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Congress Should Stand Up and Be Counted

Federal court decisions banning the Pledge of Allegiance and the Ten Commandments, and the possibility raised in *Lawrence v. Texas* that marriage may no longer be defined as the union of a man and a woman, show that the time has come to curb the Imperial Judiciary. We should not allow federal judges to overturn principles that are at the heart of the American character, culture, and Constitution.

Alexander Hamilton wrote in the *Federalist Papers* 78, 81 and 82 that he expected Congress to use its "discretion" to make appropriate "exceptions and regulations" to keep the judiciary "the least dangerous" of the three branches of government. It's long past time for Congress to protect us from activist judges who are assaulting fundamental American principles.

When the Ninth Circuit U.S. Court of Appeals by 2-1 banned the Pledge of Allegiance on June 26, 2002 because of its words "under God," Congress on the same day adopted resolutions of appropriate indignation in a House vote of 416-3 and a Senate vote of 99-0. When the full Ninth Circuit en banc refused to reconsider this outrageous decision, the Senate reaffirmed its support for the Pledge as written on March 4, 2003 by a vote of 94-0, and the House did likewise on March 20, 2003 by a vote of 400-7.

Two cheers for Congress. But that's not enough to fulfill its constitutional duty to demote the federal courts to their proper status.

Congress has failed to solve the Pledge problem, and federal judges haven't gotten the message. Last month, one federal judge barred Pennsylvania teachers from obeying a state law that required them to lead their classes in reciting the Pledge or singing the National Anthem, and this month another federal judge banned a Colorado law requiring teachers to lead the Pledge.

Public opinion has always been strongly in favor of schoolchildren reciting the Pledge. Massachusetts Governor Michael Dukakis's veto of a state law requiring teachers to lead the Pledge helped to elect George H.W. Bush as President in 1988.

If there ever were a case where Congress should act promptly to withdraw jurisdiction from the federal courts, this is it. Rep. Todd Akin's (R-MO) Pledge Protection Act (H.R. 2028) already has 220 co-sponsors, and a companion bill in the Senate is sponsored by Judiciary Committee Chairman Orrin Hatch (R-UT) and Senator Jim Talent (R-MO).

So what is Congress waiting for? All federal courts except the Supreme Court were created by Congress under the Constitution's Article III, Section 1, so Congress can uncreate, limit, or withdraw jurisdiction from them. Under Section 2, Congress can create "exceptions" to Supreme Court jurisdiction.

Congress has used this authority scores of times. In 2002, Senator Tom Daschle (D-SD) inserted a provision in legislation to prohibit all federal courts from hearing cases about brush clearing in South Dakota. (H.R. 4775, Sec. 706) Surely the Pledge of Allegiance is just as important.

The House (but not the Senate) inched a little toward doing its duty in July when it passed two amendments sponsored by Rep. John Hostettler (R-IN) to stop enforcement of two obnoxious federal court rulings. One, which passed 307-119, prohibits spending federal money to enforce the Ninth Circuit's anti-Pledge decision, and the second, adopted 260-161, does likewise for the Eleventh Circuit ruling that the Ten Commandments may not be posted in the Alabama state courthouse.

A national campaign to exorcise the Ten Commandments from public buildings has been accelerating since the Supreme Court decision in *Stone v. Graham* (1980) that caused the removal of the Ten Commandments from public school classrooms. Recent cases have popped up in at least 13 states to force removal of the Ten Commandments from all public buildings and squares. The American Civil Liberties Union has even announced a scavenger hunt with a prize for anyone who finds an another Ten Commandments monument that the ACLU can sue to get removed.

The Ten Commandments showdown is in Montgomery, Alabama, where Chief Justice Roy Moore placed a

Ten Commandments monument in the state courthouse. Despite a vitriolic hammering by the media, he has the public on his side and a crowd of 10,000 gathered in Montgomery on August 16 to support him.

Rep. Robert Aderholt's (R-AL) Ten Commandments Defense Act (H.R. 2045) declares the display of the Ten Commandments on state property to be within the powers which the Constitution reserves to the states, thereby removing challenges from federal court jurisdiction. His bill passed the House in 1999 (but not the Senate), and currently has 64 co-sponsors.

The litigation against all acknowledgments of God is massive, instigated mostly by the American Civil Liberties Union and Americans United for the Separation of Church and State. The Fourth U.S. Circuit Court of Appeals in August let stand a District Court decision that bans grace before evening meals at Virginia Military Institute, and The Citadel announced that it, too, will ban prayers rather than risk the expense of a lawsuit. It is only a matter of time before the anti-religion movement attacks our national motto "In God We Trust."

Since the Supreme Court this year voided Texas's sodomy law without any rational justification in the U.S. Constitution, pro-homosexual commentary in the media has been preparing the public for court rulings that legalize same-sex marriages and invalidate the Defense of Marriage Act (DOMA), which was passed by Congress and signed by Bill Clinton in 1996 and enacted in 37 states.

The Supreme Court may use procedural grounds to duck the issues in the lead cases on the Pledge of Allegiance, the Ten Commandments, and the definition of marriage, but that won't make these issues go away. Dozens of cases arising all over the country make it imperative for Congress to withdraw jurisdiction on these three issues from all federal courts. Members of Congress who default in this duty should be defeated in 2004.

Ginsburg Disdains the Lone Ranger

Supreme Court Justice Ruth Bader Ginsburg recently joined Hillary Clinton, Janet Reno, anti-Pledge-of-Allegiance Judge Stephen Reinhardt, and other like-mined liberals and feminists to launch a new organization called the American Constitution Society. Its mission is to challenge the Federalist Society, which promotes the nomination of judges who believe in the U.S. Constitution and in America's unique system of federalism.

The left doesn't believe that the Constitution should be the benchmark of court decisions or that we should abide by its requirement that "all legislative powers" belong to the Congress. Liberals believe that new rights should be invented and public policies dictated by supposedly more enlightened judges.

At any rate, it's easier to get life-tenured judges than democratically-elected legislatures to adopt leftist policies. That's the undercurrent driving the Democrats' filibuster against President Bush's judicial nominees.

Ginsburg's writing and speaking style is usually somewhere between convoluted and obscure, but she delighted the new group with a noteworthy triple entendre. Referring to Supreme Court decisions, she urged us to get rid of "the Lone Ranger mentality."

First, this was clearly a cut at Bush because he is closely associated with the word ranger. His baseball club was the Texas Rangers, and his top-of-the-line fundraisers are affectionately called Rangers.

Second, Ginsburg's remark was a not-so-subtle sneer at President Bush's foreign policy, which has been impudently criticized by the snooty Europeans for its "unilaterialism" and "cowboy" approach. Ginsburg bragged that the Supreme Court is "becoming more open to international law perspectives," looking to United Nations treaties and foreign courts for guidance in deciding gay rights, death penalty and affirmative action cases.

Third, Ginsburg's comment was indelibly characteristic of the biased lingo of the radical feminists who hate everything masculine. The Lone Ranger and the Texas Rangers, God bless 'em, are very masculine.

Because of her low-key manner, many people don't realize what a feminist extremist she is, but she laid it all out before she ascended to the Court in a book called *Sex Bias in the U.S. Code*. It was filled with a lot of radical feminist demands, such as assigning women to military combat duty, affirmative action for women in the armed services, federal financing of comprehensive daycare, and the sex integration of the Boy and Girl Scouts.

The real purpose of the new American Constitution Society is to recruit candidates for the federal judiciary who will continue the current Supreme Court's custom of deciding cases on the basis of the justices' own policy preferences rather than by referring to the U.S. Constitution. In this year's shocking decisions, the Court abandoned all pretense of basing rulings on what the U.S. Constitution allows or forbids.

Some liberals openly preach the "evolution" of the Constitution, or assert that judges are merely translating obsolete language into a "living" Constitution. Liberal Harvard Professor Laurence Tribe is more blunt: he calls it the "free-form method."

This spring, the Supreme Court dealt devastating blows to longstanding American laws and beliefs about morals and about a just society, and did this without advancing any argument that reasonably relates to the U.S. Constitution. The Court struck down our right to legislate against immoral actions (*Lawrence v. Texas*), and the Court exalted "diversity" as a new rule that trumps nondiscrimination on account of race (*Grutter v. Bollinger*). No constitutional argument justifies those two decisions that create new rights of sodomy and reverse racial discrimination. They evolved out of the social preferences of the shifting majorities of justices and their pandering to the liberal elites.

Ginsburg's *tour de force* to aid the feminists' campaign against everything masculine was her sudden

discovery in 1996 of a new right for women to enroll in Virginia Military Institute. Nobody else had detected that right in the Constitution during VMI's previous 157 years.

Ginsburg has long been on record as wanting cases to be decided on her version of what she calls "the equality principle" (rather than on the Constitution). Her "equality" notions include the right to abortion at taxpayers' expense (which the Supreme Court rejected in *Harris v. McRae* in 1980), and a mindless gender neutrality that would include eliminating the concept of "breadwinning husband" and "dependent, homemaking wife."

The influence of Ruth Bader Ginsburg is clearly seen in another 2003 decision that shocked observers, *Nevada Dept. of Human Resources v. Hibbs*. The Court's tirade against "stereotypes" (a word used 19 times) which supposedly "forced women to continue to assume the role of primary family caregiver" was based on feminist fantasies about a gender-neutral society.

When will the American people call a halt to the tyranny of the Imperial Judiciary and restore "all legislative powers" to the legislatures? Will that happen if some court invents a new right of same-sex marriage?

Can Globalism Amend Our Constitution?

We live in a global economy, right? But the elites mouthing this mantra haven't shared with the American people the news that globalism not only means open borders for the movement of goods and the migration of peoples, plus textbooks teaching children to be citizens of the world instead of patriots.

Globalism also means bending the United States Constitution into conformity with opinions of foreigners who pompously enunciate new laws and new human rights. The utterings of these self-important bureaucrats in the United Nations and some European countries could be merely matters for TV humor if it were not that Supreme Court Justices Breyer, Kennedy, Ginsburg and Stevens take them seriously.

Justice Breyer gleefully told George Stepanopoulos on ABC News how the United States is changing "through commerce and through globalization ... [and] through immigration," and that this change is having an impact on the courts. He speculated on "the challenge" of whether our U.S. Constitution "fits into the governing documents of other nations."

Where did he get the idea that the U.S. Constitution should "fit" into the laws of other nations? If a country can't make its own laws, how can it be a sovereign nation?

In a dissent in *Knight v. Florida*, Breyer said it was "useful" to consider court decisions on allowable delays of execution in India, Jamaica and Zimbabwe. Zimbabwe, indeed, has had a lot of experience with executions, but it's hardly a country from which we should get guidance about due process.

Justice Kennedy couldn't find any language in the U.S. Constitution to justify overturning the Texas sodomy law in *Lawrence v. Texas*, so he invoked "other authorities" in "Western civilization," namely, the European Court of Human Rights, which invalidated EU countries' domestic laws proscribing homosexual conduct. Kennedy also cited an *amicus* brief filed by Mary Robinson, former United Nations high commissioner for human rights.

Kennedy wrote, "The right the petitioners seek [to engage in sodomy] has been accepted as an integral part of human freedom in many other countries," and he emphasized the "values we share with a wider civilization." In fact, most other countries do not share American values, and we don't want to share theirs.

Reading foreign court decisions no doubt contributed to Kennedy's reliance on "emerging awareness ... in matters pertaining to sex" instead of on the U.S. Constitution. Four justices joined in Kennedy's majority decision without distancing themselves from his globalist reasoning or his false recitation of U.S. history of sodomy laws.

Justice Scalia eloquently dissented: "Constitutional entitlements do not spring into existence ... because foreign nations decriminalize conduct." He called Kennedy's words "dangerous dicta," adding that the Supreme Court "should not impose foreign moods, fads or fashions on Americans." Of course, the Supreme Court should not; but it did! Is the Court now going to use Canada's fad about same-sex marriages to overturn the laws of our 50 states?

Looking to foreign countries for guidance about U.S. laws or court decisions is not only an interference with our sovereignty but will diminish the rights Americans enjoy. The proposed Constitution for the European Union (EU) is completely different from our great, long-lasting United States Constitution. Our Bill of Rights, for example, sets forth a list of individual rights against the government, whereas the proposed EU constitution includes a long list of rights to services to be provided by the government such as education, paid maternity leave, health care, housing, and environmental protection. The EU constitution purports to require "equality" between men and women, but sets up a program to give "specific advantages in favor of the underrepresented sex."

Instead of condemning Kennedy's use of foreign courts to change U.S. laws, the American Bar Association president opined that "the concept of fundamental law knows no national boundaries." Sounding off from left field, Harvard professor Laurence Tribe chimed in to "applaud" the "important insights" of the "global legal community."

Justices Ruth Bader Ginsburg and Stephen Breyer, concurring in *Grutter v. Bollinger*, cited a treaty to justify the University of Michigan Law School's affirmative action. They wrote: "The International Convention on the Elimination of All Forms of Racial Discrimination, ratified by the United States in 1994 ... endorses special and concrete measures to ensure the adequate development and protection of certain racial groups ... for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms."

When the Senate ratified that treaty under pressure

from the Clinton Administration (30 years after Lyndon Johnson signed it), I wonder if anyone predicted that it would require U.S. schools to impose reverse discrimination based on race.

In *Atkins v. Virginia*, Justice John Paul Stevens' majority opinion cited an *amicus* brief from the European Union. The EU warned us, Stevens wrote, that "within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved." Scalia retorted, "The views of other nations cannot be imposed upon Americans." But five justices did impose foreign views on us.

It's obvious why the Democrats filibuster any judicial nominee they suspect of being a strict constructionist. The Democrats love an activist judiciary because court decisions can make fundamental changes that the American people and our elected representatives don't want.

It's also obvious why the Democrats like United Nations treaties. Activist judges can use them to circumvent our Constitution and laws.

The Impertinence of So-Called Allies

Should the United States permit Gen. Tommy R. Franks, head of the U.S. Central Command, to be prosecuted in a court in Belgium for alleged war crimes during the Iraq war? Most Americans would say, you have to be kidding; that could never happen.

But little Belgium, trying to be a player on the world stage, adopted what it calls a universal-jurisdiction law. It purports to give Belgium jurisdiction over war crimes committed anywhere in the world and give Belgian judges the authority to hear complaints brought by anyone.

Already on file is not only a complaint against Gen. Franks, but also against former President Bush, retired Gen. Norman Schwarzkopf, Secretary of State Colin Powell and Vice President Cheney, for alleged war crimes against civilians when they bombed a Baghdad bunker during the first Gulf War; and against both Israeli Prime Minister Ariel Sharon and Yasser Arafat.

Defense Secretary Donald Rumsfeld properly and publicly lowered the boom on uppity Belgium, which has been host to NATO since 1967. Secretary Rumsfeld said, "If the civilian and military leaders of [NATO] member states cannot come to Belgium without fear of harassment by Belgian courts enforcing spurious charges by political prosecutors, then it calls into question Belgium's attitude about its responsibilities as a host nation."

Rumsfeld added that it doesn't make sense for the U.S. to build a headquarters in Belgium if U.S. officials can't come to Belgium without fear of being arrested, and "I've just stated a fact."

NATO is planning on building a $352.4 million futuristic headquarters in Brussels. Rumsfeld talked to the Belgians in language they understood. He said the United States will provide no funds for the new NATO headquarters unless Belgium repeals this impertinent law. Rumsfeld's plain-speaking message achieved results. Belgium's lower house has approved a bill to limit the jurisdiction of the courts to cases involving Belgian citizens and residents.

Meanwhile, the Netherlands is trying to move to the center of the world stage with the International Criminal Court (ICC), headquartered in the Hague. The ICC bureaucrats, who are pseudo judges pretentiously asserting the power to enforce pseudo law, assert jurisdiction over U.S. citizens even though we are not and never will be a party to the treaty.

One of President Clinton's last official acts was his New Year's Eve signing of the International Criminal Court (ICC) Treaty, but it was never ratified by our Senate. President George W. Bush courageously stood up for American sovereignty when he took the unprecedented step of "unsigning" the treaty.

Last year, the United Nations Security Council reluctantly deigned to grant the United States a one-year grace period from the risk of having U.S. soldiers on overseas peacekeeping missions arrested for prosecution by the ICC.

The Bush Administration has been trying to cajole separate nations into signing promises that they won't arrest Americans stationed on their territory. So far, 38 such agreements have been signed but that doesn't include most of the major governments.

When the one-year exemption granted by the UN last year expired, the UN Security Council reluctantly approved a one-year extension. France, Germany and Syria abstained, 17 countries spoke out against us, and UN Secretary General Kofi Annan undiplomatically sneered at the U.S. exemption.

Our so-called European allies, whom American blood and treasure have again and again protected against military aggression and economic ruin, deserve a prize for impertinence. We should nip in the bud the heady hopes of the pompous bureaucrats in the Hague and Brussels, who were not elected by anybody yet dream they can exercise global judicial power.

U.S. officials don't need to pussyfoot around with the niceties of diplomatic language. They should say, "Bug off. America already enjoys the rule of law that best protects human rights, our Bill of Rights is not up for negotiation with foreigners, and we will not subject our citizens to rules or judges in foreign countries."

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