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5831 – States Rights Bill

Guests: Rep. Watt Abbott (D-VA) and Rep. Basil Whitener (D-NC)

Morphew: Introduction...to Whitener...you are a member of the house judiciary committee and I'm wondering if you can explain the states rights bill...

Whitener: Well, Dick, it's not a very complicated measure. The bill simply provides, and almost in this language, that no federal statute shall be construed to have preempted the field of state legislation unless the federal act specifically states that it is intended to take away the validity or the force of the state statutes, or unless the federal statute and the state statute are so hopelessly in conflict that they could not be construed together. And I may say further that that legislation, of course, only applies in that field which we refer to as dual sovereignty where the constitution has left to the states and the federal government concurrent jurisdiction.

Morphew: So all it does is tell the SC the way it shall interpret cases of conflict of jurisdiction...

Whitener: Well, I think it's simpler than that, Dick. I think that really what it says to the Supreme Court is that you ought to get back to the time honored principles of statutory construction which the Supreme Court itself has held and substantially the language of the bill, since eighteen hundred and twenty five but until the recent wearers of the black robes across the plaza from the Capitol started legislating, that was recognized as the proper principle of statutory construction both by the state and federal courts.

Morphew: To Abbott...do you feel that passage of the states rights bill in the house marks the beginning of a move away from the trend toward big government?

Abbott: Dick, I'm sure that it's a great step back towards states rights. You know, there has been a gradual getting away from that, gradually going towards big government, all out efforts to nationalize and federalize a number of things in our everyday life that never were intended that such would happen by our founding fathers. I think it's definitely a good sign, demonstrating that the people back home are beginning to realize what's happening because even a year ago people were just saying, here in the House, there's no chance of getting this states rights or H.R. 3 passed, but as sentiment began to crystallize, as our people began to wake up as to what is going on, and as they began to get in touch with their representatives here, we could just see the representatives beginning to express the sentiments of their people. And as a result the bill was overwhelmingly passed, as you know.

Morphew: And it was passed by votes from all over the country, not just the South.

Abbott: That's the great thing of it. It demonstrates that the people all over this country feel alike if they but know the true facts and realize what has happened to our way of life. And it's our government, the government belongs to all the people, in all sections of this country, and they feel, I believe, in the North and in the West and in the East, just like we do. The only difference is they haven't had the problems that we've had and don't have the information brought home to them of what's happening to OUR way of life and OUR government. It belongs to all of the people.

Whitener: Well, Watt, I think that those of us who were so interested, as you were, in the enactment or the passage of the H.R. 3 in the House, were very, very pleasantly surprised at the great majority that we had on final passage of the bill and that to me was a great deal more encouraging than the fact that we did pass it in the House. It was the numbers by which it was passed which indicates, if what you say is true, that there is a feeling apparently in other parts of the country that we should return to some of the fundamental principles of jurisprudence and constitutional government.

Morphew: So these are things that southerners have been saying all along, but once again, it's becoming an accepted fact in the rest of the nation.

Whitener: Yes, and I think that in all fairness that we have to admit that the Supreme Court, when it handed down the decision in the case of Nelson against Pennsylvania in which it struck down the Pennsylvania statute under this alleged doctrine preemption which, incidentally, I haven't found in the constitution anywhere but the Supreme Court has found it. That set the people of Pennsylvania and the people of other states of the nation, because there were as I remember it, what, 42 states which had sedition laws and the 2 territories, Alaska and Hawaii, Alaska now being a state, which by that Steve Nelson decision were actually stricken down even though their state statutes were not directly involved and that plus the other decisions which our Supreme Court has made in recent years, some seventy-odd of them, in which they've given relief to communists, has made our folks realize that this is a battle for survival both at the state level and the federal level and at the federal level should not be permitted to completely subjugate the states.

Abbott: Basil, I think what you say there, calls to mind, that unwittingly the Supreme Court has done much to alert the people to actually what is going on.

Whitener: I'm glad you said unwittingly.

Abbott: Yeah, the Supreme Court has just gone so far afield in its many, many decisions in taking away from the states its sovereignty and its rights that the people all over the nation have begun to realize, this is not just a sectional problem, but it involves their everyday affairs. And that, I think, has done as much as any one thing to arouse the sentiment and to correlate the sentiment in favor of a return to constitutional government, a government of laws and not of people and to get away from this socialistic trend that the Supreme Court has adopted and arrogating unto itself authority and power that it never had. And of course, when it does that, it necessarily is taken away from the people and the states rights and privileges and obligations that they had and not whatever was given to the Court or the federal government.

Whitener: Well, Watt, wouldn't you agree that it goes a little further than that? The Court has also taken over the rights of municipalities and county governments as was evidenced by the decision in the New York case where the Court held that New York City had no right to deny employment to a man who had been a communist or who was a communist, as a school teacher in their schools. And then too, another subdivision of the states and the cases which held that the bar organizations or the state licensing boards in Arizona and California had no right to deprive a man of a license to practice law even though that man was a communist. And so it goes a little further on down into destruction of government, I think, than just to the state level.

Abbott: That's right, even if you recall the Gerard 'will' case in which the Supreme Court couldn't will his property like he wanted to, that he'd have to go by a certain sociological whims and fancies of the court rather than what the testator thought about his property.

Whitener: And got away from the old rule there that the testator's intent shall govern.

Morphew: We all agree that this is a significant first step...to Abbott...what should happen next?

Abbott: Well, I think we have just started. I am hoping that we can always count on having at least one or two good Americans on the Court. And I've been thinking that possibly the Congress might want to proscribe certain rules and regulations as to when the Supreme Court could set aside a state law. It occurred to me that maybe they want to require the decision to be unanimous, not necessarily all nine justices agreeing, but that those who did participate in the decision should agree before a state statute could be stricken down. I've been pursuing that a little bit and I'm sure there are a number of other things that we've got to do and must do to take back and get back for the people their rights and privileges and try to retain constitutional government in this country.

Morphew: And Mr. Whitener?

Whitener: Well, Dick, the main thing that I think that we have to do, and we are making some headway on it, is to have our brothers in other parts of the nation to realize that this is not a southern problem and that when we southerners speak out and go to battle for these fundamental principles that we are not doing it as southerners but we're doing it as Americans and that we're not sectional in our views, I think that maybe some of the southern people have perhaps made a mistake in that, but what's good for us in the South and these basic things is good for every other part of the country, and as Mr. Abbott has said, it seems that there has been an awakening already in part to that as evidenced by the vote on H.R. 3, but we of the South must not approach this thing strictly as southerners but as Americans and we must convince our brethren in the other parts of the country that we are doing it in that manner. And when we've done that, I think that we will have made real progress.