This is a copy of my statement with reference to reapportionment of state legislatures which I felt would be of interest to you. -- BOB DOLE

STATEMENT OF CONGRESSMAN BOB DOLE (KANSAS) BEFORE THE
HOUSE COMMITTEE ON THE JUDICIARY
REGARDING H. RES. 1078 AND RELATED MEASURES
THURSDAY, AUGUST 6, 1964

MR. CHAIRMAN:

I.

Few will disagree that the greatness of our nation is owing to the intrinsic greatness of its people. This inner greatness, thriving, dynamic and creative, is reflected in a number of our institutions--one of which is our principle of representative government. This principle is not an expression of an unchanging, immutable axiom; rather it manifests a deep understanding of people, their inherent tendency for conflict, and their redeeming inclination for compromise. Moreover, it permits that restless endeavor without which, surely, there could not be a "more perfect union." The worth of this principle rests primarily on a reverent respect for the people; and, so it is recognized in the Preamble of the Constitution: "We, the People."

Basic to the successful operation of this principle has been the ability of American citizens from all states to so organize their political systems that clashing economic interests, community rivalries and local jealousies might be assuaged as fairly as possible. America, therefore, has been witness to unique governmental techniques whose genius is a tribute to her people and to their way of insuring majority rule and at the same time protecting minority interests. Among these are the referendum, initiative, home rule and, last of all, a variety of systems of legislative apportionment. Implicit in each of these is a conscious effort to resolve the inner struggles and conflicting interests embodied in the concept of politics--that quest for influence in government whose "sine qua non" is discrimination and inequality.

Despite the historical and operationally complex meaning of democratic representative government, the U. S. Supreme Court has summed it up in an ironclad rule when it declared that "the fundamental principle of representative government in this country is one of equal representation for equal numbers." This simply is not true.

II.

Many were apprehensive when the Supreme Court in Baker vs Carr decided that voters' claims under the Equal Protection Clause presented a justifiable controversy subject to adjudication by the federal courts. This apprehension turned to a more rooted anxiety when the Court, pursuing its political interest, decided that the "one person, one vote" principle applied to state apportionment laws involving the election of U. S. Senators and Congressmen. When the Court applied the latter principle to both houses of our state legislatures, this anxiety ripened into negative acclamation. What was once regarded as a principle of representative government--"one district, one vote," or "Bicameralism," has, in

effect, been ruled unconstitutional or, more bluntly, unfair. This same principle was responsible for the genesis of our great nation. It has permeated the makeup of state legislatures for over 175 years, and history can account for it yet farther into the annals of the past. The present Court, however, says it is unconstitutional and violates that agreement the sovereign people of this country entered into in 1789, the Constitution of the United States.

When faced with an unpopular Court decision, the majority will normally respectfully decline to contest the Court's reasoning. This is as it should be, for the constitutionality of a law should be left to the courts. However, when the Court has seen fit to unreasonably invade a province relegated to political controversy and has reached results not on the basis of resolving legal questions but of determining political ones, it is not inappropriate for a politician to publicly voice disapproval. Such disapproval tends to undermine the great respect and high honor our judicial system has in the past commanded from the American people. Yet, in this instance, I have no other choice, and there are a number of reasons for my disagreement with the Court.

The basic one, already expressed, is that the Court has clearly misread the full meaning of the fundamental principle of representative government in this country. In its June 15, 1964 holdings on apportionment of seats in state legislatures, the Supreme Court acknowledged that bicameralism as an institution or method of affording representation is not without justification. In the Court's own words, "a prime reason for bicameralism..., is to insure mature and deliberate consideration of, and to prevent precipitate action on, proposed legislative measures." Yet it professes inability to perceive "that the concept of bicameralism is rendered anachronistic and meaningless when the predominate basis of representation in the two state legislative bodies is required to be the same-population" (Reynolds vs Sims, 377 U. S. ___ (1964); slip opinion, p. 41).

Perhaps, if the Court had been more cognizant of other additional advantages accruing from bicameralism and the dangers associated with unicameralism, it might have been dissuaded from its aforementioned glib and exceedingly erroneous assumption that a bicameral legislature somehow is destined to survive, and to continue to function successfully notwithstanding that the upper house is constructed upon identically the same basis as is the lower; namely, that the seats in each are to be allocated in proportion to population. Precisely the contrary is likely to occur. To so organize an upper and lower house is to render them virtually undistinguishable; and when differentiation between the houses has been obliterated, bicameralism will have ceased to be defensible and unicameral state legislatures will become the order of the day.

If bicameralism is to retain its justification, an upper and lower house must be organized in such manner that members elected to each, by the unavoidable consequence of differentiation in the basis of representation upon which it is founded, can be depended upon to register and give voice to different points of approach in evaluating legislative proposals and policies. Absent such distinctions, the upper and lower houses of a bicameral legislature are likely to be converted into identical twins, performing in such pedestrian, repetitive manner as to forfeit any justification for their perpetuation. When representatives elected to the two houses are both chosen on the single basis of population without regard to the different occupational and economic interests of constituents born of residence in geographically diverse areas of a state, they can be expected to have recourse to virtually the same appraisals in considering legislation; and this dull uniformity in their approach is likely to be reflected in a comparable sameness in debate. Once the legislative process of a bicameral legislature deteriorates into nothing more significant than repetition and protraction, popular dissatisfaction engendered thereby can be expected to culminate in support of a change to unicameralism.

The Court, of course, blithely unaware of the consequences unavoidably resulting from apportionment in conformity to its population based formula, finds no occasion to entertain fears for the survival of bicameralism; but the prospect of abandonment of the latter is not to be viewed with equanimity; for certain advantages hitherto associated with bicameralism will cease to be available for protection of the inhabitants of the states. Hereinafter presented are several of the arguments advanced by notable political scientists and commentators on behalf of bicameralism.

(1) A dual chamber legislature is less vulnerable to domination by special interest groups than is the unicameral system.

(2) Only through bicameralism can there be attained such equitable representation as will protect widely scattered communities confronted with the concentrated power of a single large metropolitan area. Only through bicameralism, whereunder one house can be so constructed as to represent territorial regions rather than population, can identifiable areas within a state be accorded representation in such manner as to enable them to avoid being submerged by the massing of population in cities. In short, bicameralism is the only means of effecting a balance of power between rural minorities and urban majorities. Thus, where a large proportion of a state's population is centered in one huge metropolis, adequate representation of the inhabitants of sparsely populated rural or agricultural regions can be achieved only through reliance upon bicameralism organized other than exclusively upon the basis of population.

(3) Bicameralism affords insurance, through checks and balances, against hasty and ill-advised legislation. Errors of one house can be corrected by the other. Unicameralism is devoid of any checks and balances.

Had the Court, in espousing apportionment according to population in its recent decision, been disposed to tolerate any reasonable deviation therefrom sanctioned by popular approval, the necessity for this corrective amendment might have been obviated. To the Court, however, it is of no consequence that the inhabitants of a state, by an overwhelming vote at the polls, have recorded their approval of an apportionment formula whereby the allocation of seats in one house of their legislature continues to be representative of regions, areas, or territory.

There are others which are adequately expressed in the dissenting opinions of Justices Harlan, Clark and Stewart. All these combined prompt one to ask certain questions: If economic interests aren't important, why do people live where they do? Is not contract or consent the real principle of our government? And, if so, why did not the Court make any effort to determine the substance and meaning of the consent that inheres in the Constitution? Does it not care to take notice why Michigan's electorate rejected a pure equal population district plan in 1952; why more recently, Oklahoma and Colorado by a majority vote in state referendums accepted plans they feel to be fair; why the majority of the states of this country have governed themselves by a principle the Court now calls unconstitutional? Should not these facts, apart from the facts existing in 1789, have some relevant bearing on the proper interpretation of what now seems to be a "living and growing" Constitution? Does not the Court realize that its decision has merely contributed to the political influence of the equalitarians, that it has thereby taken a political stand that can have no other effect than to prejudice the high confidence of the people, the only rational foundation for its authority? Will not the Court recognize that the "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'...that true mass leaders of equality movements always aim at dictatorships?"

III.

Mr. Chairman, as politicians, as legislators, but most of all as Americans, we are here today because we care, and we are vitally concerned with the effect the Court's recent decision may have on the future course and well-being of this country. The Court has entered the political thicket and to the extent some supervision is desirable, we cannot complain. However, where it has arrogated itself to a position that it can determine and settle fundamental principles of representative government and has so decided them without

regard to history, reason, or the consent of the people, it is time for the people to act. Normally the Court, itself, oversees flagrant violations of trust imposed by the concept of "Separation of Powers." Unfortunately, by its own action, the Court cannot pass judgment on this great issue. As initiators of constitutional amendments, that is our task.

Mr. Chairman, my measure, H. Res. 1078, provides that "Nothing in the Constitution of the United States shall prohibit a state, having a bicameral legislature, from apportioning the membership of one house of its legislature on factors other than population." Implicit in it is that the Judiciary Branch shall have some supervision over state apportioning. But, by circumscribing the periphery of this supervision, it will undoubtedly entail the excess of political judgment that the Court has indulged in.

Since the Court is unwilling to permit popular will to prevail, recourse to constitutional amendment appears to be the only alternative remaining whereby the people can be enabled to have their way. Ratification of my proposal will not compel any state to take action in strict compliance with its provisions. Insofar as any state is disposed to abide by the decision of the Court, and is prepared to apportion seats in both houses of its legislature solely in accordance with population, my amendment will not operate to prevent them from exercising the latter option. All that I seek to accomplish by this measure is to insure that the states retain some measure of freedom to choose alternative methods for effecting the distribution of seats in at least one house of their legislature.

It is our sovereign duty to permit the people themselves to determine what the fundamental principles of our representative government are. I urge you to comply with this high duty and favorably report this proposed amendment to the Constitution of the United States, or a similar one, to the House for immediate action.

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NOTE

Kansas Constitutional Provisions on Apportionment of Seats in its Legislature

Art. 2 & 2. The number of representatives and senators shall be regulated by law, but shall never exceed 125 representatives and 40 senators. The House shall admit 1 member from each county in which at least 250 legal votes were cast at the last general election; and each county in which less than 200 legal votes were cast shall be attached to and be a part of the representative district of the county next adjacent to it on the east.

Art. 10 & 1: In future apportionments (of seats in the House of Representatives), each county shall have at least one representative; each county shall be divided into as many districts as it has representatives.

Art. 10 & 2. requires apportionment every five years starting with 1866 and based upon the last year's census.

Art. 10 & 3. provides for an apportionment of the legislature pending a new apportionment. (The legislature by law has made its own apportionment.)

No provision as to apportionment of seats in the Senate is contained in the Kansas Constitution.

Seats in the Senate were apportioned by an enactment of 1963 (Laws of Kansas, 1963 ch. 13).

The Kansas Supreme Court has always been vested with original and exclusive jurisdiction over any controversy relating to apportionment of representation in the Kansas Legislature--Laws of 1963, ch. 203.