

Constitutional Challenges

WASHINGTON — Richard Milhous Nixon fills me with a special unease these days because his transparent formula for reelection is to promise certain groups of Americans things that he can deliver only through some dangerous tampering with vital constitutional safeguards.

He is wooing Catholic voters by promising that he will find a way to make tax monies available to run parochial schools.

EVEN AS HE WAS making such a pledge in Philadelphia last week, a three-judge federal court was saying, as the courts have said time and again, that federal aid to such schools promotes a religion and would violate the constitutional requirement of separation of church and state.

Mr. Nixon is saying, in effect, "Give me your votes and I'll find a way to circumvent the Constitution."

Meanwhile, he is wooing white Anglo-Saxon Protestant voters with the promise that he will spare their children having to go to school with anything more than a token number of blacks.

He proposes to do that by getting Congress to limit the powers of federal courts to order busing as a technique for breaking up segregated school arrangements.

What a frightful thing it would be if the Executive branch could tell the Legislative branch to put the screws on the Judicial branch. Because, with the Judicial branch squelched, the Executive branch could then tell the Legislative branch where to go. And we would have arrived at the kind of executive dictatorship that would spell the end of democracy in this country.

Fortunately, a lot of Congressmen (even some who oppose busing) are aware of the

dangers of messing around with the separation of powers. Sen. Peter Dominick (R.-Colo.), the sponsor of Nixon's anti-busing bill, has expressed doubt that the measure will ever reach the floor. In more than two weeks of hearings, the only supporters to testify in behalf of the bill were an administration spokesman, HEW Secretary Elliot L. Richardson, and a newly-converted black separatist, Roy Innis, director of the Congress of Racial Equality.

But if Congress turns out to be smart enough to reject this invitation to assert its "primacy" over the courts, Mr. Nixon can turn to an even more ominous form of tampering: he can go for a constitutional amendment to prohibit busing. That way he can wipe out the hallowed principle of due process of law, the Fourteenth Amendment and whatever hope remains among America's hungry, harassed, humiliated minorities that they can find justice under the law.

Due process? Remember that the judges who order busing are on the scene. They have heard weeks of testimony before concluding that justice requires them to lower the busing boom on their fellow white neighbors and friends.

MR. NIXON HAS HEARD no testimony. He knows none of the facts about how Jim Crow came to rule the roost in Charlotte, N.C., or Richmond, Va., or Pontiac, Mich. He has heard only the cry of the mob before deciding to lower the boom on the courts and the minorities for whom they speak.

But it is too early to despair. The judges have shown that they know what is going on — and what is at stake.