulted in the best districts are shown in Map B. Map C shows the computer program's original assignment of EDs to LDs. By using the actual centers of population of these districts, another allocation of population was developed as shown in Map D. This was actually the best assignment.⁵⁷ As Map E indicates, the third trial, based on the actual population centers of Map D's districts, was slightly worse. The fourth trial gave no further change. Note that the county moment of inertia was improved by seven per cent between Maps C and D.

None of the other 19 initial trials yielded better districting solutions, although this does not prove that no better solution exists. In Sussex County, the contiguous districting with the lowest moment of inertia also showed the least population deviation. Consequently, it was not necessary to choose between several good solutions.

computer occurred to the senior author and the proposal herein was suggested and mathematically developed by the junior author.

Attempts were made to district all three Delaware counties by hand using rules similar to those which might be applied by the computer. See note 25 *supra*. When the computer formulation was developed, both Kent and Sussex Counties were subjected to many trials and single recommended plans established, according to the chosen principles of representation. These were far better than any hand solutions. Preliminary trials to district New Castle County on the computer have been made, using census tracts in order to minimize initial complexity. Further trials will be necessary to establish the best set of alternative plans. The Delaware plaintiffs have shown interest in the possibilities of this formula, but have not yet chosen to introduce it into the pending court case.

55. Schmeckebier, *The Method of Equal Proportions*, 17 LAW & CONTEMP. PROB. 302 (1952); SCHMECKEBIER, CONGRESSIONAL APPORTIONMENT 70 (1941) (quoting from report of a Committee of the National Academy of Sciences); Huntington, *A Survey of Methods of Apportionment in Congress*, S. Doc. No. 304, 76th Cong., 3d Sess. (1940).

56. The unit of distance used in moment of inertia is dictated by the map scale from which coordinates were read. Ours was scaled 0.288 inches to the mile. Therefore, to convert our values to a (nain-miles)² moment of inertia, multiply by 12.1.

57. It should be pointed out that the computer-developed shape of districts is uneven due to borders of the EDs. If a smoother shape is desired, additional factors might be entered into the computer to penalize for deviations from a few major boundaries. This, of course, would further limit the achievable population equality. See note 25 *supra*.

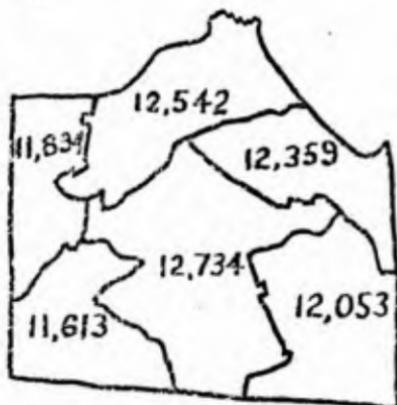
FIGURE 3
EXAMPLE OF DISTRICTING OF SUSSEX COUNTY



A



B



C



D



E

- A—Location of U.S. Census Enumeration Districts
- B—Set of initial guesses for the 6 legislative districts apportioned to Sussex
- C—First assignment of population to legislative districts based on guessed centers
Maximum Deviation: 5%
Moment of Inertia: 143,774
- D—Second trial — Improved assignment based on actual centers of first assignment (X's indicate towns of over 1000 population.)
Maximum Deviation: 1%
Moment of Inertia: 133,923
- E—Third trial: slightly worse results
Maximum Deviation: 2%
Moment of Inertia: 133,992
(Fourth trial—no further change)

DATA FOR FIGURE 3

	<i>Original Guessed Centers</i>	<i>Trial 1</i>	<i>Trial 2</i>	<i>Trial 3</i>
LD #1				
X*	4.94"	4.58"	4.84"	4.84"
Y	7.28	8.08	8.20	8.20
Population		12,542	12,323	12,323
LD #2				
X	2.06	1.73	1.83	1.90
Y	4.62	4.93	5.05	5.08
Population		11,894	12,276	12,123
LD #3				
X	8.38	8.42	8.54	8.54
Y	6.75	6.17	6.04	6.04
Population		12,359	12,131	12,131
LD #4				
X	9.62	8.52	8.52	8.52
Y	2.62	1.93	1.93	1.93
Population		12,053	12,053	12,053
LD #5				
X	6.31	5.41	5.29	5.29
Y	3.75	3.88	3.83	3.83
Population		12,734	12,070	12,070
LD #6				
X	2.59	2.41	2.38	2.31
Y	2.41	2.11	2.22	2.22
Population		11,613	12,342	12,495
County Moment of Inertia		143,773.8	133,923.4	133,992.2
Total Population		73,195	73,195	73,195
Avg. 12,199				
Highest		12,734 +4%	12,342 +1%	12,495 +2%
Lowest		11,613 -5%	12,053 -1%	12,053 -1%

*X is E-W map coordinates in inches. (Map scale: 0.288 inches to the mile.)

Y is N-S map coordinates in inches.

CONCLUSION

This paper has proposed an objective, mathematically-based procedure for districting which produces contiguous districts nearly equal in population and more "compact" than other present methods can provide. It utilizes existing computer programming techniques to locate a given number of districts within a given area, by combining smaller areas of known population in accordance with selected principles of representation. Two of these, population and contiguity, are self-explanatory and measurable. In addition, the procedure recommended in this paper introduces a quantitative measure of compactness which tends to minimize perimeter and locate districts around population centers. By

greatly reducing the number of choices that must be made, introduction of this third criteria assists the development of an impartial districting procedure. The proposed computer procedure will be of considerable usefulness to courts desiring to avoid partisan pressures and criticism when it must redistrict a state. Legislatures could also use it to avoid many compromises and delays. With the use of high-speed computers, good districting solutions may presently be calculated and chances for arithmetic error minimized.

The procedure as here reported is still in a state of development. The suggested program could be modified to accommodate principles in addition to contiguity, equal population, and compactness, if so desired. It can also be adapted to other problem situations, such as that of school districting in growing communities.⁵⁸ With sufficient effort, the computer program can probably be improved to produce "best" solutions which are not dependent on trial guesses as to LD population centers. Such a unique solution would have the least possible moment of inertia, given the prior assumptions. It might be useful in developing constitutional standards for apportioning and districting, although in itself it would not comprise a standard. Standards might be developed by first establishing certain principles of representation, among them compactness, which must be contained in any apportionment and districting, and then determining the constitutionally acceptable deviations from a quantitative norm for each principle. A "best" compactness solution could serve as a quantitative norm for the compactness principle. To make such standards a realistic alternative, we are working to create a computer program giving a "best" solution.⁵⁹ We urge others to do so as well. In the interim, the current proposal permits creation of superior districting proposals and a sound basis for comparison among these or other existing or proposed apportionment and districting plans.

58. The warehousing program, see note 47 *supra*, is particularly well adapted to adding a single warehouse (school) to an existing pattern, and determining orders (children) to be served from each location.

59. The authors have already formulated this particular problem statement mathematically as an integer programming problem. While the practical districting problem so formulated cannot now be solved, there is every reason to believe that efficient computer programs will be available to do so within one or two years.

For approaches to solving the analogous integer programming problem (the warehouse location problem) see Kuehn & Hamburger, *A Heuristic Program for Locating Warehouses*, 9 *MANAGEMENT SCIENCE* 643 (1963); BALINSKY & MILLS, *A WAREHOUSE PROBLEM* (1960); Baumol & Wolfe, *A Warehouse Location Problem*, 6 *OPERATIONS RESEARCH* 252 (1958); GOMORY, *AN ALGORITHM FOR INTEGER SOLUTIONS TO LINEAR PROBLEMS* (1958).

Mr. DONOHUE. Are there any questions?

Mr. MEADER. Mr. Chairman.

You do not take as a factor the areas of local government?

Dr. HESS. Only so far as these local boundaries delineate census enumeration districts or census tracts for population data.

Mr. WEAVER. The technique can keep units which are small enough to be a part of a district; for instance, a city which is a small fraction. However, as is shown in the appendix to the paper you have received, we say that it is necessary to have deviations of 2 to 1 or 3 to 1 in congressional districts if all county units are recognized. If you make that part of the bill, you automatically say that some districts will have deviations of 2 to 1 or 3 to 1.

Dr. HESS. I might point out that in our work with the Governor's Committee in New Castle County, one of the questions that they had to examine was whether or not to maintain the city limits of Wilmington.

The computer technique was able to handle it either way and, in fact, we did prepare districts for the committee observing Wilmington city limits; that is, having districts within Wilmington and failing to observe the city limits.

Mr. KASTENMEIER. Mr. Chairman.

I appreciate your work and I hope to examine it at more length.

I am interested, however, in your own views of the legislation before us in terms of political standards as well as mathematical.

Now, do you have any preference for any of the legislation that you have heard discussed or testified to during the hearings?

Mr. WEAVER. Only two of the bills seem to have mentioned any alternative to the districting as required in the bill.

I think, certainly, legislation should provide some alternative. One of the bills has a penalty whereby the State's congressional representation would be removed entirely, apparently, if they fail to meet districting standards. One of the bills has at large elections as an alternative. It seems to me there is also the Census Bureau as an alternative.

Some alternatives should be provided, and that is exactly the spot at which we think our technique might fit in, because it can supply the best set of districts, terms of compactness, contiguity and population equality. The best set of districts could take effect whenever the legislature does not properly redistrict itself according to other terms of your bill.

Mr. KASTENMEIER. Am I correct in assuming that with your own system you would prefer to see a standard of not more than 10-percent deviation permitted because if your system were used, why, the States would easily come within this; is that correct?

In other words, in terms of a permissible population deviation in legislation, would you prefer the least possible for the 10 percent rather than 15, 18, 20, or more?

Dr. HESS. I think we would have to speak as public citizens here rather than experts.

We are not political scientists; we feel we know something about the use of mathematical techniques and computers. I, frankly, have no opinion. I think any range of from 10 to 20 percent is satisfactory.

I do feel that one of the difficulties in these three principles is the fact that one of them is not measurable and this is the principle of compactness. Any two people can be stood up against the wall and you can observe that one is taller than another. You can observe that one district is contiguous or it is not. But there has been no acceptable means of saying that this district is more compact than that district.

One of the things that we have done in our Yale Law Journal paper is to propose a measure of compactness from the physical sciences. Once you have a measurement, you have a handle for doing a lot of manipulation mathematically or numerically which you could not do otherwise.

Mr. KASTENMEIER. Do you see any way of providing by law or statute with reference to your technique of measurement, of compactness or any other factor?

Mr. WEAVER. Yes. We have included at the end of our prepared statement a comment which says we would be glad to work with you on the exact phrasing of such a clause, which need merely say that districts of minimum compactness must be established if the other provisions of the bill are not carried out by, say, January 1 of the election year. This could be done at a computer center in any State, or outside the State; many State universities have such computers. (The statement could refer to the definition in the Yale Law Journal paper, without specifying the technique for developing ideal districts.)

Mr. KASTENMEIER. I appreciate your testimony. Thank you.

Mr. WEAVER. To add to what Dr. Hess has said, the technique could certainly create districts of well within the 10 percent so that a smaller restriction could be applied. That depends on how important you consider compactness as compared to population.

Mr. DONOHUE. If there are no further questions, we will declare the hearing closed.

Thank you very much.

(The following was supplied for the record:)

HOUSE OF REPRESENTATIVES,
Washington, D.C., June 23, 1964.

HON. EMMANUEL CELLER,
Cannon House Office Building,
Washington, D.C.

DEAR MANNIE: As you recall, you were kind enough to hold the record open on hearings on your bill, H.R. 2836, so that I might put in a statement regarding congressional district litigation in Michigan, and also insert communications received from Professor de Grazia and Professor Penniman.

Monday of this week, I had special orders and I discussed my bill, H.R. 11650, which I intend to offer as a substitute to your bill, H.R. 2836, at our committee meeting on Wednesday, June 24, and I believe that the material contained in my remarks on the floor of the House and colloquy with colleagues would be suitable exposition of the points I wish to make in our committee record that it could be included verbatim in the committee hearings. I, therefore request that the entire statement in the Congressional Record be printed as a part of our hearings on congressional district criteria.

Sincerely,

GEORGE MEADER.

CONGRESSIONAL DISTRICTS AND THE FEDERAL JUDICIARY

The SPEAKER pro tempore. Under previous order of the House, the gentleman from Michigan [Mr. Meader] is recognized for 60 minutes.

(Mr. Meader asked and was given permission to revise and extend his remarks, and include extraneous matter.)

Mr. MEADER. Mr. Speaker, I direct the attention of the House to a historic matter of surpassing importance involving the structure of our Government; namely the assertion by the Federal judiciary of authority in private litigation to determine the composition of legislative bodies, including the House of Representatives.

Mr. Speaker, when the decision in *Baker v. Carr*, 369 U.S. 186, was handed down by the U.S. Supreme Court on March 26, 1962, I recognized it as a radical departure from longstanding principles of separation of powers in our unique tripartite system of government and a dangerous and unhealthy intrusion by the judiciary into legislative processes. I discussed the subject at some length on the floor of the House on July 16, 1962, and my remarks appear on pages 13745-13754 of the Congressional Record of that date—Congressional Record, volume 108, part 10, page 13745. In those remarks, I referred to legislation pending before the House Judiciary Committee to establish criteria for congressional districts. That measure is still pending before the committee and the chairman has scheduled an executive meeting of the subcommittee for Wednesday, June 24, 1964, to consider that legislation.

Because of my firm conviction that the courts should not inject themselves between the people and their representatives in legislative bodies, I sought to devise legislation which could be offered as a substitute for the Celler bill establishing the criteria for congressional districts and on Wednesday, June 17, I introduced in the House of Representatives, H.R. 11650, to insure that congressional districts meet certain standards, and for other purposes. The text of that measure is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as 'The Congressional Districting Act.'

"SEC. 2. (a) Every State shall establish, for the Ninetieth and for each subsequent Congress, a number of congressional districts equal to the number of Representatives apportioned to such State. Each such district—

"(1) shall elect one Representative,

"(2) shall be composed of a compact and contiguous territory,

"(3) shall have boundaries which to the extent practicable coincide with boundaries of local units of government, and

"(4) shall have contained in the preceding decennial census a number of persons not more than 120 per centum nor less than 80 per centum of the number of persons in the State divided by the number of Representatives to which the State is entitled.

"(b) (1) Section 22 of the Act entitled 'An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress', approved June 18, 1929 (2 U.S.C. 2a (c)), is repealed.

"(2) Paragraph (1) of this subsection shall not take effect until noon on January 3, 1967.

"SEC. 3. (a) The House of Representatives shall conduct investigations with respect to the boundaries of congressional districts. If the House finds that the congressional districts of any State do not meet the requirements of section 2(a), the House shall declare such finding in a House resolution. The Clerk of the House shall notify the Governor of such State of the adoption of such resolution.

"(b) If such State fails, within one hundred and eighty days after the passage of a resolution under section 3(a), to change the boundaries of such districts so that they conform to the requirements of section 2(a), the House, by House resolution, shall prescribe the boundaries of such districts so that they conform to such requirements. A House resolution changing the boundaries of a congressional district in accordance with this subsection shall have the full force and effect of law with respect to elections to the first Congress beginning more than eight months after its approval.

"SEC. 4j. (a) Clause 12 of rule XI of the Rules of the House of Representatives relating to matters within the jurisdiction of the Committee on the Judiciary is amended by adding at the end thereof the following:

"(t) INVESTIGATIONS AND RESOLUTIONS UNDER THE CONGRESSIONAL DISTRICTING ACT.—The committee shall conduct investigations pursuant to section 3(a) of the Congressional Districting Act. In conducting such investigations, the committee shall give notice to and hear all interested parties, and shall determine whether the districts being investigated conform to the requirements of section

2(a) of the Congressional Districting Act. If the committee finds that such districts do not so conform, it shall report such findings to the House, and shall report to the House a House resolution stating that the House finds that the boundaries of such districts do not conform to section 2(a) of the Congressional Districting Act. If the House approves such resolution and if the committee finds that the State has failed within one hundred and eighty days after passage of such resolution to change the boundaries of its congressional districts to conform to the requirements of section 2(a) of the Congressional Districting Act, the committee shall, after holding such additional hearings as it deems necessary, report to the House a resolution prescribing the boundaries of such districts in conformity with such requirements.'

"(h) This section is enacted as an exercise of the rulemaking power of the House of Representatives with full recognition of the constitutional right of the House of Representatives to change the rule amended by this section at any time, in the same manner, and to the same extent as in the case of any other rule of the House of Representatives.

"Sec. 5. (a) Chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1361. Congressional districts

"A district court shall not have jurisdiction of any action to enjoin, suspend, or modify the operation of any law or resolution respecting the boundaries of any district from which Representatives are elected to the Congress of the United States.'

"(h) The table of contents of chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following:

"'1361. Congressional districts.'

"Sec. 6. (a) Chapter 81 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 2359. Exception to appellate jurisdiction in cases involving congressional districts

"The Supreme Court of the United States shall not have appellate jurisdiction of any action to enjoin, suspend, or modify the operation of any law or resolution respecting the boundaries of any district from which Representatives are elected to the Congress of the United States.'

"(h) The table of contents of chapter 81 of title 28, United States Code, is amended by adding at the end hereof the following:

"'1259. Exception to appellate jurisdiction in cases involving congressional districts.'"

It was my belief that this measure was of the utmost importance to every Member of the House of Representatives and, accordingly, under date of Thursday, June 18, I sent to each of my colleagues in the House a letter advising them that I would discuss this subject on Monday, June 22, 1964, on a special order on the floor of the House. The text of the letter is as follows:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 18, 1964.

DEAR COLLEAGUE: The U.S. Supreme Court and lower Federal courts have asserted dominion over Congress and State legislatures by undertaking to determine the composition of legislative bodies.

This unfounded assumption of authority by the Federal judiciary strains the equilibrium which holds together our unique tripartite system of government; disdains the comity through which alone the autonomous separate branches of government can function smoothly and effectively in concord; and poses the most serious threat to self-government by the people through elected representatives in the 175-year history of our Republic.

In *Baker v. Carr*, 369 U.S. 186, decided March 26, 1962, and *Westbury v. Sanders*, 376 U.S. 1, decided February 17, 1964, the Supreme Court invaded the "political thicket." A rash of "citizens" suits obviously well prepared and well financed, erupted overnight. The unprepared, unorganized common people were caught unawares and—States now have litigation pending which threatens to undermine the whole electoral process and attacks popular determination of areas from which legislative representatives are chosen.

What to do about it? I have prepared a bill (H.R. 11650) which will:

1. Establish criteria for congressional districts.
2. Allow State legislatures a reasonable time after apportionment of Representatives among the several States after each decennial census to delineate congressional district boundaries according to those criteria.
3. Provide a mechanism for review of State legislative action in congressional districting to determine whether the statutory criteria have been applied correctly and to establish congressional district boundaries by congressional action in those States where State legislative action has violated statutory criteria.
4. Withdraw jurisdiction of lower Federal courts and the appellate jurisdiction of the U.S. Supreme Court in all legislative districting matters.

This subject will be discussed at length on the floor of the House on Monday, June 22.

It is my hope that other Members interested in this subject (and all 435 should be) will be present to the end that we may discuss my proposal and develop support for its passage. We, in Congress, can put an end to the intrusion of the judiciary into legislative processes.

Sincerely,

GEORGE MEADER.

Mr. Speaker, my own State of Michigan has been sorely beset by litigation in Federal district court not only with respect to its congressional districts, but also districts of the State senate. In my remarks in July of 1962, referring to the above, I set forth some of the pleadings in the case of Calkins against Hare, challenging Michigan's congressional districts. They appear on page 13746 of the Congressional Record of July 16, 1962. The proceedings at that time resulted in the denial of a motion for a temporary injunction requiring all Michigan Congressmen to run at large in the 1962 election, and no further action was taken in the matter which lay dormant until this spring.

After the decision of Wesberry against Sanders on February 17, 1964, the plaintiffs in Calkins against Hare, moved to amend their pleadings to attack the congressional districting act passed by the Michigan Legislature in 1963, and after the attorney for Alvin M. Bentley, intervenor in the case, had been afforded an opportunity to file a brief opposing the relief requested the three-judge court on Good Friday in a 2-to-1 decision held the 1963 Michigan congressional districting act unconstitutional and ordered that unless the legislature enacted another congressional districting act, Michigan Congressmen would run at large. The text of the decree and the decisions of the three-judge court are as follows:

U.S. DISTRICT COURT, EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION—
DONALD A. CALKINS AND KARL J. JACOBS, PLAINTIFFS v. JAMES M. HARE, SECRETARY OF STATE, FOR THE STATE OF MICHIGAN, DEFENDANT; ALVIN M. BENTLEY, INTERVENOR

(Civil action No. 22720)

Decree: At a session of said court, held in the courthouse, city of Port Huron, Mich., on March 26, 1964.

Present: Hon. Clifford O'Sullivan, circuit judge; Hon. Talbot Smith, district judge; and Hon. Stephen J. Roth, district judge.

This cause came on for trial on March 23, 1964, at which time all parties were present by counsel and the court having considered the pleadings, the stipulations, and the arguments of counsel, and, the court being of the unanimous view that Act 249 of Public Acts of 1963 is unconstitutional, and, a majority of the court being of the view that a decree should now be entered in the terms as hereinafter set forth, it is therefore ordered adjudged, and decreed by the court:

First: The court hereby decrees that the present apportionment of congressional districts under Act 249 of Public Acts of 1963, is unconstitutional and therefore the said Act 249 is void and invalid in its application:

Second: That in conducting primaries for the nomination of candidates for, and elections for the election of, Members of Congress from Michigan, the defendant Hare, individually and in his official representative capacity, his respective agents, officers, and employees, are hereby enjoined and restrained from enforcing, applying or following the said Act 249 of the Public Acts of 1963:

Third: Pending enactment by the State of Michigan of substitute legislation in the place of said Act 249 of the Public Acts of 1963, all Members of Congress

for the State of Michigan shall be nominated and elected from the State at large:

Judge O'Sullivan concurs in the view that Act 249, Public Acts of 1963, is unconstitutional but dissents from the entry of a decree at this time with the remedies provided in paragraphs second and third for the reasons set forth in an opinion filed contemporaneously herewith.

Fourth: The court retains jurisdiction of the cause for such other and further orders as may be required.

The opinions of the court will follow in due course.

TALBOT SMITH,
U.S. District Judge.
STEPHEN J. ROY,
U.S. District Judge.

U.S. DISTRICT COURT, EASTERN DIVISION OF MICHIGAN, SOUTHERN DIVISION—DONALD A. CALKINS AND KARL J. JACOBS, PLAINTIFFS, v. JAMES M. HARE, SECRETARY OF STATE, FOR THE STATE OF MICHIGAN, DEFENDANT; AND ALVIN M. BENTLEY, INTERVENING DEFENDANT

(Civil action No. 22720)

The plaintiffs have challenged the constitutionality of the congressional districting in this State.

The action had been started on June 29, 1962, plaintiffs alleging in their original bill of complaint that the congressional districts then established (by Act 20, P.A. 1931, as amended by Act 64, P.A. 1951) were unconstitutional. A preliminary injunction was denied by this court on July 10, 1962. In June 1963, effective September 6, 1963, the Michigan Legislature enacted the congressional districting bill now under challenge, Act 249, P.A. 1963. Following the decision in the case of *Wesberry v. Sanders*, 32 USL Week, 4142 (U.S. Feb. 17, 1964), plaintiffs, upon leave granted, amended their complaint, now attacking the constitutionality of the most recent Act, No. 249, P.A. 1963, in the light of *Wesberry*.

A hearing was had on March 2, 1964, upon the motion for preliminary injunction. Plaintiffs based their case upon the population figures, from the 1960 census, for the various districts, pointing out the various discrepancies thus disclosed, and asserting, upon the authority of *Wesberry*, that constitutional requirements had not been met. The attorney general, appearing for defendant secretary of state, conceded that the criterion of "one man, one vote" had been, prima facie, violated and could offer no explanation of the reasons for the population variances shown "without an examination of the legislative history" of the act. The intervening defendant was represented by counsel whose relationship to the act under consideration was of substantial aid to the court, he having (in 1962) "entered full-time public service, when one of my objectives was to achieve the redistricting of Michigan on a basis as nearly to population as practicable." (Tr. 64.) His explanation of the criterion employed by the legislature in drawing the district lines was illuminating:

"But so far as the legislature was aware when it took action in 1963—and it was one of the most difficult accomplishments of that legislative session, the objective of equal population was satisfied if it hit a 15-percent standard, and with the exception of the 15th district and the Upper Peninsula district and ignoring some fractional deviations—there are some that go a fraction over 15 percent—they came within that standard for all but two of the districts of the State, and they hit an average deviation of less than 10 percent."

It was also suggested to the court that a proper element of "practicability" was consideration of the legislative problem of just what kind of districting the legislature would accept, in short, what bill the votes could be obtained for.

At this juncture it was the opinion of a majority of the court that a prima facie showing of unconstitutionality had been made, that the motion for preliminary injunction should be denied, and that the matter be set down for hearing on the merits on March 23. The parties were cautioned by the court to consider the matters of proof upon the merits—"it will be for them to decide whether they wish to make any factual showing of the considerations that went into the apportionment as it was made for the purpose of asserting that the apportionment was done within reasonable and practicable limits obedient to the Constitution of the United States." (Tr. 92.)

We have now held the hearing on the merits. No testimony was tendered by any party. The attorney general stated to the court that no legislative history of the challenged act was available. The intervening defendant argued the contents of his brief. The plaintiffs did likewise. Upon the showing thus made the court considered the matter as submitted.

The plaintiffs, then, have challenged the constitutionality of the congressional districting in the State.¹ They point out that certain districts in the Detroit area alone differ in population by over a hundred thousand,² that there is a variation from the smallest to the largest district in the State of almost 200,000,³ and that the Wayne County (Detroit area) districts average 444,000 persons, whereas the out-of-State average is approximately 397,000. Even if apportionment were based upon some factor other than population it would be impossible, in our judgment, to justify such variations in the Wayne County area alone. Thus, geographically, there are no intervening mountain ranges between districts, as in Colorado, no rivers or plains. Yet some districts in the county of Wayne (13th and 15th) have the greatest debasement of vote values found anywhere in the State, while another district in the county, a suburban area adjacent to the 13th; namely, the 14th, has the third-greatest enhancement of voting power in the State. Thus the fact of residence in the 15th District means that one's vote is diluted more than in any other district in the State, while a few miles away, in the 14th District, one's vote is weighted higher than in any of the other areas in the State, save two.⁴

That a constitutional right is involved is clear. Article I, section 2 of the U.S. Constitution, "that Representatives be chosen 'by the people of the several States' means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's."⁵ The intervening defendant professes to find in *Wesberry* a "strange inconsistency." If the clause above quoted, we are told, "means what it says, then raw population statistics are irrelevant" and "voting population" becomes relevant. [All emphasis in original.] To make his point, intervening defendant cites the vote for secretary of state in Wayne County in 1962. Just why this official's vote was selected, among the host of others running, including a Governor, does not appear. Or why registered voters were not used, or persons over 21 eligible to vote. Each of such latter categories might find theoretical justification. But we are a district court. We take *Wesberry* as our precedent. It is apparent from the majority opinion that this issue had consideration in the Supreme Court in *Wesberry*, since Justice Harlan's dissenting opinion (n. 4) raises this precise question, "Is the number of voters or the number of inhabitants controlling?" The answer, in our judgment, is found again and again in the *Wesberry* opinion, from the opening paragraph, referring to the 1960 census by districts and averages and referring to "this inequality of population," to the closing paragraph which speaks of "equal representation for equal numbers of people." We find no inconsistency in the opinion.

In our consideration of this case, we start with the principle that the right of franchise is "a fundamental political right, because preservative of all rights."⁶ This being the case we do not equate the presumption of constitutionality in this situation to that employed in the general police power cases, involving the regulation of health or morals, or the fixing of guidelines for a State's experiments in matters of social welfare or economic controls. In these cases the States are properly given a wide latitude.⁷ But where we are concerned with a basic constitutional right our requirements are infinitely more rigorous. Here the cloak of constitutionality is not loosely worn. There is little elbow room for freedom of movement. The fit must be precise. We do not experiment with freedom of speech, freedom of worship or freedom to vote. These are among the basic civil rights of man. Of *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942).

Plaintiff here has established that gross population inequities exist in the congressional districting of this State. To us it is inexplicable, for example, that

¹ Act 249, P.A. 1963, Mich. Stat. Ann. Cum. Sup. sec. 422, et seq.

² Fourteenth District, 372,624; 13th, 474,133.

³ Fifteenth District, 494,068; 11th district, 305,984.

⁴ The index of representation is the measure of a district's representation, relative to the ideal. It is determined by dividing the average population per district (411,790), by the actual population of the district under consideration. Thus the 15th district, with a population of 494,068, has an index of representation of 411,790 divided by 494,068, or 83.35 percent. The 14th district, with a population of 372,624 has an index of representation of 110.51 percent.

⁵ *Wesberry v. Sanders*, 32 U.S.L. Week. 4142, 4143 (U.S. Feb. 17, 1964).

⁶ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

⁷ E.g., *Railway Expressway Agency v. New York*, 336 U.S. 106 (1949).

there should be a difference of almost a hundred thousand people between the adjacent 13th and 14th Districts in Detroit. At this point the burden is upon the State to come forward with some rational explanation for what has been done.⁸ In reply we are told by the attorney general that he "has been unable to find any committee reports or legislative debates which reveal the specific causes or reasons which led to the formation of the congressional districts provided in Act 249 and must forgo any factual presentation as to this aspect of the matter."

The intervening defendant is but little more helpful. He argues principally the questions raised in footnote 4 to the dissenting opinion of Mr. Justice Harlan in *Wesberry*. However persuasive these considerations may have been in conference in the Supreme Court prior to the Court's vote on the case, they are of little help to a district court that is attempting to apply the *Wesberry* decision, not to rehear it.

Two arguments are suggested by intervening defendant in addition to Mr. Justice Harlan's questions. He states, without documentation or proof of any kind, that the legislature took into account population trends in creating certain districts, and asks if the legislature were not "entitled to anticipate a further drop" in the population of some districts and further growth in others. The difficulty with the argument made is that it is totally devoid of any tie to the realities of the case at bar. No proofs are before us, merely questions and conclusions, all of which are disputed or denied by plaintiffs. Any districting, however disparate with respect to population, may conceivably be justified by saying that the legislature expected the area to either shrink or to grow. If such a suggestion without more, suffices to justify gross population disparities, then an easy answer to a constitutional denial has indeed been found. We do not intimate that population trends either are or are not significant and usable. But the difficulty in respect of their use is that a basic constitutional right may be lost to a speculative future event, and unequal trade at best and at worst a cynical deprivation. The proof of a "trend" must be compelling, immediate, and inescapable to justify disfranchisement. We find here, on the other hand, no proofs whatever. As a matter of fact the point is not raised in the intervening defendant's answer.

The intervening defendant urges also that in construing *Wesberry's* "as merely as practicable" language, we should take into account that "if it appears to the court that the "fundamental goal" of the legislature and the Governor in the enactment of an apportionment statute was "equal representation for equal numbers of people," then the courts should not substitute their judgment for that of these elected officials. What may seem clearly practicable to a 3-judge court, or an 8-judge court, or a 9-judge court may not be realistically practicable for 144 elected representatives of 8 million people." (Brief of intervening defendant, p. 15.) The point here, as made abundantly clear upon oral argument, is that if you can't get the votes for equal districts, you have done the best you can and the courts should stay out of it. This is a pre-*Baker v. Carr*,⁹ indeed pre-*Brown v. Board of Education*,¹⁰ argument. It is scif-answering.

Finally, it is urged to us that despite unexplained and apparently unexplainable variations between districts of 10,000, 50,000, and even a 100,000,¹¹ there

⁸ *Mann v. Davis* (E.D. Va. 1962), 213 F. Supp. 577, 584: "Plaintiffs here proved the inequity of the allotment of representatives on the basis of population. Thereupon the burden to adduce evidence of the presence of other factors which might explain this disproportion passed to the defendants. But none was forthcoming, if indeed it was available."

See also, *Maryland Citizens Committee for Fair Congressional Redistricting v. Tawes* (D. Md. 1964), 226 F. Supp. 80, 81: "In our view the burden rests initially on the plaintiffs to show unconstitutionality, but when the mathematical imbalance between districts is of sufficient magnitude the burden shifts to the defendants to justify the disparity. Where the vote of a citizen in one district counts for significantly less than a vote in another district, as is manifestly now the case in Maryland, the disproportion rebuts the presumption of the constitutionality of the statute and requires the State of show that there is a rational basis for the disproportion."

⁹ *Cf., Bates v. Little Rock*, 361 U.S. 516 (1960): "Where there is a significant encroachment upon personal liberty, the State must prevail only upon showing a subordinating interest which is compelling."

¹⁰ 369 U.S. 186, 208 (1962).

¹¹ 347 U.S. 483 (1954).

¹² E.g., 15th District, 494,068; 11th District, 305,984. The intervening defendant explains the large 15th District figure by, in part, stating that an error in tabulating had included in the 15th the city of Southgate, with a population of 29,404 persons. The error remains uncorrected at this time. As to the 11th District, the intervening defendant points out in a "practicability" argument, that it comprises the entire Upper Peninsula of Michigan, and only this area. Yet for some three decades the old 11th Congressional District (even before the Mackinac Bridge) spanned the straits and included lands on both sides of it. Impracticability of including land in the Lower Peninsula is obviously not the answer.

is, after all, an "average departure" of only 9.2 percent from equality. We do not propose to be drawn into a sterile controversy over averages and percentages, whether 9 percent, 15 percent, or other. We do not measure constitutional rights in these terms. They set up wholly false standards. That the average man gets due process in our courts does not justify railroading some luckless scoundrel every now and then. Nor is it an answer to a charge of unconstitutional disfranchisement that only 10,000 people are deprived of their right to vote, this being but a small percentage of the entire voting population. These 10,000 have a right to vote equally with others, no matter what percentage of the total they comprise. We take this to be as clear as the proposition that none of our people can be denied their free right of worship no matter how small the sect, and that none of our people shall be deprived of their right of free speech, no matter how obnoxious to most of us their doctrines.

The short of the matter is that a citizen can either vote equally with his peers or he cannot. If he cannot, and we find that he cannot with respect to congressional elections in Michigan, his constitutional rights have been abridged. The statute here complained of is unconstitutional.

The constitutional guideline may be simply stated: the legislature may not "draw the lines of congressional districts in such a way as to give some voters a greater voice in choosing a Congressman than others."¹² A man's vote may not be taken from him. It may not be diluted or debased, nor, on the other hand, magnified nor enhanced. Our Constitution's "plain objective" is that of making "equal representation for equal numbers of people the fundamental goal for the House of Representatives."¹³ One factor and one alone is controlling: the factor of population.¹⁴ It is true that the Wesberry court speaks of one vote being "as nearly as practicable" worth that of another, but we do not see in these words an escape hatch for the reluctant. Nor in the caveat that the weight of votes need not be mathematically precise. What is meant here is merely that the ideal district lines enclosing mathematically equal areas of population may make minor departures here and there from such ideal, in accordance with the needs of the situation, and without "unnecessarily" (Wesberry, p. 16) abridging the people's rights. But these are minor concessions to practicability, the avoidance of ideal mathematical precision, merely. They are the application in this field of the well-known de minimis doctrine. Should the concessions made result in substantial (not minimal) and unnecessary inequalities between the districts, the lines of unconstitutionality will have been crossed. This concept of equality, which some profess to find so puzzling, is not an alien doctrine, newly imported to our shores. Long before Wesberry, we knew of the doctrines of equal rights and opportunities, of equal treatment in our courts, and of equal schooling for our children. We need not exhaust the litany. If there is one dominant social and political belief held by all our people, it is that we are both free and equal. Its implementation with respect to voting rights should present no insurmountable obstacles to those minded to pursue it.

The matter of remedy remains. It is urged to us that it is now too late for remedial action by the legislature in time for the forthcoming congressional elections and that our citizens must rest with their disfranchisement until the elections in 1966, a period of over 2 years. This we cannot accept.

Of course, as Judge Brown of the fifth circuit held for the court in *Bush v. Martin* ((S.D. Tex. 1963), 224 F. Supp. 499, aff'd and remanded, per curiam, sub. nom.) *Martin et al. v. Bush*, 32 U.S.L. Week 3303 (U.S. Mar. 2, 1964), "the easy way out is to take no action or formally defer action. But this court no less than the Supreme Court of the United States is charged with serious obligations under article III of the Constitution and under the implementing statutes of Congress to afford to litigants appropriate relief in vindication of constitutional and civil rights. We must, therefore, balance the relative advantages, disadvantages, the relative injuries to the parties, and perhaps even more so to the whole State" (224 F. Supp. at 513).

Upon balance, therefore, we have a deprivation of the constitutional rights of thousands of our people, remedial by setting up districts of equal population. As against these interests, it is urged to us that the matter is one of such extreme complexity that the legislature either cannot or will not act without delay, thus forcing the State into undesirable elections at large.

¹² Wesberry, supra, p. 13.

¹³ Wesberry, supra, p. 17.

¹⁴ "It was population which was to be the basis of the House of Representatives." Wesberry, supra, p. 7.

The need for and propriety of immediate relief is evident when consideration is given to the obvious advantage (1) to the people of the State, whose interests are our primary concern, and who have a right to expect stability and continuity in the districts in which they reside, and in their representation in the Congress; (2) to the incumbent Congressmen who are entitled to have a determination of their districts and a designation of the people they are expected to service; and (3) to those persons who may wish to become candidates for the office of Congressman, who should not be exposed to imminent prospective changes in district lines and constituencies.

It is true, of course, that the legislature may refuse or neglect to amend the now-specified dates for certain steps in the electoral process; it may refuse or neglect to reapportion in accordance with the Constitution; or, having done so, it may refuse or neglect to give such reapportionment act the immediate effect it should have in order to insure to our people the basic rights involved and avoid an election at large. We do not assume that any of these refusals or neglects will take place, preferring, rather, to assume that the legislature will act with alacrity once its constitutional duty is made clear to it. But should, regrettably, the legislature so fail the people, our duty becomes the greater, not the lesser. Under such circumstances, the "vindication of constitutional and civil rights," which it is our duty to sustain, can be accomplished only through the process of election at large, a procedure the choice of which will rest with the elected representatives of the people.

We do not read the per curiam opinion in *Martin v. Bush*, supra, as a nationwide directive to the district courts to leave things be. The district court opinion in *Martin* pointed out that under Texas law, reapportionment must be accomplished by February 3, 1964. Yet the case in the Supreme Court was not reached and decided until a month after February 3, 1964; namely, until March 2, 1964. We do not see how the Supreme Court could, as it put the matter, "in the light of the present circumstances," have done other than remand with the instructions embodied in it. In our case, however, there is ample time to act, should the legislature be so minded, as we believe they should be and are.

The constitutional deprivation is clear and the legislative duty is manifest.

TALBOT SMITH,
U.S. District Judge.
STEPHEN J. ROTH,
U.S. District Judge.

Dated March 27, 1964, Detroit, Mich.

U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION—DONALD A. CALKINS and KARL J. JACOBS, PLAINTIFFS, v. JAMES M. HARE, SECRETARY OF STATE FOR THE STATE OF MICHIGAN, DEFENDANT, and ALVIN M. BENTLEY, INTERVENING DEFENDANT

(Civil action No. 22,720)

O'Sullivan, circuit judge, concurring in part.

I concur in the view of my brothers of the majority that, in the light of *Wesberry v. Sanders* 376 U.S. 1, act 249 of the Public Acts of Michigan, session of 1963, violates article 1, section 2 of the Constitution of the United States. It will be sufficient for me now to say that I consider that the *Wesberry* case commands such a holding.

I cannot, however, join my brothers in the remedy they choose to implement our holding. Unable to persuade them to my position, I feel I should speak separately. I would order the Michigan Legislature to reapportion, but would allow it adequate time in which to do so. Even though the pressure of time denies me opportunity for careful and contemplative study and better composition, I am constrained to now say why I do not join my brothers in the remedy they decree. In my view, the command they place upon the Legislature of Michigan and the election officials of Michigan is needlessly and dangerously precipitate.

The decree they propose impresses me as evidencing undue haste to place heavy burdens upon a branch of Michigan's government that is entitled to the respect we would like to have accorded to us. As a court of equity we are not expected to, nor should we, be vindictive in the relief that we accord to litigants.

This action was originally commenced on June 29, 1962. We were asked to strike down the then Michigan congressional apportionment statute, and to issue commands not unlike what my brethren have now decreed here. Petitioners' then request for an injunction was, however, closer to imminent primary election dates than is the situation now before us. We refused to act without a longer time to consider the matter. The 1962 congressional elections then went ahead. Recognizing that a charge of unconstitutionality had been lodged against the then existing Congressional Apportionment Act, and aware of *Baker v. Carr*, 369 U.S. 188, the Michigan Legislature set about, with study, legislative deliberation and partisan contesting to formulate a new apportionment of congressional districts. This was accomplished on June 13, 1963, by adoption of Act 249, now under attack.

There has been no showing that in considering and adopting this act, the Michigan Legislature was flouting law already announced or proceeding otherwise than within the then known "guidelines" as furnished by *Baker v. Carr*. It appears that except for making Michigan's Upper Peninsula a single congressional district and some mathematical errors in Wayne County, whatever departures there are in Act 249 from strict mathematical equality are within the limits then thought to be permissible by the American Political Science Association. The act thus constructed was promulgated on June 13, 1963. No attempt was then made to revive this litigation to charge that the new 1963 act was unconstitutional. This case remained dormant from July 10, 1962, until the *Wesberry v. Sanders* decision came down from the U.S. Supreme Court on February 17, 1964. On March 2, 1964, the plaintiffs here were given leave to amend their complaint to attack the 1963 act in the light of *Wesberry*. This Court shortened the time ordinarily allowed to bring a cause to issue and trial and heard this case on March 23, 1964.

My brothers would now issue a mandatory injunction under which the 110 members of the Michigan House of Representatives and the 34 members of the Michigan Senate would have to (notwithstanding whatever other important problems of State government now occupy their time and abilities), proceed forthwith to construct a plan of apportionment suitable to us "or else." The "or else" is an election at large. We, however, furnish them no "guidelines"—a now much-used word in contemporary judicial literature. We tell them only that they must insure that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's."¹ A search for just what is "as nearly as is practicable" is presently taxing the minds of judges and professional political scientists.² Neither of the plaintiffs, political science professors, nor their knowledgeable counsel, have offered any guidelines that we could, through our decree, pass on to the nonprofessionals who make up our legislature. Thus, we hand them no small task to be accomplished, against an uncertain deadline.³ This they must do, lest we apply the lash of our judicial whip. My respect for the men who made up our State legislature forbids my placing them under such an interdiction without giving them an adequate opportunity for orderly and deliberative legislative procedure. It is unreal to expect sound legislation from a legislature thus proceeding in *terrorem*.

Becoming restraint has always marked equity's employment of its extraordinary writs. There is nothing about the facts of this case that should, in my view, cast us in the role of avenging angels. The vice which we now find in act 249 is actually much less than what has been traditional in the great majority of the States of the Union in the many years that comprise the political history of Michigan⁴ and the United States.⁵ We now find errors in the practices

¹ Literal, exact, and possible quick conformance to the suggested formula could be accomplished with the help of a staff of surveyors and mathematicians. Nineteen districts of various sizes and shapes could be outlined so as to have 411,790 people contained within each district. All agree, however, that such a performance would not be practicable or desirable.

² Distinguished members of the Supreme Court of Michigan, with becoming deference, await the arrival of "guidelines" to help them resolve a somewhat allied problem. In *Wesberry* itself, the supreme court refrained from a definition of its own words, "as nearly as practicable."

³ We seem to have no exact information of when the legislature must complete its work. The Secretary of State's answer to the application for a preliminary injunction says that the earliest date on which he may give notice for the congressional primary is May 5, next, and that he may defer such notice to June 5, 1964. We assume, too, that by hasty revision of Michigan's election laws some further time might be provided.

⁴ Michigan's apportionment during the time that Congress required equality of population in congressional districts contained larger departures than we deal with here.

⁵ See appendix, *Wesberry* against *Sanders*.

of such history. This fact, however, does not, in my view, compel us to command almost instant action by the complex machinery of a State government lest the setting of tomorrow's sun leave unrepaired even one small error. I would be ill at ease in such an enterprise.

We should never withhold our writs when serious damage would flow from such withholding, nor should we hesitate to command instant obedience when public good or private calls for it. But such is not the case before us. The malapportionments that were involved in the cases we follow, *Wesberry v. Sanders* and *Martin v. Bush*, were glaring in comparison to the act we now strike down.⁶ Taking into account the imbalance that resulted from Michigan's Upper Peninsula being given one Congressman and mathematical errors in Wayne County, the maximum disparity between the extremes under the act before us is 1.6 to 1. The average disparity runs about 1.092 to 1. I cannot believe that toleration of this disparity for a reasonable time would be a wrong commensurable within the burdens that the majority's writ would place on the Michigan Legislature. Likewise, the immeasurable wrong to the voters of the entire State which would follow an order that the coming elections be at large, far outweighs quixotic and dramatic vindication of the hypothetical voter whose vote might be diluted to the extent of the above ratios.⁷

New definitions and new guidelines have put the Federal courts into position of unprecedented power over State legislatures. The respect that we owe to our coequals in the grand scheme of our Government suggests avoiding unseemly displays of power or the flexing of our judicial muscles.

The landmark case of *Baker v. Carr* began its journey in the Federal courts sometime prior to July 31, 1959. Since then it has been considered in decisions reported at 175 F. Supp. 649 (July 31, 1959); 179 F. Supp. 824 (Dec. 21, 1959); on the Supreme Court level as *Baker v. Carr*, 369 U.S. 186 (Mar. 26, 1962); and on remand at 206 F. Supp. 341 (Mar. 26, 1962); and on remand at 206 F. Supp. 341 (June 22, 1962); and 222 F. Supp. 684 (Oct. 10, 1963). As of the date of the last decision, October 10, 1963, an acceptable reapportionment of the Tennessee Legislature had not been accomplished. But no elections at large have been held in Tennessee.

Baker v. Carr was first argued in the Supreme Court on April 19, 1961, and was set for reargument on October 9, 1961. On March 26, 1962, the Supreme Court spoke its views in some six separate opinions. *Scholle v. Hare*, 360 Mich. 1, began its journey in the Michigan courts sometime prior to its first decision, expressed in five separate opinions on June 6, 1960. Upon remand, it was decided in July 1962, through six separate opinions by the members of the court. *Scholle v. Hare*, 367 Mich. 176. It still pending in the U.S. Supreme Court. *Wesberry* was first reported as *Wesberry v. Vandiver*, 206 F. Supp. 276, on June 20, 1962. It was reversed by the U.S. Supreme Court just short of 2 years later. *Bush v. Martin*, 224 F. Supp. 499 (affirmed by the Supreme Court on March 2, 1964) decided October 19, 1963, gave the Texas Legislature until February 3, 1964, to reapportion. Such order was stayed, pending appeal, by Mr. Justice Hugo Black, and such stay continues in force. At this writing, we do not know what the Texas district court will ultimately do.

Thus are exposed the complex questions of apportionment and the time taken by learned judges to come near to a final resolution of them. The writ which my brothers employ will give the sharply divided Michigan Legislature from now, March 26, to sometime in June, to come to a common definition of, "as nearly as practicable" and to construct a plan of apportionment that will be approved by the majority or, more likely, two-thirds, of the members of both Houses. The forbearance that I recommend has been in practice in most of the Federal courts which were faced with the situation here involved.⁸ It may be argued that now

⁶ In *Wesberry*, the range from the most to the least populous district was from 823,680 to 272,154. In *Martin v. Bush*, these figures were 951,527 to 216,371.

⁷ No one, in this lawsuit, has attempted a projection to demonstrate that Michigan's congressional delegation would be substantially different under a hastily reconstructed apportionment statute from what it would be under act 249.

⁸ *Baker v. Carr*, 206 F. Supp. 341 (M.D. Tenn., 1962); *Maryland Committee v. Towes*, — F. Supp. — (Md., Mar. 21, 1964); *Wisconsin v. Zimmerman*, 209 F. Supp. 183, 188, 189 (W.D. Wis., 1962); *Nebraska League of Municipalities v. Marsh*, 209 F. Supp. 189, 195, 193 (D. Nebr., 1932); *Lisco v. McNichols*, 208 F. Supp. 471, 478, 479 (D. Colo., 1962); *Moss v. Burkhardt*, 207 F. Supp. 835, 898 (W.D. Okla., 1962).

It might be suggested that if a stay is in order, application therefor can be made to the U.S. Supreme Court. I think we are sufficiently informed to determine this on our own, without adding to the now adequate burdens of that Court and its members.

CLIFFORD O'SULLIVAN, U.S. Circuit Judge.

there is a clear standard, but the debate as to what is "as near as practicable" continues.

I would in this case make a finding that act 249, P.A., 1963, is unconstitutional, but would stay final judgment until the Michigan Legislature has had proper time to reapportion to conform to Wesberry or any other more definitive decision that may soon be forthcoming from the U.S. Supreme Court. I would allow the 1964 congressional elections to be conducted under the present law. Such forbearance would in no event, however, extend beyond such time as we consider essential in order to insure the holding of the 1966 congressional elections under an apportionment plan acceptable to us. It might be, notwithstanding our forbearance, that the Michigan Legislature, advised of our holding that act 249 is invalid, will be able to enact a new statute in time for the 1964 elections. I would, however, leave that in their hands.

Unlike the three-judge courts in other States, including Maryland, Texas, Kansas, Indiana, Idaho, Colorado, et cetera, the Michigan three-judge court refused to stay its proceedings so as not to affect the 1954 elections and, under pressure, the Michigan Legislature adopted a new congressional districting statute, act 282 of the Public Acts of 1964, signed by Governor Romney on June 11, 1964. The legislature was unable to muster the two-thirds vote required by the Michigan Constitution to give the statute immediate effect.

I desire to comment briefly on the manner in which the Michigan litigation was conducted. The defendant, Secretary of State James M. Hare, and the attorney general of the State of Michigan, Frank J. Kelly, in what I consider a flagrant disregard of their official duties and responsibilities as officers of the State of Michigan, in effect confessed judgment and failed to defend the State and its 8 million inhabitants, and the only contest was provided by the intervenor, Alvin M. Bentley and his attorney, Richard C. van Duren. Even this defense, however, was somewhat less vigorous than might be expected and seemed to be involved in political considerations such as perpetuating pressure on the Michigan Legislature to pass a new congressional districting law, rather than the forceful and effective defense of the case.

As a Congressman, and one who was concerned about this historic development in relations between the Federal judiciary and the House of Representatives, I urged at all times that the case be defended vigorously, including the prompt and timely filing of a motion for rehearing and the taking of testimony to enlighten the court as to the consequences of its decision upon the conduct of the 1964 election in Michigan. Unfortunately, from my point of view, this recommendation was not followed, no motion for rehearing was made by the intervenor, although a prospective candidate for Congress sought to intervene and move for a rehearing, which motion was denied.

Intervenor Bentley did file claim of appeal within 30 days of the Good Friday decision and subsequently made a motion before the three-judge Federal district court for a stay of its decree which was forthwith denied by a 2-to-1 decision. As far as I know, there are no plans to perfect the appeal in the light of the new statute passed by Michigan.

Mr. Speaker, last Monday, the Court in a series of decisions involving legislative bodies of six States, in effect held as unconstitutional under the equal protection clause of the 14th amendment and State statute regarding districts of the State legislatures which failed to conform to the one-man, one-vote principle, not only for the more numerous bodies of State legislatures, but for the so-called upper houses as well.

Mr. WAGGONNER. Mr. Speaker, will the gentleman yield?

Mr. MEADER. I yield to the gentleman from Louisiana.

Mr. WAGGONNER. I wonder if the gentleman feels that under the application of this same principle the Court might be inclined in future times to rule that the U.S. Senate would be subjected to the same provisions.

Mr. MEADER. Far be it from me to attempt to predict what the present Supreme Court will do, but I would say that would be a little difficult for them to declare the U.S. Senate unconstitutional since it is expressly provided in the Constitution itself.

Mr. WAGGONNER. Having a Court that from time to time tends to ignore the Constitution, then it would not appear to me it would be too far-fetched.

I should like to commend the gentleman on the work he has done in this behalf toward trying to limit the powers of the Court and remove them from

this field of reapportionment. I think he has done a tremendous job. I believe the problem we face here is trying to quit each of us having our own way as to how to curb the powers of the Court, and let us compromise a few of the plans we have and finally do something about curbing the power of the Court and remove them from this field of reapportionment.

Mr. MEADER. I know the gentleman is probably aware that in my bill, which I will discuss in a little more detail later on, I do provide for the withdrawing of jurisdiction of the lower Federal courts and the appellate jurisdiction of the Supreme Court in matters relating to congressional district legislation. I do not deal with the districts of State legislatures in this legislation because I think it would be inappropriate to do so. Others, however, have introduced bills, and I may myself introduce a bill, withdrawing the jurisdiction of the Federal district courts and the appellate jurisdiction of the Supreme Court in all matters relating to the establishment of districts for State legislatures. Such legislation is pending. I know of no intention on the part of the Judiciary Committee to hold hearings on that legislation, yet an executive session with respect to congressional districts is now pending. Hearings have been completed. The record will be completed when I insert this material I am presenting on the floor here today. The committee will probably act on the bill on Wednesday; at least, they will consider it on Wednesday.

Mr. WAGGONER. I thank the gentleman for yielding.

Mr. MEADER. I thank the gentleman for his contribution.

While considerations are different with respect to State legislatures and the Federal judiciary on the one hand, and the Federal judiciary and the U.S. House of Representatives on the other, in the *Wesberry* case, the Court interpreted article 1, section 2 of the Constitution providing for the election of Representatives by the people, to likewise require, with respect to the election of House Members, the one-man, one-vote principle. Prof. Alfred de Grazia, professor of political science at New York University, wrote in February of 1963 for the American Enterprise Institute, a book entitled "Apportionment and Representative Government." In this book, Professor de Grazia, with inexorable logic declaimed the one-man, one-vote theory of legislative districting.

I requested Professor de Grazia to comment on certain bills providing for establishing criteria for congressional districts and received from him a letter dated March 31, 1964, which reads as follows:

NEW YORK UNIVERSITY,
GRADUATE SCHOOL OF ARTS AND SCIENCE,
New York, N.Y., March 31, 1964.

HON. GEORGE MEADER,
House of Representatives,
The Capitol, Washington, D.C.

DEAR CONGRESSMAN MEADER: Thank you for sending me copies of H.R. 10181, H.R. 2835, H.R. 1128, H.R. 699, and H.R. 7343, all of which provide for the apportionment of congressional seats within States and all of which are attempts to introduce some rationality into a confused situation created by the Supreme Court in the *Baker* and *Wesberry* cases.

Frankly, I do not see much hope in any method of response to the Supreme Court except a political one. The Court has so forcibly twisted the principles of separation of powers, the Federal system, and the rule of law that discussion within the framework of constitutional law, historical jurisprudence, sociological jurisprudence, the principle of state decisis or any other logical system is useless. In addition, the Court has made almost all experimentation with improved forms of representation practically illegal. Any reasoned approach to a solution on apportionment in State or Nation is rapidly becoming impossible.

The only alternative to surrender is legislative action by Congress. This could take the form of (1) seeking to amend the Constitution to remove apportionment questions from court purview, or (2) determining a formula for congressional apportionment and admitting to Congress only such persons as are elected by this method and by no other method, whether court endorsed or not.

As an instance of such a formula, I would suggest the following: That candidates elected to the House of Representatives from the several States would be admitted to the House only upon demonstrating that their individual constituencies did not vary in population more than 20 percent from the average of districts in the State (computed on the basis of the census preceding the session of Congress), provided, however, that candidates from multimember districts

be grouped together and the total population of their district be used for the purpose of qualifying hereunder, and provided furthermore that the deviation of 20 percent may be extended to 30 percent whenever the cause of the additional deviation is reasonably attributable to an attempt to make constituency lines conform to metropolitan districts, counties, economic regions, and other natural boundaries.

The question of denial of admission to any candidates under this law will be voted upon by the whole House at the beginning of each session without debate, and, if affirmed, the State(s) involved will be notified and requested to reapportion the State and hold a special election in the constituency under the new apportionment most closely corresponding in population to the one denied reapportionment under the old apportionment within 90 days, placing the denied candidate first in line on the ballot.

I don't seriously the resolve of many Congressmen in respect to the issues of apportionment. They do not see the dangers inherent in the Court's arrogation of powers in this area. Therefore they cannot make the necessary moves against those dangers. Etched in the recent decision of the Supreme Court is the fall of the legislative system of government.

Sincerely yours,

ALFRED DE GRAZIA,
Professor of Social Theory.

The American Enterprise Institute had also requested Prof. Howard Penniman, of Georgetown University, to make a study of the legal aspects of legislative districting and, at my request, the American Enterprise Institute forwarded to me a brief statement by Professor Penniman on the problem of redistricting, the text of which is as follows:

AMERICAN ENTERPRISE INSTITUTE,
Washington, D.C., April 10, 1964.

HON. GEORGE MEADER,
House of Representatives,
Washington, D.C.

SIR: Prof. Howard Penniman has requested that the enclosed memorandum on "The Problem of Redistricting" be forwarded to you.

Sincerely yours,

THOMAS F. JOHNSON.

THE PROBLEM OF REDISTRICTING

Now that the Court has spoken, it is clear that Congress will have to act with respect to redistricting in order to prevent further incursions by the Court into the legislative realm.

In many respects it is unfortunate that discussions of districting both inside and outside the Court have tended to be tied in with the slogan "one man, one vote." It may have been useful for organizing laymen, but it is too bad that professionals in the field have sometimes apparently been misled by its simplicity.

Everyone, or at least nearly everyone, surely has always believed that "all things being equal," it would be desirable to have congressional districts of roughly similar population. The use of the slogan, however, has tended to suggest that equality of district size somehow assures equality of representation for the individual voter. This is clearly not true.

We may take, for example, a city of 300,000 like-minded people and add to it 125,000 from a neighboring district which has been too large, having, let us say, a population of 550,000. Have we, by moving the 125,000 people into a smaller district, actually increased their voting power? Or have we in reality largely disfranchised them by making them a permanent minority? Examples abound where such permanent minorities have been created and where, therefore, the voter has little or no influence on the outcome of the elections.

If we wish to create something like equality, we might want to so organize the voting pattern that it provides normally about a 52-48 percent margin of Democrats in Congress. This at least, seems to be about the normal voting margin in congressional elections. The only way that is available to make sure of absolute equality of representation, however, would mean creating an electoral system which has traditionally been abhorrent to Americans. In other words, it would require setting up some system of proportional representation with the parties, providing long lists of potential Congressmen in the order of the party's

choice. Obviously, Americans do not want such an arrangement since they view their Congressmen as more or less personal representatives of the citizens of a district.

In line with the American tradition, therefore, we must retain the district system and keep the control of the districts as close as possible to the people and at the same time attempt within these limitations to secure roughly the same ratio of party strength among Congressmen as among the actual voters. This means establishing the districts by the legislatures and not by the courts.

In the immediate future, the lower courts should follow the example of the courts in Maryland and Texas. This means that they should refrain from redistricting prior to the 1964 election and also should refuse to order elections at large. They should follow this course of action because prior to any court action there should be time enough allowed for Congress and the State legislatures to act.

The courts should refuse to require at-large elections because in many States the requirement of an at-large election merely rewards the delinquent legislative majority of a State for its very delinquency. In other words, in a State that has as much as a 55-45 margin among the voters, the legislature is almost certainly controlled by the 55 percent, but an at-large election would probably mean that all or nearly all the Congressmen would come from the majority party. Thus, for example, in Texas or in Maryland an at-large election would have wiped out any Republican representation, while an at-large election in Kansas or Iowa would prevent Democratic representation in the Congress.

Nor would the matter be any better in closely contested States like Illinois or New York. There, the two parties might be represented in the Congress, but Congressmen representing particular minorities might be defeated. In other words, in Illinois it is quite possible that an at-large election would assure the defeat of William Dawson, whereas in his own district Mr. Dawson receives one of the largest majorities of any Member of the House. In New York the same thing might be true in the case of Congressman Adam Clayton Powell.

Without attempting to write a law, still I might suggest some guidelines which would be useful in congressional preparation of legislation.

1. Congress should, of course, provide once more for the creation of "compact" and "contiguous" districts, as had been required by law prior to the 1929 Reapportionment Act.

2. Where there is a serious imbalance State legislatures should be required to redistrict during the next regular session of the legislature. In the future they should be required to redistrict, when necessary, during the first regular session following a decennial census.

3. In the establishment of districts, the State legislature should be instructed to keep the districts within 15 to 20 percent of the average for all the districts in the State.

4. Existing boundaries of counties, cities, towns, and so on should be maintained wherever possible. Counties and cities should be divided only if more than one district is to be drawn from that jurisdiction.

5. As nearly as possible, the present congressional district lines should be maintained.

6. As nearly as possible, the partisan strength of the two parties should be reflected in the estimated outcome of the elections. (It is recognized that State legislatures will always act in a partisan manner, but it is preferable that the partisanship be on the part of those who are elected rather than on the part of courts. For the latter to get into partisan activities would be dangerous to the very system itself.)

7. After action by the legislature, the proposed districts should be forwarded to the House of Representatives, which in 30 days could act to negate the decision of the State legislature if it felt that the districts did not comply with the standards laid down in the Reapportionment Act. Failure of Congress to act negatively would be taken as approval of the districts as set forth in the State legislatures. In any event would no appeal need to go to the courts.

In the event the State legislatures failed to redistrict when population changes made such redistricting necessary, the House of Representatives still would retain the authority to refuse to seat persons elected from that State until such time as acceptable redistricting had taken place.

Legislation following generally these guidelines would be within the letter and the spirit of the Constitution. It would retain control where the Constitution originally put it: in the hands of the legislature and the Congress—the legislatures because this was where it was initially placed, and the House of Representatives

because the Constitution has provided that each House shall be the judge of its own Members. It would likewise increase the probability not only of numerical equality among the districts but also improve the chances of a similar ratio between voters and their elected representatives. Finally, and perhaps most important, it would retain the political power where it should be; namely, in the hands of the political branches of the government—the Congress and the State legislatures.

Mr. Speaker, I would like to say a few words about the provisions of my bill, H.R. 11650.

With respect to the criteria for establishing congressional districts, there are only two major differences between my bill and the Celler bill: First, my bill provides that congressional districts "shall have boundaries which to the extent practicable coincide with boundaries of local units of government," and, second, instead of the 15-percent variation from the average population in districts, my bill provides for 20 percent.

I believe the gentleman from New York [Mr. Celler] has indicated that he is agreeable to the provision regarding boundaries of local units of government. From the point of view of the identity of a community and its economic, social, and political interests, and from the point of view of facilitating the conduct of elections, this standard is highly desirable. Geographical factors, plus tradition and historical development of centers of population provide important influences on the character of a community which should be recognized in any representative system through which national policies are adopted.

The greater latitude provided in my bill with respect to the population differential would facilitate complying with the standard of recognition of boundaries of local units of government and should not be regarded as too great a variation in populations of congressional districts, since the testimony in our committee's record shows that in the apportionment of the number of Members of Congress among the several States there is a discrepancy in population of congressional districts approximately 18 percent above and 26 percent below the average.

Probably the most novel feature of my bill is the provision of a mechanism for the House of Representatives itself to establish congressional districts in those States which fail within a reasonable time to create districts according to the criteria the bill sets forth. This idea was first suggested to the committee by the Honorable John P. Saylor, Representative from the State of Pennsylvania, in testimony before the committee. The provisions have been worked out very carefully with the help of the minority counsel of the Judiciary Committee, Mr. William Copenhaver, and the legislative counsel of the House of Representatives.

It is founded, of course, upon the legislative powers vested in the Congress and on article I, section 5, which reads as follows:

"Each House shall be the judge of the elections, returns, and qualifications of its own Members."

Perhaps the most important feature of my bill which differs widely from the Celler bill, is the provision withdrawing jurisdiction of the Federal courts and the appellate jurisdiction of the Supreme Court in congressional districting litigation.

Nothing, of course, is said about litigation in State courts which, of course, would be beyond the reach of Congress to affect.

The Celler bill, in contrast, expressly vests in the Federal district courts, jurisdiction to determine in litigation whether or not the criteria contained in the bill have been met by the State legislatures.

It is undoubtedly within our power under article III, section 2, clause 2 of the Constitution, to make exceptions and regulate the appellate jurisdiction of the Supreme Court. The inferior Federal courts are creatures of the Congress—article III section 1.

Mr. Speaker, it is my hope that when Subcommittee No. 5 of the Judiciary Committee meets on Wednesday, it will substitute my bill for the Celler bill and report it to the full committee. Under the recent decision of the Supreme Court, based upon the 1-man, 1-vote theory, every one of the 50 States will be affected and time is of the essence if the Congress is properly to discharge its function and to preserve its prerogatives from judicial usurpation. I hope this bill will become law in this session of Congress.

Mr. ROGERS of Colorado. Mr. Speaker, will the gentleman yield?

Mr. MEADER. I am delighted to yield to my colleague on the Judiciary Committee, the gentleman from Colorado [Mr. Rogers].

Mr. ROGERS of Colorado. I thank the gentleman for directing our attention to this important question. I note that the gentleman has outlined his bill, H.R. 11650. He has previously pointed out the differences, in some respects, as compared to the bill of our chairman, the gentleman from New York [Mr. Celler], the main portion being on page 2, section 2, under subparagraph (3).

The language in the gentleman's bill states:

"(3) shall have boundaries which to the extent practicable coincide with boundaries of local units of government, and

"(4) shall have contained in the preceding decennial census a number of persons not more than 120 per centum nor less than 80 per centum of the number of persons in the State divided by the number of Representatives to which the State is entitled."

I take it from that language that the gentleman's first objective relates to a governmental unit. It so happens that in my State, in my district, there is a combined county government and city government, in what we call the city and county of Denver. That is a local unit of government which is unique, and different from any other county in the State.

With a State average of about 438,000 per district in 1960, for population, there were 493,000-plus in my district. Perhaps the variation allowed, of from 120 to 80 percent, would bring us within the census of 1960. My question is: If there should be a variation in the 1970 census, in excess of 120 percent, then could my legislature still say that the local unit of government, which constitutes the First Congressional District, would continue to be such even though it might vary a little more than 120 percent?

Mr. MEADER. Well, we dealt with this problem in the committee, as the gentleman will recall, and it seemed that we had to have that phrase in there, "to the extent practicable," because if it were hard and fast, you might have conflicting criteria. As the gentleman probably realizes, if the State should, for instance, in your case, provide for a congressional district for the city and county of Denver, Colo., even though its population exceeded the 120-percent figure, there would still have to be action taken by the House of Representatives to overturn that provision by the State legislature. We would have to make a finding here in the House that their plan did not meet the criteria established in this bill. I would think there would be some kind of leeway there for the House of Representatives to refrain from taking action if the failure to meet the criteria were of a minor character.

Mr. ROGERS of Colorado. Now, my State legislature did apportion the congressional districts based upon the 1960 census. My district had 493,000. They increased the Fourth District until it had 408,000, so you have a difference of about 85,000 between the two. If you put it on a 20-percent variation, perhaps it would meet this standard, but anticipating the future, as the city and county of Denver grows, and if they have annexation, the population will no doubt be much greater in 1970, and it will still have a county unit instead of a city and county together. Your thought is if that should arise in 1971 and the State Legislature of Colorado has not taken any action, then this committee provided herein should make a recommendation as to whether or not that is a fair apportionment, and if they arrived at a conclusion that it was a fair apportionment, then, if we adopted it, the congressional district could remain. Would that be accomplished under your legislation?

Mr. MEADER. Section 3 of the bill says:

"The House of Representatives shall conduct investigations with respect to the boundaries of congressional districts. If the House finds that the congressional districts of any State do not meet the requirements of section 2(a), the House shall declare such finding in a House resolution. The Clerk of the House shall notify the Governor of such State of the adoption of such resolution."

The reason why I answered the gentleman's question the way I did before is that it takes affirmative action on the part of the House to overturn any existing congressional district patterns in any State. The House itself, after debate, if they found that the deviation was of a minor character from the criteria, might refrain from taking action. It would be a decision for the Members of the House to make.

Mr. ROGERS of Colorado. But it would take affirmative action by the House of Representatives pursuant to section 3 of your bill?

Mr. MEADER. That is right.

Mr. ROGERS of Colorado. Before the legislature of my State would be required to comply with the finding of this commission. Is that your position?

Mr. MEADER. It would take affirmative action by the House of Representatives before any effect upon existing State patterns of congressional districts could be felt. Unless the House of Representatives did something, whatever the law was regarding congressional districts within the State would remain that way.

Mr. ROGERS of Colorado. It would remain that way?

Mr. MEADER. That is right.

Mr. ROGERS of Colorado. Now, you and I recognize that one of the reasons that the Supreme Court took jurisdiction in *Wesberry v. Sanders*, which is a Georgia case, is because there was a great disproportion of population in congressional districts. As least one of the rights they asserted was that when Congress in 1929 passed this legislation, that in actuality the State of Georgia was not complying with so-called statutes that we passed in 1920.

If the gentleman's bill were passed and jurisdiction were taken from the district court and from the Supreme Court, could the gentleman envision that this House of Representatives would in the future continue to apportion representation in the respective States as nearly as possible to population, as nearly as possible to compact and contiguous territory, and as nearly as possible to local units of government? And does the gentleman feel that the House would measure up to its responsibility which is given them under the Constitution and concerning which apparently they failed to act upon, which caused the Supreme Court to take its action in the case of *Wesberry v. Sanders*? What is the gentleman's thought as to whether, projecting this into the future, the House of Representatives would perform its duty under this proposal?

Mr. MEADER. Of course, I cannot predict what any legislative body will do in the future. I will say this, that if there is any concern about the autonomy of a legislative body, if there is any concern about the House of Representatives' maintaining its balance in our tripartite system of government, it will make certain that the courts do not inject themselves into this matter which is so basic to the vitality and autonomy of a legislative body, namely: its composition; and I think there is plenty of incentive for the House of Representatives to carry out its duties which are expressly and mandatorily imposed upon it in section 3 of this bill.

Mr. ROGERS of Colorado. One other question, if I may. As the gentleman knows, the Supreme Court in *Wesberry v. Sanders* based part of its decision at least on article I, section 2 of the Constitution. Does the gentleman feel that if we enacted his proposal withdrawing jurisdiction from the district court and jurisdiction from the Supreme Court, that would prohibit them from accepting jurisdiction in the future?

Mr. MEADER. I should hope that the Court would recognize the act of Congress, that we were exercising power expressly vested in us in the Constitution to regulate and make exceptions to the appellate jurisdiction of the Supreme Court and to do what we please with respect to the lower Federal courts that derive their power under article III, section 1, from the Congress. We have created all of them; we could abolish all of them, if we wanted to go that far. We have the power to do it. I would hope the Court would not attempt to get around any provision of this kind—I do not say they will not try. They have stretched some clauses of the Constitution so far that they are almost unrecognizable as having any legal foundation, in my judgment. But I cannot predict that they will not try to get around this withdrawal of jurisdiction. But I do not know what else there is for us to do.

Mr. ROGERS of Colorado. I thank the gentleman for yielding to me. We know that this is a problem that the Congress should meet.

Mr. MEADER. I thank the gentleman.

Mr. JENSEN. Mr. Speaker, will the gentleman yield?

Mr. MEADER. I yield to the gentleman from Iowa.

Mr. JENSEN. Mr. Speaker, I want to compliment the gentleman on his interest in these problems which are so vital to every American. I have read his bill with great interest and understanding. While I am not a lawyer I have studied common law, quite religiously, during my younger years. I do know something about common law and jurisprudence.

Mr. Speaker, the gentleman from Michigan who is now addressing the House from the floor is an able, conscientious member of the House Judiciary Committee. He is known to be a very able constitutional lawyer. I commend him most highly for studying this entire matter relative to the Supreme Court ruling.

Mr. Speaker, I am sure I speak for a great majority of the Members of this House when I say that we are not yet ready as representatives of the people

to give away the prerogatives which we have taken an oath to perform but which the recent Supreme Court ruling has indicated they are more able to perform than the representatives of the people.

Mr. Speaker, I shall follow the gentleman in this great debate very carefully. I know that every Member of this House on either side of the aisle does appreciate the gentleman's great interest and his explanation of his bill and what the effect will be if made the law of the land.

I thank the gentleman for yielding.

Mr. MEADER. I thank the gentleman from Iowa very much for his contribution and his expression of his views on this most important matter.

Mr. HUTCHINSON. Mr. Speaker, will the gentleman yield?

Mr. MEADER. I yield to my colleague the gentleman from Michigan [Mr. Hutchinson].

Mr. HUTCHINSON. Mr. Speaker, I thank the gentleman for yielding.

I want to commend the gentleman for bringing this very fundamental question to the attention of the House at this time because certainly if the power of the Congress in our system of the three coordinate branches of government is to be maintained it must assert some control at least over the composition of the House of Representatives.

I note with approval the provision in the gentleman's bill which would withdraw from the Federal judiciary any jurisdiction over apportionment cases insofar as the composition of the House of Representatives is concerned.

I agree with the gentleman that at least in my opinion the Congress specifically has this power granted to it in the Constitution to limit the appellate jurisdiction of the lower Federal courts which it has created.

There is a problem in my opinion in section 5 of the gentleman's bill insofar as his bill specifically recognizes the retention of judicial power in State courts.

Now, permit me to pose this hypothetical situation to the gentleman in order to obtain his reaction. Suppose that his bill should become law with the criteria which are set forth in here relative to a disparity of from 80 to 120 percent of a true ratio as being proper, and then suppose that a State court accepts jurisdiction of the case involving a congressional apportionment system within a State and the State court says that in its opinion the congressional act is unconstitutional because it violates the standard set forth by the Supreme Court of the United States in the Georgia case which was recently decided which stated that the Constitution requires an equal apportionment, as near as practicable?

My question is this: Since the gentleman's bill does not foreclose all judicial performances in this area, does he not yet leave the door open for a judicial declaration which, much as he and I might agree with the correctness of the decision, might judicially throw this whole act of his out the window?

Mr. MEADER. It is true this bill does not withdraw jurisdiction of State courts to entertain suits relating to congressional districting, yet I doubt we could do anything here in Congress to affect the powers of State courts other than this:

Article VI, clause 2, provides:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

So I am assuming that if this bill becomes law the State courts under article VI would be obliged to follow that law and apply it in any litigation which arose in the States. I would think it would be quite unlikely a State court would hold that this law would be unconstitutional. Of course, you cannot predict what any court will do with certainty, but I would not be too concerned that a State court in litigation would hold this law unconstitutional.

Mr. HUTCHINSON. I would hope that the gentleman is right in his observation; but the basic question, it seems to me, and a very fundamental question that must be resolved in this country before long, is this one: whether or not some of the rights of citizens, the people, which are so political in character rather than legal in character, that some way or other must be found to remove the decisions of political matters from the Court. If we can somehow or other remove from the Court the making of political decisions, the deciding of political questions, is that not really the very basis of the problem that somehow or other we have to face and meet?

Mr. MEADER. I cannot help but say that since the *Baker v. Carr* decision came down in March of 1962 I have been concerned about the Court's invading the legislative branch of the Government in those decisions. The gentleman

and I apparently both agree with Justice Harlan and Justice Frankfurter. Those are matters which are between the people and those they elect to represent them in legislative bodies in policymaking. Whether you call it political or national policy or State policy, legislation, laying down the law, it is a matter between the legislative body and the people. The legislative body owes its allegiance to nobody but the people. The legislative branch is responsible to the people and to the Constitution. However, after the *Baker* and *Webb* decisions it comes under the dominion of the judicial branch of the Government. That is the danger I saw when *Baker v. Carr* came down. The only way to protect ourselves from further invasion by the Federal judiciary is to withdraw the Court's jurisdiction, which we have the power to do under the Constitution.

I do not believe that in any legislation we pass we could affect the jurisdiction of any State other than the limitations that are imposed upon States by our U.S. Constitution. I think that is a matter beyond our sphere of authority or jurisdiction, just as I believe the Court by stretching some broad phrases, "Elected by the people," or "Equal protection of the laws," has stretched its authority as a part of the Federal Government beyond the proper limits of Federal power.

Mr. HUTCHINSON. The gentleman would agree that it would be within the power of the people of the States to withhold from the State courts jurisdiction over that matter?

Mr. MEADER. I would assume that would depend on the constitution of each State and the people's right to alter or amend their constitution.

Mr. GRIFFIN. Mr. Speaker, will the gentleman yield?

Mr. MEADER. I yield to the gentleman from Michigan.

Mr. GRIFFIN. I, too, want to join my other colleagues on the floor in commending the gentleman from Michigan for his study of this question and his able leadership in trying to lead the Supreme Court out of the political thicket into which it has ventured.

I, too, have a question as to how effective we would be if we did try to withdraw this matter from the jurisdiction of the Supreme Court, although I would agree with the gentleman that section 2, article III, of the Constitution says very clearly that Congress can make such exceptions to the appellate jurisdiction.

I also note, of course, that the Constitution specifically provides that the Supreme Court shall have original jurisdiction in any case in which a State is a party. Would it be a concern or a possibility that the effect of the gentleman's bill might be circumvented by actually making the State a party to the suit and bringing the question before the Supreme Court in that way?

Mr. MEADER. The gentleman has raised a technical legal question which has been discussed not only with the minority counsel of the Judiciary Committee but also with a very well informed professor of law at the University of Michigan, Prof. Jerold Israel, who is teaching Federal procedure and constitutional law at the University of Michigan and has been quite a student of apportionment cases. That very question was discussed with him not long ago.

While it is a question that lawyers would argue about, I am not too fearful that anybody, such as our friends from Dearborn, Mr. Calkins and Mr. Jacobs, are going to walk down here and start a case in the U.S. Supreme Court against the State of Michigan. First, of all, there is the question of sovereignty and the State's immunity from being sued against its will. Ordinarily in legislative districting cases the secretary of state is the defendant and the action is to enjoin him from carrying out duties vested in him by State law. In a sense, the State is a party there. But I do not think that is the situation in which the Supreme Court has original jurisdiction in cases in which the State is a party. It may relate to cases where one State is suing another State; that could have been in the minds of those who drafted the Constitution. I do not believe, and I think this was also Professor Israel's offhand opinion, that the original jurisdiction of the Supreme Court, where a State is a party, would be included within the type of case challenging State laws on congressional districting or a State legislative body's districting.

Mr. GRIFFIN. It is very obvious the gentleman has given this matter very deep and thorough study. I think the House is indebted to him. I especially commend him for imposing the standards for congressional districting and bringing forth this legislation which has been long overdue. We can, and we have a right to, criticize the Supreme Court for its decisions, but I also think that the Congress itself has been derelict in its responsibility for not moving earlier in setting up standards which were more meaningful, to which we could have pointed.

I commend the gentleman for his leadership in this field.

Mr. MEADER. I thank the gentleman for his contribution to this discussion which has been very, very useful. I hold no brief for the failure of Congress to take action except to say this—that probably there has not been a demand that the Congress take action until this rash of lawsuits broke out. You could also argue that we look upon this as a matter for the States themselves to decide. When we reapportioned the number of Representatives among the States according to the decennial census the Congress may have felt that we had discharged our responsibility and more or less looked to the States to meet their problems in complete freedom and using their own discretion, even if it meant that Representatives had to run at large, which has happened a few times, or that some Representatives might represent a particular congressional district while some had to run at large, whatever the wishes of the people of that State were. It might be out of inaction or a lack of any drive for any action by the Congress or it may have been out of a desire on the part of the Congress not to invade areas of discretion which we believed were properly within the jurisdiction of the several States.

Mr. Speaker, I thank all of my colleagues who have participated in this discussion and I hope some action will come out of it.

HOUSE OF REPRESENTATIVES,
Washington, D.C., June 18, 1964.

DEAR COLLEAGUE: The U.S. Supreme Court and lower Federal courts have asserted dominion over Congress and State legislatures by undertaking to determine the composition of legislative bodies.

This unfounded assumption of authority by the Federal judiciary strains the equilibrium which holds together our unique tripartite system of government; disdains the comity through which alone the autonomous separate branches of government can function smoothly and effectively in concord; and poses the most serious threat to self-government by the people through elected representatives in the 175-year history of our Republic.

In *Baker v. Carr* (369 U.S. 186), decided March 26, 1962, and *Wesberry v. Sanders* (376 U.S. 1), decided February 17, 1964, the Supreme Court invaded the "political thicket." A rash of "citizens" suits, obviously well prepared and well financed, erupted overnight. The unprepared, unorganized common people were caught unaware and States now have litigation pending which threatens to undermine the whole electoral process and attacks popular determination of areas from which legislative representatives are chosen.

What to do about it? I have prepared a bill (H.R. 11650) which will—

1. Establish criteria for congressional districts.
2. Allow State legislatures a reasonable time after apportionment of representatives among the several States after each decennial census to delineate congressional district boundaries according to those criteria.
3. Provide a mechanism for review of State legislative action in congressional districting to determine whether the statutory criteria have been applied correctly and to establish congressional district boundaries by congressional action in those States where State legislative action has violated statutory criteria.
4. Withdraw jurisdiction of lower Federal courts and the appellate jurisdiction of the U.S. Supreme Court in all legislative districting matters.

This subject will be discussed at length on the floor of the House on Monday, June 22.

It is my hope that other Members interested in this subject (and all 435 should be) will be present to the end that we may discuss my proposal and develop support for its passage. We, in Congress, can put an end to the intrusion of the judiciary into legislative processes.

Sincerely,

GEORGE MEADER.

[H.R. 11650, 88th Cong., 2d sess.]

A BILL To insure that congressional districts meet certain standards, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this may be cited as "The Congressional Districting Act".

SEC. 2. (a) Every State shall establish, for the Ninetieth and for each subsequent Congress, a number of congressional districts equal to the number of Representatives apportioned to such State. Each such district—

- (1) shall elect one Representative,

(2) shall be composed of a compact and contiguous territory,

(3) shall have boundaries which to the extent practicable coincide with boundaries of local units of government, and

(4) shall have contained in the preceding decennial census a number of persons not more than 120 per centum nor less than 80 per centum of the number of persons in the State divided by the number of Representatives to which the State is entitled.

(b) (1) Section 22 of the Act entitled "An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress", approved June 18, 1929 (2 U.S.C. 2a (c)), is repealed.

(2) Paragraph (1) of this subsection shall not take effect until noon on January 3, 1967.

SEC. 3. (a) The House of Representatives shall conduct investigations with respect to the boundaries of congressional districts. If the House finds that the congressional districts of any State do not meet the requirements of section 2(a), the House shall declare such finding in a House resolution. The Clerk of the House shall notify the Governor of such State of the adoption of such resolution.

(b) If such State fails, within one hundred and eighty days after the passage of a resolution under section 3(a), to change the boundaries of such districts so that they conform to the requirements of section 2(a), the House, by House resolution, shall prescribe the boundaries of such districts so that they conform to such requirements. A House resolution changing the boundaries of a congressional district in accordance with this subsection shall have the full force and effect of law with respect to elections to the first Congress beginning more than eight months after its approval.

SEC. 4. (a) Clause 12 of rule XI of the Rules of the House of Representatives relating to matters within the jurisdiction of the Committee on the Judiciary is amended by adding at the end thereof the following:

"(t) INVESTIGATIONS AND RESOLUTIONS UNDER THE CONGRESSIONAL DISTRICTING ACT.—The committee shall conduct investigations pursuant to section 3(a) of the Congressional Districting Act. In conducting such investigations, the committee shall give notice to and hear all interested parties, and shall determine whether the districts being investigated conform to the requirements of section 2(a) of the Congressional Districting Act. If the committee finds that such districts do not so conform, it shall report such findings to the House, and shall report to the House a House resolution stating that the House finds that the boundaries of such districts do not conform to section 2(a) of the Congressional Districting Act. If the House approves such resolution and if the committee finds that the State has failed within one hundred and eighty days after passage of such resolution to change the boundaries of its congressional districts to conform to the requirements of section 2(a) of the Congressional Districting Act, the committee shall, after holding such additional hearings as it deems necessary, report to the House a resolution prescribing the boundaries of such districts in conformity with such requirements."

(b) This section is enacted as an exercise of the rulemaking power of the House of Representatives with full recognition of the constitutional right of the House of Representatives to change the rule amended by this section at any time, in the same manner, and to the same extent as in the case of any other rule of the House of Representatives.

SEC. 5. (a) Chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1361. Congressional districts

"A district court shall not have jurisdiction of any action to enjoin, suspend, or modify the operation of any law or resolution respecting the boundaries of any district from which Representatives are elected to the Congress of the United States.

(b) The table of contents of chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following:

"1361. Congressional districts."

SEC. 6. (a) Chapter 81 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1259. Exception to appellate jurisdiction in cases involving congressional districts

"The Supreme Court of the United States shall not have appellate jurisdiction of any action to enjoin, suspend, or modify the operation of any law or resolu-

tion respecting the boundaries of any district from which Representatives are elected to the Congress of the United States."

(h) The table of contents of chapter 81 of title 28, United States Code, is amended by adding at the end thereof the following:

"1259. Exception to appellate jurisdiction in cases involving congressional districts."

NATIONAL MUNICIPAL LEAGUE,
New York, April 6, 1964.

MR. WILLIAM FOLEY,
General Counsel,
House Judiciary Committee,
Washington, D.C.

DEAR MR. FOLEY: In response to your request for suggestions on congressional districting, I wish to comment only on the subject of permissible population deviation.

The National Municipal League has been the clearinghouse for information on legislative apportionment and congressional redistricting for the past 2 years. I have been directing this service, providing basic information both to State attorneys general defending present formulas and to the lawyers bringing suit challenging these formulas.

In State laws and now in the proposed Federal legislation there is a tendency to set the outer limits of permissible deviation from the average far too high if population equity is the objective. For example, in New York State a 15-percent deviation from the average means that many districts vary by more than 100,000. If, as the Supreme Court has said, the goal is to achieve congressional districts where "as nearly as it is practicable, one man's vote in a congressional election is to be worth as much as another's," a population deviation of 100,000 is much too large. In New York, as in most States, the average district has at least 350,000 population. A five percent deviation would seem more reasonable, since that would allow a total 10 percent difference, or approximately 35,000.

Obviously, the population of the United States is going to continue its upward trend. The average size of congressional districts will reflect this growth. While in some *very rare* instances it might be difficult (but not impossible) to create districts *today* that vary not more than 35,000, each successive census will make the variation in numbers larger. Hence, a reasonably small percentage seems all the more desirable.

We have noted that several bills propose the 10-percent overall deviation and would consider them more in keeping with the basic sentiment of the Supreme Court's ruling. Also, we heartily endorse the inclusion of standards of compactness and contiguity in any legislation adopted by the Congress on this subject.

Sincerely yours,

WILLIAM J. D. BOYD,
Senior Associate.

NATIONAL MUNICIPAL LEAGUE,
New York, April 15, 1964.

COMPARATIVE DATA ON THE COMPOSITION OF STATE LEGISLATIVE DISTRICTS

Here is the long promised final revision of comparative data on State legislative districts. The delay has been due to the continued upheaval going on (several States still do not have their district lines established for the 1964 elections).

I had hoped to include a supplemental sheet giving all new apportionments to go into effect with the 1964 election. This is still not possible; therefore, we are sending material that deals only with what has been, namely, the legislative districts in effect during the 1963 or 1964 legislative sessions.

Once the legislatures decide exactly what is what, we will compile the supplemental sheet and send it along. In the meantime, thanks to those of you who have been so patient, having requested this information over 2 months ago.

Sincerely yours,

WILLIAM J. D. BOYD,
Senior Associate.

Comparative data on the composition of State legislative districts during 1963 and/or 1964 sessions

State	Senate				Lower house			
	Average population per senator	Largest district per senator	Smallest district per senator	Minimum percent of population that can elect majority of senators	Average population per legislator	Largest district per legislator	Smallest district per legislator	Minimum percent of population that can elect majority of lower house members
Alabama.....	93,278	634,964	31,715	27.6	30,818	50,718	10,726	37.9
Alaska.....	11,368	88,021	4,603	41.9	5,654	7,174	2,945	47.3
Arizona.....	46,506	331,755	3,869	12.8	16,277	30,438	5,754	146.3
Arkansas.....	31,036	80,993	35,983	43.8	17,863	31,686	4,927	33.3
California.....	392,390	6,038,771	14,294	10.7	196,465	306,101	72,105	44.7
Colorado.....	44,077	173,340	19,983	33.0	26,983	35,123	20,302	45.1
Connecticut.....	70,423	175,940	21,627	32.0	8,623	81,089	19,191	12.0
Delaware.....	26,252	64,820	4,177	22.4	12,751	58,228	1,643	18.5
Florida.....	159,032	467,523	12,272	14.1	19,235	66,788	2,868	22.2
Georgia.....	52,021	96,032	52,572	48.3	14,210	44,210	1,876	22.9
Hawaii.....	52,310	68,620	12,572	18.1	12,407	23,779	5,030	38.4
Idaho.....	15,463	93,460	8,915	16.6	10,590	15,576	915	32.7
Illinois.....	173,812	665,300	53,500	28.7	56,596	160,200	34,433	39.9
Indiana.....	63,260	171,090	39,011	38.5	46,625	145,824	14,804	36.5
Iowa.....	54,120	296,314	29,696	35.6	25,532	133,157	7,468	27.4
Kansas.....	54,120	323,374	16,280	27.5	17,378	64,423	2,241	19.0
Kentucky.....	79,941	120,700	62,048	46.6	30,382	40,480	20,166	44.8
Louisiana.....	83,513	248,427	31,174	33.0	31,019	57,622	6,909	33.1
Maine.....	58,508	45,987	16,146	46.9	6,418	13,102	2,394	39.7
Maryland.....	106,920	492,428	15,481	14.2	21,836	37,870	6,541	42.3

Massachusetts.....	128,714	199,107	89,355	44.6	21,482	49,478	3,559	45.3
Michigan.....	200,662	600,259	53,800	29.0	71,120	131,208	34,004	44.0
Minnesota.....	50,963	99,446	20,438	40.1	16,069	30,346	5,243	34.5
Mississippi.....	44,452	187,045	20,967	37.2	25,568	28,361	5,876	41.2
Missouri.....	127,053	160,258	96,477	47.8	25,922	53,015	3,036	20.3
Montana.....	12,049	79,016	18,824	16.1	7,178	12,537	3,894	40.8
Nebraska.....	32,822	51,757	18,824	36.6	7,710	12,525	568	29.1
Nevada.....	16,781	127,016	15,668	8.0	1,517	1,517	8	143.0
New Hampshire.....	25,288	41,457	15,529	45.3	10,113	1,119	48,555	46.6
New Jersey.....	288,894	923,545	48,555	19.0	14,394	29,133	1,874	77.0
New Mexico.....	29,719	262,199	1,574	14.0	108,272	314,721	15,044	24.7
New York.....	280,014	690,112	168,398	41.8	37,968	82,059	5,420	77.1
North Carolina.....	91,128	272,111	45,031	36.9	5,499	8,408	2,453	77.1
North Dakota.....	12,907	42,041	4,098	31.9	3,000	10,574	10,574	29.4
Ohio.....	294,133	439,000	208,163	44.8	70,850	148,700	4,896	29.5
Oklahoma.....	52,916	346,038	13,125	24.5	24,473	39,660	18,885	45.1
Oregon.....	58,956	69,634	29,917	47.8	53,922	139,233	4,483	37.7
Pennsylvania.....	226,387	533,154	51,793	33.1	8,594	18,977	8,856	46.6
Rhode Island.....	18,684	47,080	8,496	18.1	19,214	29,490	3,659	46.0
South Carolina.....	51,796	216,382	8,029	23.3	9,074	16,098	3,571	33.0
South Dakota.....	19,443	43,288	10,089	38.4	36,031	60,103	22,275	39.7
Tennessee.....	108,063	133,248	83,031	44.5	62,864	106,725	33,967	38.7
Texas.....	309,022	1,243,158	147,454	30.3	14,916	32,860	1,164	33.3
Utah.....	35,625	64,760	9,408	21.3	1,585	36,531	21,826	11.9
Vermont.....	12,996	16,014	2,927	47.0	39,669	95,064	12,399	40.5
Virginia.....	99,174	103,401	61,730	41.1	28,820	57,643	4,391	33.3
Washington.....	58,229	145,180	20,023	33.9	18,604	39,015	4,891	38.9
West Virginia.....	58,138	126,463	37,192	43.9	87,498	19,651	19,651	38.9
Wisconsin.....	119,780	208,343	74,263	42.5	5,894	10,025	3,062	35.8
Wyoming.....	12,225	30,074	3,062	26.9				

1 Exact figure for percent necessary to control lower house in Arizona not available.
 2 since exact boundary lines for districts are drawn by county, not State, agencies.
 3 Unicameral legislature.

COLLEGE OF WILLIAM AND MARY,
MARSHALL-WYTHE SCHOOL OF LAW,
Williamsburg, Va., March 17, 1964.

Subject: H.R. 2836, congressional districts.

COMMITTEE ON THE JUDICIARY,
U.S. House of Representatives.

HONORABLE SIR: H.R. 2836 is a fine and important bill.

I would like, however, to direct the attention of the committee to the perfect way to have the votes of the Representatives responsive to the will of the people—weighted voting. If a State has a population of 2 million and is entitled to 5 Representatives, let each Representative cast a vote, carried out to 2 decimal points, proportionate to the percentage of 400,000 persons represented by him.

I take it that under article I, section 2, and the 14th amendment, section 4, the Congress can prescribe this upon either a National or a State-by-State basis.

I am enclosing copy of my article, "*Baker v. Carr* and Minority Government in the United States," 3 *William & Mary Law Review* 282 (1962), discussing this somewhat further and presenting my ideas as to other ways in which our governmental systems fail to give effect to the will of the majority, which always means that our democratic processes are not functioning perfectly. I shall be glad to furnish additional copies of the article to the committee or to others who will put it to good use.

Respectfully submitted.

JOSEPH M. CORMACK,
Professor of Law Emeritus.

BAKER v. CARR AND MINORITY GOVERNMENT IN THE UNITED STATES

JOSEPH M. CORMACK*

1. Minority Rule Through Unequal Voting Districts Abolished.

*Baker v. Carr*¹ effects a fundamental change in our state and federal governmental systems. It will bring genuine democracy to the states in place of rural oligarchy, and will change the relation of the states to the federal government. The urban majority of the people of the states will be able to get greater sympathy, justice and effective help from their legislatures, and will feel less necessity to turn to the Washington government for the solution of their problems.

This historic case, decided by the United States Supreme Court March 26, 1962, holds that under the equal protection clause of the fourteenth amendment a citizen of a state is entitled to vote, not just by dropping a piece of paper in a box, but by having his vote given reasonably equal weight with that of other citizens. The "political questions" doctrine,² that such matters can not be passed upon judicially, is as dead as the concept of "matrimonial domicil"³ in divorce law,⁴ and its demise here should be equally unlamented.

The principles of the decision mean, specifically, that districts for the election of members of state legislatures and Congress are required to be reasonably equal in size as to population, and that divergencies in population will have to be upon a legally justifiable basis, not simply a desire to have the state governed by a minority of rural voters rather than by a ma-

* LL.B., J.S.D., Professor of Law at the Marshall-Wythe School of Law, College of William and Mary, Williamsburg, Virginia.

¹ 82 Sup. Ct. 691 (1962).

² See, e.g. *Colegrove v. Green*, 328 U.S. 549 (1946).

³ Based on *Haddock v. Haddock*, 201 U.S. 562 (1906).

⁴ *Williams v. North Carolina*, 317 U.S. 287 (1942) and 325 U.S. 226 (1945).

majority of the voters as a whole. While the use of criteria other than population is not prohibited, it may be confidently predicted that the permitted total force of factors other than population will be relatively minor.

How the requirement of reasonably equal districts is to be carried out, and how far districts will be permitted to vary, are not passed upon (the case is simply remanded to the district court). These, however, are simply matters of mechanics, and should create no difficulty. Particularly is this true when a simple remedy is available—*weighted* voting. A court should order that until such time as a reasonable system of apportionment is established each member of the offending body (Congressional districts being handled upon a state-by-state basis) shall cast a vote weighted in accordance with the number of those represented by him, preferably the number voting at the last general election. The member representing the smallest number will cast one vote, each of the others a vote proportionately higher, (carried out to two decimal points). In this scientific age it is a simple matter to have an electrical machine tabulate the totals almost instantaneously.

Such a system will give perfect democratic government in this respect, and it is to be hoped that once such a system has been established no state (or the federal government) will desire to depart from it. The rural and isolated areas can then be given all the spokesmen they need (the loss of spokesmen having been used as an argument against reapportionment by population), without turning the state into a rural oligarchy. Setting up such a system will be simple for both the court and the legislature (or Congress), and will be relatively painless for the members already elected, in that no member will lose his seat. This possibility has been at least a subconscious factor preventing redistricting.

A great principle is involved. It seems unnecessary to do more than state that we believe in democracy, that democratic government consists of rule by the majority of the people, and that in order to completely have such rule voters must be given votes of reasonably equal value. Any departure from equality is that much of a loss from the standpoint of

achieving perfect democratic representation. The device of weighted voting would make *any* departure unnecessary.

The nature, extent and seriousness of the problem of unequal districts are matters of common knowledge, discussed in innumerable newspaper and magazine articles. It seems unnecessary to present statistics here. They are to be found in the opinions in the case.

Mr. Justice Brennan wrote the opinion of the court, joined by five others, Mr. Justice Whittaker, presumably because of illness, not participating in the decision. Three other members of the majority, Mr. Justices Douglas, Clark and Stewart, wrote concurring opinions. The other members of the majority were Mr. Chief Justice Warren and Mr. Justice Black. Justices Black and Douglas have long been in favor of judicial action against unequal apportionment. Justice Clark in his concurring opinion⁵ joins them in this emphatically.

Justice Brennan, in a painstaking opinion, speaking for the majority, discusses separately that the subject matter of the suit is within the jurisdiction of the federal courts,⁶ that the parties plaintiff have standing to sue,⁷ and, finally, that "this challenge to an apportionment presents no nonjusticiable 'political question' ".⁸ Technically the decision is limited to holding that "the complaint's allegations of a denial of equal protection present a justiciable constitutional cause of action upon which appellants are entitled to a trial and a decision".⁹ However, as it is necessary, in order to state a cause of action, that facts be alleged which if established will cause relief to be granted, this is a decision on the merits in favor of the principle of equal protection.

Justice Brennan takes great pains to limit the decision to rights under the equal protection clause, and to reject any pos-

⁵ *Baker v. Carr*, 82 Sup. Ct. 691, 733 (1962).

⁶ *Id.* at 700.

⁷ *Id.* at 703.

⁸ *Id.* at 705.

⁹ *Id.* at 720.

sible claims under the guaranty of a republican form of government in Article 4, Section 4, of the Constitution.¹⁰ He feels that such claims by their nature involve nonjusticiable political questions.¹¹ While it does not seem to make any practical difference upon which constitutional provision the result is based, it is difficult to agree with him in this. Since a republican form of government requires general representation of the people, rather than the government of professors suggested by Plato, any distinction between the two constitutional provisions would seem to be a distinction without a difference. This is indicated by Justice Douglas.¹² By his line of reasoning Justice Brennan is able to avoid overruling *Colegrove v. Green*,¹³ the leading "political question" case, but it might have been better frankly to do so, regardless of differences in the pleadings in the two cases. At any rate that seems to be its practical position.

Mr. Justice Frankfurter, speaking for himself and for Mr. Justice Harlan, dissented. He feels that the case "is, in effect, a Guaranty Clause claim masquerading under a different label",¹⁴ and it is difficult to contradict him on this. He advances the time-honored "political question" reasoning. He is appalled by the difficulties of framing relief,¹⁵ and the possibilities of "friction and tension in federal-state relations".¹⁶

Justice Harlan added a dissenting opinion in which Justice Frankfurter joined. He feels that the problem of apportionment is by its nature wholly legislative, and he even takes the extreme position that it would be constitutional for a state to maintain "an electoral imbalance between its rural and urban population . . . to protect the state's agricultural interests from the sheer weight of numbers of those residing in its cities".¹⁷ Such a

¹⁰ *Id.* at 706 and 715.

¹¹ *Id.* at 710.

¹² *Id.* at 723.

¹³ *Colegrove v. Green*, 328 U.S. 549 (1946).

¹⁴ *Baker v. Carr*, 82 Sup. Ct. 691, 754 (1962).

¹⁵ *Id.* at 767

¹⁶ *Id.* at 768.

¹⁷ *Id.* at 774.

position may be characterized as endorsement of a permanent legally irremediable rural oligarchy. He concludes with the observation that "continuing national respect for the Court's authority depends in large measure upon its wise exercise of self-restraint and discipline in constitutional adjudication".¹⁸

In conclusion, this great decision will in all probability result in the removal of a great obstacle to the achievement of effective democratic government. This obstacle would not otherwise be susceptible to removal by legal means, in view of the general refusal of state legislatures and executives to reapportion and in general what has been the failure of the courts to compel them to do so.

This is a fitting time to examine our governmental processes in general, and see what obstacles to the achievement of truly democratic government will still persist. In the course of our future history all of these should eventually be removed.

2. Separation of Powers and Checks and Balances—Minority Rule Through Preventing Action.

When a majority of the people for any reason is unable to take action which it desires, the minority opposed to change are governing¹⁹. Thus minority rule is more often negative than positive, election of the members of legislative bodies through unequal districts being an example of the latter. Either way, democratic government is not achieved.

Throughout the history of this country the overwhelming majority of Americans have believed in democratic government, that is, majority rule. Its merits will be assumed, and not argued here.

In our governmental systems, federal and state, checks and balances, designed to prevent hasty action, are a primary source of minority government. The traditional American separation of powers between the executive, legislative and

¹⁸ *Id.* at 776.

¹⁹ For a more comprehensive discussion see ELLIOTT, AMERICAN GOVERNMENT AND MAJORITY RULE (1916).

judicial branches is the most important factor in establishing checks and balances.

The objection to separation of powers, from the present standpoint, relates to that between the executive and the legislative. The judicial branch should be independent, and it never prevents the majority from taking action, except in the sense that compliance with the forms of procedure which have been set up is required. The exception includes the courts' application of constitutional limitations, which can be removed through amendment.

Separation of powers arose out of the fear of kings, who those establishing this country had good reason to fear would arise here. The ideas of Aristotle and later thinkers, and unhappy experiences with colonial governors and legislatures, were contributing factors. It was therefore natural that the founders of our country should provide for separation of powers. One would feel that it was inevitable, but for the fact that four times during their deliberations they voted to have the President elected by the Congress, eventually reversing themselves. The states, with less reason, followed the example of separation set before them by the federal government.

Our problems now are different, and obstacles to action by government are simply shackles upon ourselves. Another factor enters in to increase the importance of this, in that life and government then were infinitely more simple, and the times were correspondingly slow-moving. Dangers from delay did not occur to our forefathers.

The separation is not complete, there are, for example, powers of veto and impeachment, and the supplying of money to the executive by the legislative, but these limitations do not change the basic situation.

Today checks and balances have developed into a danger which should be removed. Caution is a fine quality, but is overdone when it invites paralysis. Now the executive head of a government should be elected by and responsible to the legislative branch. It is true that in general there have been no catastrophic results from the separation of powers in our

national government; although it is arguable that if President Wilson and Congress had cooperated after World War I the League of Nations would not have failed and Germany would not have been able to bring on World War II. In any event, it is undeniable that governmental paralysis through checks and balances has appalling possibilities, and they should not be permitted to develop into actualities.

Alexander Hamilton, this country's greatest constitutional writer, foresaw the danger from checks and balances:

In those emergencies of a nation, in which the goodness or badness, the weakness or strength of its government, is of greatest importance, there is commonly a necessity for action. If a pertinacious minority can control the opinion of a majority respecting the best mode of conducting it, *the majority*, in order that something may be done, *must conform to the views of the minority* . . . (emphasis added)²⁰.

William B. Munro has observed:

The idea that there can be no liberty without checks and balances is one that naturally found favor in an age when Newton's mechanistic philosophy held sway over the minds of men; but in this twentieth century, with our new outlook upon the universe around us, it is far from commanding general acceptance. Checks and balances keep a government safe; but they also impede its endeavors to move forward. They serve the cause of *order* but not of *progress* . . . There are many thoughtful Americans who now believe that the theory of checks and balances is a delusion and a snare, that it has made for confusion in the actual work of government, that it divides responsibility, encourages friction, and has balked constructive legislation on numberless occasions.²¹

Arthur C. Millspaugh has pointed out:

Our governmental organization produces an excess of compromise. It makes bargaining a primary procedure and

²⁰ THE FEDERALIST NO. 22, at 106 (Beloff ed. 1948) (Hamilton).

²¹ THE GOVERNMENT OF THE UNITED STATES 77 (3rd ed. 1933).

a political habit. The causes, it would seem, lie in the separation of authorities and in their check on one another, in our too numerous assemblies, and in the sectional and localistic basis of representation. In many cases too *it is the minority, rather than the majority, that actually rules* (Emphasis added)²².

Cities have shown the way, with a city manager selected by and responsible to the council or commission, no other officials being elected. And what would we think of a private corporation endeavoring to operate under a system of checks and balances? Every corporation is an economic nation, some far from small ones, and its principles of efficiency should be applied to governments.

In some states checks and balances are multiplied, through having *several* state officials elected.

A legislative body with a Senate and a lower house is an important form of checks and balances. Adding the President or Governor, there is a three-way system set up. There are always great possibilities of non-cooperation and obstruction so that nothing can be accomplished. Here again cities and private corporations have set a good example, being governed by a single body, and the nation and the states should achieve their efficiency. One state, Nebraska, has already done so, and reports indicate that the single chamber has worked well.

If the United States Senate were to be abolished, it is logical to expect that the constitutional provision for two Senators to each state would fall of its own weight and not be an obstacle, upon the ground that there was nothing left to which it could apply.

If any state will establish a legislature of a single body, called the Senate, and have fifteen Senators each paid \$15,000, and giving all his time to his duties (or, better still, a twenty-five twenty-five system), it will develop the greatest statesmen of any state, and have the best set of laws.

²² TOWARD EFFICIENT DEMOCRACY 232 (1949).

3. Constitutions Difficult to Amend—Minority Rule Through the Dead Hand of the Past.

A constitutional provision which the majority of the people no longer believe in, but which they can not change through amendment, constitutes minority rule through the dead hand of the past. What was the will of the majority, as expressed in the provision, has become the will of the minority.

The stringent requirements for amendment of the United States Constitution²³ (many of the states require only a majority of the voters) were placed there as a compromise after terrific struggle and as a result of fear of the new government. The limitations on amendment were necessary to get the new government going, but now they amount to a self-imposed partial paralysis which the country should outgrow. A people should not declare themselves incompetent to handle their affairs. Thomas Jefferson, with this sort of thing in mind, exclaimed, "The earth belongs to the living, not to the dead".²⁴ He said, further:

"We may consider each generation as a distinct nation, with a right, by the will of its majority, to bind themselves, but none to bind the succeeding generation, more than the inhabitants of another country."²⁵

Carrying his idea forward, Jefferson in the same passage rather whimsically made use of life expectancy tables, and figured out that at the expiration of eighteen years and eight months from the establishment of a constitution, over one half of the adults living at the time of the enactment will have died. Therefore, he reasoned, a constitution should contain a provision for its revision every nineteen years. In another famous passage he said:

I am not an advocate for frequent changes in laws and con-

²³ U. S. CONST. art. V: Submission by a two-thirds vote in both the Senate and the House of Representatives, with ratification by the legislatures of three-fourths of the states (there is a never-used provision that two-thirds of the states could require the calling of a national constitutional convention to propose amendments).

²⁴ Letter to J. W. Eppes, 1813.

²⁵ *Ibid.*

stitutions. But laws and institutions must go hand in hand with progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors.²⁶

Alexander Hamilton said:

When the concurrence of a large number is required by the constitution to the doing of any national act, we are apt to rest satisfied that all is safe, because nothing improper will be likely *to be done*; but we forget how much good may be prevented, and how much ill may be produced, by the power of hindering that which it is necessary to do, and of keeping affairs in the same unfavorable posture in which they may happen to stand at particular periods.²⁷

Robert M. McIver presented the matter thus:

. . . Where the constitution itself makes amendment difficult, by requiring, say, a two-thirds or three-fourths majority vote as a condition, a peculiar problem is raised. It may be argued that what the constitution does is to insure that public opinion is very definitely in favour of any proposed change before it can be translated into law. But it does more than this. It gives a *veto power against change to a minority*. If then all government rests on the will of the people, on what will does a system rest which confers on the minority a right to veto the will of the majority? It may be that the majority will acquiesce in, or even approve of, a limitation of this kind, but how can we be *sure* when by a past act it is deprived of present power? Does not a constitution of so rigorous a character bind the living will of the present? If we say with Austin that the sovereign in the United States is a three-fourths majority of the states, are we not really saying that a one-

²⁶ Letter to Thomas Kercheval, 1816.

²⁷ THE FEDERALIST No. 22 (Beloff ed. 1948) (Hamilton).

fourth minority is supreme? Have we not here an example of what happens wherever men try to assure a more-than-majority will? The endeavor ends in their *enthroning a minority will . . .*" (Emphasis added)²⁸

A government should have a written constitution, but its purpose, apart from providing for the structure of the government, should be limited to enshrining and preserving the basic principles which the people believe in, protecting them against violation and against change except by the vote of the people themselves. The constitution should not be permitted to become an instrument for defeating the will of the majority.

There is always danger to the stability of a government when there is no legal way to give effect to the desires of the majority of the people. If the matter is serious enough, there will be revolution. Much more serious examples could be imagined, but how would the American people feel if the Twenty-first Amendment, repealing the prohibition Eighteenth, had been ratified by the thirty-five most populous states, but never by another? At the very least there would have been widespread disrespect for law and disobedience of law, far beyond anything experienced during the period of prohibition.

Undue *delay* presents the same danger, in lesser degree. In the nature of things, under a system of law and order, a considerable amount of time will be consumed in effecting a change in the constitution of a nation (or of a state). This period will insure against hasty or ill-considered action, eliminating that objection to removing the extreme requirements which we now have. As Charles F. Emrick put it: "The constitution as it stands makes for obstructive delay in the righting of grievances, and pens up the ferment of society until it sometimes threatens the social order."²⁹

There is an old saying in the law, based upon observation of unforeseen eventualities, that "the dead hand is a clumsy hand". Let us remove it from control over our national life!

²⁸ THE MODERN STATE 376 (1926).

²⁹ THE COURTS AND PROPERTY (1914), reprinted in ORTH, READINGS ON THE RELATIONS OF GOVERNMENT TO PROPERTY AND INDUSTRY 82 (1915).

As to what *should* be required for national constitutional change, I would suggest that an amendment be proposed by a one-fifth vote of either the Senate or the House, or by ten Legislatures, with ratification by a majority of the voters in a national referendum. All other constitutional provisions for votes by Congress should be placed upon a majority basis.

4. Two votes to each State in the Senate—Minority Rule Preserved.

The Constitution provides that each state shall have two United States Senators,³⁰ an aggravated form of unequal districts. This provision constitutes an exception to the statement earlier made that *Baker v. Carr* abolished minority rule through unequal voting districts. This provision is protected in the Constitution in a special way by the stipulation that "no state shall, without its consent, be deprived of its equal representation in the Senate."³¹ Even this latter provision should not lead us helplessly to conclude that such a denial of democratic government must continue forever. The provision for two Senators may well be interpreted to apply only to the original thirteen states, as the others (with the exception of Texas) did not surrender any pre-existing sovereignty when admitted to the union; and the people of the thirteen states should be fair-minded enough not to wish to continue their unfair advantage throughout all future history. The rural voters of Oregon showed in a referendum that they did not desire an unfair advantage in state voting districts.³² The disparity between the populations of the states becomes greater continuously, and this process is certain to continue.

The effect of the equal number of votes in the Senate is magnified by the constitutional provision that in the Electoral College each state shall have a number of Electors equal to the number of Senators and Representatives to which it is entitled³³ and by all the special provisions for action by the Senate. Further, the Twelfth Amendment provides that in case no

³⁰ U. S. CONST., art. 1, § 3.

³¹ U. S. CONST., art. V.

³² NEUBERGER, ADVENTURES IN POLITICS 118, 123, 127, 129 (1954).

³³ U. S. CONST., art II, § 1.

candidate for President receives a majority of the votes in the Electoral College each state shall cast one vote in the House of Representatives. In time the Electoral College should give way to direct election of the President by the voters, and there should be national primaries. Selection of the President by Congress would of course eliminate the Electoral College.

Originally the provision for two Senators for each state was unavoidable, to get the new nation formed, just as the United Nations could not operate on votes cast according to population. The former colonies, due to their history of separate charters from the Crown, and separate Governors and legislative bodies, to say nothing of their equal votes under the Articles of Confederation in the Continental Congress, thought of themselves, when free, as independent nations. In no other way would they have united to form a new nation. However, in spirit we have long since passed from a union of nations to a single nation, and this unjust relic from our historic past must not continue forever.

Without waiting for the Constitution to be changed, the Senators could remove this unfairness through establishing the tradition that whenever a measure has been passed by a majority of votes in the Senate cast by Senators representing a minority of the people, a member of the majority will move to make the vote unanimous against the measure in order to conform to the will of the majority of the people. The procedure would be the same in reverse if a measure supported by Senators representing the majority of the people lost.

Incidentally, to the shame of the Senate, its rules permit filibusterers to set themselves up as minority rulers. If the Senate is to continue this absurd practice, it should if necessary stay in session twenty-four hours a day every day in the year in order to at least make an effort to get its work done. Along the same line, minority rule results when committees of a legislative body are given excessive powers.

5. A Revolution Narrowly Averted.

As long as majority rule is not legally possible the danger of revolution, peaceable or violent, will exist. If we believe in

the right of the people to govern themselves we must believe that the fundamental sovereignty of the people can not be destroyed, so as to prevent them for a thousand years from governing themselves by majority rule. If there is no legal way for them to proceed, and the situation is serious enough, they will have the same justification as Washington and Jefferson to take other steps. This is not being advocated, and it is to be devoutly hoped that the necessity will never arise. If the ideas set forth in this article are carried out it never will. (Any minority rule is to that extent taxation without representation.)

It is interesting to note that the Articles of Confederation preceding the Constitution provided that they could be changed only by consent of all the members of the Confederation.³⁴ This, however, did not prevent them from setting up the Constitution, which went into effect without waiting for all the former colonies to join.

Professor William Y. Elliott of Harvard said:

It does not require gifts of Pythian prophecy to foresee what will happen if the constitutional system is not reshaped to modern needs. If it remains unaltered legally it will be pulled down piece-meal by force of circumstances. An unworkable legislative system of checks and balances will be superseded in times of crisis by executive authority more and more Caesarian in character.³⁵

James MacGregor Burns wrote:

. . . Congress and the President [will go on living together]. But in the absence of party unity, wedlock would continue to be unhappy and unfruitful. It would not yield the teamwork in government that we sorely need. Rather we could expect recurrent periods of deadlock as Congress and the President wrestled for supremacy, ending in shift to presidential rule as the people in time of crisis called for action—any action. Could our democracy stand the strain?³⁶

³⁴ MILLSPAUGH, TOWARD EFFICIENT DEMOCRACY 266 (1949).

³⁵ THE NEED FOR CONSTITUTIONAL REFORM 206 (1935).

³⁶ CONGRESS ON TRIAL 211 (1949).

Mr. Thomas K. Finletter gave this warning:

If there is to be a move from the representative system in this country, it may be sudden or it may be gradual. If we run into extremely difficult conditions in our domestic economy and the people get the conviction that the quarreling between the Executive and Congress is incurable, they may throw over the whole attempt at self-rule with one stroke and authorize government by executive decree.

The gradual destruction of Congress is also possible. It could take the form of an increased use of executive orders instead of legislation in domestic affairs and of executive agreements instead of treaties in foreign matters, and of other devices to by-pass Congress. The condition might become so bad that public opinion would sanction the use of executive orders to the exclusion of congressional legislation. If that became the settled practice, whether all at once or by gradual steps, it would mark the death of representative government and the end of the attempt of the American people to govern themselves [beyond election of the President].³⁷

An incident in the presidential career of Franklin D. Roosevelt, largely unnoticed at the time and since, shows how close we have already come to a technical revolution. The occurrence is thus described by James MacGregor Burns:

Mr. Roosevelt's most sensational assertion of presidential power came nine months after Pearl Harbor. It had become clear during 1942 that the Emergency Price Control Act, passed by Congress early that year, could not hold the price line . . . In a Labor Day address on September 7 the President demanded that Congress repeal this provision. Mr. Roosevelt said bluntly: 'I ask the Congress to take this action by the first of October . . . In the event that Congress should fail to act, and act adequately, I shall accept the responsibility, and *I will act.*'³⁸

Congress passed the necessary legislation before the time limit set.

³⁷ *Can Representative Government Do the Job?* 20 (1945).

³⁸ CONGRESS ON TRIAL 180 (1949).

Roosevelt's contemplated action would have been a technical revolution and a most distressing precedent. It is true that there would have been no protest from the public, but throughout the world democratic government has often died with general approval, as seems to have been the case in France in recent years (written in April, 1962). Much has been written about steps taken by presidents in time of war in excess of their legal authority, but none of those actions, though showing the defects of checks and balances, involved a deliberate formal assumption of authority contrary to the constitutional system.

6. Thomas Wilson Dorr—A Revolution to Attain Majority Rule Attempted.

A unique episode in American history, the Dorr War, or Dorr Rebellion, as it is more commonly called, involved a miniature civil war in Rhode Island, representing an effort to free the state from an oligarchy entrenched behind an unamendable constitution. Thomas Wilson Dorr, who should be immortal, sacrificed his health and his life to establish democratic government. Like Nathaniel Bacon he suffered because he was a hundred years ahead of the times. The story is told in a great historical work, Arthur May Mowry's "The Dorr War".³⁹

Mowry commences his book:

A little more than fifty years ago [writing in 1900] the State of Rhode Island passed through a struggle which not only led to civil war within the State itself but also aroused great interest in other parts of the country. The contest was unique; in its causes it finds no parallel in the annals of any state of the Union; history records few civil wars in which the antagonism of parties was so intense, few which collapsed so completely and so suddenly, and yet few which accomplished a more definite result [the termination of the oligarchy]. It would be worthy of study, even were the causes less significant; but the causes illustrate, as almost no other episode of this [nineteenth] century, the development of democratic government.

³⁹ Published in 1901, by Preston & Rounds Co., Providence, R. I.

The noted historian Albert Bushnell Hart, in his highly commendatory Introduction to Mowry, says: "Perhaps the main lesson of the whole controversy, and the lesson to which Mr. Mowry especially addresses himself, is the power of strong, moderately phrased, and continuous public protest, and its superiority to forcible revolution." A purpose of this article is by treating basic causes, to assist in preventing the development of any occasion for another such chapter in our history.

Rhode Island in 1840 was still operating under the original Charter of the Colony granted by Charles II in 1663 (the other twelve original states had adopted constitutions). The Charter created the Colony as a corporation, the members, corresponding to stockholders, being the "freemen", which came to mean the citizens, of the various towns. The Charter contained no provision for amendment (though there was an unused provision that the General Assembly, the governing body, could make "new forms of government").

The Charter contained two features which gradually aroused intense hostile public opinion—restriction of the right to vote to certain property owners, so that only a minority could vote; and a fixed permanent apportionment of members of the Assembly to the various towns in a way which was fair under the original conditions, but which gradually became very unfair as the cities developed (the same evil dealt with by *Baker v. Carr.*)

Some leaders finally decided that something must be done. The ruling oligarchy showed no disposition to yield its privileged position, and under the Charter there was no legal way to correct conditions (in the earlier stages of the controversy President Tyler, appealed to by both sides, declined to exercise any initiative).

Under the leadership of Dorr, a Providence lawyer, the State Suffrage Committee sent pamphlets to the people of the towns, asking them to elect delegates to a convention, entirely apart from the government of the state, to frame a new Constitution. Amid increasing tension the convention met October 4th, 1841, and on November 18th voted to submit the Constitution which it had adopted to the voters in un-

official elections, to go into effect if approved by a majority of all the voters of the state. It was claimed by the Dorr group that the votes cast for the Constitution did represent a majority of all the voters, and it seems probable that this was true, although the claim was contested by the supporters of the old state government. The new government commenced operation, and elected Dorr Governor. He was inaugurated May 3rd, 1842, and before the New General Assembly delivered one of the great speeches of American history.⁴⁰

The pre-existing General Assembly had also called a "Freemen's" constitutional convention, and in 1842 it adopted a Constitution which was more liberal than the Charter, but which was rejected by the voters.

The state got to the verge of civil war. May 17th, 1842, Dorr, with a force of some two hundred men, made a bloodless and unsuccessful effort to capture the state Arsenal at Providence. Later he assembled a force of possibly five hundred armed men, who camped at Acote's Hill. The opposing Governor called out the militia, and again appealed to President Tyler. Tyler made it known that he would support the previously existing government. He did not pass upon the merits of the dispute, but took the position that he would support the established government until informed that another had taken its place (this action is said to have injured the Whig Party nationally).

This was the beginning of the end for Dorr. His followers began to rapidly desert him, and he fled the state June 27th, 1842, calling upon his adherents to disperse (the casualties were one killed and two wounded, all across the Massachusetts line). Dorr was later tried for treason against the state, and sentenced to life imprisonment. After having been held in jail several months awaiting trial, he spent a year in the penitentiary before he was pardoned by the General Assembly. Six years later, by which time he was a broken-hearted man, he was restored to his civil rights.

⁴⁰ A portion of it is to be found in MARK AND SCHWAB, THE FAITH OF OUR FATHERS 61 (1952).

After three more years the Assembly reversed the judgment of the Rhode Island Supreme Court that Dorr had been guilty of treason. Mowry states that now Dorr is "worn out in mind and body, without spirit or energy, grown old before his time". He died ten months later at the age of forty-nine, a martyr to his devotion to the principles upon which this country was founded. Doctor Hart says that "the Dorr Rebellion is one of the most distinct and striking incidents of the long American struggle for manhood suffrage".

In 1842, the year of Acote's Hill, the old General Assembly adopted a better Constitution to replace the one it had previously submitted to the voters, and which had been rejected by them. The new one was approved by the voters. While far from perfect, on the whole the new Constitution represented a victory for Dorr's ideas. It improved the apportionment of members of the General Assembly. Most writers feel that Dorr deserves the credit for this result. The Dorr struggle attracted intense national attention, and caused a great deal of discussion in Congress, but the debates went off on party lines, and nothing came of them (except weakening of the Whig Party).

On June 25th, 1842, the old, or Freemen's (anti-Dorr), government declared martial law. It was in full force for forty days, and was enforced with great harshness. Hundreds were arrested and held in confinement, and hundreds of houses were searched for hidden weapons or men. Sixteen persons were confined for three days in a cell twelve feet by nine feet.

Out of the martial law period arose the most famous "political questions" case in the history of the country prior to *Baker v. Carr*: *Luther v. Borden*, decided in 1849.⁴¹ While Luther, a moderator at a town meeting under the auspices of the Dorr group, was away from home, nine men, headed by Borden, broke into his home to arrest him. He sued for damages for this trespass, raising the question which of the two governments was the lawful one. The United States Supreme Court, Chief Justice Taney writing the opinion, held that it could not go into this—that when Congress continued to

⁴¹ 48 U. S. (7 How.) 1 (1849).

admit the Senators and Representatives from the old (anti-Dorr) government, its authority and its republican character were recognized "by the proper constitutional authority", and that the decision of Congress "could not be questioned in a judicial tribunal". In view of the physical condition which had existed and the action of Congress, it seems that the court acted properly in ruling that the question was "political" and not "judicial". The later error of the court has been in applying the doctrine to cases which it *could* handle.

The verdict of history, influenced by Mowry, is that Dorr was not justified in resorting to force, or in attempting even a peaceful revolution. Nevertheless, Mowry concludes the chapter on his personality and character:

Of whatever failings Thomas Wilson Dorr may be accused, his virtues clearly outrank them. Whatever he did to lose the esteem of his contemporaries is more than offset by the truth of the cause in which he was engaged. His trial and conviction were unnecessary, and his early death might have been postponed. If we call him a rebel, we must call him an honest rebel and one who sought only what seemed to him the true welfare of the people. If we condemn him for what he did, we must praise him for what he meant to do. And, after all, Thomas Wilson Dorr, though he never realized it, did bring a people's government to the people of Rhode Island.

It was more than a coincidence that in Rhode Island Thomas Wilson Dorr found oligarchy and left democracy.

STATEMENT ON H.R. 2836 SUBMITTED ON BEHALF OF THE INTERNATIONAL LADIES' GARMENT WORKERS' UNION

We wish to thank the members of this committee for affording us the opportunity to present our views on the vital subject with which H.R. 2836 deals. We wish further to commend the chairman of this committee and the introducer of this bill, Congressman Celler, for his long, steadfast devotion to the cause of fair representation. Congressman Celler's concern with the problem of inequitable representation in the House of Representatives goes back many years—to a time when very few Americans, in or out of Congress, were aware of this problem, and when fewer still were concerned with its consequences. A decade before *Baker v. Carr* and *Wesberry v. Sanders* focused the attention of the Nation on the issue, Congressman Celler had already begun his efforts to alert the country to the evil and to persuade Congress to take action against it.

Year after year, in Congress after Congress going back to the early fifties, Congressman Celler introduced legislation to establish national standards which State legislatures would be required to heed in the delineation of congressional districts; and year after year—until this year—Congressman Celler's proposals fell on deaf ears. His bills, the basic provisions of which were always essentially the same as those in H.R. 2836 today, were received with apathy by some and with hostility by others. None ever advanced beyond the committee stage.

Today, the situation is strikingly different. Not only are the inequities in congressional representation now receiving wide attention, but—ironically—the approach embodied in Congressman Celler's bills is now receiving support in some quarters where it was viewed most coldly in times past.

The landmark decisions of the Supreme Court in *Baker v. Carr* and *Wesberry v. Sanders* mean that despite Congress inaction on the proposals by Congressman Celler and others to guarantee equitable representation, and despite the continual, outrageous flouting by State legislatures of the principles of majority rule and political equality, our basic democratic right to fair representation will nonetheless be assured. The right of every American to an equal voice in determining the composition of the legislative branch of the Federal Government has now been upheld by the judicial branch. Thus the original objective of Congressman Celler's proposals, fairer congressional representation, is now to be achieved—but as a result of Court decision rather than legislation. The task now confronting Congress is consequently one of implementation: The establishment of standards of fair representation. The Supreme Court's decisions in this area have been stated in broad, general terms. It is now incumbent upon Congress to define the principles of equitable representation in more specific terms, and to act to ensure that the composition of the House of Representatives shall henceforth be based on those principles. Court action in the field of apportionment and districting was brought on in the first instance by the failure of State legislatures and of Congress to meet their responsibilities to uphold democratic processes. Unless the legislatures and Congress now act in conformity with the spirit (as well as the letter) of these decisions, the courts will inevitably be compelled to move more deeply into the apportionment and districting processes. Congress can and should act now to avoid such continuing judicial intervention.

Yet the very fact that Congress does have not only responsibility but constitutionally granted authority to play a role in this matter, has apparently led some of those still unreconciled to the eradication of inequitable representation to the belief that Congress should act not to implement the Court's ruling but rather to circumvent it. Not everyone now showing interest in the proposals Congressman Celler has been advocating for many years can be presumed to have the same motivation as the bill's author. When Congressman Celler's bill was first advanced more than a decade ago, it was in a far different atmosphere; then, the passage of any legislation of this nature would have been a significant advance in the direction of fairer representation. In the present context, however, adoption of a weak bill in this area would constitute a step backward—a step away from fairer representation. Truly fair representation is now no longer an unrealistic, unattainable goal. Weak legislation in this field today would be worse than no legislation at all. Loose standards which exempted from corrective action all but the very worst existing instances of inequality, would be an open invitation to State legislatures to continue to draw congressional district boundaries solely on the basis of partisan, sectional, or personal considerations. And such standards would also be an open invitation to further action by the courts. Consequently, while we warmly endorse the

principle underlying H.R. 2836, we strongly urge adoption of certain changes and additions in order that the bill may properly serve the purpose for which it is intended.

Our most serious reservation about the bill in its present form is our belief that the permissible district population variation of 15 percent above or below the State average is far too broad in the light of the existing abuses. To condone so wide a variation would leave untouched serious inequities which now exist in many States, and would enable those States where the variations now exceed 15 percent to maintain their basically inequitable districting patterns by means of a relatively few boundary readjustments. The severity of the inequalities requires corrective measures of the strictest nature.

Inequitable representation of any kind is a serious abridgment of our democratic practices, but its damage to democracy, and particularly to the concept of representative government, is compounded by the fact that where it exists, inequitable representation generally shows a consistent pattern of discrimination—as for example, against a particular city or region or political party. If the inequities in congressional representation existed in a random pattern—if, in a State, neither political party was the consistent and inevitable victim, or if metropolitan areas were as often overrepresented as rural areas—then those inequities which did exist might not be a cause for major national concern, for while their existence might distort the will of the people occasionally, they would not distort it consistently in any one predictable direction. But such is not the case. Who, for example, would seriously deny that the Democratic Party deliberately fostered inequities in attempts to gain partisan advantage in the last redistrictings in California, in North Carolina, in West Virginia, or that the Republican Party did the same in New York, in Iowa, in Michigan? Who would deny that rural areas are the consistent beneficiaries of numerically unequal representation in almost every State where such inequities exist, or that urban and suburban areas are the consistent victims? (Election results in Michigan over the last 10 years point up the way in which inequities consistently directed against one political party—in this case against the Democratic Party—can consistently distort the popular will as reflected in the composition of Congress. In four of the last five elections, Democratic congressional candidates won a majority of the votes in Michigan but Republicans have nonetheless continued to control a sizable majority of the State's congressional seats. The Democratic percentage of the votes cast in Michigan in the elections of 1954, 1958, 1960, and 1962, ran between 51 percent and 53 percent, yet the Republicans won 11 congressional seats and the Democrats only 7 on each occasion.) Adoption of strict standards for equitable congressional districting are imperative precisely because inequities exist in such consistent patterns and therefore distort the public will in a consistent way. Only the strictest standards can be effective in combating distortions of this nature.

A weak standard, such as the proposed 15 percent allowable population variation, would be of little effect against the kind of consistent distortions which now exist. This may readily be confirmed by the fact that there are today a number of States where no district varies in population by more than 15 percent from the State average, but where significant inequities nonetheless exist.

No congressional district in New York State exceeds the 15-percent limit, yet the districts vary in population by as much as 111,000, from a low of 349,000 to a high of 470,000.

No Nebraska district exceeds the 15-percent limit, yet the State has one district with a population of 405,000 and another with a population of 531,000, a difference of 126,000.

The maximum variation in Rhode Island is a mere 7 percent, but one of the State's two districts has a population of 400,000 while the other has a population of 460,000.

While the Supreme Court, in *Wesberry v. Sanders*, did not require that equality among district populations be established with exact "mathematical precision," it did say that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." Can it seriously be maintained that there was no "practicable" way for the New York Legislature to have avoided the establishment of one district containing 111,000 people more than another, or that Rhode Island could not have been divided into two districts more nearly equal in population than those noted above? (The population difference in Rhode Island cannot be attributed to any reluctance to subdivide

counties or towns, for both Providence County and the city of Providence are divided under the present districting.)

A statute which allowed deviations of up to 15 percent from the State average would in effect actually be allowing deviations of up to 30 percent between districts. To cite again an example noted above, there is a very substantial difference of 126,000 between the populations of two districts in Nebraska, although the greatest deviation from the State average is only 14 percent. Actually, however, two deviations are involved. The district with a population of 531,000 is 13 percent above the State average; the district with a population of 405,000 is 14 percent under the State average. The gap between them, then, is actually 27 percent. This difference is great enough to give 10 persons in the less populous district the same power in congressional elections as 13 in the more populous district. When 10 equals 13, "one man's vote in a congressional election" is clearly not "worth as much as another's." Surely the Nebraska Legislature could have created districts more nearly equal in population than these.

Another important factor to be noted with regard to the proposed maximum allowable deviation of 15 percent—or any other percent—is the fact that inequities are often cumulative in effect. A substantial number of relatively small inequities can add up to a large inequity. This factor is particularly important in States with sizable numbers of districts.

In New York State, under the districting statute in effect in elections from 1952 through 1960, no district varied in population from the State average by more than 14 percent. Nevertheless, very significant inequalities existed.

The 22 districts in New York City had an average population of 359,000; the average population of the 21 districts elsewhere in the State was 330,000. The difference of 29,000 between these two figures is relatively small, but to appreciate its true importance it must be multiplied by the number of districts involved. The result is a difference of more than 600,000—the equivalent of almost two full seats.

These comparatively small population differences yielded significant political effects; 16 of the State's districts elected Democratic representatives in all 5 elections held under the 1951 districting statute. These had an average population of 361,000. Twenty-one districts elected Republicans all 5 times, and had an average population of 336,000. Here again the difference—25,000—appears small, but an average difference of 25,000 per district adds up to a very substantial statewide difference.

New York State's current districting law also provides several examples of how meaningful inequities can be "hidden" behind an allowable variation of 15 percent.

When it redistricted the State in 1961, New York's Republican legislature was quite careful not to exceed a 15 percent variation limit. Indeed, the redistricting statute's sponsors have frequently cited this fact in its defense. Yet within this self-imposed limit, the legislature was able to do the following:

Five of the seven districts wholly, or partly within heavily Democratic Kings County (Brooklyn) were more or less "conceded" to the Democrats. These districts had an average population of 444,000. The boundaries of the other two districts were drawn in the hopes of electing Republican representatives. These districts had populations of 350,000 and 352,000.

To insure retention of at least 1 Manhattan congressional seat, a safely Republican district with a population of 382,000 was established. Manhattan's 3 other districts, all safely Democratic, had an average population of 439,000.

Two of the 17 upstate districts (those north of New York City) were drawn with no hopes that they would elect Republican Congressmen. These had populations of 436,000 and 453,000. The average population of the 15 other districts—all either contestable or safely Republican, was 406,000.

Minnesota is another State where obviously discriminatory districting exists although the maximum population-variation is comparatively small: in this instance, 13 percent. The two congressional districts which encompass the State's largest cities, Minneapolis and St. Paul, have an average population of 479,000, but the average for the State's six other districts is only 409,000. The discrimination against the two large cities is clear—and substantial—yet it would not be in violation of the presently wording of H.R. 2836.

The goal of any districting standards which Congress now establishes must be to insure compliance with the Supreme Court ruling. In framing such stand-

ards, therefore, Congress should keep in mind the fact that that ruling spoke of there being "no excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives."

The Court spoke of equality in representation "as nearly as it is practicable." It is impossible to believe that there are practicable barriers to the achievement of equality in any State which are so great as to require a leeway of 15 percent in either direction from the State average. Some leeway is both desirable and permissible, but no reason exists why it must be any greater than at most 5 percent. (Even a 5 percent allowable variation, it must be remembered, permits districts to vary from one another by as much as 10 percent.) The fact that in the redistricting enacted last year in Wisconsin, no district varied from the State average by more than 3.4 percent, is ample evidence of the fact that even a populous State containing both large metropolitan centers and sparsely settled rural areas, can easily be divided into districts with almost equal populations.

The only "practicable" barriers to the achievements of equal representation in any State are the desires of particular political parties or geographic areas to have advantages over other parties or areas. But such advantages are not only unwarranted but unconstitutional; they cannot be permitted to subvert our democratic rights.

In addition to the substitution of a 5-percent permissible variation for one of 15 percent, we believe that H.R. 2836 would be further strengthened by actual inclusion of the language of *Wesberry v. Sanders*. In part (1), subsection (c), the sentence beginning on line 9 should be amended to read as follows: "Each such district so established shall at all times be composed of contiguous territory, in as compact form as practicable, and shall contain, as nearly as is practicable, an equal number of inhabitants." (It is interesting to note that a similarly worded clause appeared in the Federal law which existed prior to 1929, but was never enforced. The recent actions of the Supreme Court, however, provide ample assurance that there would be no such enforcement problem today.)

In one aspect—inclusion of a requirement that districts be contiguous and compact—H.R. 2836 goes beyond the Supreme Court. But while the Court has not yet ruled on the question of congressional district "gerrymandering," there can be no doubt about the fact that the deliberate manipulation of district boundaries to achieve partisan advantage and the creation of numerical inequalities for the same purpose are simply two forms of the same evil: unfair, inequitable representation. The pre-1929 statute also contained an unenforced compactness and contiguity requirement, but here again, the completely different judicial disposition which now exists means that such a requirement now might well be an effective deterrent to gerrymandering. We therefore strongly support its inclusion in the proposed legislation.

One further change is clearly warranted in H.R. 2836: the date on which it would become effective. We are pleased to note that following the *Wesberry v. Sanders* ruling, Congressman Celler himself suggested that in the light of the decision, the bill's provisions should be made effective beginning with the election of 1966 rather than 1972.

Adoption of the additions and changes here suggested would, we believe, make H.R. 2836 a most effective way to assure fair and equal congressional representation to every American in every part of every State—and to reestablish the representative character of the House of Representatives.

STATEMENT OF HON. ABRAHAM J. MULTER IN SUPPORT OF H.R. 699

Mr. Chairman, I very much appreciate the opportunity to testify today in favor of my bill H.R. 699, which would require the establishment of congressional districts composed of contiguous and compact territories, and require further that the districts so established within any one State shall contain approximately the same number of inhabitants.

Mr. Chairman, the early settlers of this country brought with them from England the concept of representative government. That concept is basic to our form of government and has, in fact, become even more meaningful with the steady broadening of the base of democracy. We in the House of Representatives, in particular, should be acutely aware of the meaning of representative government. The very name of the body we constitute, the very designation each

of us bears, should constantly remind us that we are here, in a very real sense, to act in the place of those who make up our constituencies.

This right of the citizens to designate those who will make the laws under which they live must be neither compromised nor flouted. It is a right too basic and too precious. And yet this fundamental right is compromised in every section of this country in every congressional election. This is not a pleasant indictment and it signifies a state of affairs of which we should be deeply ashamed.

It is an indisputable fact that malapportionment is a distortion of representative government. It is also an indisputable fact that the present congressional apportionment of this country amounts to the partial disfranchisement of 40 million of our citizens. It is inconceivable to me how such a situation can be justified.

This malapportionment of which I speak is brought about in two ways. The more obvious is gerrymandering, the arbitrary arrangement of the congressional districts in a State so as to give one political party an unfair advantage. The more invidious method is the silent gerrymander, the failure of the State legislature to redistrict the State to reflect shifts in population. The result is a State composed of congressional districts which vary significantly in population. In Texas there is a difference of 735,156 persons between the largest and the smallest districts. This disparity is 465,274 in Arizona, 458,403 in Colorado, 406,971 in Indiana, and so forth. What this means is that the vote of a citizen in a populous district is of considerably less weight than that of a citizen in a less populous district. And such dilution is nothing less than the partial disfranchisement of these citizens. If my estimate of the growth in population in my own district since the 1960 census and the reapportionment of 1962 is correct I now represent almost 600,000 constituents. The population of the many districts in New York is under 400,000.

The legal and political situation of the voter thus discriminated against is of crucial importance. To whom may he turn for redress? The Constitution of the United States entrusts to the State legislatures the task of drawing the lines of the congressional districts. The present disgraceful situation proves that all of the States have not acted responsibly in this matter.

As a result, justifiably indignant citizens have turned to the Federal courts. Until recently, they were equally unsuccessful in that arena. The February 17 decision of the Supreme Court of the United States in the case of *Webb v. Sanders* marks the end of the era of frustration for these voters. The Court held in this case that the history and wording of the constitutional command that the "House of Representatives shall be composed of Members chosen * * * by the people of the several States" demands that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's."

The relevant question for us, the Members of Congress, is whether this decision has absolved us from any responsibility in legislating on the subject. In my opinion we are not so absolved. In fact, the Court's decision has made action by the Congress even more urgent.

It is mandatory that we finally come to grips with this problem and lay down guidelines for the State legislatures; guidelines which are not contained in the decisions of the Supreme Court.

That we have both the power and the responsibility to do so is unquestionable. Article I, section 4, of the Constitution, referred to earlier, gives to the State legislatures the responsibility for prescribing the "Times, places, and manner of holding elections for Senators and Representatives." But this power is qualified by the fact that "the Congress may at any time by law make or alter such regulations, except as to the place of choosing Senators."

Our sparing use of this power in the past does not excuse action now. There are ample precedents for congressional action on this matter. In the act of June 25, 1842, the Congress called for the election of Representatives by districts and required that in those cases where a State was entitled to more than one Representative the districts were to be composed of contiguous territory. The act of May 23, 1850, omitted the requirement of contiguous territory, but it reappeared in the acts of July 14, 1862, and February 2, 1872. The latter act further required that each district contain "as nearly as practicable an equal number of inhabitants." The act of January 16, 1901, added to this the requirement that the districts be composed of compact territory. These three requirements remained in effect until 1929. Unfortunately, subsequent legislation has omitted them.

In all cases, Congress has been understandably reluctant to exercise its power in this matter. It has never attempted to draw or redraw the lines of a State's congressional districts. In fact, it never attempted to enforce the provisions

of the laws I have mentioned. There is, however, a point at which this reluctance to act becomes a dereliction of duty. I sincerely believe that that is now the case. The law now in effect, the Reapportionment Act of June 18, 1929, as amended by the Equal Proportions Act of 1941, requires an automatic and equitable distribution of seats among the States after each census. In my judgment, it is essential that we add to this an insistence upon an equitable distribution of seats within each State.

To this end, may I commend to your attention my bill, H.R. 699. This bill would amend the Reapportionment Act of 1929 to require that each State which is entitled to more than one Representative establish districts composed of compact and contiguous territory "and the number of inhabitants contained within any district so established shall not vary more than 10 percent from the number obtained by dividing the total population of such States * * * by the number of Representatives apportioned to such State * * *."

Gerrymandered districts would be eliminated by the compact and contiguous territory requirements. The silent gerrymander would be impossible because the disparity of population between districts could not exceed 10 percent. This, in my opinion, allows a reasonable variance which is necessary in some cases because of the geography of the State.

It is important to note that the Congress, in enacting this bill, would not be taking on the task of districting or redistricting the States. We would in no way usurp the power granted to the State legislatures by the Constitution. We would merely accept our constitutionally imposed responsibility to supervise the regulations of the States and would establish a reasonable and practical set of guidelines to aid them.

This bill would be meaningless if no means of enforcement were provided. However, H.R. 699 specifies that "any Representative elected to the Congress from a district which does not conform to the requirements * * * shall be denied his seat in the House of Representatives * * *." This is clearly within our power for article I, section 5, of the Constitution states that; "each House shall be the judge of the elections, returns, and qualifications of its own Members."

There is considerable speculation in the press and elsewhere about the probable effects of widespread reapportionment by the State legislatures. Statistical analyses showing which sections of the States may gain seats and which may lose and which political party may gain and which may lose, are not uncommon.

Mr. Chairman, I think these considerations are completely irrelevant. The House of Representatives was intended to be the "popular Chamber." To be truly that, it must accurately reflect the population which it was established to serve.

For too long our unwillingness to accept our duty and our responsibility has created a vacuum. I ask you to reflect upon the injustice of a situation in which the citizens, the source of all governmental power, are deprived of a franchise equal in weight to that of their neighbor by the very agencies which were established to protect their rights. For too long was this right left unchampioned. It is true that the Supreme Court has now stepped into the void. But what is required are prospective and general guidelines such as will only be found in a legislative enactment.

I ask you to give consideration to H.R. 699. It is imperative that we act quickly, not out of panic, but out of an aroused sense of justice.

Thank you.

CITY OF NEW YORK,
OFFICE OF THE MAYOR,
New York, N.Y., April 2, 1964.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Mayor Wagner, who is out of town for a brief rest, asked me to convey to you, without delay, a somewhat belated statement by him, for inclusion in the hearing record on H.R. 2836, expressing his views which are generally in support of the bill, but making certain suggestions.

The mayor hopes that this statement will arrive in time to get in the record. In any event, he hopes that his views may be considered by you and the Judiciary Committee.

Sincerely,

JULIUS C. C. EDELSTEIN,
Executive Assistant to the Mayor.

STATEMENT OF HON. ROBERT F. WAONER, MAYOR, CITY OF NEW YORK

New York City has a deep concern and interest in the fair apportionment of congressional districts. We are strongly in favor of it, since we have certainly suffered from the absence of it in some parts of the city.

It goes without saying that we commend the leadership and zeal of Chairman Celler in proposing and advocating legislation to advance the cause of fair apportionment based on the Supreme Court decisions in *Baker v. Carr* and *Wesberry v. Sanders*. I am convinced that H.R. 2836 is in the spirit of these landmark decisions and provides proper legislative guidelines in the aftermath of the Supreme Court pronouncements on this matter.

I believe that H.R. 2836 is sound legislation with strong roots in the law and in the tradition of this country. Indeed, until 1929, a Federal law did require that all Representatives be elected from districts composed of contiguous territory and of a compact form. I strongly favor a return to and reaffirmation of this principle.

With specific regard to the establishment of districts of contiguous territory, it is clear that there is real justification for such a provision. In New York State at the present time, several districts violate this commonsense rule of representation. The 16th Congressional District, for example, is composed of two parts separated by many miles of the Atlantic Ocean.

Similarly, with regard to the stipulation of compact form, there are many instances of the violation of this important aspect of representation. The 24th Congressional District is an illustration of a district which wraps around another, skirting some areas and including others, for obvious reasons.

A legal requirement for contiguous territory and compact form will remove two of the favorite devices of the gerrymanderers.

In the Federal law prior to 1929, there was also a stipulation that all districts contain an equal number of inhabitants, as nearly as practicable. I subscribe to that principle and urge the inclusion of reference to it in this bill, H.R. 2836, to strengthen the ruling in *Wesberry v. Sanders* and to avoid any new attempt to evade it.

With this language inserted, I see no reason not to provide some firm arithmetical basis for variation. The 15-percent figure would mean a range in New York State in its congressional districts of between 347,915 and 470,733. I would prefer a reduction in this leeway to 5 percent, which would mean a range of 388,858 to 429,790. I believe this latter range is more in keeping with the spirit of the former Federal law on this subject.

I am hopeful that this committee will weigh this bill carefully and will enact it. I favor it, with the amendments I have suggested, but if these proposed amendments do not find favor with the committee, I would still strongly support and urge the passage of this legislation.

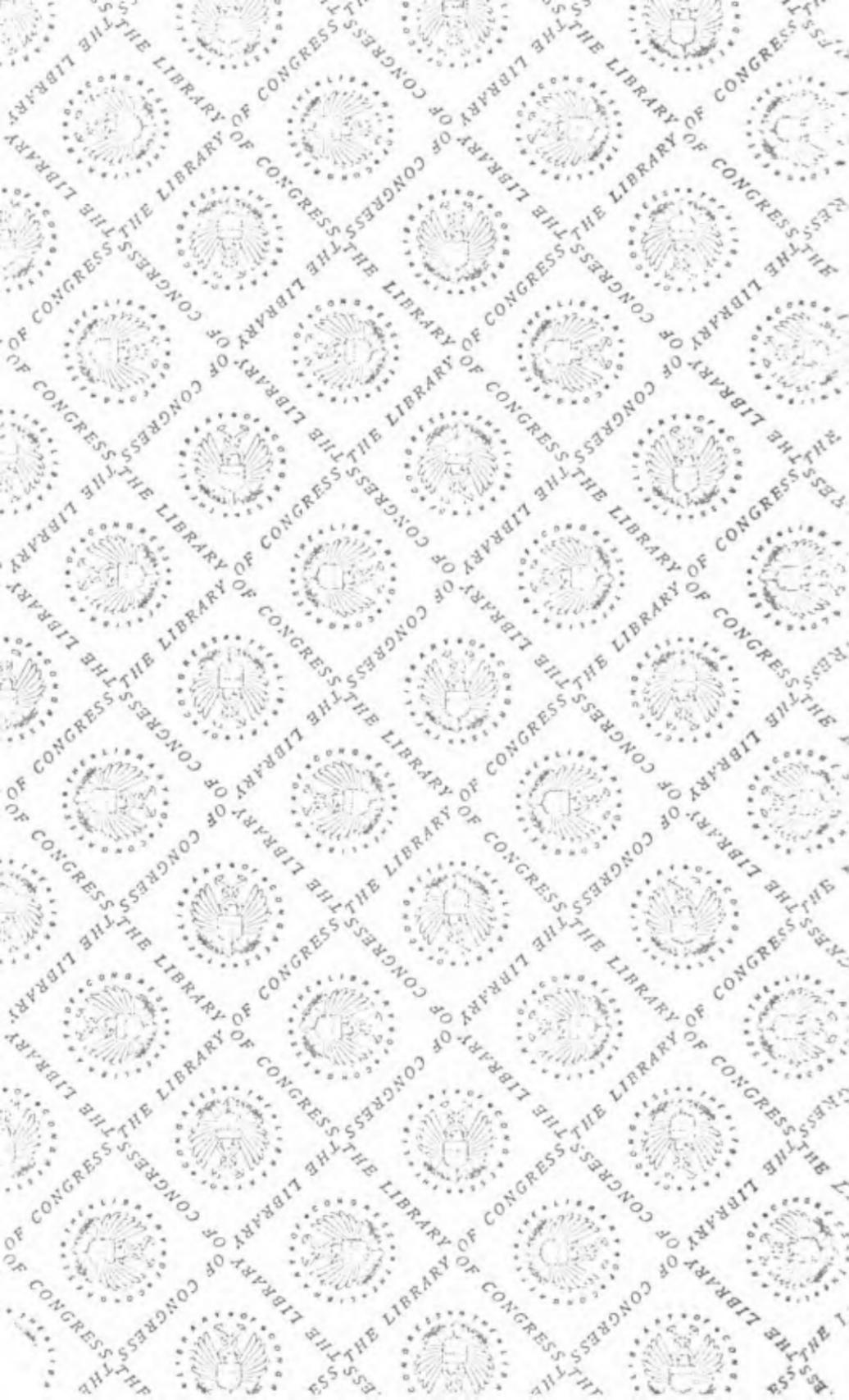
(Whereupon, at 12: 15 p.m., the hearing was closed.)

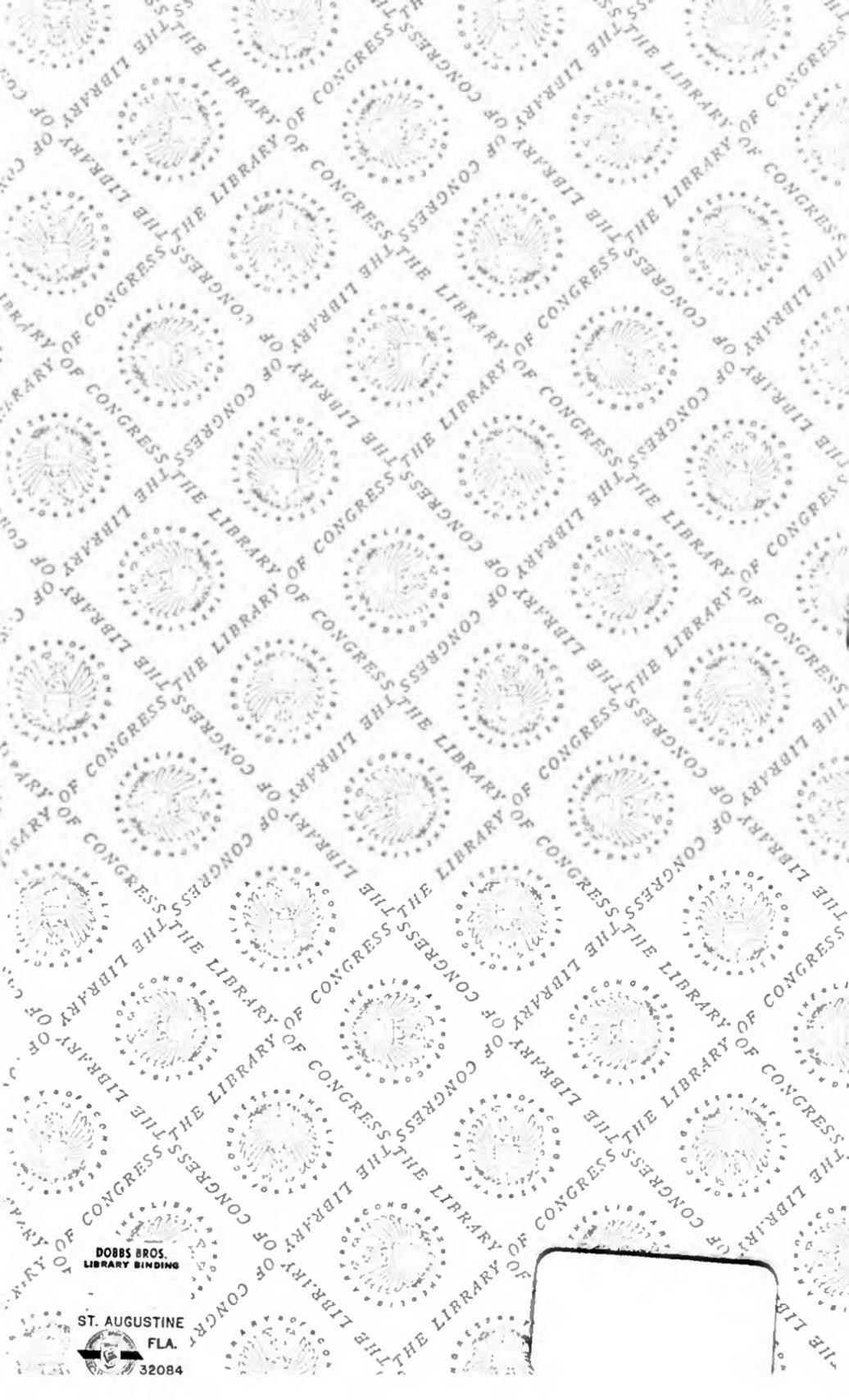


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