

## LEGISLATIVE CONTROLS OF PROSPECTIVE ACTIONS

Can Congress only authorize and declare war, or may it also establish limits on prospective presidential actions? The statutes authorizing President Washington to "protect the inhabitants" of the frontiers "from hostile incursion of the Indians" were interpreted by the Washington administration as authority for defensive, not offensive, actions. 1 Stat. 96. §5(1789); 1 Stat. 121. §16 (1790); 1 Stat. 222 (1791). Secretary of War Henry Knox wrote to Governor Blount on October 9, 1792: "The Congress which possess the powers of declaring War will assemble on the 5th of next Month—Until their judgments shall be made known it seems essential to confine all your operations to defensive measures." 4 The Territorial Papers of the United States 196 (Clarence Edwin Carter ed. 1936). President Washington consistently held to this policy. Writing in 1793, he said that any offensive operations against the Creek Nation must await congressional action: "The Constitution vests the power of declaring war with Congress; therefore no offensive expedition of importance can be undertaken until after they have deliberated upon the subject, and authorized such a measure." 33 The Writings of George Washington 73.

The statute in 1792 upon which President Washington relied for his actions in the Whiskey Rebellion, conditioned the use of military force by the President upon an unusual judicial check. The legislation said that whenever the United States "shall be invaded or be in imminent danger of invasion from any foreign nation or Indian tribe," the President may call forth the state militias to repel such invasions and to suppress insurrections." 1 Stat. 264, §1 (1792). However, whenever federal laws were opposed and their execution obstructed in any state, "by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by the act," the President would have to be first notified of that fact by an Associate Justice of the Supreme Court or by a federal district judge. Only after that notice could the President call forth the militia of the state to suppress the insurrection. Id. §2.

In the legislation authorizing the Quasi-War of 1796, Congress placed limits on what President Adams could and could not do. One statute authorized him to seize vessels sailing to French ports. He acted beyond the terms of this statute by issuing an order directing American ships to capture vessels sailing to or from French ports. A naval captain followed his order by seizing a Danish ship sailing from a French port. He was sued for damages and the case came to the Supreme Court. Chief Justice John Marshall ruled for a unanimous court the President Adams had exceeded his statutory authority. *Little v. Barreme*. 6 U.S. (2 Cr.) 169 (1840).

The Neutrality Act of 1794 led to numerous cases before the federal courts. In one of the significant cases defining the power of Congress to restrict presidential war actions, a circuit court in 1806 reviewed the indictment of an individual who claimed that his military enterprise against Spain "was begun, prepared, and set on foot with the knowledge and approbation of the executive department of our government." *United States v. Smith*. 27 Fed. Cas. 1192. 1229 (C.C.N.Y. 1806) (No. 16,342). The court repudiated this claim that a President could authorize military adventures that violated congressional policy. Executive officials were not at liberty to waive statutory provisions: "if a private individual, even with the knowledge and approbation of this high and preeminent officer of our government [the President], should set

on foot such a military expedition, how can he expect to be exonerated from the obligation of the law?" The court said that the President "cannot control the statute, nor dispense with its execution and still less can he authorize a person to do what the law forbids. If he could, it would render the execution of the laws dependent on his will and pleasure; which is a doctrine that has not been set up, and will not meet with any supporters in our government. In this particular, the law is paramount." The President could not direct a citizen to conduct a war "against a nation with whom the United States are at peace." Id. at 1230. The court asked: "Does [the President] possess the power of making war? That power is exclusively vested in congress \* \* \* it is the exclusive province of congress to change a state of peace into a state of war." Id.

## GOPAC

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona [Mr. SHADEGG] is recognized for 5 minutes.

Mr. SHADEGG. Mr. Speaker, I rise this evening to discuss with my colleagues and those who are paying attention the recent allegations against GOPAC. Indeed, we have read a great deal about them. Much of the information that has been put forward has been put forward on the premise that it is fact.

Well, it is not fact. What is going on is a lawsuit, a partisan political lawsuit brought to stop a political movement, a movement which captured the hearts and minds of the American people over the last few years.

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We ought to get some facts on the table. What are the facts? Is it true that GOPAC broke the law, the Federal Election Commission regulations which say that it cannot involve itself in Federal campaigns without first registering as a Federal PAC? That is the essence of the allegation.

Let us begin with one fact. When was the lawsuit brought? It was brought by the Democratic Congressional Campaign Committee on the eve of Speaker GINGRICH's 1990 reelection campaign. Indeed, within 30 days of when he stood for reelection, a tough reelection campaign. You might ask yourself if the timing of that was at all political. I suggest it was.

That is almost 5 years ago that they brought those allegations against the Speaker and against GOPAC. The essence of the allegation was that GOPAC had crossed the line, that it had failed to register as a Federal election campaign committee and, therefore, had violated Federal law. And that was investigated by the FEC and ultimately a lawsuit was brought.

Last week they brought all kinds of new information to the table. The shocking thing about that information is that although it was presented as fact and as woefully damaging to GOPAC, in fact it was vacuous. It lacked any substance whatsoever.

Here is the issue. The allegation is that because people are involved in

GOPAC, including the Speaker and his advisors, discussed their ultimate goal at retreats of winning the presidency and some day taking over the Congress of the United States for the Republican cause, for a conservative movement, for a movement which believes in limited government and lower taxes and sending authority away from Washington and giving it back to the people and the States, that because they generally discussed those ideas at GOPAC meetings, that was a violation of Federal law. Think about that theory. I call upon the ACLU across this nation to think about that theory.

The theory is that if you and a group of like-minded people sit down in a room and/or at a retreat and you discuss your goal, your goal is some day to have a Republican President, because we do not have one, or your goal is to take over Republican majority, a conservative majority of the United States Congress, because we do not have the right then, instantaneously, as a result of those discussions, you are required to register with the Federal Election Campaign Committee and to file their reports year in and year out. Every first amendment lawyer in America ought to be aghast at that allegation, but that is the premise that the FEC brought.

What does it mean? It means if you or your wife or your husband are the member of a Republican women's club or men's club back home or a Democrat women's club or men's club and if in fact you attend one of your meetings and in those discussions you talk about the fact that you would like to see a President elected of your party or you would like to see the Congress strengthen its hold in your party or take over the majority for your party, suddenly those mere discussions subject you to regulation by the FEC.

The notion is shocking. It is a frontal assault on the first amendment. And yet that is exactly what happened, because we learned that at the North Pole Basin retreat of GOPAC, where those involved in this movement, a grass roots movement, which admittedly had as its goal the election of State and local officials to State and local offices, who believed in the agenda of smaller government, who believed in lower taxes, that when they discussed those things, that that was okay until the moment that they said, and some day it would be nice to take over Congress or some day it would be nice to have a Republican President, suddenly at that moment because they had those discussions, there was a requirement that they register with the FEC and a requirement that they then comply with all of the laws.

I submit that that argument is so absurd that the reverse is true. If you had had a retreat of GOPAC and they had simply discussed the Super Bowl or whether or not somebody was going to win the national bake off, then there would have been shocking news. In fact, the allegations are vacuous, and

no one can substantiate what was said against the speaker or against GOPAC on those occasions.

#### WASTEFUL SPENDING BY FEDERAL EMPLOYEES AND NAFTA ACCOUNTABILITY ACT

The SPEAKER pro tempore (Mr. DICKEY). Under a previous order of the House, the gentleman from Tennessee [Mr. DUNCAN] is recognized for 5 minutes.

Mr. DUNCAN. Mr. Speaker, I rise tonight to speak on two unrelated but very important national issues.

The first is wasteful and ridiculously expensive travel by Federal employees, particularly by certain Cabinet members who should be setting a better example.

Even members of the President's own Party, such as Senator REID of Nevada, have called for Energy Secretary Hazel O'Leary's resignation.

She has been galavanting all over the world at horrendous expense to the taxpayer.

She has been chartering private jets, when she could easily have flown commercially, and she has consistently been staying in the most expensive hotels in the world.

She spent \$2.6 million on just four of these trips—\$845,000 for a trip to China, \$500,000 for a trip to Pakistan, \$560,000 for a trip to South Africa, and \$720,000 for a trip to India.

No wonder we can't balance the budget.

This is a terrible abuse of taxpayer dollars, but then the easiest thing in the world to do is to spend other people's money.

Another Cabinet Secretary who has been wasting taxpayer funds on travel is Secretary of the Interior Bruce Babbitt.

He has been traveling all over the United States to make political attacks on the Republican budget.

Almost all of his trips should have been paid for by the Democratic National Committee since he has been so blatantly partisan in his statements and press conferences.

And then the trip that really takes the cake is the one 400 Federal employees took to Disney World last month.

The Washington Post said that taxpayers paid "hundreds of thousands of dollars so about 400 Federal employees could go to Disney World and stay at a four-star hotel."

No wonder we have a five trillion dollar national debt.

The Associated Press said these employees were from the National Park Service, Army Corps of Engineers, Fish and Wildlife Service, Forest Service, and the Bureau of Land Management.

These bureaucrats had training sessions on such topics as "The Power of Magic in Shaping History," and "Goofy (and Educational) Nature Songs."

These agencies, plus almost all other Federal offices are screaming today about cuts and shortages of funds.

Well, there is no shortage of money if they can send employees on a trip like this. In fact, it appears that they have such a surplus of funds that they cannot even use good sense in how their money is spent.

Of course, the truth is that almost all Federal agencies are still getting increases. And the best question to ask is what were they getting 10 years ago.

Over that period, inflation has averaged only about 3 percent a year.

Their spending should have gone up by about 1/3 at the most, but almost all these Federal departments and agencies have increased spending at two or three or four times the rate of inflation.

The Head Start Program, for one, has gone up 300 percent in the last 10 years about 10 times the rate of inflation.

The budget for the EPA for 1995 is twice-double-what it was in 1985—a 100 percent increase.

We have allowed our Federal Government to get so big that it is simply out of control.

That is why you have abuses of the taxpayer like these.

Also, we have a civil service system that is so overly protective that Federal bureaucrats know that they can get away with almost anything.

Instead of letting Federal spending increase, but at a slower rate, as we do in the Republican budget, we should really be cutting a few things so the people can keep more of their money.

The second topic I wanted to mention, Mr. Speaker, is the NAFTA Accountability Act.

This act would require that we take another look at NAFTA to see if it is causing more harm than good.

Apparently, in an effort to sell NAFTA 2 years ago, we were given misleading or incomplete information about the Mexican economy.

Just a few days ago in my district in Tennessee, the two largest employers in Tellico Plains announced that they were leaving, one going to Mexico, one to Honduras.

At almost the same time, the largest employer in Etowah, TN announced that it was going into bankruptcy in large part due to NAFTA.

These three companies will mean almost 900 people in my district will lose their jobs. For these two small towns, the impact is devastating.

Now I do not know if the company moving to Honduras is using funds from the Caribbean Basin Initiative but "60 Minutes" and others have reported that we are making loans to American companies to set up branches in Central America and the Caribbean.

Through NAFTA and GATT, and all the money we contribute to the World Bank, and the International Monetary Fund, and things like the African Development Bank, and the Export-Import Bank, and the Caribbean Basin Initiative, all the money we spend overseas, through the State Department, the Commerce Department, the Defense Department, we seem to be giving our country away.

Then when you add in our direct foreign aid program to all these other giveaways and loans to foreign countries, and then the billions we have spent for nation-building in Rwanda, Somalia, Haiti, and now Bosnia, in addition to the multibillion bailout of Mexico. I repeat Mr. Speaker.

We seem to be giving away our own country and selling out our own people.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Ms. JACKSON-LEE] is recognized for 5 minutes.

[Ms. JACKSON-LEE of Texas addressed the House. Her remarks will appear hereafter in the Extension of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. DIAZ-BALART] is recognized for 5 minutes.

[Mr. DIAZ-BALART addressed the House. His remarks will appear hereafter in the Extension of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. POSHARD] is recognized for 5 minutes.

[Mr. POSHARD addressed the House. His remarks will appear hereafter in the Extension of Remarks.]

#### A TABLE OF TWO PRESIDENTS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kentucky [Mr. LEWIS] is recognized for 5 minutes.

Mr. LEWIS of Kentucky. Mr. Speaker, I would like to tell a story this evening. I will keep it short though it could last for hours. It is called a Tale of Two Presidents, a President in 1992 and 1993 and now a different President in 1993.

Two years ago the President and his top health care specialist, Hillary Rodham Clinton, told the American people again and again, we are talking about beginning to reduce the rate of increase in Medicare from about 11 percent annually to about 6 or 7 percent increase annually.

Mr. and Mrs. Clinton told Americans again and again, do not let people tell you these are cuts in Medicare. All we are doing is slowing the rate of increase. That is not a cut.

Remember those words very carefully because my colleagues are about to hear them again. Bill Clinton wanted to use those Medicare savings he was talking about in 1993 to help pay for his Government-run health care scheme.

Now let us move forward to early 1995. Medicare board of trustees reports Medicare part A will be bankrupt in 2002. The trustees, four of whom are Clinton appointees, also say Medicare part B was growing at an unsustainable rate.

So this Congress passed the Balanced Budget Act, which included a plan to