The Phyllis Schlafly Report

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Prepare for More Problems with Judges

Supreme Court Needs At Least One Veteran

For as long as we can remember, the U.S. Supreme Court has included at least one military veteran. Recent examples include Republican-appointed Chief Justice William Rehnquist, who died in 2005, and Justice John Paul Stevens, who announced his retirement on April 9th.

The Democrats have not placed a veteran on the Supreme Court in nearly half a century. When President Obama fills Stevens' seat, will the High Court be left without anyone who has military experience?

Veterans in the U.S. Senate should make sure that such an embarrassment does not occur. Cases concerning the military appear every year before the Supreme Court, and our nation will not be well-served by a Court lacking in military experience.

Justice Stevens himself declared in a recent interview: *"Somebody was saying that there ought to be at least one person on the Court who had military experience. I sort of feel that it is important. I have to confess that."*

Stevens is a liberal, but he loves our nation as veterans do. In 1989 in *Texas v. Johnson*, Stevens dissented when the Supreme Court by 5-to-4 okayed a so-called free-speech right to burn the American flag. Stevens wrote in dissent: "The case has nothing to do with 'disagreeable ideas.' It involves disagreeable conduct that, in my opinion, diminishes the value of an important national asset."

Obama's disdain for the military is no secret, and the leading names on his short list for possible Supreme Court appointment are as anti-military as he is. The number of veterans in Congress has declined to about 21%, but that's enough for them to make a public demand that High Court diversity include a veteran. That would be a good project for Senator John McCain.

Elena Kagan, who tops Obama's short list, banned military recruiters from the Harvard Law School campus where she was the Dean. She defied the Solomon Amendment, an important law passed by Congress and signed by President Bill Clinton, which requires withholding federal funds from any schools that exclude the military from their campuses. Kagan even signed a legal brief claiming that the Solomon Amendment was unconstitutional. The Supreme Court rejected that argument by an 8-to-0 vote.

Next on Obama's list of nominees is ***Diane Wood***, perhaps better known as the "Ghost of Harry Blackmun." She had clerked for Justice Blackmun, and now sides with the abortion industry, as her mentor Blackmun did. Blackmun wrote the *Roe v. Wade* decision that imposed abortion-on-demand, and Judge Wood has done as much as anyone to perpetuate and extend that mistake. She held, for example, that pro-life protesters of abortion clinics were liable under a racketeering law that was designed to combat mobsters. Fortunately, the Supreme Court reversed her 8-to-1.

Not only the women, but the men on Obama's short list also lack military service. ***Cass Sunstein***, a former law professor who is now Czar of the White House Office of Information and Regulatory Affairs, has such a twisted view of the First Amendment that he wants to regulate internet bloggers.

Sunstein is infamous for claiming that animals should have lawyers to represent them in Court. We wonder if he would want to exclude testimony, based on attorney-client privilege, about how a dog barked during a crime! Sunstein also wants "to ban hunting . . . if there isn't a purpose other than sport and fun." "It's time," he declared, to make it "against the law."

Next on the short list is ***Harold Koh***, the former Dean of Yale Law School, who is now the top attorney in Obama's State Department. Koh calls himself a "transnationalist," which means he wants to import and integrate all sorts of foreign laws into our domestic laws.

Obama could nominate any of the above to the Supreme Court or to another federal court. He recently nominated to the Ninth Circuit Court of Appeals ***Goodwin Liu***, who thinks that illegal aliens are entitled to the same rights as American citizens, which would include driver's licenses and full government financial benefits.

Senators stood up against Obama's nomination of ***Craig Becker***, refusing to confirm him for the National Labor Relations Board. Becker has been an attorney for the powerful

SEIU union of government workers, and is known for wanting to implement the so-called "Card Check" regulation so that unions can intimidate workers by depriving them of the secret ballot.

Senators blocked Becker's confirmation and even sent Obama a letter warning him not to give Becker a recess appointment. Obama ignored the Senate and installed Becker as soon as the Senate adjourned for Easter.

Obama thumbed his nose at the Senate, but the Senate should not allow him to thumb his nose at our armed services by replacing the last decorated veteran on the Supreme Court with a non-veteran. The men and women who risk their lives for our nation's security deserve better.

Atheist Attacks on Pledge of Allegiance

Atheists such as Michael Newdow and the American Civil Liberties Union have been carrying on a campaign for several years to remove references to God from public life. They file suits against Ten Commandments monuments, prayers in schools, our motto "In God We Trust," and particularly against the phrase "under God" in the Pledge of Allegiance. The atheists make the ridiculous argument that repeating these words in classrooms, on public property, or on money, is an unconstitutional Establishment of Religion in violation of the First Amendment, and then get some leftwing supremacist judge to agree.

Several years ago, the Ninth Circuit Court on the West Coast agreed with the atheists on the matter of the Pledge of Allegiance. This caused a big national uproar, since the American people like the Pledge of Allegiance exactly the way the Pledge law reads. A public opinion poll found that a phenomenal 87% of Americans support "under God" in the Pledge.

This case was appealed to the U.S. Supreme Court in 2004. The atheists had their big day before the Supreme Court when Michael Newdow presented his case to try to get the justices to remove "one nation under God" from the Pledge of Allegiance.

Newdow probably thought he had an iron-tight legal case because, since 1962 when the Supreme Court banned prayers from public schools, the Court has again and again censored and excluded prayer and morality from public life and schools. A moment of silence in school? The Ten Commandments on the classroom wall? An invocation at graduation? A prayer before a football game? The Supreme Court said no, no, no, no. In no other area of the law had the liberals enjoyed such a run-up of victories over such a long time.

However, 2004 was a presidential election year, and so the Supreme Court found it expedient to duck deciding the Pledge case. The High Court dismissed the Pledge case on a procedural technicality.

But the atheists didn't give up. Michael Newdow filed his case again to challenge the words "under God" in the Pledge of Allegiance. Since he lives in California, his case again came to the same Ninth Circuit Court of Appeals, which is the most liberal federal appellate court in our nation. This court sat on the case for a couple of years before deciding it.

Finally, on March 11, 2010, to the surprise of many, the Ninth Circuit Court of Appeals, by vote of two judges to one, okayed the use of "under God" in public schools as fully constitutional. In *Newdow v. Rio Linda Union School District,* the Ninth Circuit ruled, "The Pledge of Allegiance serves to unite our vast nation through the proud recitation of some of the ideals upon which our Republic was founded and for which we continue to strive." One of those ideals, the Court noted, was "the Founding Fathers' belief that the people of this nation are endowed by their Creator with certain inalienable rights," and this is captured by the phrase "one Nation under God." Continuing, the Court ruled: "The Founders did not see these two ideas — that individuals possessed certain God-given rights which no government can take away, and that we do not want our nation to establish a religion — as being in conflict."

This decision produced a 133-page dissent by Stephen Reinhardt, the most leftwing judge on the Ninth Circuit, so it is possible that Newdow will again appeal to the U.S. Supreme Court. We don't know what the Supreme Court will do, but I believe we would have a better chance of keeping our right to recite "under God" in the Pledge of Allegiance to the Flag if we have at least one veteran on the Supreme Court, even one appointed by Obama.

The continuing attacks on the Pledge prompted an eloquent rebuttal from the late Harvard professor Samuel Huntington. He said, "Unbelievers do not have to recite the Pledge, or engage in any religiously tainted practice of which they disapprove. They also, however, do not have the right to impose their atheism on all those Americans whose beliefs now and historically have defined America as a religious nation."

Professor Huntington cited statistics showing that 92% of Americans believe in God, and up to 88% of Americans identify themselves as Christians. Citing a long history of statements by Congress and the Supreme Court affirming our status as a Christian nation, Huntington says that the purpose of the First Amendment was not to establish freedom <u>from</u> religion but to establish freedom <u>for</u> religion, especially for the remarkable diversity of Christian denominations that have thrived here in comparison to European nations, which historically were dominated by one state-endorsed version of Christianity. Huntington wrote, "The proportion of Christians in America rivals or exceeds the proportion of Jews in Israel, of Muslims in Egypt, of Hindus in India, and of Orthodox believers in Russia," and so U.S. atheists should get used to living in a Christian country.

Reporters inquiring about the Pledge of Allegiance sometimes ask me if I think that the words "under God" are divisive. No, I certainly don't. The popular use of the expression

"one nation under God" dates from Abraham Lincoln's Gettysburg Address. Lincoln used the words to unite a bitterly divided nation. He called on both sides to "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."

Americans Should Study the Courts

We urge all Americans to attend House Meetings in order to study the extraordinary power of the judges who believe in the unconstitutional theory of a "living" Constitution, to learn what the judicial supremacists are doing to our Constitution, what Barack Obama wants judges to do to our Constitution, and what the American people can do to restrain supremacist judges.

Concerned Americans need to know what the stakes are when Obama fills judicial vacancies. Concerned Americans should participate in House Meetings in order to have all the good arguments on the tip of their tongues to tell Members of Congress that we are not going to tolerate supremacist judges denying our right to recite the words "under God" in the Pledge of Allegiance.

The best handbook to understand the problems of the judges is Phyllis Schlafly's book *The Supremacists: The Tyranny of Judges and How to Stop It*.

The Supremacists has a chapter on all the lines of cases that have been rapidly rewriting the Constitution since Earl Warren was Chief Justice. You can have a House Meeting on each line of cases: religion, property rights, life and feminism, marriage, parents' rights, pornography, immigration, elections, taxes, and use of foreign law.

In addition to preparing for battles over Supreme Court vacancies, the filling of vacancies on the lower federal courts is vitally important, too. That's because the Supreme Court accepts only one percent of the cases that seek to be heard by the High Court.

In the school cases brought by the atheists under the First Amendment, five federal circuits have ruled against parents' rights and in favor of public schools having the power to teach children whatever the schools want. These anti-parents' rights cases established the public schools' power to teach homosexuality, Islam, evolution, and to make children answer privacy-invading, suggestive nosy questionnaires. The Supreme Court refused to hear any of these cases, so the lower court decisions remain in force.

The judges not only manifest an anti-religion bias, but also a bias to uphold the public schools' power to take even more extreme anti-religion positions than the Constitution could possibly require. Public schools bend over backwards to avoid being sued by the atheists, take an extreme position against religion, and then are upheld by supremacist judges.

- In New Jersey, an award-winning high school football coach, Marcus Borden, was ordered in 2005 by his intolerant school district not to join his football players when they engaged in voluntary prayer. Then he was told he could not even bow his head or "take a knee" during any student-initiated prayers. The coach sued and the trial judge ruled in his favor. But the school officials and their liberal allies were relentless and appealed. The Third Circuit Court of Appeals then reversed that lower-court ruling and upheld the New Jersey school in prohibiting the coach from participating in student prayers by bowing his head respectfully even when the students' prayers are voluntary and student-initiated. (*Borden v. School District*) The Supreme Court refused to review the case.

- A case came to the Ninth Circuit in 2009 from the State of Washington that involved a senior high school orchestra that was told to select a piece from their musical repertoire to be performed during the graduation ceremony. The kids chose a piece by composer Franz Biebl called *Ave Maria*, which the students believed best showcased their talent and their skill with wind instruments. The piece was to be performed as an orchestral work without any singing or words spoken. It was not the familiar Schubert or Bach/Gounod versions of *Ave Maria*, but an obscure piece that probably no one would recognize when it was performed without words.

  A school administrator who had a doctoral degree and formal training in the place of religion in public schools admitted that she did not even know the meaning of the words *Ave Maria*, but had only a vague sense that the term had some religious origin. Nevertheless, the school forbade the students to play the piece they selected, claiming it might violate the First Amendment, and the school's decision was upheld by the Ninth Circuit. (*Nurre v. Whitehead*) The U.S. Supreme Court refused to review the case.

- In Nevada, censors pulled the plug of the microphone in the middle of the high school valedictorian's speech when she mentioned her Christian faith. The school was upheld by the Ninth Circuit (*McComb v. Crehan*), and the Supreme Court refused to review the case.

- In Virginia, a high school removed from a bulletin board materials posted by a teacher just because they included reference to a day of prayer. The school was upheld by the Fourth Circuit. (*Lee v. York County School*)

- In a case called *Faith Center v. Glover*, the Ninth Circuit denied a Christian group the right to use the public library because some aspects of the group's speech might be described as worship. Judge Lawrence Karlton, who

was appointed by President Jimmy Carter, said there is a "sorry state of the law" in not censoring more religious speech and that he is "pray[ing] for the court's enlightenment" to rule further against religion. The Supreme Court refused to review the case.

- A federal district judge declared an Illinois law unconstitutional that simply requires public school students to have a moment of silence at the beginning of the school day. The law, called the Illinois Silent Reflection and Student Prayer Act, requires public schools to allow students a brief time of silence to pray, meditate, or reflect on the day ahead of them. It passed overwhelmingly in the Democrat-controlled state legislature, overriding the veto by Gov. Rod Blagojevich. Nevertheless, U.S. District Judge Robert Gettleman declared that "The statute is a subtle effort to force students at impressionable ages to contemplate religion," and the judge issued a preliminary injunction banning schools from obeying the law by having a moment of silence. (*Sherman v. Koch*) This case is now on appeal to the Seventh Circuit.

Watch Out for Judges Using Foreign Law

It is possible that Supreme Court Justice Ruth Bader Ginsburg may resign and give Obama the chance to make another Supreme Court appointment.

Ginsburg is a liberal, feminist justice who subscribes to the spurious notion that our Constitution is a "living" (*i.e.*, reinterpretable) document. She now wants to expand that process to welcome foreign law. Ginsburg claims that our failure to cite foreign decisions has resulted in diminished influence for the U.S. Supreme Court.

At a symposium at Ohio State University's School of Law, she took a gratuitous swipe at her Supreme Court colleagues who have spoken out against citing foreign law (which, as gentlemen, they graciously pretended they didn't hear). Ginsburg said, "Why shouldn't we look to the wisdom of a judge from abroad?"

Any first-year law student should be able to answer that question: because all judges, before donning their black robes, raised their right hands and swore "to support this Constitution." The Court's four conservatives all oppose citing foreign laws or decisions in rulings on U.S. cases. Chief Justice John G. Roberts Jr. was explicit during his confirmation hearings, explaining that no foreign judge was appointed by or confirmed by anyone accountable to the American people.

Ginsburg's views may not seem so far-out when we are confronted with Barack Obama's appointments. His choice of Harold Koh, former dean of the Yale Law School, to be the State Department's legal adviser may be a harbinger of things to come. Koh has been quoted by other lawyers as telling a 2007 audience that "in an appropriate case, he didn't see any reason why Sharia law would not be applied to govern a case in the United States."

Sharia is the Muslim law which, among other extreme punishments, allows stoning women to death for the "crime" of being raped. Sharia courts in the United Kingdom have already been permitted to decide cases of domestic violence, rather than referring them to British criminal courts. Under Sharia, which Muslims consider the unalterable law of Allah, men have the right to beat disobedient wives.

In a *Fordham Law Review* article, Harold Koh revealed himself as a thoroughgoing globalist, or in his term, a transnationalist. Transnationalists believe the "living" Constitution allows us to import the fiction of what is called international law into U.S. law (*i.e.*, "domesticate" it), thereby putting the United States under a global legal system.

Since Barack Obama called himself a "citizen of the world," pledged to "rejoin the world community," and declared in his inauguration speech that U.S. power "does [not] entitle us to do as we please," we can assume that his judicial appointments will reflect those views.

Should Judges 'Spread the Wealth'?

We should also be on guard against Obama nominees who may agree with Obama's view of what judges should do. On January 18, 2001 on Public Radio WBEZ-FM, Chicago, Obama complained that the Earl Warren Court "wasn't that radical" because "It didn't break free from the essential constraints placed by the Founding Fathers in the Constitution. . . . The Supreme Court never ventured into the issues of redistribution of wealth and serve more basic issues of political and economic justice in this society."

It's clear from Obama's conversation with Joe the Plumber, and from the details of Obama's Health Control Law, that his goal in "fundamentally transforming" America is to take money away from taxpayers and give it to non-taxpayers. But expecting judges to participate in this theft is shockingly revolutionary. Any Obama nominee should be fully interrogated to ascertain whether or not he agrees with Obama that judges should venture into "redistribution of wealth."

All concerned Americans are urged to attend House Meetings to study the danger from the judiciary and what citizens can do about it. Phyllis Schlafly's book *The Supremacists* is available at **EagleForum.org** where you can download each chapter separately for discussion at a House Meeting.

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