COALITION

Traditional Values

SPECIAL REPORT

Exposing The Myth Of Judicial Supremacy

The Founding Fathers never meant to give federal courts ultimate power.

This document is part of a paper produced by Congressman John Hostettler (R-IN) on his "Marriage Protection Act of 2003" (H.R. 3313).

The Constitution clearly gives Congress the authority to strip jurisdiction from the federal courts. However, some are uncomfortable with this approach because, like many of us, opponents were likely instructed to believe that the Supreme Court and its decisions are the supreme law of the land.

Today legal scholars would have you believe that in the 1803 Supreme Court case *Marbury v. Madison*, Chief Justice John Marshall forever sewed into the fabric of the American Republic that once the Supreme Court says a thing, that thing is not just the 'law of the land' but is the supreme law of the land!

This notion of judicial supremacy is not supported by the U.S. Constitution or its Framers. Instead, the court imposed this authority on itself through its own decisions, most notably in *Marbury v. Madison* in 1803. But this concept was not born out in practice and did not take root in future Supreme Court decision-making, or in popular culture for that matter, until after the Cooper v. Aaron decision in 1958.

Not only is that not what Marshall said in *Marbury*, but it was his belief as he related it to an associate, Justice Chase, that Congress had an 'appellate jurisdiction' over the federal judiciary.

According to Marshall, when the Congress deemed a legal opinion of a judge to be 'unsound,' the Congress in exercising its appellate jurisdiction over the federal judiciary, would correct the situation by a 'reversal' of the 'unsound ... legal opinion.'

U.S. Supreme Court Chief Justice **John Marshall,** 1804: Regarding the impeachment by Congress of members of the federal judiciary, Marshall wrote: *"I think the modern doctrine of impeachment should yield to an appellate jurisdiction in the legislature. A reversal of those legal opinions deemed unsound by the legislature would certainly better comport with the mildness of our character than [would] a removal of the Judge who has rendered them unknowing of his fault."*

Thomas Jefferson, 1820: In addition to refusing to seat Mr. Marbury, Jefferson clarified his rejection of the doctrine of judicial supremacy when he wrote: *"[T]o consider the judges as the ultimate arbiters of all constitutional questions [is] a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy. Our judges are as honest as other men, and not more so. They have, with others, the same passions for party, for power, and the privilege of their corps...[A]nd their power the more dangerous as they are in office for life, and not responsible, as the other functionaries are, to the elective control. The constitution has erected no such single tribunal."*

Thomas Jefferson, 1819: *"If this opinion [of judicial supremacy] be sound, then indeed is our Constitution a complete felo de se [act of suicide]. For intending to establish three departments, coordinate and independent, that they might check and balance one another, it has given, according to this opinion, to one of them alone the right to prescribe rules for the government of the others, and to that one, too, which is unelected by and independent of the nation... The Constitution on this hypothesis is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please."*

Andrew Jackson, 1832: *"Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it, and not as it is understood by others... The opinion of judges has no more authority over Congress than the opinion of Congress had over the judges, and on that point the President is independent of both. The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive."*

Abraham Lincoln, First Inaugural Address, 1861: *"...the candid citizen must confess that if the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court the instant they are made in ordinary litigation between parties to personal actions, the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal."*

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