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Broken Inglis

A Republican congressman stands against the Pledge Protection Act.

By Ramesh Ponnuru

The Pledge Protection Act, a bill that would remove challenges to the constitutionality of the Pledge of Allegiance from the federal courts' jurisdiction, has long been a priority of House Republicans. They believe that it is necessary both to protect the pledge specifically and to strike a blow against the judicial usurpation of politics generally. In 2004, the bill passed the House with 247 votes. Only six Republicans voted no. But yesterday, the bill hit a bump in the road.

Several Republicans didn't show up for the House Judiciary Committee vote on the bill, and Republican congressman Bob Inglis of South Carolina voted against the bill. As a result, the committee vote on the bill was a 15-15 tie — which counts as defeat. Judiciary chairman James Sensenbrenner (R., Wisc.) wants the committee to reconsider the issue this afternoon at 2:30. If he prevails, the committee will almost certainly vote for the bill. Inglis wouldn't have to change his vote. But he would have to consent to allow the bill to be reconsidered, and so far he is refusing.

Inglis is willing to allow another vote only if the committee starts the debate on the bill anew, which would eat up hours that the committee may not have.

Yesterday, Inglis argued that the bill was a mistake because it transferred power from federal courts to state courts. If the federal courts can't hear challenges to the constitutionality of the pledge, state courts will. Inglis said that he feared the California supreme court more than he feared the federal courts.

But the supreme court of California cannot do anything that affects the pledge in South Carolina, whereas federal courts can. Besides, most state constitutions contain religious-freedom provisions that a state court, were it so inclined, could use to rule against the pledge. If it ruled that way, it is unlikely that the federal courts would do anything about it. Yet no state court has ruled against the pledge, while a federal court has.

Today, Inglis issued a press release making a different argument against the act. Now he argues that to remove an issue from the federal courts' purview would set a bad precedent. "A liberal congress might someday try to strip the courts of the right to hear cases claiming other constitutional claims — the right to protest at abortion clinics or the right to distribute Gospel tracts, for example."

Neither example does much to advance Inglis's argument. The federal courts have not been notably protective of anti-abortion protestors, so his example wouldn't cause them to lose any ground they have. And it's actually rather hard to imagine an elected Congress restricting the right to distribute Gospel tracts. But Inglis's larger point, that Congress could use its power to limit the

courts' jurisdiction in unwise ways, is certainly true. But is the fact that a congressional power can be exercised unwisely a reason *never* to exercise that power? When I asked Inglis that question, he answered, Yes. Which seems unreasonable.

Inglis "believes that citizens deserve the full protection of the Constitution and a fully empowered federal court system to protect those rights." His mistake is to assume that citizens will have the full protection of the Constitution to the extent that federal courts are "fully empowered." To reduce the power of the federal courts reduces their ability both to protect the Constitution and to violate it. Which risk predominates — that the courts will be empowered to do wrong, or disempowered to do right — is a question of prudence that depends on the particular circumstances of the case.

I asked Inglis if he would ever vote to limit the federal courts' jurisdiction. "I can't see a scenario where I would do that," he answered. Judicial supremacism lingers on in some surprising places.
