Congress Should Stand Up And Be Counted

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Federal court decisions about the Pledge of Allegiance and the Ten Commandments , and the specter 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. Not only did one federal judge overturn a nearly 60 percent majority of California voters who passed Proposition 187 in 1994, but another single federal judge in Sacramento is at this moment threatening to cancel the California recall election! 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 public school 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, as well as create "exceptions" to Supreme Court jurisdiction.

Congress has used this authority scores of times. Most recently, Senator Tom Daschle (D-SD) inserted a provision in legislation to prohibit the courts from hearing cases about brush clearing in South Dakota. 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 (H.R.2799), prohibits spending federal money to enforce the Ninth Circuit's anti-Pledge decision, and the second, adopted 260-161 (H.R.2799), 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 ruled in Stone v. Graham (1980) that they may not be posted in 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 showdown is coming 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 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.

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 38 states. But since the Lawrence decision, Gallup has reported a precipitous 12-point drop in public support for same-sex marriages.

It is possible that 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. The dozens of cases arising all over the country make it imperative for Congress to withdraw jurisdiction on these three issues from all federal courts, and any Member of Congress who defaults in this duty should be defeated in 2004.