

In Rhode Island, for example, the Providence Journal reported a typical story, that of George Tarbox and his wife. Mr. Tarbox and his wife were the perennial house rich and cash poor family. They purchased their home in 1958. They paid off the mortgage, but they were facing very difficult circumstances. They were on a fixed income, like most seniors. And they needed the resources to simply live. The choice between eating and buying medicine is very difficult. The reverse mortgage program allowed them to meet their needs. They were able to pay off their original mortgage. They were able to make their daily expenses. They were able to get the proceeds and resources that they needed to live. And this is just a typical story, a very, very good typical story of the effectiveness of the reverse mortgage program.

Today, with action on S. 562, we are sending a very strong message out to those unscrupulous operators who might try to prey on seniors that we are going to take a tough, tough hard stand. This program is there. It is for seniors. It is not for speculators. It is for seniors. It is not for those who prey on seniors. And it allows seniors to have access, through their home, to the resources they need to lead lives of decency and dignity.

I am so pleased with Senator D'AMATO and Senator MACK for their leadership on this, and for my colleagues who joined in sponsoring this legislation. I hope that it will move quickly through the Congress, the President will sign it, and we will give HUD the tools that it needs to eradicate this detestable practice, and allow the seniors of America to fully enjoy what they have worked so hard for, their homes and the proceeds of their homes.

Thank you very much, Mr. President.

I yield back the balance of my time.

The PRESIDING OFFICER. Does the Senator suggest the absence of a quorum?

Mr. REED. Mr. President, I do suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HUTCHINSON). Without objection, it is so ordered.

The Senator from New Hampshire is recognized for 30 minutes.

Mr. SMITH of New Hampshire. Mr. President, it is not my intention to use the full 30 minutes, I say to any colleague who may be waiting or intending to speak.

SYMPATHY FOR FLOOD VICTIMS

Mr. SMITH of New Hampshire. Mr. President, first of all, I will comment on the remarks made by the distin-

guished Senator from North Dakota, Senator DORGAN, during the time that I was in the chair regarding the terrible tragedy of the floods in North Dakota, Minnesota, and the West. He did an outstanding presentation in terms of the extreme acts of heroism that have taken place in that region of the country.

One of the great things about America and the American people is the capacity that they have to reach back in times of great crisis—whether it be war, flood, earthquake, or whatever—and help their neighbors. Certainly, Senator DORGAN captured in great detail and with a great personal touch that terrible tragedy. Of course, our hearts and prayers are with them as they go through this terrible time.

GOVERNMENT SHUTDOWNS

Mr. SMITH of New Hampshire. Also, Mr. President, I want to comment on a piece of legislation that two of my colleagues, Senator MCCAIN, and the Senator from Texas, Senator HUTCHISON, introduced regarding the prevention of the Government shutdown.

We went through this game, as you know, last year, and wound up having the Government shut down and innocent people, who were doing a good job in their capacity working for the Government, were caught in this whipsaw of conflict between the Congress and the President.

Senator HUTCHISON and Senator MCCAIN have brought forth this amendment, this idea, which essentially will see that that does not happen. I am a bit surprised, given the amount of criticism that we took from the President on the Government shutdown—he gave us most of the blame, although he, I think, deserves equal credit, if you will—at the opposition, stated opposition to this amendment by the President. I hope the President could support a proposal which eliminates the threat of a Government shutdown as we work toward getting a budget agreement.

Basically, it locks in place spending at last year's appropriation levels until we do it, and not shut down the Federal Government. I hope the President will reconsider that and endorse this proposal which I believe will be attached to the supplemental, and see that we do not have a Government shutdown again, and that Congress and the President get together and do what the American people want them to do, which is come to a budget agreement that balances the budget, that really balances the budget by the year 2002—no smoke and mirrors—and that we get entitlement reform, we get some tax relief for the American people, and do it all.

If there is gridlock because we do not get that agreement, then the people who are trying to run the Federal Government, from passing out the Social Security checks to immigration, visas and so forth, that we do not get those people again caught in that conflict.

I commend my colleagues for that and am pleased to be a supporter of it.

TERM LIMITS FOR FEDERAL JUDGES

Mr. SMITH of New Hampshire. Mr. President, earlier this week I introduced a piece of legislation that no doubt will create some discussion, if not controversy, around the country. It involves the term limits for judges—Federal judges.

This is something that, of course, would change the Constitution, so it would be a constitutional amendment. For over 200 years we have had lifetime appointments for judges, so I did not expect to have 100 Senators and all Members of the House, and everybody writing in, all over America, supporting this proposal, as soon as I introduced the proposal.

However, I do hope, as people think about it and carefully consider it, they begin to realize how important I think this change to our Constitution would be. I think, frankly, Jefferson and Hamilton would support the amendment if they were here today, because if they could look back on history and see what has happened in the Federal Judiciary, I think they would agree with me it is time we put term limits on judges.

Senator SHELBY of Alabama has joined me in this effort. We call it Senate Joint Resolution 26. It is a constitutional amendment for term limits for judges. When I introduced the amendment a couple of days ago I did not have the opportunity, because of debate on the Chemical Weapons Convention, I did not have the opportunity to make a few remarks. I want to take this time to do that.

Mr. President, the Framers of our Constitution intended that the judicial branch, which was created by article III in the Constitution, would have a limited role. That was their strong belief, that the role be limited, and that they be an equal partner in the three parts of our Government. They believed in the necessity of judicial restraint, and they recognized, and said so, the danger of judicial activism.

Now, in Federalist No. 48, James Madison wrote that to combine the judicial power with executive and legislative authority would be the very definition of tyranny. Madison's own words—"The very definition of tyranny." To repeat, to combine the judicial power with executive and judicial authority would be the very definition of tyranny.

Thomas Jefferson said, "The very notion that the Supreme Court should have the final word on constitutional questions is a very dangerous doctrine, to consider the judge as the ultimate arbiters of all constitutional questions." He also said, "It is one which would place us under the despotism of an oligarchy," meaning government of the select few. Very interesting that Jefferson and Madison, of all people, would be saying that.

It is interesting to look at the debate as the Constitution was written. Some people like to decide what they think the intent of the Founding Fathers was as we look at these court decisions that have been made over the past couple hundred years, but it is interesting to look at what they said. Sometimes what they said, what they actually said, the Founding Fathers, and what other people think they meant are not one and the same and are totally different.

Another founder, in Federalist No. 78, Alexander Hamilton, argued that the judicial branch "will always be the least dangerous to the political rights of the Constitution. Courts have neither force nor will but merely judgment, and can take no active resolution whatever."

That was Hamilton.

Even as he advocated the ratification of the Constitution, and he was one of the strongest advocates as the Federalist Papers prove, he also issued a warning. The courts, he said, must declare the sense of the law. If they should be disposed—they being the justices, the judges—to exercise will, will, instead of judgment, the consequence would equally be the substitution of their pleasure to that of the legislative body.

So, what a judge's personal view is, what his or her pleasure is in terms of a decision is irrelevant, is not the issue. It is what the best judgment in terms of the interpretation of the Constitution is. Mr. President, 200 years after Alexander Hamilton issued this warning, it is abundantly clear that the abuse of judicial power that he feared has become a reality. If Hamilton were here today, I believe he would be the first to recognize it.

Instead of applying law as they find it in a neutral manner, which is a judge's role, exercising what Hamilton called their judgment, activist judges are in effect substituting their own policy views, in what Hamilton called their will, for the policies established by the people through their elected representatives in the political branches of the Government.

Now, Mr. President, I have been in the Congress for 13 years and I have thought a lot about this. Thirteen years ago I thought about introducing an amendment to do this, but I did not. I sat back and said, Maybe this will change, maybe I am wrong. Maybe Hamilton was wrong. Maybe it is not as bad as I think. The truth of the matter is, it is worse than I thought.

Finally, the last 2 or 3 weeks I finally made up my mind that the time has come, and I think there is a lot of proof to show and to demonstrate that the time has come. Let me give some examples, and this is not meant in any way to impugn the integrity of the three justices that I will mention. They were fine individuals who acted as they saw fit to interpret the Constitution. I want to make a point here. Justices Brennan, Marshall, and Black-

mun have all taken their personal opposition to the death penalty and read it into the Constitution.

Now, the Founding Fathers discussed capital punishment as they wrote the Constitution. They mentioned capital punishment in the Constitution. The death penalty is explicitly mentioned and its constitutionality is unquestionable in the due process clauses of both the 5th and 14th amendments to the Constitution. Yet, these three Justices rendered decisions time and time again because of their personal opposition to the death penalty. Whatever anyone's view is of the death penalty is not relevant when a matter comes before the Court, if the intent of the Founders and the Constitution itself says that the death penalty is constitutional. What a personal view is—for or against it—is irrelevant. Yet, decisions were made because of their personal opposition to the death penalty. That is judicial activism.

Evidently taking their cue from Supreme Court Justices who feel free to ignore the plain meaning of the Constitution, judges on the Federal courts of appeals have also engaged in what amounts to legislating from the bench.

More examples:

Two U.S. courts of appeals—the ninth and the second circuits—have discovered in the post-Civil War 14th amendment a heretofore unknown constitutional right to physician-assisted suicide. They have just discovered this.

Now, that is a pretty bizarre reading of the 14th amendment that simply cannot be justified by the language, it cannot be justified by the meaning, and it cannot be justified even by the history of the constitutional provisions in question. Yet, the ninth and second circuits, two U.S. courts of appeals, have discovered that, now, in this post-Civil War 14th amendment, we now have a constitutional right to physician-assisted suicide. Where does it say that in the Constitution? It doesn't matter to these judges whether it says it or not. Likewise, Federal district judges have repeatedly abused their authority by blocking the implementation of entirely constitutional measures enacted through State ballot referenda simply because they disagree with the policy judgments of the voters. Now, again, that is not the role of a Federal judge. Just since 1996, a single Federal district judge, who had been an activist with the ACLU before going on the bench, blocked the implementation of the California civil rights initiative. However you feel about the initiative, for or against, isn't the issue. The California voters passed it in the State. Earlier this month, in reversing the judge's order, the U.S. Court of Appeals made the compelling comment that "A system which permits one judge to block, with a stroke of a pen, what 4,736,180 State residents voted to enact as law, tests the integrity of our constitutional democracy."

Who said that, because a judge is appointed to a court of the Federal Gov-

ernment, they are omnipotent, that they are flawless, that they are perfect? I don't recall that in the Constitution. I don't recall that in the discussions of the Founders. Judges are human beings, and they can be wrong. Consider the Dred Scott case in 1857, if you think judges are perfect. There will be some out there, probably from the American Bar Association, who will notify me over the weekend, or on Monday, that they are, because I am sure they are opposed to this amendment. But in 1857, the Supreme Court Chief Justice Roger Taney was sitting on the Court when a black former slave by the name of Dred Scott tried to bring a case before the Supreme Court for his freedom. Taney wrote the deciding majority decision, and he said Dred Scott couldn't sue in Federal Court because he was "property," not a human being. Now, was that Justice right in that decision? No, he was not right, but he did it and there was no recourse because he was a lifetime appointee.

There are many more examples, Mr. President, of activist judges who have taken control of prisons and school districts. There was the famous Kansas City case, where a judge raised the taxes of the city of Kansas City to pay for school busing. Activist judges have ordered tax increases, and they have created new rules to protect criminal defendants that result in killers, rapists, and other violent criminals being turned loose to continue to prey on society.

Almost every time you hear about some horrible murder, a violent crime against another member of our society, almost every time, if you read below the headline, you will find that this person was out on parole, or was released by a judge and given a second chance. He probably had a difficult childhood, so we have to give him another chance to kill or rape somebody else, or beat somebody else up, or abuse some child. We have to give him a third chance and a fourth chance. Time and time and time again, over the last 30, 40 years, these judges have put these animals back on the street to prey on us and prey on us and prey on us. But they are perfect, these judges—lifetime, no touch; you can't do anything about it. It is time, Mr. President, that we stop it.

Former U.S. Attorney General Edwin Meese estimates that over 100,000 criminal cases each year cannot be successfully prosecuted because of these court-created rules. You can't even prosecute some of these people because of these rules. Judicial activism has become such a severe problem that one of the leaders of the House, Representative TOM DELAY of Texas, has even suggested that we ought to consider using the constitutional power of impeachment to remove activist Federal judges from office.

Now, I understand Congressman DELAY's concern. It is a justifiable concern, but I think there is a better way to do this, which is to limit their terms—limit their terms. That way,

after a Federal judge has served 10 years—and that is what my amendment does, limit the term to 10 years—if the President wants to reappoint a judge who does some of these horrible things I have talked about, and that person can get through the Senate confirmation process, good luck. But at least we would have had the opportunity, as the elected representatives of the American people, to say, hold on, this person has made decisions that are ridiculous and we are not going to tolerate it.

The term limits for judges amendment would end the life tenure for judges on the district court, circuit courts, and the Supreme Court—all three levels of the Federal judiciary. They would be nominated by the President, and with the advice and consent of the Senate they would be appointed for 10-year terms. They could be reappointed. The good thing about this proposal, Mr. President, is that no President of the United States would have the opportunity to reappoint a judge because, as we all know, the President's term is limited to two terms, 8 years. He or she could also serve up to an additional 2 years of a President who left office, if that person were the Vice President. So the maximum they could serve would be 9 years and 364 days. Therefore, that same President would not have the opportunity to reappoint a judge.

Now, my amendment does not remove current judges from office—we do have a grandfather clause—but it would get things started, and we would begin to have this opportunity to see some change.

Activist judges are routinely violating the separation of powers by usurping legislative and executive powers. This is a widespread abuse of judicial authority, and it is serious enough to warrant a constitutional response. Term limits for judges would establish a check on the power of activist judges, and no longer could they abuse their authority with impunity. Under the term limits for judges amendment, judges who used their offices by imposing their own policy views, instead of interpreting the laws in good faith, could be passed over for new terms by the President, or rejected for reappointment by the Senate if the President persisted in offering the name up.

The term limits for judges amendment would make the President and the Senate more accountable to the people for their judicial selections. Now, you are going to hear the argument—and probably many listening to me now are already thinking it—that “this is just going to interject politics; politics is now going to be in all the court decisions, and all judges are going to make decisions based on politics so they can be reappointed.”

Stop and think about that argument. If a judge is good and if a judge is honest and has integrity and makes a decision in his or her mind based on what

is right, under the Constitution, if that's the case—and I would think that all of us would like to think that every judge fits that mold—but if that's the case, then, why would a judge make a different decision if that judge knew they were only going to be there for 10 years or life? What difference does it make? The point is, if they are good and they think it is a right decision under the law, then you make your decision whether you are going to be there 1 day or 100 years. What difference does it make?

The opposite has happened, Mr. President. What has happened now is that judges, knowing that they can't be touched, knowing that they have a lifetime appointment, are now making decisions that are political. They are imposing their will upon the American people, rather than actually judging the Constitution and interpreting the Constitution as the Founding Fathers suggested.

With all due respect to the criticism, the modern-day judiciary is too independent and too unaccountable to the taxpayers and to the people who pay their salaries and pay for their court-houses all over America. They are insulated by life tenure and free, for all intents and purposes, from any threat of impeachment. You have to commit a high crime to be removed from office as a Federal judge; we all know that. Very few judges in history have had that happen.

These activist judges, because of almost impunity, feel free to impose their political will on all of us, without having to answer to anybody. I believe that judges appointed for 10-year terms would be far more likely to follow the law rather than imposing their political will. The best way to go for a judge serving a 10-year term, who would like to serve another 10, would be to follow the law and not his or her own political agenda. Follow the law. That is what we put you on the bench to do, to follow the law. That applies to a conservative judge as well as a liberal judge. No conservative agenda, no liberal agenda. Follow the law. If you follow the law, you will get reappointed. If you don't follow the law and you follow your agenda, you don't.

It is interesting, when you talk to those who oppose this amendment, they are very aggressive in saying, “Well, these judges are fine people and you are impugning the integrity of judges.” There will always be—unless Congress changes it—nine slots on the Supreme Court. The world is not going to come to an end if one judge leaves and another takes his or her place. We are not irreplaceable. So that is not a valid argument. It is very bogus. If one judge leaves—or if it is the Supreme Court, one Justice leaves—another judge or Justice takes his or her place.

So what? It doesn't have to be the same person for life making these decisions.

So, Mr. President, I just want to notify my colleagues that I welcome their

support. I don't expect the door to be beaten down over the next few days. But I am going to be very, very aggressive and very, very persistent in taking this case to the American people that it is time for a change in our Constitution. No one wants to amend the Constitution unless it is absolutely necessary. But I think if every American citizen would look at what has happened with some of these outrageous judicial decisions by activist judges who have gone far beyond what the intent of the Constitution was, they would recognize that it is time for a change.

Hamilton said it, Madison said it, and Jefferson said it; three pretty distinguished Founding Fathers, if I do say so myself. They warned us. I read for you their quotes. We know how they felt.

I think it is time that we pursue this. I intend to take this case to the American people because I have seen polls on this that indicate that over 85 percent of the American people support term limits for judges. We have term limits for the Presidents. A lot of people favor trying to pass term limits for Members of Congress. Why not term limits for judges? Why does the world come to an end, and why does constitutional democracy of the United States of America come to an end because we don't have lifetime judges? That is ridiculous. The argument is silly.

The Founding Fathers warned us on the possibility of this. And some will say, “OK. Why didn't they put in the Constitution that we have term limits?” Because they could not possibly imagine what judges would have done in the past 200 years.

But I guarantee that if Hamilton, Jefferson, and Madison could vote today they would be voting for this amendment, and they would be supporting this amendment.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Thursday, April 24, 1997, the Federal debt stood at \$5,343,216,863,246.54. (Five trillion, three hundred forty-three billion, two hundred sixteen million, eight hundred sixty-three thousand, two hundred forty-six dollars and fifty-four cents)

One year ago, April 24, 1996, the Federal debt stood at \$5,110,704,000,000. (Five trillion, one hundred ten billion, seven hundred four million)

Five years ago, April 24, 1992, the Federal debt stood at \$3,879,889,000,000.