

CAPITOL REPORT
Senator Luann Ridgeway
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Supreme Court Invalidates Death Penalty

Here's a quiz for you. In our system of government, what is the more proper role of judges?

- A) To make policy decisions about what the law should be.
- B) To decide whether a law is constitutional.

If you answered "B," you are correct. If you answered "A," you are wrong, wrong, wrong.

In our constitutional form of government, the power to decide policy rests with the elected representatives of the people in the House and Senate. In other words, the Constitution says that the House and Senate decide what the law should be. They set policy. The judges are supposed to decide if a law has been violated, decide what a law means, how it should be interpreted or decide whether a law is constitutional. They are not supposed to decide policy. They are not supposed to decide what the law should be.

But, the United States Supreme Court doesn't agree with this. They want to set policy and tell you how to interpret it. Furthermore, they want to tell you why their way is more constitutional than that of the elected representatives of the people.

What a sweet deal for them. We might as well fire the House and Senate. We could also get rid of the Governors and the President. We could just be ruled by the appointed Supreme Court judges. They are appointed for life with no means for the people to hold them accountable.

So what has me so upset?

Let me tell you the story of a Missouri woman. She was in her mid-40s. She was minding her own business until she had the misfortune of encountering a young man who was just shy of his 18th birthday. He bound her in hog-tie fashion. He covered her eyes and mouth with duct tape; he threw her in the back of his car. He took her to a bridge

over the Meramac River where he threw her over the edge to her death. He later bragged that no one could really do anything to him because he was a juvenile.

I was in the Missouri House when we, as the elected representatives of the people, revised our juvenile code. We spent hours debating when it was appropriate to certify juveniles for trial as adults. We spent even more hours debating under what circumstances it was appropriate to impose the death penalty on a juvenile. We reached a bipartisan consensus and the legislation passed.

Given the horrific facts of the murder described above, a Cape Girardeau jury decided that the young man had earned the death penalty. But the United States Supreme Court disagrees. They decided that no elected representative of the people and no jury of the people could ever again decide whether any crime committed by a juvenile should be subject to the death penalty. They decided that the death penalty for any juvenile violates the 8th Amendment to the U.S. Constitution providing for no “cruel and unusual punishment.”

Did they reach this decision based on some other U.S. court case that paved the way for such an interpretation? No. Did they reach this decision based on other state court decisions? No. Was this decision based on any other American case law or statute? No!

As unbelievable as it may seem, France, Germany, China, and the opinion of the international community had everything to do with the United States Supreme Court’s decision. Precedent from other U.S. federal or state court decisions had little or nothing to do with the outcome.

These 12 judges who were not elected, who reside in Washington D.C., who are appointed for life and who will never be accountable to the voters of Missouri have decided what the policy should be for not only Missouri, but every state in the union, should be. They are passing laws, or more accurately repealing laws, from the bench.

Am I saying that it is right or wrong to repeal this death penalty for juveniles (even if the juvenile is only months or days away from their 18th birthday)? This isn’t my point. The point is this: The U.S. Supreme Court has stepped outside their constitutional duties in two ways. First, the court failed to rely on any American precedent in reaching their decision. Second, the court supplanted their sense of policy in place of the policy decision of the elected representatives of the people.

Activist judges who step outside their constitutional boundaries cause our form of government to get out of balance. We are not a people who take kindly to being ruled by non-accountable, unelected lifetime appointees.

What can we do? As to the U.S. Supreme Court, not much. However, President Bush has multiple federal court appointees awaiting approval of the U.S. Senate. These judges are more conservative and not as prone to replace their judgment for the policy decisions of the elected representatives of the people. However, a minority of U.S. Senators is

blocking a full vote of the entire Senate. If a full vote were allowed, the judicial nominees would be approved. The U.S. Senate is discussing a means to end this blockade. Currently a super majority of senators is necessary to proceed with judicial appointments. The senators are considering defining their rules so that only a simple majority of senators is necessary to proceed with a judicial appointment. Liberals in Congress have stalled these appointments too long. Take the time to call or write your U.S. Senators and let them know that you support them in allowing a simple majority vote of the U.S. Senate to prevail in appointing federal court judges.

As to state court judges, make sure you know something about them prior to voting to retain them. You can find information about judges from the following source:

- <http://www.mobar.org/judges04/>

If you have any questions about this or any other matter, please do not hesitate to contact me.

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