tional privacy" that would permit it to exclude as members and adult leaders persons who do not meet its criteria or share its values?

Who could possibly be opposed to the Boy Scouts, you might ask, and what type of controversial values does the organization stand for? Its long-standing values (as old as the organization itself), and the conflict they supposedly present to California's "non-discrimination" laws, provide a sad commentary on our secularized, politically-correct culture and our legal system's willingness to sacrifice the interests of the majority to those of an aggressive and destructive minority.

The Boy Scouts, you see, are for boys. (This unremarkable fact has spawned a lawsuit by a girl who was excluded for that reason, which is also now pending before the state high court.) More fundamentally, the Boy Scouts embrace as values (among other things) devotion to God and adherence to traditional morality. Although the Boy Scouts are non-denominational, and not even an exclusively Christian group, the organization promotes religious faith and opposes homosexuality. As a condition of membership, Scouts must literally pledge to honor these values, and adult leaders must exemplify them. The collision between the Boy Scouts' values and those reflected in our modern culture (the increasingly wide gap that prompts many parents to participate in Scouting) occurs when atheist children (or, more accurately, the children of atheist parents) desire to belong to the Boy Scouts without taking the "Scout Oath," and when adult homosexuals desire to be adult leaders notwithstanding the Boy Scouts' objection to homosexuality.

WHO PREVAILS in this conflict? The question is not a difficult one. In other states and in the federal courts, the Boy Scouts have won, and California should not be any different. But given the current direction of the California Supreme Court, don't count on it. Commentators and court watchers across the political spectrum are beginning to agree that Chief Justice Ron George is steering the court to the left (or, in the code

# WHAT YOU HAVEN'T BEEN TOLD ABOUT GUN CONTROL

By WILLIAM E. SARACINO

*Inspired by the even more than usually ill-informed, not to say hysterical, debates on repealing the Second Amendment that characterized the just-concluded legislative session, this new regular feature adopts the novel approach of considering Facts about guns, gun control, and gun owners.*

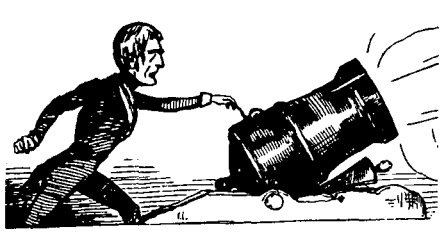
### Vetoing SB 500

Governor Wilson's veto of SB 500, the so called "Saturday Night Special" gun bill, has received much flack from the usual, uninformed sources. As a relief from the tedium of liberal whining, consider these facts. (Imagine such a thing in political dialogue!) The bill's sponsors said it would eliminate "junk guns" and was needed because such guns were "dangerous to their users," "prone to misfire and malfunction," and were crooks' "weapon of choice."

*William E. Saracino is executive director of Gunowners of California.*

### User safety

There has never been a successful prosecution of the manufacturer of any of these guns based on malfunction, misfire, explosion, or any product liability consumer safety issue. If such suits were viable, would California's zillions of blood-sucking trial attorneys be silent? No indeed. Were these guns dangerous to their users as claimed, trial attorneys would be lined up for miles to sue. They aren't.



### The "weapon of choice"

According to the California Department of Justice, short barreled hand guns were used in 13 percent of all violent crimes statewide. In the city of Los Angeles, hardly a bastion of law and order, these guns were used in only 3 percent of violent crimes.

And, of the many millions of such handguns in private hands in California, less than 3 tenths of one percent (that's 0.03%) are ever used in any type of crime.

Governor Wilson used facts, not emotion, in vetoing this frontal assault on the Bill of Rights. Well done, Pete. CPR

Paid for by Legal Affairs Council

# Tired of federal judges throwing out California ballot initiatives?

(Prop 187, Prop 209 and now term limits for politicians)

***Write to U.S. Senator Trent Lott, Majority Leader, urge a "NO" vote on Clinton's U.S. District Court nominee, Margaret Morrow***

Judicial Selection Monitoring Project

A project of the Free Congress Foundation's Center for Law & Democracy,

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Students for America
Texas Public Policy Foundation
*Traditional Values Coalition*
United Seniors Assoc.
U.S. Business & Industrial Council

An open letter to Senator Trent Lott, Majority Leader
(we urge readers to send this letter with your own cover letter to Senator Trent Lott, SR-487 Russell Senate Office Bldg., Washington, DC 20510-2403

Dear Senator Lott;

We strongly oppose the nomination of Margaret Morrow to the U.S. District Court for one or more of the following reasons.

First, her activities and writings reveal aggressive advocacy of liberal political causes and the view that courts and the law can be used to effect political and social change. This combination foretells liberal judicial activism on the bench. She wants bar associations to take "a strong active voice" on political issues and has written that he law is "on the cutting edge of social thought" and "the vehicle through which we ease the transition from the rules which have been to the rules which are to be." She opposes any restrictions on blatantly political litigation by the Legal Services Corporation.

Second, as Senator Charles Grassley has said, Morrow's "judgement and candor are under a great deal of question." Morrow twice withheld nearly 40 articles, reports and speeches from the Senate Judiciary Committee, including those clearly reflecting her activist approach to the law. She refused to answer Senators' legitimate questions following her hearing, and eventually provided answers that Senator Grassley called "false and misleading."

Finally, and perhaps most important, Americans now know what Morrow's wholesale condemnation of direct democracy will mean if she becomes a federal judge. She has written that "any real hope of intelligent voting" by the people on ballot measures is only "ephemeral." On October 8, the U.S. Court of Appeals in California implemented that same view and swept aside an initiative enacted by Californians because two judges thought the voters did not understand what they were doing. It is clear that Morrow will be yet another judge more than willing to substitute her own elitist judgements for the will of the people.

A nominee who believes the courts can be used to enact liberal political and social policy, whose "judgement and candor are under a great deal of question," and who will undermine democracy, has no place on the federal bench.

Sincerely,

Senator Ray Haynes
In behalf of Legal Affairs Council and the
Judicial Selection Monitoring Project

Donations urgently needed to help pay for this work. Paid for by Legal Affairs Council, Richard A. Delgaudio, President, Freedom Center, 3554 Chain Bridge Road, Suite 301, Fairfax, VA 22030.

We also urge readers to write a letter of support for H.R. 1170, which would require three judges in the future to strike down ballot initiatives. Introduced by Congressman Sonny Bono, 324 Cannon House Office Bldg., Washington, DC 20515-0544.

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liberals use, to the "center," since they deny that there is a "left"). Gerald Uelmen, who, when he is not representing O.J. Simpson, is the dean of Santa Clara University School of Law, says that "[r]arely do we see California Supreme Court justices dramatically shift their positions and alter the direction of the court. But that's exactly what has happened under the leadership of [Ron George]." A profile of the "George court's" first year in the September 1997 issue of the *California Bar Journal,* the official publication of the state Bar of California, confirms that "George and [Associate Justice Kathryn] Werdegar have emerged as moderates since [Chief Justice Malcolm] Lucas retired." The *California Bar Journal* article also cites *American Academy of Pediatrics v. Lungren* as evidence of "[t]he centrist shift of the George court," and, remarkably, applauds the 4-3 decision overturning California's parental consent statute as the "defining opinion" of the current court. The profile concludes with this chilling thought: "Every indication is that when Lucas retired, he took the conservative disposition of the court with him. If the current centrist [*sic*] trend continues, the coming year could redefine the character of a once conservative court." In other words, things are going to get *worse.* How?

To return to my opening theme, the California Supreme Court has before it two cases that could destroy the Boy Scouts (or even the concept of private association), one involving the atheist scenario *(Randall v. Orange County Council)* and one involving a homosexual adult leader *(Curran v. Mount Diablo Council).* The Supreme Court granted review in *Randall* and *Curran* on June 2, 1994, almost *three and one-half years ago.* The last brief was filed in December 1995, almost two years ago. Yet the cases have not yet been decided or even scheduled for oral argument. This delay represents an eternity in a simple civil case.

What are we to make of this? There are several possibilities. The simplest is that the judicial process is hopelessly slow and inefficient and that the interminable delay is merely routine. For example, the *Curran* case *began* with the expulsion of an avowed homosexual activist from the Boy Scouts in 1980 and has been bouncing around California's court system for *17 years.* The *Randall* case began in 1990 when twin sons of an atheist attorney were denied advancement in the Cub Scouts because they failed to complete the religion achievement requiring the boys to profess belief in God. A trial court, affirmed by the court of appeal, forced the Cub Scouts to allow the dissidents to continue in Scouting. Seven years later, the boys, now 16 (and apparently still atheists), are ready to receive the Eagle Scout rank, much to the Boy Scouts' chagrin.

The litigation in both cases has been marked by extraordinary delay, but the prolonged limbo in the California Supreme Court is particularly unusual. The *Curran* and *Randall* cases are the oldest civil cases on the court's docket. Why? The cases are not complex, so it is unlikely that the justices are unable to arrive at a consensus as to how the cases should be decided. The most recent decisions by the intermediate appellate courts in California — the *Merino* case in San Diego and the *Yeaw* case in Sacramento — ruled in favor of the Boy Scouts, as did the court of appeal in *Curran.* Since this makes the ruling against the Boy Scouts in *Randall* (over the eloquent dissent of Presiding Justice David Sills) an aberration, one would expect the Supreme Court to overturn *Randall* and affirm *Curran.* If this is what the Supreme Court intended to do, it could have decided the cases years ago.

MIGHT ANOTHER explanation account for the delay? An unmistakable inference emerges that a majority of the court intends to rule against the Boy Scouts, but is reluctant to face the political fallout such a decision would produce, especially in the wake of *Lungren,* prior to the November 1998 retention elections of Ron George and Justices Stanley Mosk, Janice Rogers Brown, and Ming W. Chin. If this suspicion is valid, the court will not set these cases for hearing until September 1998 (or later) so that the decision can be issued after the election. The Rose Bird Court played this game in 1978 with its *People v. Tanner* decision, striking down a popular "use a gun, go to prison" law. It appears Ron George and his "centrist" colleagues may have learned a few of her tricks.

As with the *Lungren* decision, look for Justice Stanley Mosk to dissent in *Curran* and *Randall,* as he did from a 1985 Rose Bird-era decision *(Isbister v. Boy's Club of Santa Cruz, Inc.)* that forced Boys Clubs to accept girls. Dissenting in *Isbister,* Mosk prophetically wrote: "[b]y protecting the freedom to base [private] associations on personal affinities, society promotes its pluralism, with all the values that connotes — values such as a diversity of views, a variety of ideas, and preservation of traditions." Alas, modern liberals wish to intrude into the most intimate parts of private life to suffocate diversity, to suppress ideas, and to extinguish traditions.

There is one way the Court could prove me wrong (and as the parent of a Cub Scout, I hope that I am wrong): It could set *Curran* and *Randall* for hearing in the next six months, ensuring that a decision would be issued in time to allow the voters to consider whether the justices deserve to be retained in November 1998. But I'm not holding my breath. CPR

# A little *constructive* critism, please

*An injection of competence and character, more than the jettisoning of tenure, is the cure for what ails the campus.*

WILLIAM R. ALLEN

EVERY INSTITUTION and profession is susceptible to fair criticism. One can fault much in the church, in Congress, and in the law, medicine, and gardening. And the realm of higher education, too, has its weaknesses and vulnerabilities.

The commonly-found problems and peccadilloes of colleges and universities include: perennial increase in tuition faster than the rate of inflation; lack of dispassionate professionalism in admitting students, specifying degree requirements, and hiring and promoting faculty; near-hysterical impatience, intolerance, and impropriety in public and private debate. But a recent book finds that the campus is *nothing* but "one of society's most outrageous and elaborate frauds." And the fault lies *wholly* on the self-centered and self-serving faculty.

It *is* true that the campus can be a haven of the inept, the lazy, the useless, even the subversive. It *is* true that overspecialized research on artificial topics of minutiae can be accorded excessive glamor while systematic teaching of truth is correspondingly denigrated.

Still, the purportedly apoplectic critic should add some things. One is that professors, like real people, vary in competence and accomplishment. The worst are parasites; but the best are impressive and even useful. As a university professor, I have tenure. Tenure provides job protection for teachers and scholars. UCLA could not fire me for any initiative short of seducing the dean's wife on the library steps at high noon.

Tenure, like other institutions and ground rules, is subject to abuse. And what is subject to abuse assuredly will be abused upon occasion. It has been said, with substantial justification, that tenure is for mediocrities: those who can well meet the competition of the academic market do not require assurance of employment. Indeed, the *more* able faculty can be injured by protection which is valuable mainly to the *less* able, partly because of the probable imposed trade-off of tenure in exchange for lower salaries for all faculty.

In any profession, the very good are outnumbered by the mediocre. Even with the tenure arrangement, the best people can be treated badly by the multitude of mediocrities; but without tenure the best — and the valuable but non-brilliant mavericks — may not survive at all. The pressures on faculty against which tenure is to provide protection are commonly supposed to come from the community: spiteful students, disgruntled parents, politicians on the make, sensationalist journalists. Such pressures do exist. But there is, in addition, danger from within the upper echelon of the school community: biased, belligerent faculty members and administrators who do not like conservatives — or liberals; who do not like Jews — or gentiles; who do not like virtually sole reliance on mathematical doodling in research papers — or substantial reliance on literary presentation.

Tenured security *does* weaken the relation between productivity and pay. But it weakens also the possible tyranny of the mediocre majority. The tool of tenure *can* be a device to saddle the school with favored faculty of little accomplishment or promise. It can also be a shield against personal and ideological perversion of the productive but unpopular scholar and teacher.

It is naive to suppose that the problems of universities as teaching-and-learning institutions are confined to slothful or inept faculty protected by tenure. It is true that you cannot learn what you do not study. And to learn much requires a resolution and a sense — a maturing professionalism, if you please — which does not well characterize the bulk of the college clientele.

NEITHER MAINTENANCE nor abolition of tenure, by itself, will save us. The quality of higher education and its value to the community turns on more than the arrangement of employment and job-security for the faculty. No structure of legalisms can be the ultimate determinant of how we individually look at the world, formulate our criteria and aspirations, and carry ourselves in our dealings with others, ourselves, and our work.

With or without tenure provisions, the life of the mind requires commitment and competence by teacher, student, *and* administrators who stay out of the way of scholars doing the real work of the school. Character outweighs institutional constitution. CPR

*William R. Allen, richly warrants the tenure he has long held in the UCLA Department of Economics.*