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COUNTY SUPERVISORS ASSOCIATION OF CALIFORNIA

October 10, 1963

Rep. Gerald R. Ford

Introduction: Although never a Supervisor, I have:

A. a brother who is - his job is tougher than mine.

B. worked closely with supervisors in my two counties:

32 in Ottawa - population of 98,719 (1960)

70 in Kent - population of 363,187 (1960)

They, like you, are dedicated public servants who must provide local services, build better communities, all within the tight framework of local taxes and the spotlight of hometown scrutiny.

C. D. C. welfare investigation

I. LOCAL GOVERNMENT - MICHIGAN'S PROBLEMS AND PROPOSED SOLUTIONS

A. In Michigan we have 83 counties. Since 1908 operating under historical concepts of county government.

1. One supervisor from each township and multiple supervisors from cities.

Net result - large Boards.

2. Restricted authority predicated on largely rural philosophy that predominated in middle west during our early history.

B. In 1950s growing realization a new Michigan Constitution essential because:

1. 1908 Constitution amended so many times. Constitution had become a patchwork.

2. Michigan had moved from a predominantly rural state to a state where certain counties are almost totally urban.

3. Michigan's fiscal problems were in a mess.

C. In April the voters of Michigan adopted a new state Constitution which over a period of the next several years goes into effect. In three significant respects the new document offers change or innovation in the general area of local government --

1. County home rule. Provisions similar to those for municipal home rule are made for counties. These are not self-executing and will require legislative implementation. This was done for cities and villages in the current Home Rule Act, stemming from provisions first inserted in the 1908 constitution.

The growing density of population in many counties and the consequent extension of governmental needs and problems over county-wide areas have long

been felt by many observers to justify attempts to strengthen the operations of county government, particularly in urban areas.

The old constitutional provisions required large boards of supervisors with no focus of county executive authority, and set up exactly the same structure of government for both urban and rural counties.

The new document continues the past form of county government, but offers an alternative form as well. The success of municipal home rule in gaining vitality for city and village operations is made potentially available also at the county level, under terms of the revised document.

Metropolitan Problems-- A two-pronged solution to problems in metropolitan areas is made available.

- * First, intra-state governmental cooperation is specifically offered to two or more counties, townships, cities, villages or districts, or any combination of these units.

Sharing of costs and credit, contractual agreements, transfer of functions and responsibilities, and mutual cooperation in general shall be authorized under the terms of general law.

In short, the first level of attack on common problems that transcend local boundaries is to be provided by the local units themselves through cooperative undertakings.

- * Second, additional forms of government may be established by the legislature, the only restriction being that such governments wherever possible "shall be designed to perform multi-purpose functions rather than a single function."

This level of attack looks essentially to future problems that may better lend themselves to new organizational forms for their solution. Thus, without detailed prescription or requirement, the new constitution makes ultimately available a solution at the local level for currently unforeseen needs and problems.

2. Liberal construction of provisions. The Convention's intent to strengthen and encourage government at the local level is nowhere better illustrated than in the provision calling for liberal interpretation by the courts of constitutional and statutory language relating to local units.

The provision further specifically says that local unit powers "shall include those fairly implied and not prohibited by this constitution." In many cases, court decisions have been hesitant to grant "fairly implied" powers to counties and townships, and these local units have found themselves restricted in performing some functions and services by the fact that certain explicit authority for action was not stated in law.

The new provision reverses the situation and says, in effect, that all local units may do whatever needs to be done to carry out their general powers, unless something is specifically prohibited by the constitution or by statute.

3. New taxing powers. Each home rule county, and each city and village is granted the power to levy other taxes than property taxes, subject to constitutional and statutory limitations and prohibitions.

The added flexibility which this provision affords the financing of local government is thus specifically subjected to the safeguard of constitutional or legislative pre-emption and restriction.

4. MISCELLANEOUS PROVISIONS.

Miscellaneous provisions affecting local government require brief mention.

Among them are --

- * A four-year term of office is provided for county elective officers.
- * Total debt of a county may not exceed 10 per cent of its assessed valuation.
- * Township officers may by law be given terms of office of up to four years, by contrast with the traditional two-year term.
- * All local units (including school districts) having authority to prepare budgets shall adopt them only after a public hearing.
- * An annual accounting is required for all public moneys, and uniform local accounting systems shall be prescribed and maintained. Also, all financial records and other reports of public money shall be public records and open to inspection. These provisions are more expressly and clearly stated than is certain corresponding language of the 1908 constitution.

5. IN BRIEF

Local government provisions exhibit a blending of two major concerns--

- * Retention of the historical forms of local rule along with all significant traditional powers, duties and functions on the one hand.
- * On the other hand, provision for experimentation, as in the case of county home rule, and for adaptation to need, as in the case of the recognition of metropolitan area problems.

Reinforcing the traditional, the experimental, and the provision for changes that the future may bring is the general trend toward strengthening local level ability to cope with governmental problems. This is best summed up in the provision calling for liberal construction by the courts and use of the doctrine of implied powers, and in the provision for broader taxing powers.

II. POWER GRAB BY WASHINGTON - THE ABUSE OF EXECUTIVE INTERPRETATION AND AUTHORITY

My remarks on this subject would appear to fall within the subject matter discussed in one of your Section Sessions this morning entitled, "California '64: Social Welfare or Social Warfare."

To any objective student of American government since 1932 it should be crystal clear there has been a distinct trend to increased power in the hands of non-elected federal officials through executive decisions. In recent years, and the situation is growing worse rather than better, there have been a multitude of executive orders flowing out of administrative offices in the Nation's Capital. The output of such self-serving power by non-elected officials in the federal government has reached such proportions it is virtually impossible for members of Congress, state officials or local authorities to keep abreast of what is being done in this vast bureaucracy that to a dangerous degree controls the life and destiny of the American people.

Unfortunately few Americans realize the numerical strength of decision makers in the federal government. Today Uncle Sam employs approximately 2,500,000 civilians and this army of bureaucrats is supplemented by 2,800,000 men on active duty with the Armed Forces. It must be conceded, although seldom realized except by those affected, that the military decision makers in America are a part of the Executive Branch and their decisions, both locally and nationally, can be arbitrary and far-reaching to individuals, to business, or to the local community.

The fundamental point, however, is that working for the federal government in the Executive Branch of the national government there are about 5½ million employees who are never really "called to account" by the voters. The President representing the Executive Branch, it is true, puts his record on the line once every four years and the voters in a broad sense pass judgment on an Administration whether it be Republican or Democratic. On the other hand a vast, entrenched and potentially arbitrary bureaucracy backed up by the power of \$100 billion a year in federal funds never really puts its record to the test of the ballot box.

On this point of federal Executive dictatorship I have read lately of numerous serious conflicts between local authorities in California and arbitrary federal officials in Washington. Let me assure, you, however, that this federal octopus does not limit itself to browbeating local authorities by self-serving interpretations of legislation or Congressional intent. In the past few months, the State of Michigan has experienced first-hand the disastrous effect of the abuse of power concentrated in Washington.

Back in 1961, the Congress decided to extend the aid to dependent children act to include unemployed parents. And so we passed what is now known as ADCU.

And when the bill was passed, it was to run for only one year because the Congress

felt that it would like to see how this program was administered before it was given a more permanent future.

In writing this part of the Welfare Act, the Congress said that the basis of eligibility, the definition of unemployed parents, was to be "as determined by the states."

Now, there were resistances in Michigan, on the part of the legislature, to getting into an act that was only on the Federal books for one year. It was extended in 1962 to a five-year program. On the basis of that extension and other considerations, George Romney indicated during the campaign that inasmuch as Michigan was paying \$2 for every \$1 it got back -- and inasmuch as this trend toward Federalization is not going to be stopped by one individual or one state -- Michigan might as well qualify under this Act and get at least \$1 back for every \$2 it sends down to Washington.

So, with good intentions, Governor Romney early in 1963 asked the state social welfare department to prepare a suitable bill to qualify Michigan under the federal legislation. Competent and experienced officials prepared the bill, and they put together one that was shaped to meet Michigan's problems in this field and in the welfare field generally. And they decided to limit the families who would be eligible to those parents who had been eligible for unemployment compensation after January 31, 1958. This was done because otherwise it would have been necessary to set up a new bureaucracy in Michigan to administer the program and determine those eligible. These experienced state officials did not think this was desirable.

Secondly, they wanted to do it this way because they did not want to weaken Michigan's overall welfare program. These families who were to receive help were not without help. They were all on general assistance welfare. Their children were receiving help through that program and the welfare officials and the state felt that those families who would not be eligible under their definition could be better cared for under the general welfare assistance program because that program involves providing commodities and assistance and the use of the help received, whereas the other was just a cash grant.

And then they had another reason. If they had gone the way some people thought they ought to go, it would have weakened the county welfare department, and the Michigan program depends upon the effectiveness of those departments.

So for these reasons the state officials devised this legislation, and after drafting it, they checked with the regional office of the Department of Health, Education and Welfare in Chicago to make certain that the act qualified under the Department's regulations. And the regional office checked with Washington, and the answer came back that the legislation qualified. It was all right. As a matter of fact, it qualified more of Michigan's families percentagewise on general welfare than was true of all but

two out of 15 states that had previously qualified under the program.

So the state legislation moved forward. The House passed the bill. The Senate was within 11 minutes of passing the bill when a wire was received from a Department head in Health, Education and Welfare, raising a question as to whether the legislation would qualify under the Federal Department's interpretation of the program. Belatedly the federal official in Washington raised the question of whether the definition that was being used was discriminatory. No one has ever seen a definition yet that was not discriminatory. The inherent character of a definition is to include some and exclude others.

But the Department heads in Washington did not like Michigan's definition. They have a different definition. Under their definition, Michigan could have qualified fewer families or more families under the program, just as it could have done under its own state definition as it was developed.

Well, the Governor and the legislators took a look at the law again, and took a look at the Department's regulations, and the Department made it clear that the state was to determine eligibility. Governor Romney said to the legislature, "Let us go ahead. The law is clear." So they went ahead.

The next day, after the bill was passed, Gov. Romney received a wire from the Secretary of Health, Education and Welfare, telling him that he considered the program discriminatory and that he would not grant funds under it. The Governor thought he could go down and talk to him and find out why. He was sincere in this. The Governor wanted to know whether there were things in the back of this position that he was not aware of on the surface, or in the regulations or in the basic law.

So, the Governor of Michigan went to Washington. And what he heard was so unconvincing that he suggested to the Secretary that he have his General Counsel take several days to prepare a legal memorandum indicating on what basis he had any authority to tell the states what to do in light of the clear language of the statute and also the clear congressional intent. And he emphasized the intent.

I would like to read to you what Chairman Mills said when this legislation was being considered on the floor of the House.

Congressman Barry asked, "How tough is the criteria? Is this left to the states?"

Mr. Mills replied, "In this instance we are not telling the states they cannot do this, they cannot do that or they cannot do something else. What we are telling the states is this: You find out that this family is in need and what its need is, and you decide if you want to put state money to help the problems of the needy children. And if so, we will join you under the formula now applicable under the ADCU program. This is all we are saying. It is entirely up to the states."

And later Mr. Dominick: "This bill contains no definition of what unemployment is."

Mr. Mills said, "It depends on what the state means by the term 'unemployed'.

The important point on this is that we are leaving this to the states for determination."

Mr. Dominick: "This would then centralize it all at the State and Federal level."

Mr. Mills: "At the State level, not the Federal level."

Now, if any of us understand the English language, the Chairman of the Ways and Means Committee which initiated this legislation was making it as clear as he could that this program was to be determined in terms of eligibility by the states without Federal participation.

But, the Secretary of Health, Education and Welfare has taken the opposite viewpoint.

This situation raises some tremendous issues. And the issues are threefold. The first is whether Federal officials can remodel the will of Congress to conform with their own ideas of social necessity. And the issue is in effect whether we are going to allow laws written by our elected Congressmen to be rewritten by administrative officials whose actions lie largely beyond the effective control of the people. The issue involves this significant question: Is this a Government of law or is it a Government of men?

The second issue is whether a state is to have the advantage of a program tailored to meet its own needs.

And the third is whether acceptance by a state of Federal aid is acceptance of Federal dictation.

You and I know what the answers should be. The clearly-expressed will of the elected representatives of the people must be followed. While men govern, it is the law which must rule. And the strength of our federal system lies in the conformity of purpose and action on national issues with a diversity of policy and methods on state and local affairs. But when we get to the third issue, I fear that we can see the hand-writing on the wall: the more extensive the federal aid the more likely and the more serious the federal dictation.

Centralism will be checked only when national leaders refuse to encourage the "easy way" of federal assistance, and state and local leaders assume the responsibility and privilege of local action and control. The answer is not a call to easy living but an opportunity for strength through struggle.

The big issue 100 years ago was whether the excess sovereignty of the states was going to destroy the Union and the Constitution. The big issue today is whether the excess concentration of Federal power and sovereignty is going to destroy state, local and individual freedom and responsibility.

You with all local officials throughout the country have the answer. When in concert, local and state leaders proclaim loudly and clearly "we will do the job,"

the first step will be taken.

But one more thing is essential. You and I, all of us who are concerned, must continue to show our citizens, the voters, the significance of this issue and that those political candidates who promise the most from Washington are not the most deserving of our support.

III. THE LEGISLATIVE BRANCH : CORNERSTONE OF DEMOCRACY

The third major topic which I want to consider with you for just a few minutes is to me equally as serious as the one we have just been discussing.

I am deeply concerned with the expressed and implied criticism of the Congress, yes, to all elected officials, which seems to be a popular pastime today. Many newspaper and magazine articles have been written with such titles as "Congress Must Reform;" "Old-Fashioned Congress Refuses to Face Reality." A recent long article in an outstanding magazine was entitled "Is Congress Doing Its Job?" and an article in a magazine widely read was about "Our Costly Congress."

First of all let me point out that I do not contend that the Congress is perfect or that certain revisions in procedure would not be beneficial. Of course its organization and methods can be improved. But I detect in all of this criticism and especially that levied by those in the Executive branch, whether it be controlled by Democrats or Republicans, a determined effort to downgrade the Congress and all elected legislative bodies. There is an overwhelming tendency in this accelerated world to justify the elimination of that which is old merely because it is old rather than because it may no longer serve a useful purpose. I think that any close observer has noted in the last 3 or 4 decades a concerted effort to weaken or discard our traditional system of checks and balances. The common argument, as put forward by Professor James M. Byrnes, is that "our government was set up to be a divided government with internal checks at a time when we did not need a strong national government." This of course assumes that we have reached the stage in our national development where we do need a strong national government. The next assumption is that a strong national government means a strong executive government and that anything which impedes the will of the executive is anachronistic and detrimental. From these assumptions have arisen the efforts to reduce substantially the effective power of Congress or any other legislative body elected by the people.

These assumptions lead to action in three general categories. First the increase of power through executive decisions which I have described. Second, public statements by officials, news commentators, political scientists, and others downgrading the Congress. And third, the general attitude expressed by certain political leaders that they know more about what is good for the people than the people know themselves.

Rather than to appear partisan in discussing this important issue at this meeting, I will give no specific illustrations to prove the point which we are making. You are all familiar with the anti-Congress statements emanating from various sources. By discrediting the Congress in the eyes of the public those who make these statements hope automatically to win support for programs opposed by a majority of the Congress. There is some kind of strange theory gaining prominence today which holds that simply because the Executive branch requests legislation it is good for the country and those in the Legislative must approve it. What this really means is that the Legislative should become a rubber stamp for the Executive Branch. You who are legislators must agree that none of us who are elected by our constituents can justly abdicate our responsibilities to another. Those who are so critical of the Congress completely overlook, and certainly not unknowingly, that the House of Representatives probably has the closest kinship with the electorate of any segment of the federal government. Every one of the 435 members of the House must put his record on the line and obtain the approval of his constituents every two years. I do not mean to imply that the Congress should not be criticized or that members of any legislative body always reflect fully the views of their constituents. On the other hand, it is the House of Representatives and those of us who are elected periodically who do go directly to the people for a mandate and the authority to continue in power. We are on the firing line and expect to receive our share of the sniping. It is not the criticism that troubles me but the aura of distrust generated by it; the feeling that Congress is a negative body, obstructing progress, and failing to fulfill its role and, therefore, should relinquish some of its authority to the Executive.

I contend that in many instances Congress and any legislative body takes the most effective action when it takes no action at all. It will be an evil day indeed when it is wrong to say "NO."

From the viewpoint of a person who craves power the Constitution is negative. It stresses the limitation to be placed upon the government and not upon the governed. Its foundation is laid on the basic belief that a government not controlled by the people will control the people.

Affirmatively, this means that there is a basic faith in the electorate and in elected representatives. We who fill elective offices must assume and hold as a sacred trust that authority and responsibility which temporarily rests with us. The broader vision, the unselfish endeavor, the sincere purpose, and the genuine devotion to duty on our part will preserve and strengthen that way of life which we all cherish.

From the desk of **Karl Hess**

Geovy:
Great material!
Made a copy.
Really an exciting
project.
See you soon.

Karl

COUNTY SUPERVISORS ASSOCIATION OF CALIFORNIA

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Texas Longhorn story -

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Variation
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Alpine - 397
Wayne - 2,6
Keweenaw - 2,4

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In short, the first level of attack on common problems that transcend local boundaries is to be provided by the local units themselves through cooperative undertakings.

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On this point of federal Executive dictatorship I have read lately of numerous serious conflicts between local authorities in California and arbitrary federal officials in Washington. Let me assure you, however, that this federal octopus *at the city or county level* does not limit itself to browbeating local authorities by self-serving interpretations of legislation or Congressional intent.

President James Madison - "there are more instances of abridgment of the freedom of the people by gradual & silent encroachments of those in power than by violent & sudden usurpations."

*Think -
Stop*



In the past few months, the State of Michigan has experienced first-hand the disastrous effect of the abuse of power concentrated in Washington.

Back in 1961, the Congress decided to extend the aid to dependent children act to include unemployed parents. And so *the House & Senate* ~~we~~ passed what is now known as ADCU.

And when the bill was passed, it was to run for only one year because the Congress felt that it would like to see how this program was administered before it was given a more permanent future.

In writing this part of the Welfare Act, the Congress said that the basis of eligibility, the definition of unemployed parents, was to be "as determined by the states."

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The next day, after the bill was passed, Gov. Romney received a wire from the Secretary of Health, Education and Welfare, telling him that he considered the program discriminatory



1 federal *in good faith* 15
and that he would not grant funds under it. The Governor

thought he could go down and talk to him and find out

why. He was *absolutely* *desire* *Romney* sincere in this. ~~the~~ Governor wanted to know

whether there were *certain* things in the back of *the Michigan* ~~this~~ position that

he was not aware of on the surface, or in the regulations or

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our Governor
So, the ~~Governor of Michigan~~ went to Washington. And

what he heard was so unconvincing that he suggested to the

Secretary that he have his General Counsel take several days

to prepare a legal memorandum indicating on what basis he had

any authority to tell the states what to do in light of

the clear language of the statute and also the clear

congressional intent. And he emphasized the intent.

I would like to read to you what Chairman Mills said
when this legislation was being considered on the floor of the
House.

Congressman Barry asked, "How tough is the criteria?

Is this left to the states?"



Mr. Mills replied, "In this instance we are not telling the states they cannot do this, they cannot do that or they cannot do something else. What we are telling the states is this: You find out that this family is in need and what its need is, and you decide if you want to put state money to help the problems of the needy children. And if so, we will join you under the formula now applicable under the ADCU program. This is all we are saying. It is entirely up to the states."

And later Mr. Dominick: "This bill contains no definition of what unemployment is."

Mr. Mills said, "It depends on what the state means by the term 'unemployed'. The important point on this is that we are leaving this to the states for determination."

Mr. Dominick: "This would then centralize it all at the State and Federal level."

Mr. Mills: "At the State level, not the Federal level."



~~Now, if any of us understand the English language, the Chairman of the Ways and Means Committee which initiated this legislation was making it as clear as he could that this program was to be determined in terms of eligibility by the states without Federal participation.~~

dictation, certainly not federal speakers dictation.

Regrettably
~~the~~ Secretary of Health, Education and Welfare has taken the opposite viewpoint. *of Michigan, its Governor & its legislature, is without an ADCA program despite its bona fide efforts to qualify.*

The question
~~the issues are threefold.~~ The first is whether Federal

officials can remodel the will of Congress to conform with their own ideas of social necessity. And the issue is in effect whether we are going to allow laws written by our elected Congressmen to be rewritten by administrative officials whose actions lie largely beyond the effective control of the people. The issue involves this significant question: Is this a Government of law or is it a Government of men?



The second issue is whether a state is to have the
 advantage of a program tailored to meet its own needs.

And the third is whether acceptance by a state of
 Federal aid is acceptance of Federal dictation.

You and I know what the answers should be. The
 clearly-expressed will of the elected representatives of the
 people must be followed. While men govern, it is the law
which must rule. And the strength of our federal system
 lies in the conformity of purpose and action on national
 issues with a diversity in policy and methods on state and
 local affairs. But when we get to the third issue, I fear

that we can see the hand-writing on the wall: the more extensive
the federal aid the more likely and the more serious the federal
dictation.

Centralism will be checked only when national leaders

refuse to encourage the "easy way" of federal assistance, and
 state and local leaders assume the responsibility and privilege
 of local action and control. The answer is not a call to easy

any state, yours
 or mine,

within the broad
 framework of
 federal legislation

another aspect of the question

A good big enough
 to give you something

with all its wild constations



leaving but an opportunity for strength through struggle.

The big issue 100 years ago was whether the excess sovereignty of the states was going to destroy the Union and the Constitution. The big issue today is whether the excess concentration of Federal power and sovereignty is going to destroy state, local and individual freedom and responsibility.

You with all local officials ^{citizens} throughout the country, have the answer. When in concert, local and state leaders proclaim loudly and clearly "we will to the job," the first step will be taken.

But one more thing is essential: You and I, all of us who are concerned, must continue to show our citizens, the voters, the significance of this issue and that those political candidates who promise the most from Washington are

not the most deserving of our support.

Beware of the man who promises to bring "free gifts" from the banks of the Potomac.

III. THE LEGISLATIVE BRANCH: CORNERSTONE OF DEMOCRACY

^{Another} The third major topic which I want to consider with you

for just a few minutes is to me equally as serious as the one



we have just been discussing.

I am deeply concerned with the expressed and implied criticism of the Congress, yes, of all elected officials,
This keeping criticism of legislators
~~which seems~~ to be a popular pastime today. Many newspaper and magazine articles have been written with such titles as "Congress Must Reform;" "Old-Fashioned Congress Refuses to Face Reality." A recent long article in an outstanding magazine was entitled "Is Congress Doing Its Job?" and an article in a magazine widely read was about "Our Costly Congress."

First of all, let me point out that I do not contend that the Congress is perfect or that certain revisions in *legislative* procedure would not be beneficial. Of course its organization and methods can be improved. But I detect in all of this criticism and especially that levied by those in the Executive branch, whether it be controlled by Democrats or Republicans, a determined effort to downgrade the Congress and all elected legislative bodies. There is an overwhelming



tendency in this accelerated world to justify the elimination

of that which is old merely because it is old rather than because

it may no longer serve a useful purpose.

~~I think that~~ ^{American history} ~~any~~ close observer ¹ has noted in the last

3 or 4 decades a concerted effort to weaken or discard our

traditional system of checks and balances. The common

argument, as put forward by ^{a learned professor} ~~Professor James M. Byrnes~~, is

that "our government was set up to be a divided government with

internal checks at a time when we did not need a strong

national government." This of course assumes that we have

reached the stage in our national development where we do need

a strong national government. The next assumption is that a

strong national government means a strong executive government

and that anything which impedes the will of the executive is

^{old fashioned} ~~anachronistic~~ and detrimental. From these assumptions have

arisen the efforts to reduce substantially the effective power

of Congress, or any other legislative body elected by the people.

1) Historically Congress & Executive have always met in crisis.
2) Under this system we have more freedom than any other.



These assumptions lead to action in three general categories. First the increase of power through executive decisions which I have described. Second, public statements by officials, news commentators, political scientists, and others downgrading the Congress. And third, the general attitude expressed by certain political leaders that they know more about what is good for the people than the people know themselves.

Rather than to appear partisan in discussing this important issue at this meeting, I will give no specific illustrations to prove the point which we are making. You are all familiar with the anti-Congress statements emanating from various sources. By discrediting the Congress in the eyes of the public those who make these statements hope automatically to win support for programs opposed by a majority of the Congress. There is some kind of strange theory gaining prominence today which holds that simply because the Executive

I might add there are ample evidence in the past 2 yrs.



branch requests legislation it is good for the country and those in the Legislative ^{automatically} must approve it. What this really ¹ means is that the Legislative should become a rubber stamp for the Executive branch. ^{Those} ~~You~~ who are legislators must agree that none of us who are elected by our constituents can justly abdicate our responsibilities to another. Those who are so critical of the Congress completely overlook, and certainly not unknowingly, that the House of Representatives probably has the closest kinship with the electorate of any segment of the federal government. Everyone of the 435 members of the House, must put his record on the line and obtain the approval of his constituents every two years. I do not mean to imply that the Congress should not be criticized or that members of any legislative body always reflect fully the views of their constituents. On the other hand, it is the House of Representatives and those of us who are elected periodically who do go directly to the people for a mandate



in government

and the authority to continue in power. We are on the firing line and expect to receive our share of the sniping. It is not the criticism that troubles me but the aura of distrust generated by it; the feeling that Congress is a negative body, obstructing progress, and failing to fulfill its role and, therefore, should relinquish some of its authority to the Executive.

certain

I contend that in ~~many~~ instances Congress and any legislative body ~~takes the most effective action when it takes~~ *makes the best decision for the people when it rejects* ~~unwise & poorly considered changes often merely for the sake of change.~~ *no action at all.* It will be an evil day indeed when it is

wrong to say "NO."

From the viewpoint of a person who craves power the

This historic document is negative
 Constitution is negative. ~~It stresses the limitation to be~~ *who wants to determine your DESTINY at his personal whim*
in many instances - is often a "stop sign." Frequently it says just hold on a moment.
 placed upon the governed. Its foundation is laid on the basic

belief that a government not controlled by the people will control the people.

Affirmatively, this means that there is a basic faith in



the electorate and in elected representatives. We who fill
elective offices must assume and hold as a sacred trust that
authority and responsibility which temporarily rests with us.
The broader vision, the unselfish endeavor, the sincere
purpose, and the genuine devotion to duty on our part will
preserve and strengthen that way of life which we all cherish.



File: Cofey

COUNTY SUPERVISORS ASSOCIATION OF CALIFORNIA

October 10, 1963

Rep. Gerald R. Ford

Introduction: Although never a Supervisor, I have:

- A. a brother who is - his job is tougher than mine.
- B. worked closely with supervisors in my two counties:
 - 32 in Ottawa - population of 98,719 (1960)
 - 70 in Kent - population of 363,187 (1960)

They, like you, are dedicated public servants who must provide local services, build better communities, all within the tight framework of local taxes and the spotlight of hometown scrutiny.

- C. D. C. welfare investigation

I. LOCAL GOVERNMENT - MICHIGAN'S PROBLEMS AND PROPOSED SOLUTIONS

- A. In Michigan we have 83 counties. Since 1908 operating under historical concepts of county government.
 - 1. One supervisor from each township and multiple supervisors from cities. Net result - large Boards.
 - 2. Restricted authority predicated on largely rural philosophy that predominated in middle west during our early history.
- B. In 1950s growing realization a new Michigan Constitution essential because:
 - 1. 1908 Constitution amended so many times. Constitution had become a patchwork.
 - 2. Michigan had moved from a predominantly rural state to a state where certain counties are almost totally urban.
 - 3. Michigan's fiscal problems were in a mess.
- C. In April the voters of Michigan adopted a new state Constitution which over a period of the next several years goes into effect. In three significant respects the new document offers change or innovation in the general area of local government --
 - 1. County home rule. Provisions similar to those for municipal home rule are made for counties. These are not self-executing and will require legislative implementation. This was done for cities and villages in the current Home Rule Act, stemming from provisions first inserted in the 1908 constitution.

The growing density of population in many counties and the consequent extension of governmental needs and problems over county-wide areas have long



been felt by many observers to justify attempts to strengthen the operations of county government, particularly in urban areas.

The old constitutional provisions required large boards of supervisors with no focus of county executive authority, and set up exactly the same structure of government for both urban and rural counties.

The new document continues the past form of county government, but offers an alternative form as well. The success of municipal home rule in gaining vitality for city and village operations is made potentially available also at the county level, under terms of the revised document.

Metropolitan Problems-- A two-pronged solution to problems in metropolitan areas is made available.

- * First, intra-state governmental cooperation is specifically offered to two or more counties, townships, cities, villages or districts, or any combination of these units.

Sharing of costs and credit, contractual agreements, transfer of functions and responsibilities, and mutual cooperation in general shall be authorized under the terms of general law.

In short, the first level of attack on common problems that transcend local boundaries is to be provided by the local units themselves through cooperative undertakings.

- * Second, additional forms of government may be established by the legislature, the only restriction being that such governments wherever possible "shall be designed to perform multi-purpose functions rather than a single function."

This level of attack looks essentially to future problems that may better lend themselves to new organizational forms for their solution. Thus, without detailed prescription or requirement, the new constitution makes ultimately available a solution at the local level for currently unforeseen needs and problems.

2. Liberal construction of provisions. The Convention's intent to strengthen and encourage government at the local level is nowhere better illustrated than in the provision calling for liberal interpretation by the courts of constitutional and statutory language relating to local units.

The provision further specifically says that local unit powers "shall include those fairly implied and not prohibited by this constitution." In many cases, court decisions have been hesitant to grant "fairly implied" powers to counties and townships, and these local units have found themselves restricted in performing some functions and services by the fact that certain explicit authority for action was not stated in law.



The new provision reverses the situation and says, in effect, that all local units may do whatever needs to be done to carry out their general powers, unless something is specifically prohibited by the constitution or by statute.

3. New taxing powers. Each home rule county, and each city and village is granted the power to levy other taxes than property taxes, subject to constitutional and statutory limitations and prohibitions.

The added flexibility which this provision affords the financing of local government is thus specifically subjected to the safeguard of constitutional or legislative pre-emption and restriction.

4. MISCELLANEOUS PROVISIONS.

Miscellaneous provisions affecting local government require brief mention.

Among them are --

- * A four-year term of office is provided for county elective officers.
- * Total debt of a county may not exceed 10 per cent of its assessed valuation.
- * Township officers may by law be given terms of office of up to four years, by contrast with the traditional two-year term.
- * All local units (including school districts) having authority to prepare budgets shall adopt them only after a public hearing.
- * An annual accounting is required for all public moneys, and uniform local accounting systems shall be prescribed and maintained. Also, all financial records and other reports of public money shall be public records and open to inspection. These provisions are more expressly and clearly stated than is certain corresponding language of the 1908 constitution.

5. IN BRIEF

Local government provisions exhibit a blending of two major concerns--

- * Retention of the historical forms of local rule along with all significant traditional powers, duties and functions on the one hand.
- * On the other hand, provision for experimentation, as in the case of county home rule, and for adaptation to need, as in the case of the recognition of metropolitan area problems.

Reinforcing the traditional, the experientnal, and the provision for changes that the future may bring is the general trend toward strengthening local level ability to cope with governmental problems. This is best summed up in the provision calling for liberal construction by the courts and use of the doctrine of implied powers, and in the provision for broader taxing powers.



II. POWER GRAB BY WASHINGTON - THE ABUSE OF EXECUTIVE INTERPRETATION AND AUTHORITY

My remarks on this subject would appear to fall within the subject matter discussed in one of your Section Sessions this morning entitled, "California '64: Social Welfare or Social Warfare."

To any objective student of American government since 1932 it should be crystal clear there has been a distinct trend to increased power in the hands of non-elected federal officials through executive decisions. In recent years, and the situation is growing worse rather than better, there have been a multitude of executive orders flowing out of administrative offices in the Nation's Capital. The output of such self-serving power by non-elected officials in the federal government has reached such proportions it is virtually impossible for members of Congress, state officials or local authorities to keep abreast of what is being done in this vast bureaucracy that to a dangerous degree controls the life and destiny of the American people.

Unfortunately few Americans realize the numerical strength of decision makers in the federal government. Today Uncle Sam employs approximately 2,500,000 civilians and this army of bureaucrats is supplemented by 2,800,000 men on active duty with the Armed Forces. It must be conceded, although seldom realized except by those affected, that the military decision makers in America are a part of the Executive Branch and their decisions, both locally and nationally, can be arbitrary and far-reaching to individuals, to business, or to the local community.

The fundamental point, however, is that working for the federal government in the Executive Branch of the national government there are about 5½ million employees who are never really "called to account" by the voters. The President representing the Executive Branch, it is true, puts his record on the line once every four years and the voters in a broad sense pass judgment on an Administration whether it be Republican or Democratic. On the other hand a vast, entrenched and potentially arbitrary bureaucracy backed up by the power of \$100 billion a year in federal funds never really puts its record to the test of the ballot box.

On this point of federal Executive dictatorship I have read lately of numerous serious conflicts between local authorities in California and arbitrary federal officials in Washington. Let me assure, you, however, that this federal octopus does not limit itself to browbeating local authorities by self-serving interpretations of legislation or Congressional intent. In the past few months, the State of Michigan has experienced first-hand the disastrous effect of the abuse of power concentrated in Washington.

Back in 1961, the Congress decided to extend the aid to dependent children act to include unemployed parents. And so we passed what is now known as ADCU.

And when the bill was passed, it was to run for only one year because the Congress



felt that it would like to see how this program was administered before it was given a more permanent future.

In writing this part of the Welfare Act, the Congress said that the basis of eligibility, the definition of unemployed parents, was to be "as determined by the states."

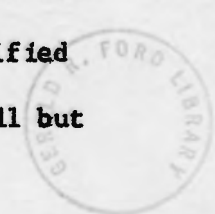
Now, there were resistances in Michigan, on the part of the legislature, to getting into an act that was only on the Federal books for one year. It was extended in 1962 to a five-year program. On the basis of that extension and other considerations, George Romney indicated during the campaign that inasmuch as Michigan was paying \$2 for every \$1 it got back -- and inasmuch as this trend toward Federalization is not going to be stopped by one individual or one state -- Michigan might as well qualify under this Act and get at least \$1 back for every \$2 it sends down to Washington.

So, with good intentions, Governor Romney early in 1963 asked the state social welfare department to prepare a suitable bill to qualify Michigan under the federal legislation. Competent and experienced officials prepared the bill, and they put together one that was shaped to meet Michigan's problems in this field and in the welfare field generally. And they decided to limit the families who would be eligible to those parents who had been eligible for unemployment compensation after January 31, 1958. This was done because otherwise it would have been necessary to set up a new bureaucracy in Michigan to administer the program and determine those eligible. These experienced state officials did not think this was desirable.

Secondly, they wanted to do it this way because they did not want to weaken Michigan's overall welfare program. These families who were to receive help were not without help. They were all on general assistance welfare. Their children were receiving help through that program and the welfare officials and the state felt that those families who would not be eligible under their definition could be better cared for under the general welfare assistance program because that program involves providing commodities and assistance and the use of the help received, whereas the other was just a cash grant.

And then they had another reason. If they had gone the way some people thought they ought to go, it would have weakened the county welfare department, and the Michigan program depends upon the effectiveness of those departments.

So for these reasons the state officials devised this legislation, and after drafting it, they checked with the regional office of the Department of Health, Education and Welfare in Chicago to make certain that the act qualified under the Department's regulations. And the regional office checked with Washington, and the answer came back that the legislation qualified. It was all right. As a matter of fact, it qualified more of Michigan's families percentagewise on general welfare than was true of all but



two out of 15 states that had previously qualified under the program.

So the state legislation moved forward. The House passed the bill. The Senate was within 11 minutes of passing the bill when a wire was received from a Department head in Health, Education and Welfare, raising a question as to whether the legislation would qualify under the Federal Department's interpretation of the program. Belatedly the federal official in Washington raised the question of whether the definition that was being used was discriminatory. No one has ever seen a definition yet that was not discriminatory. The inherent character of a definition is to include some and exclude others.

But the Department heads in Washington did not like Michigan's definition. They have a different definition. Under their definition, Michigan could have qualified fewer families or more families under the program, just as it could have done under its own state definition as it was developed.

Well, the Governor and the legislators took a look at the law again, and took a look at the Department's regulations, and the Department made it clear that the state was to determine eligibility. Governor Romney said to the legislature, "Let us go ahead. The law is clear." So they went ahead.

The next day, after the bill was passed, Gov. Romney received a wire from the Secretary of Health, Education and Welfare, telling him that he considered the program discriminatory and that he would not grant funds under it. The Governor thought he could go down and talk to him and find out why. He was sincere in this. The Governor wanted to know whether there were things in the back of this position that he was not aware of on the surface, or in the regulations or in the basic law.

So, the Governor of Michigan went to Washington. And what he heard was so unconvincing that he suggested to the Secretary that he have his General Counsel take several days to prepare a legal memorandum indicating on what basis he had any authority to tell the states what to do in light of the clear language of the statute and also the clear congressional intent. And he emphasized the intent.

I would like to read to you what Chairman Mills said when this legislation was being considered on the floor of the House.

Congressman Barry asked, "How tough is the criteria? Is this left to the states?"

Mr. Mills replied, "In this instance we are not telling the states they cannot do this, they cannot do that or they cannot do something else. What we are telling the states is this: You find out that this family is in need and what its need is, and you decide if you want to put state money to help the problems of the needy children. And if so, we will join you under the formula now applicable under the ADCU program. This is all we are saying. It is entirely up to the states."

And later Mr. Dominick: "This bill contains no definition of what unemployment is."

Mr. Mills said, "It depends on what the state means by the term 'unemployed'. The important point on this is that we are leaving this to the states for determination."

Mr. Dominick: "This would then centralize it all at the State and Federal level."

Mr. Mills: "At the State level, not the Federal level."

Now, if any of us understand the English language, the Chairman of the Ways and Means Committee which initiated this legislation was making it as clear as he could that this program was to be determined in terms of eligibility by the states without Federal participation.

But, the Secretary of Health, Education and Welfare has taken the opposite viewpoint.

This situation raises some tremendous issues. And the issues are threefold. The first is whether Federal officials can remodel the will of Congress to conform with their own ideas of social necessity. And the issue is in effect whether we are going to allow laws written by our elected Congressmen to be rewritten by administrative officials whose actions lie largely beyond the effective control of the people. The issue involves this significant question: Is this a Government of law or is it a Government of men?

The second issue is whether a state is to have the advantage of a program tailored to meet its own needs.

And the third is whether acceptance by a state of Federal aid is acceptance of Federal dictation.

You and I know what the answers should be. The clearly-expressed will of the elected representatives of the people must be followed. While men govern, it is the law which must rule. And the strength of our federal system lies in the conformity of purpose and action on national issues with a diversity of policy and methods on state and local affairs. But when we get to the third issue, I fear that we can see the hand-writing on the wall: the more extensive the federal aid the more likely and the more serious the federal dictation.

Centralism will be checked only when national leaders refuse to encourage the "easy way" of federal assistance, and state and local leaders assume the responsibility and privilege of local action and control. The answer is not a call to easy living but an opportunity for strength through struggle.

The big issue 100 years ago was whether the excess sovereignty of the states was going to destroy the Union and the Constitution. The big issue today is whether the excess concentration of Federal power and sovereignty is going to destroy state, local and individual freedom and responsibility.

You with all local officials throughout the country have the answer. When in concert, local and state leaders proclaim loudly and clearly "we will do the job,"

the first step will be taken.

But one more thing is essential. You and I, all of us who are concerned, must continue to show our citizens, the voters, the significance of this issue and that those political candidates who promise the most from Washington are not the most deserving of our support.

III. THE LEGISLATIVE BRANCH : CORNERSTONE OF DEMOCRACY

The third major topic which I want to consider with you for just a few minutes is to me equally as serious as the one we have just been discussing.

I am deeply concerned with the expressed and implied criticism of the Congress, yes, to all elected officials, which seems to be a popular pastime today. Many newspaper and magazine articles have been written with such titles as "Congress Must Reform;" "Old-Fashioned Congress Refuses to Face Reality." A recent long article in an outstanding magazine was entitled "Is Congress Doing Its Job?" and an article in a magazine widely read was about "Our Costly Congress."

First of all let me point out that I do not contend that the Congress is perfect or that certain revisions in procedure would not be beneficial. Of course its organization and methods can be improved. But I detect in all of this criticism and especially that levied by those in the Executive branch, whether it be controlled by Democrats or Republicans, a determined effort to downgrade the Congress and all elected legislative bodies. There is an overwhelming tendency in this accelerated world to justify the elimination of that which is old merely because it is old rather than because it may no longer serve a useful purpose. I think that any close observer has noted in the last 3 or 4 decades a concerted effort to weaken or discard our traditional system of checks and balances. The common argument, as put forward by Professor James M. Byrnes, is that "our government was set up to be a divided government with internal checks at a time when we did not need a strong national government." This of course assumes that we have reached the stage in our national development where we do need a strong national government. The next assumption is that a strong national government means a strong executive government and that anything which impedes the will of the executive is anachronistic and detrimental. From these assumptions have arisen the efforts to reduce substantially the effective power of Congress or any other legislative body elected by the people.

These assumptions lead to action in three general categories. First the increase of power through executive decisions which I have described. Second, public statements by officials, news commentators, political scientists, and others downgrading the Congress. And third, the general attitude expressed by certain political leaders that they know more about what is good for the people than the people know themselves.



Rather than to appear partisan in discussing this important issue at this meeting, I will give no specific illustrations to prove the point which we are making. You are all familiar with the anti-Congress statements emanating from various sources. By discrediting the Congress in the eyes of the public those who make these statements hope automatically to win support for programs opposed by a majority of the Congress. There is some kind of strange theory gaining prominence today which holds that simply because the Executive branch requests legislation it is good for the country and those in the Legislative must approve it. What this really means is that the Legislative should become a rubber stamp for the Executive Branch. You who are legislators must agree that none of us who are elected by our constituents can justly abdicate our responsibilities to another. Those who are so critical of the Congress completely overlook, and certainly not unknowingly, that the House of Representatives probably has the closest kinship with the electorate of any segment of the federal government. Every one of the 435 members of the House must put his record on the line and obtain the approval of his constituents every two years. I do not mean to imply that the Congress should not be criticized or that members of any legislative body always reflect fully the views of their constituents. On the other hand, it is the House of Representatives and those of us who are elected periodically who do go directly to the people for a mandate and the authority to continue in power. We are on the firing line and expect to receive our share of the sniping. It is not the criticism that troubles me but the aura of distrust generated by it; the feeling that Congress is a negative body, obstructing progress, and failing to fulfill its role and, therefore, should relinquish some of its authority to the Executive.

I contend that in many instances Congress and any legislative body takes the most effective action when it takes no action at all. It will be an evil day indeed when it is wrong to say "NO."

From the viewpoint of a person who craves power the Constitution is negative. It stresses the limitation to be placed upon the government and not upon the governed. Its foundation is laid on the basic belief that a government not controlled by the people will control the people.

Affirmatively, this means that there is a basic faith in the electorate and in elected representatives. We who fill elective offices must assume and hold as a sacred trust that authority and responsibility which temporarily rests with us. The broader vision, the unselfish endeavor, the sincere purpose, and the genuine devotion to duty on our part will preserve and strengthen that way of life which we all cherish.

