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3/9/37 on the Court Date

Item 27
DRAFT #2

Tonight, sitting at my desk in the White House making my first radio report to the people in my second term of office, I am reminded of that Sunday evening, March 13, 1933, when I spoke to the people of the Nation of the great banking crisis and sought to give reassurance by explaining in simple terms the business of banking and how we proposed to reestablish and maintain a sound financial system.

Tonight I want to talk to you very simply of a present crisis which is even more complex -- more far-reaching in its ultimate effects on our Nation. Four years ago we had been forced, at the eleventh hour, to close all the banks because, during the long years of the depression, unwilling or unable to determine the powers of the Federal Government, we had drifted through an unending discussion, an unending series of "on the one hand" and "on the other hand" arguments that never actually brought us either to definite knowledge of what the Government could do or to a definite plan followed by action on that plan.

It is today a simple fact of history that the previous Administration debated for months as to just what right, if any,
the Government had to save the banks. I figured out that even
if the Constitution gave to the Congress no specific power over
banking, which happens to be the fact, nevertheless, the Congress
had, more than a century before, established a national banking
system under its general power over money and that, therefore,
the President and the Congress had an inherent implied right to
save the national banking system, even though such a system had
never been thought of in 1787.

Today's crisis can become an even deeper menace to our
national welfare if we allow ourselves to drift again through
years of discussion and debate, seeking the impossibility of a
unanimous solution and postponing, perhaps until too late, the
day of decision and action.

Last Thursday I described the problems facing the Nation --
problems which actually go back many years but which have come
to a head and call for action now and not later. Our dangerous
hesitation rises out of doubts as to how far an elected Congress
will be permitted to carry out policies approved by the people
of the United States by an overwhelming vote in three successive
elections, 1932, 1934, 1936.

Somebody is blocking action. It is not the Congress; it is
not the Executive that raises a barrier against political, economic
and social progress. No government in any nation can face a
greater crisis than the realization by its people that their elected
government is powerless to meet present urgent needs and to safe-
guard them against advancing evils. Throughout the world we have
convincing proof that governments too feeble, too irresolute,
too inefficient to prevent disaster have been swept aside. It
must be your purpose and mine to enable our present democratic
representative form of republican government to have enough
strength, enough resolution and enough efficiency to keep it
from traveling the same road.

Four years ago we came close to such a crisis but the
American people rallied in support of a democratic program of
swift, useful action. We kept our institutions and sought to
establish machinery which would prevent a recurrence of the
crisis we had averted.

We still had millions of unemployed; we still needed per-
manently to solve the farmers' problems; we still needed to
save and build millions of homes; we still had to provide security/
In old age and unemployment; we still had to protect our natural
resources and do a hundred other things for the national welfare.
In spite of a nation-wide propaganda to discredit not only the objectives but the motives behind them, the American electorate voted their confidence in 1934 by a more decisive vote than in 1932. They voted that confidence in 1936 by a greater majority than in 1934.

But there was one branch of the national government for which they had no chance to vote. The two elective branches of the Government, the Legislative and the Executive, were actually solving problems. The Judicial branch, non-elective, was, by a majority vote in its highest court, blocking the execution of the program of the other two branches.

The Legislative branch of the Government must submit itself to the vote of the people every two years. The President must submit himself to the vote of the people every four years. But the Federal Judiciary, by the Constitution itself, is never compelled to submit itself to the vote of the people or to any of the people's representatives once they take their places on the bench.

What do we mean when we say that the Court has declared an Act of Congress unconstitutional? We do not mean that the Congress has submitted a statute to the Court and asked for its opinion.
When the law is passed, no one knows whether it will be held to be constitutional or not. Then when a lawsuit arises under the law, either between two individuals as in the Gold Clause case or between the government and an individual, as in the A.A.A. case, the lawsuit eventually reaches the Supreme Court, with one side claiming that the statute is not a part of our law because the Congress had no authority under the Constitution to pass such a law.

There are certain specific things mentioned in the Constitution which the Congress is expressly and specifically forbidden to do. For instance, Congress can never pass a statute which interferes with anyone's religion or religious practice. Education or education. Congress can never pass a statute which prevents free expression of opinion, or does away with equal rights for all people regardless of race, religion or color. And there are a multitude of other safeguards in the Bill of Rights included in the Constitution, which protect every law-abiding individual in our borders in his or her personal liberty and freedom. And that is so clear, that no Congress since the War between the States has ever dared or would ever dare to pass a statute which violated these express provisions of the Constitution. And if it ever did
different states.

There has been an impression created by some of the members of the Court in their opinions that there was something in the Constitution itself which compelled the Court regretfully to thwart the will of the people because the plain language of the Constitution "when laid alongside the language of the statute" left the Court no choice. That impression is simply not correct.

Pick up your copy of the Constitution and thumb through it again and see whether you can find a single word in it which expressly forbids the Congress to pass laws to help the farmers get a decent share of the national income to which they are entitled not only as a matter for themselves but as a matter of the general welfare. And when the majority of the Court says that the Congress does not have the power, does it not justify the charge made by one of its minority, a member who was not a Democrat or a Democratic appointee but was the Attorney General in the Cabinet of President Coolidge and appointed by President Coolidge, that in these recent cases the majority of the Court was adopting a tortured construction of the language of the Constitution to make the decisions square with their personal economic predilections, i.e. their own ideas of what they would have voted if they had been sitting in the Congress.
Thumb through your Constitution and see whether you can find a single word which forbids Congress to pass laws to improve working conditions and wages to develop cheap electricity through flood control projects, to provide for pensions for older workers, to apply particular treatment for sick industries like coal and oil, which enters into interstate commerce.

In other words, these New Deal statutes embodying the social and economic reforms the people want have not come in conflict with any words in the Constitution itself. They have come in conflict with the ideas of certain Justices as to the way in which the Constitution should be interpreted, i.e. their own idea of what the general welfare of the people means. In other words, as the Chief Justice himself has said "We live under a Constitution but the Constitution is what the Justices say it is."

There have been so many confusing statements and complicated arguments about the Constitution and the powers of Congress that the essentially simple language and meaning of the Constitution has been lost sight of by so many people. The Constitution is written in the simplest kind of language so that it is understandable by those who wish to understand it, without the help of lawyers. Its meaning becomes mysterious and cloudy only when lawyers begin to argue about what it means.
Every schoolboy knows that the Constitution was originally created because the statesmen of those days saw how necessary it was that the United States become legally a unified nation for the handling of national problems. Before the Constitution was adopted we had a loosely knit federal government of sorts. It was an impossible situation between the several States, each almost wholly independent of the other and with practically no authority in the Federal Government except to make foreign treaties.

And so they determined in the new Constitution to give the new national government authority over every subject which in 1787 had a national character. Of course they had never heard of railroads or automobiles or modern corporations and holding companies. Development of electricity out of flood control projects, speedy communication and transportation between the States, radio -- these were unknown to the Founding Fathers.

But in 1787 they did know about an Army and Navy. That was something which was national in character. That was something which required united action for the States by the Federal Government. And so it was the Congress, the National Government, which was given power and control over the Army and the Navy. The Constitution said nothing about airplanes. No one would argue from that that it would be unconstitutional for
the United States to include airplanes as a part of its armed forces. They did know about post offices and post roads. That was something which was national in character, something which required united action for the States by the Federal Government. And so it was the Congress, the National Government, which was given power and control over the post offices and post roads.

And although the Constitution said nothing about railroads and air highways as post roads, no one would argue from that that it would be unconstitutional for the United States to include railroads and air highways as part of its postal system.

Back in 1787 they did know about copyrights, about the coinage of money, about weights and measures. Those were matters which were national in character, matters which required united action for the States by the Federal Government.

There were two other sweeping grants of power which were given by the new Constitution to the Congress. They were deemed necessary to carry out the principal reasons for the adoption of the Constitution. After the Revolutionary War, each of the several states exercised independent control over all business within its borders. Up to the time of the Revolution, there had been no power in any central government to lay taxes which were needed to pay what were really national debts or to provide for
the common defense of all the States, or to promote the general welfare of all the people as citizens of one nation. Remember that the Preamble of the Constitution which really was a statement of its basic principles said that the Constitution was being adopted "to insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty." And to so carry out those basic principles the Constitution provided, first, that "The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States * * *. Secondly, it provided that the Congress should have power "To regulate commerce with foreign nations and among the several states".

At the same time the wise people who wrote the Constitution had enough foresight to know that things then undreamed of would become commonplace in the future. Therefore, as the debates show they used language in the Constitution with the clear intention that as these unheard of problems came into being they would, if they had a national character, be solved by national action. And as the machine age changed many local industries and local problems into national industries and national problems, the Congress has gradually extended its own control and supervision over a larger
and larger field. For example, when messages were carried on horseback from village to village, when food was raised and sold in the same township, no one could urge such matters as being of national interest. But now the telegraph, the telephone and the radio carry messages from coast to coast in a minute. Everyone concedes that that type of communication is now a matter of national interest. In the same way when cattle and grain are raised in several states and shipped to other states there to be made into food which is sent to every state, this commerce likewise becomes a matter of national concern.

As I have said, there is nothing in the Constitution you hold in your hand that says that the Supreme Court can refuse to enforce a law of Congress because the Supreme Court thinks Congress has no power to pass that law. In England the highest courts of the land enforce the acts of Parliament without daring to ask Parliament to show its authority to pass the legislation. And in this country, the power of the Court to demand that Congress show its authority to pass a law grew up very, very slowly. When the power was first asserted very modestly in a case that came out in favor of the Government, there was a furious argument and Thomas Jefferson told the Chief Justice that the Court had no such power. Up until the Civil War, there was never another attempt of the Court to exer-
cise that power until the Dred Scott case came along. Then the Court exercised the power again and helped precipitate the Civil War.

After the troubles of the Civil War were over, the Court began to assert the power again, but it tried to make it clear to the country in statement after statement that it did not consider it had any power to disregard a law of Congress except where the law clearly violated a prohibition in the Constitution or where the statute was a wholly arbitrary exercise in violation of the Bill of Rights. As the Court expressed it over and over again, it would presume a statute to be constitutional if there were any reasonable doubt about its unconstitutionality, i.e., that it would always give the Legislature the benefit of the doubt. On this basis, it repeated over and over again by the Court, the country tolerated this judicial review which Thomas Jefferson had condemned, which was almost unknown in the early days of the Republic and which was partly to blame for the tragedy of the Civil War. I am not saying that we should abolish this document of judicial review. I am only saying that we should have a Court which is capable of exercising the self-limitation in the use of that power, which is the chief condition on which the country has accepted its possession by the Judiciary. But how well has the Judiciary kept its promise to the public as to the conditions on which it would exercise this power?
If we are to preserve our Constitution and our form of government, we must preserve above all other things the power of the elected law-makers — the power of the Congress to enact all laws necessary and proper to meet our national needs. That right of law-making in the elected representatives of the people is the very foundation of our power of self-government.

The rest of our public officials, executives and judges, are selected to carry out and enforce the law. They are not chosen and it is not their duty to revise the laws enacted by Congress or to prevent the laws from being made effective.

There are restrictions upon law-making which have been written into the Constitution but neither the President nor any judge of any court has been given any authority to refuse to enforce a law just because he does not like the law and disapproves of the public policy expressed in the law. Nevertheless, for many years there has been a growing and dangerous tendency on the part of judges to find some way to stop the enforcement of laws to which they were personally opposed. This wrongful practice has been criticized bitterly by some of the most eminent justices
of the Supreme Court — but the evil instead of diminishing has steadily increased.

For example, long before the New Deal — in 1869 — a law was passed forbidding any judge from preventing the collection of federal taxes. This law was first sustained by the Supreme Court as essential to the very existence of the government. Yet, bit by bit, this sound doctrine was destroyed with the courts assuming more and more power until recently we had the extraordinary spectacle of 1671 injunctions issued by federal courts preventing the collection of federal taxes imposed by one law. Against such a violation of law by the Supreme Court, one of the early strong objectors was the late Chief Justice White.

Another example — the people wrote the Eleventh Amendment into the Constitution to prohibit suits in the federal courts against any State by citizens of another State. But, bit by bit, this Amendment was practically nullified by the holding of the Supreme Court that suits could be brought against State officials whereby the power of a State government to act could be destroyed by enjoining the State officers. Eminent Justices of the court protested in vain against such a ruling.
Another example — the people wrote the Sixteenth Amendment providing that the Congress should have power to collect taxes on incomes "from whatever source derived." But the Supreme Court held stock dividends, salaries of judges and many other kinds of income could not be taxed. Eminent lawyers and judges protested in vain.

Another example — the Congress has written a large number of laws regulating commerce among the States, laws such as the anti-trust acts, the Clayton Act, the Stockyards Act — long prior to the New Deal — and the courts have limited the enforcement of those acts to those transactions which the court decided should be regulated, overriding the decision of the Congress as to what regulations were needed to protect and promote interstate commerce.

Thus the federal courts have steadily extended their control over law-making until now the persistent question when federal laws are under consideration is not: What do the elected law-makers regard as necessary and proper laws under clearly granted powers of the federal government, but what laws will the Supreme Court permit the Congress to enact?
In like manner the courts have assumed — long before the New Deal — the power to nullify state laws which, in the opinion of eminent justices of the Supreme Court, were clearly within the law-making power of the States — laws to fix minimum wages for example.

No one can find any in the Constitution any authority to a court to decide that a State can regulate maximum hours of work but not minimum wages, or that the federal government can stop strikes but cannot stop wrongful acts that bring about strikes, or that the federal government can prohibit interstate commerce in lottery tickets but not interstate commerce in the products of child labor. These permissions or prohibitions of law are not written in the Constitution. They are written in opinions of the Supreme Court deciding what laws the elected law-makers shall be permitted to enact because a majority of the Justices approve of them.

Thus we find that the law-making power of the Congress has been subjected more and more to a veto power upon legislation which is not authorized in the Constitution and which many of the Justices of the Supreme Court have held to be unconstitutional exercise of the power of the court. In the last two this unconstitutional use of judicial power has
exceeded all previous bounds. Consider the extraordinary action of the majority of the court in four recent cases, in which the
In the railroad pension case, the federal power to provide a pension system for railway employees was denied; and Chief Justice Hughes, expressing the views of Justices Brandeis, Stone and Cardozo, said that the majority opinion showed a departure from sound principles and places an unwarranted limitation upon the commerce clause.

In the AAA case, the majority held that the expressly granted power of the Congress to lay taxes, to pay the debts and provide for the common defense and general welfare was impliedly limited by undefined powers reserved to the States, so the Congress had no power to regulate agriculture — even by encouraging voluntary farmer cooperation. The dissenting Justices protested against a "tortured construction of the Constitution" by which a power granted in specific unambiguous terms would now be qualified by judicial fiat. This "judicial fiat" in simple language means the arbitrary exercises of unconstitutional power by the judges.
In the Guffey Coal Case a majority of the Supreme Court held that coal mining activities which were regulated had no "direct" effect upon interstate commerce, although the Congress, representing public opinion, held the exact opposite.

The dissenting Justices pointed out that "the student of the subject is confronted with the indisputable truth that there were ills to be corrected and ills that had a direct relation to the maintenance of commerce among the States without friction or diversion." In a word the majority nullified a law by denying the existence of facts universally recognized.

In the Municipal Bankruptcies Case the federal government exercised a constitutional power expressly granted to "establish uniform laws on the subject of bankruptcies." But a majority of the court would not enforce the Act of Congress which permitted the States voluntarily to come under the federal bankruptcy law. They insisted on protecting the "dignity" of the State against the wishes of the States, which, as the minority of the Court remarked, operated to make "unity a doubtful blessing."
In the New York Minimum Wage Case the majority held that the liberty of people to accept starvation wages must be protected. The dissenting Justices pointed out that constitutional liberty "is not freedom from restraint of all law or any law" 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 is a summary of the problem we are facing. Is government to be rendered impotent by the accident that a bare majority of Justices of the Supreme Court are stubbornly exercising a power over legislation which was never granted to anyone in the Constitution?
No one who is willing to face the facts can deny that the Court, in a great many of its decisions, has acted not as a Court interpreting a statute or the Constitution — it has acted more as a Legislative body reading into the Constitution regulations which are not there and which could not have been intended. It is one thing to declare unconstitutional a statute which clearly violates some express provision of the Constitution. But when a member of the Court, in a minority opinion, says that the majority of the Court by its decision was restricting a proper and constitutional power of Congress by judicial fiat or judge-made legislation, it is clear that the Court is going beyond its constitutional powers and is itself acting unconstitutionally, without anyone in the United States having the power to tell them so and make them stop.

What real purpose can be served by amending the Constitution, if five judges can themselves change express words in the amendment by judicial decree?

I do not seek to take away from the Court its important and legitimate function to declare a law unconstitutional when it clearly is. I do say that the Court itself is disobeying
the Constitution by taking unto itself the power to write the
social and economic policies of a majority of the Court into
the Constitution in spite of the fact that a majority of each
House of the Congress, representing the people themselves, has
declared other policies.

The Court seems to have forgotten in recent years,
that when the Congress passes and the President approves a bill,
it has a presumption of constitutionality. That is, it should
be held constitutional unless pretty substantial and convincing
reasons can be shown that it violates some provision of the
Constitution. The very nature of a five-four decision, showing
almost an even split of opinion, is itself an indication that
these substantial and convincing reasons are absent. And yet
time and again in these last four years, well thought out plans
to help the average man and woman of the United States, passed
by the Congress, have been thrown in the
discard by the voice of one man, not elected and not responsible
ability to anyone. Because that one man does not accept the
economic philosophy which is accepted by the overwhelming
majority of the entire country, the philosophy is rejected.
Because it is against the language or the spirit of the Con-
stitution? Not at all! Simply because that one man does not
approve of it!
Now what is the remedy for a situation like this? In every other period of change in our national affairs—Is the Constitution itself inadequate so that we have to amend it to cure that inadequacy? Or, is an accidental majority of Justices so inadequate in their ability to adapt the Constitution, as John Marshall suggested, to the varying crises of human affairs that they cannot use the Constitution as the Founding Fathers conceived it would be used?

I think the Constitution is adequate for *every* of the things we need to do to make the democracy succeed in this generation. I am encouraged to think I am right because Justice Stone, Justice Brandeis, Justice Cardozo, and sometimes Justice Hughes, have agreed with me. As I read the dissenting opinions of Justices Holmes over the last twenty years protesting against the curtailment of the powers of the States by this same Supreme Court, I am sure that he would agree with me also. The Constitution is *all* right if the Court would let it operate -- if the Court would give the Congress that benefit of the doubt which the Court has always admitted was part of our constitutional law. We simply have a situation such as we often get in human affairs where the temporary holders of office are abusing an institution to the peril of the institution. Under such circumstances, common sense tells us not to alter the institution to fit the office holders, but to get the kind of office holders that can fit into the institution and the work the institution...
is supposed to do in a democracy. Twenty-five times in its history the Supreme Court has reversed itself — admitted it was wrong — just as I think it was wrong in certain decisions of the last four years. Has anybody ever proposed before that the Constitution would have to be amended to correct every one of those twenty-five mistakes. In times past we were able to afford the Supreme Court leisure to correct those mistakes by the changing of Justices as death and resignations created those changes. Sometimes it took five years, sometimes ten, sometimes twenty years. But the mistakes were corrected through the changes of the views of Justices, not through constitutional amendment. The difference with our present situation is that things are now travelling too fast and our problems are too important to be able to afford the leisure of letting the Justices correct their mistakes over an indefinite time. We have to have as much assurance as we can give ourselves that the members of the bench will be close enough to the problems of their time not to make mistakes. But we no more need amendment for such purpose of correcting human failure than we needed amendment in the other twenty-five cases where a new set of Justices admitted that an earlier set had simply been wrong. And we cannot afford to cheapen the Constitution as a great framework which can be filled in from generation to generation, by narrowing its interpretation with an amendment every time a majority of Justices
feel a higher call than their duty under the Constitution to give
the benefit of the doubt to the Legislature and try to stand in
the way of laws which do not accord with their personal economic
predilections.

I understand why people
who are looking a long time ahead can feel that the relationship
between a Congress and a life tenure court is too delicate
to be workable under the conditions of the modern world. It may
very well be that conditions have passed beyond the point where men
can be expected to be able to exercise that self-restraint essential
where two coordinate bodies try to function, each with respect
to the sphere of the other. I can understand why some men may feel
that we need a fundamental change which will either eliminate
judicial review of the Legislature or end the life tenure of Federal
judges. I have not concerned myself with such proposals for two
reasons -- first the President is not concerned in proposals for
amendment made by the Congress to the people. He does not sign
a proposal for amendment as he signs legislation. But secondly
and most importantly, I have not concerned myself with proposals
for amendment because it is my considered political judgment that
the available means for delaying the adoption of such an amendment
are sufficiently large to make it impracticable as a means of meeting
our present situation. It is very easy to talk of amendment as a way of going to the people. But as a matter of fact, it is the least democratic method of ascertaining the will of the people provided for under the Constitution. In a national election, despite the machinery of our Electoral Colleges, the people vote substantially as a Nation and the majority rules. In a vote on an amendment, the people do not vote as a Nation. They vote by States, and each state has one vote and only one vote. A State with a population of five hundred thousand people has an equal vote in the determination of the acceptance of an amendment with a state with a population of thirteen million. And depending upon the method of amendment adopted it might be possible for a single house of the Legislature of a state with a population of five hundred thousand to block the will of the Convention of a state with a population of thirteen million. If that be democracy, it is a strange kind of democracy.
That essentially undemocratic character of the process of amendment is not something to avoid when an amendment to the Constitution is necessary. We must comply with the terms of the Constitution. But when we know that it is not necessary, insisting on the amendment method to attain a result for which we do not need to use that method, is to incur a risk of delay so obvious that it is hard to credit the sense of practicability of those who are conscientiously interested in social and economic reform but who advocate the amendment process as a way out of our difficulties here and now.

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. Through the five judges on the Supreme Court they can nullify that mandate. They can, therefore, be expected to take advantage of every opportunity to obstruct any amendment. And they can be fully expected to understand the advantages of a strategy of suggesting amendment as the way to attain the social and economic legislation, and thereafter if an amendment
is proposed by Congress find reasons why it is not the particular kind of amendment they desire and oppose it tooth and nail during the process of ratification. And any liberal found in the company of those advocating amendment not as a supplement but as a substitute for the only form of statutory relief available is, as a practical politician, with very strange bedfellows.

Just let us compare the practical working out of the way I have suggested to remedy our difficulties and the way of unnecessary amendment of the Constitution suggested by those who opposed the Administration in the last election.

If the proposal now before the Congress is followed, this is what will happen. Congress will need only a majority vote to pass a statute providing for the creation of a new place on the Supreme Court for every judge over seventy on the Court who does not choose to retire within thirty days a pension of $20,000 a year. The President will then nominate judges to fill the places thus created. If the Senate approves the men the President nominates, the Senate will elect them to the Court through the process known as confirmation. If the Senate does not approve them, it will refuse to elect judges until the President nominates men whom the Senate is willing to elect.

Notice that the method proposed is fundamentally a method of Congressional action. The new judges have to be elected by the Senate.
The President can do nothing more than propose their election.

Immediately after their election the new judges will take
their places on the Supreme Court with the old judges, and with
the new knowledge of the active world they bring from outside we
can hope they will help to persuade the other judges to take a
view of the Constitution like that of Justices Stone, Cardozo,
and Brandeis. That view of the Constitution will justify Congress
as well as the Legislatures of the States in passing and putting
into effect this same Spring -- again by a simple majority vote -- the
kind of laws we have been talking about -- the laws that the people
want and believe to be constitutional -- laws for minimum wages and
maximum hours, social security and old-age pensions, collective bar-
gaining, unemployment relief, public works, aid to farmers, crop
control, soil erosion, aid to the sufferers from flood and drought
and protection of the river areas and the drought areas from the
recurrence of flood and drought, decent housing and conservation of
our natural resources. With the new judges on the Court the Congress
and the State Legislatures could pass such laws this Spring and go
home confident that those laws will have a reasonable chance to stick
in the Courts and to be put into effect without injunctions and rulings
that they were unconstitutional.
Now let's see how long it would take to get these same laws for the people if we choose the amendment method sponsored by the calculating reactionaries and the trusting liberals. Instead of a majority single/vote by Congress, we would have to go through at least three steps, each of them exceedingly difficult when fought by the tactics of obstruction which the reactionaries can be depended on to pursue.

First of all the sponsors of an amendment would have to come to some agreement among themselves. There are at least four major types of amendment -- and no one knows how many kinds of wording for each type. The sponsors of an amendment would first have to decide among themselves on the type and the wording they could agree upon. After that they would have to get their amendment approved by a two-thirds vote in each house of Congress. Any one with practical political judgment will tell you that it is probably three times as hard to get a two-thirds vote in Congress as it is to get a majority vote. Getting an amendment through Congress is certain to take time and lots of time.

After the amendment was thus proposed by Congress it would have to be ratified by three-quarters of the States, thirty-six states acting separately state by state. The Governor of the State would first have to call the Legislature, the legislature would then either go about the business of ratification itself or if Congress...
so provided call a so-called constitutional convention, for which an election would have to be called in each State for delegates.

In most States of this country there are two houses in the Legislature -- a House and a Senate. If the method of ratification proposed by Congress is ratification by the Legislature, both houses in thirty-six States would have to ratify in separate votes probably taken at separate times. That would mean seventy-two victories in the States. And if the Constitutional Convention method were adopted, we would have to win thirty-six separate votes in the States. All this after the struggle in Congress for a two-thirds vote.

Since the vote is taken state by state and each state, large or small, has one and only one vote, thirteen state conventions, or one house in the Legislature of thirteen states, could block or at least indefinitely delay ratification. Any thirteen states could accomplish this -- even if, for instance, they were the thirteen states with the smallest populations, aggregating any one-twentieth of the population, i.e. nineteen-twentieths of the voting population could be for the amendment and one-twentieth could block them. How long do you think the reactionaries with plenty of money and a determination to nullify the election could hold off an amendment with all these opportunities to thwart the democratic will by fighting for delay at every stage of this complicated process and by
finally concentrating their fire on the thirteen weakest states.

There have been amendments which went through within a year or less. But they have been the kind of amendments which the Special Economic Royalists had no interest to oppose, like the Lame Duck Amendment or the Prohibition Repeal Amendment, or amendments which had been fiercely fought over for many years before Congress proposed them to the states. This last was the case with the amendment providing for the Direct Election of Senators. Over this amendment there had been ferocious agitation and debate in the Congress for more than a decade.

The Child Labor amendment is the only modern analogy which gives us any idea of the time it takes to get through an amendment to which Economic Royalists do object and which they will spend their money to block. The Child Labor amendment has been creeping from State Legislature to State Legislature for over thirteen years since it was first proposed to the States by a Republican President and a Republican Congress in 1924. Despite Republican sponsorship and the Democratic sponsorship alike, it has so far been adopted by only twenty-eight states -- eight short of the requisite thirty-six. This amendment will not even have the advantage of the Child Labor amendment of sponsorship by both political parties. For the Republican Party will clearly not sponsor any such amendment.

And never in our political history has any amendment been ratified
over the opposition of any major political party. There are amend-
ments proposed by the party then in power in the Congress to the
States which have not been ratified in a hundred years. I do not
like to essay political prophecy. But it is my deliberate
political judgment that trying to procure social and economic
reform by the amendment route prior to the curing of such unjustified
interpretation of the Constitution as we can reach by a statute
revitalizing the Judiciary will delay the possibility of carrying
out the mandate given by the people in November by from two to three
years. And it is also my deliberate political judgment that at least
nine-tenths of the people advocating this amendment route would refuse
to support an amendment after it had been proposed by the Congress.
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. Not only that, but 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 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 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.
What is really at the back of the minds of a very large proportion of those who talk about constitutional amendment as the proper method for these objectives? What about a great many of those who say "Oh! yes we believe in your objectives; all we disagree with is this method of yours; give us a constitutional amendment to submit to the legislatures of the various States and we will all be with you; that is the best way to get all these reforms enacted into law."

The trouble with a great many of these people is that in their fundamental thinking they object to social and economic legislation along modern lines. The first essential required in doing a job well is the desire to see it done. And I say that a great many of those people who talk about amendment as the way to get the job done do not really want to see job done.

For example, there are many stock brokers and security dealers -- for the greater part decent citizens, law-abiding and respectable within their communities -- they know that the Securities Exchange Act has minimized cut down the volume of sales of new securities because it has prevented the sale of many of the types of unsound securities which used to be sold in the old days to an innocent public.
These people's incomes have been cut down by this new federal law and other similar new federal laws. Their pocketbooks have been affected. Fundamentally they do not want any more such laws that would cut down their income. Perhaps they should not be blamed for taking this position.

There are, for example, many bankers, especially the larger bankers, who have resented and still resent any extension of supervision by federal laws over the national banking system. Their pocketbooks, too, have been affected by such statutes. They are not making as much money as they did before this Administration came into office. Perhaps they are not to be blamed for taking this position.

There are, for example, the great lawyers of the Nation, men making very large incomes by handling corporate affairs. Their fees have been made from efforts to save their clients from any kind of legal supervision which really supervises. They naturally oppose, for personal economic reasons, not only my plan but any plan of amendment which would hurt their legal business. Perhaps they are not to be blamed for taking this position.
There are many manufacturers who process agricultural products, cotton, wheat, hogs, beef and scores of others.

There are those who speculate in these things which the farmer raises. They naturally were opposed to our efforts to raise the income of farmers. They did not make as much money as they could have made if this Administration had not embarked upon its program of raising the farmers' income. Naturally they opposed any proposition which would give the farmer a larger share of the dollars which you and I spend for food and clothing because that would deduct something from their share.

Perhaps they are not to be blamed for taking this position.

There are those who employ labor in factories, in mines, in mills and in all forms of business and manufacturing. A great many of them naturally objected to our efforts to raise wages and reduce the number of working hours, to improve conditions of labor. Those statutes cost them money because they were intended to permit their employees to make enough to live on decently under American standards. Some of them, engaged in monopoly, objected to our efforts to curb monopoly.

Some of them, engaged in unfair trade practices and cut-throat competition, objected to our efforts to eliminate those practices and that type of competition. Some of them
made money out of child labor. They objected to our efforts to
exploitation
abolish the ills of children.

I am not saying that everyone opposed to this plan
falls within these classes or, indeed, within any class which
is actuated only by selfish financial motives. But I am willing
to guarantee that everyone within these classes is opposed to
this plan because they know that it is going to cost them money
for the general public welfare.
The Constitution specifically gives Congress control of the number of Justices in all the Federal Courts. This is the only way in which the Constitution enables the court to be brought into line to the will of the people as expressed in the ballot. The Founding Fathers placed this power to change the number of Justices not in the President. It placed it in the elected Congress, directly and immediately responsible and accountable to you people throughout the United States; accountable in part every two years. That is the only check and balance we have on the power of the Supreme Court. Otherwise there is power which any official or body of officials in the United States can exercise to restrain them. There is only the sense of their own self-restraint.

But there must be some check upon every power in the United States. Our democracy has always depended and must continue to depend upon a series of checks and balances.

The check on the Congress is the veto power of the President. The check on the President is in the power of the Congress to override his veto. And a check upon both the President and the Congress is the periodic vote of the people of the United States. The only part of our Federal government upon which there is no check is the power of the Supreme Court.
The notions of the Supreme Court and its very attitude have completely disrupted this democratic set-up of checks and balances in two different ways.

First, it has outgrown the role for which it was originally intended — an equal co-partner in the processes of government. It has become a sort of an overlord exercising the power to legislate in the course of judicial decision, without the power of veto or check in the hands of any representative of the people or of the people themselves.

Secondly, through the process of life tenure and through the custom of continuing in their posts, to a very advanced age, it has been able to remove itself from the ability to be touched by the will of the people. The result of this process has been a denial of democracy.

No one can say that the recent decisions of the Supreme Court invalidating the major items of legislation of the New Deal were not submitted to the people themselves in this last election. The overwhelming vote in favor of the Administration was the only way the people of America had of saying that they were for the legislation and against the Court.
This plan does not seek to place any undue power in the Executive or in the Congress. It is an effort to restore the Court to its legitimate place in our system of American constitutional government and to restore to us a judiciary which will resume the high task of building on the framework of the Constitution "a system of living law."

That is why the attacks which we hear in some quarters about opening the way for dictatorship are so wholly without reason. Dictatorships come not so much from bad president men as from bad times which government does nothing to help. They come when orderly representative government finds itself unable to meet the speedy and growing demands for solution of human problems. The power of dictatorship was built upon the absence of legislative restraint and upon absence of control over the purse-strings of a government. Dictators do not bother with reforming courts; they disregard courts completely. The real danger of dictatorship comes from those who prevent a national government from responding to the needs of the time. Those who assume the power to veto the will of the people, as expressed through their elective representatives, are the ones who subject the country to the danger of some strong man or group of men who would be willing to grasp complete control of government in the act of lavishing
by furnishing promising and furnishing the responses to those needs.

It does not help consideration of this problem to use meaningless expressions such as "he is trying to pack the court." If that type of general language must be used, is it not true that all during these years the court has been packed against the forces of progress and liberalism? Four of the Justices who now assume the power to veto legislation were appointed fifteen to twenty-five years ago. All during that time they have been responsible only to themselves. To that extent this fight, while it has been made to appear to be only about a fight about the number and the age of Justices on the Supreme Court, is really in essence a continuation of the fight before the election over the things which I said to the people that we had only just begun to fight." That is why you find that everyone who was united in opposition against our program during the campaign is now united in opposition against this plan. And, by the same token, everyone who was allied with us in the campaign ought to be allied with us now.
Those who talk about this plan being a repudiation of
the Democratic Platform are just plain not telling the whole
truth. It is true that we said "if these problems cannot
be effectively solved by legislation 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 eco-

them. But before we said that we said "We have
sought and will continue to seek to meet these problems through
legislation within the Constitution." It was only if every
other means failed that an amendment would be sought. I have-
spoken of the problems and delays involved in passing and
ratifying an amendment. In the meantime, we are seeking the
constitutional and legislative means to bring the course into
line with modern public opinion. That was the spirit as well
as the letter of the Platform."
To many who have sincerely misunderstood my attitude toward the Supreme Court and to shouting partisans who are spreading misrepresentation, let me make it clear once and for all that I would cherish and safeguard the independence of the entire federal judiciary as absolutely essential to our form of government. Fearless, independent, impartial judges are necessary to maintain individual liberty and free institutions of government. My criticism is not against the decisions of such judges or the maintenance of such a court. My criticism is launched against the transformation of independence and impartiality into a stubborn partisan opposition by judges to public policies and political programs over which they have not been granted any authority by the Constitution.

My complaint is not against a conscientious effort to preserve the Constitution. It is against a willful purpose to exercise power in violation of the Constitution. My remedy is not to place upon the court men equally warped in judgment the other way — or men equally willing to exceed their constitutional authority. My remedy is to make sure that a majority of the court will protect and defend the Constitution by not preventing others from violating it but by refraining from violating it themselves.
D. R.

To many who have sincerely misunderstood my attitude toward the Supreme Court and to shouting partisans who are spreading misrepresentation, let me make it clear once and for all that I would cherish and safeguard the independence of the entire federal judiciary as absolutely essential to our form of government. Fearless, independent, impartial judges are necessary to maintain individual liberty and free institutions of government. My criticism is not against the decisions of such judges or the maintenance of such a court. My criticism is launched against the transformation of independence and impartiality into a stubborn partisan opposition by judges to public policies and political programs over which they have not been granted any authority by the Constitution.

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Let me make this clear. I do not criticize the court for deciding in the Humphrey case that the President cannot, under the law, remove certain appointed federal officials. Whether agreeing or disagreeing with the court — the decision of such a legal question is placed by the Constitution in the hands of the court. I do not criticize the court for deciding in the NRA case that the Congress could not delegate authority to the President without setting up adequate standards for his action. Such a question of law is under the Constitution to be finally decided by the Supreme Court and whether agreeing or disagreeing with its reasoning, we must accept the law as laid down.

I do not criticize the court for undertaking in the NRA case and the AAA to decide upon the extent of authority conferred upon the Congress by the commerce clause and by the general welfare clause. In a word, I do not criticize the decision by the court of any legal question presented to it, according to an independent, impartial judgment, regardless of whether as a lawyer I would so decide that question if I were acting as judge. Nor have I at any time the thought that the judges should be swayed one hair’s breadth from their duty in the decision of a legal question by the desires of the President or the Congress or even a strong public opinion.
But I cannot too strongly point out that the Constitution does not confer upon the judges any authority to oppose and to veto the decision of the Congress as to need to exercise those legislative powers clearly granted to the Congress by the Constitution.

The Guffey Coal case and the AAA case give plain examples of this judicial interference with the constitutional authority of the Congress -- and the minority opinions of four justices in one case and three in the other make my point clear.

In the Guffey case, even the majority of the court was forced to admit that evils in the mining of coal greatly affect interstate commerce. But the majority drew a hair-line distinction between those activities in mining which directly affects commerce and can be regulated and those which greatly but not directly affect commerce which five justices held cannot be regulated. That is not preserving and enforcing the Constitution; that is amending and refusing to enforce the Constitution.

In the AAA case, even the majority of the court agreed that the Congress had been given power to lay taxes and to provide for the general welfare. But the majority held that this express power was limited by an implied power reserved to the States to regulate agriculture. What is written in the Constitution only
The Constitution of 1787 was written out of the Constitution by a few judges in 1936. That is not preserving and enforcing the Constitution. That is amending and refusing to enforce the Constitution.

I think the American people are entitled to have a Supreme Court that will enforce the Constitution as written and 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 a court will not only independent of any outside control or influence. It will also be independent of inside control by those who now assume to deny the Congress a free exercise of its judgment as to the laws necessary and proper to be enacted under the powers granted in the Constitution to the Congress — and not granted to the Supreme Court.

Now we can all concede that sometimes the court may decide legal questions contrary to what we regard as an enlightened view of the law and that such decisions although evil in effect must be accepted within the power of the court. The remedy in such case may be to wait patiently for the education of the bench by the gradual force of changed condition; or it may be to seek a constitutional amendment as was done when the court
after permitting a federal income tax for years finally decided by a margin of one vote that an income tax was unconstitutional.

But the slow remedy of patient acquiescence or a constitutional amendment offers no relief adequate to a situation where by a long series of decisions the court undertakes to set aside the free exercise of legislative power and undertakes to subject all law-making on subjects of urgent national need to a veto power which the court assumes to exercise whenever it disagrees with the public policy adopted by the Congress — or even by State legislatures.

We cannot long tolerate this destruction of the balance of power established in the Constitution. We must insist on the language of the late Justice Holmes "that legislators are the ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts." We cannot permit those protections of the liberties and welfare of masses of the people which are written into laws enacted upon command of the people to be set aside by the courts in order to protect special privileges and interests which appeal to a few judges as particularly worthy of their tender case.

Many who agree with our purpose seek a far
more radical cure than we have proposed. It is proposed for example that by constitutional amendment we give the Congress power to override by a two-thirds vote the veto of the Supreme Court. Do the American people wish the Congress to have power to override the Supreme Court if the Supreme Court is really enforcing the Constitution? Certainly not. Do they wish the Congress to have power to amend the Constitution at any time by a two-thirds vote? Certainly not.

Essentially this proposal calls for a fundamental change in our form of government. It would establish a federal legislature supreme over not the federal Constitution but supreme over all the powers of state government. And yet some of those who are loudly bewailing any change in our form of government, who are clamoring against federal power and demanding preservation of state sovereignty stoop to the hypocrisy and sham of expressing a sympathetic interest in such a revolutionary proposal. They even shout that they are trying to stop a trend to dictatorship by a President and a so-called rubber stamp Congress — and then give lip-service to a proposal that would give such a President and such a Congress absolute dictatorial power over all the people.
Even if the Congress at this session were to take up seriously and in extenso all of the proposed Amendments, it is perfectly clear that this discussion could not and ought not to be rushed through at this session or even the next because of the very great difficulty on agreeing as to which course of amendment is the best. After they have agreed, if it is possible in two or three sessions, you may have the terrific problem of ratification. Meanwhile, where is the Nation?

Suggested to be put in before the part about the Constitution:

I think it is worth bringing in not only that no amendment has ever been passed with the opposition of a major ship party and that, incidentally, the leaders of the Republican party today is unquestionably opposed to amendment, but also that a very large percentage, not all, of newspaper publishers, Chambers of Commerce, Bar Associations, Manufacturers Associations, who are giving out the impression that problems cannot be solved by the amendment method and that, therefore, they would be for an amendment, when as a matter of practical fact they would be the first people, if an amendment were passed, to say Oh! that was not the
kind of an amendment that I was thinking of and, therefore, I am going to spend my time, my effort and my money to block ratification.

In other words, what lies really at the back of the minds of a very large proportion of those who are talking about amendment is simply this — that in their fundamental thinking they object to social and economic legislation along modern lines. They are, for example, stock brokers and security dealers — men, for the greater part, decent citizens, law-abiding and respectable within their communities — they know that the Securities Exchange Act has curtailed the volume of sales of new securities because it has prevent the continued assurance of many of the types of unsound securities sold in the old days to an innocent public. These people's incomes have been cut down by these new Federal laws. Fundamentally they do not want any more Federal laws that would cut down their income and we cannot wholly blame them for taking a selfish position. Take, for example, the bankers, especially larger bankers, who fundamentally resent any extension of supervisory Federal laws over the national banking system.
REMARKS - F. D. R.

They are not making as much money as they did before this Administration came into office. We can understand and perhaps excuse their selfishness.

Take the great lawyers of the Nation, men who are making what the average of us would call very large incomes in handling corporate cases — quite aside from the fact that the more cases they can get their corporate clients to take into court the more money they will make, they have so long been associated with efforts to save their clients from any kind of legal supervision that they oppose not only my plan but any plan of amendment which would hurt their legal business. We can understand and perhaps excuse their attitude.
And note that my plan proposes only the same rule for the Supreme Court as I have advocated for all the other federal courts.

That new members of the district courts should not exceed fifty. That new members of the Circuit Courts of Appeal should not exceed two in the case of any one court and that in the case of the Supreme Court it should not exceed fifteen members.

The Supreme Court may remain at nine; it may go to ten or eleven or twelve or thirteen or fourteen or fifteen — that determination will be made by the Justices of the Supreme Court themselves who are over seventy years of age.

override his veto and the power to make or to limit appropriations.
That this talk about the Platform by Wheeler (without mentioning his name) calling for an amendment, is just plain not telling the truth. The Platform said that if every other means failed, then we would seek clarifying amendments. We know clarifying amendments will take a long time to agree on and a longer time to get ratification, Because of the problems of ratification, which I will talk about later. In the meantime, carrying out the mandate of the Platform we are seeking means to bring the courts in line with modern public opinion, which is contemplated by the language of the Platform. We are seeking the other means.

Far from this being an attack on the Constitution, it is a definite rescue party for the Constitution. It is an organized rescue to prevent the Constitution from being nullified.

In the history of democratic processes, if we go back to the days of King John in England, what do we find? There was a well-ordered futile system, thoroughly under-
stood and thoroughly accepted, under which the King, at the top — one branch of the government — there were the Barons and nobles who had certain rights, powers and duties — they formed the second branch of the government — following them were the small merchants and all those people who formed the mass of the population — they had rights, powers and duties. Under King John’s predecessors this balance between the three powers had always been fairly well maintained. The democratic process was growing and more rights were being constantly demanded by the people and the barons. But the King said no. The other two branches of the government say it; I want won’t let you have it. They forced him to sign a Magna Carta.

The second example — the period, Charles I, and he declined to go along with the Commons and with probably a majority of his Nobility and there was organized a group in the Parliament — Cromwell and others who were insisting on popular government. That particular branch of the government would not go along and unfortunately he lost his head — there was no revolution.
Third - 1910 - the British House of Lords. We in this country did not resort to cutting people's heads off.

What we are essentially trying to do is to save the Constitution. In saving it we are trying to restore legislative powers to the legislative branch of the government — the Congress of the United States. Today we believe that they have had legislative powers taken away from them by unconstititutional processes that have developed slowly over a long period of years in the Supreme Court. We, therefore, want the Supreme Court to revert to what the Constitution says it shall be — the Judicial arm of the government, not the legislative arm of the government, or the third house of the legislature.

AMENDMENT - at the end

And this applies — this purpose of saving the legislative power of the government to proposed amendments to the Constitution. No matter what amendment may be added to the Constitution, it will still be subject to legislative interpretation by the Supreme Court if the present temper of the Supreme Court or its successor remains as it is today.
Where the Supreme Court has written definite statute law into a statute and use one or two or three examples.

Another example, the Sixteenth Amendment directly conferred upon the Congress of the United States the right to levy taxes on incomes from any source derived. An income tax law was passed. It applied to every Federal official, including the President and including the Congress. The Supreme Court held, however, that it did not apply to the salaries of the Judges of the Supreme Court. This, in other words, is another example of writing an amendment to the statute into the statute itself -- a purely legislative act and not a judicial function.
T. G. C.

We can invoke the Interstate Commerce Clause to protect the children of the rich against kidnapping but not to protect the children of the poor against child labor.

PAGE 85 — INSERT A

To follow "no one knows with finality when a law is passed etc. -- but there ought to be at least a presumption of constitutionality arising from the fact that a majority of the Congress in passing it and the President in signing it have demonstrated their belief that the law is within the constitutional powers of the Congress itself.

FIRST PARAGRAPH PAGE 46

Consider addition relating to 6-3; 7-2 or unanimous decisions of Court.

INSERT B

The difference between the Congress and the Court involves clauses in the Constitution which have nothing whatever to do with these clauses which protect our civil liberties.
BACKGROUND

1. What does the Constitution do — what is it intended to do?

2. Why the Supreme Court has failed to carry this out in regard to this or that.

3. What are the remedies proposed and why many of these remedies — amendment, etc., are impossible?

4. The description of why the constitutional proposal is the simplest of all.
The Congress was conferring legislative powers on the President. If we stop on that part of the NRA decision in which all the judges concurred, we have an easy way out to accomplish the objectives of NRA and that is for the Congress to pass some kind of law for those objectives but each of these laws would be phrased in such a way as to limit the President within certain clearly defined standards. The trouble is that because of other language in that NRA decision no one has any idea whether the Supreme Court would hold such laws to be constitutional or not.

J. R.

The question that this establishes a precedent which would enable any other President to make the court forty or fifty, in order to get his will done.

W. C. B.

In the first place the Supreme Court under the Constitution had no right to declare an Act of Congress unconstitutional. They asserted it for the first time when they declared that it would be their fixed principle never to declare an Act unconstitutional if there was the faintest shadow of a doubt that it was constitutional. The present position which the Supreme Court has taken goes far beyond that because there is doubt when four
judges vote against a proposal and that they are the people who are forcing the issue.

W. C. B.

It has been frequently suggested that we should, in order to overcome the present difficulty, leave the court only with the right to declare Acts unconstitutional provided there was a 7-2 majority. I am opposed to this because I do not for all future time wish to place at the mercy of the majority or a minority of the court the right to protect the religious and personal liberties of the people.
Lawyers have made the Constitution a legal document instead of a social and economic and personal document.

The main purpose of the grant of judicial power over the validity of law was to prevent a conflict between State legislative power and Federal legislative power. Someone had to decide but it was never the intention that the Federal legislative power should be curtailed or limited by the interpretation of the Supreme Court. (No Man's Land created by the Supreme Court) You have all the legislative power in the States and in the Federal Government and you have to find a means to preserve it. To protect its function so the States could not impair the powers of the Federal Government. For that reason they are put in the supremacy of the Federal Government.

MARCH 9th - F. D. R.

I have pointed out the need for some kind of action. I have pointed out my belief that the country cannot proceed over an indefinite term of years wrangling over what should be done, as it did in another great issue - Slavery. Therefore, I feel confident that the Nation will
back me up in insisting that the Congress shall proceed to
give the Nation action so that as quickly as may be possible
the Government of the United States can function in curing
social and economic ills and in providing a social and
economic policy without waiting until it may perhaps be too
too
late.

The Constitution is not determined on purely legal
grounds — that this is always right or that always wrong.
The Court has reversed itself twenty-five different times
in its history. Why should we not have Judges whose economic
and political views represent the thought of the American
people? Here you have the Court as the third branch of the
Government completely checking the other two branches of the
Government. Why not ask how these Judges earned their living
before they went on the Supreme Court? That these five or
six men represent the economic and political views of a very
small minority; that we ought to have Judges on the Bench
who have knowledge of and are alert to present day problems.
What is the use of their making an argument that you are
packing the Court. Stone, former Republican Attorney General,
is now supporting your New Deal legislation. Why should
they assume all the people you are putting on the Court are dishonest men and will not interpret the Constitution in the light of their own consciences? I think the Constitution is a social and economic document. This is the real crux of the thing as I see it. Five people control the decision about what is in the Constitution and they have our democracy stymied. They do not interpret - they legislate. They tell Congress what it can do and what it cannot do. Government is responsible to the people. Congress has the constitutional power to act.

We start with the assumption that the people want these laws. Why cannot we get them? What I propose is the only way we can get them. Do you think we can afford to take the risk of any longer time to get them?

This is the constitutional way to get it. That fundamental law is democracy.

What you face now is the unconstitutional exercise of power by a majority of the Court to the field of legislative judgment and the only remedy for that is to change. Therefore, all you can do is to add additional men who can interpret the Constitution. This is a judicial not a constitutional question.
Essentially this proposal is to restore to the Congress legislative power which has unconstitutionally been taken away from an elective legislature.
The problem of the Courts arises from two original causes. The first is the slowness and, therefore, the costliness of justice. Either the Courts are behind in their work or the Judges are so swamped with work that many cases which should be heard are denied a hearing. The mechanics of this have been fully explained in my message to the Congress. The other cause underlying what I believe to be a demand for reform on the part of a great majority of Americans is that in the decisions of so many Federal Judges in all Federal Courts there has been apparent both a complete lack of understanding of the changing conditions of civilization and also a growing willingness to act unconstitutionally by assuming legislative power which did not belong in the Courts at all. Therefore, and because of the fact that all Federal Judges are appointed for life and can remain in active service until they die, no matter what their age may be, a most thorough and careful review led us to believe that an addition of new Judges would kill two birds with one stone — help to bring the calendars up to date and provide a more careful consideration of individual cases, on the one hand, and bring in new blood conversant with modern conditions and willing to stay out of the legislative field on the other hand.
SUGGESTIONS FOR THE STARTING OF THE MARCH NINTH SPEECH (CONTINUED)

It is interesting to note that in the case of the District Courts the proposal has met with no serious objection. It is interesting to note that in the case of the Circuit Courts of Appeals, little objection has been made. It seems that if the proposal is sound in the case of the lower Courts, it is equally sound in the case of the highest Court. If it is good in the two cases why is it not good in the third?
On Thursday, last, I spoke at some length in regard to the problems which faced the country at the present moment and in the immediate future. I pointed out the seriousness of these problems and my firm belief that the solution of them cannot be put off for four years or forty years. (Then go into a resume of what I say on March 4th about the need for definite knowledge on the part of the Nation and its government as to how these problems can constitutionally be solved).

But the Courts have said that the Preamble is not a part of the Constitution. Legalistically speaking that is true. But the Preamble of the Constitution which speaks of the blessings of liberty and provides for the general welfare is intended as a guide in the construction of all the subsequent Articles. That guide has not been followed by the Supreme Court of the United States.

You and I know who have blocked efforts at social and economic reforms in bygone years and have opposed everything that I have tried to do in the past four years. A very large number of these same people -- you and I know some of them by name and all of them by type -- are today saying "Why doesn't the President propose a constitutional amendment and let the people decide?"
You and I know that if two-thirds of the Congress could decide on the language of a constitutional amendment, these same people who are today talking constitutional amendment would be the first to spend their money and their time in blocking ratification of it by the necessary three-quarters of the States. Remember that one house of the Legislature in thirteen States can block ratification indefinitely. They can do this either by declining to ratify or by declining to call a Constitutional Convention within their State. Remember, also, that ratification can be prevented not by twenty-five percent of the voting population of the Nation, but conceivably by thirteen of the smaller states with a population of only five percent of the population of the Nation. In other words, if ninety or ninety-five people out of a hundred were in favor of a new amendment, the other five or ten percent could thwart their will.

Why the Constitution? We have had a Federal Government of sorts, a Continental Congress during the Revolution and a Congress of the Confederation from 1783 to 1789. Why did we need a Constitution? Because we wanted to be a nation for the handling of all national problems. And the framers in 1787, in order to end what was an impossible situation with tariffs between the several states and no authority in the Federal Government, except to make foreign
treaties, created a National Government and gave to that National Government every authority over every subject which in 1787 had a national character. (List subjects). At the same time the writers of the Constitution realized that all kinds of new things that they had never heard of might become national problems. They had never heard of railroads, or automobiles, or minimum wages, or corporations; yet they were wise enough to know that things then undreamed-of would become commonplace in the future. Therefore, as the debates show, they drew the language of the Constitution with the clear intention that as these unheard-of problems came into being, they would, if they had a national character, be solved through national action. And that is why with great care they used phrases in the Constitution to take care of those potential needs. (Then cite some of the phrases).
REMARKS -- F. D. R.

Page #13 - Draft #2

If it had stopped there corrective legislation would have cured the trouble, and we should all have been glad to have the advice of the Supreme Court on this subject. (Go on with the nullification, etc.

Page #20 - Draft #2

This Democratic party and those in other parties who find that they can make progress toward their ideals by working with it.

Who thinks that this can be handled by the States alone?

Suggest cribbing what Phil La Follette said last night and what we talked about yesterday afternoon -- that the Supreme Court itself is acting in an unconstitutional way. In knocking out AAA doubt immediately was caused (and list some of them) NRA by a unanimous decision - the words caused doubt on other things, etc.
REMARKS - F. D. R.

In 1933 in the short session we faced such and such laws -- some of them are still on the statute books but doubt has been caused; 1934, such and such laws were passed; 1935, such and such laws were passed; 1936, such and such laws were passed. Here is our program for this year -- where do we get off?

That there seems to be absolutely no doubt about one thing, and one thing only, and that is that the Federal Government can appropriate money out of the Treasury and draw checks on the Treasury and hand them over to the States. That seems to be the only thing that is perfectly clear. The Supreme Court has never questioned that right. Are we going along handling problems by making the Federal Treasury the only agency for the solution of these problems?

STATES' RIGHTS

Remember that anything that can be done -- carried out through the agency of the States -- the Congress is going to give to the States to carry out. That is obvious and it is only where Congress decides that effective results can only be attained through Federal supervision that they are going to give Federal supervision to the Federal Government.
SUGGESTION FOR THE STARTING OF THE MARCH NINTH SPEECH - F. D. R.

Tonight in making the first radio report to the Nation, early in my second term, I am reminded of Sunday night, March 13th (?) when I made the first such talk at the beginning of my first term. I spoke at that time of the great banking crisis which had befallen us and I sought to give reassurance to the Nation by explaining frankly and fully the business of banking and the way we proposed to handle the crisis. Tonight I want to speak to you very simply of a crisis, which, to be sure, is more complex because it relates to dozens of individual subjects, but, at the same time, even more far-reaching in its ultimate effects than the safeguarding of cash in banks.

In the case of the banks in the spring of 1933, the crisis went to the complete limit of closing all the banks because for four years conversation and more conversation, dozens of remedies, dozens of statements, had resulted in no accepted plan, and especially had resulted in no action.

The present crisis, which goes even more deeply to the root of our social and economic life, will inevitably result in some kind of a crash if we handle it for another four years by conversation, a multiplicity of plans and inaction, and we have to be bold here as we had to be bold in the banking crisis.
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.

You and I then determined never to let our economic system get so out of joint again -- that we simply couldn't afford to take the risk of another such crisis which our institutions might not be able to survive.

We also became convinced that the only way to avoid a repetition of those dark days of March 1933 was to have government step in to prevent the abuses and the inequalities which had thrown that system out of joint.

Today, as recovery reaches the point where the dangers of 1933 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
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judiciary to do what the people know government needs to do to meet changing social and economic conditions so that another catastrophe can be averted.

Tonight I want to talk to you very simply about that crisis and the need for present action to meet it. Four years ago in the banking crisis, action did not come until the eleventh hour, until it was almost too late.

The reasons for that delay were fundamentally the same kind of reasons as those that tempt some of us 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 foresighted enough to understand and to act. During all the years that preceded the banking crisis the nation shrank from action, drifting through endless discussions, uncertain of either its power or its 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 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 these needs of the great masses of our people who can find in their individual efforts or in local and State legislation no solution for the evils that distress their own lives today and menace the happiness and security of their children tomorrow. And because it will take time — and plenty of time — to work out 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...
of these fundamental needs. There is almost a universal demand that the National Government take action now to solve these problems. All political parties recognized these needs. In the last national election, as in the elections of 1932 and 1934, an overwhelming majority of the people voted their wish that the Congress and the President take action, not after long years of debate -- but now.

But a majority of the individual Justices of the Supreme Court are blocking action. The necessary powers of national law-making to meet national needs are crippled, indeed paralyzed, at irregular intervals by sweeping decisions of a majority of the Supreme Court denying to the Congress the right to exercise its judgment in the use of powers expressly granted to the Congress by the Constitution of the United States.

Those decisions do not relate to acts of the Congress which the Constitution expressly forbids the Congress to pass. For instance, the Congress can never pass a statute which interferes with anyone's religion or religious education or practice. Congress can never pass a statute which prevents free expression of opinion, or does away with equal rights for all, regardless of race, religion or color. And there are a multitude of other safeguards in the Bill of Rights and elsewhere in the Constitution, which protect
every law-obdaining individual within our borders in his or her personal liberty and freedom. And that is so clear that no Congress since the War between the States has ever dared or would ever dare to violate those express provisions of the Constitution. And if it ever did dare, no court, no matter how constituted, would ever tolerate it for a moment.

We have not questioned and never will question the power of the Supreme Court to declare such laws unconstitutional. I would be the first to oppose any proposal which, by the widest stretch of the imagination, could imperil for an instant the perpetual sanctity of those protections for the individual. It is perfectly silly to talk about any danger to anyone's civil or religious liberties as being at all involved in the present proposal to reform the Judiciary.

The present conflict between the Congress and the Court has risen out of clauses of the Constitution which have nothing whatever to do with the protection of our civil liberties. The Constitution gives to the Congress an express power to meet national needs with national legislation; it gives the Congress an express power to provide for the general welfare and to regulate commerce among the States. But when the Congress has sought to exercise these powers to aid agriculture, to improve the conditions of labor, to
safeguard business against unfair competition, to protect our
natural resources and to serve in many other ways our national
needs, the majority on the Supreme Court has assumed the power to
pass upon the wisdom of these acts of the Congress, the power to
disapprove the public policy written into these laws, and to hold
unconstitutional those acts of the Congress which were contrary to
a political or economic policy acceptable to the Court.

Everybody knows that there is nothing said in the Constitu-
tion which gives the Court any such power. When it was exercised
for the first time in 1803, it was in a case in which the statute
of Congress deliberately violated an express provision of the
Constitution. Even so, the assumption of that power was challenged
in a roar of public disapproval led by the President himself—
Thomas Jefferson. Nothing was done about it probably for two
reasons: First, the Court itself said that the power to declare an
Act of the Congress invalid should never be exercised unless the
statute violated the Constitution beyond any reasonable doubt. That
promise was first expressed in 18—by Mr. Justice Washington of
the Supreme Court as follows: (quoted)

The promise was expressed in modern times by Mr. Justice
Holmes as follows: (quote)

The promise has never been withdrawn; on the contrary, it has
"It is but a decent respect due to the wisdom, integrity and the patriotism of the legislative body by which my law is passed, to presume in favor of its validity, until its violation is proved beyond all reasonable doubt."

The promise was expressed again in modern times by Mr. Justice Holmes as follows: "It is not enough that a statute goes to the verge of constitutional power. We must be able to see clearly that it goes beyond that power. In case of real doubt a law must be sustained." (207 U.S. 79)

The promise has never been withdrawn. On the contrary it has
been reiterated in the very cases in which the Justices have failed to make the promise good.

The second reason for public acquiescence is that this power of the Supreme Court was not again exercised a second time until the Dred Scott decision of 1857.

At this second exercise of this power rose another roar of disapproval — this time led by Abraham Lincoln. The opposition of the discredited Court was openly ignored during the war that followed. With increasing frequency after the Civil War, and particularly since the rise of the modern movement for social and economic progress, however, the Court has more and more boldly asserted a power to veto legislation. And in the last two years this unconstitutional use of judicial power has exceeded all previous bounds.

Can it be said that laws are unconstitutional beyond reasonable doubt when three or four of its ablest Justices maintain that such laws are constitutional?

Consider the extraordinary statements made by the minority of the Court in three recent cases in which the will of the Legislative branch was vetoed.
In the Railroad Pension Case Chief Justice Hughes said that the majority opinion showed "a departure from sound principles and places an unwarranted limitation upon the commerce clause."

In the AAA case the dissenting Justices protested against what they called a "tortured construction of the Constitution" by which a power granted "in specific ambiguous terms" would "now be curtailed by judicial fiat."

In the New York Minimum Wage case the dissenting Justices pointed out that the majority, far from insisting upon violation beyond a reasonable doubt, 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 is a summary of the problems we are facing. Is government to be rendered impotent by the accident that a bare majority of Justices of the Supreme Court are stubbornly exercising a veto power over legislation which was never granted to anyone in the Constitution?
In the face of these dissenting opinions, there is no basis for the impression which some members of the Court have tried to create in their majority opinions that there has been something in the Constitution itself which, regretfully to thwart the will of the people because the plain language of the Constitution "when laid 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 as the Chief Justice has said "what the judges say it is".

And in the face of those dissenting opinions, it is perfectly clear that the judges are not complying with the promises to the public under which they have been permitted judicial review and are not even complying with their own statements for one hundred and fifty years regarding what the Constitution is.

No one who is willing to face the facts can deny that the Court, in a great many of its decisions, has acted not as a Court interpreting a statute or the Constitution -- it has acted more as a legislative body reading into the Constitution regulations which are not there and which could not have been intended. It is one thing to declare unconstitutional a statute which clearly violates some express provision of the Constitution.
I do not seek to take away from the Court its important and legitimate function to declare a law unconstitutional when it clearly is. But I do say that the Court itself is disobeying the Constitution by taking unto itself the power to write the social and economic policies of a majority of the Court into the Constitution in spite of the fact that a majority of each House of the Congress, representing the people themselves, has declared other policies. The American people have reached the point where they 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 not only independent of any outside control or influence; it will be independent also of inside control by those who seize power to deny to the Congress the right to exercise its judgment as to the laws necessary and proper under
the legislative powers granted in the Constitution to the Congress,
and not granted to the Supreme Court.

I have been thinking about ways and means to restore the
legislative powers to the Congress ever since the election when
27,000,000 people gave me a mandate to carry out a program of
social and economic reforms impossible to carry out under the
present decisions of the Supreme Court. I understood that mandate
to require me to put that program in active operation as soon as
possible. I understood that mandate to require me to find legal
means to put that program in motion by the quickest method avail-
able which was clearly constitutional — by statute if possible —
by the slower method of amendment only if absolutely necessary.

The chief obstacle to reform of the Federal Judiciary
by statute is the provision in our Constitution that Federal
Justices, once appointed, can, if they choose, hold office for
life, but no matter how old they may get to be. In 46 out of
48 States of the Union, Judges are elected not for life but for
a period of years. It may, therefore, seem strange to most of
you accustomed to your State elective Judiciary, but the fact
is that there is no power in the Congress or in the President
to compel any Justice to leave the Court at the age of seventy.
The most that the Legislative and Executive branches of the
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 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.

The statute applied 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 should be equally good for all.

What is my proposal? It is simply this: whenever a Justice has reached the age of seventy and does not avail himself
of the opportunity which the people have given him of retiring on a pension, a new member shall be appointed by the President, with the advice and consent of the Senate. In order to place a limit upon the number of the Court, the plan provides that at no time should it contain more than fifteen members. It need not, as a fact, reach that number but it cannot go beyond. For even with the present court, which has six justices now over the age of seventy, the bill provides if any one or more of them did retire, that his place should not be filled. Consequently, although there cannot be more than fifteen, there may not be that many.

There may only fourteen or thirteen or twelve. There may be only nine. These new appointments must be confirmed by the Senate, just as all judicial appointees of the President are confirmed.

Why was the age fixed at seventy? Obviously any age would be arbitrary. But the laws of many states, Civil Service, Army and Navy regulations and the rules of private business commonly fix either seventy years or less as the age for retirement.
Justices nominated by a President to the Supreme Court must be elected -- or confirmed as we say -- by vote of two-thirds of the Senate of the United States. Of course, I should hope to obtain the confirmation of outstanding and honorable candidates. It would be unnatural if they were not people who share the hopes and beliefs of twenty-seven million people that the Constitution is adequate, as John Marshall said it was, to adapt itself to the varying crises of human affairs. I would do this 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. But in fulfillment of the high obligations of my office, I would, of course, seek to appoint men worthy and equipped to carry on the high traditions of the Court. And why should it be assumed that a Democratic President would be any less qualified to appoint Justices to the Supreme Court than Republican Presidents. President Taft appointed six justices in less than four years. President Harding appointed four justices in less than two years.

The normal opportunity to refresh the point of view of the Court, which has occurred with sufficient frequency in previous administrations to require no attention, has perhaps, for a variety
of reasons, not come to this administration although the present Supreme Court is the oldest in average age in our history. The plan I propose will tend to guarantee by law for the future that rotation in personnel of the Supreme Court which will bring to it a realization of constantly changing national needs so essential to all branches of a democratic government.

It will tend to guarantee that a Court created by previous administrations will not remain indefinitely "packed" against subsequent administrations by the failure of Justices to retire at the rate of normal expectancy. For it has seemed to me that the welfare of one hundred and thirty million people is not a game of chance where the preservation of the game is more important than the welfare of the people.

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, John Adams, Andrew Jackson, Abraham Lincoln and Ulysses S. Grant. Are we now to amend the Constitution by mere public clamor by adopting a new constitutional policy that the Congress should never again
exercise its power to change the number of Justices of the Supreme Court. My proposal limits the application of other precedents 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 saw fit to join in the abuse.

And, fundamentally, if in the future America cannot trust the Congress it elects not to abuse our Constitutional usages, democracy will have failed far beyond the importance to it of any kind of precedent concerning the Judiciary.

Those who talk about this plan being a repudiation of the Democratic Platform are just not telling the whole truth. It is true that we said "If these problems cannot be effectively solved by legislation 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."

But we also said: "We have sought and will continue to seek to meet these problems through legislation within the Constitution."

It was only if every other means failed that an amendment would be sought.
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 not being proposed as a solution of our urgent problems. I believe, 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 various proposals containing different language and different provision. 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 Income Tax amendment agreed upon and through both Houses of Congress. Remember the long years it took to get amendments passed by the Congress granting the right of suffrage to women, and the amendment providing for Direct Election of Senators, and the amendment abolishing the Impeachment 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 no reason to oppose.

And the requirement that three-quarters of the States ratify does not fairly state the odds against the amendment, or any, ratification of the amendment.

In the ratification of an amendment, the Nation does not vote as a whole as it does in a presidential election. Each State votes separately, and has just one vote, whether it has a population of 30,000 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 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 weakest 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 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 an 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, be
expected to take advantage of every opportunity to obstruct any
amendment. And they can be fully expected to understand the
advantages of a strategy of first suggesting amendment as the
way to attain the social and economic legislation, and thereafter
if an amendment is proposed by Congress find reasons why it is
not the particular kind of amendment they desire to oppose it
tooth and nail during the process of ratification.

And if any liberal is found in the company of those ad-
vocating amendment not as a supplement but as a substitute for
the only form of statutory relief available, he is, as a practical
politician, with very strange bedfellows.

By comparison, if the proposal now before the Congress is
adopted in this session, this is what will happen. We will
obtain a reinvigorated liberal-minded Court, alive to the needs
of the times — a Court which, in the self-restraint required
by the Constitution will enforce the Constitution as written
and not write into it their own political and economic policies.

What is really at the back of the minds of a very large
proportion of those who talk about constitutional amendment as
the proper method for these objectives? What is the plain truth
about a great many of those who say "Yes we believe in your
All we seriously disagree with is this method of yours; give us a constitutional amendment and we will all be with you.

The trouble with most of these people is that in their fundamental thinking they object to any social and economic legislation along modern lines. The first essential required is doing a job well is the desire to see it done at all. And I say that a great many of those who talk about amendment as the way to get the job done do not really want to see the job done.

And remember this. After the various sponsors of all of the proposed amendments to the Constitution had come to an agreement as to which amendment would be passed, after the amendment had been successfully passed by a two-thirds vote in the Congress over the opposition of all those who would be opposed to it, after the amendment had been submitted to the Legislatures of the several States, and after the battle had been won in thirty-six states -- even then there would still be the question of interpretation of the amendment itself. That interpretation would be made by these same Justices who have passed upon this recent legislation. We are not without precedent showing that a constitutional amendment can be adopted to express what is unquestionably the will of the people and can thereafter by judicial interpretation be changed 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 interest stock dividends or to salaries of the Justices of the Supreme Court themselves.
By comparison, if the proposal now before the Congress is adopted in this session, this is what will happen. We will obtain a reinvigorated liberal-minded Court, alive to the needs of the times—a Court which, in the self-restraint required by the Constitution will enforce the Constitution as written and not write into it their own political and economic policies.

That is really at the back of the minds of a very large proportion of those who talk about constitutional amendment as the proper method for those objectives? That is the plain truth about a great many of those who say “Sh!” yes we believe in your

Then the Congress, and State Legislatures, freed from the fear of unconstitutional exercise of judicial power can feel justified in proceeding to enact laws carefully drafted within legislative power constitutionally conferred—laws for minimum wages and maximum hours, social security and old-age pensions, collective bargaining, unemployment relief, public works, aid to farmers, crop control, soil erosion, aid to the sufferers from flood and drought and protection of the river areas and the drought areas from the recurrence of flood and drought, decent housing and conservation of our natural resources.

Legislative bodies may err in the exercise of their judgment but at least they can feel sure that judicial review will be confined within the historic limits of judicial power, and the days when the Courts have acted as a super-legislature will have come to an end.
In my message to the Congress I did not urge that the Supreme Court be enlarged to fifteen members. I did not propose the enlargement of any Federal Court to any fixed number. I proposed that when judges of any Federal Court who had passed the retirement age did not retire, there should be additional judges appointed in order to maintain the bench in full vigor. There is nothing novel and radical about this idea. It has been discussed and approved by many persons of high authority, including Justices of the Supreme Court, ever since a similar proposal passed the House of Representatives in 1869.

To avoid the possibility of indefinite increases the act which was drafted by the Attorney General provided against increasing the number of judges in any court beyond a fixed number, which in the case of the Supreme Court was placed at fifteen. It should be flatly stated and fairly understood that there was no assumption or expectation, in fixing such a limit, that the Supreme Court would actually be enlarged to fifteen members.

Before the end of its present term there will be on the Supreme Court five Justices over seventy-five years of age and one over seventy. It would be unreasonable to assume that all these Justices would desire to continue in active service long after the
time fixed by law for voluntary retirement and long after the time
when all men have passed the crest of physical vigor and have felt
the effects of loss of physical vigor upon the exercise of their
mental powers.

As pointed out in my Message, the extent of any increase in
the size of the Court will depend entirely upon the action of the
Justices themselves. Indeed, my recommendation of the passage of
the voluntary retirement act was based on the assumption that
members of the Supreme Court should have the same opportunity as
all other federal judges to retire to a deserved security after
reaching the age at which many would wish to retire.

Now, against this reasonable probability that the Court
would not be enlarged by the proposed legislation to any such
number as fifteen, the emotional argument has been made that such
a law would arouse deep resentment on the part of the Justices
against an apparent intimation that it might be desirable for some
of them to retire. The strange argument has been advanced that
no self-respecting Justice would retire after anyone had suggested
that his retirement might be desirable.

Coupled with this argument a most serious charge has been
made against the Justices of the Supreme Court by those assuming
to speak in their behalf. It is charged that in order to prevent
the present Chief Executive from appointing, and the present
Senate from confirming, the appointment of a successor, some of
the members of the Court would refuse to exercise a desired
privilege of retirement. Such a charge ascribes to a Justice
of the Supreme Court a political partisanship of the most vicious
character, wholly incompatible with the impartial exercise of
judicial authority.

It would be far more respectful for those who make this
charge to assume that Justices of the Supreme Court, worthy of
their solemn responsibilities, would no more determine the
question of their own retirement by considerations of partisan
interest than that they would decide a case upon the basis that
it was prosecuted by a Democratic or Republican Attorney General.

For my part I do not concede that a Justice of the Supreme Court
has any more right to play politics in deciding whether to
retire or to stay on the bench than he has to play politics in
deciding a case for or against the government. Nor do I think
that those who urge such action as desirable or probable honor
the Justices or increase public respect for the Court,
By comparison, if the proposal now before the Congress is adopted in this session, this is what will happen. We will obtain a reinvigorated liberal-minded Court, alive to the needs of the times — a Court which, in the self-restraint required by the Constitution will enforce the Constitution as written and not write into it their own political and economic policies.

What is really at the back of the minds of a very large proportion of those who talk about constitutional amendment as the proper method for these objectives? What is the plain truth about a great many of those who say "I wish we believe in your

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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] 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 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
sacred than the main objective of the Constitution to establish an enduring Nation.

You and I in 1933 determined never to let our economic system get so out of joint again—so that we simply could not afford to take the risk of another great depression and crisis.

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

Today, recovery is reaching a point where the dangers of 1929 again become possible—not this week or month perhaps but within the next year or two. 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.

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.

I want to talk with you very simply about the need for present action.
Four years ago action did not come until the eleventh hour. It was almost too late.

During all years that preceded 1933 the Nation's leaders, though they knew that many things had to be done, shrank from action, drifting through endless discussions, uncertain whether they were using some of their power to act or not; they were slow to make up their minds of their power or their will to act. What we do now will show how much we have learned from the depression. If we learned anything from this failure, anything 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 dreamer's hope of finding a solution to which everybody will agree.

I want to talk with you very simply about the 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.

Until these problems are solved our economic life will not be
[these and many other problems call for national action]
bomb-proof against another depression.

Only national laws can meet these needs of the great masses of
our people. Solely by efforts of individuals or by local or
state legislation, we cannot find solution for the evils that
threaten our own lives today and menace the happiness and
security of our children tomorrow. And because it will take
time — and plenty of time — to work out by legislation and
administration the solutions 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
of these fundamental needs. There is almost a universal demand
that the National Government take action now to solve these
problems. [All political parties recognized these needs.] In the
last national election, as in the elections of 1932 and 1934,
an overwhelming majority of the people voted their wish that the
Congress and the President take action, not after long years of
debate — but now.

Last Thursday I described the American form of Government
as a three horse team provided to the American people that their
field might be plowed. The three horses are, of course, the
three branches of government — the Congress, the Executive and the Courts. The lengths to which some papers and some speakers have gone since Thursday in intimating that the President of the United States was trying to drive that team, overlook the fact that the President, as Chief Executive, is one of the horses.

Two of the horses are pulling in unison today; the third is not. What the critics entirely overlook is that the American people who themselves are in the driver's seat, that the American people who want the furrow plowed, and that they expect the third horse to pull in unison with the other two.

This very far-reaching problem of government, affecting America today and for generations to come, calls for words of one syllable. I hope you have read the Constitution of the United States. Like the Bible, there ought to be a copy in every home. The Constitution is not a difficult document to understand. 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 to handle national problems.

That was expressed in the Preamble to the Constitution, which said: "We, the People of the United States, in order..."
to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of Liberty to ourselves and our posterity, do ordain and establish this Constitution of the United States of America.

The powers given to the Congress in the easiest way to carry out that purpose can be best described by saying to describe them is to say that the framers of the Constitution gave to the Congress all powers which at that time related to each and every problem which had a national character.

For example, Congress was authorized to impose taxes and duties, to borrow and coin money and regulate the value thereof; to regulate naturalization and bankruptcies; to promote the progress of science and art; to declare war; to support the Army and Navy; to establish all inferior courts; to establish post offices and post-roads; and to regulate commerce not only among foreign nations but also among the several States.

These and a number of other powers covered in 1787 every single problem which in that year could reasonably be called a national problem.

But the framers, having in mind that in succeeding generations many other problems then undreamed of would become
national problems, said in so many words that the Congress should have power "to provide for the general welfare of the United States."

Other sections of the Constitution have provided certain limitations to the power over national affairs thus secured 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 to cover all subjects and to meet all needs which were so national in their importance and scope that they could not be met merely by local legislation.

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 thirteen 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 twenty 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, because the Congress clearly had violated the Constitution, nothing was done about this assumption of authority, chiefly because the Supreme Court itself hastened to say that it would never 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."

And in modern times, 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 fifty-four years later—the Dred Scott decision in 1857. In that case, the Court decided that the property right by which the Congress had hoped to avoid the Civil War, in slaves outweighed the human rights of slaves. More than any other cause, it led to armed conflict four years later.

Since the War between the States the Court, with increasing frequency 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.

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, as was the case in the decision which originally established the doctrine.

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.

Then 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 policy written into these laws.
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 "That 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 agree 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

SAY: That sort of Court will be independent of any outside control or influence; it will be independent also of any inside control or influence. It will not 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 to
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 Constitu-
tion 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 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 retain in 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 forty-six 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. 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 seventy and who may wish to retire. Incidentally, under a decision of the Supreme Court itself, these pensions for Judges who have retired are not subject to any income tax.

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 average men have to exercise their rights to life, liberty
and the pursuit of happiness.

The statute would apply 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 ought to be equally good for all.

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 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 seventy, or those who would subsequently reach the age of seventy. In order to place a top limit, however, the plan provides, for example, that not more than fifty additional District Court Judges could be appointed, and not more than a total of fifteen members of the Supreme Court. In the latter case, 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
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! And the same principle applies in the case of the Circuit Courts of Appeals of 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 approved 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 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.

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 appointment of new Judges calls for the selection of honorable and able candidates. President Taft appointed six Supreme Court Justices in less than four years. President Harding appointed four Judges in less than two years. I would be unfaithful to the people who elected me if I nominated to the Senate even one Justice unworthy or unequipped to render high public service as a member of the Court. The plan I propose will tend to guarantee by law in the days to come a rotation in the personnel in all our Courts, which will bring to them an understanding of constantly changing 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. 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, America cannot trust its Congress and its President not to abuse our wholly constitutional practices, Democracy will have failed. As
a matter of fact democracy is far more likely to fail by fail-
ing 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 in
the hope that the difficult process of constitutional amendment
may be averted.

There are at least four major types of amendment. 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 sub-
stantial group within the Congress or outside who are agreed on
any single amendment.

It would take months or years to get substantial agree-
ment 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 language of the Income Tax Amendment agreed upon and through both Houses of Congress. Remember the long years it took to get amendments through the Congress by a two-thirds vote 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 neither powerful interests nor the leaders of a powerful political party have had reason to oppose.

And the requirement that three-quarters of the States ratify does not fairly state the odds against the early, or, indeed, any ratification of the amendment.

In the ratification of an amendment each State votes separately, and has just one vote, whether it has a population
of 90,000 or a population of 13,000,000. Thirteen States which
contain only five per cent of the voting population could block
ratification even though the thirty-five States with ninety-
five per cent of the 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 amend-
ment by fighting for delay at every state of this complicated
ratification process and finally concentrating their fire on
thirteen 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' Asso-
ciations, who are trying to give the impression that they are
for 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 is not the
kind of an amendment that I was thinking about. I am, there-
fore, going to spend my time, my efforts and my money to block
that amendment, although I would be awfully glad to help get
s 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 mny 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, 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 employers
should decide that subject; they do not understand 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 of five-cent cotton and thirty-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
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 either to stock divi-
dends nor to the salaries of the Justices of the Supreme
Court themselves.

I am in favor of my proposal for action through legis-
lation: 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 enforce the Con-
stitution as written, and unwilling to assume legislative
powers by writing into it their own political and economic
policies.

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 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.

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Persian

Liberty
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. He 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.

I remember very well what I was thinking/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 dangers of 1929 again become possible — not this week or month perhaps, but within the next year or two. 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.

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

During many years that preceded 1933 the Nation's leaders, though they knew that many things had to be done, shrank from action, drifting through endless discussions, uncertain either of their power or their will to act. If we learned anything from their failures 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 dreamer's hope of finding a solution to which everybody will agree.

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.

I want to talk with you very simply about the need for present action.

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.

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 thanks.

Until these problems are solved our economic life will not be bomb-proof against another depression. Only national 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 [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 of these fundamental needs. There is almost a universal demand that the National Government take action now to solve these problems. In the last national election, as in the elections of 1932 and 1934, an overwhelming majority of the people voted their wish that the Congress and the President take action not after long years of debate — but now.

Last Thursday I described the American form of Government as a three horse team provided by the American people 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 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 Confedera-
tion under which the original thirteen States tried to operate
after the Revolution showed the need of a strong National Govern-
ment to handle national problems. In its Preamble, the Constitu-
tion states that it was intended to form a more perfect Union
and the powers given to the Congress to carry out those pur-
poses 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 in so many
words an additional power of indefinite extent "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 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.
In the last four years all pretense of giving the legislation 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 policies — over the question as to how much 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 to approve or disapprove the public policy written into these laws.

That is not only my accusation. It is the accusation of our most distinguished present-day Justices of the Supreme Court.

I have not the time to quote to you all the language used by minority Justices in many of these cases. But in the case holding the Railroad Retirement Act unconstitutional, for instance, Justice ______________ 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 Stran 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 Stran 
said that the majority were actually reading into the Constitu-
tion their own "personal economic predilections", and that if 
the legislative power is not left free to express an overwel-
mimg public opinion such as supports minimum wage legislation, 
then "government is to be rendered impotent". 3 other justices 
agreed with him.

In the face of these dissenting opinions, there is no basis 
for the impression which some members of the Court have tried to 
create in their majority opinions that there has been something 
in the Constitution itself which has compelled the majority, regret-
fully to thwart the will of the people because the plain language 
of the Constitution "when laid alongside the language of the Statut 
Constitution" has left the majority no choice.

In the face of such dissenting opinions, it is perfectly 
clear that the Constitution is as the Chief Justice has said: "We 
what the judges say it is".
The 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 -- 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. 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 decline in the language of dissenting Justices to amend the Constitution by judicial say-so. That means a judiciary independent of all outside influences in deciding matters of law. But it is not a judiciary so independent of the people that it can, with impunity, assume
legislative functions. It is not explicitly 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 does 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 effect-
iveness 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 legis-
lation 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 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 renounce 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 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 average men have to live -- to save our national Constitution from hardening of the judicial arteries.

That 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, 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 seventy, or those who would subsequently reach the age of seventy. In order to place a top limit, however, the plan provides, for example, that not more than fifty additional Justices could be appointed.
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 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. 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 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.
DRAFT #8

-13-

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 those present and most members of the Court who understand those modern conditions which make necessary and constitutional the exercise of powers granted to the Congress —
Justices who will not undertake to override the judgment of the Congress on matters committed solely to its legislative discretion — 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 — now.

It would be unnatural if they were not people who share the hopes and beliefs of twenty-seven million people that the Constitution is adequate, as John Marshall said in 1819, to adapt itself to the varying crises of human affairs. I would do this 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, John Adams, Andrew Jackson, Abraham Lincoln and Ulysses S. Grant. Are we now to amend the Constitution by mere public clamor?
adopting a new constitutional policy that the Congress should
never again [exercise its power to] change the number of justices
of the Supreme Court. My proposal limits the application of
other precedents 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 saw fit
to join in the abuse. And, fundamentally, if in the future
America cannot trust the Congress it elects not to abuse our
constitutional usages, democracy will have failed far beyond the
importance to it of any kind of precedent concerning the judiciary.

Since we think it so much in the public interest to maintain
a vigorous judiciary that we have for years encouraged the retire-
ment of elderly justices by offering them a life pension at full
salary—why should we leave the fulfillment of this public
policy to chance or make it dependent upon the desire or prejudice
of an 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 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 appointment should have provided a Court well-balanced as to age. But chance and the disinclination of individuals to leave the Supreme bench has resulted in giving 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 a majority whose mental processes are rigidly set in the thought moulds of a by-gone generation.

It is now proposed that we establish by law an assurance against any such ill-balanced Court in the future. I propose that a rule of law to express a sound public policy in place of leaving the composition of our Federal Courts, including the highest, to be determined by chance or private whim.

I propose that hereafter, when a Judge reaches the age of 70, whether for retirement, automatically a new and younger Judge shall be added to the Court. If this increases the Court more
than is necessary to meet the constantly mounting business of
the Court, any Judge feeling that his further active service
is superfluous can retire. If he remains, at least the average
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.

If such a law as I propose is regarded as establishing
a new precedent — is it not a most desirable precedent? Is it not merely carrying forward a long-established precedent estab-
lished 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
visor 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 sad at this
situation. But and as at in, the welfare of the United States,
and indeed of the Constitution itself, is what we all must think
about ... The failure of the Court today has been a failure not of the Court as an institution but of human beings within the Court. We can not yield our constitutional destiny to a few men who, because they are afraid 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. 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.
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 major 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 favor of that amendment in both Houses of Congress.

After the months and years necessary to get an amendment submitted would come the long course of ratification by three-fourths of the States. 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 90,000 or a population of 13,000,000. Thirteen States which contain only five per cent of the voting population would block ratification even though the thirty-five States with ninety-five per cent of the 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 thirteen States?

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 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 I have proposed on the ground that they favor a constitutional amendment. The first is the people who fundamentally object to social and economic legislation along economic 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 eventually if necessary. I am simply convinced that as a remedy for our present difficulties an amendment is politically impracticable. When the time comes for action, you will find that many of those whose support you think you can count on today will turn out to be members of that first group who want nothing done in the way of progress and who will subrogate any constructive amendment which is proposed. Look at these strange bed-fellows of yours. When before have you found them really at your sides 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 individual so dear
to every American.

My record as Governor and as President proves my devotion
to those liberties — my steadfast purpose to protect the funda-
mental rights of the free citizen. No one who knows me can have
any 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 propa-
ganda then. The people of America will not be fooled by such
propaganda now.
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. 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.

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 remediating 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.

To avoid those dangers we must complete that program of protection. National laws are needed to meet national problems and fulfill that program. Individual or local or state effort alone cannot meet them in 1937 any better than it 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 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 dreamer's hope of finding a solution to which everybody will agree.

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 to avert 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 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 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 legis-
lative 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 the Court said violated an express provision of the
Constitution. The Court claimed the power to declare it uncon-
stitutional and did so declare it. But a little later the
Court itself admitted that it was an extraordinary power to ex-
ercise 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
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 express an overwhelming public opinion such as supports minimum wage legislation, then "government is to be rendered impotent." And three 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 regretfully 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 the Constitution itself.

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 may-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 sea 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 was clearly constitution, 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 reject the 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. 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 $50,000 a year. But Federal Justices, once appointed, can, if they choose, hold office for life, no matter how old they may get to be.

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or Justice of any Federal Court has reached the age of seventy
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pension, a new member shall be appointed by the President then
in office, with the approval, as required by the Constitution, of
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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
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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 harden-
ing 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)

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

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and that a baseless 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 “pecking 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. Far from creating 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 ac-
cordance 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 and a Chief Justice, President Wilson two, President Hardin 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 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 this 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 a few men who, being
fearful of the future, would deny us the necessary means of deal-
ing 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 "as system of
living law."

I have thus explained to you the reasons that lie behind
our efforts to secure results by legislation within the Constit-
tution. I hope that thereby the difficult process of constitu-
tional 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 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. 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 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.

By 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 destruction of 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.