

Sultan Debates Dirksen's Con Con

A constitutional law expert who lives in Farmington Township has issued a detailed criticism of the so-called "Dirksen Amendment" that would call for a federal constitutional convention to nullify U.S. Supreme Court "one-man, one-vote" rulings.

He is Allen Sulz, assistant professor of law in the University of Detroit Law School and formerly an instructor at Indiana University's law school.

Sulz reacted to an invitation issued by state Sen. George Kuhn, R-West Bloomfield, asking Sen. Dirksen himself to testify here in favor of the proposed amendment.

THE STATUS of the amendment in Michigan, according to its sponsor, Sen. Thomas Schweigert, R-Pontiac, is this: Schweigert sponsored Dirksen amendment resolution a year ago which would "memorialize" Congress to call a federal constitutional convention. The resolution is still in the Senate Business Committee, where it needs three of the five votes to get to the floor.

If Michigan's Legislature approves it, then the resolution would be close to having the support of the 34 states that it needs.

If 34 states approve such a "memorial," then Congress would be obliged to call a constitutional convention. In its original form, the Dirksen Amendment would have allowed such a convention to discuss a wide variety of subjects, but Schweigert says his resolution would limit the topic to reapportionment.

The idea behind the Dirksen Amendment is to allow states—at their option—to apportion one house of the legislature on a basis other than population. (Schweigert says the resolution wouldn't touch county boards of supervisors, which would still have to be on a "one-man, one-vote" basis.)

A LONG SERIES of hurdles is necessary before such a revision of the Michigan Senate's apportionment can become a fact, as Schweigert explains it.

First, enough states would have to ask for the constitutional convention. There is disagreement about whether all the states which have so far approved Dirksen Amendment resolutions have done so properly.

Second, the constitutional convention would have to approve the Dirksen Amendment.

Third, the legislatures of three-fourths of the states would have to approve the amendments proposed by the constitutional convention in order to make them part of the U.S. Constitution.

Fourth, the Michigan Legislature would have to place on the ballot two questions to this effect: "1. Do you want the Senate apportioned on a straight population basis?—Yes or No." "2. Do you want the Senate apportioned on a basis other than population?—Yes or No."

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Fifth, the voters would have to approve the second resolution and reject the first. (Note: Sen. Schweigert was unable to say what would happen if voters contradicted themselves by approving both questions.)

Sixth, the state Reapportionment Commission would have to revise the Senate districts. Schweigert presumes it would use the 80-20 formula of the 1963 Michigan Constitution, which the U.S. Supreme Court declared in violation of the U.S. Constitution. Under that formula, the Apportionment Commission gives 80 per cent weight to a county's population and 20 per cent to its land area in setting up Senate districts.

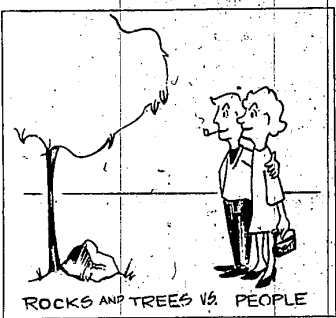
Well, Allen Sulz opposes this. Here is what he wrote:

RECENTLY, The Observer Newspapers reported a recent invitation of our State Sen. George Kuhn to U.S. Sen. Everett Dirksen, to appear in Michigan in an effort to have our state vote for the Dirksen Amendment, thereby satisfying the necessary two-thirds required by the Constitution.

Since there is no more important issue presently before the American people (in spite of riots, Vietnam and urban blight), the residents of Observerland should be informed on what many mistakenly feel is only a technical problem. The "Dirksen Amendment," one of many proposed by the Illinois senator, would overturn the recent "one-man, one-vote" rulings of the Supreme Court. I must oppose it on grounds of both practicality and principle.

THE AMENDMENT is not only impractical, it is highly dangerous. This has been the conclusion of many discussions of the proposed amendment at national meetings of law professors, as well as the conclusion of other interested and informed individuals.

Last June 16, the American Enterprise Institute for Public Policy Research in Washington,



D.C., prepared a "Special Analysis" of the proposal (Number 5) for the 90th Congress, First Session. It documented and discussed no less than 10 serious legal questions or "issues" that would be created by the "passage" of the Dirksen proposal. There are not merely problems of "interpretation," but rather concern the validity or legality of the proposal as an amendment to the Constitution.

Since a few immoderate spokesmen for the proposal do not know (or fail to respect) the dangers resulting from their support, one can envision the possibility of their call to action resulting in a deep division of the population, should one or more of the 10 issues be held by the courts to render the amendment invalid.

The result may well be two groups of candidates each claiming they were duly elected to office. Since one group would not respect the previous determination by the courts, the country may well experience a Latin American type of democracy—where sheer power or force determines who shall or shall not hold office.

SEN. DIRKSEN FAILED by both force of persuasion and by political pressure to achieve

the American people; this can best be done by guaranteeing to all the people—not rocks, not trees—the greatest possible control of their state and federal governments. The American system is predicated squarely upon this fundamental principle.

Thus, like Senators Schweigert and Kuhn, and the other members of the Michigan Legislature who favor this new Dirksen effort, I am fully in favor of a reinvigorated of revitalized federalism; I too desire a reversal of the transfer of power to the central government whenever and wherever local and state governments can properly discharge responsibilities presently performed by Washington.

But with all due respect, I must suggest to those who support this movement that it will defeat these very objectives they, and I, seek.

IT WOULD BE presumption of the highest order for any individual—learned or unlearned—to attempt with certainty to forecast the long-range ramifications of voting one way or the other on the Dirksen proposal.

Evaluating these factors, I cannot escape the conclusion that a vote for the Dirksen proposal is a vote for a society we all, with nostalgia, wish we could have for each of us have, to some degree, gone to school at the feet of Thomas Jefferson. However, in our political society, we must make basic political decisions in accord with our appraisals of public need and in the light of the society we expect, will most probably exist.

When I make these projections, the result, time and again, dictates a vote against the Dirksen proposal, whatever its form, because it would mitigate the ability of democratic representation to fully serve the needs of people at the lowest effective level of government possible.

This would, among other con-

sequences, further endanger the perpetuation of a meaningful federalism, as services demanded by the people, but politically incapable of being satisfied by the states, will eventually have to come from Washington; thus, ironically, the opposite of the result intended by the sponsors of this amendment will be realized.

LET THE MICHIGAN Legislature, therefore, "keep its cool" and allow a sister state

the dubious distinction of being the 34th state to vote and thereby satisfy the number required to call the convention.

Because many of those 33 states that have already voted for the convention are now re-apportioned, the necessary 37 ratifications will most likely never materialize. This is particularly true because, if it should materialize, it would be impossible to keep such a convention from exposure to public opinion.

It has been a long and arduous road to the equality of Americans in the young booth. Michigan and its Legislature should acclaim that achievement rather, through Sen. Schweigert's sponsorship, and Sen. Kuhn's invitation, it may well be caught up in the euphoria and false emotionalism of an empty movement which represents the last dying gasp of an old order, an order which should have long since been laid to rest.

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