

A Bill to Save our Freedom
*Contemplating the Impact of the Proposed,
Judicial Transparency and Ethics Enhancement Act of 2006*

by

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Justice Ruth Bader Ginsberg is beseeching the American Bar Association to bring pressure on Congress to defeat proposed bills that would provide a modest oversight of what the country's judges are doing. As in the case of many other things they have been doing recently, asking this appears to violate basic judicial ethics. Lawyers are dependent on judges for success in their businesses, so when any judge, even a Supreme Court justice, demands that lawyers render free political services to please her by doing what would clearly be unethical for her to do herself, there seems to be an offering of judicial good graces in exchange for valuable political activity. It is fair to ask why a proposal for oversight arouses so much fear.

Her background in the American Civil Liberties Union (ACLU) would lead most knowledgeable Americans to associate Justice Ginsberg with the complex political agenda of this organization. Like many other modern organizations, laws, and institutions, the ACLU seemingly operates under a false flag. As many disappointed citizens have come to believe, the ACLU has no interest in civil liberties or in defending them. It rather has been playing a significant role in influencing the courts to promote projects of social engineering. It has been successful even in cases where its short-term goals are opposed by the vast majority of Americans. This is because it does not operate through the legislatures or through instruments of direct democracy, such as referendums. It has rather bypassed all of the methods foreseen by the Founding Fathers for instituting change and worked through those judges who have discovered their ability to legislate from the bench.

The bill that instills so much terror in Justice Ginsberg's heart would be the first ever attempt by Congress to close the loophole that judges claim to have discovered in the Constitution, which lets one judge declare any law invalid or invent any new "right" just by raising the issue of constitutionality. If the decision of that one judge earns its rubber stamp from an appeals court, it invariably takes a basic legal right away from a litigant in a civil suit, an innocent defendant being criminally prosecuted, or the people subsequently hurt when a criminal escapes punishment. In rare cases in which the United States Supreme Court or the supreme court of a state decides to weigh in on the issue, a simple majority vote by a few justices can effectively amend the Constitution of the United States or one of the state constitutions. A 5 to 4 vote in the United States Supreme Court now trumps the work of more than 600 members of Congress, saving endless debate, committee work, lobbying, and voting. A new "right" can be invented, or discovered within the "penumbra" of another right, where none existed before in any law, or a civil or human right can be taken away by a measure as simple as adding one paragraph to an opinion ending a lawsuit.

The United States is engaged in a culture war, in which liberal and conservative social engineering goals have attracted the attention of the people to such an extent that they have missed the real point of conflict: the battle to decide whether the United States is to have a rule

of law or rule by a powerful elite.

The United States Constitution has been in force for more than two centuries, and its provisions have been interpreted countless times by courts that tried to hold to the letter of the law as much as possible. Any reasonable citizen might wonder why judges today are able to discover that the intent of the Constitution's authors has been wrongly interpreted for more than 200 years, especially since the Constitution is relatively short and written in clear and explicit language.

Although there are famous examples of judicial misinterpretations in the past, some of which have provoked national disasters, the problem today is the total lack of restraint by judges in converting their own personal opinions into newly discovered Constitutional law. Clearly distorted interpretations of the Founding Fathers' intentions are now being made thousands of times each year by judges sitting on the lowest courts, and some of them are eventually receiving approval by the Supreme Court, usually by one vote majorities. In most cases, the new "rights" being discovered by the justices involve taking a basic human or civil right away from another party. Significantly, almost all abuse of judicial discretion has involved taking such fundamental rights away from poor people with little political influence and giving new powers to government entities or people with narrow sectarian interests. How can those judges who state the Constitution is a living and evolving organism say it doesn't mean what it says and imply that we have less rights than our forefathers did in 1791?

The role that the *Dred Scott* decision played in rushing the United States toward the long and bloody Civil War is described in every decent American history book. Segregation of the schools became the rule in many states for some 60 years after the Supreme Court issued its *Plessy v. Ferguson* decision, a clear violation of the letter and spirit of the Fourteenth Amendment, which had been ratified only three decades earlier. The development of collective bargaining was delayed for decades by adverse decisions against labor unions, even though no specific laws justified the pronouncements of judges following the now discredited economic theories of *lessaiz faire* and Social Darwinism.

Today's problems dwarf those found in history books. Not only are the highest courts completely revising what we thought were our rights, but the lower courts have also adopted practices that rob all of us of the due process that we once thought we had a right to expect. While judges are busy making headlines by ruling on what religions may teach, what children may say and do in schools, what membership policies the Boy Scouts may adopt, and that private companies may seize our homes with the help of local governments, they are summarily dismissing thousands of legitimate lawsuits affecting the rights, families, jobs, and life savings of tens of thousands of ordinary citizens without permitting the cases to be decided by juries, as demanded in our Constitution and in those of the several states. Motions to dismiss and motions for summary judgment cover a multitude of sins.

Some judges allow what is clearly perjury to go unpunished if it is committed by a civil servant. They admit testimony from witnesses being offered amnesty from serious crimes in return for saying what a prosecutor wants, and they ignore documents in the file and testimony that refute basic premises on which they base their decisions. They often misstate what the lawsuit is about in order to justify a biased decision, which should lawfully be made by a jury and not by a judge. Some scholars comment that some opinions have nothing to do with the law and the facts.

In recent years, several state judges have been arrested for brazenly soliciting bribes from attorneys with lawsuits before them. Others have made key rulings favoring corporations in which they own stock. Such cases come to the attention of the public only because the news media find them interesting. However, thousands of others are not interesting enough to the press, and nobody learns anything about them, except for the litigants and their immediate families. Travesties of justice are occurring so often now, however, that people are starting to hear about them by word of mouth. The Internet has also provided a means for people to discover that they are not the only ones whose lives have been ruined by the illegal machinations of a judge and some of his cronies. The groundswell of protest has now prompted some members of Congress to propose bills to curb the power of judges who run amok.

Appointing an inspector general with oversight over Federal judges would be a step in the right direction. This would certainly not be a panacea for the elimination of lazy, incompetent, and corrupt judges, especially since such judges would immediately seek ways of getting the inspector under their control. A grand jury has been suggested as a better group to exercise such oversight. However, an inspector general with the courage and determination to show the judges that he means business could accomplish much to reform the courts. He might even be able to assure that a few litigants could actually find justice in a court. The fear which the Judicial Transparency and Ethics Enhancement Act has obviously aroused in Justice Ginsberg is strong evidence that it could turn out to be an effective law.

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