

"Writing the truth  
as I see it;  
trying not to  
offend  
those who will  
disagree."

# The truth as I see it®

Idaho Common Sense®



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## Unlimited power – Part III

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Since ratification of the Bill of Rights in 1791, the Supreme Court has found a constitutional answer to every case brought before it. Doesn't it seem unlikely that a document prepared in the 1700s could address all issues for more than two hundred years?

We currently have nine justices, none elected by the people, all appointed to their office for life, who claim absolute control over the United States Constitution. Is this what the founding fathers and the states intended? With their fear of government, why would they give unchecked power to any branch of the federal government?

During the 1930s and 1940s, President Franklin Roosevelt intimidated the Supreme Court, coercing it into giving unlimited power to the United States Congress. With two rulings, the court neutered the United States Constitution, ruling that it actually does not provide for a limited government.

Roosevelt was demanding more control of the economy to bring us out of the Great Depression but he needed to expand congressional powers to do this. Although Congress near-blindly passed whatever legislation he proposed, the Supreme Court ruled unconstitutional eight of his first ten programs.

Infuriated, he and his party proposed amending the Constitution to get what he wanted, their platform saying, "If these problems cannot be effectively solved within the Constitution, we shall seek such clarifying amendments as will assure the power to enact those laws."

But he dismissed this plan because "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-quarters of all the states."

The process was too long and he feared he might not get what he demanded. So he claimed that "in the last three national elections an overwhelming majority of (the American people) voted a mandate that the Congress and the president begin the task of providing protection (from another Great Depression) – not after long years of debate, but now."

With his interpretation of a mandate, he was determined to find a way to modify the Constitution without an amendment, concluding that he needed to "infuse new blood into all our courts." So, he proposed expanding the Supreme Court by six justices, providing "a reinvigorated, liberal-minded judiciary necessary to furnish quicker and cheaper justice." Though his "court-packing" scheme failed, the court got the message and decided to protect itself rather than the Constitution.

In 1936, with *Butler v. United States*, the Supreme Court ruled that the "general Welfare" clause of the Constitution was actually an enumerated power of Congress. The court gave Roosevelt the constitution he demanded, agreeing that Congress could pass any legislation it determined was for the "general Welfare of the United States."

The court added that challenging Congress would "naturally require a

showing that by no reasonable possibility can the challenged legislation fall within the range of discretion permitted to the Congress." Realizing the staggering power they just gave Congress, Justice Roberts said, "How great is the extent of that range, when the subject is the promotion of the general welfare of the United States, we need hardly remark."

But to grant this unlimited power to Congress, the court ignored one of the "rules of construction" about how people enter into legal relationships. The Latin translated rule says, "Words should signify something – they should be understood to have force." The founding fathers would not have violated this rule by giving Congress unlimited power to do anything it determined was for the "general Welfare" followed by a meaningless text listing specific powers. They would have omitted such an unnecessary list.

Nonetheless, Roosevelt got his new constitution, no need for an amendment, no need for "court-packing," no need for the states or people to approve. In one ruling, the Supreme Court removed nearly all constitutional limits on Congress.

But, it failed to address the needs of Congress to control individual states and individual people. That would have to wait for another case.

(Next week – Unlimited power – Part IV)