



# THE COMMUNITY PAGE

## Get involved and informed in judicial elections!

One of the founding fathers' arguments for the new Constitution in the late 1700s was that the judiciary would be the "weakest" branch of government. In two centuries, the weakest branch has come to dominate the American political scene because judges have taken from the people control of the most significant issues that affect our culture, communities, and families.

Most Americans, however, are not alarmed by this loss of liberty because they do not understand the Constitution or the American system of government.

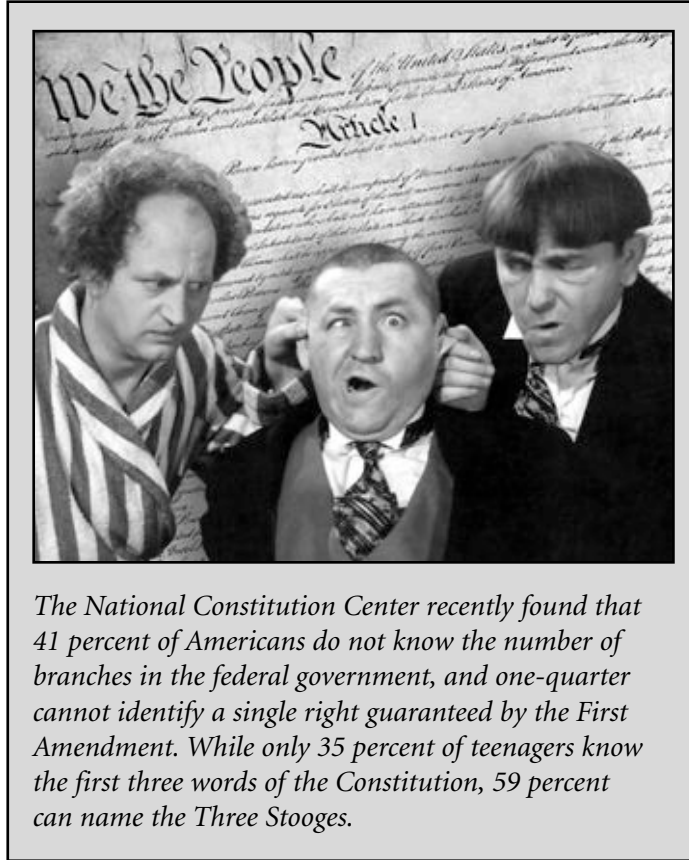
### Interpreting the Law, Not Writing It

A judge's most important task is interpreting the law. Since the law (whether a statute, a regulation, or the Constitution) already exists, interpreting it is simply determining what it means. A restrained judge believes that the meaning already exists, that the meaning came from the legislature, which enacted those words into law in the first place, and the judge's job is to find it. Activist judges, in contrast, pursue their own agendas and believe they can give those words any meaning they choose. A restrained judge takes the law as he finds it, while the activist judge believes he can make it up as he goes along, usually as a way of reaching the results he wants.

*The motivation for judges to promote and establish their will on society has become so strong that the fair, honest, and consistent interpretation and application of precedents and doctrines can no longer be taken for granted.*

Judges have the power to either preserve or erode our right to be governed by our democratically elected representatives. Since the 1960s, the judicial branch has been increasingly infiltrated by liberal activists intent on making, rather than merely interpreting, law. Activist judges have undermined Americans' right to be governed by their elected officials. This has been especially true in the arena of social policy, where matters of great concern like abortion, school prayer, and the definition of marriage have been taken out of the purview of the elected branches of government.

Unfortunately, we have seen countless examples of legislatures, at both the state and federal levels of government, acquiescing to the judiciary's power grab. The original idea behind the founding fathers' concept of checks and balances was to ensure that one branch of the government did not overrun the others, but in too many instances legislators have been willing to allow the judiciary to make the tough calls. This



*The National Constitution Center recently found that 41 percent of Americans do not know the number of branches in the federal government, and one-quarter cannot identify a single right guaranteed by the First Amendment. While only 35 percent of teenagers know the first three words of the Constitution, 59 percent can name the Three Stooges.*

arrangement attracts the activists because they can impose their will on the people through only a few votes. Mustering a majority of both houses of the Idaho Legislature or the U.S. Congress is a much more difficult task. Legislators benefit from allowing the judiciary to usurp their authority so as to avoid making difficult, politically polarizing decisions.

Politicians are only too happy not to have to deal with "divisive" issues such as abortion and gay rights. If the politicians don't have to make the tough calls, the voters are less likely to become unhappy with them and the likelihood that they will perpetuate their terms in office is increased. In the end, the activist judges are happy, the legislators feign outrage at the judiciary, and the voters don't hold their elected representatives accountable because "it's not their fault."

We, the people, are certainly empowered to hold judges to account for their deeds, or misdeeds, on the bench, but the avenues for taking such action are usually seen as too drastic or difficult to make them politically tenable. Consequently, we are slowly but surely becoming governed by largely unaccountable judges.

### Activist or Incompetent: Outcome the Same

Every Citizen has the expectation that whether they are involved in a civil or business dispute, or criminal court action, due process of law will be consistently applied to allow for the whole truth to be determined and justice achieved. Rich man, poor man, black or white, justice is supposedly blind as a respecter of persons and balanced in favor of truth and equity. However, the record is replete with examples of bad outcomes for those who could not afford to pay for "justice." History is also loaded with instances

where, despite facts in evidence or matters of law, judges have denied justice through either activism or incompetence. Especially onerous are disparate sentencing practices where, for identical infractions, the socially prominent and well-to-do receive lighter sentences than the common man. Unfortunately, whichever of the factors are to blame, the outcome is the same. Justice is denied when judges, be they activists or incompetent, are found lacking.

Idaho's founders understood the vagaries of achieving justice when they instituted the practice of electing judges. For instance, every four years district judges must stand for election by voters of the counties that make up the various judicial districts. These are non-partisan elections, held in conjunction with the partisan May primaries for county or state-wide offices and legislative seats. As such, Idahoans have a means to hold judges accountable for their actions and reward them according to their application of the principles of justice.

*Too often, without first-hand exposure to a denial of justice, most voters are unaware of the judicial worthiness of incumbents who are very likely running unopposed for a judicial position. Unfortunately, ignorance breeds injustice.*

One justice of the Idaho Supreme Court and one Appellate Court judge are running unopposed to succeed themselves. Statewide, all 39 incumbent district judges are running to retain their current seats. Two district judges are being challenged. Thirty-seven of these judges must be doing something right to avoid opposition. They are probably worthy of our vote. However, intense scrutiny should be placed on the campaigns to succeed Judges John T. Mitchell of Coeur d'Alene in District One and James C. Herndon of Blackfoot in District Seven. Herndon is being challenged by Blackfoot attorneys Darren B. Simpson and DaLon Esplin. District Seven consists of Bingham, Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Lemhi, Madison, and Teton counties.

After May 23, 2006, people who walk into the courtroom will have to live with that decision for the next four years. If there is ever a time to become informed on the judge's record and philosophy, now is that time!

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