The phrase ''good behavior'' commonly is associated with the English Act of Settlement of 1701. That act granted judges tenure for as long as they properly comported themselves. The historical basis and the current perceptions of this language (good behavior) alike signal that the standard applying to federal judges ''is higher than that constitutionally demanded of other civil officers,'' according to Harvard Law School Professor Laurence H. Tribe in this treatise ''American Constitutional Law.''

Justice Joseph Story, who served on the Supreme Court from 1811 to 1845, was of a similar view and expressed concern about judges yielding ''to the passions, and politics, and prejudices of the day.'' It may be inferred that good behavior means fidelity to the Constitution, although Prof. Tribe might have a noninterpretive definition of fidelity.

As U.S. House of Representatives Minority Leader Gerald R. Ford (R.–Mich.) told the House on April 15, 1970, regarding a bid to impeach Supreme Court Justice William O. Douglas:

''What, then, is an impeachable offense? The only honest answer is that an impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history; conviction results from whatever offense or offenses two-thirds of the other body considers to be sufficiently serious to require removal of the accused from office. Again, the historical context and political climate are important; there are few fixed principles among the handful of precedents.''

An energetic Congress can make sufficient time to impeach errant federal judges. In 1989 the House impeached and the Senate removed both U.S. District Judges Alcee L. Hastings and Walter Nixon.

In a decision resulting from a procedural challenge by Walter Nixon to his impeachment, the Supreme Court stated, ''A controversy is non-justiciable—i.e., involves a political question—where there is a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it.'' (*Nixon* v. *United States*, 1135 Ct 732 [1993]) In other words, there is no judicial review of the impeachment process.

Impeachment is, in fact, the Court said, ''the only [effective] check on the Judicial Branch by the Legislature.'' To suggest as some have that a legislative check on the judiciary (for other than criminal acts) would eviscerate the principal of separation of powers is absurd. The presidential veto allows the executive to check the legislative branch; the two-thirds override and the power of the purse allow the legislative to check the executive; and the Article III jurisdictional control of federal courts by the legislative and the legislative impeachment powers allow a check on the judiciary.

Founding Father Alexander Hamilton in ''Federalist Paper No. 81'' envisions Congress' impeachment power as a check on legislating from the bench. While discussing the reasons for considering the judicial the weakest of the three branches of government, he wrote: ''And this inference is greatly fortified by the consideration of the important constitutional check which the power of instituting impeachments in one part of the legislative body [the House], and of determining upon them in the other [the Senate], would give to that body upon the members of the judicial department. This is alone a complete security. There can never be danger that the judges, by a series of deliberate usurpations on the authority of the legislature, would hazard the united resentment of the body intrusted with it, while this body was possessed of the means of punishing their presumption by degrading them from their stations. While this ought to remove all apprehensions on the subject, it affords, at the same time, a cogent argument for constituting the Senate a court for the trial of impeachments.''

Of course, Hamilton was wrong when he said that judges would never usurp the powers of the legislature. Perhaps this is because Congress has refused the employ that check on the judiciary which he explicitly considered it to possess.

What then is good behavior? It is what Congress decides. There is no textual limitation in the Constitution, and thus its meaning must be left to the branch of government, the Congress, charged with the responsibility to apply it. Certainly, disregard of the plan meaning of the Constitution and the usurpation of the legislative authority are examples of misbehavior. Prof. John Baker of Louisiana State University Law Center suggests that a usable guide for deciding whether a judge has violated standards of good behavior is ''if on matters pertaining to the Constitution he or she has regularly rendered decisions which can be reasonably characterized as based on 'force' or 'will' rather than merely judgment. A judge exercises 'force' or 'will' rather than judgment on an issue . . . if his or her decision is not reasonably based on the explicit text of the Constitution, one of the Amendments or evidence of the intent of the Framers and ratifying bodies of the pertinent part of the Constitution or Amendment.''

In other words, Prof. Baker suggests that if a judge behaves arbitrarily and capriciously, that is, without the constraint of law, he ought to be impeached. We concur.

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

[Mr. DREIER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

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

[Mr. METCALF addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

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

[Mr. FOLEY addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

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

[Mr. CUNNINGHAM addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

AN ISSUE RELATIVE TO H.R. 1469

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

Mr. OLVER. Mr. Speaker, tomorrow this House is going to take up H.R. 1469, which in its major part is an emergency appropriation bill to help the flood victims in the western part of the States, particularly North Dakota, deal with a very tragic situation.

Within that bill, in title I of that bill, section 601 of that legislation makes a major change in the procurement policy under which our Bureau of Engraving and Printing operates which has never been considered by either the Committee on Government Reform and Oversight under the leadership of the gentleman from Indiana [Mr. BURTON] nor the Committee on Banking and Financial Services under the leadership of the gentleman from Iowa [Mr. LEACH].

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Neither of the authorizing committees dealing with this subject has held so much as a single hearing on the issue that is before us and, therefore, it has no place in an appropriations bill and is clearly not an emergency matter related to the victims of national emergencies.

Now, the provision involved in section 601 requires that the Treasury Department must give capitalization subsidies to companies that are interested in becoming new suppliers of currency paper to the Bureau of Engraving and Printing. Capitalization subsidies, Mr. Speaker, are cash payments for new equipment or new facilities in order to manufacture paper. The amount of such cash payments could reach as much as $100 million.

The manner in which this change in our law would be imposed, a change, remember, that has never been considered by either of the authorizing committees, the Committee on Government Reform and Oversight nor the Committee on Banking and Financial Services, the law would apply special provisions of our longstanding procurement laws of this Nation that were designed to induce proposals where there is no willing supplier of a commodity or a product that the Government needs and provide these cash subsidies, these capitalization subsidies, in order to induce such suppliers.

Well, there are and have been over the years willing suppliers. There is a willing supplier now and there have been on other occasions other willing suppliers. So we do not have the circumstances of the Government not having a willing supplier, and so the proposal to change the law is before us.

Section 601 also makes another change. It changes the Conte rule that had been promoted and established in 1989, under my predecessor in the first district in Massachusetts, which set the foreign ownership that could be involved in the manufacture of the American currency at 10 percent and changes that so that it can be anything up to 50 percent.

Now, our American currency is right at the very core of our national security and, actually, our sovereignty.

And most Americans, I think, believe that we should be very careful about how we deal with our currency. Well, what is the purpose of a change in the Conte law? Well, it is not as has been suggested, that no American company can vie for the contracts because they have greater than 10 percent of foreign ownership.

There is absolutely no evidence that a change in the Conte law is necessary for American paper companies to qualify as Bureau of Engraving and Printing suppliers based on their own percentage of foreign stockholders. There have been no hearings held on that. There has been no evidence taken before either the Committee on Government Reform and Oversight or the Committee on Banking and Financial Services to suggest such a thing and, in fact, the latest RFP to go out from the Treasury Department on this point has said 56 American manufacturing companies have been invited to make bids on the next set of contracts on American currency paper. All of our U.S. currency paper contract solicitations are already open solicitations and anyone can bid.

In fact, what the change in the Conte law would do is allow joint ventures with foreign national currency maker paper suppliers to get into the American currency manufacturing business.

Mr. Speaker, I ask unanimous consent for 2 additional minutes.

The SPEAKER pro tempore (Mr. BATEMAN). The Chair is not permitted to entertain the gentleman's request. The rules do not permit me to do that.

VIRGINIA IS PARTICIPANT IN STEP 21 COALITION

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

Mr. GOODLATTE. Mr. Speaker, I rise today to speak in favor of H.R. 674, also known as the STEP 21 proposal. Like the 21 other States participating in the STEP 21 Coalition, Virginia is what is called a donor State. That means Virginia gets back less than $1 in highway funding for every dollar we send to Washington each year in gas taxes; only 79 cents for each dollar we contribute, to be exact.

Other States are given the rest of Virginia's contributions because of an unfair funding formula set forth in the current Intermodal Surface Transportation Efficiency Act, or ISTEA. This unfair formula costs the State of Virginia and other donor States hundreds of millions of dollars each year.

Under the current formula, some States receive more than double the money they contribute to the trust fund. Massachusetts, for example, receives $2.49 for each dollar it collects in taxes at the pumps. Connecticut has a nearly 168 percent return on its tax payments to Washington. As a result, Virginia families are forced to subsidize transportation projects in these States and many others. While States with large areas and small populations may need to receive more money than they contribute, many of the States on the receiving end of the current ISTEA funding formula are there because of politics and not because of fairness.

Every week, as I drive back and forth from Washington to the Sixth Congressional District of Virginia, I see many unmet transportation needs. In the sixth district, road projects, such as widening Interstate 81, building Interstate 73, and improving Route 29, all need funding.

Building and maintaining a system of roads is vital to creating jobs and continuing economic development in our region. The STEP 21 proposal will improve Virginia's ability to maintain and improve its transportation system by ensuring that all States, not just Virginia, are guaranteed at least 95 cents return for every dollar sent to the highway trust fund.

STEP 21 would also guarantee the integrity of the National Highway System, recognizing the ongoing Federal interest in interstate mobility, economic connectivity, and national defense.

The other major component of STEP 21, besides the NHS, would be a streamlined surface transportation program which would provide flexible funding to allow States to respond to their specific State and local surface transportation needs without the current unnecessary Federal restrictions. By ensuring a return of at least 95 cents of every dollar for Virginia, STEP 21 would enable important transportation projects across the commonwealth to move along at a faster pace.

Ending an unfair funding formula and giving State and local governments more flexibility in transportation issues are critically important steps for this Congress to take. I urge my colleagues to join the STEP 21 Coalition and support a more equitable, flexible, and streamlined Federal transportation program that benefits the vast majority of States across the Nation.

TEXAS PARTICIPATES IN STEP 21 COALITION

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Texas [Ms. GRANGER] is recognized for 5 minutes.

Ms. GRANGER. Mr. Speaker, I rise today to join my colleagues in support of increased funding equity for donor States in the new ISTEA legislation.

Most parties agree the 1991 ISTEA law has been successful, and there is strong support for ISTEA reauthorization. The current ISTEA's major strengths are its balance of national priorities with State and local decision-making and its emphasis on the interaction between the different modes of transportation. The current ISTEA's major weaknesses are the funding inequities between the States and the complexity of the program formulas.

My State, Texas, is one of the States that does the worst in the current highway funding formulas. For every dollar we send to Washington in gasoline tax we receive only 77 cents back for new roads and bridges. In fact, Texas is currently tied with Indiana, Kentucky, and Florida for the third worst return on our highway investment.

The reason for this is that the basic ISTEA funding formulas are ultimately not based on need or equity; rather the formulas are based on historic highway funding shares from the days when the United States was focused on completing the Interstate Highway System. These antiquated formulas are significantly favoring the northeastern States and need to be revised.

The committee's challenge will be to balance the needs of restructuring and refining ISTEA and making its formulas more equitable for all States while preserving many of the best qualities. I have joined the gentleman from Texas [Mr. DELAY], our majority whip, and 104 Members of the House of Representatives as cosponsor of the STEP 21 plan to ensure that every State receives at least 95 percent of its Federal contribution back from Washington.

The STEP 21 plan creates a national highway system program which is apportioned on a need-based formula, and a streamlined surface transportation program which is apportioned according to a State's contribution to the highway trust fund.

The STEP 21 plan is a bold proposal. It presents a challenge to Congress to produce legislation that simplifies the programming's structure and increases funding equity but still allows funding to be spent on environmental quality, safety, and enhancements. Transit is not affected by the STEP 21 plan.

If this Congress is going to move our Nation's transportation infrastructure into the 21st century, the new ISTEA bill needs to form a partnership between the Federal Government, the States and local planning organizations that makes it easier and faster to construct highway and transit projects. This means building on ISTEA to make the highway and transit funding categories more flexible so that States, metropolitan areas, and transit authorities can make the most of their limited Federal resources.

My colleagues may ask why is funding equity so important to Texas and other donor States. When most people think of transportation, they think in terms of its impact on their daily commute, the errands they run, and the traffic on the way to their kids' school. But the quality of the transportation infrastructure and transportation systems in our communities really have a much greater impact on our lives than we realize.

Transportation and transportation-related activities account for one-sixth