# A Contemptible Congress and Derelict Court

BY WALTER WILLIAMS

What can Congress do that the Supreme Court would find unconstitutional? Or, what can Congress do that a president would veto as unconstitutional? It is not much exaggeration to say that Congress can do whatever it can muster a majority vote for, whether it is constitutional or not. The members only have to worry about political fallout.

It was not always this way. Up until the 1930s the Supreme Court ruled many state, local, and congressional acts, routinely accepted today, unconstitutional. Among them: minimum-wage laws, licensure laws, and much of FDR's New Deal legislation.

President James Madison vetoed a public-works bill saying, "Having considered the bill this day presented to me . . . . which sets apart and pledges funds 'for constructing roads and canals, and improving the navigation of water courses, in order to facilitate, promote, and give security to internal commerce among the several States, and to render more easy and less expensive the means and provisions for the common defense,' I am constrained by the insuperable difficulty I feel in reconciling the bill with the Constitution of the United States to return it with that objection to the House of Representatives. . . ."

President Grover Cleveland in vetoing a bill for charity relief said, "I can find no warrant for such an appropriation in the Constitution, and I do not believe that the power and duty of the General Government ought to be extended to the relief of individual suffering which is in no manner properly related to the public service or benefit."

President Franklin Pierce's 1854 veto of a measure to help the mentally ill read, "I cannot find any authority in the Constitution for public charity. [To approve the measure] would be contrary to the letter and spirit of the Constitution and subversive to the whole theory upon which the Union of these States is founded."

## That Was Then, This Is Now

For the better part of a century Congress, the president, and the Supreme Court have run roughshod over the constitutional limitations placed on them, using the pretense that their actions are constitutional under the General Welfare Clause or the Commerce Clause. Public complicity or ignorance allows them to get away with it. *Wickard v. Filburn*, a 1942 Supreme Court case, is a particularly egregious use of the Commerce Clause. Filburn was charged with exceeding his wheat acreage allotment in violation of the Agricultural Adjustment Act (AAA). He argued that since the wheat he grew was for his own consumption and not involved in interstate commerce, the AAA didn't apply to him. The Court disagreed, saying that since Filburn grew wheat for his own use, he would not be buying it in the market; therefore his actions did affect interstate commerce. That ruling made it possible for Congress to escape just about every limit placed on it by the Constitution. With such reasoning there is absolutely nothing anyone can do that does not, in one way or another, affect interstate com-

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merce and therefore give Congress the grounds to regulate it.

By permitting Congress to regulate so much of our lives under the Commerce Clause, the Supreme Court has changed the federal government from one of limited and enumerated powers to one with few exceptions to its power.

This vision in part provides the case for Congress to control our health care system. Some supporters of mandated health insurance assert that such a mandate lies within the power of Congress to regulate interstate commerce. Others have argued that the General Welfare Clause bestows that power. Yet others have pointed out that most states require car insurance, every challenge to which failed.

The term "general welfare" found in the introduction to the enumerated powers of Article I, Section 8 was never intended to extend Congress's power to regulate, tax, and spend. James Madison, the acknowledged father of our Constitution said, in a letter to Edmund Pendleton, "If Congress can do whatever in their discretion can be done by money, and will promote the General Welfare, the Government is no longer a limited one, possessing enumerated powers, but an indefinite one subject to particular exceptions." He virtually repeated himself in a letter to James Robertson: "With respect to the two words 'general welfare,' I have always regarded them as qualified by the detail of powers connected with them. To take them in a literal and unlimited sense would be a metamorphosis of the Constitution into a character which there is a host of proofs was not contemplated by its creators." Thomas Jefferson, in a letter to Albert Gallatin, said "Congress has not unlimited powers to provide for the general welfare, but only those specifically enumerated."

What about mandatory car insurance? To operate a motor vehicle one must obtain permission from the state, a driver's license. One who engages in that licensed activity must comply with the conditions of the licensing body, which can include, among other things, being old enough, passing a driver's test, and purchasing auto insurance. The driver simply agrees to the conditions. Auto insurance is a special requirement not a general one like Congress's mandate that everybody sign a contract with a health insurer or face fines and/or imprisonment. For mandatory auto insurance to be comparable to Congress's proposed mandatory health insurance, states would have to require it of all citizens, whether they operated a vehicle or not and regardless of their age.

What about the penalty Congress proposes for companies and individuals who refuse to set up a contract with a health insurance company? This is unconstitutional on its face. Article I, Section 8, giving Congress the power "To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States," is for the purpose of raising revenue to pay for the enumerated responsibilities of Congress. It was not written for the purpose of permitting Congress to punish those who did not establish congressionally mandated contracts.

Madison, in arguing for ratification of the Constitution, wrote Federalist No. 45, titled "Alleged Danger From the Powers of the Union to the State Governments Considered." He explained, "The powers delegated by the proposed Constitution to the federal government, are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State."

That is a vision completely the opposite of what exists today. One wonders what constitution did our congressmen and President swear to uphold and defend? FEE