The Phyllis Schlafly Report

VOL. 38, NO. 2 | P.O. BOX 618, ALTON, ILLINOIS 62002 | SEPTEMBER 2004

Activist Judges Rule For Special Interests

Pots of Gold Behind Crosses

The supervisors of the great Los Angeles County decided to turn tail and run rather than fight a lawsuit threatened by the American Civil Liberties Union (ACLU). Why such weak-kneed response? Lawyers for the county ominously warned that the county might lose the case and have to pay the ACLU's attorney's fees.

The ACLU is demanding that the county remove a tiny cross from its seal, one of nearly a dozen symbols it portrays. One need only look at the seal to see how ridiculous is the ACLU's demand. A third of the seal and the centerpiece is the Greek goddess Pomona standing on the shore of the Pacific Ocean. The ACLU doesn't object to her; portrayals of pagan goddesses are okay.

Six side sections of the seal depict historical motifs: the Spanish galleon San Salvador, a tuna fish, a cow, the Hollywood Bowl, two stars representing the movie and television industries, oil derricks, and a couple of engineering instruments that signify Los Angeles' industrial construction and space exploration. The cross is so tiny that it doesn't even have its own section and consumes maybe two percent of the seal's space.

Removing the cross is a blatant attempt to erase history, to drop it down the Memory Hole as George Orwell would say. It is just as reasonable to recognize the historical fact that California was settled by Christians who built missions all over the state as it is to honor the Spanish ship, the San Salvador, which sailed into San Pedro (St. Peter) Harbor on October 8, 1542.

The reason the Los Angeles County seal is such a big deal is not because it is a violation of the First Amendment. It is because a pot of gold hiding under it is attracting the ACLU like honey attracts flies.

The ACLU uses a little known 1976 federal law called the Civil Rights Attorney's Fees Awards Act to demand reimbursement for its attorney's fees for suing crosses, the Pledge of Allegiance, and the Ten Commandments, and liberal judges grant these awards. This law was designed to help plaintiffs in civil rights cases, but the ACLU is using it for First Amendment cases, asserting a civil right **not** to see a cross or the Ten Commandments.

The financial lure created by this law is the engine that is driving dozens of similar cases all over the country. Every state, county, city, public park or school that has a cross, a Ten Commandments plaque or monument, or recites the Pledge of Allegiance, has become a target for ACLU fundraising.

There are thousands of Ten Commandments plaques or monuments all over the country, and lawsuits to remove them have popped up in more than a dozen states. In Utah the ACLU even announced a scavenger hunt with a prize for anyone who could find another Ten Commandments monument that the ACLU could persuade an activist judge to remove.

The most famous Ten Commandments case is the one in the State Judicial Building in Montgomery, Alabama, installed by Chief Justice Roy Moore and ordered removed by a Carter-appointed federal judge. As their reward for winning its removal, the ACLU, Americans United for Separation of Church and State, and the Southern Poverty Law Center collected $540,000 in attorney's fees and expenses from the Alabama taxpayers.

Kentucky taxpayers have handed over $121,500 to pay the ACLU for its action against the Ten Commandments display outside its state capitol. Taxpayers in one Tennessee county had to pay the ACLU $50,000 for the same "offense."

The ACLU profited enormously, collecting $790,000 in legal fees plus $160,000 in court costs, as a result of its suit to deny the Boy Scouts of America the use of San Diego's Balboa Park for a summer camp, a city facility the Scouts had used since 1915. The ACLU argued that the Boy Scouts is a "religious organization" because it refuses to accept homosexual scoutmasters, and because the Scouts recite an oath "to do my duty to God and my country."

In northern Minnesota, the Duluth city council voted 5 to 4 to acquiesce in the ACLU's demand to remove Ten Commandments monument from public property because the city couldn't afford to pay the legal costs of defending the monument plus the ACLU's legal fees. Redlands, California like-

wise backed down after the ACLU threatened a lawsuit to force removal of a cross from part of the city logo.

Similar lawsuits could challenge "under God" in the Pledge of Allegiance, since the U.S. Supreme Court ducked deciding the issue this summer in the Michael Newdow case. There are 16,000 public school districts that could become targets of lawsuits to ban the Pledge.

Rep. John Hostettler (R-IN) has introduced H.R. 3609 to end this racket by amending the federal law that makes it possible.

Most lawsuits do not award attorney's fees to the winner, and the law should not give a financial incentive to those suing to stop our acknowledgment of God, or to continue a practice or a symbol that the American people have approved for decades.

Court Sides with Pornographers

Do you ever wonder why the internet is so polluted with pornography? The Supreme Court is the reason: it blocks every attempt by Congress to regulate the pornographers. From its ivory tower, the Court props open the floodgates for smut and graphic sex. Over the past five years, it has repeatedly found new constitutional rights for vulgarity, this year invalidating the Child Online Protection Act (COPA).

This latest judicial outrage happened on the final day of the Supreme Court's 2004 spring term, after which the justices headed out for a long summer break. Lacking teenaged children of their own, the justices closed their eyes to electronic obscenity polluting our children's minds.

For decades, pornographers have enjoyed better treatment by our courts than any other industry. The justices have constitutionally protected obscenity in libraries, filth over cable television, and unlimited internet pornography.

The flood of pornography started with the Warren Court when it handed down 34 decisions between 1966 and 1970 in favor of the smut peddlers. Using mostly one-sentence decisions that were issued anonymously (the justices were too cowardly to sign them), the Court overturned every attempt by communities to maintain standards of decency.

The judges' obsession with smut is astounding. Even though five Supreme Court justices were appointed by Presidents Reagan and the first Bush, graphic sex wins judicial protection in nearly every case. Woe to those who transgress an obscure environmental law, or say a prayer before a football game, or run a political ad within two months of an election. They find no judicial sympathy, as courts now routinely restrict private property rights and censor political and religious speech.

But the pornographers can do no wrong in the eyes of our top justices. The most explicit sex can be piped into our home computers and the Supreme Court prevents our democratically elected officials from doing anything about it.

COPA was enacted by Congress in response to the Court's invalidation of the predecessor law, the Communications Decency Act of 1996. But decency lost again when six justices knocked out COPA in *Ashcroft v. ACLU*.

COPA was badly needed, as filth plagues the internet, incites sex crimes, and entraps children. COPA banned the posting for "commercial purposes" on the World Wide Web of material that is "patently offensive" in a sexual manner unless the poster takes reasonable steps to restrict access by minors. You don't need to look very far to find a tragic crime traceable to the internet. In New Jersey in 1997, 15-year-old Sam Manzie, who had fallen prey to homosexual conduct prompted by the internet, sexually assaulted and murdered 11-year-old Eddie Werner, who was selling candy door-to-door.

COPA did not censor a single word or picture. Instead, it merely required the purveyors of sex-for-profit to screen their websites from minors, which can be done by credit card or other verification. But minors are an intended audience for the highly profitable sex industry. Impressionable teenagers are easily persuaded to have abortions, and homosexual clubs in high school are designed for the young.

Justice Kennedy declared it unconstitutional for Congress to stop porn flowing to teens, shifting the burden to families to screen out the graphic sex rather than imposing the cost on the companies profiting from the filth. His reasoning is as absurd as telling a family just to pull down its window shades if it doesn't want to see people exposing themselves outside.

In a prior pro-porn decision, Kennedy cited Hollywood morals as a guide for America, but this time he relied on the prevalence of foreign pornography: "40% of harmful-to-minors content comes from overseas," he declared while holding that the other 60% of obscenity is wrapped in the First Amendment.

The Supreme Court insisted that individual internet users should buy filters to try to block the vulgarity. Should those who do not like air pollution be told to buy air masks?

The Supreme Court protects pornography in books, movies, cable television, and the internet, real or simulated, against all citizens' clean-up efforts. The Court is no longer the blindfolded lady weighing a controversy, but is dominated by media-driven supremacists forcing us down into a moral sewer.

This latest pro-porn decision was too much even for Clinton-appointed Justice Breyer. He said, "Congress passed the current statute in response to the Court's decision" invalidating the prior law; "what else was Congress supposed to do?"

The solution to these ills foisted on us by judicial supremacists is for Congress to exercise its constitutional powers to remove jurisdiction from the federal courts over pornography. The Court has abused its power, and it's Congress's duty to end the judicial abuse.

Showing Teens How to Kill Policemen

The judicial supremacists struck again. A Clinton-appointed activist judge on July 15, 2004 wrapped the First Amendment around video and computer games that show teenagers how to kill policemen.

Washington state parents got fed up with their children playing violent video games and spurred their state legislators to action. The state imposed a fine for the sale or rental to minors of video or computer games containing "realistic or photographic-like depictions of aggressive conflict in which the player kills, injures, or otherwise causes physical harm to a human form in the game who is depicted . . . as a public law enforcement officer."

The new law restricted violent games that reward youths with points for simulated killing of others. While the impact of these games on impressionable youngsters is not fully known, common sense tells us that the videos lack any redeeming value and desensitize youths to violence.

Determined to overturn the new law, the Video Software Dealers Association went hunting for a supremacist judge who would bend the First Amendment to cover these games. The dealers found their man in federal district court judge Robert S. Lasnik.

Judge Lasnik nullified the state statute and prohibited its enforcement. He permanently enjoined Washington State from restricting the distribution of violent video games to minors.

Judge Lasnik went overboard in his extreme defense of violent video games. "Whether we believe the advent of violent video games adds anything of value to society is irrelevant; guided by the First Amendment, we are obliged to recognize that they are as much entitled to the protection of free speech as the best of literature."

Judge Lasnik crafted an interpretation of the First Amendment that protects purveyors of violence and sex to children. Lasnik said that even if it were proven that violent video games cause "real-life aggression in minors," he would invalidate the Washington state law because it would not "curb such aggression in a direct and material way."

He admitted that the videos are "filth," yet insisted that the First Amendment safeguards them. Using language often invoked to protect pornographers, Lasnik said that the statute failed to use the "least restrictive alternative available." He also indicated his disapproval that the statute only protected law enforcement officers against simulated violence rather than minorities, too.

Lasnik's decision in *Video Software Dealers Association v. Maleng* is a good example of what President Bush calls "legislating from the bench." Acting like a legislator rather than a judge, Lasnik laid down three criteria for any future attempts by the legislature to protect minors from harmful video games.

Instructing legislators how to do their job, he pronounced that any future regulation must (1) "cover only the type of depraved or extreme acts of violence that violate community norms," (2) "prohibit depictions of extreme violence against all innocent victims," and (3) be supported by "social scientific studies."

Lasnik's instructions border on the absurd. Don't we already have "community norms" against killing policemen? Do we really need "social scientific studies" to tell us that it's dangerous to teach teenagers to kill policemen? His suggestion that we can't prohibit teaching teenagers how to kill policemen unless the same video generalizes the advice to all kinds of murder shows how ridiculous the liberals' casual use of the "equal protection" argument has become.

Quite apart from the nonsense of Judge Lasnik's decision is the evidence it provides about the growing cancer of judicial supremacy. His brazen interference with the voters' attempt to protect their children illustrates how much power has been seized by the courts.

The American people must confront and repudiate the supremacist notions displayed by the life-tenured federal judges who have convinced themselves, as the French King Louis XIV famously said, "L'état, c'est moi."

Don't Let Judges Jimmy Elections

Free and honest elections are the indicia of self-government. There are many methods of counting ballots, but all ballots should be counted according to the rules that were agreed upon before the election started. As Justice Sandra Day O'Connor said during the Supreme Court's oral argument on *Bush v. Gore*, "Why isn't the standard the one that voters are instructed to follow, for goodness' sakes? I mean, it couldn't be clearer."

The Bush-Gore election in 2000 is a case in which *state* court judicial supremacists caused unprecedented problems. The Florida ballots had been counted and recounted according to pre-election procedures. All ballot procedures had been approved by both major parties before the election, and Florida was about to certify the election in an orderly way. Al Gore was free to present evidence of fraud or other misconduct, but he had no such evidence and lost his challenge in the trial court.

Then the judicial supremacists on the Florida state supreme court threw the election into chaos. They seized on Gore's argument that a different recount method might have yielded a different outcome and ordered a peculiar recount invented by the judges in order to maximize Al Gore's chances.

The Florida state supreme court supremacists, in their extraordinary conceit, operated on the premise that because they were high-ranking judges, they could devise and require a recount scheme superior to the one prescribed by pre-election rules. That premise is nonsensical and undemocratic.

The wild activism of the Florida court cried out to be

stopped by someone. Fortunately, the U.S. Supreme Court put an end to the crazy post-election recount scheme invented by the Florida judicial supremacists.

The California Recall election was another case where supremacist judges tried to interfere with an ongoing election. After the Recall election was already underway, the Ninth Circuit U.S. Court of Appeals ruled 3-0 that the California Recall election should be postponed because there was a likelihood that the ACLU could prove in a trial that the new touch-screen voting machines would be more accurate than the system California had used for decades. That's what the judges said — but with absentee ballots already being counted, everyone knew that the real reason the court tried to postpone the Recall election was to help save Governor Gray Davis from political liquidation.

To try to justify their decision, the Ninth Circuit judges said the Recall should be suspended in order for the United States to show "our commitment to elections held fairly, free of chaos" at a critical time when we are trying to persuade people of other nations of the value of free and open elections. The implication was that if California didn't postpone the Recall to give time to install touch-screen machines, America would be setting a bad example for Iraq and Afghanistan.

As further justification for this off-the-wall reasoning, the Ninth Circuit judges used some meaningless buzzwords to suggest that California urgently needed a new high-tech voting system. The court's decision stated that "the fundamental right to have votes counted in the special recall election is infringed because the pre-scored punch-card voting systems used in some California counties are intractably afflicted with technologic dyscalculia." Judicial supremacists, who are handing down decisions they can't support with common-sense language, love to lace their opinions with words the voters don't understand.

The real problem was that the activist judges were afflicted with the urge to render a political decision to help the Democrats, and the credibility of the touch-screen system was just their excuse. Fortunately, when this political decision was appealed, the full Ninth Circuit allowed the Recall election to proceed as scheduled, and the voters elected Arnold Schwarzenegger in a fair election.

The media keep telling us that the November 2004 election will be the closest ever. We must make sure that activist judges are not permitted to interfere with the election results after the election has started.

The liberals are even trying before the election to get activist judges to help stuff the ballot box. Realizing that Al Gore could have carried Florida in 2000 if convicted felons had voted, Democratic lawyers and lobbyists hope to get activist judges to throw out or rewrite state laws that place restrictions on the ability of convicted felons to vote.

In New York, Democratic officials, labor unions and pressure groups are promoting the outlandish notion of allowing legal immigrants who are not U.S. citizens to vote. New York City has a million legal immigrants of voting age who are not citizens, more than enough to swing any election.

In addition to trying to gather the votes of convicted felons who have been released from prison and of non-citizens, will the Democrats also be trying to round up the votes of prisoners? Six current Supreme Court justices have stated that they will look to foreign courts for guidance in interpreting U.S. laws, so we should be on guard against a possible next step in the Democrats' search for new voting blocs. In March 2004, the European Court of Human Rights in Strasbourg ruled that laws preventing convicted prisoners from voting in elections are a breach of their human rights. The court ruled that it cannot accept "an absolute bar on voting by any serving prisoner..."

Justice Sandra Day O'Connor, one of the six justices who have succumbed to the lure of foreign laws and court decisions, predicts that "over time [the U.S. Supreme Court] will rely increasingly . . . on international and foreign courts in examining domestic issues."

The solution to the problem of supremacist judges legislating from the bench is for American citizens to demand that Congress use its Article III power to withdraw jurisdiction from the courts over cases in which we have reason to believe that the judges may be guided by their own social and political preferences instead of by the United States Constitution. See Phyllis Schlafly's new book *The Supremacists: The Tyranny of Judges and How to Stop It.*

Sworn Statement of Ownership

The Phyllis Schlafly Report *is published monthly at P.O. Box 618, Alton, Illinois 62002.*

Publisher: Phyllis Schlafly, P.O. Box 618, Alton, Illinois 62002. Editor: Same. Owner: Eagle Trust Fund. Known bond-holders, mortgagees, or other security holder: None.

Information on circulation not required as no advertising is carried.

The Phyllis Schlafly Report

PO Box 618, Alton, Illinois 62002

ISSN0556-0152

Published monthly by the Eagle Trust Fund, PO Box 618, Alton, Illinois 62002. Periodicals Postage Paid at Alton, Illinois. Postmaster: Address Corrections should be sent to the Phyllis Schlafly Report, PO Box 618, Alton, Illinois 62002. Phone: (618) 462-5415.

Subscription Price: $20 per year. Extra copies available: 50¢ each; 3 copies $1; 30 copies $5; 100 copies $10.

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