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[White House Broadcast]

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RADIO ADDRESS OF THE PRESIDENT

THE WHITE HOUSE

TUESDAY, MARCH 9, 1937

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Last Thursday I described in detail certain economic problems which everyone admits now face the Nation. For the many messages which have come to me ~~after that speech~~, and which it is physically impossible to answer individually, I take this means of saying "thank you."

Tonight, sitting at my desk in the White House, I make my first radio report to the people in my second term of office.

I am reminded of that evening in March, four years ago, when I made my first radio report to you. We were then in the midst of the great banking crisis.

Soon after, with the authority of the Congress, we asked the Nation to turn over all of its privately held gold, dollar for dollar, to the Government of the United States.

Today's recovery proves how right that policy was.

But when, almost two years later, it came before the Supreme Court its constitutionality was upheld only by a five-four vote. The change of one vote would have thrown all the affairs of this great Nation back into hopeless chaos. In effect, four justices ruled that the right under a private contract to exact a pound of flesh was more sacred than the main objectives of the Constitution to establish an enduring Nation.

In 1933 you and I knew that we must never let our economic system get completely out of joint again -- that we could not afford to take the risk of another great depression.

We also became convinced that the only way to avoid a repetition of those dark days was to have a government with power to prevent and to cure the abuses and the inequalities which had thrown that system out of joint.

We then began a program of remedying those abuses and inequalities -- to give balance and stability to our economic system -- to make it bomb-proof against the causes of 1929.

Today we are only part-way through that program -- and recovery is speeding up to a point where the dangers of 1929 are again becoming possible, not this week or month perhaps, but within a year or two.

National laws are needed to complete that program. Individual or local or state effort alone cannot protect us in 1937 any better than ten years ago.

It will take time -- and plenty of time -- to work out our remedies administratively even after legislation is passed. To complete our program of protection in time, therefore, we cannot delay one moment in making certain that our national government has power to carry through.

Four years ago action did not come until the eleventh hour. It was almost too late.

If we learned anything from the depression we will not allow ourselves to run around in new circles of futile discussion and debate, always postponing the day of decision.

The American people have learned from the depression.

For in the last three national elections an overwhelming majority of them voted a mandate that the Congress and the President begin the task of providing that protection -- not after long years of debate, but now.

The courts, however, have cast doubts on the ability of the elected Congress to protect us against catastrophe by meeting squarely our modern social and economic conditions.

We are at a crisis in our ability to proceed with that protection. It is a quiet crisis. There are no lines of depositors outside closed banks. But to the far-sighted it is far-reaching in its possibilities of injury to America.

I want to talk with you very simply about the need for present action in this crisis -- the need to meet the unanswered challenge of one-third of a Nation ill-nourished, ill-clad, ill-housed.

Last Thursday I described the American form of government as a three horse team provided by the Constitution to the American people so that their field might be plowed. The three horses are, of course, the three branches of government -- the Congress, the Executive and the Courts. Two of the horses are pulling in unison today; the third is not. Those who have intimated that the President of the United States is trying to drive that team, overlook the simple fact that the President, as Chief Executive, is himself one of the three horses.

It is the American people themselves who are in the driver's seat.

It is the American people themselves who want the furrow plowed.

It is the American people themselves who expect the third horse to pull in unison with the other two.

I hope that you have re-read the Constitution of the United States. Like the Bible, it ought to be read again and again.

It is an easy document to understand when you remember that it was called into being because the Articles of Confederation under which the original thirteen states tried to operate after the Revolution showed the need of a national government with power enough to handle national problems. In its Preamble, the Constitution states that it was intended to form a more perfect Union and promote the general welfare; and the powers given to the Congress to carry out those purposes can be best described by saying that they were all the powers needed to meet each and every problem which then had a national character and which could not be met by merely local action.

But the framers went further. Having in mind that in succeeding generations many other problems then undreamed of would become national problems, they gave to the Congress the ample broad powers "to levy taxes \*\*\*\* and provide for the common defense and general welfare of the United States."

That, my friends, is what I honestly believe to have been the clear and underlying purpose of the patriots who wrote a Federal Constitution to create a national government with national power, intended as they said, "to form a more perfect union \*\*\*\* for ourselves and our posterity."

For nearly twenty years there was no conflict between the Congress and the Court. Then, in 1803, Congress passed a statute which the Court said violated an express provision of the Constitution. The Court claimed the power to declare it unconstitutional and did so declare it. But a little later the Court itself admitted that it was an extraordinary power to exercise and through Mr. Justice Washington laid down this limitation upon it: "It is but a decent respect due to the wisdom, the integrity and the patriotism of the Legislative body, by which any law is passed, to presume in favor of its validity until its violation of the Constitution is proved beyond all reasonable doubt."

But since the rise of the modern movement for social and economic progress through legislation, the Court has more and more often and more and more boldly asserted a power to veto laws passed by the Congress and State Legislatures in complete disregard of this original limitation.

In the last four years the sound rule of giving statutes the benefit of all reasonable doubt has been cast aside. The Court has been acting not as a judicial body, but as a policy-making body.

When the Congress has sought to stabilize national agriculture, to improve the conditions of labor, to safeguard business against unfair competition, to protect our national resources, and in many other ways, to serve our clearly national needs, the majority of the Court has been assuming the power to pass on the wisdom of these Acts of the Congress -- and to approve or disapprove the public policy written into these laws.

That is not only my accusation. It is the accusation of most distinguished Justices of the present Supreme Court. I have not the time to quote to you all the language used by dissenting Justices in many of these cases. But in the case holding the Railroad Retirement Act unconstitutional, for instance, Chief Justice Hughes said in a dissenting opinion that the majority opinion was "a departure from sound principles", and placed "an unwarranted limitation upon the commerce clause." And three other Justices agreed with him.

In the case holding the A.A.A. unconstitutional, Justice Stone said of the majority opinion that it was a "tortured construction of the Constitution." And two other Justices agreed with him.

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of poverty, subsistence and health of large numbers in the community, then "government is to be rendered impotent." And two other Justices agreed with him.

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In the face of these dissenting opinions, there is no basis for the claim made by some members of the Court that something in the Constitution has compelled them regretfully to thwart the will of the people.

In the face of such dissenting opinions, it is perfectly clear that, as Chief Justice Hughes has said: "We are under a Constitution but the Constitution is what the Judges say it is."

The Court, in addition to the proper use of its judicial functions has improperly set itself up as a third House of the Congress -- a super-legislature, as one of the Justices has called it -- reading into the Constitution words and implications which are not there, and which were never intended to be there.

We have, therefore, reached the point as a Nation where we must take action to save the Constitution from the Court and the Court from itself. We must find a way to take an appeal from the Supreme Court to the Constitution itself. We want a Supreme Court which will do justice under the Constitution -- not over it. In our courts we want a government of laws and not of men.

I want -- as all Americans want --an independent judiciary as proposed by the framers of the Constitution. That means a Supreme Court that will enforce the Constitution as written -- that will refuse to amend the Constitution by the arbitrary exercise of judicial power -- amendment by judicial say-so.

It does not mean a judiciary so independent that it can deny the existence of facts universally recognized.

How then could we proceed to perform the mandate given us? It was said in last year's Democratic platform "If these problems cannot be effectively solved within the Constitution,

we shall seek such clarifying amendment as will assure the power to enact those laws, adequately to regulate commerce, protect public health and safety, and safeguard economic security." In other words, we said we would seek an amendment only if every other possible means by legislation were to fail.

When I commenced to review the situation with the problem squarely before me, I came by a process of elimination to the conclusion that short of amendments the only method which was clearly constitutional, and would at the same time carry out other much needed reforms, was to infuse new blood into all our courts. We must have men worthy and equipped to carry out impartial justice. But, at the same time, we must have judges who will bring to the courts a present-day sense of the Constitution -- judges who will retain in the courts the judicial functions of a court, and reject the legislative powers which the courts have today assumed.

In forty-five out of the forty-eight States of the Union, judges are chosen not for life but for a period of years. In many States judges must retire at the age of seventy. Congress

has provided financial security by offering life pensions at full pay for federal judges on all courts who are willing to retire at seventy. In the case of Supreme Court Justices, that pension is \$20,000 a year. But all federal judges, once appointed, can, if they choose, hold office for life, no matter how old they may get to be.

What is my proposal? It is simply this: whenever a judge or justice of any federal court has reached the age of seventy and does not avail himself of the opportunity to retire on a pension, a new member shall be appointed by the President then in office, with the approval, as required by the Constitution, of the Senate of the United States.

That plan has two chief purposes. By bringing into the judicial system a steady and continuing stream of new and younger blood, I hope, first, to make the administration of all federal justice speedier and, therefore, less costly;

secondly, to bring to the decision of social and economic problems younger men who have had personal experience and contact with modern facts and circumstances under which average men have to live and work. This plan will save our national Constitution from hardening of the judicial arteries.

The number of Judges to be appointed would depend wholly on the decision of present Judges now over seventy, or those who would subsequently reach the age of seventy.

If, for instance, any one of the six Justices of the Supreme Court now over the age of seventy should retire as provided under the plan, ~~his place would not be filled~~, no additional place would be created. Consequently, although there never can be more than fifteen, there may be only fourteen, or thirteen, or twelve. And there may be only nine.

There is nothing novel or radical about this idea. It seeks to maintain the federal bench in full vigor. It has been discussed and approved by many persons of high authority ever since a similar proposal passed the House of Representatives in 1869.

Why was the age fixed at seventy? Because the laws of many states, the practice of the Civil Service, the regulations of the Army and Navy, and the rules of many of our Universities and of almost every great private business enterprise, commonly fix the retirement age at seventy years or less.

The statute would apply to all the Courts in the federal system. There is general approval so far as the lower federal courts are concerned. The plan has met opposition only so far as the Supreme Court of the United States itself is concerned.

But If such a plan is good for the lower courts it certainly ought to be equally good for the highest Court, from which there is no appeal.

Those opposing this plan have sought to arouse prejudice and fear by crying that I am seeking to "pack" the Supreme Court and that a baneful precedent will be established.

What do they mean by the words "packing the Court?"

Let me answer this question with a bluntness that will end all honest misunderstanding of my purposes.

If by that phrase "packing the Court" it is charged that I wish to place on the bench spineless puppets who would disregard the law and would decide specific cases as I wished them to be decided, I make this answer -- that no President fit for his office would appoint, and no Senate of honorable men fit for their office would confirm, that kind of appointees to the Supreme Court.

But if by that phrase the charge is made that I would appoint and the Senate would confirm Justices worthy to sit beside present members of the Court who understand those modern conditions -- that I will appoint Justices who will not undertake to override the judgment of the Congress on legislative policy -- that I will appoint Justices who will act as Justices and not as legislators -- if the appointment of such Justices can be called "packing the Court", then I say that I, and with me the vast majority of the American people, favor doing just that thing -- now.

Is it a dangerous precedent for the Congress to change the number of the Justices? The Congress has always had, and will have, that power. The number of Justices has been changed several times before -- in the Administrations of John Adams and Thomas Jefferson -- both signers of the Declaration of Independence -- <sup>of</sup> <sub>A</sub> Andrew Jackson, Abraham Lincoln and Ulysses S. Grant.

I suggest only the addition of Justices to the bench in accordance with a clearly defined principle relating to a clearly defined age limit. Fundamentally, if in the future, America cannot trust the Congress it elects to refrain from abuse of our constitutional usages, democracy will have failed far beyond the importance to it of any kind of precedent concerning the judiciary.

We think it so much in the public interest to maintain a vigorous judiciary that we encourage the retirement of elderly judges by offering them a life pension at full salary.

Why then should we leave the fulfillment of this public policy to chance or make it dependent upon the desire or prejudice of any individual Justice?

It is the clear intention of our public policy to provide for a constant flow of new and younger blood into the judiciary. Normally every President appoints a large number of District and Circuit Judges and a few members of the Supreme Court. Until my first term practically every President of the United States had appointed at least one member of the Supreme Court. President Taft appointed five members and named a Chief Justice -- President Wilson three -- President Harding four, including a Chief Justice -- President Coolidge one -- President Hoover three, including a Chief Justice.

Such a succession of appointments should have provided a Court well-balanced as to age. But chance and the disinclination of individuals to leave the Supreme bench have now given us a Court in which five Justices will be over seventy-five years of age before next June and one over seventy.

Thus a sound public policy has been defeated.

I now propose that we establish by law an assurance against any such ill-balanced Court in the future. I propose that hereafter, when a Judge reaches the age of seventy, a new and younger Judge shall be added to the Court automatically. In this way I propose to enforce a sound public policy by law instead of leaving the composition of our federal courts, including the highest, to be determined by chance or the personal decision of individuals.

If such a law as I propose is regarded as establishing a new precedent -- is it not a most desirable precedent?

Like all lawyers, like all Americans, I regret the necessity of this controversy. But the welfare of the United States, and indeed of the Constitution itself, is what we all must think about first. Our difficulty with the Court today rises not from the Court as an institution but from human beings within it. But we cannot yield our constitutional destiny to the personal judgment of a few men who, being fearful of the future, would deny us the necessary means of dealing with the present.

This plan of mine is no attack on the Court; it seeks to restore the Court to its rightful and historic place in our system of constitutional government and to have it resume its high task of building anew on the Constitution "a system of living law."

The Court itself can best undo what the Court has done.

I have thus explained to you the reasons that lie behind our efforts to secure results by legislation within the Constitution. I hope that thereby the difficult process of constitutional amendment may be rendered unnecessary. But let us examine that process.

There are many types of amendment proposed. Each one is radically different from the other. There is no substantial group within the Congress or outside it who are agreed on any single amendment.

It would take months or years to get substantial agreement upon the type and language of an amendment. It would take months and years thereafter to get a two-thirds majority in favor of that amendment in both Houses of the Congress.

Then would come the long course of ratification by three-fourths of the States. No amendment which any powerful economic interests or the leaders of any powerful political party have had reason to oppose has ever been ratified within anything like a reasonable time. And thirteen States which contain only five per cent of the voting population can block ratification even though the thirty-five States with ninety-five per cent of the population are in favor of it.

A very large percentage of newspaper publishers, Chambers of Commerce, Bar Associations, Manufacturers' Associations, who are trying to give the impression that they really do want a constitutional amendment would be the first to exclaim as soon as an amendment was proposed "Oh! I was for an amendment all right, but this amendment that you have proposed is not the kind of an amendment that I was thinking about. I am, therefore, going to spend my time, my efforts and my money to block that amendment, although I would be awfully glad to help get some other kind of amendment ratified."

Two groups oppose my plan on the ground that they favor a constitutional amendment. The first includes those who fundamentally object to social and economic legislation along modern lines. This is the same group who during the campaign last Fall tried to block the mandate of the people.

Now they are making a last stand. And the strategy of that last stand is to suggest the time-consuming process of amendment in order to kill off by delay the legislation demanded by the mandate.

To them I say -- I do not think you will be able long to fool the American people as to your purposes.

The other group is composed of those who honestly believe the amendment process is the best and who would be willing to support a reasonable amendment if they could agree on one.

To them I say -- we cannot rely on an amendment as the immediate or only answer to our present difficulties. When the time comes for action, you will find that many of those

who pretend to support you, will sabotage any constructive amendment which is proposed. Look at these strange bed-fellows of yours. When before have you found them really at your side in your fights for progress?

And remember one thing more. Even if an amendment were passed, and even if in the years to come it were to be ratified, its meaning would depend upon the kind of Justices who would be sitting on the Supreme Court bench. An amendment, like the rest of the Constitution, is what the Justices say it is rather than what its framers or you might hope it is.

This proposal of mine will not infringe in the slightest upon the civil or religious liberties so dear to every American.

My record as Governor and as President proves my devotion to those liberties. You who know me can have no fear that I would tolerate the destruction by any branch of government of any part of our heritage of freedom.

The present attempt by those opposed to progress to play upon the fears of danger to personal liberty brings again to

mind that crude and cruel strategy tried by the same opposition to frighten the workers of America in a pay-envelope propaganda against the Social Security Law. The workers were not fooled by that propaganda then. The people of America will not be fooled by such propaganda now.

I am in favor of action through legislation.

First, because I believe that it can be passed at this session of the Congress.

Second, because it will provide a reinvigorated, liberal-minded Judiciary necessary to furnish quicker and cheaper justice from bottom to top.

Third, because it will provide a series of federal courts willing to enforce the Constitution as written, and unwilling to assert legislative powers by writing into it their own political and economic policies.

During the past half century the balance of power between the three great branches of the Federal Government, has been tipped out of balance by the courts in direct contradiction of the high purposes of the framers of the Constitution. It is my

purpose to restore that balance. You who know me will accept  
my solemn assurance that in a world in which democracy is  
under attack, I seek to make American democracy succeed. *You*  
*and I will do our part.*

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*F.D.Roosevelt*

*Original reading copy*

Franklin D. Roosevelt / 1041

ADDRESS OF THE PRESIDENT  
Broadcast from the White House  
March 9, 1937, 10:30 P.M.

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I am reminded of that evening in March, four years ago, when I made my first radio report to you. We were then in the midst of the great banking crisis.

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In 1933 you and I knew that we must never let our economic system get completely out of joint again -- that we could not afford to take the risk of another great depression.

Franklin D. Roosevelt Library

This is a transcript made by the White House stenographer from his shorthand notes taken at the time the speech was made. Underlining indicates words extemporaneously added to the previously prepared reading copy text. Words in parentheses are words that were omitted when the speech was delivered, though they appear in the previously prepared reading copy text.

...not least" applies to  
you older I could wish out of school you in particular, though  
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than desire most, certain of guidance that to behavior as I  
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The statute would apply to all the Courts in the Federal system. There is general approval so far as the lower Federal courts are concerned. The plan has met opposition only so far as the Supreme Court of the United States itself is concerned. But, my friends, if such a plan is good for the lower courts it certainly ought to be equally good for the highest Court from which there is no appeal.

Those opposing this plan have sought to arouse prejudice and fear by crying that I am seeking to "pack" the Supreme Court and that a baneful precedent will be established.

What do they mean by the words "packing the Supreme Court"?

Let me answer this question with a bluntness that will end all honest misunderstanding of my purposes.

If by that phrase "packing the Court" it is charged that I wish to place on the bench spineless puppets who would disregard the law and would decide specific cases as I wished them to be decided, I make this answer -- that no President fit for his office would appoint, and no Senate of honorable men fit for their office would confirm, that kind of appointees to the Supreme Court.

But if by that phrase the charge is made that I would appoint and the Senate would confirm Justices worthy to sit beside present members of the Court who understand (these) modern conditions -- that I will appoint Justices who will not undertake to override the judgment of the Congress on legislative policy -- that I will appoint Justices who will act as Justices and not as legislators -- if the appointment of such Justices can be called "packing the Court(s)," then I say that I, and with me the vast majority of the American people, favor doing just that thing -- now.

Is it a dangerous precedent for the Congress to change the number of the Justices? The Congress has always had, and will have, that power. The number of Justices has been changed several times before -- in the Administrations of John Adams and Thomas Jefferson -- both of them signers of the Declaration of Independence -- in the Administrations of Andrew Jackson, Abraham Lincoln and Ulysses S. Grant.

I suggest only the addition of Justices to the bench in accordance with a clearly defined principle relating to a clearly defined age limit. Fundamentally, if in the future, America cannot trust the Congress it elects to refrain from abuse of our

Constitutional usages, democracy will have failed far beyond the importance to (it) democracy of any kind of precedent concerning the Judiciary.

We think it so much in the public interest to maintain a vigorous judiciary that we encourage the retirement of elderly Judges by offering them a life pension at full salary. Why then should we leave the fulfillment of this public policy to chance or make it dependent upon the desire or prejudice of any individual Justice?

It is the clear intention of our public policy to provide for a constant flow of new and younger blood into the Judiciary. Normally every President appoints a large number of District and Circuit Judges and a few members of the Supreme Court. Until my first term practically every President of the United States in our history had appointed at least one member of the Supreme Court. President Taft appointed five members and named a Chief Justice -- President Wilson three -- President Harding four including a Chief Justice -- President Coolidge one -- President Hoover three including a Chief Justice.

Such a succession of appointments should have provided a Court well-balanced as to age. But chance and the disinclination of individuals to leave the Supreme bench have now given us a Court in which five Justices will be over seventy-five years of age before next June and one over seventy. Thus a sound public policy has been defeated.

So, I now propose that we establish by law an assurance against any such ill-balanced Court in the future. I propose that hereafter, when a Judge reaches the age of seventy, a new and younger

Judge shall be added to the Court automatically. In this way I propose to enforce a sound public policy by law instead of leaving the composition of our Federal Courts, including the highest, to be determined by chance or the personal decision of individuals.

If such a law as I propose is regarded as establishing a new precedent -- is it not a most desirable precedent?

Like all lawyers, like all Americans, I regret the necessity of this controversy. But the welfare of the United States, and indeed of the Constitution itself, is what we all must think about first. Our difficulty with the Court today rises not from the Court as an institution but from human beings within it. But we cannot yield our constitutional destiny to the personal judgment of a few men who, being fearful of the future, would deny us the necessary means of dealing with the present.

This plan of mine is no attack on the Court; it seeks to restore the Court to its rightful and historic place in our system of Constitutional Government and to have it resume its high task of building anew on the Constitution "a system of living law." The Court itself can best undo what the Court has done.

I have thus explained to you the reasons that lie behind our efforts to secure results by legislation within the Constitution. I hope that thereby the difficult process of constitutional amendment may be rendered unnecessary. But let us examine that process.

There are many types of amendment proposed. Each one is radically different from the other. But there is no substantial group within the Congress or outside (it) the Congress who are agreed on any single amendment.

I believe that it would take months or years to get substantial agreement upon the type and language of an amendment. It would take months and years thereafter to get a two-thirds majority in favor of that amendment in both Houses of the Congress.

Then would come the long course of ratification by three-fourths of all the states. No amendment which any powerful economic interests or the leaders of any powerful political party have had reason to oppose has ever been ratified within anything like a reasonable time. And remember that thirteen states which contain only five per cent of the voting population can block ratification even though the thirty-five states with ninety-five per cent of the population are in favor of it.

A very large percentage of newspaper publishers, and Chambers of Commerce, and Bar Associations, and Manufacturers' Associations, who are trying to give the impression today that they really do want a constitutional amendment would be the first to exclaim as soon as an amendment was proposed, "Oh! I was for an amendment all right, but this amendment that you have proposed is not the kind of an amendment that I was thinking about. And so I am (therefore) going to spend my time, my efforts and my money to block that amendment, although I would be awfully glad to help to get some other kind of an amendment ratified."

Two groups oppose my plan on the ground that they favor a constitutional amendment. The first includes those who fundamentally object to social and economic legislation along modern lines. This is the same group who during the recent campaign (last Fall) tried to block the mandate of the people.

Now they are making a last stand. And the strategy of that last stand is to suggest the time-consuming process of amendment in order to kill off by delay the legislation demanded by the mandate.

To them those people I say -- I do not think you will be able long to fool the American people as to your purposes.

The other group is composed of those who honestly believe the amendment process is the best and who would be willing to support a reasonable amendment if they could agree on one.

To them I say -- we cannot rely on an amendment as the immediate or only answer to our present difficulties. When the time comes for action, you will find that many of those who pretend to support you will sabotage any constructive amendment which is proposed. Look at these strange bed-fellows of yours. When before have you found them really at your side in your fights for progress?

And remember one thing more. Even if an amendment were passed, and even if in the years to come it were to be ratified, its meaning would depend upon the kind of Justices who would be sitting on the Supreme Court bench. For an amendment, like the rest of the Constitution, is what the Justices say it is rather than what its framers or you might hope it is.

This proposal of mine will not infringe in the slightest upon the civil or religious liberties so dear to every American.

My record as Governor and as President proves my devotion to those liberties. You who know me can have no fear that I would tolerate the destruction by any branch of government of any part of our heritage of freedom.

The present attempt by those opposed to progress to play upon the fears of danger to personal liberty brings again to mind that crude and cruel strategy tried by the same opposition to frighten the workers of America in a pay-envelope propaganda against the Social Security Law. The workers were not fooled by that propaganda then, and the people of America will not be fooled by such propaganda now.

I am in favor of action through legislation:

First, because I believe (that) it can be passed at this session of the Congress.

Second, because it will provide a reinvigorated, liberal-minded Judiciary necessary to furnish quicker and cheaper justice from bottom to top.

Third, because it will provide a series of Federal Courts willing to enforce the Constitution as written, and unwilling to assert legislative powers by writing into it their own political and economic policies.

During the (past) last half century the balance of power between the three great branches of the Federal Government, has been tipped out of balance by the Courts in direct contradiction of the high purposes of the framers of the Constitution. It is my purpose to restore that balance. You who know me will accept my solemn assurance that in a world in which democracy is under attack, I seek to make American democracy succeed.

You and I will do our part.

STATEMENTS FILE  
Shorthand By Kanner

HOLD FOR RELEASEHOLD FOR RELEASEHOLD FOR RELEASEFOR THE PRESS

March 9, 1937

**CAUTION:** This address of the President, to be broadcast from the White House, is for release in editions of newspapers appearing on the streets not earlier than 10:30 P. M., Eastern Standard Time.

**NOTE:** Care must be exercised to prevent premature publication.

STEPHEN EARLY  
 Assistant Secretary to the President

*My friends,*  
 Last Thursday I described in detail certain economic problems which everyone admits now face the Nation. For the many messages which have come to me after that speech, and which it is physically impossible to answer individually, I take this means of saying "thank you."

Tonight, sitting at my desk in the White House, I make my first radio report to the people in my second term of office.

I am reminded of that evening in March, four years ago, when I made my first radio report to you. We were then in the midst of the great banking crisis.

Soon after, with the authority of the Congress, we asked the Nation to turn over all of its privately held gold, dollar for dollar, to the Government of the United States.

Today's recovery proves how right that policy was.

But when, almost two years later, it came before the Supreme Court its constitutionality was upheld only by a five-to-four vote. The change of one vote would have thrown all the affairs of this great Nation back into hopeless chaos. In effect, four Justices ruled that the right under a private contract to exact a pound of flesh was more sacred than the main objectives of the Constitution to establish an enduring Nation.

In 1933 you and I knew that we must never let our economic system get completely cut off joint again -- that we could not afford to take the risk of another great depression.

We also became convinced that the only way to avoid a repetition of those dark days was to have a government with power to prevent and to cure the abuses and the inequalities which had thrown that system out of joint.

We then began a program of remedying those abuses and inequalities -- to give balance and stability to our economic system -- to make it bomb-proof against the causes of 1929.

Today we are only part-way through that program -- and recovery is speeding up to a point where the dangers of 1929 are again becoming possible, not this week or month perhaps, but within a year or two.

National laws are needed to complete that program. Individual or local or state effort alone cannot protect us in 1937 any better than ten years ago.

It will take time -- and plenty of time -- to work out our remedies administratively even after legislation is passed. To complete our program of protection in time, therefore, we cannot delay one moment in making certain that our National Government has power to carry through.

Four years ago action did not come until the eleventh hour. It was almost too late.

If we learned anything from the depression we will not allow ourselves to run around in new circles of futile discussion and debate, always postponing the day of decision.

The American people have learned from the depression. For in the last three national elections an overwhelming majority of them voted a mandate that the Congress and the President begin the task of providing that protection -- not after long years of debate, but now.

The Courts, however, have cast doubts on the ability of the elected Congress to protect us against catastrophe by meeting squarely our modern social and economic conditions.

We are at a crisis <sup>in</sup> our ability to proceed with that protection. It is a quiet crisis. There are no lines of depositors outside closed banks. But to the far-sighted it is far-reaching in its possibilities of injury to America.

I want to talk with you very simply <sup>tonight</sup> about the need for present action in this crisis -- the need to meet the unanswered challenge of one-third of a Nation ill-nourished, ill-clad, ill-housed.

Yesterday I described the American form of Government as a three horse team provided by the Constitution to the American people so that their field might be plowed. The three horses are, of course, the three branches of government -- the Congress, the Executive and the Courts. Two of the horses are pulling in unison today; the third is not. Those who have intimated that the President of the United States is trying to drive that team, overlook the simple fact that the President, as Chief Executive, is himself one of the three horses.

It is the American people themselves who are in the driver's seat.

It is the American people themselves who want the furrow plowed.

It is the American people themselves who expect the third horse to pull in unison with the other two.

I hope that you have re-read the Constitution of the United States. Like the Bible, it ought to be read again and again.

It is an easy document to understand when you remember that it was called into being because the Articles of Confederation under which the original thirteen States tried to operate after the Revolution showed the need of a National Government with power enough to handle national problems. In its Preamble, the Constitution states that it was intended to form a more perfect Union and promote the general welfare; and the powers given to the Congress to carry out those purposes can best be described by saying that they were all the powers needed to meet each and every problem which then had a national character and which could not be met by merely local action.

But the framers went further. Having in mind that in succeeding generations many other problems than undreamed of would become national problems, they gave to the Congress the ample broad powers "to levy taxes"\*\*\*and provide for the common defense and general welfare of the United States."

That, my friends, is what I honestly believe to have been the clear and underlying purpose of the patriots who wrote a Federal Constitution to create a National Government with national power, intended as they said, "to form a more perfect union"\*\*\* for ourselves and our posterity."

For nearly twenty years there was no conflict between the Congress and the Court. Then, in 1803, Congress passed a statute which the Court said violated an express provision of the Constitution. The Court claimed the power to declare it unconstitutional and did so declare it. But a little later the Court itself admitted that it was an extraordinary power to exercise and through Mr. Justice Washington laid down this limitation upon it: "It is but a decent respect due to the wisdom, the integrity and the patriotism of the Legislative body, by which any law is passed, to presume in favor of its validity until its violation of the Constitution is proved beyond all reasonable doubt."

But since the rise of the modern movement for social and economic progress through legislation, the Court has more and more often and more and more boldly asserted a power to veto laws passed by the Congress and State Legislatures in complete disregard of this original limitation, *which I have just read.*

In the last four years the sound rule of giving statutes the benefit of all reasonable doubt has been cast aside. The Court has been acting not as a judicial body, but as a policy-making body.

When the Congress has sought to stabilize national agriculture, to improve the conditions of labor, to safeguard business against unfair competition, to protect our national resources, and in many other ways, to serve our clearly national needs, the majority of the Court has been assuming the power to pass on the wisdom of these Acts of the Congress -- and to approve or disapprove the public policy written into these laws.

That is not only my accusation. It is the accusation of most distinguished Justices of the present Supreme Court. I have not the time to quote to you all the language used by dissenting Justices in many of these cases. But in the case holding the Railroad Retirement Act unconstitutional, for instance, Chief Justice Hughes said in a dissenting opinion that the majority opinion was "a departure from sound principles", and placed "an unwarranted limitation upon the commerce clause." And three other Justices agreed with him.

*3a (A.A.A.)*  
In the case holding the ~~Revenue~~ unconstitutional, Justice Stone said of the majority opinion that it was a "tortured construction of the Constitution." And two other Justices agreed with him.

In the case holding the New York Minimum Wage Law unconstitutional, Justice Stone said that the majority were actually reading into the Constitution their own "personal economic predilections", and that if the legislative power is not left free to choose the methods of solving the problems of poverty, subsistence and health of large numbers in the community, then "government is to be rendered impotent." And two other Justices agreed with him.

In the face of these dissenting opinions, there is no basis for the claim made by some members of the Court that something in the Constitution has compelled them regrettably to thwart the will of the people.

In the face of such dissenting opinions, it is perfectly clear, that, as Chief Justice Hughes has said: "We are under a Constitution but the Constitution is what the Judges say it is."

The Court, in addition to the proper use of its judicial functions, has improperly set itself up as a third House of the Congress—a super-legislature, as one of the Justices has called it—reading into the Constitution words and implications which are not there, and which were never intended to be there.

We have, therefore, reached the point as a Nation where we must take action to save the Constitution from the Court and the Court from itself. We must find a way to take an appeal from the Supreme Court to the Constitution itself. We want a Supreme Court which will do justice under the Constitution—not over it. In our Courts we want a government of laws and not of men.

I want—as all Americans want—an independent judiciary as proposed by the framers of the Constitution. That means a Supreme Court that will enforce the Constitution as written—that will refuse to amend the Constitution by the arbitrary exercise of judicial power—amendment by judicial say-so. It does not mean a judiciary so independent that it can deny the existence of facts *which are* universally recognized. *(in other words,* *✓* *and here are the* *words.)*

How then could we proceed to perform the mandate given us? It was said in last year's Democratic platform: *If those problems cannot be effectively solved within the Constitution, we shall seek such clarifying amendment as will assure the power to enact those laws, adequately to regulate commerce, protect public health and safety, and safeguard economic security.*" In other words, we said we would seek an amendment only if every other possible means by legislation were to fail.

When I commenced to review the situation with the problem squarely before me, I came by a process of elimination to the conclusion that short of amendments the only method which was clearly constitutional, and would at the same time carry out other much needed reforms, was to infuse new blood into all our Courts. We must have men worthy and equipped to carry out impartial justice. But, at the same time, we must have Judges who will bring to the Courts a present-day sense of the Constitution—Judges who will retain in the Courts the judicial functions of a court, and reject the legislative powers which the Courts have today assumed.

*What well for us to remember that*

*1* *An* *forty-five* *out of the forty-eight States of the Union,* *Judges are chosen not for life but for a period of years.* *In many States Judges must retire at the age of seventy.* *Congress has provided financial security by offering life pensions at full pay for Federal Judges on all Courts who are willing to retire at seventy.* *In the case of Supreme Court Justices, that pension is \$20,000 a year.* *But all Federal Judges, once appointed, can, if they choose, hold office for life, no matter how old they may get to be.*

What is my proposal? It is simply this: *Whenever a Judge* *✓*

or Justice of any Federal Court has reached the age of seventy and does not avail himself of the opportunity to retire on a pension, a new member shall be appointed by the President then in office, with the approval, as required by the Constitution, of the Senate of the United States.

That plan has two chief purposes. By bringing into the Judicial system a steady and continuing stream of new and younger blood, I hope, first, to make the administration of all Federal justice easier and, therefore, less costly; secondly, to bring to the decision of social and economic problems younger men who have had personal experience and contact with modern facts and circumstances under which average men have to live and work. This plan will save our national Constitution from hardening of the judicial arteries.

The number of Judges to be appointed would depend wholly on the decision of present Judges now over seventy, or those who would subsequently reach the age of seventy.

If, for instance, any one of the six Justices of the Supreme Court now over the age of seventy should retire as provided under the plan, ~~the place would not be filled~~ <sup>(the place would not be filled)</sup> ~~one additional~~ <sup>place would be created</sup>. Consequently, although there never can be more than fifteen, there may be only fourteen, or thirteen, or twelve. And there may be only nine.

There is nothing novel or radical about this idea. It seeks to maintain the Federal bench in full vigor. It has been discussed and approved by many persons of high authority ever since a similar proposal passed the House of Representatives in 1869.

Why was the age fixed at seventy? Because the laws of many States, the practice of the Civil Service, the regulations of the Army and Navy, and the rules of many of our Universities and of almost every great private business enterprise, commonly fix the retirement age at seventy years or less.

The statute would apply to all the Courts in the Federal system. There is general approval so far as the lower Federal courts are concerned. The plan has met opposition only so far as the Supreme Court of the United States itself is concerned. If such a plan is good for the lower courts it certainly ought to be equally good for the highest Court from which there is no appeal.

*Book mark  
pinched*  
Those opposing this plan have sought to arouse prejudice and fear by crying that I am seeking to "pack" the Supreme Court and that a baneful precedent will be established.

What do they mean by the words "packing the Court?"

Let me answer this question with a bluntness that will end all honest misunderstanding of my purposes.

If by that phrase "packing the Court" it is charged that I wish to place on the bench spineless puppets who would disregard the law and would decide specific cases as I wished them to be decided, I make this answer -- that no President fit for his office would appoint, and no Senate of honorable men fit for their office would confirm, that kind of appointees to the Supreme Court.

But if by that phrase the charge is made that I would appoint and the Senate would confirm Justices worthy to sit beside

(here)

present members of the Court who understand ~~these~~ modern conditions -- that I will appoint Justices who will not undertake to override the judgment of the Congress on legislative policy-- that I will appoint Justices who will act as Justices and not as legislators--if the appointment of such Justices can be called "packing the Court", then I say that I and with me the vast majority of the American people favor doing just that thing--now.

Is it a dangerous precedent for the Congress to change the number of the Justices? The Congress has always had, and will have, that power. The number of Justices has been changed several times before--in the Administrations of John Adams and Thomas Jefferson,--both signers of the Declaration of Independence--<sup>in the Administrations of</sup> Andrew Jackson, Abraham Lincoln and Ulysses S. Grant.

I suggest only the addition of Justices to the bench in accordance with a clearly defined principle relating to a clearly defined age limit. Fundamentally, if in the future, America cannot trust the Congress it elects to refrain from abuse of our Constitutional usages, democracy will have failed far beyond the importance to ~~of~~ <sup>in</sup> any kind of precedent concerning the Judiciary.

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It is the clear intention of our public policy to provide for a constant flow of new and younger blood into the Judiciary. Normally every President appoints a large number of District and Circuit Judges and a few members of the Supreme Court. Until my first term practically every President of the United States ~~had~~ appointed at least one member of the Supreme Court. President Taft appointed five members and named a Chief Justice--President Wilson three--President Harding four including a Chief Justice--President Coolidge one--President Hoover three including a Chief Justice.

Such a succession of appointments should have provided a Court well-balanced as to age. But chance and the disinclination of individuals to leave the Supreme bench have now given us a Court in which five Justices will be over seventy-five years of age before next June and one over eighty. Thus a sound public policy has been defeated.

<sup>in our history</sup> I now propose that we establish by law an assurance against any such ill-balanced Court in the future. I propose that hereafter, when a Judge reaches the age of seventy, a new and younger Judge shall be added to the Court automatically. In this way I propose to enforce a sound public policy by law instead of leaving the composition of our Federal Courts, including the highest, to be determined by chance or the personal decision of individuals.

If such a law as I propose is regarded as establishing a new precedent -- is it not a most desirable precedent?

Like all lawyers, like all Americans, I regret the necessity of this controversy. But the welfare of the United States, and indeed of the Constitution itself, is what we all must think about first. Our difficulty with the Court today rises not from the Court as an institution but from human beings within it. But we cannot yield our constitutional destiny to the personal judgment of a few men who, being fearful of the future, would deny us the necessary means of dealing with the present.

This plan of mine is no attack on the Court; it seeks to restore the Court to its rightful and historic place in our system of Constitutional Government and to have it resume its high task of building anew on the Constitution "a system of living law."

*(Signed) J. W. D. [Signature] with the Court Law side.*

I have thus explained to you the reasons that lie behind our efforts to secure results by legislation within the Constitution. I hope that thereby the difficult process of constitutional amendment may be rendered unnecessary. But let us examine that process.

There are many types of amendment proposed. Each one is radically different from the other. There is no substantial group within the Congress or outside who are agreed on any single amendment.

*J. W. D. [Signature]*

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Then would come the long course of ratification by three-fourths of the States. No amendment which any powerful economic interests or the leaders of any powerful political party have had reason to oppose has ever been ratified within anything like a reasonable time. And thirteen States which contain only five per cent of the voting population can block ratification even through the thirty-one States with ninety-five per cent of the population are in favor of it.

A very large percentage of newspaper publishers, Chambers of Commerce, ~~and~~ Associations, ~~Manufacturers' Associations,~~ who are trying to give the impression that they really do want a constitutional amendment would be the first to exclaim as soon as an amendment is proposed why! I am for an amendment all right, but this amendment that you have proposed is not the kind of an amendment that I was thinking about! I am, ~~however~~, ~~therefore~~, going to spend my time, my efforts and my money to block that amendment, although I would be surely glad to help ~~not~~ some other kind of amendment ratified.

Two groups oppose my plan on the ground that they favor a constitutional amendment. The first includes those who fundamentally object to social and economic legislation along modern lines. This is the same group who during the campaign ~~before~~ tried to block the nomination of the people.

Now they are making a last stand. And the strategy of that last stand is to prevent the time-consuming process of amendment in order to kill off by delay the legislation demanded by the masses. *(Signed) J. W. D. [Signature]*

To them I say -- I do not think you will be able long to fool the American people as to your purposes.

The other group is composed of those who honestly believe the amendment process is the best and who would be willing to support a reasonable amendment if they could agree on one.

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*As I told you and I will do our part.*

1041

Draft -  
March 9, 1937

DRAFT #4

Tonight, sitting alone at my desk in the White House, I make my first radio report to the people in my second term of office. I am reminded of that Sunday evening in March, four years ago, when I made my first radio report to you. We were in the midst of the great banking crisis. I then ~~tried to explain~~ to you the business of banking as it affected the Nation and how we proposed to reestablish and to maintain a sound banking system.

A <sup>in 1933</sup> You and I ~~were~~ determined never to let our economic system get so out of joint again -- that we simply could ~~not~~ afford to take the risk of another ~~new~~ crisis. <sup>great depression and</sup> ~~which our institutions might~~ <sup>not be able to survive.</sup>

We also became convinced that the only way to avoid a repetition of those dark days ~~in 1929~~ was to have government <sup>capable of</sup> ~~stop~~ prevent the abuses and the inequalities which had thrown that system out of joint.

Today, ~~the~~ recovery reaches ~~the point~~ where the dangers of <sup>are</sup> ~~not far off~~ <sup>is</sup> ~~now~~ <sup>at</sup> ~~but~~ <sup>in</sup> ~~the next month perhaps~~ <sup>in the next year or two,</sup> 1929 again become possible. We face another crisis, not so immediately evident as the lines of depositors outside closed banks, but even more far-reaching in its possibilities of injury to America. That is ~~a crisis of realization that the elected government of the American people has been rendered powerless by their~~ <sup>caused by the inability of</sup>

#B

## Insert A

Soon thereafter, under authority given by the Congress, and with the purpose of establishing a permanently sound national financial structure, we asked the nation to turn over all of its privately held gold to the Government of the United States, thus ending for all time the right of individuals to demand payments of debts in gold, and substituting therefor payment in a sound national currency, whose purchasing power we have sought to make as stable as possible.

It is interesting to note that this national policy was finally upheld as to its constitutionality by a 5-4 vote of the Supreme Court. The change of one vote would have nullified recovery and thrown all the affairs of a great nation into hopeless chaos. Four Justices ruled in effect that the right under~~a~~ a private ~~affidavit~~ contract to exact a pound of flesh was more sacred than the main objective of the Constitution to establish an enduring nation

Insert B.

Our problem today arises from doubts which have been cast on the ability of the elected Congress of the United States to do what a very large majority of people know the Government must do if we are to avert catastrophe by squarely meeting our modern social and economic conditions

~~judiciary to do what the people know Government ~~needs~~ do to meet changing social and economic conditions so that another catastrophe can be averted.~~

~~I want to talk <sup>with</sup> you very simply about ~~that~~ the need for present action, ~~to~~. Four years ago ~~we~~, action did not come until the eleventh hour. It was almost too late.~~

~~The reasons for that delay were fundamentally the same kind of reasons as those that tempt some ~~of~~ to delay action in this judicial crisis until another eleventh hour. In both cases, the common sense of the people has to deal with institutions which are wrapped about with a mysterious reverence, and speak a technical language which the ordinary man is not supposed to understand. But in the case of the courts, as in the case of our banking system, we must be farsighted enough to understand and to act.~~

~~During all ~~the~~ years that preceded ~~the~~ the ~~Indies, though they knew that many things had to be done,~~ Nation shrank from action, drifting through endless discussions, uncertain <sup>of their</sup> either ~~the~~ power or ~~the~~ will to act. What we do now will show how much we have learned from the Depression. If we learned anything we will not allow ourselves to run around in ~~the~~ circles of futile discussion and debate, always postponing the day of decision and action in the dreamer's hope of finding a~~

solution to which everybody will agree.

Last Thursday I described in detail certain problems which everyone admits now face the Nation -- the need for permanent protection of agriculture; the need to end widespread unemployment; the need for the peaceful adjustment of controversies over wages, hours and conditions of employment; the need to provide adequate security against the hazards of old-age and unemployment; the need to provide for the preservation of our natural resources before thousands of tons of our precious soil is washed or blown away; the need to protect thousands upon thousands of homes from floods; the need to meet the unanswered challenge of one-third of a Nation ill-nourished, ill-clad, ill-housed.

These and many other problems call for national action.

Only national laws can meet those needs of the great masses of our people, ~~which can be met by individual efforts by local~~  
~~but cannot find~~  
~~or~~ State legislation ~~as~~ solution for the evils that ~~now~~ threaten  
~~the~~ own lives today and menace the happiness and security of  
~~the~~ children tomorrow. And because it will take time -- and  
plenty of time -- to work out <sup>by legislation and administration, the</sup> solution of these needs even after  
we know we have power to deal with them, we cannot delay one moment  
in making certain that our national government has such power.

There is almost a universal understanding and acceptance

national problems, said in so many words that the Congress should have power <sup>\*</sup>to provide for the general welfare of the United States.

Other sections of the Constitution have provided certain denials of power to the Congress. The Congress may not legislate over a few specific grants of power to the States themselves; nor may the Congress pass laws violating the Bill of Rights, which ~~was added to the Constitution~~ for the protection of individual citizens -- things like freedom of religion, of speech, and of the Press; trial by jury and so forth.

In other words and with these proper limitations, the Constitution intended that the Congress -- constantly renewed by the elective process -- should pass laws as needed ~~as well~~ <sup>To cover all</sup> subjects, and to meet all needs founded on a national interest -- things so national in their importance and scope that they could not be met merely by local legislation.

(Sheet A)  
next page

That, my friends, is the simplest and clearest statement that I can make to you in describing what I honestly believe to have been the underlying purpose of the patriots who, faced with the possibility of 13 states falling into utter confusion and helplessness, wrote a Federal Constitution creating a national government with national power, intended as they said, to form a more perfect union . . . for themselves and their posterity.

What has been the sequence of events? For nearly 20 years the Congress carried out its legislative powers, the President his executive powers, and the Supreme Court its normal judicial powers. Then, in 1803 the Supreme Court stated for the first time, that a Statute of the Congress was unconstitutional because it deliberately violated an expressed provision of the Constitution. There was a great uproar led by President Jefferson himself for the Constitution had never vested specific authority in the Supreme Court to declare a law unconstitutional - in fact during the debates on the Constitution such a proposal had been voted down five separate times. Nevertheless, in 1803 nothing was done about this assumption of authority, chiefly because the Supreme Court itself hastened to say that it would never ~~exercise~~ declare an Act of the Congress invalid unless

the Statute violated the Constitution beyond any reasonable doubt. Mr. Justice Bushrod Washington said "It is but a decent respect due to the wisdom, integrity and patriotism of the Legislative body, by which any law is passed, to presume in favor of its validity until its violation is proved beyond all reasonable doubt".

Mr. Justice Holmes said "In case of real doubt a law must be sustained."

The other reason that the public acquiesced so long in the assumed power of the Supreme Court, was that it was not again exercised until 54 years' later- the Dred Scott decision of 1857. In that case , the Court decided that the property right in slaves outweighed the human rights of slaves. More than any other cause, it led to armed conflict four years' later.

War between the States  
Since the/CixxixMax the Court with increasing  
frequently and particularly since the rise of the modern need  
for social and economic progress, has more and more boldly  
asserted a power to veto laws passed by the Legislative Branch  
of the government. In the last two years this use of judicial  
power which is to be found nowhere in the Constitution has  
exceeded all previous bounds.

/D

I have never sought, and I do not seek, to take away from the Supreme Court its proper function of declaring a law unconstitutional when that law flies definitely in the face of clear and unequivocal language of the Constitution itself.

The Constitution says: "No tax or duty shall be laid on articles from any State". If the Congress were to impose such a tax it would be the duty of the Supreme Court to declare the Act unconstitutional.

The Constitution says: "No title of nobility shall be granted by the United States." If the Congress declared a title of nobility the Court ought to declare the Act unconstitutional. In the same way the Constitution says "No State shall enter into any treaty . . . or coin money". If a State tried to do either of these things, the Supreme Court should, properly, declare the State statute unconstitutional.

Your difficulty and mine is that during the past half-century, the Court in too many instances has acted not as a judicial body, but as a policy making body. The present conflict between the Congress and the Court, does not rise out of those clauses of the Constitution which protect our civil liberties, and protect the State governments. It arises out of narrow interpretations of the general welfare and commerce clauses.

When the Congress has sought to stabilize national agriculture, to improve the conditions of labor, to safeguard business against unfair competition, to protect our national resources, and in many other ways, to serve our clearly national needs, the majority of the Court, has too often assumed the power to pass on the wisdom of these Acts of the Congress, the power to disapprove the public ~~the~~ policy written into these laws.~~xxxmxxm~~

~~the~~  
~~the~~  
I have not the time to quote to you language used by minority justices in many of these cases. One of them said that the majority opinion showed "A departure from sound principles", and "an unwarranted limitation upon the Commerce clause". In another case a minority justice said of the majority opinion that it was a "Tortured construction of the Constitution." In another case a dissenting justice said that the Majority were actually reading into the Constitution their own "personal economic predilections." The Chief Justice himself has said that the Constitution is "What the Judges say it is."

The Constitution gives all of the Legislative power to the two Houses of the Congress. No one who is willing to face the facts - and that includes thousands of lawyers who agreee with me - can deny that in recent years the Court in

| ✓

addition to the proper use of its judicial functions has improperly set itself up as a third legislative body, reading into the Constitution words and implications which are not there, and which were never intended to be there.

We have therefore reached the point as a nation where we must take action to save the Constitution from the Court and the Court from itself. We must find a way to take an appeal from the Supreme Court to the Constitution itself.

of course, I am in favor of an independent judiciary as proposed by the framers of the Constitution. That means a judiciary independent of all outside influences in deciding purely matters of law. It is not a judiciary so independent of the people that it can, with impunity, assume legislative functions — not a judiciary so independent of the people that it can override legislation not forbidden in clear terms by the Constitution itself — not a judiciary so independent of the people that the system of checks and balances proposed in the Constitution does not apply to it as it does to the other two branches of the Government — and not a judiciary so independent of the strong tides of public opinion that it can deny the existence of facts universally recognized.

I think the American people are entitled to have a Supreme Court that will enforce the Constitution as written — that will decline to amend the Constitution by the arbitrary exercise of judicial power — that will decline, in the language of dissenting Justices to amend the Constitution by judicial fiat. That sort of Court will be ~~nearly~~ independent of any outside control or influence; it will be independent also of inside control <sup>and</sup> ~~on influence,~~  
~~these who exercise power to~~ <sup>It will not</sup> deny to the Congress the right to exercise its judgment as to the laws necessary and proper under the legislative powers granted by the Constitution. The Congress and not granted to the Court.

The election of 1936 confirmed the elections of 1934 and 1932 in giving to the Congress and to me, a mandate to carry out a program of necessary social and economic reforms. We cannot proceed because the Courts by their present decisions block us or make the effectiveness of any new legislation so full of doubt that the Congress and I find ourselves in a valley of uncertainty.

How then, could we proceed? The Democratic platform of 1936 said in effect "We will try by every statutory method to get ourselves and the Nation out of this legal forest, and if this does not succeed we shall have to come to amending the Constitution itself."

When I commenced to review the situation with the problem squarely before me, I came by a process of elimination to the conclusion that the only method short of amendments which would be wholly legal and at the same time carry out other much needed reforms, was to obtain an accession of new blood in all our Courts. Clearly we ~~do not~~ want men worthy and equipped to carry out impartial justice, but at the same time we want judges who will bring to the Courts a present-day sense of the Constitution - judges who ~~will~~ ~~not~~ ~~allow~~ the Courts, the judicial functions of the Court, and remove from the Courts

the unconstitutional assumption of legislative powers which  
today have been usurped.

It is worth noting that in 46 out of the 48 States  
of the Union, judges are chosen not for life but for a period  
<sup>many</sup> of years. In ~~xxx~~ States judges must retire at the age of  
70. You may not know it, but it is a fact, that all Federal  
Judges once appointed, can if they choose hold office for life,  
no matter how old they may get to be. The Congress has done  
all it can do constitutionally, by providing financial security -  
\$20,000 a year for life - for Justices who have reached the  
age of 70 and who may wish to retire. Incidentally, under a  
decision of the Supreme Court itself, /pensions for judges  
who have retired, are not subject to any income tax.  
this?

DRAFT #4

~~16~~

Government can do is to provide financial security, in the form of \$20,000 per year for life, for Justices who have reached the age of seventy and who wish to retire. That security has been provided.

The plan which <sup>I think</sup> I propose had two chief purposes. By bringing into the Judicial system a steady and continuing stream of new and younger blood, I hope first, to make the administration of all Federal justice speedier and, therefore, less costly; secondly, bring to the decision of social and economic problems younger men who have had personal experience and contact with modern facts and circumstances under which average men have to exercise their rights to life, liberty and the pursuit of happiness.

would apply  
The statute ~~applies~~ to all the courts in the Federal system. No one has objected so far as the lower federal courts are concerned. The plan has met opposition only so far as the Supreme Court of the United States itself is concerned. But it would seem that a plan good for the lower court <sup>ought to</sup> ~~should be~~ equally good for all.

What is my proposal? It is simply this: whenever a ~~Judge or~~ <sup>of my Federal Court</sup> Justice has reached the age of seventy and does not avail himself

of the opportunity to retire on a pension a new member shall be appointed by whoever happens to be President, with the approval, however, of the Senate of the United States, just as it has always been done.

The number of judges to be appointed would depend wholly on the decision of present judges now over 70, or those who would subsequently reach the age of 70. In order to place a top limit, however, the plan provides, for example, that not more than 50 additional District Court judges could be appointed, and not more than a total of 15 members of the Supreme Court. In the latter case, the number could conceivably go to 15 but not beyond. If for instance, any one of the six Justices of the Supreme Court now over the age of 70 should retire, his place would not be filled. Consequently, although there cannot be more than 15, there be only 14, or 13, or 12. There may be only nine! (exclamation added by M.A.L.) And the same principle applies in the case of the Circuit Courts of appeals and all the District Courts. There is nothing novel or radical about this idea. It seeks to maintain the Federal Bench in full vigor. It has been discussed and a roved by many persons of high authority, and Attorneys General ever

since a similar proposal passed the House of Representatives in 1869.

The strange argument has been advanced that no self-respecting judge would retire ~~if it was suggested~~ if the proposed legislation were passed. Such a charge ascribes to our judges a political partisanship of the most vicious character, wholly incompatible with the impartial exercise of judicial authority. I do not think that those who urge such action on our judges, honor them or increase public respect for our Courts (shudders by me )

Why was the age fixed at 70? Because the laws of many states, the practice of the Civil Service, the regulations of the Army and Navy, and the rules of almost every great private business enterprise, commonly fix the retirement age at 70 years or less. (Hurrah)

The appointment of new judges calls for the selection of honorable and able candidates (that leaves about three available). President Taft appointed 6 Supreme Court justices in less than 4 years. (He needed them) President Harding appointed four judges in less than two years. (Look at him now) I would be unfaithful to the people who elected me if I nominated to the Senate even one Justice unworthy or unequipped to render

public  
high/service as a member of the Court. The plan I propose  
will tend to guarantee by law in the days to come, that rotation  
in the personnel in all our Courts, will bring to them an  
understanding of constantly/national needs so essential to all  
three branches of our government. That kind of a three-horse  
team will get our field plowed.

Among certain elements in our population, a part of  
the resentment against my suggestion is caused by the fact  
that it is admitted on all sides that my suggestion is wholly  
constitutional (resenting with Roosevelt?) Congress has always  
had the power to change the number of Justices of the  
Supreme Court and the number of Judges of the lower courts. It  
has often exercised that power. It is rather childish to talk  
about some future President or some future Congress abusing this  
power, because fundamentally, if in the days to come Americans  
cannot trust its Congress and its President not to abuse our  
wholly constitutional practices, Democracy will have failed.  
(tears and tears and tears) As a matter of fact Democracy is far  
more likely to fail b failing to keep abreast of modern needs  
than through any other bogey man that is now brandished before  
your eyes.

It was said in last year's Democratic platform "If these problems cannot be effectively solved within the Constitution, we shall seek such clarifying amendment as will assure the power to enact those laws, adequately to regulate commerce, protect public health and safety, and safeguard economic security.

In other words, we said we would seek an amendment only if every other means by legislation were to fail. And so today I am seeking the legislative means within the Constitution ~~before~~ in the hope that the difficult process of constitutional amendment may be averted/ (My back is breaking at this moment) (I also want a soda, and I bet you boozes are having one( - Curses)

Some of those who are opposed to this plan have said that they would rather get the objectives we are after by means of a constitutional amendment. I have long considered the wisdom and the feasibility of every form of amendment now being proposed as a solution of our urgent problems. ~~I believe a resort to amendment less practical than the statutory program proposed for several reasons.~~

There are at least four major types of amendment. Each one is radically different from the other. And as to each type there are ~~many~~ <sup>of these</sup> proposals containing different language and different provisions. There is no substantial group within the Congress or outside who are agreed upon any single amendment.

It would take months or years to get substantial agreement upon the type and language of an amendment. It would take months and years thereafter to get a two-thirds majority in favor of that amendment in both Houses of Congress. Remember it took fifteen years to get the <sup>language of the</sup> Income Tax Amendment agreed upon and through both Houses of Congress. Remember the long years it took to get amendments <sup>through</sup> ~~passed~~ <sup>by a 2/3 vote</sup> the Congress granting the right of suffrage to women, and the amendment providing for Direct Election of Senators, and the amendment abolishing the Lame Duck session.

But after the months and years necessary to get an amendment

submitted, then let us look at the long course of ratification by three-fourths of the States. Remember the Child Labor Amendment is still pending ratification in the State Legislatures after thirteen years. There have been amendments which went through within a year or less. But they have been the kind of amendments which powerful interests have had ~~reason~~ reason to oppose.

And the requirement that three-quarters of the States ratify does not fairly state the odds against the ~~xxi~~ early, or <sup>indeed</sup>, ratification of the amendment.

In the ratification of an amendment, ~~the Nation does not~~  
~~vote as a whole~~ it does in a Presidential election. Each State votes separately, and has just one vote, whether it has a population of ~~20~~ 90,000 or a population of 13,000,000. Thirteen States which contain only five percent of the voting population could block ratification even though ninety-five percent of the ~~voting~~ <sup>35</sup> States with population were in favor of it. How long do you think the reactionaries with plenty of money and a determination to nullify the election could hold off an amendment by fighting for delay at every stage of this complicated ratification process and finally concentrating their fire on ~~the~~ thirteen ~~other~~ States?

I think it can be safely said that no constitutional amendment has ever been adopted over the opposition of a major political party. The leadership of the Republican Party today is unquestionably opposed to an amendment to the Constitution.

And a very large percentage of newspaper publishers, Chambers of Commerce, Bar Associations, Manufacturers' Associations, who are trying to give the impression that they are for a constitutional amendment would be the first to ~~xxxxxxxxxx~~ exclaim as soon as an amendment was passed "Oh! I was for an amendment all right, but this amendment that you have passed is not the kind of an amendment that I was thinking about. I am therefore going to spend my time, my efforts and my money to block that amendment, although I would be awfully glad to help get some other kind of amendment ratified."

Let us be practical about this business. On the other side, against the program of social and economic legislation which twenty-seven million people gave us a mandate to carry through last Fall, are the same economic groups which tried to block that mandate. You know how much money they spent officially and unofficially, how many pressures they brought to bear, how ruthlessly and unscrupulously they used their economic power and their money to defeat that mandate.

Now they are making a last stand. They can, therefore, ~~xxxxxxxxxxxxxx~~ take advantage of every opportunity to obstruct any amendment. They can be expected to adopt the strategy of suggesting an amendment in order to kill off legislation such as I propose. Later on - a long time later on - if an amendment does pass the Congress they can solemnly announce that it is not the kind they like, and use all their efforts to stop its ratification.

I am speaking now of those men and women who in their social thinking fundamentally object to social and economic legislation along modern lines. They are good citizens, most of them, in the accepted sense of the term. They are moral and they think of themselves as patriotic Americans. But in their hearts they have not approved of what the Congress and I have honestly sought to accomplish in the past four years. They do not like the idea of having any restrictions imposed on stock-exchanges or the free sale of any type of stocks or bonds; they do not like the idea of being told that in their factory or mill they must pay a decent wage for they have been accustomed to think that it is their prerogative to determine what a decent wage is; they do not like the idea of laws limiting the hours of work,

for they think that they as employers should decide that subject; they do not understand ~~that~~ how government can properly take any interest in the size of the surplus of cotton or of wheat because they are not really interested in averting a return to five-cent cotton and 30-cent wheat; they are not really interested in cheap electricity for every home and farm in the nation.

There are other groups in the nation composed of those (should that be goops) who honestly believe that the Amendment process is the best, and who would be willing to support a reasonable amendment. Aside from the practical political difficulty of getting a two-thirds vote in both Houses of the Congress for an Amendment, I ask them to remember that even if an amendment were passed, and even if in the years to come, it were to be ratified it would still have to run the gauntlet of interpretation by the Supreme Court. I for one because of long experience fear that type of judicial interpretation which might change even a new amendment out of its original meaning. For example the income tax amendment which provided for the taxation of income "from whatever source derived" was by interpretation of the Supreme Court held not to apply to stock dividends <sup>either</sup> ~~and held not to apply~~ to the salaries <sup>nor</sup> ~~of the Justices~~ of the Supreme Court itself <sup>themselves</sup>.

I am in favor of my proposal for action through legislation;

First, because I believe that it can be passed at this session of the Congress.

Second, Because it will quickly produce results making clear the right of the Congress to provide for our present and future social and economic needs.

Third, a reinvigorated, liberal-minded series of Federal Courts with the numbers and machinery necessary to provide quicker and cheaper justice from bottom to top.

Fourth, a series of courts willing to inforce the Constitution as written, and unwilling to assume legislative powers by writing into it their own political and economic policies.

(Did somebody say this was tooo long?)

It is my belief that especially during the past half-century the balance of power between the three great branches of the Federal government, has been tipped out of balance in direct contradiction of the high purposes (High with a small h ) of the framers of the Constitution. It is my belief that the Constitution has been nullified. It is my purpose to restore the Constitution . You who know me ~~will~~ accept my solemn assurance that in a world in which democracy is under attack, I seek to make American democracy succeed.

DRAFT #6

8 AM  
March 7, 1957

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~~#9~~

Last Thursday I described in detail certain economic problems which everyone admits now face the Nation. For the many messages which have come to me after that speech, and which it is physically impossible to answer individually, I take this means of saying "thank you".

DRAFT #6

/A

Tonight, sitting at my desk in the White House, I make my first radio report to the people in my second term of office. I am reminded of that evening in March, four years ago, when I made my first radio report to you. We were then in the midst of the great banking crisis. I then talked to you of the business of banking as it affected the Nation and how we proposed to reestablish and to maintain a sound banking system.

Soon after, with the authority of the Congress, we asked the Nation to turn over all of its privately held gold, dollar for dollar, to the Government of the United States. [ We thus ended the right of individuals to demand payments of debts in gold, and substituted therefor payment in a sound national currency, whose purchasing power we have sought to make as stable as possible. In this way we laid the foundations of a permanently sound financial structure.]

Today's recovery proves how right that policy was. But when, almost two years later, it came before the Supreme Court its constitutionality was upheld only by a five-to-four vote. The change of one vote would have thrown all the affairs of this great Nation back into hopeless chaos. In effect, four

Justices ruled that the right under a private contract to exact a pound of flesh was more sacred than the main objective of the Constitution to establish an enduring Nation.

In 1933 you and I knew that we must never let our economic system get completely out of joint again -- that we ~~simply~~ could not afford to take the risk of another great depression.

We also became convinced that the only way to avoid a repetition of those dark days was to have a government with power to prevent and to cure the abuses and the inequalities which had thrown that system out of joint. ~~Substitute~~

[I remember very well what I was thinking <sup>of</sup> on that night in March, 1933. I was worried that we would not do the decisive things which we needed to do because of fear. Tonight I am again concerned whether we will do decisive things we need to do because better times may make us blind to the need of getting ready now to prevent future recurrence of disaster.]

Today, recovery is speeding up to a point where ~~the~~ <sup>the</sup> dangers of 1939 again ~~become~~ <sup>are</sup> ~~possible~~ -- not this week or month, perhaps, but within the next year or two. We ~~face~~ <sup>are</sup> another crisis, not so immediately evident as the lines of depositors

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~~SUPERSEDE Z~~

We then began a program of remedying those abuses and inequalities -- to give stability to our economic system -- to make it bomb-proof against the causes of 1929.

Today we are only part-way through that program -- and recovery is speeding up to a point where the dangers of 1929 are again becoming possible, not this week or month perhaps, but within a year or two.

To avoid those dangers we must complete that program of protection. Only ~~National laws~~ <sup>and needed to</sup> can meet national problems and fulfill that program. Individual or local or state effort alone cannot meet them in 1937 any better than ~~they~~ could ten years ago.

It will take time -- and plenty of time -- to work out our remedies administratively even after legislation is passed. To complete our program of protection in time, therefore, we cannot delay one moment in making certain that our National Government has power to carry its program through.

Four years ago action did not come until the eleventh hour. It was almost too late.

If we learned anything from the depression we will not allow ourselves to run around in new circles of futile discussion and

~~3A~~

3A

debate, always postponing the day of decision and action in the dreamer's hope of finding a solution to which everybody will agree.

4 The American people have learned from the depression. For in the last three national elections an overwhelming majority of ~~the people~~ voted a mandate that the Congress and the President begin the task of providing <sup>that</sup> protection -- not after long years of debate, but now.

The Courts, however, have cast doubts on the ability of the elected Congress to do what that majority wants government to do to avert catastrophes by meeting squarely our modern social and economic conditions.

5 We are at a crisis in our ability to proceed with that protection. It is a quiet crisis, — a crisis of ability to prepare. There are no lines of depositors outside closed banks. But to the ~~wise~~ <sup>that</sup> sighted it is far-reaching in its possibilities of injury to America.

6 I want to talk with you very simply about the need for present action in ~~that~~ <sup>this</sup> crisis — the need for permanent

protection of agriculture; the need to end widespread unemployment; the need for the peaceful adjustment of controversies over wages, hours and conditions of employment; the need to provide adequate security against the hazards of old-age and unemployment; the need to provide for the preservation of our natural resources before thousands of tons of our precious soil is washed or blown away; the need to protect thousands upon thousands of homes from floods; the need to meet the unanswered challenge of one-third of a Nation ill-nourished, ill-clad, ill-housed.

For the many messages which have come to me after that speech, and which it is physically impossible to answer individually, I take this means of saying "thank you."

Until these problems are solved our economic life will remain in a state of chronic instability — will not be bomb-proof against another depression. Only national laws are needed to solve these problems. [Laws can meet them] Individual or local or State effort alone simply cannot meet them in 1937 any better than they could ten years ago. And because it will take time — and plenty of time — to work out by legislation and administration the solutions of these needs [E] we know we have power to deal with them we cannot delay one moment in making certain that our National Government has [the] power to begin the job.]

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There is almost a universal understanding and acceptance of these fundamental needs. There is almost a universal demand that the National Government ~~make that beginning now.~~ take action now to solve these problems. In the last national election, ~~as in the elections~~ as in 1932 and 1934, an overwhelming majority of the people voted their wish that the Congress and the President ~~wake action~~ begin, not after long years of debate -- but now.

Last Thursday I described the American form of Government as a three horse team provided <sup>by the Constitution</sup> to the American people <sup>so</sup> that their field might be plowed. The three horses are, of course, the three branches of government -- the Congress, the Executive and the Courts. Two of the horses are pulling in unison today; the third is not. Those who have intimated that the President of the United States is trying to drive that team, overlook the simple fact that the President, as Chief Executive, is himself one of the three horses. It is the American people themselves who are in the driver's seat. It is the American people themselves who want the furrow plowed. It is the American people themselves who expect the third horse to pull in unison with the other two.

I hope you have re-read the Constitution of the United States ~~since this controversy began.~~ Like the Bible, it ought to be read again and again.

It is an easy document to understand when you remember that it was called into being because the Articles of Confederation under which the original thirteen States tried to operate after the Revolution showed the need of a ~~strong~~ National Government with powers enough to handle national problems. In its Preamble, the Constitution states that it was intended to form a more perfect Union and promote the general welfare; and the powers given to the Congress to carry out those purposes can be best described by saying that they were all the powers needed to meet each and every problem which then had a national character and which could not be met by merely local action.

But the framers went further. Having in mind that in succeeding generations many other problems then undreamed of would become national problems, gave to the Congress ~~as many~~ <sup>they so thought</sup> powers "to lay Taxes...and provide for the common defense and ~~make~~ <sup>and</sup> ~~an additional power of indefinite extent~~ <sup>5"</sup> to provide for the general welfare of the United States."

That, my friends, is what I honestly believe to have been the clear and underlying purpose of the patriots who faced the possibility of thirteen States falling into utter confusion and helplessness, and therefore wrote a Federal Constitution to create a national government with national power, intended as they said, "to form a more perfect union \*\*\*\* for ourselves and our posterity."

For nearly twenty years the Congress carried out its legislative powers, the President his executive powers, and the Supreme Court its normal judicial powers. There was no conflict between the Congress and the Court. Then, in 1803, Congress passed a statute which violated an express provision of the Constitution. The Court claimed the power to declare it unconstitutional and did so declare it. But a little later the Court itself admitted that it was an extraordinary power to exercise and through Mr. Justice Washington laid down this limitation upon it: "It is but a decent respect due to the wisdom, integrity and patriotism of the Legislative body, by which any law is passed, to presume in favor of its validity until its violation is proved beyond all reasonable doubt."

But since ~~ininxinxexxthe&#8226;xwithxincreasingxfrequency,~~  
~~andxparticularx~~ the rise of the modern movement for social and economic progress through legislation, the Court has more and more often and more and more boldly asserted a power to veto laws passed by ~~the Legislative branch of~~ the Congress and ~~the~~ State Legislatures in complete disregard of this original limitation.

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In the last four years ~~all protection~~ giving ~~protection~~ -  
the sound rule of ~~protection~~ <sup>so</sup> to the States

iation the benefit of all reasonable doubt has been cast aside.

The Court has been acting ~~in~~ not as a judicial body, but as a policy-making body. The present conflict between the Congress

<sup>so</sup> and the Court has nothing to do with civil and religious liberties. It has been a conflict solely over economic policies --

<sup>and social</sup>  
<sup>A</sup> over the question as to ~~how~~ what the Congress has power to do under the clauses dealing with the general welfare and with commerce between the States.

<sup>so</sup> When the Congress has sought to stabilize national agriculture, to improve the conditions of labor, to safeguard business against unfair competition, to protect our national resources, and in many other ways, to serve our clearly national needs,

the majority of the Court has been assuming the power to pass on the wisdom of these Acts of the Congress to approve or disapprove <sup>— and so</sup> the public policy written into these laws.

That is not only my accusation. It is the accusation of <sup>of course</sup> most distinguished ~~present-day~~ Justices of the Supreme Court.

I have not the time to quote to you all the language used by <sup>so</sup> dissenting Justices in many of these cases. But in the case

holding the Railroad Retirement Act unconstitutional, for instance, Justice <sup>Chief</sup> ~~Hughes~~ said in a dissenting opinion that the

majority opinion showed "a departure from sound principles", and "an unwarranted limitation upon the commerce clause". And three other justices agreed with him. In the case holding the A.A.A. unconstitutional, Justice J. T. Faris said of the majority opinion that it was a "tortured construction of the Constitution". And two other Justices agreed with him. In the case holding the New York Minimum Wage Law unconstitutional, Justice J. T. Faris said that the majority were actually reading into the Constitution their own "personal economic predilections", and that if the legislative power is not left free to express an overwhelming public opinion such as supports minimum wage legislation, then "government is to be rendered impotent". *That the Justices agreed with him.*

In the face of these dissenting opinions, there is no basis for the ~~claim made by~~ ~~which some members of the Court have tried to~~ ~~erects in their majority opinions that there has been something~~ ~~in the Constitution which has compelled them~~ ~~fully to thwart the will of the people, because the plain language~~ ~~of the Constitution when read alongside the language of the~~ ~~Constitution has left the majority no choice.~~

In the face of such dissenting opinions, it is perfectly clear that ~~the Constitution is the~~ <sup>as</sup> ~~Chief Justice~~ <sup>Hughes</sup> ~~has~~ <sup>4</sup> ~~said:~~ ~~It is~~ ~~a~~ ~~Constitution, but the Constitution is~~ ~~what the judges say it is.~~

~~The~~ <sup>as it is written</sup> Constitution gives all of the Legislative power to the two Houses of the Congress. In recent years, however, the Court in addition to the proper use of its judicial functions has improperly set itself up as a third House of the Congress -- <sup>so</sup> a super-legislature, as one of the Justices has called it -- reading into the Constitution words and implications which are not there, and which were never intended to be there.

We have, therefore, reached the point as a Nation where we must take action to save the Constitution from the Court and the Court from itself. We must find a way to take an appeal from the Supreme Court to the Constitution itself.

I want -- as all Americans want -- an independent judiciary as proposed by the framers of the Constitution. ~~think~~ <sup>the</sup> ~~the~~ ~~the~~ ~~the~~ ~~the~~ ~~the~~ That means a Supreme Court that will enforce the Constitution as written -- that will refuse to amend the Constitution by the arbitrary exercise of judicial power -- ~~that will decide, in the language of dissenting Justices to amend the Constitution by judicial say-so.~~ <sup>as it is written</sup> ~~That seems a judiciary independent of all outside influences in deciding matters of law.~~ But it ~~isn't~~ a judiciary so independent of the people that it can, with impunity, assume

legislative functions. It ~~is~~ not a judiciary so independent of the people that it can override legislation not forbidden in clear terms by the Constitution itself. It ~~is~~ not a judiciary so independent of the people that the system of checks and balances proposed in the Constitution does not apply to it as it ~~is~~ to the other two branches of the Government. It ~~is~~ not ~~a~~ judiciary so independent that it can deny the existence of facts universally recognized.

The election of 1936 confirmed the elections of 1934 and 1932 in giving to the Congress and to me a mandate to carry out a program of necessary social and economic reforms. The Courts by their present decisions block us or make the effectiveness of any new legislation so full of doubt that the Congress and I find ourselves in a fog of uncertainty.

How then could we proceed? It was said in last year's Democratic platform "If these problems cannot be effectively solved within the Constitution, we shall seek such clarifying amendment as will assure the power to enact those laws, adequately to regulate commerce, protect public health and safety, and safeguard economic security. In other words, we said we would seek an amendment only if every other possible means by legislation were to fail.

When I commenced to review the situation with the problem squarely before me, I came by a process of elimination to the conclusion that short of amendments the only method which ~~would~~ <sup>would</sup> be clearly constitutional, and at the same time carry out other much needed reforms, was to infuse new blood into all our Courts. We must have men worthy and equipped to carry out impartial justice. But, at the same time, we must have Judges who will bring to the Courts a present-day sense of the Constitution -- Judges who will retain in the Courts the judicial functions of a court, and ~~subject~~ <sup>subject</sup> the ~~unconstitutional assumption of~~ legislative powers which the courts have today usurped.

In seeking a means to provide such Justices in the Federal Courts, there is a difficulty not present in the State Judicial systems. In forty-five out of the forty-eight States of the Union, Judges are chosen not for life but for a period of years. In many States Judges must retire at the age of seventy. But Federal Justices, once appointed, can, if they choose, hold office for life, no matter how old they may get to be. Congress has provided financial security by offering life pensions at full pay for ~~all~~ <sup>or all</sup> Federal Judges who are willing to retire at seventy. In the case of Supreme Court Justices, that pension is \$20,000 a year. ~~But Congress, unlike the States, has no~~

constitutional power to compel its Judges to retire at a given retirement age.

The plan which I have proposed has two chief purposes.

By bringing into the Judicial system a steady and continuing stream of new and younger blood, I hope, first, to make the administration of all Federal justice speedier and, therefore,

less costly; secondly, to bring to the decision of social and economic problems younger men who have had personal experience

and contact with modern facts and circumstances under which  
and work. This plan will  
average men have to live ~~and~~ save our national Constitution

from hardening of the judicial arteries.

What is my proposal? It is simply this: whenever a Judge or Justice of any Federal Court has reached the age of seventy and does not avail himself of the opportunity to retire on a pension, a new member shall be appointed by the President <sup>as required by the Constitution</sup>, then in office, with the approval, <sup>however</sup>, of the Senate of the United States, just as it has always been done.

The number of Judges to be appointed would depend wholly on the decision of present Judges now over seventy, or those who would subsequently reach the age of seventy. In order to place a top limit, however, the plan provides, for example, <sup>Judges in the lower courts</sup> that not more than fifty additional Justices could be appointed.

INSERT B

p 13

The plan provides a top limit. For example, not more than a total of fifty additional judges can be appointed <sup>in all Federal Courts</sup> under the proposed law. In the case of the Supreme Court the membership can never exceed fifteen. But it may not even reach that number.

49

~~and not more than a total of fifteen members for the Supreme Court. For the Supreme Court, the number could conceivably go to fifteen but not beyond. If, for instance, any one of the six Justices of the Supreme Court now over the age of seventy as provided under the plan should retire, his place would not be filled. Consequently, although there cannot be more than fifteen, there may be only fourteen, or thirteen, or twelve. There may be only nine.~~

~~the same principle applies in the case of the Circuit Courts of Appeals and the District Courts.~~ There is nothing novel or radical about this idea. It seeks to maintain the Federal bench in full vigor. It has been discussed and approved by many persons of high authority ever since a similar proposal passed the House of Representatives in 1869.

Why was the age fixed at seventy? Because the laws of many States, the practice of the Civil Service, the regulations of the Army and Navy, and the rules of almost every great private business enterprise, commonly fix the retirement age at seventy years or less.

The statute would apply to all the courts in the Federal system. There is general approval so far as the lower Federal courts are concerned. The plan has met opposition only so far as the Supreme Court of the United States itself is concerned.

But it would seem that a plan good for the lower courts ought to be equally good for all.

Those opposing this plan have sought to arouse prejudice and fear by crying that I am seeking to "pack" the Supreme Court and that a baneful precedent will be established.

What do they mean by the words "packing the Court"? Is that what I am trying to do? What is this precedent that I would establish?

Let me answer this question with a bluntness that will end all honest misunderstanding of my purposes.

If by that phrase "packing the Court", it is charged that I wish to place on the bench spineless puppets who would disregard the law and would decide specific cases as I wished them to be decided, I make this answer -- that no President fit for his office would appoint, and no Senate of honorable men fit for their office would confirm, that kind of appointees to the Supreme Court.

But if by that phrase the charge is made that, ~~if given~~ ~~the power,~~ I would appoint and the Senate would confirm Justices worthy to sit beside ~~these~~ present ~~eminent~~ members of the Court who understand those modern conditions ~~which~~ ~~make~~ ~~it~~ ~~unnecessary~~ ~~and~~ ~~constitutional~~ ~~the~~ ~~exercise~~ ~~of~~ ~~powers~~ ~~granted~~ ~~to~~ ~~the~~ ~~Constitu-~~

DRAFT #6

-16-

~~Fant & will appoint~~ that I will appoint  
Justices who will not undertake to override the judgment of the  
~~legislated policy~~ Justices who will act as Justices  
Congress on ~~theirs own basis~~ solely to its legislative and  
~~executive~~ if the appointment of such Justices can be called  
~~packing the Court~~, then I say that the vast majority of the  
American people are in favor ~~of such action~~ doing just that thing -- now.  
It would be unnatural if ~~such~~ people share  
the hopes and beliefs of twenty-seven million ~~people~~ voters  
Constitution is adequate, as John Marshall said ~~it is~~, to adapt  
to the varying crises of human affairs. ~~I would do this~~ certainly  
~~if I were making nominations for the Court to fill vacancies which~~  
~~occurred from causes completely apart from these proposals. I~~  
~~would be unfaithful to the people who elected me if I did anything~~  
~~else.~~

Is it a dangerous precedent for the Congress to change the  
number of the Justices? ~~This plan does not create any dangerous~~  
~~precedent or indeed any precedent at all.~~ The Congress has always  
had, and will have, ~~the~~ power which it now has to change the number  
~~of the Justices of the Supreme Court.~~ Far from creating a precedent,  
I am only following one. The number of Justices has been changed  
several times before -- in the Administrations of Thomas Jefferson, —  
~~and both signers of the Declaration of Independence —~~  
~~John Adams, Andrew Jackson, Abraham Lincoln and Ulysses S. Grant.~~  
~~in effect~~  
Are we now to amend the Constitution ~~by some public classes~~ by

adopting a new ~~constitutional~~ policy that the Congress should never again ~~enact~~ <sup>or</sup> ~~change~~ the number of Justices of the Supreme Court? ~~my proposal limits the application of the~~ ~~other~~ <sup>But</sup> ~~president~~ <sup>to</sup> ~~existing~~ <sup>It suggests only</sup> ~~presidents~~ <sup>age</sup> ~~already existing~~. It suggests the addition of Justices to the bench ~~only~~ in accordance with a clearly defined principle relating to a clearly defined age limit, ~~on the bench~~. ~~No successor of mine could abuse it unless the Congress was fit to join in the abuse.~~ And, Fundamentally, if in the future, America cannot trust the Congress it elects ~~not to~~ abuse <sup>to reform from</sup> our Constitutional usages, democracy will have failed far beyond the importance to it of any kind of precedent concerning the Judiciary.

We think it so much in the public interest to maintain a vigorous judiciary that we ~~have for years~~ encourage the retirement of elderly <sup>Judges</sup> by offering them a life pension at full salary, ~~Why~~ <sup>thus</sup> should we leave the fulfillment of this public policy to chance or make it dependent upon the desire or prejudice of any individual Justice?

It is the clear intention of our ~~long-established~~ public policy to provide for a constant flow of new and younger blood into the Judiciary. Normally every President appoints a large number of District and Circuit Judges and a few members of the Supreme Court. Until my first term <sup>practically</sup> every President of the

United States had appointed at least one member of the Supreme

Court. President Taft appointed five and a Chief Justice.

President Wilson two. President Harding three and a Chief Justice.

President Coolidge one. President Hoover two.

Such a succession of appointments should have provided a

Court well-balanced as to age. But chance and the disinclination

of individuals to leave the Supreme bench ~~has now given~~ has now given us a Court in which five Justices will be over seventy-five years

of age before next June and one over seventy. Thus a sound

public policy has been defeated ~~and we have a Court dominated by~~

~~men of advanced years, a Court in which, despite the flexible,~~

~~modern thinking of some of its members, is dominated by the rigid~~

~~convictions of men whose mental processes are rigidly set~~

~~in the thought moulds of a by-gone generation.~~

I now propose

~~It is now proposed~~ that we establish by law an assurance

against any such ill-balanced Court in the future. I propose

~~in this way by law instead~~ to ~~express~~ sound public policy ~~in place~~ of leaving

the composition of our Federal Courts, including the highest,

~~to be determined by chance or~~ the personal fitness of individuals.

I propose that hereafter, when a Judge reaches the age of 70

~~suitable for retirement, automatically~~ a new and younger Judge

shall be added to the Court, if this increases the Court more

then is necessary to meet the constantly mounting business of  
the Court, any Judge feeling that his further active service  
~~not needed~~ is ~~superfluous~~ can retire. If he remains, at least the average age  
of the Court will be somewhat reduced. At least a younger Judge  
fresh from immediate contacts with the work-a-day-world will  
add to the power of the Court.  
*Another perspective*

If such a law as I propose is regarded as establishing  
a new precedent — is it not a most desirable precedent? It is not merely carrying forward a long-established precedent es-  
tablished not only in the Courts but generally in public service  
and in private business? It will not be a precedent for changing  
the numbers and membership of the Court capriciously from time to  
time. It will be a precedent under which future changes will be  
unnecessary — a precedent under which the people may be assured  
of the continuing service of a Court — in which the declining  
vigor and rigidity of thought which afflict older men will be  
always balanced by the more modern point of view and responsive-  
ness to prevailing thought which is commonly characteristic of  
younger men who have achieved distinction in their generation.

Like all lawyers, like all Americans, I ~~feel~~ <sup>right the necessity of</sup> this  
~~entirely~~ ~~but~~ ~~education~~. But ~~and~~ ~~as~~ ~~it~~, the welfare of the United States,  
and indeed of the Constitution itself, is what we all ~~must~~ <sup>must</sup> think

DRAFT #6

first. ~~Our difficulty with~~ -20-  
about ~~the Court today~~ ~~is no net from the limit his over~~  
~~the [redacted]~~ institution but ~~from~~ <sup>from</sup> human beings within ~~it~~  
[redacted] But we can not yield our constitutional destiny to a few  
men who, ~~because they are afraid~~ <sup>using fearful</sup> of the future, would deny us  
the necessary means of dealing with the present.

There is nothing strange in the hope that a newly invigorated Judiciary will decide that the Congress has many national powers about which recent divided decisions of the Court have cast so much doubt. It is not a new thing for the Supreme Court to reverse itself. It has reversed itself at least a score of times in the course of its history. <sup>It</sup> The Court itself can best undo what the Court has done.

This plan of mine is no attack on the Court; it seeks to restore the Court to its rightful and historic place in our system of Constitutional Government and to have it resume its high task of building anew on the Constitution "a system of living law".

57

I have thus explained to you the reasons that lie behind our efforts to secure results by legislation within the Constitution. I hope that thereby the difficult process of constitutional amendment may be rendered unnecessary. But let us examine that process.

There are ~~at least four~~ <sup>many</sup> types of amendment proposed.

Each one is radically different from the other. ~~and as to each~~  
~~of these types there are a dozen different proposals containing~~  
~~different language and different provisions.~~ There is no substantial group within the Congress or outside who are agreed on any single amendment.

It would take months or years to get substantial agreement upon the type and language of an amendment. It would take months and years thereafter to get a two-thirds majority in

~~the~~ favor of that amendment in ~~both~~ Houses of Congress.

~~REX after the months and years necessary to get an~~  
~~This~~  
~~amendment submitted~~ would come the long course of ratification  
~~by three-fourths of the States. Remember the Child Labor~~  
~~Amendment is still unratified by the State Legislatures after~~  
~~thirteen years.~~ No amendment which any powerful economic  
interests or the leaders of ~~a~~ powerful political party have

had reason to oppose has ever been ratified within anything like a reasonable time.

In the ratification of an amendment each State votes separately, and has just one vote, whether it has a population of 2,000 or a population of 13,000,000. Thirteen States which contain only five per cent of the voting population ~~would~~ can block ratification even though the thirty-five States with ninety-five per cent of the population ~~were~~ are in favor of it. How long do you think the reactionaries with plenty of money and a determination to nullify the election could hold off an amendment by fighting for delay at every stage of this complicated ratification process and finally concentrating their fire on thirteen States?

40 A very large percentage of newspaper publishers, Chambers of Commerce, Bar Associations, Manufacturers' Associations, who are trying to give the impression that they really do want a constitutional amendment would be the first to exclaim as soon as an amendment was passed "Oh! I was for an amendment all right, but this amendment that you have ~~passed~~ proposed is not the kind of an amendment that I was thinking about. I am, therefore, going to spend my time, my efforts and my money to block that amendment, although I would be awfully glad to help get

some other kind of amendment ratified."

There are two groups in opposition to the plan which have proposed on the ground that they favor a constitutional amendment. The first ~~to the people~~ who fundamentally object to social and economic legislation along ~~economic~~ modern lines. This is the same group who during the campaign last Fall tried to block the mandate of the people.

You know how much money they spent officially and unofficially, how many pressures they brought to bear, how ruthlessly and unscrupulously they used their economic power and their money to defeat that mandate.

Now they are making a last stand. And the strategy of that last stand is to suggest the time-consuming process of amendment in order to kill off by delay the legislation demanded by the mandate.

To them I say -- I do not think you will be able long to continue to fool the American people as to your purposes.

The other group is composed of those who honestly believe the amendment process is the best and who would be willing to support a reasonable amendment if they could agree on one.

To them I say -- ~~I am not against the idea of an amendment~~  
~~we cannot fully use an amendment to~~  
~~the immediate or only answer to~~  
~~ment eventually if necessary. I am deeply convinced that as a~~  
remedy for our present difficulties, ~~an amendment is politically~~  
~~impracticable. And~~  
~~that many of those whose support you think you can count on~~  
~~today will turn out to be members of that first group who went~~  
~~nothing done in the way of progress and who will sabotage any~~  
S 0 constructive amendment which is proposed. Look at these strange  
bed-fellows of yours. When before have you found them really  
at your side in your fights for progress? And remember one  
thing more.

Even if an amendment were passed, and even if in the  
years to come it were to be ratified, its meaning would depend  
upon the kind of Justices who would be sitting on the Supreme  
Court bench. An amendment like the rest of the Constitution  
is what the Justices say it is rather than what its framers or  
you might hope it is.

For example, the income tax amendment, which provided  
for the taxation of income "from whatever source derived", was  
by interpretation of the Supreme Court held not to apply either  
to stock dividends or to the salaries of the Justices of the  
Supreme Court themselves.

This proposal of mine will not infringe in the slightest upon the civil or religious liberties ~~of the American~~ so dear to every American.

My record as Governor and as President proves my devotion to those liberties -- my steadfast purpose to protect the fundamental rights of the free citizen. <sup>You</sup> ~~No~~ who knows me can have no

<sup>so</sup> fear that I would tolerate the destruction by any branch of government of any part of our heritage of freedom. The present attempt by those opposed to progress to play upon the fears of danger to personal liberty brings again to mind that crude and cruel strategy tried by the same opposition to frighten the workers of America in a pay-envelope propaganda against the social security law. The workers were not fooled by that propaganda then. The people of America will not be fooled by such propaganda now.

CIV

I am in favor of ~~my proposal~~ action through legislation: First, because I believe that it can be passed at this session of the Congress.

~~Second, because it will quickly produce results making clear the right of the Congress to provide for our present and future social and economic needs.~~

~~Third~~, because it will provide a reinvigorated, liberal-minded Judiciary necessary to furnish quicker and cheaper justice from bottom to top.

~~Fourth~~, because it will provide a series of Federal Courts willing to enforce the Constitution as written, and unwilling to assert legislative powers by writing into it their own political and economic policies.

During the past half century the balance of power between the three great branches of the Federal Government, has been tipped out of balance by the Courts in direct contradiction of the high purposes of the framers of the Constitution. It is my purpose ~~to restore the balance, established by the Constitution.~~ You who know me will accept my solemn assurance that in a world in which democracy is under attack, I seek to make American democracy succeed.

*grafe March 1937*

Last Thursday I described in detail certain economic problems which everyone ~~admit~~ now face the Nation. For the many messages which have come to me after that speech, and which it is physically impossible to answer individually, I take this means of saying "thank you."

Tonight, sitting at my desk in the White House, I make my first radio report to the people in my second term of office.

*P* I am reminded of that evening in March, ~~four~~ years ago, when I made my first radio report to you. We were then in ~~the~~ midst of the great banking crisis. ~~I then talked to you of the business of banking as it affected the Nation and how we proposed to reestablish and to maintain a sound banking system.~~

~~Today's recovery proves how right that policy was.~~

Soon after, with the authority of the Congress, we asked the Nation to turn over all of its privately held gold, dollar for dollar, to the Government of the United States.

*P* Today's recovery proves how right that policy was. But when, almost two years later, it came before the Supreme Court its constitutionality was upheld only by a five-to-four vote. The change of one vote would have thrown all the affairs of this great Nation back into hopeless chaos. In effect, four

Justices ruled that the right under a private contract to exact a pound of flesh was more sacred than the main objectives of the Constitution to establish an enduring Nation.

In 1933 you and I knew that we must never let our economic system get completely out of joint again -- that we could not afford to take the risk of another great depression.

We also became convinced that the only way to avoid a repetition of those dark days was to have a government with power to prevent and to cure the abuses and the inequalities which had thrown that system out of joint.

We then began a program of remedying those abuses and inequalities -- to give balance and stability to our economic system -- to make it bomb-proof against the causes of 1929.

Today we are only part-way through that program --and recovery is speeding up to a point where the dangers of 1929 are again becoming possible, not this week or month perhaps, but within a year or two.

~~Remove these dangers so we can complete that program,~~  
*R* ~~protection.~~ National laws are needed to ~~meet national problems~~  
~~and fulfill that program.~~ Individual or local or state effort alone cannot ~~protect us~~ in 1937 any better than it could ten years ago.

(2)

It will take time -- and plenty of time -- to work out our remedies administratively even after legislation is passed. To complete our program of protection in time, therefore, we cannot delay one moment in making certain that our National Government has power to carry through.

Four years ago action did not come until the eleventh hour. It was almost too late.

If we learned anything from the depression we will not allow ourselves to run around in new circles of futile discussion and debate, always postponing the day of decision, ~~and action in the~~ ~~desperate hope of finding a solution to which everybody will~~ ~~subscribe.~~

The American people have learned from the depression. For in the last three national elections an overwhelming majority of them voted a mandate that the Congress and the President begin the task of providing that protection -- not after long years of debate, but now.

The Courts, however, have cast doubts on the ability of the elected Congress to ~~do what that majority wants government to do~~ <sup>to meet the threat</sup> however catastrophe by meeting squarely our modern social and economic conditions.

We are at a crisis in our ability to proceed with that protection. It is a quiet crisis. There are no lines of depositors outside closed banks. But to the far-sighted it is far-reaching in its possibilities of injury to America.

I want to talk with you very simply about the need for present action in this crisis -- the need to meet the unanswered challenge of one-third of a Nation ill-nourished, ill-clad, ill-housed.

Last Thursday I described the American form of Government as a three horse team provided by the Constitution to the American people so that their field might be plowed. The three horses are, of course, the three branches of government -- the Congress, the Executive and the Courts. Two of the horses are pulling in unison today; the third is not. Those who have intimated that the President of the United States is trying to drive that team, overlook the simple fact that the President, as Chief Executive, is himself one of the three horses.

It is the American people themselves who are in the driver's seat. It is the American people themselves who want the furrow plowed. It is the American people themselves who expect the third horse to pull in unison with the other two.

I hope that you have re-read the Constitution of the United States. Like the Bible, it ought to be read again and again.

It is an easy document to understand when you remember that it was called into being because the Articles of Confederation under which the original thirteen States tried to operate after the Revolution showed the need of a National Government with power enough to handle national problems. In its Preamble, the Constitution states that it was intended to form a more perfect Union and promote the general welfare; and the powers given to the Congress to carry out those purposes can be best described by saying that they were all the powers needed to meet each and every problem which then had a national character and which could not be met by merely local action.

But the framers went further. Having in mind that in succeeding generations many other problems then undreamed of would become national problems, they gave to the Congress the ample broad powers "to levy taxes\*\*\*\*and provide for the common defense and general welfare of the United States."

That, my friends, is what I honestly believe to have been the clear and underlying purpose of the patriots who ~~fear'd the possibility of thirteen States falling into utter confusion and helplessness, and therefore~~ wrote a Federal Constitution to create a National Government with national power, intended as they said, "to form a more perfect union \*\*\*\* for ourselves and our posterity."

For nearly twenty years ~~the Congress carried out its legislative power, the President his executive powers, and the Supreme Court its normal judicial powers.~~ There was no conflict between the Congress and the Court. Then, in 1803, Congress passed a statute which the Court said violated an express provision of the Constitution. The Court claimed the power to declare it unconstitutional and did so declare it. But a little later the Court itself admitted that it was an extraordinary power to exercise and through Mr. Justice Washington laid down this limitation upon it: "It is but a decent respect due to the wisdom, integrity and patriotism of the Legislative body, by which any law is passed, to presume in favor of its validity until its violation is proved beyond all reasonable doubt."

But since the rise of the modern movement for social and economic progress through legislation, the Court has more and more often and more and more boldly asserted a power to veto laws passed by the Congress and State Legislatures in complete disregard of this original limitation.

In the last four years the sound rule of giving statutes the benefit of all reasonable doubt has been cast aside. The Court has been acting not as a judicial body, but as a policy-making body. ~~The present conflict between the Congress and the court has nothing to do with civil and religious liberties. It has been a conflict solely over economic and social policies — over the question as to what the Congress has power to do under the clauses dealing with the general welfare and with commerce between the States.~~

When the Congress has sought to stabilize national agriculture, to improve the conditions of labor, to safeguard business against unfair competition, to protect our national resources, and in many other ways, to serve our clearly national needs, the majority of the Court has been assuming the power to pass on the wisdom of these Acts of the Congress — and to approve or disapprove the public policy written into these laws.

That is not only my accusation. It is the accusation of most distinguished Justices of the present Supreme Court. I have not the time to quote to you all the language used by dissenting Justices in many of these cases. But in the case holding the Railroad Retirement Act unconstitutional, for instance, Chief Justice Hughes said in a dissenting opinion that the

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10/22/50

majority opinion showed "a departure from sound principles", and, "an unwarranted limitation upon the commerce clause." And three other Justices agreed with him. In the case holding the A.A.A. unconstitutional, Justice Stone said of the majority opinion that it was a "tortured construction of the Constitution." And two other Justices agreed with him. In the case holding the New York Minimum Wage Law unconstitutional, Justice Stone said that the majority were actually reading into the Constitution their own "personal economic predilections", and that if the legislative power is not left free to ~~choose the methods of solving the problems of~~ express an overwhelming public opinion favorably, substantially and healthily of large numbers in the community such as supports minimum wage legislation, then "government is to be rendered impotent." ~~three~~ And ~~two~~ other Justices agreed with him.

In the face of these dissenting opinions, there is no basis for the claim made by some members of the Court that something in the Constitution has compelled them regrettably to thwart the will of the people.

In the face of such dissenting opinions, it is perfectly clear, as Chief Justice Hughes has said: "We are under a Constitution but the Constitution is what the Judges say it is."

~~The Constitution as it is written gives all of the legislative power to the two Houses of the Congress. In recent years, however, the~~

Court in addition to the proper use of its judicial functions has improperly set itself up as a third House of the Congress--a super-legislature, as one of the Justices has called it--reading into the Constitution words and implications which are not there, and which were never intended to be there.

We have, therefore, reached the point as a Nation where we must take action to save the Constitution from the Court and the Court from

itself. We must find a way to take an appeal from the Supreme Court to

*Hi want a /genuine/ honest federal judiciary which will do justice under the Constitution itself. The Constitution - not over it. In our Courts we want a government of laws and not of men.*

I want--as all Americans want--an independent judiciary as proposed by the framers of the Constitution. That means a Supreme Court that will enforce the Constitution as written--that will refuse to amend the Constitution by the arbitrary exercise of judicial power--amendment by judicial say-so. But it does not mean a judiciary so independent of the people that it can, with impunity, assume

~~legislative functions. It does not mean a judiciary so independent of the people that the system of checks and balances proposed in the Constitution does not apply to it as to the other two branches of the Government.~~ It does not mean a judiciary so independent that it can deny the existence of facts universally recognized.

The election of 1936 confirmed the elections of 1934 and 1932 in giving to the Congress and to me a mandate to carry out a program of necessary social and economic reforms. The Courts by their present decisions block us or make the effectiveness of any new legislation so full of doubt that the Congress and I find ourselves in a fog of uncertainty.

How then could we proceed? *After the mandate given us?* It was said in last year's Democratic platform "If these problems cannot be effectively solved within the Constitution, we shall seek such clarifying amendment as will assure the power to enact those laws, adequately to regulate commerce, protect public health and safety, and safeguard economic security." In other words, we said we would seek an amendment only if every other possible means by legislation were to fail.

When I commenced to review the situation with the problem squarely before me, I came by a process of elimination to the

conclusion that short of amendments the only method which was clearly constitution, and <sup>at</sup> ~~would~~ at the same time carry out other much needed reforms, was to infuse new blood into all our Courts.

"We must have men worthy and equipped to carry out impartial justice. But, at the same time, we must have Judges who will bring to the Courts a present-day sense of the Constitution -- Judges who will retain in the Courts the judicial functions of a court, and reject the legislative powers which the courts have <sup>grasped</sup> today (~~unseized~~.)

In seeking a means to provide such services in the Federal Courts there is a difficulty not present in the State Judicial system. In forty-five out of the forty-eight States of the Union, Judges are chosen not for life but for a period of years. In many States Judges must retire at the age of seventy. Congress has provided financial security by offering life pensions at full pay for Federal Judges on all Courts who are willing to retire at seventy. In the case of Supreme Court Justices, that pension is \$20,000 a year. But Federal <sup>all</sup> ~~Judges~~, once appointed, can, if they choose, hold office for life, no matter how old they may get to be.

What is my proposal? It is simply this: whenever a Judge

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or Justice of any Federal Court has reached the age of seventy and does not avail himself of the opportunity to retire on a pension, a new member shall be appointed by the President then in office, with the approval, as required by the Constitution, of the Senate of the United States.

That plan has two chief purposes. By bringing into the Judicial system a steady and continuing stream of new and younger blood, I hope, first, to make the administration of all Federal justices speedier and, therefore, less costly; secondly, to bring to the decision of social and economic problems younger men who have had personal experience and contact with modern facts and circumstances under which average men have to live and work. This plan will save our national Constitution from hardening of the judicial arteries.

The number of Judges to be appointed would depend wholly on the decision of present Judges now over seventy, or those who would subsequently reach the age of seventy.

~~The plan provides a top limit. For example, not more than a total of fifty additional judges in all Federal Courts can be appointed under the proposed law. In the case of the Supreme Court the membership can never exceed fifteen. But it may not even reach that number.~~

If, for instance, any one of the six Justices of the Supreme Court now over the age of seventy should retire as provided under the plan, his place would not be filled. Consequently, although there never can be more than fifteen, there may be only fourteen, or thirteen, or twelve. And there may be only nine.

There is nothing novel or radical about this idea. It seeks to maintain the Federal bench in full vigor. It has been discussed and approved by many persons of high authority ever since a similar proposal passed the House of Representatives in 1869.

Why was the age fixed at seventy? Because the laws of many States, the practice of the Civil Service, the regulations of the Army and Navy, ~~and~~ the rules many of our Universities and of almost every great private business enterprise, commonly fix the retirement age at seventy years or less.

The statute would apply to all the Courts in the Federal system. There is general approval so far as the lower Federal courts are concerned. The plan has met opposition only so far as the Supreme Court of the United States itself is concerned.  
~~(no paragraph)~~ <sup>French</sup> ~~But it would seem that~~ a plan good for the lower courts <sup>is certainly</sup> ought to be equally good for ~~the~~ <sup>the highest law court which there</sup> is no appeal.

Those opposing this plan have sought to arouse prejudice and fear by crying that I am seeking to "pack" the Supreme Court

and that a baneful precedent will be established.

What do they mean by the words "packing the Court"? ~~is that what I am trying to do? What is this precedent that I would establish?~~

Let me answer this question with a bluntness that will end all honest misunderstanding of my purposes.

If by that phrase "packing the Court" it is charged that I wish to place on the bench spineless puppets who would disregard the law and would decide specific cases as I wished them to be decided, I make this answer -- that no President fit for his office would appoint, and no Senate of honorable men fit for their office would confirm, that kind of appointees to the Supreme Court.

But if by that phrase the charge is made that I would appoint and the Senate would confirm Justices worthy to sit beside present members of the Court who understand those modern conditions --

--that I will appoint Justices who will not undertake to override the judgment of the Congress on legislative policy--that I will appoint Justices who will act as Justices and not as legislators--if the appointment of such Justices can be called "packing the Courts", then I say that I and with me the vast majority of the American people favor doing just that thing--now.

~~It would be unnatural if such Justices did not share the hopes and beliefs of twenty-seven million voters that the Constitution is adequate, as John Marshall said, to be adapted to the varying crises of human affairs.~~

Is it a dangerous precedent for the Congress to change the number of the Justices? The Congress has always had, and will have, that power. ~~Has four cloturing a precedent, I am only following one.~~ The number of Justices has been changed several times before--in the Administrations of John Adams and Thomas Jefferson,--both signers of the Declaration of Independence--Andrew Jackson, Abraham Lincoln and Ulysses S. Grant. ~~Are we in effect now to amend the Constitution by~~

~~adopting a new policy that the Congress should never again change  
the number on the Supreme Court?~~

I suggest only the addition of Justices to the bench in accordance with a clearly defined principle relating to a clearly defined age limit. Fundamentally, if in the future, America cannot trust the Congress it elects to refrain from abuse of our Constitutional usages, democracy will have failed far beyond the importance to it of any kind of precedent concerning the Judiciary.

We think it so much in the public interest to maintain a vigorous judiciary that we encourage the retirement of elderly Judges by offering them a life pension at full salary. Why then should we leave the fulfillment of this public policy to chance or make it dependent upon the desire or prejudice of any individual Justice?

It is the clear intention of our public policy to provide for a constant flow of new and younger blood into the Judiciary. Normally every President appoints a large number of District and Circuit Judges and a few members of the Supreme Court. Until my first term practically every President of the

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United States had appointed at least one member of the Supreme

Court. President Taft appointed five <sup>members</sup> ~~and~~ <sup>named</sup> a Chief Justice.

President Wilson ~~two~~ <sup>three</sup> President Harding <sup>four</sup> ~~and~~ <sup>including</sup> a Chief Justice.

President Coolidge one. President Hoover ~~one~~ <sup>three</sup> ~~including~~ <sup>including</sup> a Chief Justice.

Such a succession of appointments should have provided a Court well-balanced as to age. But chance and the disinclination of individuals to leave the Supreme bench have now given us a Court in which five Justices will be over seventy-five years of age before next June and one over seventy. Thus a sound public policy has been defeated.

I now propose that we establish by law an assurance against any such ill-balanced Court in the future. I propose that hereafter, when a Judge reaches the age of seventy, a new and younger Judge shall be added to the Court automatically. In this way I propose to enforce <sup>a</sup> ~~the~~ sound public policy by law instead of leaving the composition of our Federal Courts, including the highest, to be determined by chance or the personal decision of individuals.

If such a law as I propose is regarded as establishing a new precedent -- is it not a most desirable precedent?

Like all lawyers, like all Americans, I regret the necessity of this controversy. But the welfare of the United States, and indeed of the Constitution itself, is what we all must think about first. Our difficulty with the Court today rises not from the Court as an institution but from human beings within it. But we cannot yield our constitutional destiny to <sup>the personal judgment of</sup> a few men who, being fearful of the future, would deny us the necessary means of dealing with the present.

This plan of mine is no attack on the Court; it seeks to restore the Court to its rightful and historic place in our system of Constitutional Government and to have it resume its high task of building anew on the Constitution "a system of living law." The Court itself can best undo what the Court has done.

I have thus explained to you the reasons that lie behind our efforts to secure results by legislation within the Constitution. I hope that thereby the difficult process of constitutional amendment may be rendered unnecessary. But let us examine that process.

There are many types of amendment proposed. Each one is radically different from the other. There is no substantial group within the Congress or outside it who are agreed on any single amendment.

It would take months or years to get substantial agreement upon the type and language of an amendment. It would take months and years thereafter to get a two-thirds majority in favor of that amendment in both Houses of the Congress.

Then would come the long course of ratification by three-fourths of the States. No amendment which any powerful economic interests or the leaders of any powerful political party have

had reason to oppose has ever been ratified within anything like a reasonable time. And thirteen States which contain only five per cent of the voting population can block ratification even though the thirty-five States with ninety five per cent of the population are in favor of it.

A very large percentage of newspaper publishers, Chambers of Commerce, Bar Associations, Manufacturers' Associations, who are trying to give the impression that they really do want a constitutional amendment would be the first to exclaim as soon as an amendment was proposed "Oh! I was for an amendment all right, but this amendment that you have proposed is not the kind of an amendment that I was thinking about. I am, therefore, going to spend my time, my efforts and my money to block that amendment, although I would be awfully glad to help get some other kind of amendment ratified."

Two groups oppose my plan on the ground that they favor a constitutional amendment. The first includes those who fundamentally object to social and economic legislation along modern lines. This is the same group who during the campaign last Fall tried to block the mandate of the people.

Now they are making a last stand. And the ~~exxaggy~~ of that last stand is to suggest the time-consuming process of amendment in order to kill off by delay the legislation demanded by the mandate.

To them I say -- I do not think you will be able long to fool the American people as to your purposes.

The other group is composed of those who honestly believe the amendment process is the best and who would be willing to support a reasonable amendment if they could agree on one.

To them I say -- we cannot rely on an amendment as the immediate or only answer to our present difficulties. *And when* the time comes for action, you will find that many of those who pretend to support you will sabotage any constructive amendment which is proposed. Look at these strange bed-fellows of yours. When before have you found them really at your side in your fights for ~~xxxx~~ progress?

And remember one thing more. Even if an amendment were passed, and even if in the years to come it were to be ratified, its meaning would depend upon the kind of Justices who would be sitting on the Supreme Court bench. An amendment like the rest of the Constitution is what the Justices say it is rather than what its framers or you might hope it is.

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This proposal of mine will not infringe in the slightest upon the civil or religious liberties so dear to every American.

My record as Governor and as President proves my devotion to those liberties. ~~My steadfast purpose to protect the fundamental rights of the free citizen.~~ You who know me can have no fear that I would tolerate the ~~xxxxx~~ destruction by any branch of government of any part of our heritage of freedom. <sup>R</sup> The present attempt by those opposed to progress to play upon the fears of danger to personal liberty brings again to mind that crude and cruel strategy tried by the same opposition to frighten the workers of America in a pay-envelope propaganda against the Social Security Law. The workers were not fooled by that propaganda then. The people of America will not be fooled by such propaganda now.

*Taft  
Mar 9, 1957*  
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I am in favor of action through legislation:

First, because I believe that it can be passed at this session of the Congress.

Second, because it will provide a reinvigorated, liberal-minded Judiciary necessary to furnish quicker and cheaper justice from bottom to top.

Third, because it will provide a series of Federal Courts willing to enforce the Constitution as written, and unwilling to assert legislative powers by writing into it their own political and economic policies.

During the past half century the balance of power between the three great branches of the Federal Government, has been tipped out of balance by the Courts in direct contradiction of the high purposes of the framers of the Constitution. It is my purpose to restore that balance. You who know me will accept my solemn assurance that in a world in which democracy is under attack, I seek to make American democracy succeed.

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