

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

CHAMBERS OF
HENRY J. FRIENDLY
CIRCUIT JUDGE
U. S. COURTHOUSE
NEW YORK, N. Y. 10007

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RECEIVED
CLERKS OF THE
CHIEF JUSTICE

PERSONAL

July 15, 1977

The Chief Justice
Supreme Court of the United States
Washington, D. C. 20543

Dear Warren:

As you requested, I have made an analysis of S. 35 which I am enclosing. I had pretty well completed this before I received the "Preliminary Comments" which you sent me. I went ahead deliberately because I wanted to be sure that the analysis represented my own thinking. The Comments were well done, and I am in general accord with them.

I have left my analysis unsigned. If you want to put it to use, you are at liberty either to disclose or not to disclose the author, or to disclose this to some and not to others, all as you think best.

To my mind, the focus of criticism should be less on the increased load which S. 35 would impose on the federal courts, although it certainly would do that, and more on the needless exacerbation of tension between federal and state judges and the assumption that, in areas far removed from the original purpose of the Civil Rights Act, state officials need federal judicial supervision which federal officials do not. The bill, rather than being called "the Civil Rights Improvement Act of 1977", should be styled "An Act to promote tension between federal and state courts". The needless creation of a confrontation between Congress and the Supreme Court on the extremely sensitive issue of the scope of § 5 of the Fourteenth Amendment is also a matter of deep concern.

Mr. Ruppel

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It is impossible for me to imagine that serious and high minded Congressmen, including the sponsors, would favor such a bill if they truly understood it. The Judicial Conference can be most useful in helping them to that end. It also seems to me highly important that such organizations as the Conference of State Chief Justices, which I believe meets in August, and the Association of State Attorneys General should be aware of this bill and its counterpart, H.R. 4514.

As I told you, I expect to leave for Europe on July 21 but will be back in late August. Let me know if there is anything more you wish me to do.

Many thanks for a delicious and enjoyable luncheon. Please get some rest over the summer.

Sincerely,

A handwritten signature in cursive script, appearing to read "Henry Friendly". The signature is written in dark ink and is positioned to the right of the typed name "Henry Friendly".