

FOUNDING FATHERS CONCERNS ABOUT JUDICIARY

Memorandum of Law

The purpose of this Memorandum is to clarify our founding fathers concerns of the Judiciary. Men like Samuel Adams, George Mason and Patrick Henry were against the Constitution. Why? Because they did not think it put enough limits on the power of the federal government. The Founders disliked concentrated power. Colonial leader John Cotton stated, *“For whatever transcendent power is given, will certainly over-run those that give it. ... It is necessary therefore, that all power that is on earth be limited.”*

James Madison sums up the current dilemma in Federalist Paper #51 where he said: *“In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”*

Therefore, *“at the Conventions of a number of the States having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added.”* And on December 15, 1791 the Bill of Rights was ratified.

WHY OUR FOUNDING FATHERS WERE CONCERNED ABOUT THE JUDICIARY

Law Review Article by Lynn D. Wardle, Professor of Law
Biomedical ethics and conflict of laws policy issues

Our founding fathers never intended for judges to decide issues.¹ In the discussions about the proper role of the federal courts by the delegates to the Constitutional Convention in Philadelphia in the summer of 1787, and in the public debates about the proposed Constitution that fall, the Founders expressed widespread concern about judges taking authority beyond their lawmaking action. They were aware that because federal judges would have the last word in interpreting the Constitution, they would have the power to make illegitimate judicial decisions that would impose their (the judges’) own political will instead of the will of the people (the true sovereign in the American constitutional Republic).

Specifically, the Founders, as can be read in “James Madison, Notes of Debates in the Federal Convention of 1787 Reported by James Madison,” expressed concerns that the

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federal judges might become like “the justiciary of Aragon”² who, by striking down laws and imposing their own policy preferences upon the people, “became by degrees, the lawmaker.”

The history of the founding of the Constitution clearly shows that both Federalists and Anti-Federalists believed that the exercise of judicial authority to create new legal policies in derogation of long-established institutions and precedents, and contrary to the due process of the political branches, was illegitimate and improper. Interestingly, most of the discussion in the Constitutional Convention came in discussions of a proposal to create a “Council of Revision” including federal judges and executive and legislative representatives. James Madison and his close ally, James Wilson, thrice proposed a Council of Revision with elected and judicial representatives to give judges power to help enact laws and to protect their position in the government. The proposal of a Council of Revision was rejected every time.

The main reasons for rejecting Madison’s proposed Council of Revision was objection to getting judges involved in the process of enacting laws. For example, when it first was proposed, Mr. Pinkney from South Carolina conceded that he initially had liked the idea but now opposed it, in part because “*he was opposed to an introduction of the Judges into the business of making laws.*” Mr. Dickenson of Delaware added that “*he thought to a junction of the Judiciary to the Council, involved an improper mixture of powers.*”

John Dickenson was perhaps the most widely-respected (and probably the best-educated) lawyer to serve as a delegate to the Constitutional Convention. He was one of the few American lawyers who had formally studied law in England. After reading law in Philadelphia, he was sent to study law at Middle Temple in London, then in the Inns of Court, and finally at Westminster. So his opposition was not lightly brushed aside. Indeed, the opposition to the Council of Revision carried the day.

However, the proposal of a Council of Revision was again raised, a month later. Again, Mr. Gerry of Massachusetts vigorously opposed, arguing against giving judges a role in making the laws. A Council of Revision with judges “was liable to strong objections. It was combining and mixing together the Legislative [and] the other departments. It was establishing an improper coalition between the Executive [and] Judiciary departments.”

² The justiza or justiciary of Aragon has been treated by some writers as a sort of **anomalous magistrate**, created originally as an intermediate power between the king and people, to watch over the exercise of royal authority.

Mr. Gorham of Massachusetts also raised “two objections against admitting the Judges to share in [the power to check the legislature] which no observations on the other side seemed to obviate.” Another objection was “the Judges ought to carry into the exposition of the laws not prepossessions with regard to them....”

Likewise, “Mr. Strong, of Massachusetts, thought with Mr. Gerry, of Massachusetts, that the power of making the laws was to be kept distinct from that of expounding, the laws. No maxim was better established. The judges, in exercising the function of expositors, might be influenced by the part they had taken in framing the laws.”

While the Founders rejected a Council of Revision, over the years the Supreme Court may have evolved into a de facto Council of Revision – if not a justiciary of Aragon. In April 2015, the Supreme Court heard oral argument in the Obergefell case. The main issue in the case is whether states (specifically Ohio, Michigan, Kentucky and Tennessee) may define marriage as the gender-integrating union of a man and a woman only (not allowing same-sex couples to marry).

The definition and regulation was clearly a policy issue reserved by our Constitution for the states to decide. And it is clear that the Founders of our Constitution thought that the federal judiciary should have no role in creating such marriage laws or policies. That is evident from the Founders’ disparagement of a “justiciary of Aragon” and their repeated rejection of a “Council of Revision,” in which judges could participate in making the laws.

In the Obergefell case, the Supreme Court considered whether it should redefine marriage for the entire nation. It is deciding whether it, the Supreme Court, will impose a very controversial substantive marriage policy upon, and in, all of the states. Ironically, it is clear that the Founders would have considered the definition of marriage to be beyond the legitimate authority of even a Council of Revision. It is clear that they would have considered such a federal judicial decree to be an act like that of the justiciary of Aragon.

Yet, in *Obergefell v. Hodges*, 576 U.S. 2015, a landmark civil rights case in which the Supreme Court of the United States ruled that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The 5–4 ruling requires all fifty states, the District of Columbia, and the Insular Areas to perform and recognize the marriages of same-sex couples on the same terms and

conditions as the marriages of opposite-sex couples, with all the accompanying rights and responsibilities.

The following are some quotes by our founders concerning the dangers of judicial powers:

- In 1748, Baron Montesquieu, the most quoted writer by the Framers of the Constitution, warned of the dangers of uncontrolled judicial power in his “Spirit of the Laws stating:” *“Nor is there liberty if the power of judging is not separated from legislative power and from executive power. If it were joined to legislative power, the power over life and liberty of the citizens would be arbitrary, for the judge would be the legislator. If it were joined to executive power, the judge could have the force of an oppressor. All would be lost if the same ... body of principal men ... exercised these three powers.”*
- In 1772, John Adams from an oration at Braintree, Massachusetts, wrote in his notes: *“There is danger from all men. The only maxim of a free government ought to be to trust no man living with the power to endanger the public liberty.”*
- On July 11, 1787, James Madison at the Constitutional Convention stated: *“All men having power ought to be distrusted.”*
- On Sept. 17, 1796, George Washington stated in his farewell address: *“And of fatal tendency ... to put, in the place of the delegated will of the Nation, the will of a party – often a small but artful and enterprising minority. ... They are likely, in the course of time and things, to become potent engines, by which cunning, ambitious, and unprincipled men will be enabled to subvert the Power of the people and to usurp for themselves the reins of government; destroying afterwards the very engines which have lifted them to unjust dominion.”*
- On September 11, 1804, Thomas Jefferson wrote to Abigail Adams: *“Nothing in the Constitution has given them (judges) a right to decide for the Executive, more than to the Executive to decide for them. ... But the opinion which gives to the judges the right to decide what laws are constitutional, and what not, not only for themselves in their own sphere of action, but for the legislature and executive also, in their spheres, would make the judiciary a despotic branch.”*
- On Sept. 6, 1819, Thomas Jefferson was concerned that the judges were overreaching their authority and wrote: *“The Constitution is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please.”*

- On September 28, 1820, Thomas Jefferson in a letter to William Jarvis warned of judicial despotism: *“You seem to consider the judges as the ultimate arbiters of all constitutional questions; a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy.”* ... *“Our judges are as honest as other men and not more so ... and their power (is) the more dangerous, as they are in office for life and not responsible, as the other functionaries are, to the elective control. The Constitution has erected no such single tribunal, knowing that to whatever hands confided, with corruptions of time and party, its members would become despots.”*
- In 1821, Thomas Jefferson warned Mr. Hammond that over time the federal government would usurped power from the states: *“The germ of dissolution of our federal government is in... the federal judiciary; an irresponsible body... working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief, over the field of jurisdiction, until all shall be usurped from the states.”*
- June 12, 1823, Thomas Jefferson explained to Supreme Court Justice William Johnson: *“On every question of construction, carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates, and instead of trying what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed.”*
- On July 10, 1832, President Andrew Jackson stated in his Bank Renewal Bill Veto: *“It is easy to conceive that great evils to our country and its institutions might flow from such a concentration of power in the hands of a few men irresponsible to the people. Mere precedent is a dangerous source of authority, and should not be regarded as deciding questions of constitutional power.”*
- In 1835, Alexis de Tocqueville, author of “Democracy in America” warned: *“The president, who exercises a limited power, may err without causing great mischief in the state. Congress may decide amiss without destroying the Union, because the electoral body in which Congress originates may cause it to retract its decision by changing its members. But if the Supreme Court is ever composed of imprudent men or bad citizens, the Union may be plunged into anarchy or civil war.”*
- On Dec. 7, 1835, President Andrew Jackson in his seventh annual message stated: *“All history tells us that a free people should be watchful of delegated power, and should never acquiesce in a practice which will diminish their control over it.”*

- In 1841, President William Henry Harrison warned in his inaugural address: “*The tendency of power to increase itself, particularly when exercised by a single individual ... would terminate in virtual monarchy.... The great danger to our institutions does ... appear to me to be ... the accumulation in one of the departments of that which was assigned to others. Limited as are the powers which have been granted, still enough have been granted to constitute despotism if concentrated in one of the departments.*”
- In 1857, Supreme Court Justice Roger Taney gave his infamous Dred Scott decision that slaves were not citizens, but property.
- On March 4, 1861, Abraham Lincoln in his first inaugural address stated: “*I do not forget the position assumed by some that constitutional questions are to be decided by the Supreme Court.... The candid citizen must confess that if the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made... the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of the eminent tribunal.*”
- On Nov. 19, 1863, Abraham Lincoln delivered his Gettysburg Address: “*Fourscore and seven years ago our fathers brought forth upon this continent a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal.*

Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure. We are met on a great battlefield of that war. We have come to dedicate a portion of that field as a final resting place for those who here gave their lives that that nation might live. It is altogether fitting and proper that we should do this.

But in a larger sense we cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it far above our poor power to add or detract.

The world will little note, nor long remember, what we say here, but it can never forget what they did here. It is for us, the living, rather to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced.

It is rather for us to be here dedicated to the great task remaining before us – that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion – that we here highly resolve that these dead shall not have died in vain – that this nation, under God, shall have a new birth of

freedom – and that government of the people, by the people, for the people, shall not perish from the earth.”

- On April 5, 1881, Lord Acton in his letter to Bishop Mandell Creighton wrote: “*All power tends to corrupt and absolute power corrupts absolutely.*”
- In 1903 President Theodore Roosevelt stated: “*In no other place and at no other time has the experiment of government of the people, by the people, for the people, been tried on so vast a scale as here in our own country.*” Is “*Government of the people, by the people, for the people*” *perishing from the earth?*”

And so today the abuse of powers by the judiciary continues:

- On September 5, 1999 Missouri’s legislators passed a ban on partial birth abortion. Democrat Governor Mel Carnahan vetoed it. In a historic session, fifteen thousand citizens knelt in prayer around the State Capitol as the Legislature overrode his veto. Days later Federal District Judge Scott O. Wright suspended the law and five years later it is still in limbo.
- For years a bill to ban partial birth abortion worked its way through the U.S. Congress, being signed by the president Nov. 5, 2003. The next day a federal judge suspended the law for years – if not forever. In fact, 31 states passed bans on partial birth abortion, only to have un-elected federal judges suspend them.
- On November 18, 2003, even as Massachusetts Legislators were working to define marriage as between a man and a woman, four State Supreme Court Judges “ordered” the state legislature to pass a law within 180 days recognizing homosexual marriage. Deciding what laws are needed is the responsibility of the Legislative Branch. The Judicial Branch is simply to administer the laws according to the meaning the legislators had when passing the laws. Instead of “Separation of Powers,” the Massachusetts Supreme Court is suffering from “Confusion of Powers.” The Judicial Branch of government cannot “order” the Legislative Branch to do anything.
- The people of Arizona voted English as their official language, but federal judges overruled.³
- The people of Arkansas passed term limits for politicians, but federal judges overruled.⁴

³ 9th Circuit, Prop. 106, March 3, 1997.

⁴ Sup. Ct., Term Limits v Thornton, May 22, 1995.

- The people of California voted to stop state-funded taxpayer services to illegal aliens, but federal judges overruled.⁵
- The people of Colorado voted not to give special rights to homosexuals, but federal judges overruled.⁶
- The people of Missouri defeated a tax increase, but federal judges overruled.⁷
- The people of Missouri limited contributions to State candidates, but a federal judge overruled.⁸
- The people of Missouri passed “A Woman’s Right to Know.” Governor Bob Holden veto it. Legislators overrode his veto, but a federal judge overruled.⁹
- The people of Nebraska passed a Marriage Amendment with 70 percent of the vote, but a federal judge overruled.¹⁰
- The people of New York voted against physician-assisted suicide, but federal judges overruled.¹¹
- The people of Washington voted against physician-assisted suicide, but federal judges overruled.¹²
- The people of Washington passed term limits for politicians, but federal judges overruled.¹³
- The people of Montana voted by an overwhelming 74 percent to define a marriage as between one man and one woman, but federal judge Brian Morris overruled. Republican Rep. Steve Daines stated an “*unelected federal judge*” had ignored *Montanans’ wishes*.”¹⁴

“Immense effort goes into the legislative process, political campaigns, registering voters, getting to polls, voting, swearing in, introducing bills, debating bills, voting on bills, overriding vetoes yet this is all an exercise in futility if only a few unelected judges can invalidate the entire process.”¹⁵ Have Americans “ceased to be their own rulers”? Have Americans “resigned their government into the hands of the eminent

⁵ Prop. 187, Nov. 20, 1995.

⁶ Sup. Ct. *Romer v Evans*, 1992.

⁷ 8th Circuit, *Missouri v Jenkins*, Apr. 18, 1990.

⁸ 8th Circuit, *Shrink Pac v Nixon*, Jan. 24, 2000.

⁹ U.S. District Judge Scott O. Wright, Sept. 11, 2000.

¹⁰ U.S. District Judge Joseph Batallion, May 12, 2005.

¹¹ 2nd Circuit, April 2, 1996.

¹² 9th Circuit, March 6, 1996.

¹³ Sup. Ct., *Term Limits v Thornton*, May 22, 1995.

¹⁴ Associated Press, Nov. 19, 2014 Republican Rep.

¹⁵ Bill Federer Published: www.wnd.com 11/18/2018.

tribunal”? Have we become an American oligarchy? Has “government of the people, by the people, for the people” perished?

Our children are falsely taught America is a democracy, when in fact we are a constitutional republic. But, in actuality, America is functioning as an oligarchy, a rule by a few unelected federal judges. Webster’s 1828 Dictionary defines “oligarchy” as: “*A form of government in which the supreme power is placed in a few hands; a species of aristocracy.*” People must not give in to “a practice which will diminish their control over” the delegated power of the Judicial Branch, lest Americans find themselves pledging, not “to the Republic, for which it stands,” but to a new American Oligarchy.

Finally, a conspiracy was perpetrated by the Federal Judiciary when it claimed the existence of a tax court under Article I, when no such authority exists. [*see court role and structure at uscourts.gov.*¹⁶] The federal judiciary in collusion with the Federal Reserve and other subversives have provided for the weaponization of the IRS to enslave the People by providing for the existence of a “pseudo tax court” claiming that Congress created a tax court under Article I Section 8 Clause 9 which states “*Congress shall have power to constitute tribunals inferior to the Supreme Court.*”

Said clause for creating tribunals is governed by the judicial powers we ordained under Article III Section 1¹⁷ and Section 2¹⁸ where we vested the Federal Judiciary with judicial power in law and equity arising under this Constitution and the laws of the United States as follows:

We vested congress under Article I Section 8 Clause 9¹⁹ with the power to constitute tribunals inferior to the Supreme Court. Congress acted upon this power and wrote:

28 U.S. Code § 132: Creation and composition of district courts: (a) There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district. (b) Each district court shall consist of the district judge or judges for the district in regular active service. Justices or judges designated or assigned shall be competent to sit as judges of the court. (c) Except as otherwise provided by law, or rule or order of court, the judicial power of a district court with respect to any action, suit or proceeding may be exercised by a single judge, who may preside alone and

¹⁶ <https://www.uscourts.gov/about-federal-courts/court-role-and-structure>.

¹⁷ **Article III Section 1:** The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior.

¹⁸ **Article III Section 2:** The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States.

¹⁹ **Article I Section 8 Clause 9:** “*Congress shall have power to constitute tribunals inferior to the Supreme Court.*”

hold a regular or special session of court at the same time other sessions are held by other judges.

The aforesaid 28 U.S. Code §132 provide for only District Courts of Record whose jurisdiction is under Natural Law. And, Equity Courts whose jurisdictions are under U.S. Titles that administrates federal agencies, bureaucrats, commercial activities and to all cases affecting ambassadors, public ministers, consuls, admiralty, and maritime jurisdiction, and controversies to which the United States shall be a party; all of which have no jurisdiction over the People.

Congress wrote no other U.S. Codes, nor did we give them the power to, that created courts other than U.S. District Courts of Record and Equity. And as for USC Title 26 which is not positive law, states no jurisdiction, and at best would have administrative authority for the aforesaid fictions and not People.

Furthermore, the People explicitly prohibited direct tax under Article I Section 9 Clause 4 and therefore there can be no tax court because there can be no direct tax.²⁰ *“The 16th Amendment does not justify the taxation of persons or things previously immune. It was intended only to remove all occasions for any apportionment of income taxes among the states. It does not authorize a tax on a salary.”*²¹ *“In construing federal revenue statute, Supreme Court gives no weight to Treasury regulation which attempts to add to statute something which is not there.”*²² *“Congress cannot by any definition (of income in this case) it may adopt, conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully expressed.”*²³

IT SHOULD BE NOTED that there have been instances where the United States Supreme Court trespassed on God’s jurisdiction thinking they can change His Laws. Two examples that immediately come to mind are abortion and marriage. They think they can legalize murder via abortion and change the nature of marriage where God said: *“From the beginning of the creation God made them male and female. For this cause shall a man leave his father and mother, and cleave to his wife; And they twain shall be one flesh: so then they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder.” - Mark 10:6-9*

²⁰ **Article I Section 9 Clause 4:** No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

²¹ Evans v. Gore, 253 U.S. 245.

²² United States v. Calamaro, 354 U.S. 351 (1957), 1 L. Ed. 2d 1394, 77 S. Ct. 1138 (1957).

²³ Eisner v. Macomber, 252 U.S. 189.

IN CONCLUSION: Our founding fathers believed it to be necessary that all power that is on earth be limited and never intended for Judges to decide issues. They did not trust the judiciary and accused them early on of over reaching their authority. Jefferson claimed that they twist and shape the Constitution into any form they please and warned us of judicial despotism, and reminded us that they are as honest as other men and not more so.

Under Article III Section 1 judges hold their offices during good behavior which means “obedience to the Law of the Land,” a/k/a Constitution. Therefore, judges can be removed for defiance to the Constitution via impeachment under Article II Section 4²⁴. And, if Congress cannot find the backbone to impeach, We the People will remove bad behavior judges via indictment under the 5th Amendment²⁵ and/or alter the Federal Judiciary under the Peoples unalienable “*right to alter and institute new servants*”²⁶ codified by the People in the Declaration of Independence Preamble.

Moreover elected and appointed judges can be prosecuted if they act under the color of law, conspire against the Rights’ of the People in violation of 18, USC 241²⁷ and 42 USC 1985(3)²⁸, conspire under color of any law, statute, ordinance, regulation, or

²⁴ **Article II Section 4:** The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

²⁵ **Amendment V:** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury.

²⁶ **Declaration of Independence:** Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter [or abolish] it, and to institute new [Servants] government.

²⁷ **18, USC 241; CONSPIRACY AGAINST RIGHTS:** If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same.

²⁸ **42 USC 1985(3); CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS:** Depriving persons of rights or privileges: If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

custom in violation of 18, USC 242²⁹, or neglects to prevent said conspiring of rights under 42 USC 1986.³⁰

Judges who consistently rule, in equity courts, without regard for the Constitution and American Jurisprudence should be impeached for bad behavior. And, any judge administrating a court of law on behalf of the Kings bench, a/k/a Petit Jury is to proceeds as Magistrate and is not to make any rulings. And, likewise if a judge seizes authority from a Jury they too should be impeached for bad behavior and prosecuted.

²⁹ **18, USC 242; DEPRIVATION OF RIGHTS UNDER COLOR OF LAW:** Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

³⁰ **42 USC 1986; ACTION FOR NEGLIGENCE TO PREVENT:** Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefore, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.