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Comment of Our Referendum

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Belittle and treat with scorn the statesmanship and patriotism of the great judges of this country from Marshall to Hughes, are making headway with a large proportion of our people who are not fully informed and who may be groping more or less in the dark. It is distinctly up to all honest patriotic citizens to stand firm for government by law and do their utmost to offset the vicious teaching and propaganda of the radical forces which are met with no matter where we may turn. We must work every year, every month in the year, every week in the month, every day in the week, and every hour of the day. This is what our opponents are doing.

C. J. MURPHY, President.

COMMENT OF OUR REFERENDUM

Our Executive Committee has recently devoted some time to the earnest consideration of the President's proposal with reference to the United States Supreme Court, and what, if anything, the lawyers of North Dakota should do about it, as it was deemed by them to be a crisis in Government affairs. Some of our members have urged that the Executive Committee adopt a drastic resolution in opposition to the plan. Others thought such an expression would be construed as an attempt to bind the membership of our Association without knowing how they stood. The by-laws provide that the Executive Committee shall manage the affairs of the Association in the interim between assembly meetings of the entire Association. But it was urged that that applied only to matters within the ordinary scope of association affairs, and analogous to powers of the Board of Directors of a corporation. Other suggestions were made and considered as to procedure. It was finally decided that the Executive Committee would order a referendum to be taken immediately among all the members of our Association and report to our Senators and Congressmen whatever the result of the ballot might be. This referendum is now in progress. Ballots were sent to 581 members and at the present time, some 350 of them have beeen returned, with nine days more before the expiration of the time limit set.

Comment published by the Associated Press in the Chicago papers upon the referendum conducted in Illinois, in part, was as follows: "President Roosevelt evidently believes that John Marshall and all the great judges who have been on the Supreme Court for the last hundred years were wrong in their interpretation of the Constitution when they held that the Supreme Court was an independent department of the government from the executive and legislative departments. The President's proposal is that he appoint new judges who agree with him that the Court should be subservient to the President and Congress. That is to take the last trench in which the defenders of our constitutional liberties stand."

That lawyers should be so overwhelmingly opposed to the President's plan of revamping the Supreme Court is not strange,

as they have been educated and trained to the defense of the Constitution and the law, and have been sworn to defend both. And if there are any decisions in our lives in which we must rise above partisan politics, this is one, regardless of which side we favor. And it is gratifying that this feeling is especially common among members of our profession. In fact, it would seem there is more opposition among the Democrats than the Republicans.

In the letter sent to our members with the ballot was the request that each and every one of us write our Senators and Congressmen stating their views on this important subject. This was done to try to inform the President and Congress just what North Dakota lawyers were thinking on the subject, as we believe they are entitled to that information.

Admitting that President Roosevelt was sincere in his argument that this proposal to revise the machinery of our Federal Courts was made to speed Court processes, the proposition came at an unfortunate time when our people wondered if that was the real motive. If there was any doubt in the minds of anyone what the real purpose was of the President's proposal, Attorney General Cummings' speech removed that doubt, for he said: "That the freedom of our people to direct their own destiny has been hampered, especially of late, by judicial action, is scarcely open to debate. These limitations upon Congressional power have brought into challenge a wide range of projects and measures overwhelmingly approved by our people." Thus Mr. Cummings admits that the President's program is to remove the Supreme Court as an obstacle to Congress passing any laws it may desire and thus get rid of "all limitations upon Congressional power."

The issue is thus openly presented, rather than under camouflage of a need to speed up the Courts, which the very recent report of the Attorney General himself says does not apply to the Supreme Court. Being thus in the open, all of us can think directly on the purpose of the President's plan and determine whether we are for or against it without being misled by any "window dressing."

Your Editor believes that the lawyers are still somewhat looked upon as leaders of public opinion in this country. Admitting this, then every lawyer who believes that the President ought not be given the power to mold the Supreme Court to his desires, should make it known to his community that he is opposed thereto, and if any lawyer is convinced that the welfare of this country requires the consolidation of all three of our Government departments into one, he also should speak up. We urge that the issue is of such importance as to require not only the earnest consideration and decision of every lawyer, but that of every other citizen, and that he should express himself to our representatives in Congress and not leave them ignorant as to what people think. That is the reason we urged every member of our Association to write immediately.

If any one of our members does not like this little expression and does not regard it as a fairly neutral expression, I apologize, if he will promise to read this statement again.

THE SUPREME COURT

There has been received at ye Editor's desk so much comment on the proposition above entitled, that it is impossible to review them in this small publication for your consideration. Some conclusion, of course, is inevitable as an admitted proposition; six members of the Court are over the prescribed age, the effect of the proposal would be to add six new members to the Court, unless they saw fit to resign or "retire", as it has been described. Again the proposal has been described (not inaptly) as an attempt to "pack" the Court.

Perhaps one can safely quote that remarkable man, James Brice, in his great work "The American Commonwealth", when he referred to such a proposal as "immoral in substance". His comments on the Supreme Court are in Chapter XXIV ("The Work of the Courts",) from which the following quotation is taken (New and Revised Edition, Vol. 1 pages 276-277):

> "The Fathers of the Constitution studied nothing more than to secure the complete independence of the judiciary. The President was not permitted to remove the judges, nor Congress to diminish their salaries. One thing only was either forgotten or deemed undesirable, because highly inconvenient, to determine — the number of judges in the Supreme Court. Here was a weak point, a joint in the court's armour through which a weapon might some day penetrate. Congress having in 1801, pursuant to a power contained in the Constitution, established sixteen Circuit Courts, President Adams, immediately before he quitted office, appointed members of his own party to the justiceships thus created. When President Jefferson came in, he refused to admit the validity of the appointment; and the newly elected Congress, which was in sympathy with him, abolished the Circuit Courts themselves, since it could find no other means of ousting the new justices. This method of attack, whose constitutionality has been much doubted, cannot be used against the Supreme Court, because that tribunal is directly created by the Constitution. But as the Constitution does not prescribe the number of justices, a statute may increase or diminish the number as Congress thinks fit. In 1866 when Congress was in fierce antagonism to President Johnson, and desired to prevent him from appointing any judges, it reduced the number, which was then ten, by a statute providing that no vacancy should be filled up till the number was reduced to seven. In 1869, when Johnson had been succeeded by Grant, the number was raised to nine, and presently the altered court allowed the question of the validity of the Legal Tender Act, just before determined, to be reopened. This method is plainly sus-