

Statement of

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**House Committee on the Judiciary
Subcommittee on Courts, the Internet, and
Intellectual Property**

Hearing on

H.R. 3799

The “Constitution Restoration Act of 2004”

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Executive Summary

1. H.R. 3799 in context. Although H.R. 3799 can be referred to colloquially as “court-stripping” legislation, it goes considerably further than most of the bills that fall within that category. Most of its provisions are unconstitutional, and the bill as a whole is unwise as a matter of public policy irrespective of whether one shares the concerns that underlie it. An independent federal judiciary has served this nation well, and Congress should resist measures that would diminish or threaten that independence.

2. Impeachment as a remedy. Section 302 provides that if any federal judge or Justice engages in any activity that exceeds the jurisdiction of the judge’s court by reason of the Act’s jurisdictional restrictions, that activity shall be deemed to constitute an impeachable offense. This provision is plainly unconstitutional; in addition, it would breach a longstanding constitutional tradition that has served this country well.

3. State courts and Supreme Court precedent. Section 301 provides that any decision of a federal court that relates to an issue removed from jurisdiction by Title I “is not binding precedent on any state court.” This is an attempt to legislatively supersede the Supreme Court’s decisions interpreting and applying the Constitution. It is therefore unconstitutional under the Supreme Court decision in *Dickerson v. United States*, 530 U.S. 428 (2000), and the case law that underlies *Dickerson*.

4. Constitutional interpretation. Section 201 provides that in “interpreting and applying the Constitution of the United States, a court of the United States may not rely upon” foreign or international law. This provision too is unconstitutional. For Congress to tell a federal court that it may not “rely upon” sources that the court believes to be relevant is to intrude on core Article III functions.

5. Supreme Court appellate jurisdiction. One of the postulates behind the words of the Constitution – notably Article III and the Supremacy Clause – is that review by the United States Supreme Court would be available to assure that state courts comply with the commands of federal law. To the extent that the proposed 28 USC § 1260 would allow state courts to reject federal claims without the possibility of review by the Supreme Court, it would violate that postulate.

6. District court jurisdiction. If the proposed restriction on Supreme Court jurisdiction is not enacted, the proposed restriction on district jurisdiction would be constitutional. As Professor Paul Bator has said, “If the Congress decides that a certain category of case arising under federal law should be litigated in a state court, subject to Supreme Court review, neither the letter nor the spirit of the Constitution has been violated.”

7. Conclusion. Ours is a pluralistic nation, closely divided on many issues. Depending on the time and the circumstances, anyone can be part of a minority. The availability of an independent federal court, with power to hear everyone’s constitutional claims, is a source of reassurance to all. Congress should adhere to that tradition and should reject H.R. 3799 in its entirety.

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Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to testify at this legislative hearing on H.R. 3799, the “Constitution Restoration Act of 2004.” My view, in brief, is that most of the provisions of H.R. 3799 are unconstitutional, and all of them are unwise. An independent federal judiciary has served this nation well, and Congress should resist measures that would diminish or threaten that independence.

It is important to emphasize that opposition to H.R. 3799 is justified irrespective of whether one shares the concerns that underlie the bill. Certainly reasonable people can argue that the courts have sometimes gone too far in banishing religious references from public ceremonies and religious displays from public places. And I would have no difficulty in endorsing the position, well articulated by Judge Richard A. Posner and Professor John O. McGinnis, that the federal courts should not use foreign or international law as persuasive authority in interpreting our own Constitution. But however wrong (or even wrong-headed) some of the decisions may be, H.R. 3799 is a misguided remedy that should be rejected outright.

Before turning to the issues raised by H.R. 3799, I will say a few words by way of personal background. I am a professor of law and Distinguished Faculty Scholar at the University of Pittsburgh School of Law, where I teach courses in Federal Courts and Constitutional Law. I have written numerous articles and reports on various aspects of the work of the federal courts; I have also written on free speech and on judicial activism. Of particular relevance to today’s hearing, I am the author (with Dean Lauren Robel of the Indiana University School of Law) of *FEDERAL COURTS: CASES AND MATERIALS ON JUDICIAL FEDERALISM AND THE*

LAWYERING PROCESS, which is scheduled for publication in the spring of 2005. I am responsible for the chapters on “Congressional Power to Control the Jurisdiction of the Federal Courts” and “Congressional Power to Control Judicial Decision Making,” and in this statement I have adapted some material from those chapters. Of course, in my testimony today I speak only for myself.

I. H.R. 3799 in Context

Although H.R. 3799 can be referred to colloquially as “court-stripping” legislation, it goes considerably further than most of the bills that fall within that category. A useful point of comparison is H.R. 3313, the Marriage Protection Act of 2004, which was passed by the House in July of this year.

Title I of H.R. 3799 parallels the Marriage Protection Act in its entirety. Each of the bills eliminates both the Supreme Court’s appellate jurisdiction and the district courts’ trial jurisdiction to hear a particular kind of case. In the Marriage Protection Act, the prohibition extends to “any question pertaining to the interpretation of, or the validity under the Constitution of, section 1738C [of Title 28] or this section.” In H.R. 3799, the proscription embraces “any matter to the extent that relief is sought against an element of Federal, State, or local government, or against an officer of Federal, State, or local government (whether or not acting in official personal capacity), by reason of that element’s or officer’s acknowledgement of God as the sovereign source of law, liberty, or government.”¹

The remaining provisions of H.R. 3799 have no counterpart in the Marriage Protection Act. Two of these provisions are designed as enforcement mechanisms

¹ Although I will not develop the point here, I note that the jurisdictional provisions in Title I are inartfully drafted. Each of the provisions excludes jurisdiction over “any matter” of the kind described. But the relevant provisions of Title 28 define jurisdiction by reference to “cases,” “judgments,” and “civil actions.” The statute as drafted would thus pose difficult problems of interpretation and application.

for the jurisdictional restrictions in Title I. Section 301 provides that any decision of a federal court that relates to an issue removed from jurisdiction by Title I “is not binding precedent on any state court.” Section 302 provides that if any federal judge or Justice engages in any activity that exceeds the jurisdiction of the judge’s court by reason of the Act’s jurisdictional restrictions, that activity shall be deemed to constitute an impeachable offense.

Finally – and without apparent connection to the other provisions – Title II of the Act takes aim at recent decisions by the Supreme Court that look to foreign and international law for guidance in the resolution of questions arising under the Constitution of the United States. It states: “In interpreting and applying the Constitution of the United States, a court of the United States may not rely upon any constitution, law, administrative rule, Executive order, directive, policy, judicial decision, or any other action of any foreign state or international organization or agency, other than the constitutional law and English common law.”

In this statement, I will discuss the three titles of H.R. 3799 in the reverse order of their appearance in the bill. I will address the jurisdictional provisions only briefly, because the issues are familiar to the members of this Subcommittee from the debates on the Marriage Protection Act in the full Committee and on the House floor.

In discussing the constitutional issues presented by H.R. 3799, I will confine myself to the tools of constitutional interpretation that the Supreme Court is likely to use if the various provisions of the bill should come before it. I have avoided esoteric theories that are not likely to command the Court’s attention.

II. Impeachment as a Remedy

Section 302 is the most radical provision of H.R. 3799. It provides:

To the extent that a justice of the Supreme Court of the United States or any judge of any Federal court engages in any activity that exceeds the jurisdiction of the court of that justice or judge, as the case may be, by reason of [the jurisdictional provisions of Title I], engaging in that activity shall be deemed to constitute the commission of--

(1) an offense for which the judge may be removed upon impeachment and conviction; and

(2) a breach of the standard of good behavior required by article III, section 1 of the Constitution.

I believe that this provision is plainly unconstitutional; in addition, it would breach a longstanding constitutional tradition that has served this country well.

On the first point, my conclusion is grounded in the text of the Constitution. It is true, of course, that the Constitution does not say in so many words that a federal judge cannot be impeached and convicted for rendering decisions that Congress does not like. But it does say that “[t]he judges, both of the supreme and inferior courts, shall ... receive for their Services *a Compensation, which shall not be diminished* during their Continuance in Office.” (Emphasis added.) The Framers included this provision because they thought it was essential to have an independent judiciary – a judiciary not beholden to Congress.

The Constitution thus forbids Congress from reducing a judge’s salary by even 5 percent because it disagrees with one of the judge’s decisions. Is it conceivable that the Constitution would allow Congress, by reason of that same disagreement, to impeach a judge, convict him, and remove him from office? Logically, there can be only one answer: it is not possible.

In addition to the text, we can also draw guidance from tradition – in this instance, a tradition that has been chronicled and summarized by none other than

the Chief Justice of the United States, William H. Rehnquist. In his book *GRAND INQUESTS* (1992), the Chief Justice describes in detail the impeachment trial of Justice Samuel Chase in 1805. Chase, a Federalist, was impeached by the House at the instigation of President Jefferson, a Republican.² All of the charges grew out of alleged misbehavior while Chase was sitting in the circuit court as a trial judge. The most serious accusations were based on his conduct during two criminal trials and his partisan comments during a charge to a grand jury.

The Senate acquitted Chase on all of the articles of impeachment. On most of the articles there was not even a majority, much less the two-thirds required for conviction. Chief Justice Rehnquist summarizes the consequences of that momentous series of votes:

The acquittal of Samuel Chase by the Senate had a profound effect on the American judiciary. First, it assured the independence of federal judges from congressional oversight of the decisions they made in the cases that came before them. Second, by assuring that impeachment would not be used in the future as a method to remove members of the Supreme Court for their judicial opinions, it helped to safeguard the independence of that body. ...

The acquittal of Chase [was] significant in that it seemed to draw a line as the proper use of the congressional power to impeach and remove a judge from office. Jefferson himself freely acknowledged this fact shortly after the Chase acquittal, saying the impeachment was a “scarecrow” which would not be used again. The Senate’s action prevented the Republicans from further exploring and expanding the possible use of impeachment to remove from office judges whose views they considered to be unwise or out of keeping with the times. ...

Neither the Chase acquittal nor any other single event could possibly remove the potential for conflict between the federal judiciary and the other branches of the federal government. That sort of conflict is contemplated by the Constitution, and it would require a rewriting of that

² Jefferson’s Republican Party was of course unrelated to the Republican Party of today.

document to avoid the occasional confrontations that have taken place. But the Chase acquittal has come to stand for the proposition that impeachment is not a proper weapon for Congress (abetted, perhaps, by the executive as in the case of Chase) to employ in these confrontations. No matter how angry or frustrated either of the other branches may be by the action of the Supreme Court, removal of individual members of the Court because of their judicial philosophy is not permissible. The other branches must make use of other powers granted them by the Constitution in their effort to bring the Court to book.

You might respond to this by saying that, as judge himself, the Chief Justice is not the most impartial of observers. But one does not have to be a judge to look back on 200 years of American history and see the benefits of an independent judiciary.

I will return to this point at the conclusion of my testimony, but there is more that needs to be said about H.R. 3799's willingness to use impeachment as a remedy. Reasonable people can disagree about the merits of many federal-court decisions today, as they have disagreed about past decisions such as *Dred Scott*, *Brown v. Board of Education*, and many others. And in a free society, it is legitimate to launch "vehement, caustic, and sometimes unpleasantly sharp attacks" on judges as on other public officials.³ But for members of Congress to propose impeachment and removal from office as a means of combating court decisions they disapprove of goes beyond the boundaries of appropriate legislative response.

III. State Courts and Supreme Court Precedent

In addition to the impeachment provision, H.R. 3799 includes a second mechanism for enforcing its jurisdictional restrictions. Section 301 states that any decision of a federal court, whether made prior to or after the effective date of the

³ See *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

Act, “to the extent that the decision relates to an issue removed from Federal jurisdiction [by the Act], is not binding precedent on any State court.” This provision too is both unconstitutional and unwise.

Preliminarily, it should be noted that the only federal-court decisions that are binding on state courts under current practice are the decisions of the United States Supreme Court. State courts may find guidance in decisions of the federal courts of appeals and the district courts, but they are under no obligation to rule in accordance with them. Section 301 is thus a directive addressed to state courts instructing them that they need not follow certain decisions of the Supreme Court of the United States.

The unconstitutionality of section 301 is made clear by the recent decision in *Dickerson v. United States*, 530 U.S. 428 (2000). In *Dickerson*, the Supreme Court considered the constitutionality of 18 USC § 3501, enacted as part of the Omnibus Crime Control and Safe Streets Act of 1968. Section 3501 provides in part: “In any criminal prosecution brought by the United States or by the District of Columbia, a confession . . . shall be admissible in evidence if it is voluntarily given.” The statute offers a non-exclusive list of factors that courts should consider in determining voluntariness.

Two years before section 3501 was enacted, the Supreme Court decided *Miranda v. Arizona*, 384 U.S. 436 (1966). In *Miranda*, of course, the Court held that a confession could not be admitted into evidence against a defendant unless it was preceded by the now-familiar warnings. Section 3501 made no mention of any required warnings. In *Dickerson*, Chief Justice Rehnquist, writing for the Court, described the conflict between section 3501 and *Miranda*:

Given § 3501's express designation of voluntariness as the touchstone of admissibility, its omission of any warning requirement, and

the instruction for trial courts to consider a nonexclusive list of factors relevant to the circumstances of a confession, we agree with the Court of Appeals that Congress intended by its enactment to overrule *Miranda*. Because of the obvious conflict between our decision in *Miranda* and § 3501, we must address whether Congress has constitutional authority to thus supersede *Miranda*. If Congress has such authority, § 3501's totality-of-the-circumstances approach must prevail over *Miranda*'s requirement of warnings; if not, that section must yield to *Miranda*'s more specific requirements.

The Chief Justice then laid out the governing rules:

The law in this area is clear. ... Congress retains the ultimate authority to modify or set aside any judicially created rules of evidence and procedure that are not required by the Constitution.

But *Congress may not legislatively supersede our decisions interpreting and applying the Constitution.* (Emphasis added.)

By telling state judges that they need not follow Supreme Court decisions on issues removed from Federal jurisdiction by Title I of the Act, Section 301 is an attempt to “legislatively supersede [the Supreme Court’s] decisions interpreting and applying the Constitution.” It is therefore unconstitutional. Indeed, the point is even clearer than it was in *Dickerson*, because the attempt to countermand the Court’s decisions is more direct.

Yet even if the unconstitutionality of section 301 were not so clear, the provision would still be unwise. Alexander Hamilton, in an oft-quoted passage in Federalist No. 82, emphasized that “the state governments and the national governments ... truly are ...parts of ONE WHOLE.” It would be poor policy indeed for one branch of the national government to tell state courts that they can ignore the hitherto binding judgments of another branch.

IV. Use of “Foreign or International Law” in Constitutional Interpretation

Section 201 of the bill is a directive addressed not to state judges but to federal judges. It provides:

In interpreting and applying the Constitution of the United States, a court of the United States may not rely upon any constitution, law, administrative rule, Executive order, directive, policy, judicial decision, or any other action of any foreign state or international organization or agency, other than the constitutional law and English common law.

Although the rule of *Dickerson* may not directly apply to section 201, I believe that the *Dickerson* principle does control and that it renders section 201 unconstitutional. The reason is that the *Dickerson* principle derives ultimately from the bedrock decision in American constitutional law, *Marbury v. Madison*, 1 Cranch (5 U.S.) 137 (1803). *Marbury* in turn rests on the proposition that “[i]t is emphatically the province and duty of the judicial department to say what the law is.” The power to “say what the law is” necessarily encompasses the power to determine where to look for guidance in interpreting the law. Indeed, the *Marbury* opinion itself states: “Those who apply the rule to particular cases, must of necessity expound and interpret that rule.” For Congress to tell a federal court that it may not “rely upon” sources that the court believes to be relevant is thus to intrude on core Article III functions.

A similar conclusion is suggested by the recent decision in *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995). Justice Scalia, writing for the Court, emphasized the Framers’ “sense of a sharp necessity to separate the legislative from the judicial power.” He continued by describing how the Framers acted on that belief:

The essential balance created by [the allocation of authority in the Constitution] was a simple one. The Legislature would be possessed of power to “prescrib[e] the rules by which the duties and rights of every citizen are to be regulated,” but the power of “[t]he interpretation of the laws” would be “the proper and peculiar province of the courts.” The Federalist No. 78, pp. 523, 525.

By its very terms, section 201 attempts to exercise the power of “[t]he interpretation of the laws” which under the Constitution is “the proper and peculiar province of the courts.”

Section 201 is also ill-advised. Like the impeachment provision, a frontal challenge to the courts’ approach to constitutional interpretation would further damage the already troubled relations between the judiciary and Congress. And it would be counterproductive, for it would tend to discredit reasoned arguments, such as those made by Judge Posner and Professor McGinnis, against the practices that it would outlaw.⁴

V. Limiting the Supreme Court’s Appellate Jurisdiction

I turn now to the first of the jurisdictional restrictions in H.R. 3799. Section 101 would add a new section to Chapter 81, the chapter in Title 28 that defines the jurisdiction of the Supreme Court. Section 1260 would provide:

Notwithstanding any other provision of this chapter, the Supreme Court shall not have jurisdiction to review, by appeal, writ of certiorari, or otherwise, any matter to the extent that relief is sought against an element of Federal, State, or local government, or against an officer of Federal, State, or local government (whether or not acting in official personal capacity), by reason of that element's or officer's acknowledgement of God as the sovereign source of law, liberty, or government.

Is the proposed section 1260 constitutional? The argument that it is relies heavily on the language and structure of Article III section 2. The first sentence of section 2 defines the “judicial power of the United States” by listing nine categories of “Cases” and “Controversies.” The second sentence provides that in two of those classes of cases—“Cases affecting Ambassadors, other public

⁴ See Richard A. Posner, No Thanks, We Already Have Our Own Laws, Legal Affairs, July-August 2004; John O. McGinnis, Statement Before the Subcommittee on the Constitution, House Committee on the Judiciary, Mar. 25, 2004.

Ministers and Consuls, and those in which a State shall be Party”—the Supreme Court shall have original jurisdiction. Article III continues: “In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.”

The final clause thus authorizes Congress to make “Exceptions” to the Supreme Court’s appellate jurisdiction. Nothing in Article III limits that authorization. The proposed section 1260 would simply create an “exception” to the grants of appellate jurisdiction in sections 1254 and 1257. Therefore it is constitutional.⁵

So goes the argument. But I believe that the analysis cannot end there. The reason lies in one of the most profound comments about constitutional interpretation that anyone has ever made. In *Monaco v. Mississippi*, 292 U.S. 313 (1934), Chief Justice Hughes said: “Behind the words of the constitutional provisions are postulates which limit and control.” One of the “postulates” that lies behind the words of the Constitution – notably Article III and the Supremacy Clause – is that review by the United States Supreme Court would be available to assure that state courts comply with the commands of federal law. To the extent that the proposed section 1260 would allow state courts to reject federal claims without the possibility of review by the Supreme Court, it would violate that postulate.

⁵ In this statement, I discuss the proposed restriction only as it affects 28 USC § 1257 and the Supreme Court’s appellate jurisdiction over state courts. If Congress can eliminate particular categories of cases from the jurisdiction of the lower federal courts, as I believe it can, the appellate jurisdiction under 28 USC § 1254 in such cases would be of little importance.

Admittedly, this argument seems to run up against the language of the “exceptions” clause. My response is this. We know that many of the delegates to the Constitutional Convention were concerned about assuring state-court compliance with federal law.⁶ If they thought that the “exceptions” clause would leave Congress free to disarm the mechanism established by the Constitution to accomplish this purpose, they would have raised the point in the debates. They might not have pursued it, but they would not have remained silent. Yet when the “exceptions” clause came up for consideration, no one said anything about Supreme Court review of state-court decisions.⁷ The most plausible explanation is that the delegates did not view the language as allowing Congress to withhold the jurisdiction to which they attached so much importance.

Yet even if this argument is not accepted, it is significant that the first Congress did authorize the Supreme Court to review state-court decisions rejecting federal claims or defenses, and that this jurisdiction has continued without interruption to the present day. Numerous bills have been proposed to limit the jurisdiction, but none have been enacted. A jurisdictional arrangement that was seen as necessary by the Framers and that has been part of our system for the entire life of the Republic should not be lightly disturbed.

VI. Limiting the Jurisdiction of the District Courts

Finally, section 102 of the bill provides: “Notwithstanding any other provision of law, the district court shall not have jurisdiction of a matter if the

⁶ For example, Edmund Randolph, in the course of the debate on the judiciary article, commented that “the Courts of the States can not be trusted with the administration of the National laws. The objects of jurisdiction are such as will often place the General & local policy at variance.” Daniel A. Farber & Suzanna Sherry, *A HISTORY OF THE AMERICAN CONSTITUTION* 58 (1990).

⁷ See *id.* at 62.

Supreme Court does not have jurisdiction to review that matter by reason of section 1260 of this title.” This language thus excludes district-court jurisdiction over –

any matter to the extent that relief is sought against an element of Federal, State, or local government, or against an officer of Federal, State, or local government (whether or not acting in official personal capacity), by reason of that element’s or officer’s acknowledgement of God as the sovereign source of law, liberty, or government.

Functionally, section 102 embraces two distinct categories of cases, each raising somewhat different constitutional issues.

First, section 102 eliminates district court jurisdiction over suits challenging action by *state or local* officials. If Congress retains – as I believe it must – the Supreme Court’s appellate jurisdiction over state-court cases within this category, then there is no constitutional obstacle to denying jurisdiction to the district courts. The Constitution does not require Congress to create lower federal courts at all, and the Supreme Court has repeatedly said that “Congress may withhold from any court of its creation jurisdiction of any of the enumerated controversies. Courts created by statute can have no jurisdiction but such as the statute confers.” *Sheldon v. Sill*, 8 How. (49 U.S.) 441 (1850).

Of course, Congress’s power over the lower federal courts is subject to the various limitations that the Constitution imposes on all exercises of Congressional power. Thus, notwithstanding the language in *Sheldon v. Sill*, a law that prohibited Jews or Republicans from filing suit in federal district court plainly would be unconstitutional under the First Amendment. But H.R. 3799 is not such a law. And in explaining why section 102 is constitutional with respect to challenges to state action, I cannot improve on the words of the late Professor Paul Bator:

If the Congress decides that a certain category of case arising under federal law should be litigated in a state court, subject to Supreme Court review, *neither the letter nor the spirit of the Constitution has been violated*. What has happened is that Congress has taken up one of the precise options which the Constitutional Framers specifically envisaged. From the viewpoint of the Constitution, nothing has gone awry.⁸

Section 102 raises more difficult issues in its application to suits challenging action by *federal* government officials. The reason is that the Supreme Court, again speaking through Chief Justice Rehnquist, has referred to the “serious constitutional question that would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim.” *Webster v. Doe*, 486 U.S. 592, 603 (1988). To be sure, section 102 does not, by its own terms, deny *any* judicial forum for the suits within its ambit; it denies only the *federal* forum. But under 28 USC § 1442(a), a federal official who is sued in state court, whether “in an official or [an] individual capacity,” for “any act under color of [his] federal office,” may remove the case to federal district court. If, under section 102, the district court were required to dismiss the action, this would present the “serious constitutional question” that concerned the Court in *Webster*. If the statute is construed to allow the district court to remand the case to state court, the constitutional problem would be avoided.

But to say that section 102 is constitutional is not to say that it is good policy, and it is not. It would send a handful of suits to the state courts rather than the federal district courts. If the state courts chose not to follow the governing precedents, and review was sought in the Supreme Court, the Supreme Court would probably feel obliged to correct the erroneous decisions. Little would be

⁸ Paul M. Bator, *Congressional Power Over the Jurisdiction of the Federal Courts*, 27 *Vill. L. Rev.* 1030, 1034 (1982) (emphasis in original).

accomplished except perhaps to create some friction between state and federal judiciaries.

VII. Conclusion

Any citizen who cares deeply about public affairs and the role of government in the life of the nation will experience frustration from time to time with decisions handed down by the federal courts. And when the citizen is a Member of Congress, it will be tempting to promote legislation that will eliminate the jurisdiction of the courts to hear cases raising the particular issue. But the temptation should be resisted.

One reason it should be resisted is that Congress has always resisted it in the past. Over the last half-century, there have been numerous bills to curtail the jurisdiction of the federal courts on a wide spectrum of constitutional issues, including prayer in the schools, criminal procedure, abortion, and many others. Some of these bills have had substantial support. But none has been enacted.

This history has established a tradition almost as strong as the one that Chief Justice Rehnquist discussed in his chapter on the impeachment of Justice Samuel Chase. This tradition has served the country well. It has helped to maintain a system of judicial independence that is the envy of civilized nations throughout the world.

Ours is a pluralistic nation, closely divided on many issues. Depending on the time and the circumstances, anyone can be part of a minority. The availability of an independent federal court, with power to hear everyone's constitutional claims, is a source of reassurance to all. Congress should adhere to that tradition and should reject H.R. 3799 in its entirety.