UNRESTRAINED POWER

A Pamphlet from Aletheia Group L.L.C

Unrestrained Power

It's difficult to find any aspect of society where the federal government doesn't have some role or influence. And the Supreme Court, more than any other branch or entity of government, is the most radical and aggressive practitioner of unrestrained power.[i]

Mark Levin, *Men In Black*

The term "judicial tyranny" has become a part of our American lexicon and these two words should have never been combined. The blame for this misnomer falls directly upon lawyers, legislators, and those in the state and federal executive branches.

An entity that was never meant to have power cannot abuse such power. Only through the usurpation of their constitutionally mandated powers by the legislative and executive branches can the judiciary conduct itself, through fiat, in a tyrannical manner. It is time to reign in our renegade judiciary.

How It All Began

What was the original intent of the constitutional framers in respect to the judiciary branch? Article III, Section 1 of the US Constitution 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. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.[ii]

So WE the People have enumerated judicial power to the Supreme Court of the United States (SCOTUS) and the Congress has power to ordain and establish inferior courts. So the entire federal court system, minus SCOTUS, is an invention of Congress and at any time is under its purview.

How many Congressman and Senators do you think realize they have power over our federal judicial system? One such congressman did. He is former House Majority Leader Tom DeLay of Texas. Congressman DeLay writes:

A brief survey of early American political theory will show that the Founding Fathers never intended the judiciary to hold the power it does today. Now activist judges usurp the will of the people and do untold damage through decisions based more on radical ideologies than on the law of the land. The Constitution gives power to Congress to restrict the judiciary, and it is time for a grand correction to the judicial excess of our time.[iii]

Tom DeLay, *No Retreat, No Surrender*

Congressman DeLay championed judicial reform after the starving murder of Terry Schiavo here in Florida. An activist judge named George Greer pronounced a death sentence upon Ms. Schiavo at the behest of her adulterous and abusive husband.

It was after this judicial debacle that DeLay called for judicial reform through the constitutional powers vested in the legislature. To hear the screams and wails of the mainstream media and liberals (but I repeat myself), you would have thought that the Majority Leader had called for the executions of activist judges. Liberals usually do gnash their teeth whenever the Constitution is cited.

So how did all of this judicial activism and oversight begin? We have to go back to the beginning of our nation to see. The case is known as *Marbury v. Madison* and the Chief Justice of the

Supreme Court at the time was John Marshall. There is a bigger than life-size statue of him in the center hall of the Supreme Court building in Washington D.C.

Chief Justice Marshall is most noted for his writing of the majority decision in *Marbury v. Madison* and establishing the Court's power of judicial review. Marshall stated that the legislature had no jurisdiction over SCOTUS because the people constitutionally enumerated that power. Marshall insisted that the Constitution was superior to any laws passed by the legislature and it was up to the Supreme Court to determine the constitutionality of such laws (or executive actions) when such cases were brought to their attention.

Let me defer to my good friend and constitutional scholar Mark Levin. He writes about *Marbury v. Madison*:

"…Marshall's decision in *Marbury*—while upsetting the Constitution's balance of power and the relationship between the federal government and the states—was a master political stroke. Marshall stated that Marbury, consistent with legal doctrine at the time, had something akin to a property right to the office to which he had been nominated and confirmed. Marshall also said that the federal judiciary should be able to issue an order directing the appointment of Marbury, but because the

Constitution did not enumerate such an original right for the Supreme Court, the Court was powerless to do so."[iv]

Mark describes Marshall's and the Court's decision in *Marbury v. Madison* as counter-revolutionary. And the outcome of this decision has been the executive and legislative branches bowing at the altar of the Supreme Court.

Well sure, but hasn't the Supreme Court mostly got it right when it comes to constitutional issues? Sadly, the opposite has too often been true.

Dark Moments From SCOTUS

It is vital to remember that the Supreme Court of the United States is made up of nine members, human beings like that rest of us. So what could possibly go wrong with instituting extra-constitutional powers to nine men and/or women? Remember Jeremiah's warning:

"The heart is deceitful above all things, and desperately wicked; who can know it?" (Jeremiah 17:9)

If the hearts of just five members of the court are hell-bent towards evil then what is to stop these five from exerting their political will in their decisions?

Nothing does, as history has proven. One of the darkest moments in SCOTUS' history is the Dred Scott case. To quickly sum up this case, the Supreme Court of the United States ruled that slaves or their descendents (free or slave) were not protected by the Constitution. Chief Justice Roger B. Taney ruled that slaves were property and that being true, were not protected under the 5th Amendment right of life, liberty, or property.

This heinous decision greatly affected Abraham Lincoln and became the central theme in his famous debates with Senator Stephen Douglas of Illinois. It also brought about the modern Republican Party and the demise of the Whig Party. With Lincoln's and the new Republican Party's popularity, Lincoln was elected president in 1860 and not too long after his inauguration the first shots of the Civil War were fired into Fort Sumter, S.C.

Another infamous SCOTUS case is *Plessy v. Ferguson*, where racial segregation was upheld as constitutional. This godless ruling declared that racial segregation was not a matter of implying the inferiority of blacks but merely a matter of public policy.

Writing in the majority opinion, Associate Justice Henry Billings Brown stated:

"We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it."[v]

To put this in today's parlance, SCOTUS was basically telling blacks to get over their sense of inferiority just because the State of Louisiana made them set in separate rail cars. Because of this ruling, the national blight of "separate but equal" stained our country for nearly 58 years until *Brown v. Board of Education* overturned this ruling.

Would it be safe to say we have learned from history, or as is to often the case, did we as a nation repeat history by failing to learn from it? The latter, sadly, is true.

Modern Malfeasance

Here at Aletheia Group L.L.C. we have already proved in our e-Booklet "Do Politics and Religion Mix?", that our nation was never to have the concept of separation of church and state as it is understood today. So then how did we get to this point? You guessed it, the Supreme Court. This dastardly deed was accomplished on February 10,

1947 in the Supreme Court case *Everson v. Board of Education of the Township of Ewing.* Justice Hugo Black writing the majority decision erroneously applied Thomas Jefferson's comment about "a wall of separation of church and state" in a letter to the Danbury Baptists to this case. Justice Black wrote:

While we do not mean to intimate that a state could not provide transportation only to children attending public schools, we must be careful, in protecting the citizens of New Jersey against state-established churches, to be sure that we do not inadvertently prohibit New Jersey from extending its general state law benefits to all its citizens without regard to their religious belief.[vi]

The problem with Justice Black's ruling is that the US Constitution's First Amendment does not restrict states; only the federal government. A state has the right to pass a state-sanctioned religion if its people allow such power through its constitution. That is the meaning of the tenth amendment; powers not enumerated to the federal government are then vested in the states and the peoples of those states. This does not mean the states have rights; only people have rights. The states have powers enumerated to them just like the federal government. (We'll address that another time.)

More egregious in his ruling were Justice Black's following words:

The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach. New Jersey has not breached it here.[vii]

That my dear patriots is the genesis of the godless society where we are subjected to, through the likes of the American Civil Liberties Union and Americans United for the Separation of Church and State, the constant and vicious attacks to our religious freedom. Justice Black's above statement is the holy grail of atheists and their legal supporters to campaign relentlessly against any semblance of religion in the public arena. Again I refer you to "Do Politics and Religion Mix?" to prove this was never the intent of the Founding Fathers.

When morals, and its foundational bedrock-religion, are attacked, then a lessening on the value of life is never far behind. While I could continue to write volumes on the ravages the judiciary has wrought onto our great republic, we shall end with the most egregious of all Supreme Court rulings: Roe v. Wade. It is through this case that the usurpation of legislative and executive powers has been surrendered to the Supreme Court, to the downfall of our once great nation.

Let me cut through all the judicial double-speak found in the ruling and get to the heart of the matter. Writing in the majority decision, Justice Harry Black stated that the Court was persuaded "that the word 'person,' as used in the Fourteenth Amendment, does not include the unborn."[viii]

In essence, seven men decided that an unborn baby was not a person and therefore did not have the right to live. Is there any wonder why we have watched the downward spiral of all morality in a nation where an unborn baby is not considered a person? Let every legislator, executive, and judge across America proclaim it so and it will still be a lie straight from the pit of hell! The Bible declares otherwise:

"For You formed my inward parts; You covered me in my mother's womb. I will praise You, for I am fearfully and wonderfully made; marvelous are Your works, and that my soul knows very well. My frame was not hidden from You, when I was made in secret, and skillfully wrought in the lowest parts of the earth. Your eyes saw my substance, being yet unformed. And in Your book they all were written, the days fashioned for me, when as yet there were none of them." (Psalm 139:13-16)

There and only there is where WE the People should look to for the authoritative word as to when life begins, not some godless council of men. Our founding document, the Declaration of Independence declares that as a people we have the right "to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle' us. Among the self-evident truths of all men being created equal is our unalienable right, endowed by God Almighty, is our right to life, liberty, and the pursuit of happiness. Is it possible to have the ability to pursue happiness and to be free if you are dead?

So what can you Joe and Jane Citizen do about the unrestrained power of the judiciary?

The Way Back

All constitutional powers of the three branches of government are derived from the people. When there is an abuse of that power it is incumbent upon a free people to wrest that power back from the abusers. There are at least three things that can be done by WE the People.

First, we must educate ourselves on the original intent for the judiciary branch. The limited powers intended for the judiciary are clearly spelled out in Federalist Papers # 78-83. Take the time to

read those. Also, I highly encourage you to read Mark Levin's *Men In Black: How the Supreme Court is Destroying America.* Mark's book will be to the restoring of judicial power to its original intent what his book *Liberty and Tyranny: A Conservative Manifesto* is to the tea party movement. If you will educate yourself on just these six Federalist Papers and Mark's book you will come a long way in knowing what the courts should and should not do.

Second, we must elect only representatives who will enforce the constitutional powers given to them. The US Congress can and should reign in the scope of jurisprudence that the Courts have today. Additionally, we should elect a president and senators who will insist that judges be of the Originalist mold.

Third, WE the People must insist that our judges not legislate from the bench. Article III, Section 1 of the US Constitution allows for the lifetime appointments of Supreme Court Justices and federal judges based on "good Behaviour." Judicial activism is unacceptable behavior and must be punished by the legislature in the form of censure and if necessary, impeachment and removal from the bench.

It is up to us to educate ourselves, elect only constitutionalists, and if necessary eradicate all

judges who would submit their wills upon the people by legislating from the bench through judicial activism.

There is a movement asunder across this great land to return our republic to its original state as outlined in our Constitution. It will take hard work but without WE the People doing the heavy lifting, it will not get done. We have for too long entrusted it to our elected officials. It's up to us to rescue our nation.

This is your invitation to join the fight.

NOTES

[i] Mark R. Levin, *Men In Black: How the Supreme Court Is Destroying America* (Washington DC: Regnery Publishing, Inc., 2005), 207.

[ii] "The Constitution of the United States: A Transcription," NARA—The Charters of Freedom—"A New World Is At Hand." [Online version, *www.archives.gov/exhibits/charters/constitution_transcript*, National Archives and Records Administration, September 5, 2011.]

[iii] Tom DeLay with Stephen Mansfield, *No Retreat, No Surrender: One American's Fight* (New York: Sentinel, 2007), 173.

[iv] Levin, *Men In Black*, 31-2.

[v] "Plessy v. Ferguson", Legal Information Institute – Cornell University Law School (accessed online 5 September 2011), available from http://www.law.cornell.edu/supct/html/historics/USSC_CR_0163_0537_ZO.html; Internet.

[vi] "Everson v. Board of Education of the Township of Ewing", Legal Information Institute – Cornell University Law School (accessed online 5 September 2011), available from http://www.law.cornell.edu/supct/html/historics/USSC_CR_0330_0001_ZO.html; Internet.

[vii] Ibid.

[viii] "Roe v. Wade", Legal Information Institute – Cornell University Law School (accessed online 5 September 2011), available from http://www.law.cornell.edu/supct/html/historics/USSC_CR_0410_0113_ZO.html; Internet.