Supremacist Judicial Mischief In Arizona

by Phyllis Schlafly Feb. 22, 2006

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One of the most outrageous current examples of out-of-control judges is the case called Flores v. Arizona, now pending in federal court in Tucson, Arizona. Originally filed in 1992, plaintiff lawyers claim to represent an estimated 160,000 children of illegal aliens attending public schools.

The case seeks to force Arizona taxpayers to pay for bringing these children, euphemistically called English Language Learners, up to grade level. The lawyers are trying to accomplish this by turning a state legislative issue into a federal judicial command.

In 2000, a Carter-appointed judge ruled that the inability of illegal alien children to speak English well enough to succeed in school meant that Arizona was violating the federal Equal Education Opportunity Act of 1974. This EEOA requires "appropriate action to overcome language barriers that impede equal participation."

A decade ago, in a case that involved Alabama's policy about foreign-language driver's license exams, the liberals attempted to induce activist judges to insert the word "language" into the 1964 Civil Rights Act's prohibition of discrimination on

the basis of "national origin." The lawyers did persuade the District Court and the Eleventh Circuit Court of Appeals to legislate from the bench and do that.

However, in the 2001 case of Alexander v. Sandoval, the U.S. Supreme Court reversed, rejecting the claim that someone can sue for accommodation for his foreign language based on the Civil Rights Act. In our era of supremacist judges who so often believe that they can "evolve" new meanings into the Constitution and into statutes, and impose their own policy preferences, this was a welcome case of judicial restraint.

Nevertheless, hope springs eternal in the creative minds of lawyers who seek out supremacist judges. They are spurred on when deep pockets are available, and they find the deepest pockets when they can raid the American taxpayers.

So, back to Flores v. Arizona where the Carter-appointed judge had ruled against the taxpayers. But since the statute sets no standards for "appropriate action," the judge wisely said in 1999 that he would not substitute the court's "educational values and theories for the educational and political decisions reserved to state or local school authorities."

The judge ordered the state to prepare a cost study so the legislature could act. The legislature then passed three bills providing funds to address the problem of English Language Learners, but Governor Janet Napolitano vetoed all three.

The original judge retired, and the Flores case was handed over to a Clinton-appointed judge. In December 2005, he imposed fines of $500,000 a day, escalating to $2 million a day, for every day that the legislature fails to authorize funding acceptable to the Governor.

Governor Napolitano wants the state legislature to appropriate nearly $1,200 per child. That could total $192 million, and she wants it without accountability for how it is to be spent.

Since January 25, millions of dollars in court-ordered fines have been accumulating. If this continues to the end of the legislative session, the fines will total more than $77 million.

With the judge on her side, the Governor has no incentive to sign any bill passed by the legislature until she gets what she wants. Governor Napolitano is the same person who, when she was State Attorney General, had the responsibility to defend Arizona's taxpayers.

If there is any issue that should be clearly and exclusively a function of the legislature elected by the people it is the matter of raising taxes and spending the people's money. Unfortunately, there are many supremacist judges who think they (in this case, a judge and a governor) can order the legislature to raise taxes and tell them how to spend the taxpayers' money.

Flores v. Arizona makes it clear that our battle to reform the Imperial Judiciary is not finished just because two Bush-appointed justices have been seated on the Supreme Court. Hundreds of Clinton-appointed, Carter-appointed, and even Lyndon Johnson-appointed federal judges are continuing their judicial mischief in cases that will probably never reach the U.S. Supreme Court.

Millions of non-English-speaking immigrants have come to America over several centuries. When their children went immediately into schools where only English was spoken, they learned English rapidly and taught it to their parents.

Immersion in English in public schools was the way this happened, and nobody ever thought of rewarding the immigrants or the schools with special

appropriations. The immersion system worked just fine until liberal busybodies, with too much tax money at their disposal, decided to experiment on vulnerable immigrant children with unworkable, expensive projects such as the now discredited and misnamed "bilingual education."

Nobody seems to know why some Arizona children haven't learned English in the last five years. Can it be that the schools are allowing them to use Spanish in the classroom instead of the proven immersion method?