

**The measure of constitutionality to nullify a statute ... Edward Grandison Smith.  
Clarksburg, West Virginia. February 22, 1937.**

The MEASURE of Constitutionality To Nullify a Statute

THE Written Constitution is what the Framer's Convention reported and the states ratified as amended formally under its Article V and is by its Article VI supreme.

The Judiciary, by construction in litigated cases before it, purports to imply other supposed interstitial parts of the Constitution as general rules to condemn legislation in conflict with them having that effect of amendment.\*

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\* Note: Acknowledged "in respect of our internal affairs" December 21, 1936, in U. S. v. Curtis-Wright, 81 L. ed., Advance Opinions 166, 170, 173 and point 2 syl. and foreign affairs distinguished without a solid difference.

This jurisdiction the Judiciary did not have at common law. Grant it had legislated interstitially, still, in 1787, it had not to any effect amended a Written Constitution.

This thereafter assumed jurisdiction of the Judiciary is not Judicial Power but is in that effect Written-Constitution Amending Power, a Political Power, vested elsewhere by Article V for concurrent national and state exertion, the highest ritualistic solemnity authorized by the Constitution.

It is out of accord with separation of powers, with not vesting power so great in a department, and with the Written Constitution being supreme.

It is in principle not constitutional.

It is in fact judicial usurpation of non-judicial power.

Therefore, the Written Constitution, not Judicial Implications, should measure constitutionality to nullify a statute.

The Judiciary not so holding, formal amendment should so provide.

Such holding, or that wanting, such amendment, would return the Judicial Power to the Constitution.



Had the return been timely, it should have forestalled the Dred Scott decision and the War between the States; the First Legal Tender holding overruled the next year; the Income Tax decision necessitating the XVI Article of Amendment; and the Judicial Power's will to rule.

Such return seems necessary now to forestall other grave consequences imminent in the future near at hand.

EDWARD GRANDISON SMITH

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