CONGRESSMAN'S REPORT
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Reapportionment--II
Where Do We Go From Here?

In my October report I outlined the reapportionment rulings of the U.S. Supreme Court which brought on the current controversy, gave examples of unequal representation in various States, and detailed the deadlock which existed when the 88th Congress adjourned. In this second newsletter I want to examine the arguments for and against the Court's ruling and suggest a possible solution.

Because the Court found that "one man, one vote" legislatures are required by the U.S. Constitution, no mere act of Congress can halt this basic change. The Federal courts are rapidly implementing the ruling, and unless a constitutional amendment is passed and ratified immediately, all 50 State legislatures will be reapportioned on strictly population bases in both their branches before the 1966 elections. Indeed, more than 20 States already have acted under court order or threatened court order.

What does this mean for Arizona? It means that unless we act a Federal court will act for us, and we could find ourselves in the sad plight of voters in Illinois this year who were given a "bedsheet" ballot to elect all 177 members of the Illinois House, atlarge.

In recent months I have had many letters on this subject, some approving the Court ruling and declaring it long overdue, others demanding an immediate amendment to restore State legislatures to their composition prior to the bombshell decision of June 1964. Here are the main arguments made on each side.

ARGUMENTS FOR A CONSTITUTIONAL AMENDMENT

Those who are critical of the Court's ruling make these points:

** U.S. Senate Analogy. Both Alaska with its 1/4 million people and, New York with its 17 million have two U.S. Senators, while the U.S. House of Representatives, based on population, gives New York 41 seats and Alaska only one. This system, recognizing the diversity of our people and the special interests of smaller States, has worked reasonably well for 175 years. Surely the Federal government and its courts cannot deny the States the right to adopt similar arrangements.

** State's Rights. Our uniquely successful Federal system is one of dual sovereignty with a carefully-drawn system of divided Federal-State rights and powers. We destroy this diversity and

undermine State's rights when States are denied the basic right to establish legislative bodies of their own design and composition.

** Tyranny of the Majority. One of the great features of American democracy is the recognition and protection of minority rights. The tyranny of the majority is little worse than tyranny of the minority. People living in small counties, small towns and sparsely-populated areas have a right to play a part in the decisions of government. This right is now endangered and needs to be reaffirmed.

** City Legislators Don't Know Rural Problems. Many rural areas are situated far from population centers. City legislators can't possibly understand the problems and needs of rural people. Arizona's smaller communities produce half the nation's copper and much of its livestock and cotton; they should and must be given special consideration in the allocation of seats in at least one branch of the legislature as a check on urban majorities.

** Grab for Power. This is another outrageous grab for power by the U.S. Supreme Court. If it is not checked, the Court will soon declare the U.S. Senate unconstitutional too, and smaller States like Arizona then will lose the only forum in which they can make their needs known on the national scene.

** Access to One's Representatives. A voter should be able to see and talk with his State representative or senator without traveling great distances. If the Court ruling takes effect, many rural voters will have to travel 150 miles or more to see their nearest legislator.

Leading spokesman for the anti-Court, pro-amendment forces is Senator Everett Dirksen of Illinois. He summed up their arguments when he wrote several months ago:

". . .the forces of our national life are not brought to bear on public questions solely in proportion to the weight of numbers. If they were, the 6 million citizens of the Chicago area would hold sway in the Illinois Legislature without consideration of the problems of their 4 million fellows who are scattered in 100 other counties. Under the Court's new decree, California could be dominated by Los Angeles and San Francisco; Michigan by Detroit.. ."

ARGUMENTS AGAINST A CONSTITUTIONAL AMENDMENT

Those who support the Court's ruling and oppose any constitutional amendment come back with these major arguments:

** Majority Rule. The very foundation of democratic government is "majority rule." A majority of Americans -- some 70 percent, in fact -- now live in cities. What is logical or fair or democratic about a government which lets 30 percent of the people write the laws for the other 70 percent? We wouldn't tolerate such a situation in a business or fraternal group, a PTA,

a school board or a city council. Surely fair representation is even more important where the laws of the land are at stake.

** Senate Analogy Is False. The analogy to the U.S. Senate is false. The 13 American colonies before 1789 were actually separate nations. In order to form one country and adopt the Constitution a number of compromises were necessary, and the key compromise was equal Senate representation for all States. This is guaranteed forever -- and the Supreme Court can't possibly change it. Article V provides:

> ". . . .no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."

While this bargain was obviously undemocratic and a heavy burden on the big States, one undemocratic compromise does not justify 50 more. Because New York City's 8 million people are at a heavy disadvantage in the U.S. Senate does not mean that they must also have their State laws written by upstate, rural legislators.

No one can argue that Arizona's 14 counties were separate sovereign States which got together to form a new State. Counties are merely administrative arms of the State government; they can be abolished or consolidated at any time.

** Avenue for Special Interests. Unequal representation provides an avenue for special interests. A complete "saturation" campaign for State Senator in a small county can be run for a few hundred dollars, while a modestly-financed Maricopa County race might cost $50,000. It takes only 13 percent of the electorate to gain a majority in the Arizona Senate today.

** Rural Votes vs. Rural Votes. It is false to argue this issue in terms of cities vs. rural areas. Cities have "special problems" too, and many rural areas even now enjoy no such favoritism. Ajo has about the same population as Mohave County, but it has no Senators all to itself. Wickenburg and Gila Bend are rural and isolated; surely they have special problems, but they're represented by the same Senators who serve Phoenix with its 439,000 people.

If the amendment arguments are valid, why don't we give thinly-populated areas extra representation on school boards, boards of supervisors and city councils? For years Tucson residents complained that 30,000 people in western Pima County had one supervisor while the other two supervisors each represented as many as 150,000. Finally a suit filed by the publisher of the Tucson Daily Citizen forced the establishment of equal supervisory districts. Can the people of Pueblo Gardens and Mission Manor possibly understand the problems of El Encanto Estates? If not, perhaps amendment advocates would feel this area of a few hundred people deserved a city councilman all to itself.

** Toward Stronger State Governments. The Court's decision, rather than weakening State governments, will give them at long last legislatures which are truly representative and capable of solving long-neglected State and municipal problems. The result will be a lessening of dependence on Washington. In the early years of this century, before State legislatures were so

badly malapportioned, it was not the Federal government which led in solving social and welfare problems; it was the legislatures of progressive States. The first laws governing child labor, minimum wages and hours for women, civil rights, etc., were not passed by Congress but by States like Massachusetts, New York and Washington. The Federal government is so deeply involved in social legislation today mainly because malapportioned State legislatures have refused to act.

A leader in support of the Supreme Court is Mayor Raymond R. Tucker of St. Louis, president of the U.S. Conference of Mayors. He summed up the case for the Court and against any amendment in a letter to all Members of Congress last August. He wrote:

"The Supreme Court has acted to strengthen democracy .... Let us not act to perpetuate the old system, but let us add strength to the federal system of government, in which strong state governments should be a key element. Nothing can better secure and enhance the position of the states in the federal system than genuinely representative legislative bodies. Urban and metropolitan areas are where most of our population lives and this trend will continue. Proper representation of these areas is essential if we are adequately to cope with the problems of an urban society."

WHAT HAPPENS NOW?

I think it is clear that the Supreme Court decision is going to have an effect on every legislature in the land. I have two basic reactions to all this: (1) There can hardly be an adequate defense for some of the extreme examples of unequal representation mentioned in my last report. Cases of voters having a thousand times the influence of other voters through arbitrary apportionment will be no more. (2) On the other hand, I am troubled by the extremely broad sweep of the Court's decision and by its failure to give the States more time to comply.

Will this process be slowed? Can an amendment be passed and ratified to save the status quo in Arizona and other States? Here are the hard realities. The U.S. Constitution has been amended only 14 times in 175 years. An amendment requires (a) a two-thirds vote of the U.S. House, (b) a two-thirds vote of the U.S. Senate, and (c) ratification by 38 State legislatures. What are the prospects for each?

** House. In the more conservative 88th Congress only 218 House members voted for the Tuck Bill, a step short of a constitutional amendment. This was far less than the 290 votes needed for a two-thirds margin, and there will be fewer, not more, votes for this position in the 89th Congress.

** Senate. In the Senate last September the amendment forces couldn't even get a majority for the so-called "Dirksen rider", which would merely have delayed enforcement of the Court's ruling Finally, a bare majority (44 -38) was obtained for the Mansfield substitute, which said

district courts could hold up action for six months but otherwise approved the Court's decision.

** Legislatures. Even assuming an amendment could pass both houses of Congress, it will take only one house in just 13 State legislatures to block ratification. In a majority of legislatures the lower house is apportioned according to population rightnow. Thus ratification by both houses in all of 38 legislatures is, at best, a very long shot. Beyond this, there is the hard fact that within a very few months the Federal courts will have reconstituted most legislatures to comply with the decree, and these new legislatures will be the ones to pass on any constitutional amendment.

'LAST DITCH' EFFORT IS OUT

With these harsh realities in mind it is obvious that heroic "last-ditch" efforts to preserve the status quo are out. And yet there are complexities in electing a representative government for a pluralistic society. In fact, it is quite possible that arbitrary lines could be drawn which, though setting up mathematically equal districts, might so ignore community-of-interest that areas of sizeable population might be under-represented and others over-represented.

If we in Arizona want to save our small counties from the total domination they fear from Phoenix and Tucson, our only chance lies in a compromise which would be acceptable to the pro-Court, anti-amendment forces. I have prepared such a compromise amendment, and from my discussions with congressmen and senators representing urban areas I believe it might have a chance. These Members tell me they are willing to give the States some reasonable leeway in establishing legislatures which might give some extra consideration to rural, isolated or "special problem" areas of a State. However, they will fight forever against any proposal to return to a system in which some States allowed some voters to have hundreds or thousands of times as much voting strength as other voters.

My amendment would permit any State to apportion one house of a bicameral legislature on factors other than strict population. To obtain that right, however, the State would be required to arrange its legislative and electoral machinery to meet three criteria:

1. The other house would have to be apportioned and kept regularly apportioned on a strict population basis with each member representing substantially the same number of people. Bear in mind that in many States both houses are now malapportioned, and neither is population-based.

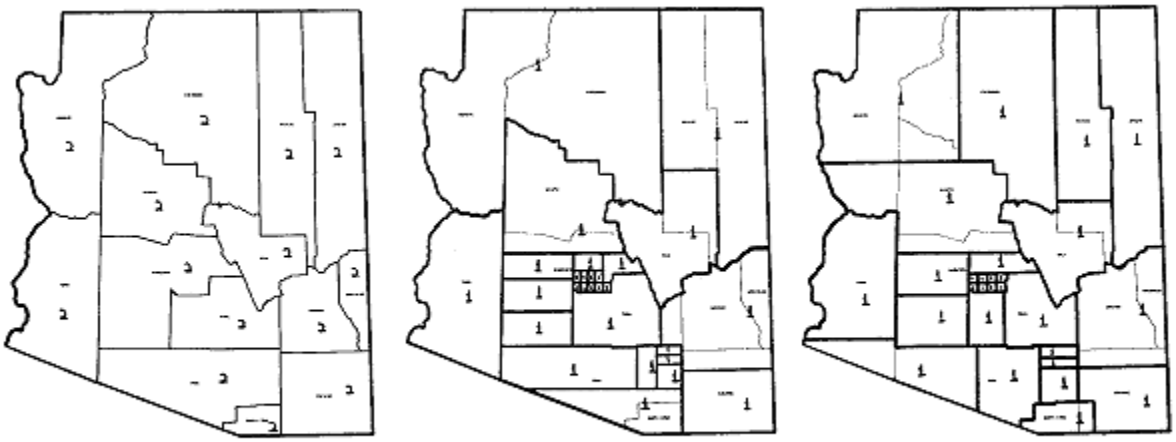
2. While the legislators in the non-population-based house could represent unequal numbers of people, there would be a definite limitation on the degree of disparity. I am thinking in terms of a ratio not to exceed 1 1/2-to-1, 2-to-1, or perhaps 3-to-1. Thus, if the permitted disparity were 2-to-1, the smallest district might have 20,000 people and the largest not more than 40,000. This would protect voters from the kind of outrageous extremes existing today.

3. If a State decided to make the arrangement permitted by No. 1 and No. 2 above, it could not do so until and unless this was approved by a majority of the voters of the State, and machinery (such as we have in Arizona) were established to permit voters by petition to review and change the arrangement from time to time.

A LOOK AT THE ALTERNATIVES

The subject of reapportionment is sure to be the biggest issue of the 1965 Arizona Legislature. A lot is at stake.

Although I will have no part in the reapportionment process, I have been asked by readers of my first report to depict in a rough, approximate way how our State Senate might be apportioned if the Court's ruling is adhered to and how it might be apportioned if my compromise amendment were to be passed and ratified. Here, in map form, is a picture of our present Senate and some guesswork on the other two alternatives:



PRESENT SENATE | 'ONE MAN, ONE VOTE' | COMPROMISE AMENDMENT (2-1)

WILL PHOENIX AND TUCSON RUN THE STATE?

I don't fully share the fears of those who say that either the compromise plan or the Court plan would mean total State domination by Phoenix and Tucson forces. Pima and Maricopa Counties now have 57 of the 80 seats in the House of Representatives, yet these 57 people have rarely had total agreement on anything. If the new State Senators are assigned to definite geographical areas of Maricopa and Pima County, as they should be, I would expect to find them differing markedly in philosophies and views. The new Senate districts would cover approximately three present House districts; I would not expect a senator from South Phoenix, for example, always to agree with a senator from Scottsdale anymore than the representatives from those areas always agree today.

Not only area interests but political philosophies, personal loyalties and party programs are important factors in any legislative body. City officials of Tucson and Phoenix tell me they

often have had more consideration and understanding from small-county legislators than from many urban members. I would hope and expect that responsible city legislators would take the same kind of state-wide view on small-county problems.

WE'RE, UNDER THE GUN

On this big problem Arizona, like most other States, is "under the gun." We face hard work and tough decisions, but I see no reason to panic. With cool heads and a will to work out our problems I think we can avoid the sort of difficulty that has developed in Illinois, Oklahoma and other States.

But, above all, I believe we want to keep the initiative in our hands -- and not the Court's.