WHORM Subject File Code: FE002
(Federal Government: Declaration of Independence and the Constitution)
Case File Number(s): 350000-419999
Box Number: 2

WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name WHITE HOUSE OFFICE OF RECORDS MANAGEMENT: SUBJECT FILE

Withdrawer DLB 10/26/2010

File Folder FE002 (DECLARATION OF INDEPENDENCE - CONSTITUTION) (350000-419999)

FOIA S10-0365/01 SYSTEMATIC

Box Number 2

5

DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
1	LETTER	LINO GRAGLIA TO PENLETON JAMES 380298	1	ND	B6

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]
B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
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B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
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B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

JV

ID # 355537 CU

FE002

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: James Munn

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: S.40, "Constitutional Convention Implementation Act of 1985"

ROUTE TO: Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
Cuttall	ORIGINATOR	85/10/15 PXJ		C	86/04/10 CJ
Cuat 18	Referral Note: R	85/10/15 PXJ	NAN	C	86/04/10 CJ
	Referral Note:	/ /			/ /
	Referral Note:	/ /			/ /
	Referral Note:	/ /			/ /
	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
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DISPOSITION CODES:
A - Answered
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C - Completed
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FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
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Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

RECORDS MANAGEMENT ONLY

CLASSIFICATION SECTION

No. of Additional Correspondents: _____ Media: C Individual Codes: 1110 ___.____ ___.____

Prime Subject Code: FE002.__ Secondary Subject Codes: FG ____.__ FG006-11
LE ____.__ __ ____.__
FG035.__ __ ____.__

PRESIDENTIAL REPLY

Code	Date	Comment	Form
C __ __	_____	Time: _____	P- _____
DSP	_____	Time: _____	Media: _____

SIGNATURE CODES:

CPn - Presidential Correspondence
- n - 0 - Unknown
- n - 1 - Ronald Wilson Reagan
- n - 2 - Ronald Reagan
- n - 3 - Ron
- n - 4 - Dutch
- n - 5 - Ron Reagan
- n - 6 - Ronald
- n - 7 - Ronnie

CLn - First Lady's Correspondence
- n - 0 - Unknown
- n - 1 - Nancy Reagan
- n - 2 - Nancy
- n - 3 - Mrs. Ronald Reagan

CBn - Presidential & First Lady's Correspondence
- n - 1 - Ronald Reagan - Nancy Reagan
- n - 2 - Ron - Nancy

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- M - Mailgram
- O - Memo
- P - Photo
- R - Report
- S - Sealed
- T - Telegram
- V - Telephone
- X - Miscellaneous
- Y - Study

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 10, 1985

355537 (W

LEGISLATIVE REFERRAL MEMORANDUM

TO: LEGISLATIVE LIAISON OFFICER

Department of Justice
National Archives & Records Administration
General Services Administration

SUBJECT: S. 40, as reported (Senate Report 99-135), the "Constitutional Convention Implementation Act of 1985."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than October 30, 1985

Direct your questions to Branden Blum (395-3454), the legislative attorney in this office.

James C. Murr for
Assistant Director for
Legislative Reference

cc: John Cooney
Jill Kent
Karen Wilson
Fred Fielding

Calendar No. 286

99TH CONGRESS
1ST SESSION

S. 40

[Report No. 99–135]

To provide procedures for calling Federal constitutional conventions under article V for the purpose of proposing amendments to the United States Constitution.

IN THE SENATE OF THE UNITED STATES

JANUARY 3, 1985

Mr. HATCH (for himself, Mr. DECONCINI, and Mr. THURMOND) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 10 (legislative day, SEPTEMBER 9), 1985

Reported by Mr. THURMOND, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To provide procedures for calling Federal constitutional conventions under article V for the purpose of proposing amendments to the United States Constitution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That this Act may be cited as the "Constitutional Convention Implementation Act of 1985".

APPLICATIONS FOR CONSTITUTIONAL CONVENTION

SEC. 2. (a) The legislature of a State, in making application to the Congress for a constitutional convention under article V of the Constitution of the United States, for the purpose of proposing one or more specific amendments, shall adopt a resolution pursuant to this Act stating, in substance, that the legislature requests the calling of a convention for the purpose of proposing one or more specific amendments to the Constitution of the United States and stating the subject matter of the amendment or amendments to be proposed.

(b) The procedures provided by this Act are required to be used whenever application is made to the Congress, under article V of the Constitution of the United States, for the calling of any convention for the purposes of proposing one or more specific amendments to the Constitution of the United States, each applying State stating in the terms of its application the subject matter of the amendment or amendments to be proposed. This Act is not intended to apply to applications requesting a convention for any other purpose under article V of the Constitution.

APPLICATION PROCEDURE

SEC. 3. (a) The rules of procedure governing the adoption or withdrawal of a resolution pursuant to section 2 and section 5 of this Act are determinable by the State legislature, except that the assent of the Governor as to any application or withdrawal shall be unnecessary.

(b) Questions concerning compliance with the rules governing the adoption or withdrawal of a State resolution cognizable under this Act are determinable by the State legislature, except that questions concerning the fact of final approval of such resolution by no less than a majority vote of each House of such legislature shall be determinable by the Congress of the United States.

TRANSMITTAL OF APPLICATIONS

SEC. 4. (a) Within thirty days after the effective date of the resolution adopted by the legislature of a State calling for a constitutional convention, the secretary of state of the State, or, if there be no such officer, the person who is charged by the State law with such function, shall transmit to the Congress of the United States two copies of the application, one addressed to the President of the Senate and one to the Speaker of the House of Representatives.

(b) Each copy of the application so made by any State shall contain—

(1) the title of the resolution, the exact text of the resolution signed by the presiding officer of each house of the State legislature, the date on which the legislature adopted the resolution, and a certificate of the secretary of state of the State, or such other person as is charged by the State law with such function, certifying that the application accurately sets forth the text of the resolution; and

(2) to the extent practicable, and if desired, a list of all State applications in effect on the date of adoption whose subject matter are substantially the same as the subject matter set forth in the application.

(c) Within ten days after receipt of a copy of any such application, the President of the Senate and Speaker of the House of Representatives shall report to the House of which he is presiding officer, identifying the State making application, the subject matter of the application, and the number of States then having made application on such subject. The President of the Senate and Speaker of the House of Representatives shall jointly cause copies of such application to be sent to the presiding officer of each house of the legislature of every other State and to each Member of the Senate and House of Representatives of the Congress of the United States.

EFFECTIVE PERIOD OF APPLICATION

SEC. 5. (a) An application submitted to the Congress by a State, unless sooner withdrawn by the State legislature, shall remain effective for the lesser of the period specified in such application by the State legislature or for a period of seven calendar years after the date it is received by the Congress, except that whenever within a period of seven calendar years two-thirds or more of the several States have each submitted an application calling for a constitutional convention on the same subject matter all such applications shall

remain in effect until the Congress has taken action on a concurrent resolution, pursuant to section 6 of this Act, calling for a constitutional convention: *Provided however*, That those applications which have not been before the Congress for more than twelve years on the effective date of this Act shall be effective for a period of not less than two years.

(b) A State may withdraw its application calling for a constitutional convention by adopting and transmitting to the Congress a resolution of withdrawal in conformity with the procedures specified in sections 3 and 4 of this Act, except that no such withdrawal shall be effective as to any valid application made for a constitutional convention upon any subject after the date on which two-thirds or more of the State legislatures have valid applications pending before the Congress seeking amendments on the same subject matter.

CALLING OF A CONSTITUTIONAL CONVENTION

SEC. 6. (a) It shall be the duty of the Secretary of the Senate and the Clerk of the House of Representatives to maintain a record of all applications received by the President of the Senate and Speaker of the House of Representatives from States for the calling of a constitutional convention upon each subject matter. Whenever applications made by two-thirds or more of the States with respect to the same subject matter have been received, the Secretary and the Clerk shall so report within five days, in writing to the officer to whom those applications were transmitted, and such offi-

sentatives the name of each delegate elected or appointed by the Council pursuant to this section.

~~(c)~~ *(d)* Delegates shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at a session of the convention, and in going to and returning from the same; and for any speech or debate in the convention they shall not be questioned in any other place.

CONVENING THE CONVENTION

SEC. 8. (a) The President pro tempore of the United States Senate and the Speaker of the United States House of Representatives shall jointly convene the constitutional convention. They shall administer the oath of office of the delegates to the convention and shall preside until the delegates elect a presiding officer who shall preside thereafter. Before taking his seat each delegate shall subscribe to an oath by which he shall be committed during the conduct of the convention to comply with the Constitution of the United States. Further proceedings of the convention shall be conducted in accordance with such rules, not inconsistent with this Act, as the convention may adopt by vote of three-fifths of the number of delegates who have subscribed to the oath of office.

(b) There is hereby authorized to be appropriated such sums as may be necessary for the payment of the expenses of the convention, including payment to each delegate of an

amount of pay equal to that for Members of Congress prorated for the term of the convention, as well as necessary travel expenses for such delegates. In the event that such sums are not appropriated in a timely manner, or are appropriated subject to additional conditions, the convention shall be authorized to apportion its costs among the States.

(c) The Administrator of General Services shall provide such facilities, and the Congress and each executive department, agency, or authority of the United States shall provide such information and assistance as the convention may require, upon written request made by the elected presiding officer of the convention.

PROCEDURES OF THE CONVENTION

SEC. 9. (a) In voting on any question before the convention, including the proposal of amendments, each delegate shall have one vote.

(b) The convention shall keep a daily verbatim record of its proceedings and publish the same. The vote of the delegates on any question shall be entered on the record.

(c) The convention shall terminate its proceedings within six months after convening unless the period is extended by concurrent resolution of the Congress of the United States upon request from the convention.

(d) Within thirty days after the termination of the proceedings of the convention, the presiding officer shall trans-

mit to the Archivist of the United States all records of official proceedings of the convention.

PROPOSAL OF AMENDMENTS

SEC. 10. No convention called under this Act may propose any amendment or amendments of a subject matter different from that stated in the concurrent resolution calling the convention.

APPROVAL BY THE CONGRESS AND TRANSMITTAL TO THE STATES FOR RATIFICATION

SEC. 11. (a) The presiding officer of the convention shall, within thirty days after the termination of its proceedings, submit to the Congress the exact text of any amendment or amendments agreed upon by the convention.

(b) Whenever a constitutional convention called under this Act has transmitted to the Congress a proposed amendment to the Constitution, the Congress shall in as expeditious a manner as possible, but in any case within six months thereafter, adopt a concurrent resolution—

(i) directing the Administrator of General Services to transmit forthwith to each of the several States a duly certified copy thereof, and a copy of any concurrent resolution agreed to by both Houses of Congress which prescribes the mode in which such amendment shall be ratified and the time within which such amendment shall be ratified in the event that the amendment itself contains no such provision. In no

case shall such a resolution prescribe a period for ratification of less than four years; or

(ii) stating that the Congress does not direct the submission of such proposed amendment to the States because such proposed amendment relates to or includes subject matter which differs from or was not included in the subject matter named or described in the concurrent resolution of the Congress by which the convention was called.

(c) In the event that the Congress has not passed a concurrent resolution under subsection (b)(i) within the time prescribed therein, during the thirty days following any State may commence an action under section 15 of this Act seeking a declaration that the proposed amendment is consistent with the concurrent resolution by the Congress by which the convention was called and directing its submission to the States for ratification.

(d) Notwithstanding the issuance of such order, the mandate of the Court shall not issue prior to the expiration of the first period of thirty days following the date on which such order is issued. Congress may during such thirty-day period, adopt a concurrent resolution prescribing the mode in which such amendment shall be ratified, and the time within which the amendment shall be ratified in the event that the amendment itself contains no such provision. In no case shall

such a resolution prescribe a period for ratification of less than four years.

(e) In the event that the Congress has not adopted a concurrent resolution under subsection (d) within the time prescribed therein, the mandate for such order shall issue forthwith. The mode for ratification in such case shall be by action of the legislatures of three-fourths of the States within a period of seven years, unless the amendment itself contains a different period.

RATIFICATION OF PROPOSED AMENDMENTS

SEC. 12. (a) Any amendment proposed by the convention and submitted to the States in accordance with the provisions of this Act shall be valid for all intents and purposes as part of the Constitution of the United States when duly ratified by three-fourths of the States in the manner and within the time specified consistent with the provisions of article V of the Constitution of the United States.

(b) The secretary of state of the State, or if there be no such officer, the person who is charged by State law with such function, shall transmit a certified copy of the State action ratifying any proposed amendment to the Administrator of General Services.

RESCISSION OF RATIFICATIONS

SEC. 13. (a) Any State may rescind its ratification of a proposed amendment by the same procedures by which it ratified the proposed amendment, unless other procedures are

specified by such State, except that no State may rescind when there are existing valid ratifications of such amendment by three-fourths of the States.

(b) Any State may ratify a proposed amendment even though it previously may have rejected the same proposal or may have rescinded a prior ratification thereof.

PROCLAMATION OF CONSTITUTIONAL AMENDMENTS

SEC. 14. The Administrator of General Services, when three-fourths of the several States have ratified a proposed amendment to the Constitution of the United States, shall issue a proclamation that the amendment is a part of the Constitution of the United States.

JUDICIAL REVIEW

SEC. 15. (a) Any State aggrieved by any determination or finding, or by any failure of Congress to make a determination or finding within the periods provided, under section 6 or section 11 of this Act may bring an action in the Supreme Court of the United States against the Secretary of the Senate and the Clerk of the House of Representatives or, where appropriate, the Administrator of General Services, and such other parties as may be necessary to afford the relief sought. Such an action shall be given priority on the Court's docket.

(b) Every claim arising under this Act shall be barred unless suit is filed thereon within sixty days after such claim first arises.

(c) The right to review by the Supreme Court provided under subsection (a) does not limit or restrict the right to judicial review of any other determination or decision made under this Act or such review as is otherwise provided by the Constitution or any other law of the United States.

EFFECTIVE DATE OF AMENDMENTS

SEC. 16. An amendment proposed to the Constitution of the United States shall be effective from the date specified therein or, if no date is specified, then ~~on~~ *one year after* the date on which the last State necessary to constitute three-fourths of the States of the United States, as provided for in article V, has ratified the same.

SEVERABILITY

SEC. 17. In the event that any part of this Act be held unconstitutional, the same shall not necessarily affect the validity of other sections of this Act.

Calendar No. 286

99TH CONGRESS
1ST SESSION

S. 40

[Report No. 99–135]

A BILL

To provide procedures for calling Federal constitutional conventions under article V for the purpose of proposing amendments to the United States Constitution.

SEPTEMBER 10 (legislative day, SEPTEMBER 9), 1985

Reported with amendments

356203

FE002

PY

Pat -

Pat, Comments on yours 1 page to DTR

Forgive my peeking over your shoulder on this. A few comments:

1) See attached. The media is on to Constitutional Convention. It is new and different, they know it'll make good news. I suspect there will be institutional resistance to this because it is radical. We must make the case that we've already "stumbled into it." It's a major initiative there for the taking. This is an epoch making issue -- legacy stuff that makes tax reform look puny. Who better to lead it than RR.

2) "Family" will be far more palatable to the corner office than "Right to Life." I'm afraid a R to L initiative will be rejected out of hand. However, it can be contained in a Family initiative. I'm not wimping out on you, but I have the same concerns about listing "Colorblind" up front. You've already broken a few lances on this one. There may be a way we can back in to this one and get what we want.

3) Do you have an A list, B list? Some here are time sensitive.

4) You ought to meet with Poindexter on Monday and work out a consensus for what is needed to:

   A. Finish COntra Aid;
   B. Return to, sustain, echo Pro Defense themes;
   C. Decide what are the best sub-themes -- ASAT, SDI, Nuc Testing. And Saudi Arm sales. This could be a real Black hole for political capital. 30 votes maybe in the Senate?
   D. Terrorism -- the Admiral may be more responsive to an Anti-T package than was the case 8 months ago...You're absolutely right. We need to be prepared on this one.

   Point is, I suspect that most of the building would be pleased to get off defense/national security issues and back to tax, free and fair trade, budget etc. If you and the Admiral agree in advance and make a unified pitch -- all the better.

5) We are working up draft communications plans on :

   -- The Judiciary
   -- The Family
   -- Tort Reform
   -- working on Const. COnvention.

   Will provide in final draft form, Monday p.m.

TG.

1. ~~trouble sustaining~~

THE WHITE HOUSE
WASHINGTON

TO: Pat

FROM: **TOM GIBSON**
Director of Public Affairs

– See attached & highlights from 3/26.

– Const. Convention is here. as an issue.

– I'll be amazed if we don't get a Q in the next press conf.

– Time to roll w/ it.

TG.

Speaker Briefing Wed Jan 29 - 2 - Balanced Budget Amendment Const. Convention

people for a balanced budget amendment to the Constitution leaves the matter in the hands of the states. It remains the President's hope that Congress will act responsibly to pass a balanced budget amendment, avoiding the need for a constitutional convention. If Congress does not act soon, the states will have no choice.

The President urges Congress to set aside its free-spending habits and to promptly act to propose a balanced budget amendment before the supporters of such an amendment have no other course than to pursue petitioning the remaining state legislatures.

The background on that is that Congress, of course, provides two methods for amending the Constitution. Congress must call a constitutional convention for proposing amendments when two-thirds of the states apply for one. That would be thirty-four states are required. There are thirty-two states calling for a balanced budget amendment in one form and another. Petitions have already been received.

Q Would the President support a constitutional convention?

MR. SPEAKES: It may be the only choice left to us in order to get a balanced budget is to go the route of the constitutional convention.

Q So he would support it?

MR. SPEAKES: It may be the only route. The President wants Congress to act, but if they fail to act, the route would be to go to the states. And the President --

Q But are you satisified --

Q The President says --

MR. SPEAKES: And the President may very well speak out in favor of state action on a constitutional convention for a balanced budget.

Q Larry, in all the time that we've been dealing with this, six years in office, Reagan has never gone to a state to campaign for ratification of this thing in any legislation.

MR. SPEAKES: That -- I wouldn't preclude that option.

Q Well, is he satisfied that you can limit the convention to just one subject once called?

MR. SPEAKES: There are constitutional questions about that, but the President feels strongly about the balanced budget. Every time he's run for office, he campaigned about it, in favor of it -- '76, '80, and '84.

file - press conference

next week. There must be a phase-in period that would allow appropriate time.

Q What phase-in does he anticipate?

MR. SPEAKES: Doesn't have a timetable for it. It would be worked out.

Q Did he seek or get any commitments from the Republicans who wouldn't vote for the balanced budget amendment to bring it up again later?

MR. SPEAKES: I don't think we've had an opportunity to do that. There were 10 Republicans that voted against it.

Peter?

Q Is there a time limit in which the President is willing to let the Senate, perhaps, think about it and reverse itself before he considers going out --

MR. SPEAKES: Second time that question has been asked. The President didn't set a time limit.

Dave?

Q Is the President at all concerned, though, that if he did go ahead with a constitutional convention that you might open up everything in the Constitution and all the protections they're in?

MR. SPEAKES: Certainly that's a question to be considered, but the President feels very strongly about this matter, which is obvious from the statement he authorized me to make.

Bob?

Q Larry, are you saying the President will consider going in these states and promoting it --

MR. SPEAKES: Yes.

Q -- or, in fact, he will --

MR. SPEAKES: Consider going into these states.

Q Will he do it tomorrow?

MR. SPEAKES: No.

Ira?

Q Does the President support this idea of having a federal capital budget, which I think is the reason that all these states can have a balanced budget?

MR. SPEAKES: Yes. I haven't heard him address it.

Charles?

Q But you said the President may feel strongly enough to support a constitutional convention. What are his reservations?

MR. SPEAKES: His reservations are to give the others an opportunity to act -- give the Congress an opportunity to act.

Q Well, wouldn't he either feel strongly enough to support it or not, regardless of whether Congress acts?

MR. SPEAKES: No. He wants Congress to act. He would prefer to give the Congress the opportunity to act on it. They

JV

ID # 372127 CU

FE002
DBW

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: George Reder

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: U.S. citizens denied constitutional rights

ROUTE TO: | **ACTION** | **DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CU HOLL	ORIGINATOR	85/12/30 PY		C	86/01/07 PY
Chat 14	Referral Note: R	86/01/03 PY	DBW	A	86/01/07 PY
	Referral Note:	/ /			/ /
	Referral Note:	/ /			/ /
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Prime Subject Code: PE002-__ Secondary Subject Codes: RE001.__ __ ____-__

__ ____-__ __ ____-__

__ ____-__ __ ____-__

PRESIDENTIAL REPLY

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DSP	_____	Time: _____	Media: _____

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- n - 6 - Ronald
- n - 7 - Ronnie

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- n - 0 - Unknown
- n - 1 - Nancy Reagan
- n - 2 - Nancy
- n - 3 - Mrs. Ronald Reagan

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- n - 1 - Ronald Reagan - Nancy Reagan
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- P - Photo
- R - Report
- S - Sealed
- T - Telegram
- V - Telephone
- X - Miscellaneous
- Y - Study

THE WHITE HOUSE

WASHINGTON

January 7, 1986

Dear Mr. Reder:

Your November 11, 1985 letter to the President has been referred to me for response.

Please be advised that the White House has no record of the October 9, 1985 correspondence referred to in your letter. Assuming it concerns your dispute with the U.S. Army, as I stated in my May 7, 1985 letter to you, it would be inappropriate for the President to become involved.

Sincerely,

David B. Waller
Senior Associate Counsel
to the President

Mr. George E. Reder, II
4709-39th Street
Lubbock, Texas 79414

"VETERAN'S DAY"

George E. Reder, II. [for Family Reder]
Disabled American Veteran
4709-39th Street
Lubbock, TX 79414
(806) 797-2480

11 November 1985

372127

President Ronald Reagan
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. President:

Regarding our letter to you of 9 Oct 85, as of this date, we have'nt received a response. Not even a short note (post card) courtesy answer.

As the past 6 have been an all-phase-sports qualified athletic official, and noted for training the worlds first female certified baseball umpire. We too like baseball, and believe everyone looks up to the winning team. Everyone would like to be on the winning team. And while we can appreciate you personally congratulating the winning pitcher of the 1985 World Series team, we find it equally hard to understand, that you place more importance on a "game," than in the defense of the "Constitution of the United States." As I'm a Disabled American Veteran, it is all the more disappointing.

As it has been more than thirty days since our initial contact with you, do we then accept as fact, that you approve and sanction citizens of the United States being surrepititously denied their guaranteed constitutional rights? It appears this would be a logical assumption. Are you willing to disprove that assumption?

George E. Reder, II.

Post Script: There is only one reason for the use of pen and ink in the body of this followup letter. It makes personality-stability, behavior-threat evaluation a simple task through graphology analysis. The result of which should be well within the accepted 'norm' standard.

ADMINISTRATIVELY SENSITIVE - not to be released without authority of the Counsel to the President

THE WHITE HOUSE

WASHINGTON

September 12, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: DEBORAH K. OWEN

SUBJECT: Lino Graglia Quote in 9/16/85 Newsweek Article re: The Constitution --

Pursuant to your request, I asked Grover Rees about the source of the quotation attributed to Lino Graglia in the above-referenced article. He indicated that it came from a National Review article which was included in a package of materials he once forwarded to this office. I have been unable to locate that article in our files, and Sherrie Cooksey reports that she does not recall having seen it. According to her, Justice was supposed to have provided all of his writings.

Mr. Rees feels that the first part of the quote (i.e., "The Constitution is neither very entertaining nor very informative . . . ") was taken out of context. According to him, the entire remark was to the effect that not many people read the Constitution because it is not entertaining or informative. With respect to the second part of the quote, relating to the Constitution not limiting the power of the states in certain areas, Mr. Rees acknowledged that it was correct, and volunteered that he agreed with it. Attached at Tab A is the National Review article, which I obtained from the library. I have highlighted the pertinent paragraph.

Also attached for your information at Tab B is a copy of a letter from Mr. Graglia to E. Pendleton James, presumably written during the transition period or early in the Administration, relating to what appears from the file to be a letter-writing campaign on his behalf. Please note the "P.S." for the archetype of judicial temperament. I discovered this while I was searching for the National Review article.

Attachments

OUR REGAL JUDICIARY / LINO A. GRAGLIA

WAS THE CONSTITUTION A GOOD IDEA?

THE ANNIVERSARY OF our achievement of political independence 208 years ago is an occasion not only for celebration but, more important, for examination of the current condition of our independence. That the ideals of personal liberty, individualism, and self-government with which we began as a nation have been allowed to deteriorate may be illustrated by a relatively minor recent incident that would once have been unthinkable in this country. A few months ago a low-level unelected and unremovable official of the national government—the federal district judge in east Texas—ordered that residents of two 52-unit housing developments in Clarksville, Texas, be evicted from their homes, which some of them had occupied for more than twenty years, because of their race. The Clarksville Housing Authority was ordered to assign them to new quarters so that each of the developments would have a racial balance 50 per cent black and 50 per cent white, give or take 5 per cent. There was of course much unhappiness and complaint from all or nearly all of the people involved, but in the United States of America in the year 1984 the order was carried out; the people were indeed removed from their homes, though not all of them would go where the judge had ordered them assigned.

Now, it is true that these people were poor and that the housing developments were government-subsidized projects —the citizens of Clarksville who could fully pay for their housing, it is reassuring to note, were not required to move and can continue to live in "racially imbalanced" areas, just as those who can pay for private schools can escape court-ordered racial busing—but even so, was there not a time in America when such a government edict would have occasioned protest? What outrages did the British perpetrate or threaten that provided better grounds for revolt? We have apparently become so accustomed to the control of our lives by federal judges that we have lost all sense of indignation and all heart for resistance. But if all we did was trade King George III for the federal district judge in east Texas, I doubt it was worth a revolution.

Political liberty requires that government be according to law and with the consent of the governed, not according to the whim of an irresponsible government official. Law is most likely to be good, or at least tolerable, the theory is, if made by those who must live under it. But where was the law—and who were the people that gave it their consent—that required the eviction of those families from their homes in Clarksville because of their race? Well, the law, the judge told us, was the grandest law of all, the United States Constitution, and surely you do not propose to utter a word against the Constitution. We will not regain our political freedom, my thesis is, unless we fully understand and are prepared to insist that what the judge told us in this case—and what the judges tell us in almost every case in which they invoke the Constitution—is simply not so.

Few people, it seems, have ever actually read the Constitution or have a clear idea of its structure and provisions. This is not surprising, because the Constitution is neither very entertaining nor very informative. Some knowledge of the Constitution has nonetheless become essential in order to understand clearly what it does *not* contain—in order to understand that it does not, for example, in any way limit the power of the states to restrict the availability of abortion or pornography or to permit prayer in the public schools.

Considering the remarkable things our judges have found in it, one could easily imagine that the Constitution is a very long and complex document, perhaps like the Bible or the Talmud or at least the tax code. It may be somewhat surprising, therefore, to be reminded that it is actually very short—easily printed, with all amendments, in a thin booklet of fewer than twenty pages—and apparently quite simple and straightforward. The Constitution was, after all, the result of the very practical and mundane purpose of granting the central government the power to ensure a national common market by removing barriers to interstate commerce.

The original Constitution, adopted in 1789 to replace the Articles of Confederation, is only about ten pages long and consists of seven articles or major sections. The first article, by far the longest, provides for the national legislature, the Congress. It consists mostly of provisions regarding methods of election and operating procedures, some of which are obsolete, having been changed by amendment. Although strengthening the national legislature, the Constitution was careful to leave general policymaking authority —the "general welfare" or "police" power—with the individual states. The national government was limited to specified powers, primarily the powers to tax, regulate foreign and interstate commerce, and provide for the common defense. The possession of wide-ranging and undefined pow-

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ers by the national judiciary is, of course, totally inconsistent with this basic constitutional scheme.

Article II of the Constitution, on the Presidency, consists largely of a description of the complicated method of selection, much of which is also obsolete. The very short third article, on the judiciary, creates a federal Supreme Court and grants Congress authority to create other federal courts. It explicitly provides for congressional control of the Supreme Court's appellate jurisdiction, a potentially important means of limiting the Court's power. Article III also provides for jury trial in federal criminal cases and narrowly defines the crime of treason. These three articles provide the framework for a complete system of national government, the basic function of the Constitution.

Article IV requires each state to give "full faith and credit" to the official acts and records and court judgments of other states, prohibits discrimination against out-of-staters, provides for the admission of new states, and provides that the United States shall guarantee each state "a republican form of government." Article V provides for the amendment of the Constitution; Article VI provides that the Constitution, and the laws and treaties made pursuant to it, shall be "the supreme law of the land"; and Article VII provides for ratification. That is essentially all there is to the original Constitution.

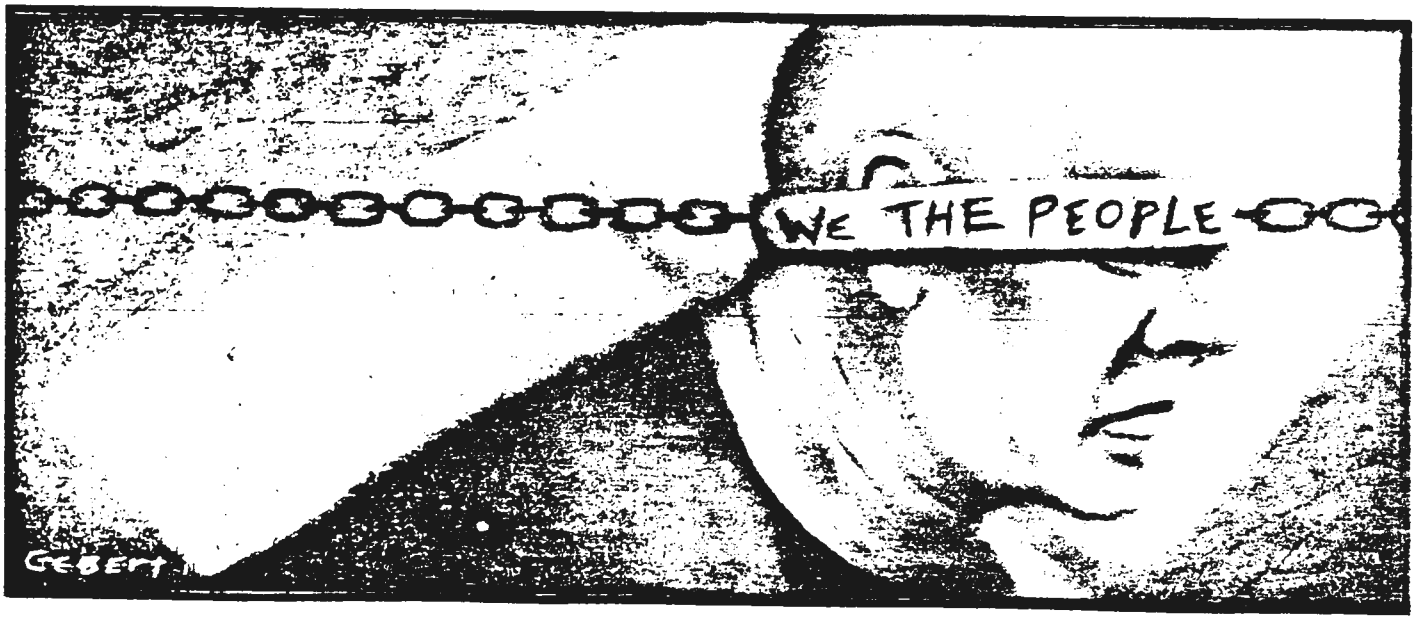
Apart from the fact that the national government was to be limited to its specified powers, the original Constitution placed very few restrictions on either the federal or the state governments. Some of these restrictions, such as that Congress could not prohibit the slave trade until the year 1808, are obsolete, and others, such as that neither the federal nor the state governments may grant any "title of nobility," have been of little or no importance. The Federal Government is prohibited from suspending the "writ of habeas corpus" except in emergencies, both the federal and the state governments are prohibited from enacting a "bill of attainder" or "ex post facto law," and the states are prohibited from enacting any law "impairing the obligation of contracts." Only the protection of contract rights —a "bulwark" against "socialist fantasy," Sir Henry Maine called it—has been important in giving rise to constitutional litigation.

Surprising as it may seem, the Constitution nowhere states that federal judges have the power to invalidate the acts of other officials or institutions of government. The extraordinary nature of this power, and the fact that it was without precedent in English law, should alone be taken as establishing that no such power was granted. Given the very few restrictions in the original Constitution, there was little basis for the exercise of such a power even if it had been granted. It is clear that the Constitution did not—and indeed still does not—contemplate a significant policymaking role for judges.

In 1791, two years after the adoption of the Constitution, ten amendments were adopted, the so-called Bill of Rights. The First Amendment, easily the most celebrated, provides that Congress shall not establish a religion or prohibit the free exercise of religion or abridge the freedom of speech or of the press or the rights of peaceful assembly and to petition government. Its basic purpose was to prohibit the Federal Government from licensing the press and from interfering in any way with state authority in matters of religion. That the religion clauses have become the means by which the Supreme Court *overrides* state authority regarding religion merely illustrates that constitutional law is not only not based on but often directly contrary to the Constitution.

After the First Amendment the Bill of Rights seems to go rapidly downhill. The Second Amendment, creating a right to bear arms in connection with the maintenance of a militia, seems to many people who are otherwise Bill of Rights enthusiasts to be obsolete and irrelevant—at best a nuisance constantly brought up by opponents of gun control. The Third Amendment, having to do with the quartering of soldiers in private houses, seems even more remote from and unrelated to any present-day concern. It is safe to say that few people have heard of it and fewer would miss it if it did not exist.

The remaining substantive provisions of the Bill of Rights have to do mostly with criminal procedure. The Fourth Amendment prohibits "unreasonable searches and seizures" and creates a search-warrant requirement. It creates no "exclusionary rule," which is solely an invention of the Warren Court, the effect of which is to divert the major issue in American criminal trials from the guilt of the accused, which is typically not seriously in doubt, to the



procedures by which the evidence of guilt was obtained.

The Fifth Amendment, something of a catchall, requires grand-jury indictments for "capital" and other serious crimes, prohibits putting a person twice in jeopardy of "life or limb" for the same offense, creates a privilege against self-incrimination, provides that no person shall be "deprived of life, liberty, or property without due process of law," and requires just compensation for the taking of private property for public use. The repeated references to capital punishment (referred to still again in the Fourteenth Amendment) are particularly noteworthy in light of the fact that the Supreme Court has come very close to holding (Justices Brennan and Marshall would simply hold) that capital punishment is constitutionally prohibited—another example of constitutional law made in the teeth of rather than in accordance with the Constitution.

The Sixth Amendment creates a right to jury trial in criminal cases, to be informed of the charge, to confront and compel the appearance of witnesses, and to have the assistance of counsel. The Seventh Amendment requires jury trials in civil cases involving more than $20. It is, almost all would agree, simply an embarrassment, an excellent illustration of the desirability of keeping constitutional limitations on self-government to a minimum.

Dred Scott was only one of many injuries inflicted on the nation by the Supreme Court in the name of the Constitution

The Eighth Amendment prohibits cruel and unusual punishments and excessive bail. The Ninth provides that the Constitution's enumeration of rights shall not be taken to deny or disparage other rights retained by the people, and the Tenth makes explicit that the states and the people retain all powers not delegated to the Federal Government.

It is very important to understand that the various provisions of the Bill of Rights were demanded and ratified by the states as limitations on the Federal Government, not as limitations on themselves, and it was early held by the Supreme Court that they have no application to the states. The next time someone tells you that, for example, a city cannot keep the Ku Klux Klan from parading through the heart of downtown (a recurring issue in Austin, Texas)—or prohibit pornographic bookstores or nude dancing, or permit prayer in public schools—because of the First Amendment, you might point out that that is very surprising considering that the first word of the First Amendment is "Congress" and that it nowhere mentions the states. Of course, you might also ask where, in any event, this defender of constitutional rights finds protection of nude dancing in the First Amendment—but be forewarned that the Supreme Court can find it and has found it.

Sixteen more amendments have been adopted since 1791. The Eleventh Amendment was adopted to overturn a Supreme Court decision that allowed states to be sued. The Supreme Court has never liked this amendment, however, and has therefore largely read it out of the Constitution—suing states and cities is today a major industry. Humpty Dumpty and other close students of language would no doubt find it fascinating that the very same act by a state official can be "state action" for the purposes of the Fourteenth Amendment, making the state liable to suit, yet not be state action for the purposes of the Eleventh Amendment, removing the state's immunity from suit.

The Twelfth Amendment changed the procedure for electing the President and Vice President. The Thirteenth, Fourteenth, and Fifteenth Amendments are known as the post-Civil War or Reconstruction Amendments; the Thirteenth abolished slavery, ratifying the Emancipation Proclamation, and the Fifteenth gave blacks the right to vote.

The Fourteenth Amendment was adopted for the very specific and limited purpose of guaranteeing blacks certain basic civil rights, such as to make contracts, own property, sue and be sued, and be subject only to equal punishments. In the hands of the Supreme Court, however, it has become by far the most important provision in the Constitution, in effect a second Constitution that has swallowed the first and transferred all policymaking power not only to the Federal Government but to the unelected branch of the Federal Government, the Court itself. Virtually every constitutional decision involving state law, which is to say the vast majority of all constitutional decisions, purports to be based on a single sentence of the Fourteenth Amendment, and indeed on four words: "due process" and "equal protection." By totally divorcing these words from their historic purposes, the Court has deprived them of meaning and therefore made them capable of meaning anything—magic formulas suitable for the Court's every purpose.

It is therefore essentially misleading to speak of "the Constitution" or "interpretation of the Constitution" in connection with Supreme Court decisions invalidating state law. No more is in fact involved than the Court's purported discovery of new meanings in "due process" and "equal protection." Supposedly on the basis of these two pairs of words the Court has reached such near-incredible decisions as that New York may not refuse to employ Communist Party members as public-school teachers and may not give college scholarship aid to American citizens unless it also gives it to resident aliens, that California may not punish the parading of obscenity through its courthouses, and that Oklahoma may not have a higher legal drinking age for males than for females, even though it is males who present the drunken-driving problem. Except for those four words, these and countless other matters, some of much greater importance, would still be left for decision by elected officials at the state or local level rather than by the majority vote of a committee of nine lawyers, unelected and life-tenured, sitting in Washington, D.C.

To complete our review of the Constitution, the Sixteenth Amendment gave Congress the power to levy an income tax, the Seventeenth provided for the direct election of senators, the Eighteenth gave us Prohibition, the Nineteenth gave women the right to vote, the Twentieth set new dates on which terms of elected federal officials would begin and end, and the Twenty-First repealed the Eighteenth.

The remaining five amendments I think of as modern or contemporary. That is, I can remember when they were adopted. The Twenty-Second Amendment, adopted in 1951, limits the President to two terms—which in my view is like most limitations on self-government, simply a mistake

The Twenty-Third, adopted in 1961, allows residents of Washington, D.C., to vote for President; the Twenty-Fourth, adopted in 1964, abolishes the poll tax in federal elections. The Supreme Court, however, seeing little value in confining the amendment process to Congress and the states as provided in the Constitution, then decided on its own to abolish the poll tax in state elections as well. The Twenty-Fifth Amendment, adopted in 1967, has to do with presidential succession, and finally the Twenty-Sixth, adopted in 1971, gives 18-year-olds the right to vote.

A proposed Twenty-Seventh Amendment, the Equal Rights Amendment, purported to prohibit all distinctions by government on the basis of sex. Because its literal interpretation would have been intolerable, its practical effect would have been to leave the difficult policy choices involved to federal judges, authorizing them to do what they now do without authority in the name of the Fourteenth Amendment.

We have lived now under the Constitution for almost two hundred years in unprecedented prosperity and freedom, and sound conservative principle cautions against changing what has proved workable. It may be doubted, however, that our success as a nation has been due to the Constitution, as interpreted by the Supreme Court, rather than in spite of it. We must not forget that but for the Supreme Court's interpretation of the Constitution in the notorious *Dred Scott* case, our greatest national tragedy, the Civil War, costing us more lives than all our other wars combined, might well have been avoided. The Court's decision that the Constitution precluded Congress from dealing with the slavery question made its resolution by war seem inevitable. A better illustration of the dangers of constitutional limitations on self-government would be difficult to imagine. On the basis of this one experience, it is doubtful that the net contribution of the Constitution to our national well-being has been positive, and it is certain that the net contribution of judicial review has been negative.

The *Dred Scott* decision was, however, only one of many injuries inflicted on the nation by the Supreme Court in the name of the Constitution. In the 1883 Civil Rights Cases, its next major constitutional decision invalidating a federal statute, the Court held that Congress could not prohibit compulsory racial segregation in places of public accommodation. The Court thereby gave us such segregation for another eighty years, until Congress again barred it in the 1964 Civil Rights Act. The Court's current contribution in the race area, busing for racial balance in the schools, is solidly in the *Dred Scott* and Civil Rights Cases tradition. Federal courts have recently ruled, for example, that the Atlanta public-school system, having become virtually all black, has finally achieved "unitary" status, after more than twenty years of compliance with court orders, and may therefore terminate its racial-balance efforts. The Boston and Denver public-school systems, however, although they have gone from majority to minority white while obeying busing orders, still have some whites left and must continue to attempt to distribute them evenly among the schools.

Even without judicial review, most constitutional restrictions are just bad ideas, the product of the mistaken and presumptuous notion that the people of one time are better able to deal with future problems than the people of future times will be. In constitution-making the rule should be the less the better, and a major virtue of our Constitution is its brevity. Indeed, except for what the Supreme Court has made of the Fourteenth Amendment, the Constitution would cause few problems today. Even the very brief original Constitution, however, manages to contain several provisions that are at best an inconvenience.

The Constitution provides, for example, that only a "natural born citizen" can be President. A great political leader could arise and become a much-admired senator or governor, but no matter how strongly the people wanted him for their national leader, he could not be elected President, unless he was born an American citizen. Felix Frankfurter and Albert Einstein, for example, were ineligible, as is Henry Kissinger. This was a source of concern some years ago when Governor George Romney of Michigan, who was not born in this country, was seeking the Republican presidential nomination. Surely this is a situation for which there is nothing to be said. Similarly, the Constitution "protects" us from any temptation we might have to elect a 34-year-old President, a 29-year-old senator, or a 24-year-old congressman. We have particular reason to be grateful today that the drafters did not also concern themselves with maximum ages for high federal office.

As Bishop Hoadly pointed out to the King in 1717, whoever has absolute authority to interpret the law is the true lawgiver

Still another example of a needless and potentially troublesome constitutional restriction is the provision that a member of Congress cannot be appointed to any federal office during the term for which he was elected if Congress had raised the salary of the office during that term. This caused a serious problem when President Nixon wanted to appoint Senator William Saxbe of Ohio to the office of Attorney General. The Attorney General's salary had recently been increased as part of a general salary increase for all federal employees. The result was that President Nixon wanted Senator Saxbe to be Attorney General, Senator Saxbe wanted to be Attorney General, and no one, apparently, was opposed. Unfortunately, it was unconstitutional, proving that a real constitutional issue can arise, but not necessarily to any good purpose.

Because, as Bishop Hoadly pointed out to the King in 1717, whoever has absolute authority to interpret the law is the true lawgiver, to leave the ultimate interpretation of the Constitution to unelected, lifetime judges is to invite subversion of self-government and tyranny. The prescient Tocqueville warned, long before the Court attained its present power, that though the President, whose power is limited, and Congress, which is subject to the electorate, might err without greatly injuring the nation, "if the Supreme Court is ever composed of imprudent or bad men, the Union may be plunged into anarchy or civil war." *Dred Scott* proved the accuracy of Tocqueville's warning, and the Court seems determined to prove it again.

Purporting merely to enforce the Constitution, the Su-

preme Court has for some thirty years usurped and exercised legislative powers that its predecessors could not have dreamed of, making itself the most powerful and important institution of government in regard to the nature and quality of life in our society. It has effectively remade America in its own image, according to a doctrinaire ideology based on egalitarianism and the rejection of traditional notions of morality and public order. It has literally decided issues of life and death, removing from the states the power to prevent or significantly restrain the practice of abortion and, after effectively prohibiting capital punishment for two decades, now imposing such costly and time-consuming restrictions on its use as almost to amount to prohibition.

In the area of morality and religion, the Court has removed from both the federal and state governments nearly all power to prohibit the distribution and sale or exhibition of pornographic materials. It has further weakened traditional sexual restraints, disallowing restrictions on the availability of contraceptives and lessening the stigma of illegitimacy by prohibiting government distinctions on that basis. It has prohibited the states from providing for prayer or Bible-reading in the public schools while also prohibiting virtually all government aid, state or federal, to religious schools.

What Phyllis Schlafly achieved by years of magnificent effort, Justice O'Connor can cancel with a stroke of her pen

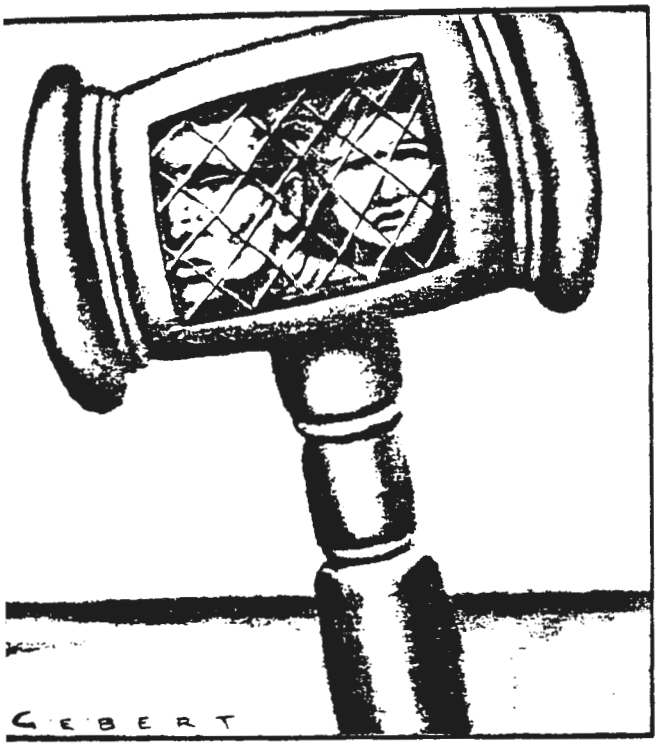
The Court has created for criminal defendants rights that do not exist under any other system of law—for example, the possibility of almost endless appeals with all costs paid by the state—and which have made the prosecution and conviction of criminals so complex and difficult as to make the attempt frequently seem not worth while. It has severely restricted the power of the states and cities to limit marches and other public demonstrations and otherwise maintain order in the streets and other public places, even though the result may be to require cities to spend thousands of dollars to prevent or control the disturbances the demonstrations may be intended to provoke.

Nothing, however, can better illustrate the extraordinary power the Supreme Court has now achieved than its busing decisions. It would have seemed incredible just a short time ago that the Court would be able to order the exclusion of public-school children from their neighborhood schools and their transportation to more distant schools because of their race. For more than a decade now, however, those orders have been handed down and faithfully complied with across the country despite the fact that they typically operate to increase racial separation not only in the schools but elsewhere and despite their obviously destructive impact on our public-school systems and our cities. Because a requirement of racial integration of the schools—compulsory racial discrimination by government in school assignment—cannot be defended, the Court has always insisted that there is no such requirement and that it orders busing only to enforce the 1954 *Brown* decision's *prohibition* of racial assignment. Difficult as it may be to believe, the only justification ever offered by the Supreme Court for its requirement of racial discrimination by government is that such discrimination is constitutionally prohibited.

Similarly, the Court has boldly asserted that its busing requirement is consistent with the 1964 Civil Rights Act. That act, however, states that "desegregation" means "the assignment of students to public schools . . . without regard to their race" and, redundantly, that it "shall not mean the assignment of students to public schools in order to overcome racial imbalance." The Court's definition of "desegregation" is of course directly to the contrary, requiring the assignment of students to schools on the basis of their race in order to overcome racial imbalance. As Senator Sam Ervin said in justified outrage, the act "says in about as plain words as can be found in English" that assignments are to be nonracial. Congress "could not have found simpler words to express that concept" and was careful to use language "that even a judge ought to be able to understand," he said, but "the Supreme Court nullified this act of Congress" by requiring racial assignment nonetheless in suits brought under the act. Perhaps the Court has obtained a sort of squatter's right to do what it wants with the Constitution, but it can claim no warrant deliberately to pervert a recent, clear, and specific act of Congress. Less egregious abuses of office by other government officials have led to calls for impeachment. But to the Supreme Court truth, logic, and the consequences of its acts impose no insurmountable obstacle. That, one is forced to admit in awe, is real power, power to which no mere elected official could aspire.

Given the Supreme Court's power, the selection of a Supreme Court Justice may well be the most important act a President may have an opportunity to perform. The Justice will decide a much wider range of issues than a President can, and he is likely to remain in office—as in the cases of Justices Douglas and Black, who served for more than a third of a century—long after the President is gone. The power to select Supreme Court Justices has therefore rightly become a major issue in recent presidential campaigns. The system of self-government through elected representatives with which we began as a nation has so deteriorated that we must now choose our highest elected official with care not so much because he will govern us as because he may have an opportunity to choose one or more of the judges who will govern us and whom we will be unable to remove.

Even the election of Presidents who campaign as opponents of judicial power has, however, apparently lost its effectiveness as a means of restraining the Supreme Court. The Court's power is now so firmly established and so widely accepted as to have the status of a force of nature largely impervious to political events. With his very first appointments to the Court, President Franklin D. Roosevelt ended forever the Court's opposition to the New Deal, and never again was a federal statute regulating the national economy or welfare, or a state statute regulating business, held unconstitutional (with one exception, later overruled). President Nixon was exceptionally fortunate to be able to make four appointments to the Court during his first term (President Carter, of course, made none, and



resident Reagan has made only one, and that was due to n unexpected resignation). The Court's power and willingess to govern not only has not been checked as a result f the Nixon appointments, however, but has continued o grow.

Chief Justice Burger, Nixon's first appointment, wrote he opinion in the *Swann* case, in which the Court first rdered busing for racial balance in the schools. Justice Blackmun, Nixon's second appointment, joined Justice Burger's opinion in *Swann* and wrote the opinion for the Court in *Roe* v. *Wade*, in which the Court for the first time created a constitutional right to have an abortion. Chief Justice Burger and Justice Powell, Nixon's third appointment, concurred in *Roe* v. *Wade*; of the four Nixon appointees, only Justice Rehnquist dissented. Justice Blackmun also wrote the precedent-shattering opinion in which the Court held that a state may not constitutionally prefer American citizens to resident aliens.

Illustrating the utter chanciness of government by the Supreme Court, if the Senate had not rejected President Nixon's first two choices for the seat that finally went to Justice Blackmun, we almost surely would no longer have court-ordered racial busing—the Court's 5 to 4 reaffirmation of busing in 1979, after backing off for some years, required Blackmun's vote—and abortion would probably still be a matter for regulation by the people of each state through the political process. Justice Blackmun has publicly identified the prohibition of such regulation as his greatest contribution to American life. Never in our history has so much turned on the will of a single individual not answerable to the people whose lives he controls.

Justice Stevens, appointed by President Ford to replace Justice Douglas, the most radical Justice in the Court's history, has voted indistinguishably from Douglas on busing, abortion, and most other basic social issues. Justice O'Connor, appointed by President Reagan, wrote the opinion for the Court holding that Mississippi is constitutionally prohibited from maintaining a nursing school for women even though it also maintains another nursing school of equal quality that admits men—a result unimaginable just a few years ago. The ERA could be defeated in the political arena, but nothing can prevent the Justices from enacting it anyway, and theirs are the only votes that ultimately count. What Phyllis Schlafly achieved by years of magnificent effort, Justice O'Connor can cancel with a stroke of her pen.

Similarly, despite numerous cases presenting the issue to the Court, the exclusionary rule has still not been rejected. In short, six appointments by Presidents ostensibly opposed to judicial activism have not been sufficient to reverse a single major innovation of the Warren Court and have, instead, produced further innovations.

Proponents of judicial review defend the power of the Supreme Court as necessary to the protection of individual liberties against government officials. The assumption, almost universal among academics, is that the American people are not to be trusted with self-government and are much in need of restraint by their moral and intellectual betters. It is somehow forgotten that Supreme Court Justices are themselves high government officials, and officials who, not being subject to the restraint of the ballot, are more, not less, subject to the corruption of power. It is also hard to understand why the search for moral and intellectual leaders, if that's to be the role of our judges, should be confined to members of the legal profession.

In any event, far from being essential to the preservation of our individual liberties, federal judges have become themselves the greatest source of danger to those liberties. It would be difficult to think of a more serious and widespread violation of liberty than that resulting from the Supreme Court's busing decisions—which also violate equality, in that their immediate impact is primarily on the less well off. By undermining effective enforcement of the criminal law—to say nothing of the Court's invalidation of traditional vagrancy statutes—the Court has diminished our liberty to walk the streets of our cities with a degree of security. The Court has admittedly done wonders for the liberties of street demonstrators, dear to the hearts of academics, but for the poor and elderly, forced to live in fear of the crime the Court's decisions have made more difficult to combat, the Court's contribution to liberty is less clear. Most important, every Court decision removing a policy issue from the political process deprives us of our most basic civil right, the right of self-government.

The issue presented by the Supreme Court's virtually unlimited power is, therefore, not whether we agree or disagree with its exercise in particular cases but whether we acquiesce in its usurpation by the Court. The great Judge Learned Hand protested that he would find it "most irksome to be ruled by a bevy of Platonic Guardians, even if I knew how to choose them, which I assuredly do not." I consider it not merely irksome but shameful to be ruled, not even by Platonic Guardians authorized and supposedly competent to rule, but by a handful of lawyers, elected by no one, holding office for life, and pretending to interpret the Constitution. Whatever may be the best system of government, that surely must be one of the worst. But I would, in any event, rather be misruled by my fellow citizens than saved from misrule by the Supreme Court. Bad government is a risk we must take; government by judges is an insult to our national heritage. □

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NAME OF CORRESPONDENT: BRIG. GENERAL JOHN E. MCDONALD RET.

SUBJECT: RECOMMENDS MR. BILL RINALDI OF DUNMORE FOR PARTICIPATION IN THE PROCEEDINGS OF THE 200TH ANNIVERSARY CELEBRATION OF THE UNITED STATES CONSTITUTION IN PHILADELPHIA, PENNSYLVANIA

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION ACT CODE	ACTION DATE YY/MM/DD	DISPOSITION TYPE RESP	DISPOSITION C D	DISPOSITION COMPLETED YY/MM/DD
KATJA BULLOCK	ORG	86/05/27	RT		86/05/29 AB
REFERRAL NOTE:					
REFERRAL NOTE:					
REFERRAL NOTE:					
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COMMENTS: _____

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES: ____ ____ ____

MI MAIL USER CODES: (A)_____ (B)_____ (C)_____

*ACTION CODES:	*DISPOSITION	*OUTGOING CORRESPONDENCE:
*A-APPROPRIATE ACTION	*A-ANSWERED	*TYPE RESP=INITIALS OF SIGNER
*C-COMMENT/RECOM	*B-NON-SPEC-REFERRAL	* CODE = A
*D-DRAFT RESPONSE	*C-COMPLETED	*COMPLETED = DATE OF OUTGOING
*F-FURNISH FACT SHEET	*S-SUSPENDED	
*I-INFO COPY/NO ACT NEC		
*R-DIRECT REPLY W/COPY		
*S-FOR-SIGNATURE		
*X-INTERIM REPLY		

REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE (ROOM 75,OEOB) EXT-2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS MANAGEMENT.

May 29, 1986

Dear General McDonald:

Thank you very much for your letter to President Reagan recommending Bill Rinaldi.

Regretfully, we must inform you that the President has made a tentative decision to appoint another individual to this position.

Please be assured that your recommendation will be included in our personnel files, and as we endeavor to select the most qualified individuals to serve in the Reagan Administration, your candidate will be given every consideration as other positions become available.

We greatly appreciate hearing from you on this matter and thank you again for your letter of recommendation.

Sincerely,

Robert H. Tuttle
Director of Presidential Personnel

General John E McDonald
2307 Adams Ave
Scranton, PA 18509

RECOMMENDATION ROUTING TICKET

CANDIDATE: Rinaldi, Bill

RCVD BY: PRR RECAGCY: CON

RECPOS: MBR

LTR# SENT: 14 PROCESS?: Y N

TO AD: ANF BSW KAR SAB MXS SEP RHT

DATE TO AD: 860529 AD TO FILES: ____

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RACCNR: 92814 FILESTAT: 2

****

INCOMPLETE RESUME

BAT: _____ LTR1 & FILESTAT W

****

COMPLETE RESUME

BAT: _____ LTR1 & FILESTAT C

YOB: _____ SSN: _____

****

AFTER REVIEW

FILESTAT:	AD	CF
POLRTG:	P	1
PRORTG:	P	1
RTGLVL:	1 (PAS)	2 (PA)
	3 (SES)	4 (SKC)

PAS/SES-LEAD: ANF BSW KAR

MXS SEP

PA-LEAD: SAB

SKC-LEAD: ESP ERS

LTR2: Y N

PARTY: _____ 1980 DOM: _____

RECFOR: _____ AT: ___

403816

KB

May 19,1986

Dear President Reagan:

I read with great interest the plans to celebrate the 200th anniversary of the United States Constitution in Philadelphia.

I believe I have an appropriate person to suggest for participation in the proceedings. Bill Rinaldi of Dunmore, Pennsylvania, symbolizes the elements integral to such an American happening. In his dual careers as a teacher of history and government for fifteen years and as an elected government official for fifteen years, he has demonstrated that even a severely disabled person can achieve success in our land of opportunity.

Bill has Duchenne Muscular Dystrophy and the doctors all stated that he would not live beyond puberty. His wheelchair confinement began at age six, and yet he became the first mainstreamed student in all his school settings and went on to significant academic achievement at every stage. The pattern of honors continued in his professional life with awards as Teacher of the Year, Educator of the Year, and Pennsylvania Citizen of the Year.

He has leadership roles in over thirty organizations highlighting his dedication as a volunteer to the causes he supports. These include civic responsibility, support of the arts, advocacy for the disabled, and activitivities which encourage the development and acceptance of individual potential.

Not only does he set an outsatanding example, he also brings the message to a wide variety of captivated audiences. For example, just this month he has addressed over 150 first graders to develop their empathetic understanding of persons with disabilities.

He also conducted a Seminar for the League Of Women Voters on "Local Goverment ". His current projects include the development of a Community Musical for his hometown's summer festival, and technical assistance toward the development of toys for handicapped children.

Bill is truly a remarkable and exceptional person. Loaded with talent, energy and a willingness to give of himself, Bill has won the respect and admiration of all with whom he deals. Therefore, I cannot help but to think how effective his participation in the Philadelphia Constitutional celebration would be.

I ask that you pass this suggestion and information on to the appropriate individuals planning the celebration.

Thank you.

Respectfully,

John E. McDonald
Brig.Gen. (Ret.)
2307 Adams Avenue
Scranton Pennsylvania,18509
Phone 717 342-2516

CC. Senator John Heinz
Senator Arlen Spector
Congressman Joseph McDade

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4800
1111

BREAKING FREE
incorporated

the spirit of enterprise

23 Joan Road
Stamford, CT 06905
(203) 329-9636

FE002
AH013-38
FE004
WE
50002

September 30, 1985

Honorable Patrick Buchanan
Assistant to the President
The White House
Washington, D. C. 20500

Dear Mr. Buchanan:

My sincere thanks to you for taking the time to hear my presentation on the bicentennial of the U. S Constitution and, specifically, my proposal for a presidential dinner honoring black flag officers. I also appreciate very much the complimentary things you had to say about our work thus far.

Your support for the President's participation in our combination salute to the Constitution and to black flag officers during black history month is critical and much appreciated. In addition to the obvious opportunity the President will have to remind Americans of the benefits and the costs of freedom, there are several tacit, but strong and positive, messages, going in several directions, that will emanate from this event.

Net financial proceeds from the dinner, if any, will be used solely to support the educational program that we plan for the bicentennial. This program will be developed and implemented by the BREAKING FREE Foundation, the Booker T. Washington Foundation, and such other 501(c)(3) organizations as deemed appropriate for the mission. Our primary objective is to heighten the awareness of the general public, especially youngsters, of the important links among freedom, enterprise and responsibility, of the natural individual creativity that flows from freedom, and of how the Constitution, by placing limits on government, protects individual economic freedom. Another objective is to leave tangible symbols of the new wave of national pride and optimism that is occurring in the 1980s, as we approach our 200th year as a nation. That the film "Wings on this Man" was narrated by Ronald Reagan and the current new wave of optimism is occurring under his leadership is no mere coincidence to those of us who believe in magic.

I realize that February is just around the corner, but I think you agree that it is the perfect month for the dinner. It does mean, however, that an early reply from the White House is important for success. Please let me know what I can do to help it along and how and when I can be of support to you.

Best regards,

Wendell Wilkie Gunn

(K) comments:
call Wendell
+ say we
have put in
sched. prep.
Done 10/24

BREAKING FREE
incorporated

the spirit of enterprise

23 Joan Road
Stamford, CT 06905
(203) 329-9636

September 24, 1985

9/30
Memo To Linda
Terrific—Idea
can you do a
Short Proposal
Put Me On It.
PAB

Honorable Patrick Buchanan
Assistant to the President
The White House
Washington, D. C. 20500

Dear Mr. Buchanan:

Enclosed please find a copy of a letter to Linda Chavez, requesting her assistance in securing the President's participation in a dinner salute to high-ranking black officers in the military as part of black history month and the bicentennial of the Constitution. The letter is self-explanatory. I trust that you too will find the proposal meritorious and support it as appropriate.

Please let me know if I can answer any questions for you in this regard. By the way, you are sorely missed by fans of the McLoughlin Group.

Best regards,

Wendell Wilkie Gunn

PB

September 24, 1985

Honorable Linda Chavez
Deputy Assistant to the President
The White House
Washington, D. C. 20500

Dear Ms. Chavez:

By way of introduction, for two years ending in June 1984, I was a Special Assistant to President Reagan for Policy Development, and Assistant Director of OPD for Commerce and Trade. I am now a private business consultant.

I am writing to seek your support in securing the President's participation in a salute by the Booker T. Washington Foundation and the Breaking Free Foundation to the black flag officers (admirals and generals) in the U. S. military, as part of our salute to the bicentennial of the Constitution of the United States and the celebration of Black History Month in February 1986.

The specific event being planned is a black tie dinner on a date in February, to be agreed upon among the White House, the Defense Department, the honorees and the principal sponsors, and the President will be asked to give the principal address. Dinner activities will include the showing of a 1945 film, entitled "Wings on This Man", an exciting documentary on the flight training school at Tuskegee Institute for black pilots who fought in World War II. The film's narrator was Ronald Reagan.

Other special invitees will include members of the Senate and House Armed Services Committees and Defense Appropriations Subcommittes, appropriate persons from the Executive Branch and the military, Tuskegee Institute officials, alumni of the Tuskegee flight training school, industry executives.

The Booker T. Washington Foundation and the Breaking Free Foundation believe that the bicentennial of the U. S. Constitution is a unique opportunity to increase public awareness, especially among young Americans, of the links among freedom, enterprise and responsibility. We are in the process of developing an educational program, directed toward young Americans, to serve precisely this purpose. I am also working with the U. S. Chamber of Commerce as a consultant in the development of their program for celebrating the bicentennial.

A new logo, "A Freedom Celebration", has been designed to capture what we will be celebrating, "an America bursting with opportunity, her spirit unleashed and breaking free" (R.R. 5/28/85). A new song has been composed, called "Freedom Ain't Free" (lyrics enclosed), which I was invited to perform at the first meeting of the President's Commission on the Bicentennial. Both the logo and the song will be prominently featured at the dinner.

As you know, the bicentennial celebration will climax in September 1987, just fifteen months before the end of the President's second term. It is important that its substance and its symbols reflect the current new wave of national pride and optimism that is occurring in the 1980s under his leadership, and give hope to our children for the future. We believe that our salute to black officers, our educational efforts, and our symbolism will be important contributions. Accordingly, we believe this to be an excellent event for the President to discuss freedom and the responsibility we have for protecting it.

If the President wishes to participate, an early decision will be necessary so the final date can be set and special preparations can be made. Please let me know what we can do to help you reach a positive and early decision. As a consultant to the Chamber, I am a frequent visitor to Washington and would be pleased to visit your office to discuss this proposal in more detail. In case you haven't seen it, I will try to bring a VCR copy of the film, "Wings on this Man". I will even bring my guitar and sing the song for you. I think you will like both.

Best regards,

Wendell Wilkie Gunn

Enclosures

cc: Honorable Patrick Buchanan ✓

A FREEDOM CELEBRATION

> "I see an America, bursting with opportunity, her spirit unleashed and breaking free".
> -- President Ronald W. Reagan

A FREEDOM CELEBRATION, created as a salute to the Constitution of the United States, is inspired by the belief that there are no limits to human energy and ingenuity. A symbol of individual freedom and initiative, it gives visual expression to the notions that freedom is the key to progress and that the struggle for freedom is never finished.

> "Central to all of the struggles 200 years ago, and today, was the insatiable human hunger for freedom."
> -- U. S. Chief Justice Warren Burger

The parabola & transverse (BREAKING FREE) illustrate graphically the central issue of the Constitutional struggle, then and now. Recognizing that either too little government or too much government can be harmful to the interests of the people, the objective was, and is, to find the balance that provides for "a more perfect union", while permitting individual freedom to flourish.

> "Everything that is really great and inspiring is created by men and women who labor in freedom."
> -- Albert Einstein

Alternatively, BREAKING FREE depicts a burst of energy, meeting, moving, and piercing through a barrier. It represents the energy of free individuals who actively seek success, including those who face special challenges and have the special energy required to meet them, and who, regardless of current circumstances, already sense that they will achieve it.

The BALD EAGLE symbolizes the spirit of America and, hence, the source of the energy in BREAKING FREE. The traditional eagle and the contemporary BREAKING FREE together combine old and new, attesting to the durability of the longest lasting written Constitution in the history of the world.

FIFTY STARS are included, representing the fifty states, even though only thirteen states existed when the Constitution was framed. Thirteen stars might have narrowed the celebration to those states, to the original Constitution and Bill of Rights, and to those persons who enjoyed full rights of citizenship at the time. A FREEDOM CELEBRATION salutes the entire Constitution with all of its amendments, including, importantly, the Thirteenth, Fourteenth, Fifteenth, and Nineteenth Amendments.

This Constitution has "undergirded pervasive freedom and creativity in the arts; in science, invention and technology; in speech, press and religion; in enterprise; and in methods of helping each other." The result is "a free, creative, problem-solving, enterprising America." (*)

By reaffirming the vital importance of freedom and the central role of enterprising individuals in human progress, A FREEDOM CELEBRATION represents the spirit that gave birth to America and transformed her in less than two hundred years from a small band of rebels into the strongest nation on earth.

(*) "Why Celebrate the Constitution", National Forum, Fall 1984.

FREEDOM AIN'T FREE (breaking free)

(stanza #1)
they said there'll be;
a new country;
where we can be everything that we can be.

secure for me;
life liberty;
on freedom's morn, when she was born, she was breaking free.

(stanza #2)
to write, to say;
protect and pray;
to come together peacefully in our own way.

take back your tea;
it ain't for me;
why should i pay if i can't play? make freedom be.

(refrain)
freedom ain't free;
they don't give it away;
we have to win it anew and protect it every day.

from sea to sea;
it's our country;
but if we want to be free, make freedom be.

(stanza #3)
i'll fight to see;
no chains on me;
i'll fight because tomorrow's nothing if we ain't free.

take from my neighbor;
you take from me;
i can't be free if he can't be, make freedom be.

(repeat refrain)

(bridge #1)
freedom is sacred, and it's sweet, but it's heavy;
the most precious gift of all, but it ain't free;

i want you to be free;
i want you here with me;
come walk with me, we can be free 'cause we'll be breaking free.

(repeat refrain)

* * * * *