

Desperate times call for desperate (debate) measures...by David Russell

by **Stephen Elliott-Buckley - Wednesday, January 11, 2006**

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I'm sorry, you'll do what?

I didn't quite do an all-out spit-take (I could never match the prowess of the late, great John Ritter on that front anyway) but I did nearly leap forward into the car in front of me.

Paul Martin announced (well, "announced" usually implies some sort of organized, well prepared policy initiative but nonetheless) that if re-elected, he would pass a bill prohibiting the federal use of Section 33 of the Charter of Rights and Freedoms, the so-called notwithstanding clause.

Talk about constitutional reform from the hip.

In twelve years of office, the Liberals have never, ever, expressed concern about the federal government's legal ability to make use of Section 33 to override a judicial decision made by the Supreme Court should the need arise. True, they've never used it but until now they gave no indication they wanted to eliminate their ability to make use of it.

Indeed, a bit of history is merited. It was the federal Liberals under the leadership of Pierre Trudeau who not only championed the Charter of Rights and Freedoms but included Section 33 at the behest of provincial premiers who refused to sign on to the deal without it (hmmm.... another case of Liberal political expediency? We'll do whatever it takes to get the votes we need?).

Conspiracy theorists may point to the fact that much of the Charter was penned by Martin's arch-nemesis Jean Chretien, then the Justice Minister, as yet another poke from Martin at his constant internecine rival and in ordinary circumstances I wouldn't put that sort of political shallowness beyond l'homme de LaSalle-Emard.

But last night's anti-notwithstanding position reeks of something else: sheer, unadulterated, pathetic desperation.

Notwithstanding the fact the notwithstanding clause could be abused by a Conservative (or Liberal or NDP or Marijuana Party) government, an act that would place limits on any section of the Charter of Rights and Freedoms, the single most powerful document in all of Canadian jurisprudence, needs not to be done without serious disciplined, research into the constitutional impact of such an amendment (which, by the way, could just as easily be un-amended by the next government).

Not to be drawn into a constitutional debate but Section 33 protects the Canadian people from extra-judicial decisions by an unrepresentative, unaccountable Supreme Court (appointed with no checks or balances by the Prime Minister). Its use is rare and should only ever be contemplated in the most serious

of cases.

Mr. Martin's position isn't based on serious debate (there has been none to date, at least no publicly). The Prime Minister's attack on the notwithstanding clause was nothing more than a feeble minded, desperate attempt to draw Stephen Harper into the same-sex marriage debate, despite Mr. Harper's pledge never to use Section 33 on that issue.

It was a shameful display of political gamesmanship. You don't amend the constitution because you're behind in the polls. You amend the constitution because it's the right thing to do; and when you can show us you've done your homework on this one, Prime Minister, then we can talk.