Republican Agenda for the

105th Congress

by Phyllis Schlafly February 5, 1997

Republicans are trying to define their agenda for the 105th Congress by selecting specific legislative goals that can't be vetoed by President Clinton. The best answer to their search is to make this the Congress that restores our constitutional balance of powers by stopping the abuses committed by the Federal courts.

In the latest outrage, a Federal judge ruled that Penthouse magazine and other explicit magazines and videos have a First Amendment right to be available in subsidized post exchanges on military bases. The military is now enjoined from obeying the Military Honor and Decency Act of 1996, which forbade such materials on military bases.

Personal preferences are what the Supreme Court has imposed in the areas of affirmative action quotas, criminal procedures, and legislative reapportionment. The courts have invented new rights such as the right to abortion and to receive welfare, and have arbitrarily overturned the votes of the people in California and Colorado who had the old-fashioned belief that they could exercise self-government.

Since law-abiding citizens can't hold the life-tenured radical judges accountable, grassroots groups everywhere are planning on holding accountable every Senator and Congressman who fails to act to reign in the imperial judiciary. Here's what we expect.

Senators should use their Article II "Advice and Consent" power to "just say no" to Clinton's nominees unless they publicly pledge to abide by the words of the Constitution and statutes and the intent of their authors. When Clinton's nominees demur, Republican Senators should do what Democratic Senators have done so often: just don't schedule a vote or even a hearing on the nominees.

The Republican Senate elected in 1994 did not defeat a single Clinton judicial nominee, either in committee or on the Senate floor. It approved 198 Clinton nominees by unanimous consent without a minute of floor debate. It was an outrage for the Republican Senate to give a free pass to Ruth Bader Ginsburg, despite her documented paper trail espousing the most bizarre feminist positions.

Congress should use Article III to limit the jurisdiction of the federal courts. This explicit power is given to Congress by the Constitution, and it ought to be used without delay.

Article III, Section 1 of the Constitution provides that "the judicial power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." There are many past examples of Congress withdrawing jurisdiction from the lower federal courts in areas where Congress didn't trust the federal courts, such as the 1932 Norris-LaGuardia Act and the 1942 Emergency Price Control Act.

In upholding these statutes, the Supreme Court repeatedly ruled that Congress has the power of "withholding jurisdiction from them [the federal courts] in the exact degrees and character which to Congress may seem proper for the public good." Even the 104th Congress used this power to restrict criminal appeals.

The Constitution also gives Congress the power to define the boundaries of the Supreme Court "with such Exceptions, and under such Regulations as the Congress shall make." The Supreme Court has upheld this limitation of its own authority.

For starters, Congress should deny federal judges the power to impose taxes. One of the most arrogant decisions was the court's imposition of increased property taxes in Kansas City to pay for the world's most extravagant public school facilities.

Congress should take away all jurisdiction of the federal courts to issue injunctions to overturn referenda. It is outrageous that a single Federal judge can nullify initiatives passed by a majority of voters, such as the California Civil Rights Initiative.

Congress should also take away any power of the federal courts to invent new rights, such as the so-called rights to same-sex marriage or to assisted suicide. Congress should stop the courts' arrogant micromanagement of schools and prisons.

Over the last several years, Congress itself has vastly increased the jurisdiction of the Federal courts by creating thousands of new federal crimes, until now there are some 3,000 federal crimes. This trend accelerated during the 104th Congress, revealing all that pious talk about the Tenth Amendment as phony

as a $3 bill.

Under our federal system, criminal law should be a state, not a federal, function, and there's no reason to have more than about a dozen federal crimes. Congress should remove from the federal courts all jurisdiction over crimes that are already crimes under state law.

Congress should reassert its own investigative function and eliminate the special status the American Bar Association has long enjoyed in evaluating court nominees. The ABA is a special-interest political group with its own leftwing agenda, including abortion, affirmative action quotas, restricting welfare handouts, and perpetuating the out-of-control Legal Services Corporation.

In the granddaddy document of American freedom, the Magna Charta signed at Runnymede in 1215, King John promised, "We will appoint as justices, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well." We expect at least as much from Republican Senators as our forefathers got from King John.