

RETIRING JUSTICES GIVE PRO-LIFERS CAUSE TO HOPE

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PINE BLUFFS — In his first term, George Bush revamped American foreign policy, moving away from the idea that terrorists must be dealt with through the criminal courts and only after they've attacked us. During his present term, he's positioned to realign the Supreme Court, moving it away from judicial activism and toward a court based on the Rule of Law rather than the justice's personal philosophy.

If this can be accomplished, it will mean substantial gains for the pro-life movement. However realignment will not occur without a struggle of epic proportions.

Retiring Justices

Chief Justice William Rehnquist, 80, returned to the Court on a limited basis in March after a five month absence battling thyroid cancer. He'll probably retire this year. Three other justices, John Paul Stevens, Sandra Day O'Connor and Ruth Bader Ginsberg — all-pro-abortion advocates and all over 70 — may toss in the towel during the next four years.

In the '80s, Jimmy Carter became the first president to complete a full term without appointing a single justice. In 2004, George Bush became the second.

But if all the above named justices return to private life during his second term, Bush could have the unprecedented opportunity to appoint four justices.

In February 2005, Life Institute Inc.'s leader, John Willke, M.D. wrote: "If Rehnquist or other justices retire, it's absolutely critical that President Bush nominate strict constructionists like Antonin Scalia and Clarence Thomas to fill this and other

potential vacancies on the Court. President Bush's impressive pro-life track record with lower court appointees gives us reason for optimism."

Nominating strict constructionists, who see no right to abortion in the Constitution and therefore tend to be pro-life, is one thing; getting them past the Senate Judiciary Committee and that chamber's substantial pro-abortion faction is another. The Judiciary Committee, on which Republicans hold ten seats and Democrats eight, is chaired by Pennsylvania's liberal Republican Senator Arlen Specter. It's split almost evenly between pro-life and pro-abortion members.

That's just half the battle. If a nomination survives the Committee it goes to the Senate floor for a vote. Of course, the new Republican majority will help there. But Senators Ted Kennedy (D - MA), Joe Biden (D - DE), and others, have joined forces with pro-abortion activist groups in the past to keep pro-life judges off federal courts. They will do it again, using the filibuster to prevent a vote on qualified nominees.

The Filibuster and the Nuclear or Constitutional Option

In 2003 and 2004, Senate Democrats filibustered ten federal circuit court nominees. Each time, Republicans tried to invoke cloture to end the filibuster and allow a vote on the nominee. Under present Senate rules, cloture requires an affirmative vote of sixty senators, although the Constitution specifies a simple majority of fifty-one.

The votes were along party lines, so cloture failed and qualified nominees like Texas Supreme Court Judge Miguel Estrada, who if approved, would have been the first Hispanic to serve on the prestigious D.C. Circuit Court of Appeals, were denied an up or down vote.

To put an end to this stalling tactic, Republicans must exercise the so-called "Nuclear Option," which they refer to as the "Constitutional Option," that is, vote to

change the rules and return the Senate to the days of a simple majority vote on cloture. Whether they'll do it remains to be seen.

In late March, Democrats threatened to halt all Senate business except essential operations and national defense if Republicans resort to that maneuver to unclog the President's judicial nominees.

An End to Judicial Activism?

With the possibility of so many Supreme Court retirements during Mr. Bush's second term, pro-lifers have good reason to be excited and pro-abortion supporters have every reason for concern. Judicial activism, at least at the Supreme Court level, may be experiencing its death throes.

What's wrong with Judicial Activism? When judges decide cases based on their personal philosophy rather than following the law, our legal system becomes confusing and unpredictable.

Litigants have a right to expect cases to be decided on the basis of law rather than a judge's personal predilections. Liberal judges are prone to resolve cases along liberal lines. Tom Sowell, writing in *The Washington Times*, 3/11/05, said: "Liberals have rooted for judicial activism because this activism has favored liberal causes . . . such as abortion, same-sex 'marriage' and racial quotas. . . ." Aware of this, liberals, after losing at the ballot box, scamper quickly into court looking for a win. But judges are supposed to interpret the law, not make it. In a Republic, making law is the function of our elected representatives. Judicial activism erodes our constitutional right to govern ourselves.

Realignment of the Court

With the possible retirement of four justices, realignment looms. A realigned Supreme Court means that the fate of *Roe v. Wade*, heavily dependent upon judicial

activism rather than constitutionality, hangs in the balance. Pro-abortion supporters understand this only too well. That's why they lined up behind John Kerry's candidacy last November. And that's why they will fight hard to keep the President from appointing strict constructionist judges to the Supreme Court and to the lower federal courts.

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