BOB DOLE
1ST DISTRICT, KANSAS

244 CANNON HOUSE OFFICE BUILDING
CAPITOL 4-3121, EXT. 2715

COMMITTEE:
AGRICULTURE

DISTRICT OFFICE:
210 FEDERAL BUILDING
HUTCHINSON, KANSAS 67501

COUNTIES:

BARBER	HODGEMAN	RAW
BARTON	JEWELL	REN
CHEYENNE	KEARNY	REP
CLARK	KINGMAN	RICE
CLOUD	KIOWA	ROO
COMANCHE	LANE	RUS
DECATUR	LINCOLN	RUS
EDWARDS	LOGAN	SALI
ELLIS	MEADE	SCO
ELLSWORTH	MITCHELL	SEW
FINNEY	MORTON	SHE
FORD	NESS	SHE
GOVE	NORTON	SMI
GRAHAM	OSBORNE	STA
GRANT	OTTAWA	STA
GRAY	PAWNEE	STE
GREELEY	PHILLIPS	THO
HAMILTON	PRATT	TRE
HARPER		WAL
HASKELL		WIC

Congress of the United States
House of Representatives
Washington, D.C. 20515

STATEMENT OF CONGRESSMAN BOB DOLE (KANSAS)
HOUSE JUDICIARY COMMITTEE
June 24, 1965
(LEGISLATIVE REAPPORTIONMENT)

Mr. Chairman, distinguished members of the Committee, the issue of legislative apportionment is the most important domestic issue before this Congress, even more important now than when I appeared before this Committee on August 4, 1964.

Since the Supreme Court handed down the "one man-one vote" decisions last June 15th, many, myself included, have proposed constitutional amendments and have urged this issue be resolved to permit States with bicameral legislatures to apportion one house on factors other than population. A bipartisan steering committee in the House composed of four Democrats and three Republicans has been making every effort to obtain favorable action on an amendment which would accomplish this. This committee includes the gentlemen from California (MR. BALDWIN), and (MR. JOHNSON), the gentleman from New York (MR. KING), the gentleman from Missouri (MR. ICHORD), the gentleman from Texas (MR. PATMAN), the gentleman from Florida (MR. FUQUA), and myself.

The reapportionment issue is finally coming to a head as indicated yesterday by the favorable action on the "Dirksen" amendment in the Senate Judiciary Subcommittee on Constitutional Amendments.

Simply the issue now is whether this Congress will refuse to give states the opportunity to ratify or reject an amendment which would permit them, under certain conditions, to apportion one legislative body of a bicameral legislature on factors other than population. As a safeguard, the amendment clearly provides that the qualified electors of a state by majority vote (an on a "one man-one vote" basis) must approve the plan of apportionment before it is effective.

I certainly recognize the utter futility of arguing the merits of any of the Supreme Court decisions before this committee. The Court has acted and has stripped the states of their constitutional authority to determine the character of its representative systems. The Court, itself unelective, has demolished the representative structure of the States with computer-like logic which, in my opinion, represents the crowning irony in judicial lawmaking.

I am here to plead the case for a minority group composed of all races, creeds, colors--specifically rural Americans. Congress properly devotes much time legislating to protect the rights of minorities and so it is somewhat paradoxical that so many champions of this cause fail to lift a finger when the rights and the very life blood of rural America is going down the drain. Yes, to be certain, some areas needed "prodding" by the Court to overcome gross malapportionment, but why sentence everyone for the misdeeds of a few? In my state of Kansas, we have a balanced legislature with our state Senate apportioned on a strict population basis and the State House of Representatives on a combination of factors--geography and population with each of our 105 counties having one representative. The all powerful Court has destroyed this "balance."

Why is it that Congress has been so reluctant to submit an amendment to the States? We are not asking enactment of legislation stripping the Court of jurisdiction. Why the delay?

It has been suggested that those of you who embrace the "one-man, one-vote" doctrine might consider applying it to the pending resolutions rather than continuing the "one-man, no-vote" practice.

In conclusion, I fully appreciate the alignment of forces on this issue. Big city political bosses, labor leaders, and other assorted equalitarians are pitted against a sincere but an unorganized and peaceful minority composed of farmers, small businessmen, and others who believe their respective states still serve some useful purpose even in the "Great Society."

I do wish to include a statement by Justice Harlan, who dissented in the Reynolds case, and a statement by Justice Harold Fatzer, Supreme Court of Kansas, taken from his dissent in the case of Harris v. Anderson, decided March 1, 1965. These outstanding jurists point out that the Supreme Court's decisions were in effect "judicial lawmaking."

Justice Harlan stated in the Reynolds case:

"Since it can, I think, be shown beyond doubt that state legislative apportionments, as such are wholly free of constitutional limitations save as may be imposed by the Republican form of government clause, the Court's action in bringing them within the purview of the Fourteenth Amendment ("equal protection of the laws") amounts to nothing less than an exercise of the amending power of this court."

Justice Fatzer stated in the Harris case:

"I have diligently searched for any cognizable constitutional principle which would sustain the majority's opinion in Reynolds, but I find none. I think it has been established beyond doubt that the conclusions announced in that case are not only unauthorized by the Fourteenth Amentment, but represent nothing less than the majority's attempt to write its own amendment to the Constitution of the United States in clear violation of the Fifth (V) Article, and being without legal sanction, such conclusions are not the Constitution of the United States and are not binding upon state courts or the judges of those courts under the Supremacy Clause of the Sixth (VI) Article.

"I insist that the majority of the Supreme Court of the United Statescorrect what seems to me to be clear judicial error, and retreat from the height to which it has ascended by its unwarranted judicial interpretation in Reynolds and related cases, to a sound, historical and legal construction of the Fourteenth Amendment. That amendment was the work of Congress and the ratifying

states, and was not the product of the majority's opinion in Reynolds, notwithstanding the lofty eminence of those members of the Supreme Court who concurred therein. Had the framers who proposed and the Congress which submitted the amendment intended that it regulate per se state apportionment and prescribe a standard based on population alone, they would have declared such a policy in express terms. Such an important matter affecting our dual federal system would not have been left unattanded. The misgivings the majority have of the historical concept of our dual federal system should not permit it to write into the amendment its own notions of what is presently politically or socially best to cure the nation's ills since a majority of succeeding members may, due to changing times, have completely different notions as to what those political or social cures may be. Surely, the Constitution and the Fourteenth Amendment mean more than that. Moreover, the Equal Protection Clause 'should not be distorted to make the federal courts the supervisor of state elections (state apportionment). That would place the federal judiciary in a position "to supervise and review the political administration of a state government by its own officials and through its own courts (Wilson v. North Carolina, 169 U. S. 586, 596, 42 L. Ed. 865, 871, 18 S. Ct. 435)"--matters on which each state has the final say.' (Snowden v. Hughes, 321 U. S. 1, 88 L. Ed. 497, 64 S. Ct. 397.)"

Thank you for providing me this opportunity.