1-25-1956

Interposition, The Barrier Against Tyranny

John Bell Williams

Mississippi. Segregation 11-13-56

Copy 3

INTERPOSITION,

THE BARRIER AGAINST TYRANNY

Speech of

Representative John Bell Williams

(D-Miss.)

In the United States

House of Representatives

January 25, 1956

LAWRENCE-GREENWOOD 67395

INTERPOSITION:

The Barrier Against Tyranny

Mr. Speaker, on May 17, 1954, the Supreme Court of the United States drove a knife into the heart of the American Constitution. On that date the Supreme Court delegated unto itself and the Federal Government certain powers in excess of those granted under the Constitution. On that date, nine appointed Justices assumed unto themselves the power to amend the Constitution in the absence of approval by the people or the several States in the manner which is provided in the Constitution. Wilfully and wantonly, they violated every principle of established law. They usurped the legislative powers of the Congress, and contributed affirmatively to the destruction of our dual sovereignty form of Government.

For purposes of this discussion, let us set aside the emotional and political aspects of the subject matter involved in those decisions as well as the merits or demerits of racial segregation per se, and consider instead the Constitutional crisis which the people of the 48 States face as a result of the Court's action.

For the States of this Union, north or south, to permit the Supreme Court's brazen act of usurpation to stand unchallenged is for them to surrender meekly their sovereignty to the Central Government. For the States to permit their sovereignties to be so usurped would be to provide the foundation on which oligarchies are built.

Because some States do not have segregation laws, their people may think that the Court's illegal ruling is of no importance to them. They may even believe conscientiously that the Federal Government would be morally justified in the employment of its full force and power against the Southern States in order to compel integration of the races.

If they believe either, they are overlooking the disastrous effects of the Court's action of May 17, 1954.

If the Supreme Court has the inherent right, under its judicial powers (which are not clearly defined in the Constitution) to amend the Constitution in this instance, the Court may likewise amend the Constitution by interpretation in cases affecting other States, and in matters equally as vital to them.

Chief Justice John Marshall, a Federalist himself, whose opinions would certainly show him a believer in a strong Central Government, once wrote this language into a decision.

> "No political dreamer has ever been wild enough to think of breaking down the lines that separate the States, or of compounding the American people into one common mass."

In their attempt to destroy the lines that separate the States and to compound the American people into one common mass, the present Court found it necessary to go outside the law. They found it necessary to use, as the basis for their ruling, various sociological documents, some actually written by foreigners whose information on the subject was gained

from abstract sources. The Black Monday decisions violate every principle of established law. There is no basis for such rulings in statutory law, nor can a substantial premise be found throughout the entire history of Anglo-Saxon common law.

Mr. Speaker, let us recall for a moment why the Constitution came into being and how the Union was formed. From a Convention of patriots representing thirteen independent Colonies, there emerged a document forming a Federal Union. The time was 1787; the place, Philadelphia. After declaring their independence from the British Crown, they recognized the necessity for a common union or federation for the mutual protection of all. Acting on this premise, a convention was called to meet in Philadelphia in the late spring of 1787. In attendance were lovers of liberty who had made extreme sacrifices and endured extraordinary hardships in their common resistance to tyranny. The Colonies' independence had been secured at a very high price: Death, destruction, privation, bankruptcy, and a tragic war. The high price paid for their liberty was fresh in the minds of the assembled patriots.

In that convention each Colony voluntarily surrendered to the Union certain powers which they regarded as necessary to the purposes and functions of the Central Government. These powers so surrendered were specifically enumerated and carefully limited. The individual States reserved to themselves all powers not expressly delegated to the Union nor prohibited to themselves in accordance with the terms of their compact.

In spite of the cautious wording of the original document, the States refused to ratify the Constitution until ample assurance was given to the States and the people that the Central Government so created could never devour its creators, or deprive the people of their "inalienable" rights. As a result, the Bill of Rights, the first Ten Amendments were added to the Constitution.

These Ten Amendments did not expand the authority of the Central Government. On the contrary, they further restricted its authority. Like the Ten Commandments, our Bill of Rights are "Thou Shalt Nots," directed to the Federal Government. They shield the people and the States from an oppressive and tyrannical Government born of over-concentration of powers. They were, and are now, the basis for individual liberty and State sovereignty.

The Tenth Amendment clarified the matter of delegated and reserved powers — in the simplest of language. It reads:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

In elaborating on the Tenth Amendment, the Supreme Court said, in 1864:

> "The reservation to the States respectively can only mean the reservation of the rights of sovereignty which they respectively possessed before the adoption of the Constitution of the United States and which they had not parted from by that instrument. And any legislation by Congress beyond the limits of the power delegated

would be trespassing upon the rights of the States or the people and would not be the supreme law of the land, but null and void. (Gordon v. United States, 117 U.S. 697)."

In this particular case the Court had reference to an Act of Congress, but its application is to the Power of Federal Government. It follows, of course, that whichever branch of the Federal Government goes beyond the limits of the power delegated to it is trespassing upon the rights of the States or the people and such act is null and void. The Tenth Amendment applies with equal force to all agencies of the Federal Government.

Mr. Speaker, for nearly a century and a half the Supreme Court, the Congress and the Executive recognized that the power to segregate the races was among the reserved powers of the States. Like the police power, the power to maintain and regulate schools, the power to segregate the races was reserved to the States for the reason that it was not specifically delegated to Congress nor prohibited to the States in the Constitution.

The Supreme Court had many opportunities to construe the meaning of the Fourteenth Amendment, and did so on several occasions.

The Court consistently held that States must extend equal protection of their law to all persons; but not specifically the same protection to all persons. The Court's language was never intended to prevent reasonable classification as long as all classes were treated alike. This was known as "separate but equal" doctrine. The present Court upset the historical findings of the Federal Judiciary in their decision of May 17, 1954, by saying: "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

In the words of the Indianapolis Star, under date of January 3, 1956:

"But we believe that in the issuance to the States, in the name of the Federal Government, of an order to cease the operation of segregated schools, the Supreme Court exceeded the Constitutional authority of the Federal Government.

"The single conclusion on which the Court rested its assumption of this authority was, after all, a shaky one. It was the Court's arbitrary assertion, thereafter referred to as a fact, that separate schools cannot possibly be equal. Carried to its logical conclusion, this means that Indianapolis Public Schools 80 and 84, to pick two at random, cannot be equal because they are separate. To be sure they are separate on the basis of pupils' addresses rather than race or some other characteristic. But they are separate nonetheless, and pupils arbitrarily assigned to one or the other. Going further, it could be said that if there are two third-grade classes in a given school, they cannot be equal because they are separate. In short, if what the Supreme Court asserted as a fact is indeed a fact, the only community equality of educational opportunity is found in the one-room school! Yet

on this premise the Court assumed application of the Fourteenth Amendment to the States' operation of public school systems."

Mr. Speaker, it is quite obvious that the Court not only undertook to rewrite the Fourteenth Amendment, which they have no right to do, but they also have rendered a decision which is utterly impossible of enforcement.

Let us take a further look at the background of the Black Monday decisions. The language of the Fourteenth Amendment is the same as when it was submitted by Congress and ratified by the States. The present Supreme Court would have us believe that its meaning and intent has changed. This is not true; it was never intended by the sponsors or the ratifying States that it should take from the States their right to segregate the races in their public schools and other local institutions. How can the Court reconcile its interpretation of the intent of the Fourteenth Amendment in face of the fact that the very Congress which submitted it to the States proceeded to provide for a segregated school system in the District of Columbia, over which it exercises domain? How can they reconcile their position with the fact that a great number of the ratifying States continued to maintain segregated school systems?

If the idea had ever been entertained that segregated schools were to be prohibited by the operation of the Fourteenth Amendment, it stands to reason that Congress and the States would have abandoned their segregated school systems then and there. Certainly they would not have violated their own creature in the very act of creation.

The Constitution of the State of Mississippi was adopted in 1890, and it provides for separate public schools for the white and negro races. The question of whether this provision was in conflict with the Fourteenth Amendment was raised in the case of Gong Lum vs. Rice (275 U.S. 78) before the Supreme Court in 1927. Chief Justice Taft, in delivering the Court's opinion, said:

> "The right and power of the State to regulate the method of providing for the education of its youth at public expense is clear."

Previously, in the case of Cumming v. Richmond County Board of Education, 175 U.S. 528, 545, the Court had said, in an opinion delivered by Mr. Justice Harlan:

> "Under the circumstances disclosed, we cannot say that the action of the State Court was, within the meaning of the Fourteenth Amendment, a denial by the State to the Plaintiffs * * * of the equal protection of the laws, or of any privileges belonging to them as citizens of the United States. We may add that * * * the education of the people in schools maintained by State taxation is a matter belonging to the respective States, * * *."

In the case of Plessy v. Ferguson, 163 U.S. 537, 544, 545, the Court had held the "separate but equal" doctrine as being in conformity with the intent of the Fourteenth Amendment. In that case, the Court had held that the establishment of separate schools for

white and colored children "has been held to be a valid exercise of the legislative power even of Courts of States where the political rights of the colored race have been longest and most rigidly enforced."

There is no doubt but that the Supreme Court has the authority to construe the Constitution when the issue is of first impression before the Court and there is no legislative history of the issue. But in the desegregation cases there were a long line of Court decisions, as well as ninety years of legislative history. In nearly three score cases, the Federal Judiciary has held to the separate but equal maxim. For nearly a century, the Congress and State Legislatures made laws in reliance on the settled principle that each State had the power to regulate its school system without interference by the Federal Government. In effect, the Supreme Court has now amended the Constitution, taking from the States powers exercised by them since the formation of the Union.

Only the people, acting through two-thirds of their national representatives and three-fourths of their State Legislatures or State Conventions can legally amend the Constitution. The Supreme Court cannot lawfully do it. But if the Black Monday decisions are allowed to stand, it will have been amended.

If the Court is sustained in its continued usurpation of power, State boundaries will be erased and the Constitution rendered meaningless.

On May 17 ,1954, the Court did not suggest or contend that the principle enunciated in Plessy v. Ferguson, in Cumming v. County Board of Education, in Gong Lum v. Rice, and all the other cases were bad decisions. The Court did not say they were erroneous interpretations of the Constitution. Instead, the Court held that these previous decisions were bad "psychology" and errors in "sociology."

If we are to recognize the Supreme Court's Black Monday decisions as valid and binding, then we must also assume that the Tenth Amendment to the Constitution was repealed by the enactment of the Fourteenth Amendment. Certainly such was not the intention of those who forced the Fourteenth Amendment through the Congress and subsequently fought for its ratification by the States.

Is the Supreme Court of the United States, consisting of nine men holding office by appointment, and answerable not to the people but to their respective consciences, if such they have, to exercise final and absolute dominion over every phase of society? Are they to be recognized as the sole and only judges of the limits to which the Federal Agency may go in the exercise of its powers, the Constitution to the contrary notwithstanding? Are we to assume that the States and the people are helpless and without recourse against unconstitutional usurpations of authority by the Federal establishment? Are the States defenseless? Must they yield to Federal authority, when the exercise or assumption of that authority is beyond the limitations imposed on the Federal establishment in the Constitution?

If these premises are to be recognized as sound, then we have already changed our form of Government, and no longer live under a Constitutional Republic. If these premises are sound, we are wasting the fruits of the peoples' labors in maintaining State

Governments and in supporting County and Municipal Governments.

The Federal Government, being a creature of the several States, through usurpation, is slowly but surely cannibalizing its creators, to the end that it and it alone shall sit in exclusive judgment of the acts of the citizens of the several States.

If an unlimited Central Government is to be according to the will of our people, then it should be established by the people. The Court, an appointed body, is clothed neither with the authority nor the ability to speak for the people.

Look for a moment to the Declaration of Independence, which holds that Government derives its just powers from the consent of the governed. In elaborating further on this doctrine, the Declaration of Independence warns us as follows:

> "Prudence, indeed, will dictate that governments long established should not be changed for light and transcient causes; and accordingly all experience hath shown that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations * * * evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security."

These words were directed to the King of England and the tyranny of his regime, of course. Not the least among their grievances was the assertion:

> "He (the King) has combined with others to subject us to a jurisdiction foreign to our constitutions and unacknowledged by our laws, giving his assent to their pretended acts of legislation * * * for taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments; for suspending our legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever. * * * In every state of these oppressions we have petitioned for redress in the most humble terms: Our repeated petitions have been answered only by repeated injuries."

Today, the people of the Southern States suffer oppression at the hands of an irresponsible Supreme Court. We have seen that Court arbitrarily void provisions of our Charters; they have abolished some of our most valuable laws, and they have virtually declared themselves invested with power to legislate for us in all cases.

Yes, Mr. Speaker, we in the States have petitioned again and again to this Court for redress, but the Court turns a deaf ear to our pleas, choosing instead to harken to the conscienceless demands of minority pressure groups seeking political favor, and to whom the preservation of Constitutional Government is a matter of neither moment nor consequence.

Annually we gather in this Chamber for a reading of Washington's Farewell Address to Congress. We

accord the reading of this document the proper outward reverence and honor which it certainly deserves, and we can do no less. Many hear its reading, but few listen to the words or attempt to grasp its profound meanings.

If one listens closely to the next reading of this monumental message, he will hear this admonition to all who shall live under the Constitution of the United States:

> "The Constitution which at any time existsts till changed by an explicit and authentic act of the whole people is sacredly obligatory upon all. * * * 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."

As God-fearing people, we are obligated to resist tyranny, no matter what form it may take. If we are true to ourselves, we must resist it even when it wears the sheep's clothing of judicial robes, if freedom is to be the legacy we leave to our children.

The resolving of this crisis does not call for complacency, timidity, or cowardice. It will call for taxing new reservoirs of courage, and will demand sacrifices that will test the strength of our convictions. In the face of the Supreme Court's brazen usurpation of authority, its flagrant disregard of Constitutional limitations, its wilful flaunting of judicial precedents, its wanton contempt for the doctrine of stare decisis and recognized principles of established law, we must resort to drastic measures if we are to preserve the structure of our Republic. This will mean suffering and sacrifice on the part of liberty-loving Americans, and it means seizing the offensive from the conscienceless self-seeking elements who seek to destroy our Republic. It means that we must seek and find the courage that distinguished our great American ancestors in their struggle to build this Republic, and there can be no retreating from principle for any cause whatsoever.

Mr. Speaker, inasmuch as the Federal Government is a creature of the States, it is the solemn duty of the States to protect themselves from encroachments upon their sovereignty. No machinery for this is set up in the Constitution. No relief is available in the statutes. Yet the law teaches us that for every wrong there must be a remedy.

The Black Monday decisions of the Federal Judiciary go beyond the limits of delegated powers and therefore are an invasion of powers reserved to the States, but the States have a remedy. It was first used by Georgia in the 1790's. It was used by Kentucky and Virginia in the same decade. Other States used it in the Nineteenth Century. Jefferson, Madison and Calhoun were its authors and originators. It was called the Doctrine of Interposition.

In the words of Jefferson from the Kentucky Resolutions:

> "Resolved, that the several States composing the United States of America are not united on the principle of unlimited submission to their general Government; but that by compact under the style and title of a Constitution for the United States and of amendments thereto, they consti-

tuted a general Government for special purposes, delegated to that Government certain definite powers, reserving each State to itself, the residuary mass of right to their own self-government; and that whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void and of no force:

"That to this compact each State acceded as a State, and is an integral party, its co-States forming as to itself, the other party:

"That the Government created by this pact was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion and not the Constitution the measure of its powers; but that as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress * * *."

In the words of Madison (Committee Report on the Virginia Resolutions):

"It appears to your committee to be a plain principle, founded in common sense, illustrated by common practice, and essential to the nature of compacts, that where resort can be had to no tribunal superior to the authority of the parties, the parties themselves must be made the rightful judges, in the last resort, whether the bargain has been pursued or violated.

"The Constitution of the United States was formed by the sanction of the States, given by each in its sovereign capacity. It adds to the stability and dignity, as well as to the authority of the Constitution, that it rests on this legitimate and solid foundation.

"The States, then, being the parties to the Constitutional compact, and in their sovereign capacity, it follows of necessity that there can be no tribunal above their authority to decide, in the last resort, whether the compact made by them be violated; and, consequently, that, as the parties to it, they must decide themselves, in the last resort, such questions as may be of sufficient magnitude to require their interposition. . . ."

In the words of Calhoun:

"This right of interposition, thus solemnly asserted by the State of Virginia, be it called what it may—State-right, veto, nullification, or by any other name—I conceive to be the fundamental principle of our system, resting on facts historically as certain as our revolution itself, and deductions as simple and demonstrative as that of any political or moral truth whatever; and I firmly believe that on its recognition depends the stability and safety of our political institutions. . . ."

None can say that these three great statesmen were advocating anything but preservation of the Constitution and the Union. They had contributed as much, if not more, than all their contemporaries to the creation of this Republic. Certainly their philosophy and their interpretation of Constitutional limitations should be given credence today, when the relationship of the Federal Union to the States is in issue.

The right of the States to check encroachments of the Federal Government must, of necessity, be an integral part of our system of dual sovereignty, and vice versa. What happens when a State encroaches on the Federal Government's delegated powers? The Federal Government immediately interposes its sovereignty between the encroachment and the citizens affected. Does anyone believe that our Founding Fathers would confer such power on the creature and withhold it from the creator? No, Mr. Speaker, the principle of interposition is a fundamental part of our system of dual sovereignty. The right of interposition should be reserved for use only when there is a deliberate, palpable and dangerous usurpation of the sovereign States' powers.

A precedent in American history, when interposition was carried to its logical conclusion, occurred in Georgia.

Georgia and the Supreme Court, 1792-3

The issue in the case of Chisholm v. Georgia was the right of the Supreme Court to hear cases in which a State was sued by a citizen of another State. Chisholm, a citizen of South Carolina, sued Georgia to recover some lands confiscated during the Revolutionary War.

Georgia refused to recognize the competence of the Supreme Court to hear the case, and when the case came to the Court in 1792, Georgia declined to enter an appearance, but merely submitted a written remonstrance against the jurisdiction of the Court. In 1793, the Supreme Court ordered Georgia to appear under penalty of a judgment by default for Chisholm. Georgia maintained its defiance and a writ of inquiry was awarded for Chisholm.

The writ was never executed and Georgia succeeded in its defiance of the Court. Opposition to the Court's assumption of jurisdiction was intense in Georgia (the State House of Representatives passed a bill declaring it a felony punishable by death for anyone to attempt to execute any compulsory process issuing from the Supreme Court in this case) and widespread in the other States. On the day after the Court's decision was announced, a Constitutional Amendment was introduced in Congress to prevent a State from being sued in the Federal courts. The Eleventh Amendment, which reverses the decision in Chisholm v. Georgia, was finally ratified in 1798.

There were other cases where the right of interposition was imposed, but they turned into open defiance and were never followed through to their logical conclusion. Several interposition resolutions lay inactive or were withdrawn without following the amendment process. Others were not followed through because the legislation protested was amended, or repealed by Congress. Notable examples of the latter are the interposition resolutions of many northern

States in the matter of the Fugitive Slave Law, and South Carolina on the Tariff issue. Cases are cited below—not as examples of complete interposition, but as examples of the forms of interposition that have occurred in American history.

Pennsylvania and the Federal Courts—
The Case of the Sloop Active

This conflict between the Pennsylvania and Federal Government originated in the Revolutionary War. The sloop Active was captured during the War and sold. The Pennsylvania Court of Admiralty ruled that the proceeds belonged to the captors, but the owners of the ship appealed to the Continental Congress, which, through its Committee on Appeals, reversed the State court. The ruling of the Committee on Appeals was ignored.

Almost twenty years later, Olmsted, the owner, applied to the Federal District Court for a process to enforce the ruling of the Committee on Appeals. In 1803 Federal District Judge Peters ruled that the money be paid to Olmsted, but he was defied by the State and his decree was not enforced. Olmsted applied to the Supreme Court, which in 1809 issued a writ of mandamus directing the enforcement of the District Court's decree.

When the Supreme Court's decision was announced, the Governor notified the Legislature that he proposed to call out the State militia to prevent the enforcement of the Court's decree. The Federal marshal attempted to serve process on the State Treasurer, but was stopped by the State troops. However, the marshal declared his intention to call out a posse in order to enforce his authority.

At the last moment the State backed down. The process was served and the Legislature appropriated the money to pay Olmsted's claim. As a final humiliation, the General of the State militia was convicted in Federal Court for forcibly resisting the Federal marshal. He was, however, pardoned by President Madison almost immediately afterwards.

The Virginia Supreme Court of Appeals and the Supreme Court—Martin v. Hunter's Lessee

This conflict between Federal and State authorities arose out of litigation to determine the title to certain lands in Virginia. The history of the litigation and the issues of law involved are very complex, but do not need to be described in an account of the conflict between the two courts.

In 1810, the Virginia Court of Appeals held that Martin's claim to the lands in issue was not valid because of Virginia statutes restricting the rights of aliens to inherit land within the Commonwealth. A writ of error to the Supreme Court was, however, allowed and that Court reversed the Virginia decision and entered an order requiring the Virginia Court of Appeals to enter judgment for Martin.

The Virginia court refused to comply with the mandamus from the Supreme Court. Their refusal was based on the independency of the State judiciary. The Virginia court acknowledged the supremacy clause of the Constitution, but denied that this involved the supremacy of the Federal courts.

After the Virginia court's refusal to implement the Supreme Court's decision, the case went back to the Supreme Court on the sole issue of that Court's power to secure compliance with its decisions. Compliance was secured by sending the case back to the lower Virginia court in which it had originated and which enforced the Supreme Court's decision.

Connecticut and the Embargo Act, 1809

The Embargo Act was passed by Congress in 1807 and led to much discontent in the New England States. Many memorials against the act were passed, but Congress ignored the protests and in 1809 passed a stringent enforcement act.

Connecticut refused to cooperate in the enforcement of this act and the General Assembly in special session resolved "That to preserve the Union, and support the Constitution of the United States, it becomes the duty of the Legislatures of the States, in such a crisis of affairs, vigilantly to watch over, and vigorously to maintain, the powers not delegated to the United States, but reserved to the States respectively, or to the people; and that a due regard to this duty, will not permit this Assembly to assist, or concur in giving effect to this unconstitutional act, passed, to enforce the embargo.

The extent of the opposition to the embargo caused Congress to repeal it within a year of this protest.

Ohio and the National Bank

In 1819 Ohio placed a tax of $50,000 on every branch of the Bank of the United States within its borders in order to drive it from the State. Despite the Supreme Court decision in McCullough v. Maryland, which had declared such a tax unconstitutional, Osborn, the State Auditor, determined to collect the tax. He was enjoined from collecting the tax by the Circuit Court, but nevertheless proceeded to take it by force from one of the branches of the bank. The Ohio Legislature supported Osborn in a series of resolutions objecting to the doctrine that the States are bound on questions of constitutionality by Supreme Court decisions. The Legislature also passed an "Act to withdraw from the Bank of the United States the protection of the laws of this State" as a further way of seeking to expel the bank which had been supported by the Supreme Court.

The bank instituted proceedings against Osborn and in 1824 the Supreme Court affirmed a lower court decision against him. The tax money was refunded to the bank.

Georgia and the Indians

In the 1820's Georgia became dissatisfied with the slowness of the Federal Government's removal of the Creek Indians from Georgia territory. Governor Troup charged the Federal Government was failing to carry out its promises and ordered a State survey of the lands. President Adams threatened to use the army to stop the Georgia surveyors, but Governor Troup successfully defied him. The issue was settled by the withdrawal of the Creeks beyond the Mississippi.

At the same time as the Creek controversy, Georgia also took over the lands of the Cherokees within its borders. The Cherokee laws were annulled and

Georgia statutes enforced in the territory. This controversy went to the Supreme Court when a Cherokee was convicted under Georgia law and sentenced to death. The Supreme Court granted a writ of error, but it was ignored and the Cherokee was executed. At least two other cases arising out of the Georgia statutes regulating the Cherokee lands were appealed to the Supreme Court. In both, the Court ruled against the State, but in each case the State authorities ignored all communications from the Court and the criminal penalties awarded by the Georgia courts were carried out.

Nullification in South Carolina

Opposition to the protective tariff increased in South Carolina throughout the 1820's. The 1828 "Tariff of Abominations" produced a formal protest from the State Legislature and nullification sentiment increased for the next four years. The tariff of 1832 did not alleviate the situation and in the fall of 1832 the State Legislature issued a call for a State convention. The convention met in November, 1832, and passed an Ordinance of Nullification that declared the protective tariff unconstitutional and authorized the Legislature to take all steps necessary to prevent the enforcement of the tariff acts as from February, 1833.

President Jackson responded with a message declaring that he would enforce the tariff with all the means at his disposal and a "Force Bill" was introduced in Congress.

The Force Bill was passed, together with a compromise tariff act that was acceptable to South Carolina. The South Carolina convention reassembled in March, rescinded its nullification act against the tariff, but passed an Ordinance of Nullification against the Force Act.

Fugitive Slaves and Personal Laws

The Federal Fugitive Slave Act of 1793 caused opposition from States in which abolitionist sentiment was strong. The Act relied on State officers to enforce its provisions and several States passed laws extending the right of jury trial to suspected fugitive slaves. Such laws were passed in Indiana (1824), Connecticut (1838), Vermont (1840), and New York (1840). Though these laws were not direct challenges to Federal authority, they undoubtedly were designed to hinder the operation of the Federal statute.

The situation was altered by the decision of the Supreme Court in the case of Prigg v. Pennsylvania. The significant portion of the decision was the ruling that State officers could not be compelled to enforce a Federal statute. As a direct result four States (Massachusetts, Vermont, Pennsylvania and Rhode Island) passed laws prohibiting State officers from performing the duties assigned to them under the law of 1793 and also forbidding the use of State jails for fugitive slaves.

A new Federal Fugitive Slave Act was passed in 1850 which did not rely on State officers for its enforcement. Personal liberty laws providing safeguards for the fugitive slave and making the enforcement of the law more difficult were passed in ten States (Vermont, Connecticut, Rhode Island, Massachusetts, Michigan, Maine, Wisconsin, Kansas, Ohio,

and Pennsylvania).

The most positive defiance of the Federal Government on the fugitive slave issue occurred in Wisconsin in the 1850's. Sherman Booth, an abolitionist editor, was arrested for forcibly rescuing a fugitive slave. The State Supreme Court released him on a writ of habeas corpus and at the same time held the Federal Fugitive Slave Law unconstitutional. However, Booth was indicted and convicted in the United States District Court only to have the State Supreme Court again release him. In 1855 the Supreme Court issued a writ of error, but the Wisconsin court ignored it and refused to send a copy of its record.

The Supreme Court managed to procure a copy of the record in 1857 and in 1858 reversed the judgment of the Wisconsin court. The State courts refused to enforce the verdict, but Booth was arrested by a United States marshal in 1860. He was rescued, rearrested, and finally pardoned by President Buchanan in the same year.

The South Carolina Nullification Resolution of 1832 nullified a revenue act designed to finance the United States Government. The revenue act was clearly within the delegated powers of the Congress, and was an act which it was constitutionally empowered to pass. There was no question in this case but that the act was constitutional.

Following the adoption by South Carolina of its nullification resolution, the Legislatures of the States of Mississippi, Alabama, North Carolina and Virginia adopted resolutions taking exceptions to South Carolina's right thus to nullify a legal and constitutional act of Congress. Even so, South Carolina won a distinct victory by her act of nullification.

I do not contend, in spite of this precedent, that a State can nullify an act which Congress has the constitutional right to pass. No State can legally void actions of the Federal Government when those actions are clearly within the scope of powers delegated to the Federal Government by the Constitution. If such acts could be so nullified, we would have no effective Federal Government, of course.

But, Mr. Speaker, this is not the case presented by the May 17, 1954, decision. In the present case, the Supreme Court is clearly attempting to destroy the Constitution itself. It has made an abortive attempt to amend the Constitution. It is attempting to nullify the powers reserved to the States under the Constitution. Through acts of interposition, the States would merely be seeking to nullify the action of the nullifiers.

By design, the Supreme Court has committed a deliberate, palpable, and dangerous invasion of the field of sovereignty exclusively reserved to the States. The nine Justices have committed an act of treason against the Constitution of the United States.

It is the duty of the States, in the face of such flagrant and illegal assumption of power by the Federal judiciary, to interpose their sovereignty and nullify the decision. In doing so, the States are protecting the Constitution against nullification by the Courts, and are protecting the liberties of the American people.

The time is at hand when the States must reassert their constitutional rights or suffer their own de-

struction. The zero hour for State Governments has arrived, and it might well be the zero hour, also, for our Republican form of Government.

Mr. Speaker, I have heard many say that they favor interposition, but are opposed to nullification. This is the same thing as saying that we favor the aiming and firing of our guns but we are against hitting the target.

The very purpose of interposition is to nullify. If that is not to be the purpose, the act of interposition becomes merely an expression of disfavor and is meaningless.

Mr. Speaker, interposition is the act by which a State attempts to nullify. Interposition without nullification is a knife without an edge, a gun without bullets, a car without an engine, a body without a life.

If the States are to preserve their sovereignties, if they are to preserve the Constitution, they must interpose and declare the Black Monday decisions to be illegal and invalid and of no force and effect within the territorial limits of their respective jurisdictions. This position I believe the States have the right and duty to take and to maintain until such time as this question of contested powers has been settled legally and finally by constitutional amendment.

Mr. Speaker, the South desires nothing more or less than its right to order and control its own affairs within the limitations of its constitutional prerogatives. The Southern States will not submit to judicial tyranny any more than our sister States will sanction illegal usurpations of their sovereignty. In seeking relief from the oppression of this decision, we must and will call on our sister States for their support to the end that the sovereign rights of all the States shall be preserved.

Mr. Speaker, while the Black Monday decisions constitute the basis for our present grievance, it might be well for the States of this Union to take stock of other usurpations of their sovereign powers. Treaty-making powers, taxing powers, the interstate commerce clause and Government competition with private enterprise have all been, in recent years, the subject of frequent abuse by the three branches of the Federal Government. If we are to maintain our present form of Government, the time is at hand when the States should take action, also, to re-define delegated and reserved powers.

Again I emphasize that public school segregation, as vital as it is to the people of my State and the South, is but part of the all-embracing problem brought on by the Black Monday decisions. There have been deliberate, palpable, and dangerous encroachments in other fields. The trend toward centralization of power into the hands of the few was merely stabilized and amplified by the Black Monday decisions. It is quite apparent that we can expect more and more such abortive invasions of State sovereignties, and more and more usurpation of power by the Federal establishment. The question of whether the States are sovereign in the matter of reserved powers should be settled now, once and for all.

What will be the object of the Supreme Court's next act of usurpation? What among Jefferson's "inalienable rights" will be next to suffer destruction by judicial legislation?

Will it be the police power of the States? Intrastate transportation and commerce? Will it be State and local regulatory powers. Will it be property rights, marriage laws, contract laws, criminal laws? If we surrender to this trend, where will it end: Can anyone say?

In discussing the unsurrendered powers of the States, the Court, in 1911, said:

> "Among the powers of the State not surrendered—which power therefore remains with the State—is the power to regulate the relative rights and duties of all within its jurisdiction as to guard the public morals, the public safety, and the public health, as well as to promote the public convenience and the common good." (Chicago, et al v. McGuire, 219 I.S. 549.)

Will this be the next principle of Constitutional Government to feel the axe of the Court's usurpation?

We know not which principle of Constitutional Government will be next to be attacked. Therefore, the people are entitled to know whether the States—the original source of all Federal authority—or the Federal Government itself is to be the final and supreme arbiter of the extent of delegated and reserved powers under our Constitution.

Jefferson once said: "Timid men * * * prefer the calm of despotism to the boisterous sea of liberty." He said "The God that gave us life gave us liberty at the same time: The hand of force may destroy, but cannot disjoin them." It was his creed that resistance to tyranny was obedience to God.

Mr. Speaker, the same God that watched over Jefferson, and inspired him to swear eternal hostility to tyranny watches over us. With His Divine guidance and help, we shall not fail.

Additional copies may be had, postpaid, for:

10 for	$1.00
50 for	4.00
100 for	6.00

Please send cash, money order or check with order.

ASSOCIATION OF
CITIZENS' COUNCILS
OF MISSISSIPPI

Greenwood, Mississippi

WHEN YOU FINISH READING THIS PASS IT ON TO SOMEONE ELSE.