Statement concerning the Constitutionality
of the Apportionment System of the State of Connecticut

The system of legislative apportionment of the State of Connecticut combines several elements in assigning seats in the legislature. It accords recognition especially to units of government and their populations. Its Senate recognizes counties and their population densities. Its House stresses towns and their respective populations. As such, the system rests upon many historical precedents and has much in common with current practice in the Federal government, the legislatures of other States, and in the local legislatures of the country.

Any court proceeding that would nullify this sytem for being contrary to a provision of the Federal Constitution must approve, directly or by implication, certain doctrines and consequences. Among them are included the following:

1) that a State under the Federal system can determine only within narrow limits the structure of its most important branch of government.

This would appear to be an unwarranted and dangerous departure from the essential principles of federalism.

2) that a great many legislatures, local and State and including the Congress, may not be constitutionally organized, in terms of the Federal Constitution.

However, the extension of the doctrine of Baker v. Carr beyond the case of Tennessee or even beyond its meaning within the State ~~case~~ of Tennessee is, at this point in time, of dubious legality. The present case is far from being on all fours with the Tennessee case.

3) that some interest of great importance has been proven to be damaged severely and a court remedy is the only remedy.

This statement cannot be accepted unless there is avalid test of damages to the parties of apportionment cases. Yet without such proof a far-reaching chain of events is being touched off.

4) that the Courts are competent to handle this chronically agitated political issue on a continuous basis.

But apportionment is a complicated and enduring problem of representative government. To remove it from the political sphereis in itself a blow to the principles of democracy. To calim special competence for it is presemptuous. To engage in the process is immensely time-consuming.

5) that sheer numbers of people have an overwhelming and almost exclusive privilege as the basis of State and Federal government under the Federal Constitution.

This is nothing but an extra-legal doctrine held by a few people absolutely and by many people in a partial and restricted form.

6) that equality in America has merely and simply a numerical meaning.

Howver, as the court records of the United States so amply attest, the meaning of equality is as often anti-numerical and special as it is numerical and general. Symmetry of numbers, when it occurs, is a by-product, not the cause, or the true product of, democracy.

7) that the socially beneficial operation of legislatures is a purely mechanical response to the counting of ballots, and that no ohher interestss or consequences need be considered.

On the contrary, legislatures do many kinds of highly involved work, elaborately organized, and have many kinds of social and economic relations with the people variously grouped in the State.

They are not automatons responding senselessly to votes.

These seven points donot exhaust all of the presumptions and consequences entailed by the acceptance of the superfically clear demand to reduce a State's apportionment system to the principle of equal-populations districts by court action. Yet the judicial leap of nullification would necessarily affirm or accept these seven points and others as well.

Under such circumstances it would appear that the principle of judicial restraint should intervene so as to prevent a power of the highest and most intense kind from being exercised in a case where not only is the law unclear and full of risks but also where damages are unproven. Considering the factual question of "who is hurt and by how much?" the judicial leap with its far-ranging constitutional and political consequences is almost a gymnastic display without practical effect on the problems it may be intended to solve.

In the case of Connecticut and other jurisdictions, unless the parties appear with proof of damages validly attributable to the system of apportionment, and unless such damages are ~~of~~ demonstrably of a type as invidious or otherwise by the Federal Constitution, and even then unless such damages are of a nature so large and important as to require for their repair a weakening ~~of~~ of the structure of federalism, the shifting of legislative powers to the judiciary, the raising of doubts as to the guarantee of a rule of law, and the incitement of political confusion -- all of these being constitutional matters of great importance -- the apportionment system should be held to be constitutional under the Federal Constitution.

It frequently occurs that the system of apportionment is tied by law to the organization of political parties and to other operations of government in a jurisdiction. In some cases, the tie-in may be unfortunate and introduce consequences deemed evil. However, if such is the case, the remedy should be addressed to the tie-in and should ordinarily be political unless the tie-in itself introduces unconstitutional discriminations, in which event the tie-in, rather than the system of apportionment, would be unconstitutional.

It may also appear that the system of apportionment, while patently constitutional as a whole, introduces a severe discrimination in the case oof cerain groups or places, such as a single city, which discrimination is therefore alleged to be unconstitutional, and thence the system as applied to such places or place is alleged to be unconstitutional. Cannot a court legally cope with this alleged, obtrusive evil, while leaving the general system intact? It can, under the following conditions:

1) Valid proof of injury to the named places owing to the system of apportionment is advanced, at the same time showing that the injury is not a normal case of the effects of governmental operations, which must usually take more from some than from others and give to some rather than others.

2) Demonstration. of a fairly clear invidiousness in the discrimination, under federal constitutional standards.

3) Conscious and informed balancing of the merits of each side: the extent of the injury on the one and on the other the extent of interference with a key organ of government, the creation of politiaal confusion, damage to other deserving interests, and harm to the objectivity of the legal process.

4) Minimal substitution of new principles of apportionment in correcting the allleged unconstitutional evil. Particularly a rejection of the notion that good and effective government must depend upon equal-populations districts or that the Federal Constitution implies more than a general dependence of good government upon a considerable active public.

A distinction may be made between a constitutionally prohibited injury and a constitutional disadvantage. If an organ of State government flagrantly refuses over an extended period of time to obey the law of the State under which it operates and that refusal ~~is~~ clearly and sufficiently results in a citizen of the United States being deprived ofhis rights, then a federal court can assist that citizen to obtain from the State the rights guaranteed him by the combined State and Federal law. If in another State, the same right is not granted, the Federal guarantee may be held not to exist. That is, the Federal right, in the present case of apportionment, is a right to enjoy whatever the State has promised under the general umbrella of Federal Constitutional permissiveness, but not a right to create a new substantive law within the State. Even so, court action under this suggested doctrine must take into account the necessity of proof of damages and of invidiousness in any such discrimination by a State organ in violation of its own State law, and the relief granted must not extend to the active ~~de~~ disruption of and reformulation of the legal and political system where the abuse occurred.

The position presented here above is considered to be consistent with the opinion of the Supreme Court in the case of Baker v. Carr, if not with the opinion of the several State and Federal courts

subsequent to that decision. Which interpretation will ultimately prevail depends upon a clarification which the Supreme Court is expected to undertake this coming fall. The instant case, like similar ones in other jurisdictions can provide instructive and illuminating material for the forthcoming work of clarification.

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