

Eyes On Justice

The Justice At Stake Newsletter



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Of Bullying and Bullhorns: Election Season Inspires Attacks on America's Judges, Provides Fuel for the Effort to Limit Rights

Welcome to Eyes on Justice, published by the Justice at Stake Campaign, whose 42 partners work to keep courts fair and impartial. (Hyperlinks are underlined). You can learn more about us at <http://www.faircourts.org>. In this issue:

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- Rep. John Hostettler (R-IN), quoted in the *Washington Times*, June 24, 2004

Politicians are elected to keep promises and represent public opinion. But judges have a different job: to decide cases, one at a time, based on the facts and the law, and not on pressure or intimidation.

But in an election year, political intimidation of the courts is awfully tempting. And a string of recent court decisions on hot-button social issues have given slogan-hungry politicians the opportunities they crave.

Here's a look at how some hot election year issues are surfacing as political attacks on the courts that protect our rights.

**** The Marriage Debate**

State lawmakers who most virulently disagreed with the *Goodridge* decision that legalized same sex marriage in Massachusetts recently **filed legislation in the state's legislative assembly to impeach the state's Chief Justice**, Margaret Marshall, and the Associate Justices of the Massachusetts Supreme Judicial Court that authored the majority opinion in the controversial case. But some opponents of the ruling don't think going after the judges is a good idea: the impeachment efforts have been given thumbs-down by Massachusetts Governor Mitt Romney, and appear to be attracting little support in the halls of the legislature. And Chief Justice Marshall is not taking the attacks lying down. She has visited with editorial boards in Massachusetts to press the case for independent judges. "Our is a system in which legislation is tested against a clearly delineated charter of rights..." Chief Justice Marshall told one editorial board.

That's not stopping some lawmakers in Washington from charging ahead with their court-stripping efforts. "**The marriage issue gives us a great political window of opportunity into what Congress can do to limit the courts,**" **Rep. John Hostettler** (R-IN) recently told the *Washington Times*. The marriage debate will take center stage in Washington next week, now that Senator Majority Leader Bill Frist (R-TN) has scheduled a Senate vote on the constitutional amendment banning same sex marriage for the week of July 12. Sen. Frist told [Fox News](#) that the timing doesn't

have to do with politics, as some have charged—the first major party convention opens less than two weeks later—but rather that the vote is being called “in response to the **activist judges there**, and these marriages that are occurring around the country, it is incumbent for the people to speak.”

**** Partial-Birth Abortion Ban Act**

A recent ruling by California U.S. District Judge Phyllis Hamilton that declared the Partial-Birth Abortion Ban Act unconstitutional provoked swift and contemptuous reaction from pro-life groups. The Christian Coalition quickly established [a petition on its website](#) to gather signatures calling for the impeachment of Judge Hamilton: “We urge Congress to take action against the Judicial Activism that is preventing the will of the people from being carried...We declare our determination to support your much needed efforts to impeach this federal judge and Take America Back **from a liberal and tyrannical federal judiciary**,” The conservative media echoed their attacks on Judge Hamilton, labeling her one of many “black-robed radicals” who has “manifestly hijacked the law and lives of the most innocent members of society for their own ideological purposes.” (*Washington Times*, June 3, 2004). The *Times* then called for the Judge’s impeachment by the House and removal by the Senate.

The attacks continued in Nebraska, where a similar lawsuit launched against the ban resulted in more chest-thumping.. During the trial in Lincoln, the *Omaha World-Herald* reported, U.S. Rep. Steve King (R-IA) appeared outside the courthouse to denounce “activist judges.” Rep. King said he would lead the effort to “rein in” such judges if they overturned the ban. This prompted a response from U.S. District Judge Richard Kopf, who offered his own reaction to the label: “stupid and superficial.” “I’ve done this for 17 years now,” Judge Kopf said, “and I’ve never met a judge

(like that)."

**** Security and The War on Terror**

In an election year in which a President has largely staked his re-election campaign on his performance as a “wartime president”, the recent rulings from the U.S. Supreme Court on the Guantanamo detainees and enemy combatants are sure to have significant political fallout between now and November. Editorial commentary ran almost exclusively in favor (“It’s Called Democracy,” said the headline above the *Los Angeles Times* editorial backing the rulings), though the [Wall Street Journal concluded](#) that the rulings represented “**a modest but important victory for the Presidency.**”

In fact, the justices reiterated what the American people believe: **we need to be secure *and* free.** What’s not so well known is that these cases were just the latest episode in a series of post-September 11 attacks on the power of the courts to protect our Constitutional rights. Parts of **the USA Patriot Act** dramatically weakened the power of the courts to thwart possible government abuses, by expanding the ability of the federal government to search personal records, wiretap and incarcerate without meaningful review from a judge. In many cases, the government can now skip the courthouse altogether. The 2003 “**Feeney Amendment**” handcuffed the ability of judges to issue sentences that fall below federal guidelines as they pick punishments to suit the crime—and judges who do must be reported to the Justice Department. The plain fact is that that judges are indispensable to the war on terror. The abuses at Abu Ghraib remind us that all governments can abuse their power if they face no oversight or independent checks on their powers. Judges are there to protect our rights and remind us what we are fighting to preserve—the American way.

**** Redistricting for the Federal Courts?**

As if the mind-numbing political battles over redistricting in state legislatures weren't bad enough, now some members of Congress are reviving an attempt to to "reapportion" the federal bench. Sen. John Ensign, R-Nevada, and Sen. Larry Craig, R-Idaho, recently introduced the **"Ninth Circuit Judgeship and Reorganization Act of 2004" (S. 2778)** that would split the Ninth Circuit into three new circuits. (Other bills, one pending in the Senate and one in the House of Representatives, would divide the circuit into two.) Under the bill filed by Senators Ensign and Craig, the Ninth Circuit would consist of California, Hawaii, Guam, and the Northern Mariana Islands; the Twelfth Circuit would include Arizona, Nevada, Idaho, and Montana—it would hear cases in both Phoenix and Las Vegas—and the Thirteenth Circuit would be made up of Alaska, Washington, and Oregon. The proposals have been met by criticism from the President-elect of the **American Bar Association**, Robert J. Grey. "There are decisions that each federal bench makes—or any judicial panel for that matter—that some segments of the public will not agree with..." [Grey told the Beverly Hills Bar Association](#), "but **the spirit of judicial independence does not allow us to use restructuring of the courts for political or ideological ends.**" [A recent analysis](#) of the Ninth Circuit's track record by the *Sacramento Bee* concluded that the circuit placed fifth out of thirteen when it came to Supreme Court reversals of its decisions – though the analysis also concluded that "as usual, the 9th was the most closely reviewed circuit." It generated 18 percent of all circuit decisions, but 31 percent of those chosen for review by the Supreme Court, according to the *Bee*.

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