MR. CHAIRMAN AND GENTLEMEN:

I am pleased to have this opportunity to make a brief statement in support of Senate Bill 2646, to limit the Appellate Jurisdiction of the Supreme Court.

This is a matter of particular interest to me, because I have had a life-long interest in all things pertaining to the delicate balance of powers existing between the three branches of the Federal government and between the Federal and State governments.

In the present instance, we are confronted by an alarming trend on the part of the Judicial Branch of the government, headed by the Supreme Court, to usurp fields of responsibility that belong elsewhere.

Not only has the Court dealt deadly blows to the Constitutional principle of States Rights and to the law-making power of the Legislative Branch of the Federal government, but the Court has also struck at the fundamental authority vested in the Executive Branch.

The time is long past due for action by the Congress to call a halt to this unconstitutional seizure of power by the third branch of the government.

We are confronted today by two methods by which the Supreme Court is undermining Constitutional government in this country.

The first of these methods is through seizure of power. Although the Court was conceived by the framers of the Constitution to be a weaker branch than the Legislative and Executive Branches, the Court has consistently moved to expand its powers, until it threatens to be the dominating power in the government.

Secondly, the Court has moved, perhaps unconsciously, to set itself up as the guardian of subversive elements, encouraging these people to continue their work against Constitutional government.

Senator Jenner's bill is a particularly timely one because it throws up a defense for the Constitution against attack from both of these directions. It would remove from the Supreme Court some of the powers it has preempted for itself
and for the central government. At the same time, it would remove the protective cloak that the Court has thrown around subversives.

In *Watkins v. United States*, the Court attempted to prescribe rules to govern the conduct of Congressional investigating committees. Note that this was, in the general sense, an effort to limit the power of the Legislative Branch. In the specific sense, by limiting the power of Committees to investigate subversive activity, it had the effect of shielding Communists.

The same pattern may be seen in *Konigsberg v. California* and in *Schware v. Board of Bar Examiners*. The broad effect of the decisions was to limit the power of state governments to deny licenses to practice law. The specific, or narrow effect, was to secure law licenses for persons suspected of subversive activities.

Again, in *Nelson v. Pennsylvania*, wherein the sedition laws of 42 states were rendered ineffective, we again find the double impact to Constitutional government. First, state authority was smashed down, and, simultaneously, the rights of suspected Communists were enlarged.

The same is true in *Slochower v. Board of Education, Yates v. California, Service v. Dulles*, and a number of other cases that have come into the purview of this committee in its study of Senate Bill 2646.

In most of these cases, the Supreme Court has made the error of setting itself up as a judge of character. The cases involved persons who may or may not have been Communists, subversives, or security risks. In each case, the court of the first instance had made this determination and the Supreme Court reversed the initial decision by applying its own standards.

Now, judging character is not an easy matter. As Justice Frankfurter wrote in his dissenting opinion in *Schware v. Board of Bar Examiners*, in which the Court tried to satisfy itself concerning the moral character of Schware:

"...satisfaction of the requirement of moral character involves an exercise of delicate judgment on the part of those who reach a conclusion, having heard and seen the applicant for admission, a judgment of which it may be said...that it expresses an 'intuition of experience which outruns analysis and sums up many unnamed and tangled impressions; impressions which may lie beneath consciousness without losing their worth.'"
It is impossible for the Supreme Court, as an appellate court, to study a case so thoroughly and so carefully that it can exercise that "delicate judgment" which is so essential to a proper determination of character. Even if it could, the fact that the lower court looks to the Supreme Court for precedents, means that a set of arbitrary rules must replace judgment.

While I favor all of the provisions of the bill, I am particularly interested in the one that would prevent the Supreme Court from reviewing cases challenging the statutes and executive regulations of the States pertaining to subversion against the States. In the case of Nelson v. Pennsylvania, the Court overturned a conviction obtained under the Pennsylvania Sedition Act, which forbids the knowing advocacy of the overthrow of the Government of the United States by force and violence, by holding that it had been superseded by the Smith Act, a federal law forbidding the same conduct.

In effect, the Supreme Court nullified the anti-subversion laws of 42 states by holding that the Federal government had preempted the field.

Congress never intended such an effect of the Smith Act. As the three dissenting justices pointed out in Nelson v. Pennsylvania:

"The Smith Act appears in Title 18 of the United States Code, and Section 3231 provides, 'Nothing in this Title shall be held to take away or impair the jurisdiction of the Courts of the several states under the laws thereof...''"

Here is clearly another example of how central authority can needlessly replace local authority; in fact, it would seem, the Supreme Court holds to the notion that central authority necessarily excludes local authority from whatever field of law the central authority preempts.

This same point -- the Sedition Laws of the States -- is covered in another bill pending before the Judiciary Committee, Senate Bill 2401. This bill, one introduced by me during the First Session of this Congress, also would restrict the jurisdiction of the Supreme Court in reviewing the validity of statutes and regulations pertaining to the operation of public schools in the several states. It appears to me that the last stronghold of our system of local
self-government lies in local control of the public school systems, and that, by
interposing itself into a field properly occupied by State school boards and local
authorities, the Supreme Court has struck at the very foundation of Constitutional
government.

The choice we face in this country today is judicial limitation or
judicial tyranny.

Judicial limitation will strengthen the ramparts over which patriots have
watched through the generations since 1776. Judicial tyranny will destroy
Constitutional government just as surely as any other type of tyranny.

If the Supreme Court can assume power without rebuff, the complete tyranny
of the Judiciary is close at hand. Then the Federal government will cease to
be federal and become national in nature, imposing its will upon the States and
local governments of this great country.

The Supreme Court must be curbed. If it continues in the direction it is
headed, we shall all become the victims of Judicial tyranny.

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