

DEMS STOOP TO INTIMIDATION TO SILENCE DEBATE

By Don Feder

When liberals stoop to intimidation to stifle a debate, it's a sure sign of the intellectual bankruptcy of their position.

On April 14, Senators Chuck Schumer, Harry Reid, Debbie Stabenow and Dick Durbin demanded that the president and GOP leaders in Congress "denounce" what the Democrats characterized as "inflammatory comments" that "openly threaten sitting judges."

The object of their invective was a Washington conference the week before (sponsored by the Judeo-Christian Council for Constitutional Restoration). From the tone of their letter, you'd think the gathering consisted of a snarling mob brandishing nooses. In fact, the speakers included a former state chief justice, members of Congress, an Orthodox rabbi, a niece of Dr. Martin Luther King, and a number of legal scholars.

Schumer and et al. are in a frenzy over reform proposals put forth by the conference, including withdrawal of jurisdiction (under Article III of the Constitution) and impeachment for the worst judicial offenders.

Judges have never been sacrosanct. From Thomas Jefferson to Franklin Delano Roosevelt, presidents have scathingly rebuked the judiciary. Jefferson warned that the Federalist judges of his day were becoming "an oligarchy" whose objective was to establish "despotism."

Lincoln excoriated Chief Justice Roger Taney for the Dred Scott decision. Taking its cue from Lincoln, the Republican press of the 1860s referred to the Taney court as “a diseased member of the body politic” which was worthy of “amputation.”

In a 1937 radio address, FDR – who was furious when the Supreme Court declared several New Deal programs unconstitutional – proclaimed, “We must save the Constitution from the Court and the Court from itself.” Was this Democratic icon guilty of inflammatory rhetoric which “might encourage violence against judges”?

Critics of judicial activism are trying to defend representative government against the violence being done to it by judges who have turned constitutional law into a game of how-much-can-I-get-away-with, in the guise of *interpreting* the Constitution.

Last month, the Supreme Court struck down the laws of 18 states allowing the execution of minors. Justice Anthony Kennedy had the audacity write that in interpreting the Constitution, it was entirely proper to “acknowledge the overwhelming weight of international opinion against the death penalty” – as if the Founding Fathers intended their words to be informed by the views of Frenchmen and Germans.

Four days earlier, California Superior Court Judge Richard Kramer threw out a state law restricting marriage to a man and a woman (enacted by referendum), on the grounds that, “It appears that no rational purpose exists for limiting marriage ... to opposite sex partners.” Kramer didn’t even attempt to frame a constitutional argument. In essence, what he said was: This doesn’t make sense to me. Therefore, I’m going to nullify the will of 61.4% of voters.

The clearest example of judicial juggling to arrive at a predetermined result is Justice Sandra Day O’Connor’s position in

two Supreme Court sodomy cases. In *Bowers v. Hardwick* (1986), O'Connor sided with the majority in upholding the constitutionality of Georgia's anti-sodomy law. In *Lawrence v. Texas* (2003), she went with the majority again – this time striking down a nearly identical Texas law.

The Constitution didn't change in the intervening 17 years. Neither did the justice's understanding of the Constitution. (Does her 2003 vote suggest that she was incapable of reading the First Amendment in 1986?) What changed was O'Connor's attitude toward homosexuality – which she then read into the Constitution to arrive at the desired conclusion.

For Schumer and company, the courts are a giant piñata. Liberals strike it, and out fall abortion on demand, a constitutional “right” to sodomy, rights for illegal aliens and foreign terrorist suspects, racial preferences, limitation of the death penalty and (at the appellate court level) a prohibition on display of the Ten Commandments and God in the Pledge of Allegiance. One more good, hard whack, at the right time, and gay marriage will magically pop out.

Democrats won't debate judicial activism because they can't debate it – because what judges are doing to the Constitution (to liberal approbation) is indefensible. So they resort to a smear campaign to silence swelling demands for judicial reform.

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