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The American Bar and the Supreme Court Proposal

By F. H. STINCHFIELD, *President,*
of the American Bar Association.

We have heard from our members their opinions on the President's proposals with reference to the Federal Judiciary. You have seen reports of the referendum. The figures need not be repeated in detail.

The issue regarded most seriously was, of course, the proposed increase of the Supreme Court, and, a bit more incidentally, the changes of the lower Federal Courts. Against such an increase the American Bar Association was emphatic. Thirteen out of every fifteen members said no such result can be permitted. This issue is the only one which gets much attention from the public. However serious the other considerations may be, the lay citizens of the United States can think only of the necessity of protection to their Supreme Court. Our influence in this situation must of necessity be great. Whatever the people may think of us, ordinarily, as a class, one can hardly doubt but that in this crisis they wish our advice and help. They must have it and have it abundantly.

Some of the Administration forces say that the American Bar Association isn't representative. Yet they know full well that our membership is recruited from substantially every locality, large and small, in the United States; that, generally speaking, our contacts are wide and that the people who trust the individual lawyer are legion. But because some say that we are not representative, the Bar Association is now starting a poll of all the other lawyers of the United States. We shall see how different is the view of the lawyer who hasn't joined us from the views of those who are already in our ranks. We shall, even, by this poll grant the right to vote to those who may disapprove of us as an Association. We have faith enough in lawyers to feel that they will not be influenced by that prejudice when voting on the President's proposals.

It was widely declared that, while older lawyers might be against the packing of the Supreme Court, the younger men would favor it because they believe it the quickest way by which the desired end of the Administration can be reached. The Board of Elections, therefore, counted separately the votes of lawyers under thirty-six years of age. That vote was more than four to one against the proposed increase. Four out of every five of these young lawyers are out of accord with the President's proposal. When we bear in mind the idealism of youth, their desire for betterment, their dissatisfaction with a sinful world, we can appreciate how emphatic is the declaration by these young men that this legislation must not be adopted.

No state in the Union voted for the increase of the Supreme Court. The same was true of the vote of the younger lawyers, except in one state where there were but four votes cast by the younger men, three of which favored the proposed change.

Everywhere, since the 5th of February, lawyers, individually and

as members of bar associations, have been vigorous in their opposition to the suggestion that members of the Federal Courts be hand-picked. The voices in opposition have spoken, necessarily, as individuals and not in behalf of associations. Without detailed knowledge from the members of the Association, the officers have not felt free to be the spokesmen of the Association. The ban is now lifted. Anyone who now speaks can say that, personally and as an officer of the Association, he will do everything in his power to see that the legislation does not become law.

It will be strange if this legislation is accepted. Strange, because to pass this law would run counter to all ideals of proper judicial conduct, counter to our feelings for one hundred and fifty years that we do not believe that Congress is all-powerful, and counter to the feeling that, while we must have government in order to have civilization, still the powers that have not been heretofore granted by the people remain with them until by amendment they choose to change the fundamental law.

Acts of Congress Declared Unconstitutional By the Supreme Court

With the spotlight of public attention centered upon the Supreme Court controversy, it is of interest to the bar to be apprised of the number and nature of the decisions of the Court declaring Acts of Congress unconstitutional. The following list has therefore been compiled, with the cooperation of the West Publishing Company. The list includes decisions down to the end of the year 1936.

1803

Marbury v. Madison, 1 Cranch, 137.

Declared unconstitutional provisions of Act Sept. 24, 1789, as attempting to give to the Supreme Court original jurisdiction in other cases than those prescribed in the Constitution.

1857

Dred Scott v. Sandford, 19 How. 393.

Declared unconstitutional the "Missouri Compromise", Act March 6, 1820, on the ground that an act which prohibited a citizen from owning certain property in territory north of a certain line and granted the right to others was not warranted by the Constitution.

1865

Gordon v. United States, 2 Wall. 561.

Declared unconstitutional provisions of Act March 3, 1863, granting appeals from the Court of Claims to the Supreme Court.

1867

Ex parte Garland, 4 Wall. 333.

Declared unconstitutional provisions of Act Jan. 24, 1865, prescribing a test oath that the opponent had never voluntarily borne arms against the United States as a qualification for admission to practice before the Supreme Court; the reason being that such act was a bill of attainder.

1868

Reichert v. Felps, 6 Wall. 160.

Declared unconstitutional provisions of Act Feb. 20, 1812, authorizing a board of revision to pass on titles already confirmed by other agents of the government.

1869

The Alicia v. United States, 7 Wall 571.

Declared unconstitutional provisions of Act June 30, 1864, purporting to give jurisdiction to the Su-