

BOB DOLE
1ST DISTRICT, KANSAS

243 CANNON HOUSE OFFICE BUILDING
AREA CODE 202
225-2715

COMMITTEES:
AGRICULTURE
GOVERNMENT OPERATIONS

DISTRICT OFFICE:
101 FEDERAL BUILDING
GREAT BEND, KANSAS 67530
AREA CODE 316
SW 3-5423

Congress of the United States

House of Representatives

Washington, D.C. 20515

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GRAHAM	NORTON	STAFF
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		WICH

STATUS OF LEGISLATIVE REAPPORTIONMENT

Congressman Bob Dole

Since 1963, thirty-two states have adopted petitions requesting Congress to call a Constitutional Convention to deal in one fashion or another with state legislative apportionment. Article V of the Constitution of the United States provides, in part, that

"The Congress,.....on the application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing amendments....."

which become a part of the Constitution upon ratification by three-fourths of the States. Therefore, it appears that if only two more states should adopt petitions calling for such a convention, one must be called.

The issue which has stimulated this drive is, of course, the action taken by the Supreme Court of the United States in ordering the apportionment of both houses of a bicameral state legislature solely on the basis of population. The landmark decisions of Baker v. Carr in 1962 and Reynolds v. Sims in 1964 altered the traditional Court policy of abstention from reapportionment cases and overturned the so-called "federal example" of apportioning one house of a legislature on the basis of geographical units.

ACTION TAKEN TO OVERRULE THE COURT

Opponents of this decision have taken a two-pronged course in attempting to reverse the Court's mandate. On the one hand, in the U. S. Senate Senator Everett McKinley Dirksen has twice been able to muster a majority in favor of a proposed amendment to allow states to base the apportionment of one house on factors other than population. In both instances, however, he has failed to obtain the two-thirds majority necessary to have the amendment adopted. On the other hand, in 1962, even before Senator Dirksen had attempted to pass his amendment, the 16th Biennial General Assembly of the States endorsed a Constitutional amendment to remove reapportionment from the jurisdiction of the federal judiciary. During the 88th Congress (1963-64), 12 states, including Kansas, submitted petitions calling for a Constitutional amendment dealing with apportionment. After the 1964 General Assembly of the States, 22 States, including Kansas, and 8 other states which had submitted petitions to the preceding Congress, presented petitions to the 89th Con-

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gress calling for an amendment to allow states to apportion one house of their legislature on factors other than population. The present Congress has received four petitions from additional states calling for a convention on this issue. Furthermore, 4 states, the receipt of whose petitions is contested, have also adopted measures calling for the convention, bringing the total to 32 states.

PRINCIPAL QUESTIONS RAISED

As the eventuality of 34 states adopting such petitions becomes ever more imminent, advocates of the Court's so-called "one-man, one-vote" pronouncement have been busily assembling a list of questions that the Convention's proponents will have to face. Of these, there are seven principal ones that demand attention.

1) Must the language of amendments proposed in state petitions be identical? If so, the fact that the language of the petitions to the 88th and 89th Congresses are at variance would mean that far fewer than the requisite number of states had submitted the same petition.

2) How long does a state petition requesting a Constitutional Convention remain valid? Since it is over 4 years since the first of these petitions was submitted, this question is a fundamental one.

3) Is a petition from a malapportioned state legislature valid? The contention that it is not has become one of the primary challenges put forth by opponents of the calling of a convention, particularly Senators Tydings of Maryland and Proxmire of Wisconsin.

4) May a state rescind a petition calling for a convention? This course of action has been initiated in Maryland in an attempt by opponents of the measure to block the convention call.

5) Does Congress have power to restrict the scope of a convention's deliberations? This is a thorny problem that has even bothered many people who would favor a Convention called for the purpose of overturning the reapportionment decision but who would not be in favor of a general revision of the Constitution such as a convention with no restrictions on it could propose.

6) Do state applications control the subjects considered in a convention? Could, that is, in this way the states limit the purview of a convention and thereby not open the door to a flood of amendments?

7) Does Congress have the power to refuse to call a Constitutional Convention? Some opponents of the measure contend that Congress -- although the Constitution clearly says that that body shall call a convention, not may call a convention -- can simply refuse to issue a call and thereby derail the convention move.

CONCLUSION

Whatever the answers to these questions, petitions pending in state legislatures throughout the country indicate Congress may soon have to provide them. The Founding Fathers included a provision in the Constitution intended to allow the states to call for a revamping of that document without direct recourse to the Congress. Up to this time, it has never been put to use, and the problems raised by its wording have not been confronted. The time for confrontation may soon be here.