Stopping The Mischief Of Activist Judges

by Phyllis Schlafly Feb. 4, 2004

Google Ads are provided by Google and are not selected or endorsed by Eagle Forum

Finally, we have a President who comes right out and targets "activist judges" as the enemy of traditional values and urges us to use "the constitutional process" to remedy the problem. President Bush's State of the Union Address laid down the gauntlet.

Bush called on Americans to defend the sanctity of marriage against activist judges who force "their arbitrary will" by court order "without regard for the will of the people and their elected representatives." It's clear that it's not enough to press forward with the task of confirming nominees who will respect the Constitution; we must also deal with the problem of the activist judges who continue their mischief under the shield of life tenure.

While delivered in the context of the threat to the traditional definition of marriage, Bush's State of the Union remarks are equally applicable to other institutions that are precious to Americans, such as the Pledge of Allegiance and the Ten Commandments. The federal judiciary is still peopled with Clinton-appointed, Carter-appointed, and even LBJ-appointed activist judges who are trying to abolish those sacred practices, and Congress has the duty to use the "constitutional process" (such as set forth in Article III) to terminate their mischief.

The enormous damage that activist judges have inflicted on America is described in the new book by Judge Robert H. Bork called "Coercing Virtue: The Worldwide Rule of Judges." The title is rather misleading; the judicial oligarchy is not dictating virtue but enforcing a new ideology that he calls "lifestyle socialism."

The courts are now dominated by what Bork calls faux intellectuals of the Left who, unable to persuade the people or the legislatures, "avoid the verdict of the ballot box" by engaging in "politics masquerading as law." We are "increasingly governed not by law or elected representatives, but by unelected, unrepresentative, unaccountable committees of lawyers applying no law other than their own will."

Americans generally believe that bloodless revolutions come only dressed in military garb, but Bork details how America has suffered a "coup d'etat" from the men and women in black robes who have changed us "from the rule of law to the rule of judges." He agrees with Justice Antonin Scalia that the Court "is busy designing a Constitution for a country I do not recognize."

Bork shows how "virulent judicial activism" has overturned constitutional law in so many areas. For example, "the suffocating vulgarity of popular culture is in large measure the work of the Court" because it repeatedly defeated the people's attempts to contain and minimize it.

The core value of the First Amendment's speech clause is the protection of political speech and, as late as 1942, a unanimous Supreme Court ruled that prohibiting the obscene, the profane, and insulting words was never thought to raise any constitutional problem because those are not political speech. But now the Court limits political speech in campaigns, while using the First Amendment to elevate pornography and other assaults on decency.

Activist judges are so thoroughly secularized that "they not only reject personal belief but maintain an active hostility to religion and religious institutions." The Supreme Court "has almost succeeded in establishing a new religion: secular humanism."

Bork agrees with Chief Justice Rehnquist that the Court now "bristles with hostility to all things religious in public life." Under recent First Amendment decisions, nude dancing before football games would be a more acceptable form of expression than prayer.

Judge Bork ridicules all the pompous talk we hear about international law, which he says is "not law but politics." His critique of the International Criminal Court as "the latest international outrage" confirms President Bush's wise decision to "unsign" the International Criminal Court treaty (which Bill Clinton signed on his last New Year's Eve in the White House).

Bork criticizes the citing of foreign sources by seven Supreme Court justices to justify their unconstitutional decisions. Justice O'Connor, who has succumbed to what Bork calls "the insidious appeal of internationalism," predicts that "we will rely increasingly on international and foreign courts in examining domestic issues."

Bork describes the United Nations as not only useless but, "in fact, almost entirely detrimental to the interests of the United States." How can we possibly respect the authority of "an organization that routinely paints Israel as a fascistic, if not genocidal, aggressor in the Middle East, the United States as a ravening imperialistic power, and whose Human Rights Commission elected Libya as its head (by a vote of 33 to 3, with 17 abstentions)"?

Bork says the activist judges see their mission, not as upholding our Constitution, but as redefining it to coerce new behaviors on what they consider "a barbarian majority motivated by bigotry, racism, sexism, xenophobia, irrational sexual morality, and the like." It's time for the American people to notify their Members of Congress that it is their mission to restore self-government under the U.S. Constitution and save self-government from the rule of judges