

August 2, 2015

Presidents and SCOTUS

The President had won his second term re-election by a landslide, but in the midst of his celebration, he was troubled. Congress and the media had cooperated with him for the last four years, but the Supreme Court was a potential obstacle in his second term. Four of the nine were against all of his programs, and recently, Justice Roberts had been the deciding vote in ruling that a pro labor law was unconstitutional. He had come to believe that Justice Roberts was an ally.

It was not Chief Justice John Roberts, but Justice Owen Roberts, and the year was 1936. FDR had just won in the second biggest electoral vote landslide in history, only surpassed in the election of 1820, when James Monroe was unopposed. FDR thought the Supreme Court might derail the New Deal. It was in June of 1936 when the Supreme Court overruled the state of New York in the *Tipaldo* case. The case involved minimum wages for women and children, and Roosevelt felt that his whole New Deal was in jeopardy. He was barely into his second term when he concocted a plan to expand the court. Justice Roberts, at age 60, was the youngest member among the nine. He asked Congress for the authorization to appoint a new judge to the court for any judge who was over 70 years old, and didn't retire. If nobody retired, the court could have had as many as fifteen members.

The court packing had wide support in the media, but at the end of March, before the scheme was made public, Justice Roberts flipped - it must run in the family - and by a 5-4 margin in a case similar to the *Tipaldo* case, they ruled that a hotel in Wenatchee, Washington must pay a chambermaid back wages. Justice Roberts was appointed by Herbert Hoover, and like Anthony Kennedy of the present court he was known as a "swing vote." Subsequent to the *Tipaldo* case, he had decided that the New Deal was indeed constitutional. During the next two weeks the court - all by a 5-4 margin - ruled on several cases that were pro New Deal. The court expansion was not needed, and it died a natural death. FDR eventually appointed eight Justices.

About ten years ago I, with about 150 others, was invited to the University Club in New York for a closed door - no media - speech by Justice Antonin Scalia. Among other things, Judge Scalia said that there were members on the court who would gladly legislate on issues that Congress was too chicken to take up. For example, he explained that he couldn't find one mention of abortion in the constitution. It was never any truer than now. Congress is doing little, and the Supreme Court has become a "super" legislature, making laws.

The importance of electing Republican Presidents so they can make Supreme Court appointments cannot be minimized, but Democrats do a better job of appointing those with the same agendas as the Democratic Party. Democratic Presidents dating back to FDR have rarely appointed anything but ideologues with liberal agendas. (JFK appointee, Byron "Whizzer" White was an exception.)

President Eisenhower was quoted as saying the appointment of Earl Warren was the biggest mistake he made in his presidency, and who can forget President George H.W. Bush's appointment of ultra-liberal David Souter ... on the recommendation of his chief of staff John Sununu.

The division of the modern court reflects the division of the nation. Our culture is under attack from within. More specifically, Christianity is under attack. Recently, I watched a video of a message, titled "We Will Not Bow Down" by John MacArthur, of Grace Community Church in Los Angeles. He said, "The two greatest attacks of terror on America were perpetrated by the Supreme Court. Not by any Muslim, but by the Supreme Court of the United States."

Since the Roe v Wade decision in 1973, it is estimated that 55 million babies have been aborted. If you have any doubt about those babies being human beings, the videos of Planned Parenthood doctors selling body parts ought to convince you otherwise. It is estimated that Hitler killed 11 million civilians, including 6 million Jews. Is our nation as evil as Nazi Germany?

Roe v Wade was a 7-2 decision, and 5 of the 9 on that court were Republican appointments, and 4 voted with the majority. Nixon appointee, Harry Blackmun wrote the majority opinion. The aforementioned Byron White wrote the dissenting opinion, and he was joined in the minority by William Rehnquist - Nixon appointee - who was later the Chief Justice.

Republican appointments outnumber Democratic appointments 5-4, on the present Court that made recent the re-definition of marriage decision, and with that decision the war on our Christian culture is seemingly lost. Any preacher who says that sex outside of marriage - heterosexual or homosexual - is sin, is accused of spewing hate speech. There are already rumblings about taking tax-free status away from churches that adhere to the Bible. Meanwhile, there is an "emerging" church that has redefined sin, and they don't talk about the judgement of God. Some of those churches are among the largest in the U.S. Who they are is a subject for a later time.

When we saw how bad Obama was, we said we have to have a Republican majority in the House, and when we got that we said the House can't work with the Senate, and we have to have a majority in the Senate, and we got that. I can't tell a significant difference between the Mitch McConnell Senate and the Harry Reid Senate. But if we can just elect a Republican President....