Republican Appointees Disappoint Again

by Phyllis Schlafly *July 6, 2005*

The Supreme Court wrapped up one of its most disappointing terms in years. Plagued by Chief Justice Rehnquist's absence due to illness, the other justices behaved like the gang that cannot shoot straight.

The Court banished the Ten Commandments from courthouses in *McCreary County v. ACLU,* and ruled against private property in *Kelo v. City of New London.* The term would have been a complete disaster if Justice Breyer, a Clinton-appointee, had not surprisingly voted to save the Ten Commandments displayed on the Texas State Capitol grounds in *Van Orden v. Perry.*

The grounds of the Texas Capitol include 17 monuments and 21 historical markers honoring "people, ideals, and events that compose Texan identity." One monument was the Ten Commandments, and the Supreme Court was asked to order its removal based on the Establishment Clause. Appointees by Republican Presidents Ford, Reagan and the first Bush shockingly wanted to censor the Ten Commandments and force Texas to uproot it.

The Ten Commandments had sat there for nearly two generations with nary a complaint, but Justice Souter would have removed it saying that the lack of complaint for decades is meaningless. "Suing a State over religion puts nothing in a plaintiff's pocket ... I doubt that a slow walk to the courthouse, even one that took 40 years, is much evidentiary help in applying the Establishment Clause."

Quite the contrary, the lawsuits against religion that now clutter our courts are fueled by a federal law allowing enormous attorney's fees to the winners. In similar cases, groups such as the ACLU recover extravagant fees at the expense of a town, county, or public school.

Justice O'Connor's intolerance of public recognition of religion, which provided the pivotal fifth vote in the Kentucky Ten Commandments decision, will force courthouses nationwide to remove internal displays of the Ten Commandments. The Court strained to preserve the Ten Commandments on the wall of its own building by distinguishing between Moses carrying mostly blank tablets and tablets inscribed with words.

Justice Breyer's concurrence in favor of the Ten Commandments in Texas noted that "the Establishment Clause does not compel the government to purge from the public sphere all that in any way partakes of the religious. Such absolutism is not only inconsistent with our national traditions, but would also tend to promote the kind of social conflict the Establishment Clause seeks to avoid."

But such conflict is precisely what Justices O'Connor and others have promoted by their continued hostility to religion in public.

Republicans can only shake their head in disbelief, as a Clinton-appointed justice (Breyer) was better than three Republican-appointed justices (Stevens, O'Connor and Souter) on this fundamental issue. Adding insult to injury, Justice Souter (appointed by the first Bush) reaffirmed the much-discredited "Lemon test" that those intolerant of religion have used for three decades to argue their cases.

We are told that federal judges are overworked and underpaid, and that more resources are needed to fight the war on terror. Congress can address this problem by removing jurisdiction from all federal courts over the continuing attempt by the secularists to purge religious symbols.

Not only religion but private property was the target of the Supreme Court's disdain.

A 5-4 Court rewrote the Fifth Amendment phrase "public use" to be "public purpose," and defined it to include enabling govermnent to take anyone's property to give to a large corporation if taxes can thereby be increased.

The Fifth Amendment of the U.S. Constitution states, "Nor shall private property be taken for public use, without just compensation." The original meaning of "public use" is still its plain meaning today: a use for basic needs of the public such as govermnent services or transportation.

But five Justices rewrote this constitutional clause, taking Wilhelmina Dery's home that she has lived in since her birth in 1918 and giving it to a corporate development featuring Pfizer. Always reliable Justice Thomas wrote: "Something has gone seriously awry with this Court's interpretation of the Constitution."

This Term disproves the perception that we have a five-bloc conservative Court. There were many 5-4 decisions, but most of those decisions were not rendered by five supposedly conservative justices.

An unacceptable decision by Congress or the President can be corrected in the next election cycle. Yet a bad decision by the Supreme Court can burden us for decades.

Republican Presidents are elected by promising to appoint good Justices, but have abysmally failed to deliver on their campaign pledges. Congress has promised to pass laws curbing judicial abuse, so when will it honor its pledge?

The only good news is that the Court rendered only 76 full decisions in the past year, far fewer than its average of a decade ago. Just imagine the damage that could have been done had it worked harder!