CONGRESSMAN'S REPORT
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October 14, 1964

Reapportionment--I
"One Man, One Vote" . . . That's All She Wrote!

In the closing days of the 88th Congress, when it appeared we would never adjourn, I found myself hearing echoes of 1937 -- that year when the famous "Nine Old Men" of the Supreme Court had struck down a series of New Deal economic measures and President Roosevelt, in retaliation, tried but failed to "pack" the Court with six more judges who presumably would be more favorable to his point of view. Congress has now adjourned, and we can all take advantage of the "breather" to assess what this latest debate is all about.

The most striking fact to be noted is that the Court's defenders and attackers have switched sides. Conservatives of 1937 regarded that Court as the "country's greatest symbol of orderly, stable and constitutional government," while some conservatives of 1964 view the present tribunal as a "destroyer of the Constitution, enemy of federalism, and perhaps the Communist Party's best friend." Roosevelt attacked the Court for obstructing legislative power; today's charge is that the Court usurps legislative power.

But such attacks and switches are an old story to American historians. Sine 1789 the three separate and equal branches of our national government have often collided in bitter contests of power. And in nearly every era the Supreme Court -- one of those equal branches -- has been a center of controversy. Marbury v. Madison, Chief Justice Marshall's history-making decision of 1801, claimed for the Court the now-accepted right to make acts of Congress invalid; this decision stirred passions for more than a decade. The Dred Scott fugitive slave decision of 1857 wrecked the Missouri compromise and, historians agree, brought on the Civil War.

In all the stormy history of the Court, however, no panel of judges has been involved in more controversy than the "Warren Court" of 1953-64. While the decisions of the "Nine Old Men" of the 1930s centered on economic legislation, the controversial Court decisions of the 50s and 60s have dealt largely with personal freedoms and civil liberties: school desegregation, prayer in public schools, free speech vs. obscenity, and the rights of individuals charged with crime.

Now in this election year of 1964 a new series of decisions has disrupted the Congress, aroused the wrath of hundreds of State legislators, and set off a heated national debate. It seems likely the controversy will be settled only by 1) the defeat or 2) the passage of a constitutional amendment.

THREE DECISIONS IN ALL

These new decisions are based on a theory of representative government with the catchy slogan: "One man, one vote." I have been asked by many people to explain the basis and impact of these decisions on the governments of our 50 States -- and on Arizona's, in particular. Let's take a look at them.

While a large number of separate cases have been decided, they fall into a pattern of three separate rulings:

THE FIRST RULING: Baker v. Carr, 1962

Tennessee's constitution requires both its House and Senate seats to be divided among counties on the basis of population, with a new allocation to be made by the legislature after each 10-year census. In 1901 the seats were properly divided on the basis of the State's then largely rural population. Since 1901 Tennessee's impressive population gains have been mostly in the cities. In the face of its own State constitution the legislature refused in 1911, 1921, 1931 and subsequent years to reapportion itself -- proving an old adage of political science: a politician will almost never vote himself out of office. As a result, by 1960 it developed that 60 percent of the State's senators were being elected by 37 percent of the voters. Of the State's representatives 64 percent were being elected by 50 percent of the voters. One county with 3,084 people had the same legislative representation as another county of 33,990 people.

Baker, a Nashville citizen, argued, and the Supreme Court agreed, that the Court could order Tennessee to comply with its own constitution. This was done in 1963 and 1964.

The Baker case caused some controversy, but the decision was accepted by most lawyers, most political scientists and most of the people of Tennessee.

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THE SECOND RULING: Wesberry v. Sanders, 1963

If Federal courts can make State legislatures follow their own State constitutions, it would seem even more likely that Federal courts could make State legislatures follow the plain and unambiguous provisions of the Federal constitution. In a report of April 16, 1962, commenting on Baker, I predicted that such a decision would follow. It did

in 1963. The Court decided Wesberryv. Sanders, dealing with U.S. Congressional districts. The Federal constitution requires that Congressional districts be of approximately equal population. Georgia, with 4,000,000 people, was entitled to 10 representatives in Congress, or one representative for each 400,000 people. However, the Georgia legislature, itself heavily weighted in favor of rural areas, had created Congressional districts in which one man represented Atlanta with nearly 1,000,000 people while a rural Congressman -- also with one vote in Congress -- represented only 270,000.

Wesberry, an Atlanta resident, won an order requiring the Georgia legislature to draw new and approximately equal districts.

The backwash of Wesberry reached Arizona in May 1964 when a Phoenix resident filed suit asking that Arizona's three Congressional districts be equalized. The present districts have these population figures:

District	Counties Included	Population	% of State
1	Maricopa	663,500	51.0%
2	Cochise, Pima, Pinal, Santa Cruz, Yuma	440,500	33.8%
3	Apache, Coconino, Gila, Graham, Greenlee, Mohave, Navajo, Yavapai	198,000	15.2%

The Arizona suit is pending, but its outcome is not in doubt: equal districting will be ordered.

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THE THIRD RULING: Reynolds v. Sims (Alabama), and Lucas v. Colorado General Assembly, 1964

While many persons were aroused and angry with the First and Second rulings, it was the Third group of cases which really touched off the storm. In June 1964 the Court decided Reynolds v. Sims (Alabama) and a group of related cases from New York, Colorado, Maryland, Delaware and Virginia. The Colorado case (Lucas v. Colorado General Assembly) goes a little farther than the others and is based on a situation almost like Arizona's; for these reasons let's examine it as illustrative of the group.

About 65 percent of Colorado's 2,000,000 population lives in Denver and Colorado Springs. The rest is widely scattered and rural. The Colorado House seats (like Arizona's) are allocated on a reasonably equal population basis which fairly satisfies the "one man, one vote" principle. After much discussion the Colorado legislature in 1962 submitted to the voters a "little Federal plan" under which the State Senate was constituted to give rural areas many more seats than a strict population apportionment would allow. This referendum was approved by 64 percent of the voters state-wide -- and, in fact, by 55 percent of the Denver County voters as well. (Note: In 1952 Arizona voters approved a somewhat similar plan giving each of our 14 counties two senators.) Lucas, a Denver resident, refused to accept the decision of his fellow voters and brought suit. His argument ran something like this:

"The Federal Constitution guarantees me free speech. The 14th Amendment guarantees me 'equal protection of the laws.' I do not have equal protection of the laws when my vote in the Senate is worth perhaps 1/50th of the vote of a man in some small hamlet in the Rockies. My Federal right of free speech does not depend on how popular it is, and cannot be taken from me by a vote of even 98 percent of Colorado voters. Neither can my right to an equal voice in the legislature be taken away by 64 percent of the voters."

The Supreme Court, agreeing with Lucas, ordered Colorado to allocate its Senate seats, as well as its House seats, on population. If this far-reaching decision stands, all 50 State legislatures must be organized in both chambers (if they have two chambers) on a "one man, one vote" basis.

> At this point "the fat was really in the fire." Note that in these "Third Ruling" cases there was no claim (as in Baker) that any State legislature had violated its own constitution. The people of these States had deliberately written constitutions allowing non-population factors in apportioning one or both houses. Nor was there any claim (as in Wesberry) that the State legislatures were interfering with proper representation in the Federal Congress. These cases involved interference with the manner in which individual sovereign States had chosen (some long ago, some like Colorado very recently) to apportion their own legislatures.

UNEQUAL REPRESENTATION: LOWER LEVEL

Whether these "Third Ruling" cases are right or wrong, good or bad, no one can deny that some of the States have allowed thinly-populated areas to exercise extra, and often strikingly disproportionate, power in making State laws. This is a result of 1) the immense growth of cities and the decline of rural populations, and 2) a failure of these States to adjust the allocation of legislative seats as the population distribution has changed.

Consider these statistics: In 1910 the counties in this country having 100,000 or more residents had a combined population of 31 million, or 33 percent of the nation's population. By 1960 counties in this category had a combined population of more than 114 million, or 64 percent of the nation's population. Yet few States had given these counties any additional representation in either house, and there are even examples of their representation having been decreased.

Here are some of the most striking disparities in lower house apportionment:

** In Connecticut one House district has 191 people; another, 81,000.

** In New Hampshire one township with 3 (three!) people has a state assemblyman; this is the same representation given another district with 3,244. The vote of a resident of the first town is 108,000 percent more powerful at the Capitol.

** In Utah the smallest district has 164 people, the largest 32,280 (28 times the population of the other). But each has one vote in the House.

** In Vermont the smallest district has 36 people, the largest 35,000 a ratio of almost 1,000 to 1.

What about Arizona? The Arizona House of Representatives, by contrast with the cases cited above, is one of the most fairly apportioned legislative chambers in the nation. Every four years the Secretary of State simply counts the votes for governor in the last election and re-divides the 80 House seats among the counties.

In similar fashion the U. S. House of Representatives is reapportioned after every census. The seats are automatically re-divided by a simple and mechanical notification by the House Clerk to the States.

These are sound procedures which never put an elected legislator in the position of having to decide that ultimately painful political question: "Should my own seat be abolished?" However, our Arizona Constitution provides that each of the 14 counties shall have at least one representative, and this does create some departure from strict, "one man, one vote" apportionment. For example, Mohave's one state representative speaks for 7,700 people, while Maricopa's 40 members represent an average of 14,000 and Pima's 17 members represent an average of 15,000.

UNEQUAL REPRESENTATION: UPPER LEVEL

In State Senates, many of them patterned on the Federal Congress (with lower house based on population and upper house on area) the extreme examples are equally

startling:

** In California the 14,000 people of one small county have one State senator to speak for them; so do the 6 million people of Los Angeles County. It takes 430 Los Angelenos to muster the same influence on a State senator that one person wields in the smaller district.

** In Idaho the smallest Senate district has 951 people; the largest, 93,400.

** Nevada's 17 State senators represent as many as 127,000 or as few as 568 people -- a ratio of 224 to 1.

of In Arizona, Mohave County's 7,700 people have two State senators; so do the 663,000 people of Maricopa. The ratio is 86 to 1.

THE FIGHT SHIFTS TO CONGRESS

The ink was hardly dry on the Reynolds and Lucas cases when the first cries of outrage went up from State officials across the country -- and especially State legislators whose jobs might be at stake.

It was quickly apparent that only an immediate constitutional amendment (or perhaps some action by Congress) could prevent the Federal courts from putting this decision into prompt effect in all 50 States. In fact, a few legislatures (Michigan and Oklahoma, for example) have already been reapportioned by Federal court order, and many other suits have been filed but not acted upon. (Included is one directed at the Arizona State Senate.) Governor Fannin has appointed a blue-ribbon, bi-partisan committee to study the impact of the Arizona suit and make recommendations.

The two houses of Congress are sharply divided on their approach to this issue. Most United States Senators owe their election to voting majorities in the large cities found in almost every State. However, a majority of United States Representatives are elected from areas which have large rural and small-county populations with pivotal voting strength. My district is mixed: one large city with 65 percent of the people and four smaller counties with the remaining 35 percent.

SENATE ACTION

In August, Senator Dirksen of Illinois, spokesman for the anti-decision forces, offered the "Dirksen rider" to the foreign aid bill. The rider was designed to hold off enforcement of the "one man, one vote" decisions for two years, giving the States time to pass a Constitutional amendment to legalize the present legislatures. In late

September, after a bi-partisan group of urban-oriented senators had conducted a leisurely two-month filibuster against any action to delay the Supreme Court's decisions, the Senate rejected the "Dirksen rider". It did pass a non-binding advisory resolution which, in effect, accepts the Supreme Court decision but states the "sense of Congress" that States should have a reasonable time to set the "one man, one vote" legislatures. This resolution later was stripped from the foreign aid bill in a House-Senate conference, and Congress adjourned without taking any action on the subject.

HOUSE ACTION

In the House a group of Members from rural districts mutinied against the leadership, ignored the House Judiciary Committee, and brought up for debate a bill by Representative Tuck of Virginia. This drastic and far-reaching proposal would have deprived the Federal courts of all jurisdiction to hear or decide or enter orders in any State reapportionment case. This bill passed August 19th by a vote of 218 to 175. I voted against it for these reasons:

1. The bill was clearly unconstitutional. In our constitutional system there must be an umpire whose decisions are accepted; the alternatives are anarchy or revolution. If the people believe the Court has improperly decided a constitutional question, they can impeach the justices or amend the Constitution. These are the only proper checks and balances against the judiciary's disposition of constitutional questions. But Congress alone cannot amend the Constitution; only the States, acting with Congress, can do so. The Court interpreted the "equal protection" clause of the 14th Amendment to require "one man, one vote" legislatures. As a legal decision this may be right or wrong, but only the Court and not the Congress can say what the Constitution means. If Congress could thus override the Constitution as interpreted by the Court, it could also pass a bill depriving the Court of jurisdiction to hear or enforce cases involving freedom of press, or religion, or speech. While these rights might remain in the Constitution, they could not be enforced, and freedom which cannot be enforced is no freedom at all.

2. This is an issue which deserves the most careful study and debate. The debate now beginning is going to be one of the great constitutional debates of this century. The people need time to think about it, and the Congress needs time to hold hearings, to hear all sides, and to act in wisdom and not in haste. While I am distressed and troubled by situations in which one citizen has 1,000 times the voting strength of another, I believe there is more at stake than a mere mathematical division of voters. For this reason I was prepared to support the Dirksen proposal to give the States and the people a two-year period to review the apportionment of their legislatures and to consider possible constitutional amendments. I believe the people should have time to reflect on these far-reaching changes before they become accomplished fact. But the House shouted down those of us who took a middle-ground between the extremes of

1) doing nothing, or 2) doing violence to the Constitution. I had no choice but to vote "no."

In the 173 years since the 10-amendment Bill of Rights was ratified, the Constitution has been amended only 14 times. I objected to the House of Representatives undertaking what amounted to a backdoor amendment after only two hours of debate when no committee hearings had been held and when most of the people of this country had had no opportunity to consider its implications. The Tuck bill was ignored by the Senate and the whole issue was left open for the 89th Congress convening next January.

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In a subsequent report I shall discuss the pros and cons of a constitutional amendment and will suggest a compromise which I think would be a realistic solution to this problem.