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Judicial domination

Strom Thurmond

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ADDRESS BY STROM THURMOND TO THE TENNESSEE FEDERATION FOR CONSTITUTIONAL GOVERNMENT AT WAR MEMORIAL AUDITORIUM, NASHVILLE, TENNESSEE, MONDAY, JUNE 18, 1956, at 7:30 P.M.

Judicial Domination

Captain Stahlman, Dr. Davidson, Other Distinguished Guests, and My Fellow Americans of Tennessee:

It is a pleasure for me to come to Nashville - a beautiful city in a progressive state of noble citizenship.

Tennessee has furnished some of the outstanding leaders of our nation, and her people played a vital part in the early development of our country.

We South Carolinians feel a close bond of friendship between the citizens of our state and yours. Your great citizen, the Seventh President of the United States, Andrew Jackson, was born in South Carolina, on March 15, 1767, and subsequently moved to Tennessee.

The first Vice President who served with Jackson was a South Carolinian and a great American, John C. Calhoun. Altho these two intellectual giants did not always agree, there was a deep admiration on the part of each for the other. Both were fearless men and true patriots, and knew no compromise of principle.

The Tennessee Federation for Constitutional Government is a highly respected organization and deserves to be commended for the magnificent work it is doing. I congratulate Dr. Donald Davidson, its able Chairman, his Board, and the members of this Federation for the significant contribution they are making to preserve our American way of life. The Federation has taken constructive stands which represent true Americanism, and is engaged
in activities that are truly democratic and reflect credit upon its members.

This organization is fortunate in having one of America's most profound editors supporting its program— I refer to Captain James E. Stahlman of The Nashville Banner.

When the Constitutional Convention ended in Philadelphia on September 17, 1787, the Constitution, as adopted at that time, did not contain the rights later embodied in the first ten amendments, known as the Bill of Rights."

The many deputies who opposed adopting the Constitution without the Bill of Rights, were fearful of a powerful central government. Those wise men, who took that position, visualized the dangers of power being centralized at the national capital. They foresaw an invasion of the rights of the states and encroachment on the freedom of the individual citizen. It was only after assurances were given, that Congress would be requested to submit the Bill of Rights for adoption, that these men agreed to sign the Constitution. Even then, 3 of the 55 deputies attending, John Randolph of Virginia, George Mason of Virginia and Gerry of Massachusetts, felt so strongly the danger of a centralized government that they refused to sign it. It is remarkable that these wise men, so early in the formation of our government, foresaw the events now occurring and attempted to guard against them.

After the Bill of Rights was adopted, our Constitution became the soundest fundamental law for the basis of government that the world had ever known. The greatest government of the world sprang up -- a government that has provided for its people
more prosperity, more liberty, more individual freedom, and greater justice, than any government theretofore conceived by the mind of man. But, my friends, a threat hovers over America today -- the threat of Federal encroachment on the rights of the states and the freedom of the individual.

Strange to say, the most vicious form of Federal encroachment is by the Judiciary, the branch of government that should be the most zealous in protecting our citizens.

Therefore, my remarks to you tonight will be on the subject of "Judicial Domination."

The South today is bearing the brunt of the battle of Federal encroachment, and some would have you believe that the people of the South are fighting for a "lost cause." I would remind you, however, that so long as the South has men and women like you -- who vow to uphold their Constitutional government, who speak without fear, and who work together in unity -- then, I say, our nation's greatness will continue, and that our fight for constitutional government is not lost.

Washington has probably produced more sensational news in the short history of this country than any nation in a similar period of time. However, and I am sure you recognize this, news does not have to be sensational to be important.

The most important news to come out of Washington last year, and for the past few years, has not come all at once. It has come in small doses -- the kind of doses that lull people to sleep, because it is not sensational but more deceptive in nature.

There is presently in the Congress of the United States a great rising revolt against the Supreme Court, and this effort is gaining support throughout this country -- not in the South alone,
as some would have you believe.

Certainly, we all here are satisfied that the Court has overstepped its power. While their precedent setting decision on segregation has turned the spotlight on the South, we might pose the question, "This usurpation may most affect the South today, but what will they call it when it affects the North, the West, or the East tomorrow?"

They will call it the same thing we do, which is exactly what it is, an unprecedented disregard of the rights of the states. A disregard which has assumed such preposterous dimensions that it raises doubts and questions in the minds of the public regarding not only this Court, but all courts and all law.

The Supreme Court has ceased to interpret the Constitution -- they have now begun to amend it. The Court reminds me of a cat with nine lives, with the Justices poking around in back alleys, dumping parts of our Constitution in garbage pails. Proverbial They had better come out of the dark, or their/nine lives won't be sufficient to carry them through another year similar to several we have recently had.

You, no doubt, have heard that Washington has been considering deporting the squirrels from the White House lawn, as they were pestering the President's golf balls. I believe you will agree that their time would be better spent if they left the squirrels in Washington and deported the Judges of the Supreme Court. These 9 men are not worthy of the black robes they wear.

There are now perhaps 50 proposals in Congress -- Bills, Constitutional amendments and resolutions -- to curb the power of the Court and the Federal government, and to undo what the Court has done, or to repudiate it.
The Justices must rejoice that the summer vacation is finally here, enabling them to return home and rest in leisure at some peaceful spot, away from the loudest furor, and the heaviest criticism of the Court in our country's history.

It is appropriate that we should stop here to turn back the pages of history to re-examine the course of events which led to the adoption of our Constitution, and the operation of our government thereunder.

This examination reveals that we are today facing a period as critical as that faced by our founding fathers in the turbulent days of 1776. It was then that a small group of men met at Philadelphia to decide between peace and relative security, and a conflict that they realized full well may bring an end to their own lives, and the lives of their families and friends.

Yet, these men, whose intrepid decisions still guide our nation today, decided that submission to tyrannical oppression was not the reply for free men. So, they embarked on a courageous course, a challenging one, and joined in battle in order that this country would forever enjoy liberty.

The victory in 1776 resulted in giving us a government of liberty, freedom, justice and opportunity.

The foundation of this free government is, of course, our Constitution. It is a document of lasting principles, not subject to the whims and fancies of men who would seek to destroy it.

Under the Constitution we have a government of the people with 3 co-equal branches, each serving as a check and balance on the other; a Legislative Branch, represented by the Congress,
which makes our laws; an Executive Branch, headed by the President, which enforces our laws; and a Judicial Branch, represented by the Supreme Court, which interprets our laws.

The Constitution provides a method for the amendment of this document. This method is nothing less than \( \frac{2}{3} \) vote of the Congress and \( \frac{3}{4} \) of the states. Without action by the Congress and by the states, not a phrase or a word of this fundamental document can be changed.

Approximately 20 years after the formation of our government, when our first president took his leave from public life, he left with us a warning which is timely and applicable to the grave situation facing us today.

George Washington stated in his farewell address in 1796:

"If, in the opinion of the people, the distribution or modification of the Constitutional powers be, in any particular, wrong, let it be corrected by an amendment, in the way which the Constitution delegates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed."

Today we find ourselves confronted with the danger of which President Washington warned us over 160 years ago. This danger has manifested itself in the attempts of the Supreme Court to usurp functions and power it does not possess. Functions which belong exclusively to the states and to the Congress.

The most notorious example of this usurpation is the Court's 1954 ruling in the segregation case. This decision infringes upon the rights of self-government reserved to the states.
The 10th Amendment clearly states, "The powers not delegated to the United States by the Constitution, nor prohibited to it by the states, are reserved to the states respectively, or to the people."

The wording of this amendment is crystal clear. Our children in grade school can understand it. Yet, the 9 Justices have completely ignored it, or read into it something which is not there.

This amendment states that powers not delegated to the United States by the Constitution, rest with the states. The word "education" does not appear in our Constitution one single time.

But, the Supreme Court has ruled, in the face of many years of precedent, that we have to integrate our schools, whether the states and their people want to or not.

The Court has, in effect, set themselves up as an "almighty" Board of Education to regulate the public school system in my state, your state, and every other state of this great Union -- and we don't like it.

In rendering the segregation decision, the Court based their findings on so-called modern authorities on psychology and sociology and the Red-tinted officials of the NAACP, whose nefarious record stands as proof of its unworthiness.

The NAACP itself has, in effect, been working to amend the Constitution. The NAACP was dealt a stunning blow when it was revealed that 78 out of 177 officials had been cited by the House Committee on Un-American Activities and were found to have questionable records.
This segregation decision of the Court literally tore the roots out of years of judicial justice and replanted in its place judicial domination. It has fallen to our lot to return to our government the common sense it abandoned, in overthrowing numerous decisions upholding the "separate but equal" doctrine which had been in effect from 1896 to that infamous Black Monday on May 17, 1954.

In the case of Plessy vs. Ferguson, decided in 1896, the Justices of the Supreme Court declared, under the 14th Amendment, that no person was denied his rights if separate but equal facilities were provided. I ask you, is the 14th Amendment to our Constitution any different today from what it was in 1896? No, the difference is in the men who interpret it and the nature of their motives.

The segregation decision overruled such legal giants as Oliver Wendell Holmes, Chief Justice Harlan Stone, Chief Justice Charles Evan Hughes and Chief Justice William Howard Taft, a former president.

As late as 1927, in the case of Lum vs. Rice, Chief Justice Taft ruled that the separate but equal doctrine was not in conflict with the 14th Amendment. But, today, with sociological pressures on the Justices of the Supreme Court, they have handed down a decision which follows a trend of politics rather than a basis of law.

Between 1896 and 1954, no less than 157 cases upheld the "separate but equal" doctrine. 11 were decided by the United States Supreme Court, 13 by the United States Courts of Appeal, 27 by United States District Courts, and 106 by State Supreme Courts.

The 1954 decision wiped out constitutional and statutory
provisions in 17 states and the District of Columbia. In answer to this judicial domination, 14 school districts in the state of Delaware, with a racial school enrollment of 6 whites to 1 negro, dealt a stunning admonition to the Court when they polled a vote of 86 to 1 in favor of segregation.

In years past the Supreme Court has stood as the most respected governmental body of our land. For nearly a century and a half it deserved the high respect accorded it.

During these crucial years of history, the Justices of the Court proclaimed the Constitution as written, knowing that the people had the power to amend it if they chose to do so. The Court possessed the integrity and the legal ability to uphold the greatest governmental document ever written.

Then came the era of court-packing. A President of the United States contemptuously referred to the Justices as "nine old men," and asked the Congress to give him legal sanction to pack the Court by increasing its number.

Altho the Congress refused this request, the passage of time has seen the caliber of the appointees to the Court decline. Men have been appointed to this high judicial body solely on the basis of political expediency. Sitting in that monument to justice in Washington today, are men who have not even had the benefit of a background of a judgeship.

The result has been a trend towards flouting of the law and the Constitution. In the past few years, they have regarded the whole body of law as an unchartered sea, and piloted our Ship of State in a reckless and haphazard manner. Their ears have been deaf to all reason, except that offered by the clamor of minority groups.
The Court has overruled with one stroke of the pen, decisions with years of precedent to support them. They are reading into the Constitution something which is not there, and most frightening of all, they are stripping the states of powers explicitly reserved to the states by the constitution.

This judicial domination is not confined to the segregation issue. It has already extended its octopus-like tentacles to usurp powers of Municipal and State governments, and even the Congress.

It is appropriate for us to now review several prominent cases in which the Court has rendered invalid the powers delegated to the states by our Constitution.

In a decision handed down in 1955, the Supreme Court rendered invalid a statute of the State of Maryland, requiring segregation in the parks and swimming pools, and by such decision running rough-shod over the sovereignty of that state.

In a recent case, Harry Slochower v. New York City, the Court struck down a law of the City of New York which required the discharge of a professor who invoked the 5th Amendment and refused to answer when questioned about Communist affiliations.

Brooklyn City College, where Slochower taught, was forced to re-instate this man, altho the City charter provided for an automatic discharge for refusal to answer questions by an official investigating committee.

In a still more recent case, Steve Nelson v. the State of Pennsylvania, a notorious communist, was operating in Pennsylvania in open defiance of the state's sedition laws. He was prosecuted and convicted. In April of this year, the Supreme Court reversed
this conviction on the ground the Smith Federal Sedition Act had preempted the field on the subject of sedition. This action nullified the anti-sedition laws in 42 states, Alasks and Hawaii. In terms of the layman, this means that State laws on sedition -- which provide prosecution for acts short of treason have been rendered ineffective and unenforceable, merely because there is a Federal law on the same subject.

The Supreme Court, in effect, has taken the position, in spite of precedent again, that where Congress has enacted legislation on ANY subject, the states are automatically deprived of all power to enact or enforce similar laws on the same subject, even though the state laws are not in conflict with the Federal Acts.

In reply to the Supreme Court decision in the Nelson case, the author of the Smith Act wrote:

"This is the first intimation I ever had that Congress had the faintest notion of nullifying the concurrent jurisdiction of the respective sovereign states to pursue their own prosecutions of subversive acts."

However, the Court had popped its whip again, and decided again that it knows more about the intention of the Smith Act than the man who wrote it, or the Congress which passed it.

The action of the Court in the Nelson case resulted in dissenting statements from practically every State Attorney General -- North, West, East and South.

Senator Jenner of Indiana gave a representative view when he stated, "The doctrine of federal preemption has been expanded to such unreasonable proportions that there are few, if any,
State laws of any importance which are not of questionably validity today."

Another example of this trend towards judicial domination may be found in the Court's action concerning the Natural Gas Act of 1951. President Truman vetoed this bill but the Congress overrode his veto.

In 1954, the Supreme Court heard a case testing this Act (Phillips Petroleum Company), and declared that the Federal government has the power to dictate the price of natural gas sold at the well-head, in spite of the intent of Congress to the contrary.

This was one of the Court's two major decisions of 1954 -- decisions which declared, in effect, that the laws and the Constitution now mean whatever a majority of the Court wants them to mean at any particular moment. In 1956, Congress again passes the Natural Gas Act, and again it was vetoed by the President. The history of Federal regulation of natural gas shows that the will of the Congress, which after all represents the people, has been ground to powder between Presidential vetoes and judicial domination.

We find that this trend continues down its twisted path of destruction by examining a 5-4 split decision of the Court on April 23, 1956. In this case, the "black robe wonders" once again went beyond constitutional power and told the states how to run their local courthouses.

This case concerned 2 men convicted in Illinois of a crime of armed robbery. They took issue with an Illinois law that they
must pay a fee for the transcript of the trial at which they were convicted, if they appealed their case. Stating they did not have the money to pay the necessary costs, they appealed to the Supreme Court on the ground that the Illinois law violated their Constitutional rights in not giving them free transcripts. They stood on the "equal protection of the laws" clause of the 14th Amendment, and won a bare majority decision. Even the dissenting opinion, in which four of the Justices concurred has this to say:

"The Constitution requires equal protection of the law, but it does not require the States to provide equal financial means for all defendants to avail themselves of such laws."

The Justices of the dissenting opinion also held,

"This is an interference with state power for what may be a desirable result, but which we believe to be with the field of local option."

To this dissenting opinion, Justice Harlan added,

"I think it is beyond the province of this Court to tell Illinois that it must provide such procedures."

If time permitted, we could continue to cite other cases in which the Court, in a shocking reversal of past history and precedent, has done nothing short of repudiating the basic rights of the states assured them by the Constitution.

In addition to this encroachment by the Supreme Court on the rights of the States, the Court has, in recent years, rendered a decision on one day, and, in effect, made a complete about face and reversed that decision another day.
In the past 14 years, we find that the Court has reversed itself in 39 cases. While I would be the first to recognize their right to correct a previous wrong, surely this excess of about-faces has weakened the prestige of the Court. An attorney scarcely knows now how to advise a client what the law is -- because tomorrow the Court may decide the law is different than today.

Certainly, the laymen, men and women like you, must be asking the question, "Is the law as uncertain as that? Is our Constitution so difficult to interpret?"

We must never lose sight of the fact that the ballot box and the Court are the only recourses of the people. Deliberately removed from the influences of politics, the Court, in its initial service, kept a restraining hand on the excesses of Federal legislation and administration.

But, now we are faced with the problem of having a Court which is doing exactly the opposite. Its present-day constructions almost invariably add strength to the centralizing forces that all but destroyed the constitutionally-reserved domain of state government.

The states of their sovereign rights to protect their citizens, to operate their schools and to exercise jurisdiction in local matters.

Based on what has already taken place, it is frightening to contemplate what may follow. If the Court is allowed to continue down this perilous path of destruction of states rights, who knows what they may do next, or to where they might lead us?

Now, being aware of this problem, and doing something about it.

We are grateful for organizations such as your Federation, where citizens have joined together to preserve the rights given
us by our founding fathers.

There are presently a number of Bills pending in Congress which, if passed, would go a long way toward restoring some semblance of order to our present disorder.

It is recognized that the solution to the problem of restoring to the people of the states their rightful powers, as guaranteed under the Constitution, is a broad one and that no set course will bring it about. However, several steps might be taken which would be very helpful and I recommend that your organization give consideration to the following 5 points:

1 - Limit the powers of the Federal Appellate Courts;
2 - Amend the Electoral College system for choosing the President;
3 - Pursue the doctrine of interposition;
4 - Set forth, in law, qualifications for Supreme Court Justices; and
5 - Inform the public of our cause and crystallize public opinion for constitutional government.

In limiting the power of the Federal Appellate Courts, we mean that in education and other local matters the final decisions should be made by the U. S. District Judges. These men are familiar with local problems and will more accurately represent the people these decisions affect.

Our District Judges should be the final judicial authority on such matters, and there should be no further appeal in such cases. This would restore to the people some of their rights which the Supreme Court has been fit to trample upon.

Our second point is to amend the electoral system for choosing the president. This would limit the influence of minorities, who are rapidly assuming the balance of power in our larger states.
Under the present system, it is a winner-take-all proposition, with the entire electoral votes of any state going to the presidential candidate who wins the election in that state, even if his victory margin is only by one vote.

A fairer system would be choosing presidential electors in the same manner as members of Congress are selected, or split the electoral vote in each state in the same proportion as the popular vote.

Our third point is the pursuance of the doctrine of interposition, which has been successfully invoked many times in the past. This doctrine has not been tested in the courts, but it is one which stems from the architects of our Constitution, Thomas Jefferson and James Madison, and appears to be founded on sound logic.

Through interposition, the people of this country might be enabled to restore their sovereign states to their basic position in our system of government. This is a possible method for the people to regain control of their republic, and preserve the Constitution.

The 4th point concerns setting forth, in law, certain qualifications for every man appointed to the Supreme Court. Of the entire Supreme Court, as it exists today, only two members possessed judicial experience before appointment. Obviously, in this present day, politics and radicalism outweigh legal ability and judicial experience.

Finally, and this audience has already enacted this point, we must concern ourselves with public opinion and the great force it generates. As I have stated, earlier in this address, a well-
informed public is the strongest force on earth. Abraham Lincoln once said, "With public sentiment, nothing can fail; without it, nothing can succeed."

My friends, it behooves every true patriot to exert his utmost efforts to crystalize public sentiment against judicial domination, and to preserve our Constitution.

In conclusion, let me say that the Supreme Court has no right to change the law or amend the Constitution. This nation has survived while many others crumbled under the pressures of time, simply because our government has been a government of laws, not a government of men.

When I was dropped from the skies onto the shores of Normandy, in our hour of crisis in World War II, and took my place alongside your sons, husbands and loved ones, I realized then, more than ever, such men would never allow this nation to be destroyed by war. But I warn you today, in times of peace, that we are slowly being destroyed by judicial law.

However, I have an abiding confidence in our people, and just as the men and women of this country arose to meet that challenge of world domination, I believe they will now arise to meet the challenge in this country of judicial domination.

In this struggle against such judicial domination, our fight will be none the less important, our efforts will be none the less vigorous, and our victory will be none the less triumphant.

This goal can be attained, it will be attained, for we here tonight have already dedicated ourselves to preserve our Constitution and to fight as valiantly to defend it as our forefathers fought to attain it.

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