

APPORTIONMENT OF REPRESENTATIVES

Mr. HALE. I am directed by the Committee on the Census, to which was referred the bill (H.R. 30566; S. Rept. No. 1280) for an apportionment of Representatives in Congress Among the several states UNDER THR Thirteenth Decennial Census to report it

Mr. McCUMBER. I object to the receipt of that at this time.

Mr. HALE. Before that is done, let me state what the committee reports. This is the house bill fixing the number of Representatives and their distribution among the different States, without any amendment. That is the recommendation of the majority of the committee. I should be very glad to have passed. That rests with the Senate.

Mr. McCUMBER. Mr. President—

The VICE PRESIDENT. The Senator from North Dakota objects.

Mr. McCUMBER. The matter has never been before the committee. The committee, or members of it, may have been polled. I did not sign either for or against it as a member of the committee. It is a matter that deals with the representation of the States, and in all probability will deal with them for 10 years, although there is provision, which I would object to myself, which allows one of the departments to ascertain and fix apportionment from time to time. But it has not been considered in the committee.

There can be no loss of rights of any State if it goes over until it can be considered, for this reason: In nearly all of the States the legislatures have adjourned or do adjourn to-day or to-morrow. In most of the States where they have biennial sessions there would not be a session for two years, so that they could not redistrict before that time, and Congress will meet again at least next December, if it does not before, and the matter can then be taken up and considered by the Senate and by the Committee on the Census, to which it has been referred and as no one can be injured by it, it seems to me proper that it should not be taken up at this time.

Mr. HALE. Mr. President—

The VICE PRESIDENT. The Senator from North Dakota objects to the present reception of the report.

Mr. HALE. What the Senator says is entirely true. The chairman of the committee, the Senator from Wisconsin [Mr. LA FOLLETTE], is, I am sorry to say, ill and not able to be in the Senate or to report the bill, and he asked me, as the next member of the committee, to report it for the action of the Senate.

It was felt that that was due the other branch of Congress. What the Senator says about the action of the committee is entirely true. The Senator from Wisconsin endeavored to get a quorum of the committee together to pass upon it at a meeting. It is one of the infirmities of the present unfortunate situation that we are in that he was not able to secure the attendance or a quorum of the committee. I was present with two or three others, and then, with the assent of the Senator from Indiana, who was there, you remember, the clerk of the committee was asked to poll the committee.

Mr. McCUMBER. May I ask the Senator a Question? I perhaps misunderstood the Senator. The Senator does not claim that there was a meeting of the committee/

Mr. HALE. There was an attempt at getting a meeting. AS I have said, there was no quorum present.

Mr. McCUMBER. The only time, I will say to the Senator that a meeting has been called was for the other day, and I phoned down before the time and was informed by the clerk that it would be impossible to get a quorum that day, and that the committee would meet some other day.

Mr. HALE. As I have just started, the chairman was not able then to get a quorum, and under what is quite commonly the practice here, the committee was polled. Perhaps the practice of polling a committee without its actually meeting is carried to excess. I think there are a great many bills reported here that ought not be reported, and which would not be reported if there was an actual meeting. In this case the course that is going on with other committees and other subjects every day in the Senate was pursued, and several Senators on the committee, when they were requested by the clerk, a very competent, accomplished man, informed him that they could not agree to it. He reported to me that the majority of the committee were in favor of the bill and of passing it without amendment.

I have under these circumstances, in view of the illness of the chairman made the report, and I consider that my duty has been performed and the whole thing rests with the Senate.

Mr. SHIVELY, Does the——

The VICE PRESIDENT. Does the Senator from Maine yield to the Senator from Indiana?

Mr. HALE. I yield to the Senator from Indiana.

The VICE PRESIDENT. All this is by the courtesy of the Senator from Oklahoma.

Mr. OWEN. I yield to the Senator from Indiana.

Mr. SHIVELY. I only want to say that I fully indorse what the Senator from Maine has said as to what occurred on the occasion when we attempted to have a meeting of a Committee on the Census. There was not a quorum present though an effort was made to have a quorum present. I want to say now that all of the minority members of the Committee on the Census heartily joined in the proceedings to have this bill reported. They wished to have it reported and acted on.

The VICE PRESIDENT. The Senator from North Dakota objects. The report will be returned to the Senator from Maine.

Mr. BAILEY. A parliamentary inquiry.

Mr. HALE. Is it returned, or does it simply go over?

The VICE PRESIDENT. It goes over. It remains on the table. It can not be received in the face of an objection. It remains on the table.

Mr. HALE. That is right.

Mr. BVAILEY. Will the Senator from Oklahoma permit me?

The VICE PRESIDENT. Does the Senator from Oklahoma yield to the Senator from Texas?

Mr. OWEN. Yes.

Mr. BAILEY. Mr. President, the meeting to which the Senators from Maine and Indiana refer was called for Tuesday morning, as I remember, and that was the morning which followed the all-night session, after which a recess was taken at about 8 o'clock until 11. I think that explains how it happened that a quorum of the committee did not attend the meeting. I know that explains how it was that I was not present.

I desire to say, although the Senator from Indiana has already stated it, on behalf of the minority members of the committee, that it was our opinion that this bill ought to have been reported and that it ought to pass. I am no able to agree with the view if the House which led it to increase its membership, because I am convinced from my experience there that the larger the House the more necessary it becomes to concentrate power in the hands of those who manage its affairs. That, however, is a matter for the House itself to settle, and I do not believe that the Senate ought to interpose to prevent the judgment of the house from becoming effective unless the apportionment is clearly unfair to some States. With the size of the House, assuming it to be fair as between the States, it seems to me the Senate has no concern, and I am sure that no Senator would assert a right to interfere with that except for its incidental effect upon the

electoral college. But, although the Constitution fixes the electoral college to consists of a number equal to the House and Senate, I think that indirect effect does not warrant us in insisting that we know better than the House what size it ought to be.

Mr. President, this is a duty enjoyed upon us by the Constitution. We are required every 10 years to apportion these Representatives among the States, and it is perfectly obvious that in the regular and ordinary course of affairs we will not pass this apportionment within the 10-year period, for unless Congress is convened in extraordinary session—and however much we may believe that event will come to pass, we are not justified in acting upon it without knowing it with greater certainty than we now have before us—it is an absolute certainty that no apportionment bill will pass congress within the 10-year period as required by the Constitution; and I would rather perform this duty in strict accord with out organic law, even if I felt it were not so wisely performed as a delay might enable us to perform it.

I feel that inasmuch as it is a duty enjoined upon us by the Constitution we could well claim it to be a matter of privilege, and as such we could bring it before the Senate if it were nor that another matter is now pending. While I think it would be a fruitless effort, I am so thoroughly convinced that it is a matter of high privilege, and would displace the order of business, that I would insist on that if I did not think I would simply result in another delay. Although it is not safe to repeat these thing that float around the Chamber, I am advised that so many Senators are opposed to it that we could not reasonably hope to bring it to t vote.

I see the Senator from New York {Mr. ROOT} is now ready to address the Chair. I am told that he thinks the Senate not only has the power but has the right and with propriety may resist the conclusion of the House I this matter. I would like to see it brought to a test, and if Senators are willing and the Senator from Oklahoma would yield for that purpose, I should like to see it voted on.

Mr. OWEN. I yield to the Senator from New York, Mr. President.

Mr. ROOT. Mr. President, I do not think that we ought to vote on this bill under the present circumstances without time for real consideration and discussion on the part of the Senate, and without the bill having had that consideration and discussion which it would naturally have had if there could have been a meting of the committee and time to give it attention. I do not doubt that the numbers of the committee did everything that was within their power, in view of their other manifold and pressing engagements, to accomplish their duty with regard to this bill. But it sill remains that for perfectly good reason they were unable to hold the meeting and give the consideration to the measure which it is the intention of the rules and practice of the Senate and of all similar bodies shall be secured through a reference to a committee and a report upon it. If the measure is of slight importance it may make little difference if, instead of a committee meeting and considering it, the committee is polled by some member going about and getting assent to a report. But this is not such a measure. It is a measure of very great importance, and, in my judgment, it is a measure with very objectionable characteristics. I do not think we would do our duty either to rely upon that kind of procedure as if it was by the committee or to act on the bill under the present circumstances, which preclude a real consideration of it by the Senate.

Mr. BAILEY. Will the Senator permit me?

Mr. ROOT. Certainly.

Mr. BAILEY. I think I am warranted in saying that if the committee has held an all-day session every day since the bill came to the Senate from the House it would have reached the conclusion expressed in the report as now made, because a majority of that committee felt and feel that this is a matter for the House to settle, and we would have voted for the bill as it came fro the House.

Mr. HALE. The Main Legislature is in session.

M. BAILEY. As the Senator from Maine suggests, the legislature of that State is still in session.

Mr. SHIVELY. And then Indiana Legislature.

Mr. STONE. My legislature is in session.

Mr. BACON. The Legislature of Georgia and Florida will each be in session during the coming summer.

Mr. JONES. The Washington Legislature is in session.

Mr. YOUNG. And the Iowa Legislature is in session.

Mr. McCUMBER. I think you will find that in a majority of the States the legislatures will not be in session after the 4th of March.

Mr. BAILEY. If two thirds of them were at adjournment it would still be worth our while to let the other third perform this duty while they are in session, leaving the two-thirds now at adjournment to reconvene under their constitution or under the governor's call. It is a very serious matter, in my opinion, to require all of the States to incur the expense of extraordinary session because we are not willing to vote on this measure.

Mr. BANKHEAD. While the Senator from Texas is on the floor——

Mr. ROOT. I yield.

Mr. BANKHEAD. I will state that the Legislature of Alabama is now in session, and under the constitution of the State its session will expire in 10 or 15 days, and it will not meet again in four years.

Mr. BAILEY. That obviously requires, if Alabama is given an additional Member under the bill——

Mr. BANKHEAD. That is the point I am coming to exactly. She has additional an Member.

Mr. BAILEY. Then he will have to be elected from the State at large.

Mr. Mr. BANKHEAD. That is the point I am just coming to. Will it not be necessary, then, for the legislature to provide for an election of a Representative at large in the State?

Mr. BAILEY. I think Congress could do it, but I do not think Congress ought to do it.

Mr. BANKHEAD. I say, could not the Legislature of Alabama, while in session, provide for the election of a Member by the State at large?

Mr. BAILEY. Undoubtedly they might provide for it: but then if the Senator from New York and those who agree with him in opposing this bill have their way, there will be no Member from Alabama to be elected from the State at large.

Mr. BANKHEAD. Then, if we do not elect at large, we may be without on Representative for three years.

Mr. ROOT. Or, unless the bill is so ordered that there is no increase in the number in Alabama.

Mr. BAILEY. Still they might have to redistrict the State, because their Population may not have increased in the same proportion in every district. Some districts may have lost and some may have gained more than their proportion. A readjustment is essential in almost every State, even if their representation remains the same.

Mr. BANKHEAD. Mr. President, at that point I beg to say that one county in Alabama, according to the last census, so increased in population that that county alone is entitled to a Member of Congress under this apportionment bill.

Mr. BAILEY. That illustrates the inconveniences to which we subject the people. I was once a Member of the House, and consequently I feel some interest in the situation of gentlemen who are still there. If you force the States to elect a Member of Congress from the State at large, then when the State is redistricted he may be set down in the district of some present Member and you will have a contest that otherwise might be avoided.

Mr. STONE. I should like to ask the Senator from New York this question. It is immaterial whether I should ask one or the other, but the Senator from New York having the floor, I will ask him. Where there has been a decrease in the membership of the House—I speak now of a decrease of one Member or more under the bill—what, then, would be the situation? Take my State, for example. If instead of having 16 Members to the ratio of representation all the members would have to be selected at large, or what would be the situation?

Mr. ROOT. No; Mr. President, until this bill is passed the representation of the State stands exactly as it has stood.

Mr. STONE. But I say if it should be passed, assuming that we should have extraordinary session or pass it next year, as in the case of Alabama, where the legislature does not meet for four years, would Alabama lose one instead of gaining one?

Mr. ROOT. I would have to refer to the bill, which I have not immediately before me.

Mr. Perkins. Mr. President, I wish to present a conference report.

Mr. ROOT. I yield for the conference report.

Mr. OWEN. I will yield to the Senator from California.

NAVAL APPROPRIATION BILL

.....SKIP.....

APPORTIONMENT OF REPRESENTATIVES

The Senate, as a Committee of the Whole, resumed the consideration of the Bill (H. R. 30566) for apportionment of Representatives in the Congress among the several States under the Thirteenth Decennial Census.

Mr. ROOT. Mr. President, the Senator from Texas [Mr. BAILEY] thinks that he is warranted in saying that if the committee had met and considered this subject, they would have come to the same conclusion. I do not think anyone can say that. As a matter of fact, there are several members of the committee who do not agree with this report, I am told. The chairman of the committee does not aggress with it, I am told; and another member of the committee told me that he did not at all agree to it and refused to assent to a report being made by a poll of the committee. No one can say that areal consideration and discussion of the subject in committee would not have led to a different conclusion. The argument inconvenient, of course, is very persuasive; but sir, the fact that it might be inconvenient for a few States does not relieve us from our duty to really consider this legislation. There will be no election to take place under this bill or any bill that will pass in any form until a year from next fall, and there is abundant time for all of the States to make their new dispositions in accordance with any bill that may be passed, if we have an extraordinary session, at that or, if not, at the next regular session. There is abundance of time for it; so that there is no real pressure arising from having the matter arranged for the States.

Now, let me say about the merits of the bill, it undertakes to do two things—one is to increase the number of the House and the other is to protect itself into the future add to regulate without any further action or concern of Congress the way in which apportionment shall be made, and it puts that power to make it in the hands of the Secretary of the Commerce and Labor.

So the Secretary of the Commerce and Labor, when the next succeeding census is taken, is, without any reference to Congress whatever, to take a rule which is laid down, take the census figures with out those figures having been referred to Congress at all, without anybody but the Secretary himself to determine whether the figures are satisfactory or not, whether they are

padding in one State and reduced in another or not, exercising a judgment by which he may give to a State additional Representative or additional presidential electors.

I say this bill undertakes to vest in the Secretary of the Commerce and Labor for all successive apportionments, for all successive censuses hereafter, for all enumerations, that power without an reference to Congress whatever. I submit, Mr. President, that we ought not to formally pass a bill of that kind without consideration and full discussion both by the committee and by the Senate.

Mr. HALE. Mr. President——

The PRESIDING OFFICER. Does the Senator from New York yield to the Senator from Main?

Mr. ROOT. Yes.

Mr. HALE. Mr. President, in my early service in this body I was chairman of the committee having charge of the apportionment for two decades. Controversies then arose and were finally disposed of upon the theory so well stated by the Senator from Texas [Mr. BAILEY]. As I recollect it—I have not had time to send for the statutes—I do not think there is any more in this bill with reference to the power of the Secretary who has this subject in charge—that is, the administration part of it—than there has been in other bills.

It is not intended, and never has been intended in any bill reported, to give the Secretary any power for a future apportionment that in the least interferes with Congress. If Congress does not take the matter up, and it does not provide for an apportionment, my recollection is that several of the statutes have had the same provision in regard to the conduct an action of the secretary provided Congress took no step: but this bill does not in any way propose to give to the Sectary any power to assume to conduct and basis of the next apportionment, except in the case of Congress failing to make an apportionment. It then provides that somebody—and in this case it is the Secretary of the Commerce and Labor—shall do that. So I do not think thee is anything in the suggestion last made by the Senator from New York [Mr. ROOT]. The statement the Senator from Texas has made is very admirable, and I could not add to it.

Mr. ROOT. Mr. President, I do not think the Senator from Maine gives weight to the provisions of this bill which, if Congress performing now and has for many years past, would require a virtual repeal of this bill before Congress could act. I is a vesting of power in this officer. No such provision was in the last apportionment bill, and no such provision was in the bill preceding that. Further than that my observation does not go.

Mr. BACON. I want to say to the Senator that I entirely agree with him about the objectionable feature of that section, and I would strike it out if it did not interfere with the balance of the bill.

Mr. ROOT. That shows how important it is that there should be proper and full consideration of such a measure. AS to the increase in the size of the House of Representatives, I do not agree, Mr. President, that we are at liberty to surrender our judgment to the House of Representatives. If the Constitution had meant that, it would have provided that the rules of the House of Representatives should determine the size of the House; but by law we are required to act. That means that the Senate shall perform its duty in accordance with its judgment for the public interest. We do quite generally agree that it is not wise that the size of the House should be increased, one reason being the very reason stated by the Senator from Texas. The circumstances under which the House is called upon to act are such as to make it exceptionally difficult to resist the solicitations and the demands of friendship on the part of Members of the House who would be deprived of their districts and perhaps prevented from reelection in case the number should not be increased.

Mr. HALE. Will the Senator allow me to make a suggestion?

The PRESIDING OFFICER. Does the Senator from New York yield to Senator from Maine?

Mr. ROOT. Certainly.

Mr. HALE. My impression is that not—as disclosed in the attempted meeting, which did not materialize, but from hearing expressions in committee—the general feeling of the committee was that a mistake would be made as to the matter of public policy by further increasing the membership of the House. I know I felt that very strongly and said so. That being my opinion, I was interested in looking up the record to find that so long ago as when the House consisted of 240 Members, when as a youngster I was a Member of that body, the first speech I made was against increasing the number. I think I was right then.

The House would have been better off if it had been kept at 240 ; but, as the Senator has said, after every census the temptation is to go on and save the districts, and the membership has been increased. It went up to 280 and then to 300, and now it is proposed to increase it to 400-odd. I think we all felt about the same way; the thing which controlled the majority of the committee was, so far as I could get at it, the consideration that, after all, it was the business of the House. I think the increase will work badly. I have no doubt about it, and never have been in favor of it.

Mr. ROOT. Mr. President, I did not intend to argue this question. I rose merely for the purpose of stating the reasons why my judgment regarding the inexpediency and unwisdom of the attempt to act upon this bill led me to unite with the Senator from North Dakota in the action he was taking. There are other Members of the Senate who I know would wish to be heard upon this very important question: several of them who were here earlier in the evening waiting, in expectation that the bill might come up, and with the intention of arguing the subject at considerable length to the Senate. I do not think the opportunity for discussing a measure of this importance should be prevented.

Mr. HALE. The senator, of course, understands that while I reported the bill and would be glad to have it passed. I recognize the difficulties in its way, and under the single objection which has been raised by the Senator from Oklahoma the matter goes over and the bill remains on the Vice President's table. It would be useless to attempt to get a vote upon it and useless to further discuss it.

Mr. SHIVELY. Will the Senator from Oklahoma yield to me for a moment?

Mr. OWEN. I yield to the Senator from Indiana.

Mr. SHIVELY. I understand the Senator from New York [Mr. ROOT] observed, while I was absent for a moment, that he understood that the chairman of the committee was opposed to this bill.

Mr. ROOT. I did so understand.

Mr. SHIVELY. While I do not wish to speak with great positiveness for the chairman of the committee, but only within the last two days I had a conversation with him on this question and he left on my mind the impression distinctly to the contrary.

Mr. HALE. I am bound to say that I did not think the chairman of the committee was in favor of the provision of the bill, but he was in favor of reporting the bill. I think, however, he was not, in favor of the provision of the bill.

Mr. McCUMBER. If the Senator will excuse me, I think I noticed that he expressed his dissent in writing on the back of the bill.

Mr. SHIVELY. I think myself that the Senator had a mental reservation in regard to the increased membership of the other House. I think that is as far as it went, but that he thought nevertheless that the bill should be reported to the Senate and acted on.

Mr. HALE. Undoubtedly.

Mr. BAILEY. Mr. President, I want simply to say, if the Senator from Oklahoma will indulge me a moment——

Mr. OWEN. Certainly.

Mr. BAILEY. That I think the House of Representatives really expressed its judgment against this constant increase with each decennial census in the provision to which the Senator from New York has alluded, and which he thinks objectionable because it is neither more nor less than a legislative declaration that the House will not be tempted the next time by the importunities of relatively diminishing populations to increase the membership of the House in order to save the representation of certain States.

Mr. HALE. That the time has come to stop.

Mr. BAILEY. Yes; that the time has come to stop.

Mr. ROOT. And to stop by surrendering the power into the hands of a person who would not be so weak as to yield, that is to say, the Secretary of Commerce and Labor.

Mr. BAILEY. It is hardly fair to say that, because the House fixes the membership at 430, and then simply directs the Census Bureau to divide the population of the country at large and in the States according to a rule which it has fixed.

Mr. BACON. Does the Senator think that that is in compliance with the provision of the Constitution?

Mr. BAILEY. I think that it, of course, would not bind anybody, unless this might happen——

Mr. BACON. That was not the question I asked the Senator—not whether it would bind them or not; we know it would nor bind them, for the law could be repealed but is this arrangement in compliance with the provision of the Constitution which directs Congress to make an apportionment?

Mr. BAILEY. I think it is to the strict letter; but I will agree with the Senator from Georgia that it is an evasion, to say the least, because the apportionment has to be made every 10 years and I do not think that the Sixty-second Congress has the power to bind future Congresses. But this much I would say to the Senator from Georgia, that it might be quite possible that the permanent law of this kind would be wise in the event that the two Houses should disagree or the President should disagree with both of them; and I am not perfectly certain but what it would be both competent and wise for Congress to enact such a law, so that in the event of a disagreement between the House there would be a rule

When the Senator from New York [Mr. ROOT] suggest that if it had been intended by that if it had been intended by the Constitution to leave this matter entirely with the House, the Constitution would have lodged it exclusively with the House, he overlooks the fact that the apportionment of Representatives is coupled inseparably in the Constitution with the apportionment of direct taxes; and, of course, the framers of the Constitution did not intend the House to apportion taxation without the concurrence of the Senate.

I think perhaps if the men who drew the Constitution had been willing to make one section of it relate to taxes and another to Representatives they probably would have left the membership of the House to be fixed absolutely by the House itself. But these two matters are inseparably coupled. If the Senator will turn to the Constitution he will find that runs that “Representatives and direct taxes shall be apportioned,” and so forth, according to the enumeration which shall be taken once within every 10 years. We could take it oftener; we could take it every two years; we could take it every five years; we could take it as often as we pleased within the 10 years, but we have no right to postpone-it beyond the 10 years

Mr. ROOT. It is no the apportionment that Congress requires to be within 10 years; it is the enumeration.

Mr. BAILEY. But direct taxes and Representatives must be according to enumeration.

Mr. ROOT. The Constitution provides that Representatives and direct taxes shall be apportioned in accordance with the enumeration.

Mr. BAILEY. The enumeration must be every 10 years, and, as Representatives must be apportioned according to the enumeration, it must be done each 10 years.

Mr. ROOT. Yes; but the time within which the apportionment is to be made is a time necessarily reasonable for the performance of the duties following the enumeration. The Constitution does not undertake to fix the limit of that reasonable time for the performance of that duty. It fixes the limit of 10 years upon that. Of course, it is the duty of Congress to proceed with the apportionment in good faith and as speedily as it can perform the duty properly and fully.

Mr. BAILEY. Now suppose this Congress tomorrow were to levy a direct tax, who doubts that it must be levied according to the census? Then, if direct taxes must be levied according to the last census, Representatives must be apportioned according to it. I go so far as to say that that Representatives to the next Congress must be elected under the last census, and Congress would have no power to postpone an apportionment beyond election. I think that is conclusive, because your rule for Representatives is precisely your rule for direct taxation, and as the direct taxes must be apportioned according to the last enumeration, so must your Representatives.

I think it is our plain duty to apportion these Representatives just exactly as we would apportion taxes. We probably could not get the question of representation in the courts, but if this Congress, before it adjourns at 12 o'clock or after it convenes in extraordinary session, were to levy a direct a direct tax and attempt to apportion according to the census of 1900 instead of the census of 1910, I could enjoin the collection of the taxes, certainly we are enjoined by the Constitution to apportion the Representatives.

Mr. KEAN. Mr. President——

The PRESIDING OFFICER. Does the Senator from Oklahoma yield to the Senator from New Jersey?

Mr. OWEN. Yes.

Mr. KEAN. I move the Senate take a recess until 6 o'clock.

Mr. BORAH. Will the Senator from Oklahoma yield to me? I want to have a matter laid before the Senate. It will take but a moment.

Mr. OWEN. I yield to the Senator from Idaho.