

*How to Stop
Judicial Supremacists*

OUR TASK IS TO EXPUNGE the un-American notion of judicial supremacy by using the checks and balances built into our great United States Constitution. We must stop the judicial supremacists who have been systematically dismantling the architecture of our unique, three-branch constitutional republic and replacing it with an Imperial Judiciary. Since the legal community has a vested interest in the status quo, this task must be undertaken by grassroots Americans. We must raise a mighty demand that Congress do its duty.

Out-of-control federal and state judges who believe in and advocate judicial supremacy over the other branches of government are trying to write new laws and to invalidate laws and practices that have been part of American life for centuries. If the American people don't stand up for the Pledge of Allegiance, the Ten Commandments, and the sanctity of marriage, what do we stand for?

The American people must *not* acquiesce in illicit grabs for power by federal and state judges who censor and overturn our precious laws and traditions. We must reject the notion that judges' orders in particular cases are the law of the land that we must all obey. Congress, the executive branch, and the American people must use every peaceful weapon at our disposal.

We must press forward with the task of confirming nominees who respect the Constitution. We must also deal with the problem of the activist judges who are undermining the Constitution under the shield of life tenure. Hundreds of judicial supremacists with lifetime appointments are on the federal bench today and could be there for decades more.

We must also address the problem of judges who become activists and supremacists after they don their black robes and become heady with their new powers.

President George W. Bush's 2004 State of the Union Address, which targeted "activist judges" as the enemy of traditional values and urged us to use "the constitutional process" to remedy their mischief, was spoken in the context of the threat to the traditional definition of marriage. His remarks are equally applicable to other institutions that are precious to Americans, including the Pledge of Allegiance and the Ten Commandments.

Here are ten steps to terminate the rule of judges and restore constitutional self-government.

I

REFORM SENATE RULES

The Senate must reform its rules so liberals are not able to defeat constitutionalist nominees by preventing the Senate from voting them up or down. We should not eliminate the filibuster; we should make it a fair and workable process.

The current Senate Rule xxii requires sixty senators (three-fifths of the entire U.S. Senate) to close debate and proceed to a vote. That means the Republicans must have sixty votes on the floor to break a filibuster, but the Democrats can keep the filibuster going with only a single Senator on the floor (to make objections). By this method, the Democratic minority in the Senate won sixteen cloture votes and successfully blocked some of President Bush's best nominees to the U.S. Courts of Appeals.

The Senate should adopt a new rule permitting three-fifths of Senators *present* to close a debate. That would give the majority a fair chance to confirm the president's nominees by requiring the obstructionist minority to actually show up and debate.

We expect Republican senators to do their duty by confirming constitutionalist judges after ascertaining that they believe in upholding the U.S. Constitution as it was written and do not subscribe to the notion that it is a living and evolving document. We hope Justice Samuel Alito will be faithful to his statement to the Senate Judiciary Committee in 1990 that judges should not "import a judge's own view of the law into the law that should be applied to the case."

II

LEGISLATE EXCEPTIONS TO COURT JURISDICTION

Congress has the duty to curb the power of the judicial supremacists. We don't trust the federal courts or the Supreme Court to tamper with the definition of marriage by applying supremacist notions of "emerging awareness" or "evolving paradigm." We don't trust the courts to tamper with our right to acknowledge God, whether in the Pledge of Allegiance, the Ten Commandments, our national motto, or voluntary prayer. Therefore, Congress should remove power from all federal courts to impose the rule of judges over our rights of self-government.

Our great Constitution has within it the checks and balances we need to deal with the problem of judicial supremacy. This includes the ability of Congress to limit the jurisdiction (judicial power) of all federal courts.

Article I, Section 8 of the Constitution states: "The Congress shall have power . . . to constitute tribunals inferior to the Supreme Court." Article III, Section 1 states: "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." These two sections mean that all federal courts except the Supreme Court were created by Congress, which defined their powers and prescribed what kind of cases they can hear. Whatever Congress created it can abolish, limit, or regulate.

Article III, Section 2 states: "The Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress

shall make.” This section means that Congress can make “exceptions” to the types of cases that the Supreme Court can decide. This is the most important way that Congress can bring an end to the reign of judicial supremacy.

There is nothing new or wrong about Congress telling the federal courts what cases they can and cannot hear. Limiting court jurisdiction is a tool the liberals have used many times. In 2002, Congress passed a law (at Senator Tom Daschle’s urging) to prohibit all federal courts from hearing cases about brush clearing in South Dakota. Surely other issues are as important as brush fires in South Dakota.

The Record of Congressional Action

A long historical record conclusively proves that Congress has the power to regulate and limit court jurisdiction, that Congress has used this power repeatedly, and that the courts have accepted it.

In *Turner v. Bank of North America* (1799), Justice Chase commented: “The notion has frequently been entertained, that the federal courts derive their judicial power immediately from the Constitution; but the political truth is, that the disposal of the judicial power (except in a few specified instances) belongs to Congress. If Congress has given the power to this Court, we possess it, not otherwise: and if Congress has not given the power to us, or to any other Court, it still remains at the legislative disposal.”

Even Chief Justice John Marshall, the judicial supremacists’ hero, made similar assertions. For example, in *Ex parte Bollman* (1807), Marshall said that “courts which are created

by written law, and whose jurisdiction is defined by written law, cannot transcend that jurisdiction.”

The early decisions of the Supreme Court were sprinkled with the assumption that the power of Congress to create inferior federal courts necessarily implied, as stated in *U.S. v. Hudson & Goodwin* (1812), “the power to limit jurisdiction of those Courts to particular objects.” The Court stated, “All other Courts [except the Supreme Court] created by the general Government possess no jurisdiction but what is given them by the power that creates them.”

The Supreme Court held unanimously in *Sheldon v. Sill* (1850) that because the Constitution did not create inferior federal courts but rather authorized Congress to create them, Congress was also empowered to define their jurisdiction and to withhold jurisdiction of any of the enumerated cases and controversies. This case has been cited and reaffirmed numerous times. It was applied in the Voting Rights Act of 1965, in which Congress required covered states that wished to be relieved of coverage to bring their actions in the District Court of the District of Columbia.

The Supreme Court broadly upheld Congress’s constitutional power to define the limitations of the Supreme Court “with such Exceptions, and under such Regulations as the Congress shall make” in *Ex parte McCordle* (1869). Congress had enacted a provision repealing the act that authorized the appeal McCordle had taken. Although the Court had already heard argument on the merits, it dismissed the case for want of jurisdiction. “We are not at liberty to inquire into the motives of the legislature. We can only examine into its power under the Constitution; and

the power to make exceptions to the appellate jurisdiction of this court is given by express words.”

McCardle grew out of the stresses of Reconstruction, but the principle there applied has been affirmed and applied in later cases. For example, in 1948 Justice Frankfurter in *National Mutual Insurance Co. v. Tidewater Transfer Co.* (dissenting) commented: “Congress need not give this Court any appellate power; it may withdraw appellate jurisdiction once conferred and it may do so even while a case is *sub judice* [already before the court].”

In *The Francis Wright* (1882), the Court said:

While the appellate power of this court under the Constitution extends to all cases within the judicial power of the United States, actual jurisdiction under the power is confined within such limits as Congress sees fit to prescribe. . . . What those powers shall be, and to what extent they shall be exercised, are, and always have been, proper subjects of legislative control. . . . Not only may whole classes of cases be kept out of the jurisdiction altogether, but particular classes of questions may be subjected to re-examination and review, while others are not.

Numerous restrictions on the exercise of appellate jurisdiction have been upheld. For example, Congress for a hundred years did not allow a right of appeal to the Supreme Court in criminal cases except upon a certification of divided circuit courts.

In the 1930s, liberals in Congress thought the federal courts were too pro-business to fairly handle cases involv-

ing labor strikes. In 1932 Congress passed the Norris-La-Guardia Act removing jurisdiction in this field from the federal courts, and the Supreme Court had no difficulty in upholding it in *Lauf v. E. G. Shinner & Co.* (1938). The Supreme Court declared, "There can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States."

Liberals followed the same procedure when they passed the Hiram Johnson Acts in order to remove jurisdiction from the federal courts over public utility rates and state tax rates. These laws worked well and no one has suggested they be repealed.

Another celebrated example was the Emergency Price Control Act of 1942, in which Congress removed from federal courts the jurisdiction to consider the validity of any price-control regulation. In the test case upholding this law, *Lockerty v. Phillips* (1943), the Supreme Court held 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."

After the Supreme Court ruled in *Tennessee Coal v. Muscoda* (1944) that employers had to pay retroactive wages for coal miners' underground travel to and from their work station, Congress passed the Portal-to-Portal Act of 1947 prohibiting any court from enforcing such liability.

Even one of the leading judicial supremacists, Justice William Brennan, conceded Congress's constitutional power to limit the jurisdiction of the federal courts. In 1982 he wrote for the Court in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*: "Of course, virtually all matters

that might be heard in Art. III courts could also be left by Congress to state courts . . . [and] the principle of separation of powers is not threatened by leaving the adjudication of federal disputes to such judges.”

In 1999 the Court upheld Congress’s power to restrict the jurisdiction of the federal courts to interfere in certain immigration disputes (*Reno v. American-Arab Anti-Discrimination Committee*). In 2003 a federal judge upheld a 1996 law signed by President Clinton that gave exclusive authority to the U.S. attorney general to deport certain illegal aliens and specified that federal courts have no jurisdiction to review such removal orders (*Hatami v. Ridge*).

Another statute that prohibits judicial review is the Medicare law, on which nearly everyone over age sixty-five relies for health care. Congress mandated that “there shall be no administrative or judicial review” of administrative decisions about many aspects of the Medicare payment system. When someone sued in federal court anyway, the court dismissed the lawsuit based on this prohibition of judicial review. (*American Society of Dermatology v. Shalala*, 1996).

In 2005, Congress passed the Protection of Lawful Commerce in Arms Act which forbids both federal and state courts from entertaining suits against gun manufacturers for the misuse of their lawfully sold firearms, canceled all such suits currently in the courts, and gives similar immunity to private individuals who are legal gun owners. This act protects gun manufacturers and individuals from having to pay the penalty for the crimes of others. While this law was passed under Congress’s Commerce Clause power rather than Article III, the effect is very much the

same: Congress has prohibited the courts from hearing certain kinds of lawsuits.

Justices Recognize Congress's Authority

Supreme Court justices know perfectly well that Congress has Article III power to limit their jurisdiction. When Chief Justice Rehnquist issued his last annual report, he spent several pages discussing criticism of the courts and arguing against Congress ever using its power to impeach judges. He then included this sentence: "There were several bills introduced in the last Congress that would limit the jurisdiction of the federal courts to decide constitutional challenges to certain kinds of government action."

Rehnquist made no additional comment or explanation. He didn't say such action would be undeserved or unconstitutional or unwise or out of the mainstream. He just left that sentence for us to construe either as an invitation to congressional action or as a warning to his associates.

When Chief Justice John Roberts was special assistant to the attorney general during the Reagan Administration, he wrote a twenty-seven page document defending the constitutional power of Congress to limit federal court jurisdiction. To prove that Supreme Court justices recognize this power over the courts, he pointed out that former Supreme Court Justice Owen Roberts had proposed an "amendment of the Constitution to remove Congress' exceptions power," which was actually passed by the Senate in 1953 but then tabled by the House. John Roberts concluded that Congress's constitutional authority to make

exceptions to federal court jurisdiction is so clear that only a new constitutional amendment could deny it.

Keep Judges' Hands Off DOMA

The Defense of Marriage Act (DOMA), overwhelmingly passed by Congress in 1996, defines marriage for federal purposes as “a legal union between one man and one woman as husband and wife,” and assures that states do not have to recognize same-sex marriage licenses issued by other states. Congress must defend this good and popular law.

It is completely constitutional for Congress to take away from all federal courts the power to declare federal and state DOMAs unconstitutional—and it's Congress's constitutional duty to protect the American people from judicial supremacists who might commit such an outrage. The House of Representatives did pass a bill to accomplish this in the fall of 2004, but the Senate took no action. Since lawyers are predicting it is only a matter of time until federal courts knock out DOMA, Congress would be derelict in its duty if it doesn't protect DOMA from out-of-control federal judges.

Congress should also withdraw jurisdiction from federal courts to hear any case claiming that state DOMAs violate the U.S. Constitution. Such a law would protect us from the ruling of the federal judge who knocked out Nebraska's state constitutional amendment that was passed by 70 percent of the voters.

Legislation to limit federal court jurisdiction will not stop Massachusetts from issuing same-sex marriage licenses.

But it would mean that the federal government would not have to recognize those licenses and that the federal courts could not be used to force other states to recognize them.

The executive branch also has the responsibility to defend marriage by using DOMA. The President should do his constitutional duty to “take care that the laws be faithfully executed.”

The General Accounting Office compiled a fifty-eight-page list of 1,049 federal rights and responsibilities that are contingent on DOMA’s definition of marriage. The GAO report states that the man-woman marital relationship is “integral” to the Social Security system and “pervasive” to our system of taxation. The widespread social and familial consequences of DOMA also impact on adoption, child custody, veterans benefits, and the tax-free inheritance of a spouse’s estate.

The Internal Revenue Code has provided since 1948 that “a husband and wife may make a single return jointly of income taxes.” If the highest court of a state declares that marriage is no longer a union of “husband” and “wife,” then whatever unions are performed in that state should not be recognized as a marriage by federal law and should not be entitled to file a joint federal income tax return.

Gay advocates want same-sex couples to claim the 1,049 benefits of marriage under federal law, but what should happen instead is that, once a state’s definition of marriage no longer means husband and wife, then no one married in that state (including opposite-sex couples) should be

recognized as married by federal law. Couples that seek traditional marriages recognized by the federal government for income tax purposes might consider traveling to another state that performs only marriages that are legitimate under federal law.

The President should order the bureaucracy to establish procedures to handle the paperwork. Taxpayers are quite used to having to provide the Social Security number of their children to prove their existence in order to claim income tax exemptions. The Internal Revenue Service should prepare income tax forms that require joint returns to show the date and place of marriage, enabling it to identify and reject unions from states, cities, counties, and foreign countries whose local marriage laws do not comply with the federal definition of marriage.

The President should instruct all federal agencies to prepare for energetic compliance with the more than a thousand federal regulations impacted by DOMA.

Keep Judges' Hands Off Acknowledgment of God

Congress should pass a law to clarify that the federal courts, including the Supreme Court, do *not* have jurisdiction over whether an acknowledgment of God by public officials violates the Establishment Clause of the First Amendment. Nothing in the Constitution confers on the federal courts, including the Supreme Court, the final and exclusive authority to decide how the other branches, or how each governmental entity of the fifty states, may acknowledge God. Under the constitutional doctrine of separation of

powers, each branch of the federal government has the authority to determine how it will acknowledge God.

This remedy is needed because dozens of cases have been filed all over the country asking federal judges to declare the recitation in public schools of the Pledge of Allegiance unconstitutional because it includes the words “under God,” or demanding that the display of the Ten Commandments in public buildings be held unconstitutional.

The federal courts should have no authority to hear such cases or to render such a decision. These lawsuits are initiated under the pretense that any mention of God violates the First Amendment, which states: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof” The acknowledgment of God in the Pledge of Allegiance and the Ten Commandments is not an “establishment of religion.” The Constitution delegates “all legislative powers” to the Congress (none to the courts), and Congress has never passed a law banning the acknowledgment of God.

So how could a handful of activist judges in the last couple of years presume to ban the acknowledgment of God from documents, monuments, songs, expressions and practices that have been part of our culture throughout our history? The answer is that Congress and the American people have been letting them get by with this unconstitutional grab for power.

The federal courts should have no jurisdiction to consider cases involving the acknowledgment of God. Congress should forbid federal courts from censoring public acknowl-

edgments of God, adding this issue to other “exceptions” and “regulations” to federal court jurisdiction.

That is the way the framers of our Constitution intended that Congress would, as Alexander Hamilton wrote in *Federalist* 78, keep the judiciary as the “least powerful” branch of government and see to it that judges “should be bound down by strict rules and precedents, which serve to define and point out their duty.”

III

STOP FOREIGN INTERFERENCE

Congress should prohibit federal courts from relying on foreign laws, administrative rules, or court decisions. Americans have been shocked to learn that six U.S. Supreme Court justices cited foreign sources, even though it is self-evident that U.S. judges should be bound by the U.S. Constitution and U.S. laws, *not* foreign ones.

One of the justifications for the American Revolution listed in the Declaration of Independence was that King George III had “combined with others to subject us to a jurisdiction foreign to our Constitution, and unacknowledged by our laws.” It is unacceptable that Supreme Court justices have gone on record as saying that U.S. court decisions should be influenced by foreign sources.

In a speech to the U.S. Judicial Conference on March 16, 2004, House Judiciary Committee Chairman F. James Sensenbrenner Jr. admonished the justices that deference to foreign sources is out of order:

Article VI of the Constitution unambiguously states that the Constitution and federal statutes are the supreme law of the land. America's sovereignty may be imperiled by a jurisprudence predicated upon laws and judicial decisions unfounded in our Constitution and unincorporated by the Congress. Inappropriate judicial adherence to foreign laws or legal tribunals threatens American sovereignty, unsettles the separation of powers carefully crafted by our Founders, and threatens to undermine the legitimacy of the American judicial process.

IV

STOP JUDICIAL TAXATION

Congress should prohibit the federal courts from ordering any government entity at any level to raise taxes or spend taxpayers' money under any circumstance. One of the Constitution's clearest directives is "All Bills for raising Revenue shall originate in the House of Representatives."

State court judges must also be required to recognize that under the separation of powers, raising taxes and appropriating money are exclusively legislative functions.

V

CONGRESS SHOULD USE ITS MONEY POWER

Congress should pass legislation to prohibit the spending of federal money to enforce obnoxious decisions handed down by judicial supremacists. The House of Representatives did exactly this when it passed two amendments in 2003

sponsored by Rep. John Hostettler (R-IN). One amendment, which passed 307 to 119, would have prohibited spending federal money to enforce the Ninth Circuit's anti-Pledge of Allegiance decision, and the second, adopted 260 to 161, would have done likewise for the Eleventh Circuit ruling that the Ten Commandments may not be posted in the Alabama state courthouse. On June 15, 2005, the House passed another Hostettler bill to prohibit tax funds from being used to enforce the ruling of a district court in Indiana that had ordered the removal of a Ten Commandments monument in Gibson County, Indiana. Unfortunately, the Senate failed to act on those bills.

Since Congress controls appropriations, there are many ways that Congress can rein in the courts, such as refusing to allow any federal funds to be used when local governments misuse the power of eminent domain for purposes other than constitutionally valid "public use." Congress can use its appropriations power to negate any court opinion such as *Fields v. Palmdale School District* (2005) which purports to terminate parents' rights over sex education in public schools. Congress should make compliance with the law about parents' rights a condition of federal funding to schools just like other civil rights requirements.

Although the Constitution forbids Congress from reducing the salaries of federal judges "during their continuance in office," Congress could cut the administrative budget of the judiciary to limit, for example, their foreign junkets where they pick up so many bad ideas. Congress controls the money, and Congress should use its money power to limit the mischief of the judicial supremacists.

VI

END THE POWER OF A SINGLE JUDGE

Congress should take away the power of a single federal judge to issue an injunction to overturn a referendum and prevent enforcement of the voters' wishes during the years that a case winds its way through the court system. It is an offense to the rule of law that, again and again, a single federal judge has nullified an initiative passed by a majority of the voters in a statewide referendum.

A single Jimmy Carter-appointed federal judge (Mariana Pfaelzer) nullified California's Proposition 187, which would have prohibited giving taxpayer benefits to illegal aliens. Proposition 187, which passed in 1994 receiving five million votes, was nullified by only one federal judge and kept permanently inoperative (*League of United Latin American Citizens v. Wilson*).

A single federal judge nullified Proposition 209, the California Civil Rights Initiative to end state racial preferences, which overwhelmingly passed in 1996. It is nonsense to call this measure unconstitutional when its text reads as if it were copied from the 1964 Civil Rights Act. Judge Thelton Henderson, the Carter appointee and former ACLU board member and civil rights litigator who rendered this decision, not only used his judicial power to overturn the wishes of the majority of Californians, but in a highly suspect procedure, grabbed jurisdiction over this case from another judge to whom it had been assigned. Fortunately, the Ninth Circuit ruled that Proposition 209 is constitutional (*Coalition for Economic Equity v. Wilson*) and declared, "A system which

permits one judge to block with the stroke of a pen what 4,736,180 state residents voted to enact as law tests the integrity of our constitutional democracy.”

Indeed it does. We wish the Ninth Circuit would always remember that principle.

In a statewide referendum in 1991, the voters in the state of Washington reaffirmed a state statute that prohibited anyone from “knowingly causing or aiding other persons in ending their lives.” In *Compassion in Dying v. Washington* (1996), one federal district court judge (Barbara J. Rothstein) declared unconstitutional the people’s vote against physician-assisted suicide. The full Ninth Circuit U.S. Court of Appeals, *en banc*, agreed, tried to invent a new constitutional right to assisted suicide, and smeared those who oppose it as “cruel.”

Fortunately, the Supreme Court reversed that cruel decision (*Washington v. Glucksberg*, 1997). Unfortunately, that’s not the end of the story.

Five of the justices in *Glucksberg* indicated that if the facts are slightly different in a future case, they might use substantive due process to find a right to assisted suicide. In a speech on April 27, 2004, Justice Scalia speculated that the Court may soon discover a right to assisted suicide between the lines of the text of the Constitution. “We’re not ready to announce that right,” he said, “check back with us.”

Congress should by law prevent one federal judge from overturning the vote of the people in a statewide referendum. One way to do this would be to legislate that a popular initiative passed by the voters can be struck down only by a three-judge panel.

Cases in which the Supreme Court was split on a decision that declared a provision of a federal or state law unconstitutional are among the most controversial and historic cases ever decided: legal tender, slaughterhouse, income tax, child labor, minimum wage, the gold clause, congressional term limits, mandatory abortion funding, partial-birth abortion, school vouchers, and racial preferences. On such great issues where our leaders and the American people have different views, does it make sense that one justice in a 5 to 4 decision should be able to void a law for the entire nation?

On the fifth anniversary of Justice Harry Blackmun's death, in March 2004, the Library of Congress made available to the public 530,000 pages of his personal papers. The documents reveal the power and influence of a single justice in legislating public policies of tremendous significance.

Blackmun's notes reveal that the Supreme Court was on the verge of rejecting by 5 to 4 the argument that prayer at public school graduations violates the First Amendment when, suddenly, Justice Anthony Kennedy changed his mind. Kennedy then wrote the 5 to 4 decision in *Lee v. Weisman* (1992) which banned graduation prayer because "peer pressure" to attend graduation might induce students to listen to a prayer they didn't like.

Lee v. Weisman became a major precedent in the cases to ban the words "under God" from the Pledge of Allegiance. Without the Kennedy switch, we probably wouldn't have to worry about the Pledge of Allegiance cases, and we might even be closer to a return to voluntary school prayer.

Why did Kennedy switch? Who influenced him at the last minute? Should such important issues of public policy be made by a single justice whose opinion shifts back and forth, and who may have been unduly influenced by pressures unknown?

Kennedy played the same role in *Planned Parenthood v. Casey*, another landmark ruling in 1992. Blackmun's notes reveal that Kennedy was ready to be part of a 5 to 4 decision overturning *Roe v. Wade*. Suddenly, Kennedy sent a handwritten note to Blackmun (the author of *Roe v. Wade*) promising "welcome news." Kennedy switched sides and joined the unexpected 5 to 4 ruling in *Planned Parenthood v. Casey* to uphold *Roe v. Wade*. Kennedy also switched from his vote upholding capital punishment for juveniles in the 5 to 4 decision in *Stanford v. Kentucky* (1989) to his vote banning juvenile capital punishment in the 5 to 4 decision in *Roper v. Simmons* (2005).

The justices' insistence on deliberating in total secrecy makes this process unaccountable to the public. It is unacceptable that one justice can willy-nilly switch sides in momentous cases for reasons unknown and thereby provide the fifth vote to bind an entire nation. It is an insult to our rights of self-government that the fickle nature of one man, combined with the utmost secrecy, leaves 290 million Americans prey to whatever happens behind the scenes.

The judicial supremacists are just as dangerous in the lower federal courts and in many state courts. The second Florida supreme court decision throwing out the 2000 presidential election count was 4 to 3, and the Massachusetts court decision in *Goodridge* legalizing same-sex

marriage was also 4 to 3. As one Massachusetts legislator said, “Abraham Lincoln said government of the people, by the people, for the people, but the Massachusetts court has given us government by four people.”

We must reject the notion that the Constitution is whatever the Supreme Court says it is—that, in effect, the Constitution is what one justice says it is, one justice who changes his mind overnight.

VII

REMOVAL IS AN OPTION

Congress should let it be known that it takes its impeachment power seriously and intends to use it. The Constitution’s Article VI states that “all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution,” and Article III further specifies that all federal judges, including Supreme Court justices, “shall hold their offices during good behavior.”

Making outrageous rulings that have no basis in the Constitution should be grounds for impeachment. Claiming that an Imperial Judiciary can make our laws rather than elected representatives should be grounds for impeachment. Citing foreign courts as a basis for overturning U.S. laws should be grounds for impeachment. Grounds for impeachment should also include three absurd and unconstitutional opinions issued in 2005: Judge Lawrence Karlton banned the Pledge of Allegiance, Judge Joseph Bataillon knocked out the Nebraska state constitutional amendment on mar-

riage, and Judge Stephen Reinhardt tried to cancel all parents' rights in public schools.

Even the threat of impeachment is useful. When federal district judge Harold Baer allowed a confessed drug dealer to suppress evidence of her crime, Senate Majority Leader Bob Dole called for his impeachment and President Clinton's spokesman issued what was understood to be a veiled warning. Baer quickly reversed himself.

Impeachment should be a particularly viable remedy against judicial supremacists on state courts. The Massachusetts judges who ruled for same-sex marriage should be prime candidates for impeachment and removal.

Massachusetts even has a separate procedure to fire a sitting judge by a simple majority vote of the legislature. Article 98 of the Massachusetts Constitution provides that "the governor, with the consent of the council, may remove them [all judicial officers] upon the address of both houses of the legislature . . ." Why hasn't the Massachusetts legislature acted? It is primarily Massachusetts' duty to remedy the outrage of its out-of-control judges.

The problem of state court supremacists can also be dealt with by defeating them for reelection or retention, since they do not have lifetime appointments. The voters sent a powerful message in 1986 when California Chief Justice Rose Bird and two like-minded justices were defeated and removed for imposing their personal political views.

In 2004, Judge Gordon Maag, who had become a symbol of excessive civil litigation and the need for tort reform, was removed from the Illinois appellate court after failing to receive 60 percent of the vote in his retention election.

Illinois' unique requirement of a supermajority for judicial retention is an excellent idea which should be copied in other states.

Public indignation can sometimes achieve the same result. In 2004, a Sarasota, Florida, circuit court judge decided to retire rather than seek reelection after he was criticized on national television for allowing a criminal to remain on probation, despite violating its conditions, who was then charged with kidnapping and slaying an eleven-year-old girl.

VIII

STOP JUDICIAL MICROMANAGEMENT

Congress should prohibit federal judges from trying to micromanage public schools, prisons, or mental hospitals. The courts have no competence for these tasks, and the pretense that they do results in much mischief. For example, in *Missouri v. Jenkins*, the judicial supremacists ordered “a wholesale shift of authority over day-to-day school operations from parents, teachers, and elected officials to an unaccountable district judge whose province is law, not education.” The mountain of litigation and costs that resulted from that decision achieved nothing.

Courts make no attempt to study the effects of their rulings, and sometimes the solution is worse than the problem. The Kennedy-Rehnquist-O'Connor-Scalia concurring opinion in *Missouri v. Jenkins* pointed out that the decision “demonstrated little concern for the fiscal consequences of the remedy that it helped design.”

Unfortunately, judicial supremacists did not learn any lesson from *Missouri v. Jenkins*. In November 2002, the Arkansas high court ordered changes in the state's \$1.8 billion public education system and set January 1, 2004, as the deadline for compliance. When the legislature failed to obey the court's orders, the Arkansas supreme court appointed its own representative to take charge of the school system.

On April 26, 2004, a Massachusetts superior court judge issued a 300-page advisory ruling, dictating the future of education in that state and giving the school system a "limited period of time" to comply. This outrage was overturned by the Massachusetts supreme court (perhaps smarting from bad publicity over its same-sex marriage decision).

On May 11, 2004, a state district judge ordered Kansas to close all its public schools until the state obeys the court's demand to change the way the taxpayers' money is spent on education.

The means by which federal district judges micromanage public agencies such as schools and prisons is called the consent decree. In a consent decree, the representatives of the parties to a lawsuit "consent" to a "decree" in which the agency is supervised by a federal court for an indefinite period of time. Some consent decrees have lasted twenty-five years or more with no end in sight—twenty-five years in which an important agency of state or local government has been taken away from legislators, voters and taxpayers, and controlled exclusively by one unelected federal district judge with life tenure.

Congress should end the racket of consent decrees by adding this provision to federal law: The equitable power

of the district courts over government agencies is hereby limited to remedies that can be performed within one year. No injunction or decree or other remedy shall be entered against a governmental entity unless by its terms it can be performed within one year from date of entry.

Senator Lamar Alexander (R-TN) has introduced legislation called the Federal Consent Decree Fairness Act. The bill would make it easier for state and local governments to amend federal court consent decrees by requiring plaintiffs to justify the continued existence of consent decrees after four years have passed or six months after voters have elected a new administration.

Alexander cited examples of consent-decree abuses that this bill would remedy. In Tennessee, a federal judge ruled that the government could not scale back benefits for optional beneficiaries of the state Medicaid program in order to save health-care programs for low-income children. In New York, a thirty-year-old consent decree has forced Hispanic children into bilingual education programs over the objections of their own parents who want their children to learn English rapidly. In Los Angeles, consent decrees have forced the Metropolitan Transit Authority to spend forty-seven percent of its budget on city buses, leaving only half the budget to pay for all other Los Angeles transportation needs.

Judges have large caseloads and are constantly complaining about being overworked. The day-to-day management of schools, prisons, health care, and transit systems should not be on their agenda.

IX

CUT OFF ATTORNEY'S FEES

Congress should pass a law to prevent the collection of attorney's fees by special-interest organizations that litigate against the acknowledgment of God or marriage. It is intolerable that the ACLU and other left-wing groups are able to use these lawsuits as a source of revenue. Many of the mischievous ACLU lawsuits are actually funded by the taxpayers because a federal law awards attorney's fees if they win the case. The fees collected can be staggering.

The organizations that sued to remove the Ten Commandments from the Alabama State Judicial Building (ACLU, Southern Poverty Law Center, and Americans United for Separation of Church and State) collected \$540,000 in attorney's fees and expenses in 2004 from Alabama taxpayers. It is unconscionable that the Alabama taxpayers were forced to pay for the anti-Ten Commandments lawyers.

Kentucky taxpayers handed over \$121,500 to pay the ACLU for its action against the Ten Commandments display outside its state capitol, and Hamilton County, Tennessee, paid the ACLU \$50,000 for the same "offense." In Georgia, the Barrow County commissioners agreed to pay the ACLU \$150,000 as part of a court agreement to remove a posting of the Ten Commandments. Defending the case cost the county an additional \$264,000.

The ACLU profited enormously, collecting \$790,000 in legal fees plus \$160,000 in court costs, as a result of its suit to deny the Boy Scouts of America the use of San Diego's

Balboa Park for a summer camp, a city facility the Scouts had used since 1915. The ACLU argued that the Boy Scouts must be designated a “religious organization” because it refuses to accept homosexual scoutmasters, and because the Scouts use an oath “to do my duty to God and my country.”

Congress should end this racket. Most lawsuits do not award attorney’s fees to the winner, and the law should not give a financial incentive to those suing to stop our acknowledgment of God. Federal law should never have permitted an award of attorney’s fees in those cases. The attorneys who sued to remove the Ten Commandments monument in Alabama were not lawyers in private practice who risked their own time and money to help a worthy but penniless plaintiff; they were salaried lawyers employed by wealthy organizations that use such lawsuits for fundraising.

When small units of government receive a demand from the ACLU to remove their Ten Commandments monument, which may have stood in the city park for a half century without annoying anyone, many city fathers feel compelled to knuckle under because they lack the funds to fight the lawsuit. In northern Minnesota, the Duluth city council voted 5 to 4 to acquiesce in the ACLU’s demand to remove a Ten Commandments monument from public property. Council members voted that way only because the city couldn’t afford to pay the legal costs of defending the monument, in addition to the ACLU’s fees if they lost. In May 2004 under pressure from the ACLU, the city of Redlands, California, “voluntarily” changed its forty-year-old city seal to remove a cross and replace it with a tree.

“We cannot afford to engage in a fight that we will lose,” the mayor said.

There are sixteen thousand public school districts in the United States that could become targets of lawsuits to ban the Pledge of Allegiance or the Boy Scouts. No one knows how many depictions of the Ten Commandments or crosses are in courthouses or other public properties. The ACLU and other anti-God groups could look upon all of them as containing pots of gold to be captured by filing suit before a supremacist judge and then getting the judge to award generous attorney’s fees.

X

THE POWER OF CONGRESSIONAL INVESTIGATIONS

The Senate and House Judiciary Committees should hold extensive hearings on various proposals to stop the usurpation of power by the federal courts. Congress’s investigative function is one of its most important duties, and now is the time to use it. Many experts and scholars have proposed various remedies to curb judicial usurpation, and Congressional hearings are the proper forum to air them.

Some have proposed term limits for Supreme Court and other federal judges. That would require a constitutional amendment, since the Constitution provides that federal judges serve “during good behavior.” Since 1970, justices have been staying on the Supreme Court more than ten years longer, on average, than they did in our first two centuries. Vacancies happen less often, and so nominations are more hard-fought. We passed a constitutional amendment

limiting presidents to eight years, so why can a Supreme Court justice serve for thirty-six or more years?

Alternatively, Congress could pass a law requiring Supreme Court justices to move to senior status after eighteen years, as other federal judges already do. They would still draw their full salaries (as the Constitution requires) and could sit on other federal courts, but not on the Supreme Court. Or they could resign to make more money in the private sector.

Another reform proposal is to divide up the huge San Francisco-based Ninth Circuit, which now covers California and eight other states. The Ninth Circuit is the locus of many supremacist decisions, many of which have been reversed by the Supreme Court.

We must educate the public. Here is one striking example of how public discussion outside of the courtroom can correct the judges and lawyers who are teaching error.

From about 1950 to about 1990, law professors, prosecutors and judges adopted the erroneous view that the Second Amendment had nothing to do with an individual's right to own a gun. They tried to reinterpret the text of the Second Amendment, and they completely ignored its plain meaning and historical context.

Then, an assortment of gun rights advocates, working entirely outside the legal profession, actively promoted the truth about the historical meaning of the Second Amendment. At first, the legal community scoffed at these people by pretending they were ignorant "gun nuts." But eventually, the weight of logic and historical evidence became overwhelming.

The view that the Second Amendment guarantees the right of individuals to own guns has now been adopted by the U.S. Justice Department, the Fifth Circuit U.S. Court of Appeals, and a leading treatise on constitutional law. The Fifth Circuit decision, *U.S. v. Emerson* (2001), concluded that “It appears clear that ‘the people,’ as used in the Constitution, including the Second Amendment, refers to individual Americans.”

Quoting what he called the “unanimous understanding of the Founding Fathers,” Attorney General John Ashcroft stated on May 17, 2001, “In light of this vast body of evidence, I believe it is clear that the Constitution protects the private ownership of firearms for lawful purposes.”

Congressional investigations into all the constitutional issues discussed in this book would take us far toward remedying the impudence of the judicial supremacists.

THE TIME FOR ACTION IS NOW

The new ruling class of judicial supremacists has effectively changed the definition of “the supreme law of the land” *from* “this Constitution, and the Laws of the United States which shall be made in Pursuance thereof” *to* whatever a federal judge decides this week. The supremacists have replaced our three equal branches of the federal government with the Imperial Judiciary.

Judges have convinced themselves that they are infallible and should have the final say over our nation’s controversial political and social issues. Judges use their assumed powers to enforce their liberal agenda on us, and they preempt

criticism by repeatedly proclaiming the false court-invented notions that their rulings are the law of the land and that the Constitution is whatever the Supreme Court says it is. They are locking in what Thomas Jefferson called “the despotism of an oligarchy” of judges who have become “the ultimate arbiters of all constitutional questions.”

Article IV, Section 4 of the Constitution guarantees “to every State in this union a Republican Form of Government.” As long as we allow judges to legislate, we do not have republican self-government. The American people and their elected representatives allowed this to happen over the last fifty years, exactly as Thomas Jefferson warned: “The germ of dissolution of our federal government is in the constitution of the federal judiciary; . . . working like gravity by night and by day, gaining a little today and little tomorrow, and advancing its noiseless step like a thief over the field of jurisdiction, until all shall be usurped . . .”

The judicial supremacists have no regard for the processes of self-government. According to Robert Bork, the judges disdain the American people as “motivated by bigotry, racism, sexism, xenophobia, irrational sexual morality, and the like,” and the judges see their mission as remaking our culture in their own liberal image.

The current situation is intolerable. We call on Congress to use its constitutional authority to restore the balance of power among the three branches. The accusation will be made that withdrawing jurisdiction from the federal courts is an attack on their power and indicates that we don’t trust their decisions. That’s exactly right; we don’t, especially

after *Roe*, *Casey*, *Romer*, *Lawrence*, *Kelo*, and *Van Orden*, the lower federal court decisions on the Pledge of Allegiance and pornography, and state court decisions on marriage and taxes. The judicial supremacists are out of control.

Despite public opinion polls showing overwhelming support for acknowledging God in the Pledge of Allegiance and other American traditions, supremacist doctrines continue to plague us without any relief in sight. The flawed *Lemon v. Kurtzman* test for the acknowledgment of God continues to encourage activist judges to hand down their own interpretations of what that test means. In 2004, the Supreme Court justices wrestled with the VMI grace-before-supper case (*Mellen v. Bunting*) during eight private weekly conferences before deciding *not* to decide the case, allowing the Fourth Circuit anti-God ruling to stand.

The ACLU is continuing its revenue-producing anti-God strategy in state after state. Many of the lawsuits are settled in the ACLU's favor and against the wishes of the people because the local units of government can't justify the costs of litigation and the risk of payment of the ACLU lawyers' fees. The settlements indicate tacit acquiescence in the false notion that the First Amendment prohibits the mention of God by any public official or in any public place.

Unless the American public makes its outrage about judicial supremacists loud and clear, the Supreme Court may believe it can continue to ignore the public. In the 1950s and 1960s, the American people and distinguished attorneys expressed public indignation about the Warren Court's anti-God, pro-criminal, pro-pornography, and pro-

Communist decisions. But Congress failed to take specific action, and later judges continued to expand on the powers grabbed by the Warren Court.

Congress has the duty to save us from judicial supremacists *and* from the harassment that is carried on by pressure groups litigating on the basis of supremacists' court rulings. Congress should act now.

The liberals who have lost their majority in Congress are using every procedural and rhetorical device to block reform of the runaway courts. They sanctimoniously assert that we must preserve an "independent" judiciary. What they really mean is a judiciary independent of the Constitution, and that's what we must not permit.

The histrionics of the liberals trying to retain their clutch on the courts reached a fever pitch when House Minority Leader Nancy Pelosi declaimed in the summer of 2005, "It is a decision of the Supreme Court. So this is almost as if God has spoken!" Her claim that the only way to counteract the Court's decisions is a constitutional amendment is just plain wrong. This book gives many constructive remedies to abolish the heresy that the Supreme Court has the rank of God.

On March 8, 2004, in Dallas, President Bush delivered the challenge: "We will not stand for judges who undermine democracy by legislating from the bench and try to remake the culture of America by court order."

The American people must demand that Congress use its full constitutional powers to protect America from judicial usurpation. This goal should take priority over

everything else because the federal courts pose the number-one threat to our democratic process.

If we truly believe in self-government, ordinary Americans must take a major role in reforming the Imperial Judiciary. Private citizens must take an interest in court decisions, discuss them, comment on them, and ask television and radio talk shows to include them in their programming. Ordinary Americans must require every candidate for Congress to commit to restoring self-government by legislating historical limits to the federal judiciary's powers. Every candidate should commit to voting for legislation to remove the jurisdiction of the federal courts over those areas where we don't trust them, starting with the definition of marriage, the Pledge of Allegiance, the Ten Commandments, and the Boy Scouts.

Judicial supremacy is a heresy that has arisen and grown only during the last half century—it did not come to us from the Constitution or from America's rich heritage of respect for the rule of law. Judicial supremacy started with the Warren Supreme Court in the 1950s, and it has expanded to an intolerable level.

We must ask ourselves, what kind of a country do we want America to be? Do we want a country where “we the people” are sovereign, where we are governed by legislators we elect, where we can continue to raise our children in a land where the government respects our religious, cultural, and social traditions and heritage? Or will we be ruled by an unelected cadre of judges who are trampling on our most precious traditions and customs? The moral crisis of our

nation is largely the result of court decisions that overturned longstanding laws and customs designed to protect morality, marriage, family integrity, and national security.

All those who love liberty must oppose judicial supremacy and its advocates. In the words of the Declaration of Independence, we must “disavow these Usurpations.” The longer we delay in taking up the challenge, the harder it will be to achieve our goal. The truth of what has been done to us by judicial supremacists appears clearer every day. America faces a crisis of self-government.

Every session of the Supreme Court opens with the announcement: “God save the United States and this Honorable Court.” The American people are crying out: “God save the United States *from* this Honorable Court.”

15 *How To Stop Judicial Supremacy*

- For a history of the filibuster and a road map for how the Senate can adopt new rules by a simple majority vote, see “The Constitutional Option to Change Senate Rules and Procedures: A Majoritarian Means to Overcome the Filibuster” by Martin B. Gold & Dimple Gupta, *Harvard Journal of Law & Public Policy*, vol. 28, pp. 205-272 (Winter 2005).
- The Daschle law about brush clearing is Public Law 107-206, Sec. 706(j), which states: “Any action authorized by this section shall not be subject to judicial review by any court of the United States.” The law authorized the Interior Department to clear timber in the Black Hills of South Dakota in order to fight and prevent forest fires. Environmental groups had filed several lawsuits to stop timber clearing. At least one court had issued an order and other suits were pending. The Daschle law terminated all these suits so that timber clearing could continue without judicial interference. The constitutionality of Congress terminating those lawsuits has not been questioned.
- Chief Justice Oliver Ellsworth had served as a member of the Committee of Detail at the Constitutional Convention, which drafted the provision in Article III authorizing Congress to limit the jurisdiction of the Supreme Court. Chief Justice Ellsworth wrote in *Wiscart v. Dauchy* (1796): “The Constitution, distributing the judicial power of the United States, vests in the Supreme Court, an original as well as an appellate jurisdiction. The original jurisdiction, however, is confined to cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party. In all other cases, only an appellate jurisdiction is given to the court; and even the appellate jurisdiction is, likewise, qualified; inasmuch as it is given ‘with such exceptions, and under such regulations, as the Congress

shall make.’ Here then, is the ground, and the only ground, on which we can sustain an appeal. If Congress has provided no rule to regulate our proceedings, we cannot exercise an appellate jurisdiction; and if the rule is provided, we cannot depart from it. The question, therefore, on the constitutional point of an appellate jurisdiction, is simply, whether Congress has established any rule for regulating its exercise?”

- Many of the Supreme Court’s decisions that are deplorable—because they are legislating from the bench and remaking our culture by court order—are based on the Fourteenth Amendment. The U.S. Constitution gives Congress, not the Court, the power to enforce the Fourteenth Amendment. Section 5 states: “The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.”

John G. Roberts’ 27-page document, written when he was Special Assistant to the Attorney General during the Reagan Administration, makes this additional argument in support of Congress’s constitutional power: “Congress may derive additional authority in regulating Supreme Court appellate jurisdiction over Fourteenth Amendment cases by virtue of section 5 of that Amendment . . . Congress could invoke the authority of this section in divesting the Supreme Court of appellate jurisdiction over specified Fourteenth Amendment claims and providing that such claims shall receive final enforcement in the state courts. As the Court noted in *Katzenbach v. Morgan* (1966), ‘section 5 is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment.’ It is certainly within the broad scope of #5 for Congress to determine that in certain cases, such as abortion and school desegregation cases, the grants of due process and equal protection are more appropriately enforced by state courts.”

Explaining further, Roberts wrote: “The history of the Fourteenth Amendment strongly supports the authority of Congress

to advance its view of the appropriate means of enforcing the guarantees of due process and equal protection under #5. The Fourteenth Amendment was drafted and passed in an atmosphere of great hostility to the Supreme Court. . . . [Congress] had suffered great defeats at the hands of the High Court in the *Dred Scott* and *Fugitive Slave* decisions. A court which would render such decisions was certainly not to be entrusted with securing the protections of the Thirteenth through Fifteenth Amendments. In the view of the Framers of the Civil War Amendments, therefore, Congress was to have primary responsibility for providing for the enforcement of the guarantees of due process and equal protection. . . . It is of course true that the Supreme Court has long since assumed a dominant role in enforcing the Fourteenth Amendment. This does not, however, detract from the authority of Congress to enter the field under section 5 as originally contemplated.” Roberts Memorandum, “Prospects to Divest the Supreme Court of Appellate Jurisdiction: An Analysis in Light of Recent Developments” (undated), 25-26. See also, Austin Bramwell, “Pleading the Fourteenth,” *The American Conservative*, Jan. 31, 2005, 13.

- Congress used its Article III power in 2005 to order completion of a fence on our southern border near San Diego which had been held up for ten years by environmental lawsuits. By the REAL ID Act, Congress legislated that the fence should go forward with “expeditious construction” and that “no court... shall have jurisdiction to hear any cause or claim” to stop it. This law has already been upheld as constitutional by a federal court.
- The GAO study, released in 1997, found 1,049 federal statutory provisions in the United States Code, as of the date DOMA was signed into law, in which benefits, rights and privileges are contingent on marital status or in which marital status is a factor. Subsequently, the GAO identified 120 statutory provisions involving marital status that were enacted between Sept. 21, 1996 and Dec. 31, 2003, and 31 provisions that were repealed or

amended to eliminate marital status as a factor. Consequently as of Dec. 31, 2003, the revised GAO total of federal statutory provisions in which marital status is a factor is 1,138.

- The Supreme Court affirmed a provision of the Ohio constitution requiring near-unanimity by its supreme court before reversing a lower court and invalidating a statute as unconstitutional (*Ohio ex rel. Bryant v. Akron Metropolitan Park District*, 1930).
- Ninth Circuit Federal Judge Stephen Reinhardt, appointed by Jimmy Carter in 1980, is probably the most supremacist judge in America. His opinion in *Fields v. Palmdale* (2005) asserting that parents have no rights in public schools is only the latest example of his sweeping liberal decisions. In *Silveira v. Lockyer* (2002), his seventy-page opinion discussed the Second Amendment at length and asserted that there is no individual right to keep and bear arms, citing with approval the bogus research of Michael Bellesiles. (Reinhardt later issued an amended opinion omitting the references to Bellesiles.) Reinhardt is married to Ramona Ripston, who has been executive director of the ACLU of Southern California since 1972, was a co-founder of NARAL in 1969, a leader in People for the American Way, and a longtime political associate and appointee of Los Angeles Mayor Villaraigosa. Ripston was responsible for forcing Los Angeles County to remove the tiny cross from its seal, and she led the initial court victory attempting to stop the 2003 recall of Governor Gray Davis based on a phony argument about voting machines (which the full Ninth Circuit reversed). Ripston is Reinhardt's third wife and he is her fifth husband.
- Sarasota Circuit Court Judge Harry Rapkin was properly criticized for his handling of the probation of Joseph P. Smith, who was charged in the death of eleven-year-old Carlie Brucia. *Sarasota Herald Tribune*, April 23, 2004.
- For an example of a nineteen-year-old consent decree, see the Notes for Chapter 2 re: Judge Myron Thompson.

- The law that authorizes attorney's fees to the ACLU and others for anti-God lawsuits was passed by the Watergate Congress in 1976 under the name "Civil Rights Attorney's Fees Awards Act." It is codified as 42 U.S.C. Section 1988(b). Congress should repeal or amend it so that attorney's fees are not allowed in lawsuits claiming a violation of the Establishment Clause.
- For the Redlands controversy, see the Associated Press or *Los Angeles Times*, April 29, 2004, B1.
- This 1996 law review article documents how scholars have shifted toward the individual rights interpretation of the Second Amendment. It says that only three out of thirty-four law review articles written since 1980 oppose the individual rights interpretation, and two of those were written by anti-gun lobbyists. "Toward a Functional Framework for Interpreting the Second Amendment" by Scott Bursor, 74 *Texas Law Review* 1125-1151 (1996).
- The quotation from Thomas Jefferson is from his letter to Charles Hammond in 1821.
- For the Supreme Court justices discussing *Mellen v. Bunting* in eight conferences, see the article by Linda Greenhouse, *New York Times*, April 27, 2004, A22.
- In October 2005, a survey released by the *ABA Journal eReport* reported that a majority of Americans agree with the statements that "judicial activism" has reached "a crisis," that judges "ignore traditional morality," that judges are "arrogant, out-of-control and unaccountable," and that judges who ignore voters' values "should be impeached." This was a random-sample poll of the general population made by Opinion Research Corporation and commissioned by the American Bar Association. The lawyers who ordered the survey were in shock at the results.

Web links and updates are available online at
www.Schlafly.net/judges/

LESSON FOURTEEN

HOW TO STOP JUDICIAL SUPREMACISTS

QUESTIONS FOR DISCUSSION:

- ★ Are the American people going to give up their rights of self-government and resign themselves to be ruled by unelected, unaccountable, life-tenured judges?
- ★ Does the Constitution give Congress the power to create, abolish, and regulate the jurisdiction of the federal courts?
- ★ Discuss the many times that Congress took away jurisdiction from the federal courts over subjects where Congress did not trust the courts.
- ★ Do judges recognize that Congress has the power to limit judges' power?
- ★ Can Congress constitutionally pass a law prohibiting judges from banning the Pledge of Allegiance, the Ten Commandments, our national motto, and other acknowledgments of God in public forums -- and if so, why hasn't Congress done this?
- ★ What are some recent examples of Congress withdrawing jurisdiction from federal courts?
- ★ Should Congress take action to prevent the Supreme Court from using foreign laws to interpret the U.S. Constitution?
- ★ How can Congress use its appropriations power to stop the public schools from interfering with parents' rights?
- ★ How can Congress stop a single judge from overturning a referendum passed by the majority of voters?
- ★ Should we prohibit judges from micro-managing public schools?
- ★ Can Congress stop the collection of attorney fees when lawyers persuade supremacist judges to rule against the Pledge of Allegiance, the Ten Commandments, or the Boy Scouts?
- ★ Why should Congress hold public investigations of judicial supremacy in order to educate the American people and the media about judicial mischief and possible solutions?
- ★ Is it true that the Constitution is whatever the Supreme Court says it is?
- ★ Discuss what John Roberts said – before he became Chief Justice – about Congress' authority over the federal courts.
- ★ Read what the Constitution, Article III, Sections 1 and 2, says about the power of Congress over the federal courts.