Republicans Have Duty To Hold Judges Accountable

by Phyllis Schlafly March 5, 1997

Senator Orrin Hatch takes exception to the New York Times' criticism of his record as chairman of the Senate Judiciary Committee, and he wrote a letter to the editor to object. (2-19) The Times had complained that Republican Senators have "politicized" the judicial confirmation process by not confirming enough of Clinton's judicial nominees.

Not so, says Hatch, and he has the numbers to prove it. He proudly asserts that the Senate has confirmed 202 of Clinton's judges. That's more than President Bush's (194), more than President Reagan's (164), and more than President Nixon's (191) during each of their first terms.

Hatch added, "None of these judges would have been confirmed without Republican cooperation."

It is not only shocking that Republican Senators have cooperated in confirming Clinton's 202 federal judges, but it is just as shocking that Orrin Hatch is bragging about it. In allowing themselves to be coopted by Bill Clinton, Republican Senators have failed to accept their constitutional "advice and consent" responsibilities.

The federal judges appointed by Bill Clinton and Jimmy Carter are the biggest threat to constitutional self government today. These activist judges have been writing liberal opinions into the law, usurping legislative functions, and depriving Americans of our rights of self- government.

On November 15, Senator Hatch made a speech to the Federalist Society in which he said, "Those nominees who are or will be judicial activists should not be nominated by the President or confirmed by the Senate, and I personally will do my best to see to it that they are not." Sounds good, doesn't it.

But Senator Hatch and Republican leader Bob Dole enthusiastically confirmed Clinton's most activist Supreme Court nominee, Ruth Bader Ginsburg. Her Supreme Court opinion forcing Virginia Military Institute to admit women is typical feminist judicial extremism and was wholly predictable at the time of her appointment.

Where were Orrin Hatch and Republican Senators then? They didn't even ask Ginsburg any questions about her own published writings in support of radical feminist goals to fundamentally change our Constitution.

Instead of cooperating in confirming Clinton's judges, Republicans should be talking about impeaching the Clinton and Carter judges who have been usurping legislative and executive functions. Article III states that "The Judges, both of the Supreme and inferior Courts, shall hold their offices during good behavior," and it is not "good behavior" to hand down rulings based on personal social views rather than the Constitution's words.

David Barton of the Texas-based organization called WallBuilders has just published a scholarly handbook called "Impeachment," in which he lays out the constitutional foundations for using impeachment to curb our present overactive judiciary. The Constitution contains six clauses about impeachment.

The House of Representatives has the sole power of impeachment (the presentation of formal charges). The Senate has the sole power to try impeachments, and conviction requires a two-thirds vote. Punishment can be removal from office or removal plus a bar against future office-holding.

Contrary to current popular misconceptions, impeachment is not a criminal proceeding, and Congress cannot impose civil or criminal penalties. The offense for which a judge may be impeached does not have to be a crime or have any statutory or criminal basis.

Barton quotes numerous Founders to prove that they viewed impeachment as a remedy for a broad range of non- statutory offenses such as (in George Mason's words) "attempts to subvert the Constitution," or (in Alexander Hamilton's words) "violation of some public trust."

Even that great advocate of judicial power, Chief Justice John Marshall, wrote during impeachment proceedings against Justice Samuel Chase, for his arbitrary use of judicial power, that "a Judge giving a legal opinion contrary to the opinion of the legislature is liable to impeachment." Carter and Clinton judges are constantly making rulings contrary to what the legislature intended.

All the impeachment cases brought during our first half-century involved non-statutory offenses, such as "judicial high-handedness." It's easy to think of some current judges who could be targets for impeachment on that charge.

When President Gerald Ford was a Congressman, he proposed the impeachment of Supreme Court Justices William O. Douglas. Ford explained Congress's tremendous and far-reaching power of impeachment: "An impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history; conviction results from whatever offense or offenses two-thirds of the other body [the Senate] considers to be sufficiently serious to require removal of the accused from office."

In our intricate constitutional system of interlacing checks and balances, the legislative and executive branches are held accountable by frequent elections. Judges should be held accountable by the Senate's "advice and consent" power to withhold confirmation, and by the House's power to impeach judges for lack of "good behavior."