

Reining In the Court

The Constitution offers Congress powerful means to deal with an increasingly lawless judiciary.



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Stand by your oath! Each member of Congress takes an oath to uphold our Constitution, which gives that body the power to curb the abuses of a runaway judicial branch. The remedies offered by the Constitution include limiting the Supreme Court's appellate jurisdiction, impeaching renegade judges, and even dissolving any federal court below the Supreme Court.

by William Norman Grigg

How should we deal with a renegade federal court? This question has been asked by constitutionalists with increasing frequency in recent years, as outrageous judicial rulings accumulate.

Last year, the Ninth Circuit Court of Appeals ruled that reciting the Pledge of Allegiance in public schools is unconstitutional on account of the phrase "under God." On July 1st of this year, the 11th Circuit Court of Appeals upheld a District Court ruling that displaying a granite sculpture of the Ten Commandments in the Alabama Judicial Building is an unconstitutional establishment of religion. The

Supreme Court's late-June decisions upholding affirmative action and striking down state anti-sodomy laws leaves the impression that practically the entire judicial branch is united in a campaign to undermine our culture and destroy any embattled remnants of true federalism.

But there are remedies available for judicial usurpation of the powers reserved to the states and the Congress. First, all courts inferior to the Supreme Court (which is a creation of Article III of the U.S. Constitution) were created by Congress, and can be dissolved by Congress if necessary. Second, under Article III, Section 2, clause 2 of the Constitution, Congress has the power to define exceptions to the appellate

jurisdiction the Supreme Court and, by extension, all other federal courts. Third, Congress has the power, when necessary, to impeach any federal judge, including Supreme Court justices.

In the 1868 case *Ex Parte McCordle*, the Supreme Court recognized the congressional power to limit its appellate jurisdiction. The case arose from a Civil War incident involving a civilian accused of publishing "incendiary and libelous" anti-war propaganda. Arrested and held by the U.S. Army, McCordle faced a trial by a military commission. Protesting that he was illegally imprisoned, he applied for a writ of habeas corpus. The military commissioner responded with the claim that