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Congress Can Right High Court's Errors

To the Editor:

The Rehnquist Court is threatening a major step backward. Almost 40 years ago, the Supreme Court ruled that those convicted in a state court could have full review of their Federal constitutional claims in a Federal court by the use of the ancient writ of habeas corpus. Not until then did state court criminal proceedings effectively become governed by the Federal Constitution.

The Rehnquist Court has been chipping away at that ruling and is preparing to wipe it out completely. Last December, the Court ordered lawyers in a case to be argued next month to brief the question whether Federal courts should defer to a state court's determination or make their own independent determination of claims of Federal constitutional violations. Deference to a state court means that Federal constitutional protections are finally determined by state court judges, who because of institutional pressures are often less sensitive to constitutional claims than Federal judges.

Lest it be thought that all this is relevant only to scruffy criminals not entitled to society's sympathy or concern, the 40-year-old decision to which I refer overruled the approach of the Leo Frank case decided in 1915. Frank, a young Jewish man operating a factory in Georgia, was tried and convicted of murder by a Georgia court and sentenced to death. Though the trial was a travesty, as recounted in the dissenting opinion of Justice Oliver Wendell Holmes, the majority of the Supreme Court deferred to the Georgia courts -- the procedure Chief Justice Rehnquist is trying to restore.

Incidentally, about five years ago, the Georgia Legislature acknowledged that Frank was not guilty. That did not help him much. After the Supreme Court sustained the death sentence, the Governor of Georgia, reacting to the unfairness of the trial, commuted the sentence to life imprisonment. A mob then stormed the jail where Frank was incarcerated, seized and lynched him.

Despite the assumption that the Supreme Court has the last word, that is not the case. Most of the backward-looking decisions by the Court involve interpretation of statutes, not constitutional determinations. Thus, Congress can overrule Supreme Court decisions, as it did in recent years in the Civil Rights Restoration Act of 1987 and the Civil Rights Act of 1991.

On habeas corpus, the House of Representatives passed a bill that continues existing law, but the Senate bill would go along with President Bush's proposal, which is essentially what Chief Justice Rehnquist seeks to achieve. The main point is that Congress -- not the Supreme Court -- has the last word. Thus, the people through their representatives can have impact.

If the Supreme Court continues to move backward, it is inviting a steady stream of corrective legislation. MORTON STAVIS President Center for Constitutional Rights New York, Feb. 14, 1992

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