

PRESS RELEASE

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CONYERS TELLS FEDERAL JUDGES THEIR INDEPENDENCE IS AT STAKE

Congressman John Conyers, Jr., Ranking Member of the House Judiciary Committee, issued the following statement today at the opening session of the Judicial Conference of the United States:

“I must inform you that Congress in general, and the House of Representatives in particular, is engaged in an unprecedented assault on the Judiciary, the crown jewel of our constitutional system.

In the last two years, Congress has undertaken a series of discrete, but inter-related actions that undermine our constitutional framework. By hamstringing, harassing, and weakening the Judicial Branch, these actions threaten to rob the Judiciary of its independence. The House has pushed unconstitutional legislation to prevent the courts from reviewing legislation, to take away the ability of judges to issue fair sentences in criminal cases, and to intimidate judges into following politically conservative beliefs when making rulings.

Court Stripping

If enacted, these bills would, for the first time, prevent federal courts from reviewing the constitutionality of federal laws:

First, H.R. 3313 (Marriage Protection Act) prevents federal courts and the Supreme Court from reviewing challenges to the Defense of Marriage Act. It passed the House this past July by a vote of 233-194.

Second, H.R. 2028 (Pledge Protection Act of 2003), which prevents courts created by Congress and the Supreme Court from reviewing First Amendment challenges to the Pledge of Allegiance. This will be on the House floor on Thursday, September 23, 2004.

Finally, H.R. 3799 (Constitution Restoration Act of 2004) is a response to anger at two federal court decisions that cited foreign law and found certain governmental invocations of God to violate the First Amendment. H.R. 3799 would strip federal courts of jurisdiction to hear such cases. And here’s the kicker: H.R. 3799 declares it an impeachable offense for a judge to decide that H.R. 3799 violates the Constitution. In one fell swoop, Congress would overturn the centuries-old principle that judges have the ultimate power to decide if our laws violate the Constitution.

Aside from their political attack of the judiciary, these bills are unconstitutional in that they violate separation of powers, equal protection, due process, and the supremacy clause. Congress is challenging Justice John Marshall’s famous pronouncement from *Marbury v. Madison* that it is the province of the courts to ‘say what the law is.’

On top of that, permitting state courts to be the final arbiters of federal constitutional law will bring disarray to the Nation, also in violation of the Constitution. The Supremacy Clause of article VI states that the Constitution shall be the supreme law of the land, but dividing our nation into fifty different legal regimes is the antithesis of this sacred principle. Enacting these proposals would constitute an undesirable precedent and lead to further assaults

on the Judiciary.

Considering that the highest court in our land has not issued a single opinion undermining the Pledge or the Defense of Marriage Act, it is inexcusable to attack the judiciary to score political points.

The irony is that the House is celebrating Justice John Marshall by authorizing a commemorative coin in his honor, at the same time that it is passing the Pledge Protection Act and the Marriage Protection Act. These bills are entirely inconsistent with *Marbury v. Madison*, Justice Marshall's seminal opinion. At a time when it is more important than ever that our Nation stand out as a beacon of freedom, we should not countenance bills that undermine the very protector of those freedoms - our independent judiciary.

These unprecedented court stripping bills are nothing more than modern day versions of 'court packing.' Just as President Franklin Roosevelt's efforts to control the outcome of the Supreme Court by packing it with loyalists was rejected by Congress in the 1930s, thereby preserving the independence of the federal judiciary, so too must this modern day effort to show the courts 'who is boss' fail as well.

Sentencing Discretion

Last year, Congress undertook another line of attack against the Judiciary through the controversial 'Feeney amendment.' This misguided legislation eliminated most of the discretion judges had when making sentencing determinations.

If we have learned anything over the years, it is that mandatory minimum sentences are counterproductive. They do not reduce crime. They punish the smaller players and their families. They distract from dealing with the real problems. And they waste precious resources.

Moreover, the amendment's imposition of burdensome reporting requirements, combined with Congress's demonstrated willingness to investigate the sentencing practices of specific judges, represent a shameless attempt to intimidate judges.

Judicial Pay

Last, but not least, I am concerned that by failing to provide judges with annual cost of living adjustments over the last decade, federal judges have faced the equivalent of a \$77,000 reduction in salary. In the last 30 years, while average pay has increased 12% for most workers, it has decreased 25% for judges. This has made it increasingly difficult for the judiciary to attract and retain talented lawyers to its ranks.

That is why I joined my colleagues in introducing a bill, H.R. 2118, to increase the salaries of all federal judges by 16.5 percent.

Conclusion

In the short history of our Republic, the political branches of government have all too frequently ridden the prevailing political breeze to constitutional excess.

An independent judiciary is all that protects our constitutionally guaranteed rights against the depredations of the political branches. If the judiciary is too cowed or disabled to protect us, each citizen will be at the mercy of the ever-shifting political winds."

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