ADDRESS BY SENATOR STROM THURMOND (D-SC) IN SUPPORT OF POINT OF ORDER DIRECTED AGAINST H. R. 7999, ON SENATE FLOOR, JUNE 27, 1958.

MR. PRESIDENT:

I rise to speak on the first point of order directed against H. R. 7999 which has been raised by the distinguished Senator from Mississippi (Mr. Eastland).

The admission of a State to the Union is an irrevocable step. It would be a tragic thing if Congress should admit the Territory of Alaska to statehood by passing a bill which did not stand four-square with the law. It would be a tragic thing if the Congress should pass a bill on such an important matter which had in it defects which would be challenged successfully in the Courts.

My position on the subject of Alaskan statehood is well known to the Members of the Senate. I do not believe that it is a wise step to admit Alaska to statehood at this time. At the same time, I feel a genuine sympathy and affection for the people of Alaska. If a statehood bill is to be passed at all, then I devoutly hope that it will be a good bill from the standpoint of the legal technicalities involved. No doubt those Alaskans who desire statehood would be disappointed if the Alaskan statehood bill is not enacted. They will be much more deeply disappointed, however, if a bill is passed which flies in the face of the Constitution of the United States. Such a bill would cast grave doubts on the legality of any and every action taken by the government of the new State of Alaska.

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Therefore, Mr. President, I believe that it is of paramount importance that the Senate examine H. R. 7999 with extreme care.

I will begin by discussing the point that Section 10 of H. R. 7999 violates the Constitutional requirement for equality of States in the Union.

Section 10 authorizes the President of the United States to establish by executive order or proclamation one or more special national defense withdrawals within the exterior boundaries of Alaska which withdrawal or withdrawals may thereafter be terminated in whole or in part by the President.

These withdrawals may be made in a wide area of Alaska. The line begins at the point where Porcupine River crosses the international boundary between Alaska and Canada; thence along the main channel of the Porcupine River to its confluence with the Yukon River; thence along the main channel of the Yukon River to its most southerly point of intersection with the meridian of longitude 160° west of Greenwich; thence south to the intersection of said meridian with the Kuskokwim River; thence along the right bank of the Kuskokwim River to the mouth of said river; thence along the shore line of Kuskokwim Bay to its intersection with the meridian of longitude 162° 30 minutes west of Greenwich; thence south to the intersection of said meridian with the parallel of latitude of 57° 30 minutes north; thence east to the intersection of said parallel with the meridian of longitude 156° west of Greenwich; thence south to the intersection of said meridian with the parallel of latitude 50° north.

The purpose of this section of the bill is to permit the
President to secure jurisdiction over this wide area for national defense purposes. No doubt this section of the bill is well intentioned. The difficulty is that it is clearly in violation of the Constitution of the United States. The Congress cannot legislate solely on the basis of good intentions. Ours is a government of laws. It is necessary for Congress to consider the basic law of our country, the Constitution, in considering any and all legislation. H. R. 7999 states that the State of Alaska is to be declared a State of the United States of America and is declared admitted into the Union on an equal footing with the other States of the Union in all respects whatever. This, too, is a laudable declaration of intention. If Alaska is to be a State then surely it should be and must be placed on an equal footing with the other States; however, this good intention that the State of Alaska shall be equal in all respects to other States is contradicted by the language of Section 10 of the bill.

Nor would it be possible, under our Constitution, to admit the State of Alaska under any condition except that of equality. The courts have said time and time again that the condition of equality of States is an inherent attribute of all of the States of the United States.

(I believe that I should read now, in that connection, the statement of Mr. Justice Lurton in Coyle v. Oklahoma, 221 U. S. 559, pages 566 & 567.)

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Further I recall and I am sure that the Members of the Senate all recall the memorable words of Chief Justice Salmon P. Chase in the case of Texas v. Wyatt when he said, "The Constitution,
in all of its provisions looks to an indestructible union, composed of indestructible States." Nevertheless, it is proposed that the State of Alaska be admitted to the Union under conditions which would permit the Federal Government to destroy the sovereignty of that State over a large part of its territory.

This area consists of approximately 166,000,000 acres of land, most of it unsettled. There is very little civilian activity in the acres under discussion. As a practical matter, it has been argued, there are not enough civilians in this large area for it to make much difference whether it is under the jurisdiction of the Federal Government or the Government of the State of Alaska. I submit that while it may not make much practical difference, the principle involved is one of the utmost importance. Nor can we say what will be the status in years to come. We do not know whether this area of Alaska will be subject to great economic development in years to come. Therefore, in the future, it may be of great practical importance. For the present, however, we must concern ourselves principally with the fact that this provision of the bill is a direct contradiction of the Constitution of the United States.

It may be helpful now to refer to some of the discussion of this problem of the National Defense Withdrawal Area, as it appears in the report of the hearings before the Subcommittee on Territorial and Insular Affairs of the Committee on Interior and Insular Affairs of the House of Representatives.

A number of questions arose concerning the manner in which this section would be applied.
General Nathan B. Twining, appearing in the capacity of Acting Chairman of the Joint Chiefs of Staff, testified that the withdrawal provision would satisfy the doubts which the Department of Defense has had in the past concerning the wisdom of granting statehood to Alaska.

"From the military point of view," General Twining said, "the overall strategic concept for the defense of Alaska would remain unaffected by a grant of statehood. Tactically, however, the ease of accomplishment of the military operations necessary to implement the strategic concept would be greater with proper defense area limitations and safeguards." General Twining then went on to say, "I am not an expert on the highly technical details of withdrawal language, but I am satisfied that the proposed amendments meet the demands of national security."

Mr. President, there are no experts in "withdrawal language." The fact is that no State was ever admitted to the Union under a bill containing any sort of "withdrawal language" and, therefore, there are no experts on this subject. There is not a great deal to know about the technical details of implementing such a withdrawal because no such implementation can be made under the provisions of our Constitution.

Now to further illustrate the manner in which these defense withdrawals might be made, I refer also to testimony by the Honorable Hatfield Chilson in his capacity as Under Secretary of the Interior. Mr. Chilson was questioned by the Honorable Wayne N. Aspinall, the object of the questioning being to ascertain exactly what jurisdiction would be given up by the Government
of the State of Alaska if the President exercised his authority to make special national defense withdrawals within the territory.

Mr. Aspinall brought up the example of the fishing industry, a substantial proportion of which is centered in areas which might be withdrawn from State jurisdiction. Mr. Chilson gave what might be taken to be a reassuring reply. He said essentially that the withdrawal power would be used discreetly by the Federal Government and that it would not infringe upon or override the laws of the State of Alaska unless it was necessary. I quote now from Mr. Chilson:

If the President did not exercise his authority to make any special national defense withdrawals, upon admission the laws of the State of Alaska would govern. If the President should exercise his power for a special defense withdrawal in a fishing area, the laws of the State of Alaska could well govern the fishing industry, unless the nature of the use of that withdrawal should interfere with it, or, two, unless some law passed by Congress should be inconsistent with the State law. In that event the Congressional expression would govern in the national defense withdrawal area.

There was, however, one important point which advocates of Alaskan statehood should not overlook. Mr. Chilson said further:

The State laws would apply even in the special defense withdrawal. They would be executed, of course, by Federal representatives, because it would be exclusive jurisdiction in the Federal Government.

The fact is that the law provides that the Federal Government shall withdraw as much jurisdiction from the State as suits the convenience of the Federal Government provided only that such exclusive Federal jurisdiction shall not prevent the execution of any process, civil or criminal, of the State of Alaska, upon any
person found within said withdrawals and, that such exclusive Federal jurisdiction shall not prohibit the State of Alaska from enacting and enforcing all laws necessary to establish voting districts and the qualifications and procedures for voting in all elections. Those were only two matters which were left out of the exclusive jurisdiction of the Federal Government.

Of course, the great majority of the acreage under discussion is the property of the Federal Government. Under normal conditions the State of Alaska will have concurrent jurisdiction with the Federal Government over all public lands not otherwise areas of exclusive jurisdiction such as military reservations established prior to statehood. This State jurisdiction would extend to the police power exercised by the State through legislative and executive action. The courts of the State would have jurisdiction over criminal and civil actions throughout Alaska. Municipalities would be the creation of and subject to Alaska State law.

Now, when the President of the United States decided to exercise the authority given him to establish a special national defense area, he would issue an executive order or proclamation specifying the area and setting forth the exceptions from the requirement of exclusive Federal jurisdiction. The Federal Government would take exclusive jurisdiction except in those areas of Government which the President excepted from his executive proclamation.

Upon issuing such an order, the Chief Executive would take the responsibility for enforcing all applicable laws of the State of Alaska in the area covered by the order. For the purposes
of administration and enforcement, these Alaska State laws would become for all practical intents and purposes Federal laws. They might be enforced by United States marshals, or at the discretion of the President, local police officials authorized by the President to act as law enforcement agents.

Now this is a curious fact: After the issuance of an order by the Chief Executive establishing a national defense area, the laws of the State of Alaska as they apply to that area, could be amended, revised, or even suspended, by action of the United States Congress. The only exceptions would be those laws relating to municipalities and State laws relating to elections.

The Federal Government is given, in effect, the power to suspend full statehood in the areas withdrawn from State sovereignty.

This provision is, in no sense of the word, a contract or a compact between the Government of Alaska and the Federal Government limiting or restricting the activities of the Federal Government in the future. It is, no more and no less than an arrangement by which the Congress agrees to confer statehood on Alaska at the price of Alaskan sovereignty over this large area of Alaska.

It has been argued that certain States of the Union were admitted only subject to certain conditions set forth in advance by Congress; however, no such conditions have ever been attached to statehood as are attached in the Alaskan statehood bill. These conditions are so stringent that the approximately 24,000 citizens in the withdrawal area could be evacuated at a moment's
notice on order of the Federal Government. It would require only two executive orders from the President of the United States one withdrawing the area from State control and another ordering the citizens to depart.

I have already mentioned the case of Coyle v. Oklahoma. In that case Congress passed a law admitting Oklahoma into the Union. The law provided that the admittance of the State of Oklahoma was conditional; that the State Capitol must be located at the town of Guthrie, and that the State Capitol could not be moved from Guthrie by State authority until 1913. The new State of Oklahoma disregarded this provision in the law. The Legislature almost immediately removed the Capitol to Oklahoma City. The Court, in that case, found in favor of the State of Oklahoma.

It has been pointed out, too, that the State of Wyoming was admitted to the Union with the condition that the Federal Government would maintain jurisdiction over the area encompassed by the boundaries of the Yellowstone National Park. This example was, in fact, used as an argument during the Senate hearings to justify the constitutionality and the legality of the withdrawal provisions of the Alaskan Statehood Bill. The facts of the matter are that Yellowstone Park was reserved by an act of Congress eighteen years before Wyoming was admitted to the Union as a State.

The argument has also been made that the Federal Government was given jurisdiction over land in the State of Arizona and in the State of New Mexico, for purposes of national defense. The facts are, however, that jurisdiction over those lands was given
by the legislatures of the States of New Mexico and Arizona. It was a case of action by the States; it was not Federal action.

Mr. President, I believe it will be desirable at this point to cite certain decisions of the Supreme Court, in which the Court has consistently held in favor of the doctrine that new States must be admitted into the Union on an "equal footing" with the old ones.

The United States Supreme Court, in Ex parte Webb (225 U. S. 663), at page 690, had this to say:

It is not our purpose to qualify the doctrine established by repeated decisions of this Court that the admission of a new State into the Union on an equal footing with the original States imparts an equality of power over internal affairs.

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The most recent decision of this Court upon the subject of the proper construction of acts of Congress passed for the admission of new States into the Union is Coyle v. Smith (221 U. S. 559), where it was held that the Oklahoma Enabling Act (34 Stat., c. 3335, p. 267), in providing that the capital of the State should temporarily be at the city of Guthrie, and should not be changed therefrom previous to the year 1913, ceased to be a limitation upon the power of the State after its admission. The Court, however, was careful to state (221 U. S. 574): "It may well happen that Congress should embrace in an enactment introducing a new State into the Union legislation intended as a regulation of commerce among the States, or with Indian tribes situated within the limits of such new State, or regulations touching the sole care and disposition of the public lands or reservations therein, which might be upheld as legislation within the sphere of the plain power of Congress. But in every such case such legislation would derive its force not from any agreement or compact with the proposed new State, nor by reason of its acceptance of such enactment as a term of admission, but solely because the power of Congress extended to the subject, and therefore would not operate to restrict the State's legislative power in respect of any matter which was not plainly within the regulating power of Congress."
In the case of *Case v. Toftus*, 39 Federal Reports, 730, at page 732, the Court said:

The doctrine that new States must be admitted into the Union on an "equal footing" with the old ones does not rest on any express provision of the constitution, which simply declares (art. 4, sec. 3) "new States may be admitted by Congress into this Union," but on what is considered and has been held by the Supreme Court to be the general character and purpose of the union of the States, as established by the constitution, a union of political equals. (*Pollard v. Hagan* (3 How. 233); *Permoli v. New Orleans* (Id. 609); *Strader v. Graham* (10 How. 92).)

In *Boyd v. Thayer* (143 U. S. 135), at page 170, the Court said:

Admission on an equal footing with the original States, in all respects whatever, involves equality of constitutional right and power, which cannot thereafter be controlled, and it also involves the adoption as citizens of the United States of those whom Congress makes members of the political community, and who are recognized as such in the formation of the new State with the consent of Congress.

In *Escanaba Company v. Chicago* (107 U. S. 678, at p. 688), Mr. Justice Field, speaking for the Supreme Court, said:

Whatever the limitation upon her powers as a government whilst in a territorial condition, whether from the ordinance of 1787 or the legislation of Congress, it ceased to have any operative force, except as voluntarily adopted by her, after she became a State of the Union. On her admission she at once became entitled to and possessed of all the rights of dominion and sovereignty which belonged to the original States. She was admitted, and could be admitted, only on the same footing with them. *** Equality of the constitutional right and power is the condition of all the States of the Union, old and new.

In *Skirliotes v. Florida* (313 U. S. 69), at page 77, the Court said:
If the United States may control the conduct of its citizens upon the high seas, we see no reason why the State of Florida may not likewise govern the conduct of its citizens upon the high seas with respect to matters in which the State has a legitimate interest and where there is no conflict with acts of Congress. Save for the powers committed by the Constitution to the Union, the State of Florida has retained the status of a sovereign. Florida was admitted to the Union "on equal footing with the original States, in all respects whatsoever" (act of March 3, 1845, 5 Stat. 742). And the power given to Congress by section 3 of Article IV of the Constitution to admit new States relates only to such States as are equal to each other "in power, dignity and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself" (Coyle v. Smith (221 U. S. 559, 567)).

Mr. President, the situation which would exist under the Alaskan Statehood Bill has been compared, correctly, with the situation which existed in the State of California during World War II, when a large number of persons of Japanese ancestry were evacuated from the coastal areas by order of the Federal Government. There was one important difference. In the case of California, a national emergency existed. In the case of Alaska, it is proposed to give to the President of the United States blanket authority without the invocation of martial law, without the necessity of gaining the permission of the State, and without the presence of a national emergency.

The simple fact of the matter then is that Congress is establishing as a condition for the admission of the State of Alaska that it consent in advance to exclusive authority in the Federal Government to supercede State sovereignty over a portion of its area and a portion of its citizenry. Mr. President, if we adopt the principle that Congress can set forth conditions which the citizens of territories must agree to in order to achieve statehood, it follows that we can have a government of unequal
states, some States with unrestricted powers, and other States whose powers have been restricted by the act of Congress which admitted States to the Union.

I urge, Mr. President, that this point of order be sustained and Section 10 of H. R. 7999 be stricken from the bill.