Principle Loses Out To Consensus And Bipartisanship

by Phyllis Schlafly June 7, 2006

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Some Republicans, from senators to the new chief justice, are falling for the seductive goals of consensus and bipartisanship. More often than not, those words mean abandonment of principle.

Chief Justice John G. Roberts Jr.'s commencement address to Georgetown University law students is illustrative. He emphasized his desire for broad agreement and, indeed, his first term on the High Court produced 29 unanimous decisions out of 44.

During his confirmation hearings, Roberts promised to serve like a baseball umpire, remembering that "it's my job to call balls and strikes." But baseball umpires don't seek unanimity in cases when there should be a winner and a loser, and they don't duck a controversial call in order to be popular with fans on both sides of the contest.

Consensus on the Supreme Court can come at the expense of clear, principled rulings. A unanimous ruling can be achieved by watering down the ruling until it resolves almost nothing.

One of Roberts' unanimous decisions in his first term involved the challenge to the Solomon Amendment, a congressional law authorizing the federal government to withhold funding from schools and colleges that discriminate against military recruiters. The unanimous decision in Rumsfeld v. F.A.I.R. upholding this much-needed law rejected the arguments of scores of leftwing and anti-military law professors who filed amicus briefs hoping to overturn the law.

There was no good reason, except to placate the liberals, for Roberts to quote this foolish admission by the Solicitor General that was not even in the record: law schools "could put signs on the bulletin board next to the door, they could engage in speech, they could help organize student protests."

Subsequent to Roberts' decision, four uniformed U.S. military recruiters had to flee the University of California at Santa Cruz from aggressive protestors chanting "don't come back." The Bush Administration has so far done nothing about this scandalous treatment of the military.

Roberts assigned the writing of the decision in Ayotte v. Planned Parenthood to retiring Justice Sandra Day O'Connor, who then ducked the key issues by sending them back to the lower court. That delays resolution for years, during which New Hampshire is prevented from enforcing its law requiring parental notification before minors can get an abortion.

Roberts has penned only one dissent, and that was in an obscure case. Maybe Roberts has spent too many years as part of the Washington insider crowd where praise from colleagues and the media is preferred over taking a forthright position of principle.

Caving into consensus in order to appease the liberals by fuzzied-up decisions isn't confined to the Supreme Court. A Republican-majority panel on the Eleventh Circuit, including supposedly conservative William Pryor, just overturned a district

court's activist decision ordering the Cobb County school board to remove a disclaimer stating that "evolution is a theory, not a fact."

So much, so good. But rather than render a principled decision, the Eleventh Circuit panel remanded the case back to the same district court judge who had rendered the obnoxious decision and invited him to try, try again.

The Republican judges apparently sought consensus with the one Clinton-appointed judge. Just imagine an umpire telling the pitcher to try, try again so the umpire could avoid making a controversial call.

Just before Memorial Day, the majority of Republicans in the Senate voted against amnesty for illegal aliens. But enough Republicans were seduced by the siren call of bipartisanship to join with the Democrats and pass the Kennedy-McCain amnesty bill.

The Senate bill puts all illegal aliens who have lived in the United States for at least two years on the path to citizenship, and admits an estimated 66 million new foreigners over the next 20 years who are dishonestly called "temporary" but actually are put on the path to permanent legal residence. As Rep. James Sensenbrenner (R-WI) stated, the Senate bill is a repeat of the 1986 Simpson-Mazzoli amnesty law, which was a miserable failure and is responsible for the problems we face today.

To nobody's surprise, the media were prompt with their praise for what they called the bipartisan coalition that passed this bill and identified the "key architects" as Senators Ted Kennedy (D-MA) and John McCain (R-AZ). The media were not misled by the transparent attempt to relabel it the Martinez-Hagel bill.

When a Republican votes with Ted Kennedy, it is called bipartisanship. Somehow we never hear demands that Kennedy vote with Republicans to achieve consensus.

Consensus and bipartisanship are liberal arguments used to con and intimidate conservatives. Politicians and judges should beware of falling into those traps.