

THE NEW YORK TIMES, MONDAY, MAY 11, 1970

Lawmakers' Status in Reserves Is Challenged by Antiwar Group

By BEN A. FRANKLIN
Special to The New York Times

WASHINGTON, May 10 — A committee of antiwar armed forces reservists said today that it would sue the Defense Department in an effort to force the expulsion of nine Senators and 50 Representatives from commissioned status as Reserve or National Guard officers.

The group is the Reservists Committee to Stop the War, a largely student-run organization based in Berkeley, Calif., that is opposed to the fighting in Vietnam and Cambodia. It announced that the suit would be brought in the Federal District Court here tomorrow.

Under Article I, Section 6 of the Constitution, "no person holding any office under the United States, shall be a member of either house during his continuance in office."

The committee and its lawyer here, William A. Dobrovir, contend that nearly 170 years of Congressional precedents make it clear that the prohibition — designed to enforce separation of legislative and executive powers — includes commissioned appointments in the Reserves—active, inactive or retired. But according to Mr. Dobrovir, the issue has never been tested in the courts.

Others on Retired Lists

Counting 63 additional members of Congress who are on the retired lists of the various Reserve components and may be drawing pensions, the committee said, the Congressional membership allegedly in violation of the constitutional mandate may total 122, or more than one-fifth of the 100 Senators and 435 Representatives.

According to Adam Hochschild, a former San Francisco newspaperman and ex-reservist who is now a freelance writer and co-chairman of the committee, it is this arithmetic, rather than the niceties of constitutional interpretation, that motivated the suit.

"The Senators and represent-

atives threatened by the suit tend to be hawks on Vietnam and military issues," Mr. Hochschild said. As reservists or former reservists, he and the four other individual plaintiffs in the suit contend that they are discriminated against, in relation to the Congressional reserve officers, in assignments and promotions and in liability to a call to active duty.

Moreover, Mr. Hochschild

said, as citizens and taxpayers "we are deprived of the unbiased judgment of these members of Congress on war and defense policy and appropriations."

He said that 27 of the Reserve or National Guard officers in Congress held key positions on defense, foreign policy and appropriations committees. Of the 59 Reserve officers in Congress who have not retired from their commissions, he said, 20 hold the rank of colonel or Navy captain or above.

Two former Reserve major generals, Senator Barry Goldwater of Arizona and Senator Strom Thurmond of South Carolina, both Republicans, were characterized by the committee as tending "to be hawks on Vietnam in military issues."

Among other Senators with Reserve or retired Reserve status are Hiram L. Fong of Hawaii, Jack Miller of Iowa, Charles M. C. Mathias Jr. of Maryland and Howard H. Baker Jr. of Tennessee, all Republicans; and Howard W. Cannon of Nevada, Frank E. Moss of Utah and Harry F. Byrd Jr. of Virginia, all Democrats.

Among House members with Reserve status are Robert L. F. Sikes, Democrat of Florida, a retired major general in the Army Reserve and a ranking member of the Defense Appropriations Subcommittee; and three members of the House Armed Services Committee, Samuel S. Stratton, Democrat of upstate New York, and Robert T. Stafford of Vermont and William S. Mailliard of California, both Republicans.