



New Jersey Supreme Court Rules Against Recall

On November 16, the Supreme Court of New Jersey held that a committee seeking to recall Senator Robert Menendez in advance of the end of his term may not proceed. In a 4-2 decision, the state's highest court ruled that a constitutional amendment passed in 1993 (along with state laws promulgated subsequently) violates the separation of powers as set forth in the both the state and national constitutions.



"The text and history of the Federal Constitution, as well as the principles of the democratic system it created, do not allow the states the power to recall U.S. Senators," the court's Chief Justice wrote in the majority opinion.

While Chief Justice Stuart Rabner's notion of the form of government established by the national constitution is shockingly erroneous (the document clearly forms and guarantees a republican form of government), he is correct in his assessment of the rights of the people to remove a representative from office once he or she has been duly elected.

The relevant articles of our national constitution anticipate only five means whereby the seat of a member of the legislative branch may be vacated: death, resignation, disqualification, expulsion, and the expiration of the term of office. There is no constitutional basis whereupon the right of the electorate to rescind their previously expressed will may be based. Elections are not golf and there is no provision for a mulligan, even if in spite of all your best intentions, your shot lands out of constitutional bounds.

In the case in New Jersey, Senator Menendez has done much during his term as a senator to cause his constituents to regret their decision. Menendez has repeatedly voted in favor of such unconstitutional programs as ObamaCare and cap and trade. He is apparently unaware of the limits placed by the Constitution (the same one he swore to preserve, protect, and defend) on the powers of Congress.

The recall committee predictably expressed dissatisfaction with the outcome. "The case has always been about free speech," said Daniel Silberstein, the attorney representing the committee at the appellate level. "The Supreme Court decision amounts to a content-based restriction on political speech. It is very, very, worrisome."

While Mr. Silberstein's frustration is understandable, his analysis of constitutional law is flawed. The speech of the people of the sovereign state of New Jersey was freely expressed in their election of Senator Menendez. In 2012, when his term has ended, they will have another opportunity to vent their frustration with his voting record and recall him from his post in Washington.

As the principals in this fiduciary relationship, the people of the Garden State may revoke the granting of their agency to Menendez at the time set forth in the employment contract — once every six years



Written by [Joe Wolverton, II, J.D.](#) on November 19, 2010

(with the exception of the occurrence of one of the events mentioned above).

There is strong Tea Party support for the recall of Senator Menendez, as well as for the appeal of Tuesday's decision. RoseAnn Salanitri, the founder of the Sussex County (New Jersey) Tea Party Patriots spoke for the committee members when she declared, "The recall committee sees this an opportunity to open the doors of recall for the entire nation because we fully intend to take this case to the U.S. Supreme Court."

Again, one appreciates the sincerity of Ms. Salanitri's convictions and all constitutionalists empathize with her feelings of deception. Mr. Menendez has betrayed the good people of New Jersey by advocating an appalling panoply of unconstitutional measures.

That said, Ms. Salanitri's (and the recall committee's) espousal of a tool of pure democracy bears the taint of irony. Most members of the multitude of Tea Party organizations are friends of the Constitution and understand the dangers posed to our republic by the slouch away from the government provided by our Founders and toward democracy, a form of government universally decried by our Founding Fathers. While their ends — ridding Congress of a man whose voting record consistently demonstrates unrepentant disregard for the restraints on his power placed by the Constitution — are noble and well formed, the means they have devised to achieve them are contrary to the very principles of good government they undoubtedly and rightly revere.

Attorneys representing Senator Menendez praised the court's favorable ruling. "We are pleased that the New Jersey Supreme Court decided this case correctly in holding that this tea party effort was clearly unconstitutional. We strongly believe that this is the end of the matter. There is no basis for further review as the U.S. Supreme Court is highly unlikely to take up an appeal of a decision in which the U.S. Constitution was upheld on clearly correct grounds."

It is dishearteningly when a man with a record so devoid of any respect for the Constitution successfully hides behind its sacred parchment. Robert Menendez is apparently concerned only with the Constitution's "clearly correct grounds" for behavior when his own political survival is at stake. Sadly, he demonstrates no such deference when it is merely the existence of our republic that is in peril.

Procedurally, the appellants (the review committee) have 90 days in which to file a petition with the Supreme Court requesting a hearing on the matter. They appear determined to pursue such a remedy despite the lack of constitutional support for their cause. Should the Supreme Court of the United States grant the recall committee's petition, there will likely be subsequent amicus briefs filed by an unlikely coalition of constitutionalists possessed of an accurate understanding of the core principles of our founding charter, and those who simply seek constitutional cover for their attack on our liberty.

Photo: Senate Banking Committee member Sen. Robert Menendez, D-N.J. speaks about his amendment to consider a bill entitled: Livable Communities Act of 2010, Aug. 3, 2010: AP Images



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