

Statement by David Friedland

SPEECH BEFORE THE NEW JERSEY
CONSTITUTIONAL CONVENTION 4/21/66

GENTLEMEN:

I know that this Committee has had an opportunity to listen to the missionaries from Nebraska and has been deluged with a mass of material relating to unicameral legislatures. The advantages and disadvantages of both the unicameral and bicameral structure of government have been clearly set before this Committee, and I have no desire to litter the record of this Committee with a repetition of the broad based arguments which have been presented for and against a unicameral legislature.

In the past five years, I have been constantly occupied with the problem of legislative apportionment in the State of New Jersey; and I hope to be able to bring to this Committee some of the experience which I have obtained in these past five years.

I want to begin by noting that anything this Convention does with respect to the structure of government in the State of New Jersey will constitute a radical departure from our past history. This will be true whether this Convention retains a bicameral structure of government or decides instead to establish a unicameral structure of government for the State of New Jersey. I think it would be probably more accurate to say that a radical change in the structure of government in the State of New Jersey

has already occurred by reason of the decisions of our New Jersey Supreme Court. As the members of this Committee know, our New Jersey Supreme Court held that both houses of a bicameral state legislature must be based upon population. This decision requires a change in the essential theoretical structure of the New Jersey Senate. As a result, the Legislature temporarily apportioned the Senate on a population basis and increased its size to 29 members. A critical examination of the institutional structure of the Senate reveals that both houses of our New Jersey State Legislature are now temporarily apportioned on the same theoretical basis. I like to put it this way. The Senate (and I want to make it clear that when I talk of the Senate, I use the term in its truest generic case, & I am talking about the Senate as a governmental institution and I make no reference whatsoever to the great statesmen who currently inhabit that legislative body) -- but the Senate is simply a long and telescopic microcosmic view of the Assembly. I mean that if you looked at the Senate structure through the wrong end of a telescope, you would see reflected in miniature, all of the same theoretical principles which underlie the creation of a General Assembly.

The old Senate, that is, the 21 member Senate, is for all intents and purposes consigned to the relics of our ancient

history. It is, in a sense, like the Parthenon. And because of our long history with it and because we have the advantage of still having gentlemen who served in the prior Senate, a great deal of appropriate nostalgia surrounds its demise.

But by reason of the decision of the United States Supreme Court in Reynolds v. Sims and of our New Jersey Supreme Court in Jackman v. Bodine, members of both branches of our State Legislature must be elected on a population basis. Under our State Constitution, both Houses of our Legislature are given basically the same legislative authority, with certain minor exceptions. There is no division in our State or between the Houses along aristocratic lines and there are no qualifications of wealth or property. These Supreme Court decisions thus give rise to a number of essential questions which I propose to deal with today. These questions are:

1. SINCE OUR NEW JERSEY SUPREME COURT HAS RULED THAT BOTH HOUSES OF OUR STATE LEGISLATURE MUST DISTRIBUTE SEATS ON THE SAME BASIS -- POPULATION -- IS THERE ANY LONGER ANY NEED FOR A SECOND LEGISLATIVE BRANCH OF GOVERNMENT IN THE STATE OF NEW JERSEY?

2. WOULD HAVING JUST ONE HOUSE IN THE STATE OF NEW JERSEY DESTROY THE CHECKS AND BALANCES SYSTEM COMMONLY ASSOCIATED WITH A TWO HOUSE SYSTEM?

3. WOULD IT BE EASIER FOR ONE MAN OR A SMALL GROUP OF PEOPLE OR ANY STATE OFFICIAL TO CONTROL A ONE HOUSE LEGISLATURE TO THE DETRIMENT OF THE PEOPLE? AND FINALLY,

4. IF A ONE HOUSE LEGISLATURE IS SO GOOD, WHY HAVEN'T THE OTHER STATES ADOPTED IT?

I will attempt to answer these questions in the order in which I presented them.

My first question, SINCE THE NEW JERSEY SUPREME COURT HAS RULED THAT BOTH HOUSES OF A STATE LEGISLATURE MUST DISTRIBUTE SEATS ON THE SAME BASIS -- POPULATION --, IS THERE ANY LONGER ANY NEED FOR A SECOND LEGISLATIVE BRANCH OF GOVERNMENT?

As I have pointed out previously, members of the two branches of our State Legislature must be elected by the people of the State of New Jersey on the basis of population. There is no division in our State along aristocratic lines, and there are no qualifications of wealth or property. It would appear that there is no reason to give the two branches of our State Legislature the same authority to do the same thing when they possess the same qualifications for office and where the work of the two bodies is identical. Such a structure would provide, insofar as the Legislature is concerned, that the work shall be done twice requiring identical procedures by each branch, although each branch has the same jurisdiction. Such unreasonable and

illogical action is not required in any other governmental activity. This illogical procedure is well illustrated by what happens in our Courts of justice.

A case in court may involve a lifetime of savings; it may involve the liberty of one or more of the litigants; it may even involve human life. But however important may be the issue, it is unnecessary to have more than one trial. Under the guidance and control of the presiding judge, each side presents all evidence deemed important and relevant. When all the evidence is in, the attorneys argue the case to the jury. When the argument is over, the Judge instructs the jury. The jury retires and after deliberation, renders a verdict. The Judge then renders judgment upon this verdict. The determination of the case is then handed down,--unless the Judge or jury has violated some constitutional provision, in which case the verdict is set aside, and a new trial ordered.

This same check would exist in legislative matters if we had the one house legislature. If the Legislature exceeded its Constitutional authority in the enactment of any law, it would be set aside by the Supreme Court. There would also exist the veto power of the Governor, who could exercise his right to veto undesirable legislation.

And so I ask the question, why should a State have a legislature composed of two bodies with the same qualifications

The idea of a two-branch legislature in this country was originally copied from the mother country, where a two-branch legislature was then in force. One of these branches -- the House of Commons -- represented the common people, the other branch -- the House of Lords -- represented the aristocracy, men of wealth. The House of Commons was elected by the common people; the House of Lords was selected by the King, and membership in the House of Lords was of a life tenure. They were not intended to be responsible to the people. It was intended that the House of Commons and House of Lords, selected in entirely different ways and representing entirely different constituencies, would be a check upon each other and that in this way neither class would be able to legislate to the detriment of the other. Assuming two such classes exist and that their interests conflict, there is some reason for a two-house legislature, but in this country we have no such classes and the constitutions of our various States are built upon the idea that there is but one class. If this be true, there is no sense or reason in having the same thing done twice, especially if it is to be done by two bodies of men elected in the same way and having the same jurisdiction. The principle of a legislature is not applied to any other governmental business or economic activity.

There is no more reason for a two house legislature in

the State of New Jersey than there is for a bank to have two boards of directors or for a city to have two separate boards of aldermen. In addition, there is no more use for a two branch legislature than there is for two governments. In the words of Governor Norris of Nebraska, there is no more reason for a state to have two branches of its legislature than there is for a "wagon to have five wheels."

As I have stated previously, the idea of a two branch legislature in this Country was originally copied from the experience in England, where a two branch legislature was then in force. It is worthy to note in this connection, that Great Britain, as her people have become more democratic in their ideas of government, has gradually taken away from the House of Lords most of its legislative authority. And in 1911, the House of Lords was shorn of practically all its legislative functions, and today Great Britain, for all practical purposes, is operating under a unicameral or one-house legislature. Yet we still adhere to this ancient form of government, while the substance of legislative authority has been entirely changed by the country after which we modeled our Federal and State Constitutions.

Other countries too have recognized that a one-house Legislature is a more effective system of government. Eight of the nine Provinces of the Dominion of Canada have adopted

house legislatures and they have found that they get better laws at less expense.

The little Republic of Finland has been so well governed that it is the only European power that has the financial ability to meet the installments of war loans due the American Government. Finland has had a one-house legislature for 17 years.

In addition, the Government of the Philippine Islands, the newest republic in the world, whose ship of state is being launched upon the governmental sea under the auspices and direction of the American Government, is to have a one-house legislature.

It is not necessary for me to direct this Committee's attention to the experience of foreign countries, because there is a sufficient experience in the United States of America, and indeed, in the State of New Jersey for the functioning of a unicameral body. While there are quite a number of differences between the governmental structure of municipalities and the governmental structure of a state legislature, it is nonetheless true that of 3,000 municipalities in the United States, only two municipalities, Waterville, Maine and Everett, Massachusetts, have continued a bicameral system of government.

INDENT:

*flexibility
indemonstrated*

[I am not here to justify the particular form of unicameral structures which the municipalities have adopted. Municipalities do pass laws, raising revenue, they pass ordinances defining criminal conduct, and they pass other laws dealing with public health, safety and welfare. The fact is that the structure that is provided is unicameral, and to the extent that the analogy is relevant, I make it.]

But there is additional experience in the State of New Jersey for a unicameral structure. Our 1947 Constitutional Convention was a unicameral functioning body, as is this Convention. And each member of this Convention, therefore, has the opportunity of observing directly the nature of the unicameral process.

So, I can sum up my answer to my first question by saying that since the United States Supreme Court has held that both houses of a state legislature must distribute seats on the same basis -- population --, it would appear that there is no longer any theoretical need for a second branch of government.

My second question is WOULD HAVING JUST ONE HOUSE DESTROY THE CHECKS AND BALANCES SYSTEM THAT IS COMMONLY UNDERSTOOD TO BE A PART OF THE TWO HOUSE SYSTEM?

I want to begin by noting that the term check and balance no longer has the same meaning that it did before the New Jersey Supreme Court decision. This is quite amply pointed out by the United States Supreme Court by its decision in

Reynolds v. Sims. The Court said:

"We find the federal analogy inapposite and irrelevant to state legislative districting schemes. We hold that the Equal Protection Clause requires both houses of a state legislature to be apportioned on a population basis. The right of a citizen to equal representation and to have his vote weighted equally with those of all other citizens in the election of members of one house of a bicameral state legislature would amount to little if States could effectively submerge the equal-population principle in the apportionment of seats in the other house.

"In all to many cases", the court said, "the more probable result would be frustration of the majority will through minority veto in the house not apportioned on a population basis, stemming directly from the failure to accord adequate overall legislative representation to all of the State's citizens on a nondiscriminatory basis. In summary, we can perceive no constitutional difference, with respect to the geographical distribution of state legislative representation, between the two houses of a bicameral state legislature."

And with these words, the United States Supreme Court cast out the notion that one house of a bicameral state legislature was intended to serve as a check against the other house. But in all fairness, I must say that the Court did not believe that bicameralism was rendered meaningless. It did point out that one of the prime reasons currently advanced by those who support bicameralism, is a desire to insure mature and deliberate

consideration of, and to prevent precipitate action on, proposed legislative measures. The Court pointed out that different constituencies could be represented in the two houses; that one body could be composed of single-member districts, while the other could have at least some multi-member districts. The Court also pointed out that the length of terms of the legislators in the separate bodies could differ. The numerical size of the two bodies could be made to differ, even significantly, and the geographical size of districts from which legislators are elected could also be made to differ. The Court also pointed out that its decision did not constitutionally require the destruction of a bicameral form of government. ^PI have come here today not to argue for the destruction of the Senate -- but in a truer sense, for the elimination of the Assembly. And I hope that I will be able to convince you that with the suggestions that will immediately follow, that all of the advantages which are claimed for a bicameral structure can be transplanted into a unicameral structure, so that the people may be provided with all of the advantages of both systems.

And so I ask the question again, WOULD HAVING JUST ONE HOUSE DESTROY THE ADVANTAGES WHICH ARE CLAIMED FOR A TWO HOUSE SYSTEM? I know that this Committee is concerned only with the question of the proposed structure of the New Jersey

State Government, and that other Committees are wrestling with other difficult problems which must be solved by this Convention. But it is my hope to convince this committee that the choice of a unicameral structure of government would in no way limit the flexibility of the Convention in deciding upon the other issues which are presented for decision.

It has, I know, been suggested to the Convention that if a bicameral system of government were adopted, it would be possible to structure one house on the basis of elections at-large in ^{some of} the counties, and that it would be possible to structure the other house by having elections from smaller election districts. The question now arises whether or not that system, if it is to be adopted by the Convention, could be transplanted into a unicameral structure -- for if it can, we would have achieved, within the unicameral structure, one of the advantages claimed for a bicameral structure; namely, the election of representatives from different and differing districts. The question may be stated more specifically. Is it constitutionally permissible under a unicameral system of government, to provide for elections at-large within a specific county of certain legislators, and at the same time, to provide for the election of state legislators from assembly districts within each such specific county? I am prepared to give an unequivocal answer

to this question. The answer is that such a system is constitutionally permissible for the State of New Jersey. For my authority for this proposition, I draw upon the current experience in two States of our Union, Virginia and Oregon.

Although both of these States have bicameral state legislatures, in each of these states one house of the legislature is apportioned in the system I have just described; namely, at-large elections are conducted on a county basis, and legislators are also elected from single member districts within these counties.

The question may now be asked whether the combination of single member district and multi-member districts within one house is constitutional? And I am prepared to give an unequivocal answer to this question. Only this past month, the United States Supreme Court decides this very issue. In the case of Yancey v. Faubus, a United States District Court for the Eastern District of Arkansas, apportioned new assembly and senate districts created by a state board of apportionment. In each house, there was a combination of single-member and some multi-member districts. One who attacked this plan argued that the combination of single-member and multi-member districts deprived people of the State of Arkansas of the opportunity to elect an equal number of the legislators and would be deprived then of the effectiveness of their vote.

In Wyoming, in the case of Schaeffer v. Thompson, a United States District Court had created state senate districts creating single-member and multi-member districts in the same legislative districts. In both of these cases, the United States Supreme Court only last month, sanctioned the use in one house of a state legislature of such mixed districting.

I bring these matters to the attention of the Committee because I recognize that there is a serious dispute in this Convention relating to the use of assembly districts and multi-member districts and because this Convention appears also to be divided on the desirability of electing representatives from different constituencies, thereby providing the kind of balance which the Supreme Court utilized as a justification for the bicameral structure. These recent decisions of the United States Supreme Court make it quite clear that the virtues which have been claimed for a bicameral structure may be easily transplanted into a unicameral structure.

As you will recall, I have directed the attention of the Committee to two different types of institutional structures which may be used within the confines of a unicameral structure; namely, the use of at-large elections within a county

and also the election of assemblymen from single-member districts within each county. I have also pointed out that it is permissible to have multi-member and single - member districts within one house of a legislature by reason of decisions of the United States Supreme Court. It also may be pointed out that any combination of these plans may be utilized within a unicameral structure. In addition to these two theoretical principles which I present to the Committee, I also want to note that it is possible to elect two different classifications of legislators within a unicameral body. For example, if the Convention so desires, it is constitutionally permissible to elect some of the legislators serving in a unicameral structure, for a period of two or four years, and others for a period of six years. It is possible to have one representative apportioned to each county and elected for a period of six years, while the remaining representatives in the unicameral structure are elected for lesser periods of time. I am sure that the members of this Committee are fully aware of the effect which such a procedure would have upon the structure of a unicameral legislature. The legislators who were elected for longer periods of time would, by reason of their seniority, be entitled, I would think, to the same type of privileges which are accorded in the Senate of the State of New Jersey. In fact, I am prepared to state that the

only method in which the old 21 member Senate can be resurrected is within the structure of a unicameral body in the fashion I have just described.

While I do not mean to suggest how these problems ought to be solved, I do want to bring before the Committee the full scope of possibilities. I might also suggest that it would be constitutionally permissible to place any of these considerations, except the question dealing with the terms of the legislators, on a local optional basis. Such traditions are deeply rooted in the State of New Jersey and analogy for them may be found in the provisions of the Faulkner Act. It is constitutionally permissible for this Convention to provide, within the scope of a unicameral legislature, that a referendum be held within certain counties for the purpose of permitting the people in those counties to choose between a system of at-large elections or single-member district elections. I have, however, pointed out in the event the people decide to provide for a mixture of single-member and multi-member districts, the Supreme Court has sustained the constitutionality of such a governmental structure. I also want to point out that other governmental institutional methods may be ^{utilized} ~~multi-member~~ to provide the kind of check and balance which is permissible under the supreme court's decision. The best example I can draw is to the functioning of this Committee. This Committee is functioning within a well-

cameral structure and the Chairman of this Committee and the members of it will exercise ^{a most} ~~the~~ most fundamental influence upon the course of government in the State of New Jersey, than many of them would have as members of either house of the state legislature. In this respect, I direct my remarks to those members of this Committee who serve or have served in the State Legislature. I am sure that they realize that if the problem of legislative apportionment had been left to both houses of the State Legislature, that their ability to influence the structure of government would be less significant than it is today. My point is that the effective use of a Committee system in a state legislature can have an important effect upon the course of legislation within, and particularly within, a unicameral legislature. I bring these matters to the attention of the Committee with the hope that I have been able to convince you that considerable flexibility is present within a unicameral structure and that if this Committee decides to recommend such a structure to the entire Convention, that it will not tie the hands of the Convention with respect to the other proposals now pending before the Convention. In this respect, I do hope that this Committee will at least recommend that the subject matter of a unicameral legislature be debated by the delegates in the Convention in public. Because I believe that it would be

quite unfortunate that consideration not be given by the entire Convention to a proposition which in recent times has commanded the attention and thought of nearly all profound students of political science.

I now would like to turn to the third question which I presented; and that is, WOULD A UNICAMERAL STRUCTURE LEND ITSELF TO HASTY OR ILL-CONSIDERED LEGISLATION?

I believe that the answer to this question really depends more upon the quality of legislators that are elected to a legislature, than upon the legislature itself. Frankly, gentlemen, there is no evidence whatsoever to support the long-accepted proposition that two houses of a legislature tend to produce better legislation. The argument is that ~~is~~ a more cumbersome, complex system of passing legislation ~~is~~ is desirable because it slows down the legislative process, then I can only reply that if you desire to transplant these protective measures into the structure of a one house legislature, you may constitutionally do so. I have already pointed out the considerable influence which a committee system can exert upon a one house legislature by drawing analogy to the procedures with respect to the entire governmental structure in the State of New Jersey. There may be those of you who would consider the incorporation of cumbersome and complex procedures in a unicameral system

to be undesirable. Again, I would not take issue with you, for I have not come here to propose, but to explore. But it seems to me that the whole range of decision is open to this Convention, and that any of these decisions may be made within the structure of a unicameral legislature.

And finally, I would suggest that if you decide to have a unicameral legislature and if the people of the State make the serious mistake of electing representatives who by maligned pressure could be too easily stampeded into a vote which is not in the best interest of the citizens, that it is just as true that a double chamber affords to every improper influence the same advantage. It has been sometimes said that precipitous action is the potential disease of a single-chamber, and that no action is the disease of a bicameral structure. I believe in my suggestions today, that I have pointed out a number of ways of providing inoculations against precipitous action in a unicameral structure.