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Written by **Selwyn Duke** on April 5, 2017

Rogue Judges Claim "LGBT" Discrimination Protected by Civil Rights Law

In another example of judges attempting to make law, a Chicago federal appeals court ruled Tuesday that central-government civil-rights legislation says something it doesn't — that it prohibits job discrimination against lesbian, homosexual, bisexual, and "transgender" employees.

Writes NBC News, "The decision, from the Seventh Circuit Court of Appeals in Chicago said 'discrimination on the basis of sexual orientation is a form of sex discrimination.'"

Sex=sexual orientation? Can a man now enter a women's athletic competition if he says that, like the other competitors (well, most of them, anyway), he's attracted to men? Apparently, these judges aren't big on word definitions.

NBC continues, "Federal law forbids workplace discrimination on the basis of race, color, religion, sex, or national origin, but it does not…mention sexual orientation, and the U.S. Supreme Court has never ruled on the issue."

"But the appeals court, in an 8-3 decision, said 'it would require considerable calisthenics to remove the 'sex' from 'sexual orientation.'"

Actually, it required incredible intellectual calisthenics to put it in there.

Obviously, "sex" in the civil-rights law refers to the biological reality of being male or female, not to a lustful inclination or activity. Conflating these two things does mean the Seventh Circuit managed to remove something else, however: "judge" from judgment.

The case before the usurpative court involved part-time professor Kimberly Hively, who claimed she was denied a full-time post at Ivy Tech Community College in South Bend, Indiana, because she's a lesbian.

The Hively case majority opinion was written by Chief Judge Diane Wood and stated, among other things, that the decision was based on "the common-sense reality that it is actually impossible to discriminate on the basis of sexual orientation without discriminating on the basis of sex."

This only proves that common sense is indeed very uncommon. If you refuse to hire people who exhibit same-sex attraction — *regardless* of whether they're male or female — you've just done the impossible (according to "Judge" Diane Wood).

Some actual common sense was expressed by Judge Diane Sykes, who wrote the dissenting opinion. She said the ruling "was the equivalent of 'a statutory amendment courtesy of unelected judges,' resulting in 'the circumvention of the legislative process by which the people govern themselves,'" related NBC.

Interestingly, this was tacitly acknowledged, in a Freudian slip kind of way, by Greg Nevins of the LGBT

rights group Lambda Legal, which represented Hively. Hailing the court's irrationality, he said, "Federal law is catching up to public opinion: 90 percent of Americans already believe that LGBT employees should be valued for how well they do their jobs, not who they love or who they are."

It's natural here for people to get distracted by the public-opinion claim. But the more striking comment by Nevins is, "Federal law is catching up…," which implies that judges can, somehow, make law. In reality, only the legislature has that power, and the judges' opinion did nothing to change the text or intent of federal civil-rights legislation.

As to this, its text says nothing about "sexual orientation," and equating this with "sex" is to confuse what you like with what you are. As for intent, it's preposterous to think legislators decades ago — when homosexuality was still closeted — sought to offer those practicing it special civil-rights protections.

How could judges render such a stupid opinion? It's not for lack of intelligence, but for want of honor, integrity, and sense of duty.

Instead of looking at the facts of the case and the law and drawing the proper conclusion, these rogue black-robes begin with the conclusion (their desired outcome) and work back from there. Of course, just as if you insist a car is a boat and then seek to explain how such a conclusion is drawn, this results in bizarre lines of reasoning.

This judicial malfeasance is nothing new, but is worsening with time. Consider the 2015 *Obergefell v. Hodges* faux-marriage opinion; it was so patently unconstitutional that late dissenting justice Antonin Scalia wrote that it lacked "even a thin veneer of law" and called the Court a "threat to American democracy."

Now we see how the courts are a threat to America's physical well-being itself, as they've outrageously claimed President Trump doesn't have the constitutional authority to halt immigration from terrorist-spawning nations — even though they'd always recognized such executive power in the past. Again, it's conclusion first (in this case, "We hate Trump's guts, so we say 'Nay, nay'"), and constitutional contortions later as they twist reality into a pretzel.

What's tragic is that the courts could easily be bent back into shape were it not for congressional cowardice and widespread ignorance. First, Congress has the power under the Constitution's Article III to eliminate any and every federal court, except for the Supreme Court. A good start would be to make the Seventh Circuit go bye-bye, followed by the Ninth. If judges knew violating the Constitution and tyrannically imposing their will could mean their jobs, they'd mind their p's and q's.

Article III also grants Congress the power to limit the appellate jurisdiction of the SCOTUS; meaning, it could limit the Court's ability to hear cases brought up through lower courts (example: Congress could have prevented the SCOTUS from being able to hear marriage cases, and then *Obergefell* never would have happened).

Why is Congress derelict in its duty? Because doing otherwise would mean taking a real stand on contentious issues and suffering possible election-time blowback. Politicians would rather posture, huff and puff about judicial overreach and then throw up their hands and say, "We tried, but the courts have ruled! It's the law!" Cowards.

This is why a better solution to judge-born tyranny lies in eliminating judicial supremacy itself. "But wait, Duke," some will say, "This requires a constitutional amendment." Actually, no.

Judicial supremacy *isn't* in the Constitution.

As I wrote in February:

> Rather, this "power" was declared by the courts themselves, most notably in the 1803 *Marbury v. Madison* decision.
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> That's right: the Supreme Court gave the Supreme Court the supreme power to have the final say on laws' meaning.
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> It's a great con if you can pull it off.

The point is that the judiciary enjoys this power at the *executive branch's pleasure.* As soon as the latter says, to paraphrase Andrew Jackson, "The courts have made their decision; now let them enforce it," that power goes bye-bye.

And if we want to say hello to freedom, this is a must. Thomas Jefferson correctly warned that accepting judicial supremacy would make the Constitution a *felo de se,* an "act of suicide." He explained why in 1820, writing that "to consider the judges as the ultimate arbiters of all constitutional questions" is "a very dangerous doctrine indeed and one which would place us under the despotism of an Oligarchy."

No doubt. Consider that James Madison, the "Father of the Constitution," once said that if the executive, legislative, and judicial powers were all in one entity's hands, you had tyranny. Well, as Dr. Alan Keyes explained in 2005, what do the courts possess today?

They have their judicial power. If they can say what law means — in contravention of the legislators' original intent (e.g., "sexual orientation"="sex") and what lawmakers may even say at the moment — and if the legislature must abide by their decision, they have arrogated to themselves the legislative power. And if they can tell the president that he cannot enforce a given law or he must execute a certain action, then they've arrogated to themselves the executive power as well.

Result: You have the executive, legislative, and judicial powers in the hands of one party — the courts. You have tyranny.

Courts can neither make law nor break law. But they've been doing both, and it's high time to break up the judicial oligarchy. For the rule of law cannot survive the rule of lawyers.