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High Court Bans Death Penalty for Child Rapists

Last week this column discussed a recent decision by the U.S. Supreme Court, recognizing the right outlined in the Constitution of the people to bear arms for personal defense. The same week as this important decision was handed down, the Court also issued a ruling that bars states from applying the death penalty in child rape cases, dealing a blow to efforts to protect our children to the best of our ability and punish the vilest of criminals.

These decisions could not have been more different in their reasoning and in their result. The opinion upholding the right to bear arms was based on careful study of the text of the Constitution and the intent of our founding fathers. The decision to strike a Louisiana law allowing for the execution of a man who violently raped his own 8-year-old step-daughter was based on “evolving standards of decency” that the Court seemed to pluck from the air to justify their ruling.

In its decision the Supreme Court offered twisted bits of logic to explain why it decided to strike the law of our sister state of Louisiana. On the one hand, they pointed to the fact that the majority of the 50 states do not presently have laws on their books imposing the death penalty for child rape as evidence of a lack of a national consensus on the issue. The irony of this reasoning is that in many cases it was the Court’s own ruling in a 1977 case banning the death penalty for the rape of an adult, and what amounted to a Court imposed moratorium on the death penalty that stretched across several years in the 1960’s and 1970’s, that put a damper on efforts by the states to expand this penalty to one of the most heinous crimes imaginable — child rape. And despite the Court’s own muddying of the water on this issue, efforts were still underway across the nation (including in Missouri) to impose the death penalty on those who would dare rape an innocent child — a fact that seemed to be of little consequence to the five jurists who gave us this unfortunate decision.

In its opinion, the Court engages in remarkable legal gymnastics to attempt to bolster its declaration that American society no longer approves of executing child rapists. In reality, the Court needed to do nothing more than what courts are supposed to do — decide matters of law and leave public policy decisions to Congress and the elected legislatures of the 50 states. The founders of the United States created the perfect barometer for gauging the opinion of the American people — elected legislators and a jury of one’s peers.

While five left-leaning members of the U.S. Supreme Court may find the execution of those who rape little children to be repugnant, I am confident a majority of Missourians feel that the crime itself is onerous enough to warrant the ultimate penalty a government can impose. By its ill-advised venture into the public policy arena, the Court overstepped its bounds and replaced a thoughtful public debate on this issue with an edict that forecloses any further discussion.

This past legislative session, the Senate Judiciary Committee, which I chair, heard and passed a bill that would have allowed prosecutors to seek the death penalty for child rape. However, the Legislature realized that it would all be for nothing if the Supreme Court struck down the Louisiana law, which they have now done.

In both of these recent rulings (gun rights and striking the child rape law), the Court was split 5 to 4, showing just how delicate the balance is on the Supreme Court. With a Court this closely divided, it can tilt dramatically from one day to the next. Let us hope that future decisions will demonstrate respect for the text of the Constitution and the original intent of its framers, and will avoid unfortunate forays into the personal opinions of those justices who have been given this position of public trust.

If you have any comments or questions about this week's column or any other matter involving state government, please do not hesitate to contact me. You can reach my office by e-mail at matt_bartle@senate.mo.gov or by phone at (888) 711-9278. My web address is <http://www.senate.mo.gov/bartle>.

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