

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

April 21, 2005      LR 8

since 1868; something else did. Constitutions are adaptable. They are elastic. They are modified through interpretation by courts, through Congress using what's called the elastic clause in the first article of the constitution to enact all laws necessary and proper to carry out the powers and duties accorded to the central government. The actual scope of the constitution as far as the powers of the central government were expanded. Although the U.S. government, acting through Congress, is a government of enumerated or granted powers, it has many more and much more powers and power than those specified in the amendments. That elastic clause was recognized by a chief justice named John Marshall in a case called McCullough v. Maryland, and he talked about the implied powers of Congress. He also was the one who created the concept of judicial review where courts had the power to look at enactments of Congress and strike them down if they violated the constitution. That was in Marbury v. Madison in 1803,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...which everybody who's ever been to law school read or heard of and may have forgotten. So when people today who call themselves conservatives want to say that a privacy right found in the constitution which guarantees a woman the right to make the determination of whether or not she will carry a pregnancy to term, that's condemned because they say it's not mentioned in the constitution, well, one of the most powerful forces in this country, judicial review, is not mentioned in the constitution. The constitution does not bestow on the U.S. Supreme Court or the federal courts the power to nullify congressional enactments. That was created by one strong man--Chief Justice of the U.S. Supreme Court John Marshall in 1803, Marbury v. Madison. So people need to read their history, study what is available, and before they start criticizing and condemning the court for being people by activist judges,...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: ...look at what some of the judges they call conservatives have done. Was that my third time, Mr. President?