



The Phyllis Schlafly Report

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Unpacking the Court

Even before the death of Ruth Bader Ginsburg created an opening for President Trump to place a third Justice on the nine-member Supreme Court, Democrats were planning to take control of the courts next year. Their dreams include “packing” the Supreme Court with a one-time infusion of six additional justices, as Franklin Roosevelt tried to do in 1937.

FDR’s court-packing plan failed when the president was rebuked by his own Democrat-controlled Congress. He was never able to push things through Congress after that, and struggled even to obtain public support for World War II until Japan attacked Pearl Harbor.

Kamala Harris is still smarting that she was unable to stop Brett Kavanaugh from joining the Court in 2018. Along with fellow Democrats on the Senate Judiciary Committee, Harris tried to derail the nomination with an unproven, absurd accusation of misconduct from 35 years earlier when the future justice was still in high school.

All Democrat-appointed justices on the Supreme Court have voted in lockstep in recent years, always in favor of entrenched liberal interest groups. They always hear petitions from Planned Parenthood and its allies, while turning down 99% of the petitions for review by other parties.

With the media on their side, the four Democrat-appointed Justices were able to forge a majority on several key issues by peeling off a Republican justice to join them, be it John Roberts or Neil Gorsuch. But that game will be over with confirmation of another Trump nominee to the Court.

Justice Ruth Bader Ginsburg died one day after Constitution Day, the 233rd anniversary of the day when Washington, Madison, and Hamilton completed their long summer of hammering out the structure of our government. Today that same Constitution is an obstacle to Biden-Harris as they seek to turn our Nation into a one-party state like California, which elected Kamala Harris as its senator.

Even before Ginsburg passed away, Democrats were clamoring for unconstitutional goals such as statehood for Washington, D.C., abolishing the Electoral College, and adding the Equal Rights Amendment to the Constitution

40 years after the deadline for its ratification expired. The Harris Administration, as Kamala referred to it in light of Biden’s declining mental capacity, needs a majority on the Supreme Court to achieve those goals.

D.C. Statehood, which Nancy Pelosi has already rammed through the House and could get through the Senate if Democrats win a majority there in November, violates at least two provisions in the Constitution. Rep. Tom Massie (R-KY) called this legislation “farcical” because it is so clearly unconstitutional, and this bad idea should be dead-on-arrival in the courts.

President Trump’s third nomination to the Supreme Court, which no first-term president has achieved in a half-century, will protect our Constitution and break the liberal influence over it. This achieves a long overdue result of unpacking the Court and freeing it from those who want to rewrite our laws, rather than applying the Constitution as they should.

Now with only three justices voting together for liberal causes and without the sympathetic pull toward the late Justice Ginsburg, the dynamic suddenly changes to a Court that will interpret the law like an impartial umpire, as it should. It becomes a new ballgame of calling balls and strikes, as Phyllis Schlafly wrote in her 2004 book *The Supremacists*.

Democrats are openly frustrated that their political base is not as energized by the importance of the Supreme Court as the conservative base is. Dating back to the notorious rulings of the Warren Court in the 1950s and 1960s, grassroots conservatives have long been aware of how much damage an activist court does, and how important it is to elect a president who appoints good judges.

Trump has accomplished more in his first term than prior Republican presidents achieved in two terms on this all-important issue. As others dithered about whether to fill the sudden vacancy left by RGB passing away, Trump acted boldly and decisively in declaring that he would fill it immediately.

With that masterstroke, it feels like 2016 again, as Trump steps on the accelerator while the media tries to catch up with him. Trump wiped away the tiresome

negative publicity about COVID-19, rioting, and California wildfires, and took charge in a breathtaking way.

The contrast between him and “Basement” Biden becomes clearer. Biden’s prior statements in favor of filling a vacancy in a presidential year and his refusal to identify whom he would name to the Supreme Court exposes him as the inept, bumbling two-facer that he is.

Biden himself has criticized the suggestion of packing the court which his Leftist supporters rush to now. It is time to unpack the High Court and end the control that the Left has had over it, and President Trump is keeping America great by doing so.

Judges on a Rampage Against Trump

While the nation’s attention is transfixed on the impending confirmation of a new Justice of the Supreme Court, lower court judges have been ruling almost daily against good policies of the Trump Administration and the states that voted for him in 2016. Democrat-appointed judges have issued sweeping injunctions on the census, the post office, the presidential election, state ballot requirements, asylum, the border wall, and even TikTok.

Imagine a football game where the rules about what constitutes a first down were changed during the contest. How silly and unfair it would be if in the second half a rule change were imposed to require only 5 yards rather than 10 to attain a first down.

Yet a flood of recent decisions by Obama-appointed judges are trying to change rules for the presidential election that is ongoing. Shockingly, more than 300 such lawsuits have been filed this year in 44 states, according to the COVID-Related Election Litigation Tracker.

Obama judges have arrogantly acted to suspend or override state laws that protect the security of ballots and prohibit accepting ballots after Election Day. A chaotic landscape of court decisions and emergency appeals have undermined an election process that has worked well for 232 years.

In Wisconsin, Arizona, Georgia, Louisiana, and South Carolina, Obama-appointed judges have ordered election officials to accept and count ballots that arrive after the deadline established by state law. The Wisconsin ruling was temporarily put on hold by the Seventh Circuit, but the South Carolina ruling was upheld by the Democrat-controlled Fourth Circuit.

These rulings fly in the face of the *Purcell* principle, which requires courts to refrain from disturbing the established procedures so close to an election. Judicial supremacy, by which judges pretend to be supreme over the other branches of government, is a pandemic now.

Federal courts have even interfered with the beneficial deal that President Trump brokered for the transfer of the popular TikTok app from the Chinese Communists to new American owners. The Administration correctly viewed Chinese control of TikTok as a threat to our national

security, yet a transaction which would have created a \$5 billion windfall for the American people has been disrupted by the federal judiciary.

Joe Biden promised to appoint a black female to the Supreme Court, and Stacey Abrams, the failed candidate for governor of Georgia, seems to be his leading choice. A Yale Law School graduate whose sister is an Obama-appointed federal judge, Abrams recently headed the \$10 million New Georgia Project that brought the Georgia lawsuit asking an Obama judge to overturn state laws that protect ballot security.

In South Carolina, Obama Judge J. Michelle Childs issued a 71-page opinion overturning several state laws, including the requirement of a witness signature for absentee ballots. The witness requirement was specifically relied on by Republican state legislators when they agreed to extend absentee ballots to all voters this year.

In Louisiana, Obama Judge Shelly Dick arbitrarily extended the deadlines for both early voting and mail-in voting. In Georgia, Obama Judge Eleanor Ross ordered election officials to accept and count mail-in ballots received three days after the election, despite a state law which requires all ballots to be received by Election Day.

In Arizona, Obama Judge Douglas Rayes ordered election officials to allow voters five days to cure a missing signature or other defect on their mail-in ballots, despite state law which requires all ballots to be completed by Election Day. In Wisconsin, Obama Judge William M. Conley ordered election officials to accept mail-in ballots received six days after the election, despite its state law forbidding that.

In Washington State, Obama Judge Stanley Bastian ordered the Postal Service to make multiple changes in its procedures, ostensibly to promote massive use of mail-in voting. Among other instructions, Judge Bastian wants post offices to treat election-related mail as first-class mail even if first-class postage wasn’t paid.

There are still plenty of Clinton judges engaging in activism, too. Texas had a reasonable plan to allow seniors at risk of Covid to use absentee ballots without excuse, but Clinton-appointed Judge Fred Biery absurdly ruled that it violated the 26th amendment to not allow the same accommodation to 18-year-old voters; the Fifth Circuit reversed him.

Politics abhors a vacuum, and Democrat-appointed judges are wasting no time filling up the judicial pipeline with activist rulings while Republicans focus on future Justice Amy Coney Barrett. All over the country, Obama-appointed district court judges are issuing rulings they hope will outlast Trump and be upheld by a future Justice Stacey Abrams.

The last presidential election hinged on the issue of the courts, as most voters wanted President Trump to fill the vacancy created by the death of Justice Antonin Scalia. The same issue persists now at the district court level, as this recent tsunami of Leftist injunctions demonstrates.

Trump Judge Nixes ‘New Normal’

A Trump-appointed judge has finally stood up against the senseless continuing shutdowns by Democrat governors. Federal judges had been going along with totalitarianism at the state level until September 14, when federal judge William Stickman declared that a Democrat governor acted irrationally.

Pennsylvania Gov. Tom Wolf’s never-ending shutdown blocks outdoor rallies by the Trump campaign in the state which may decide the outcome of the presidential election, and has prohibited attendance at other gatherings, too. Prior attempts to restore freedom, including a lawsuit appealed to the Pennsylvania Supreme Court and efforts by the Republican-controlled legislature, had failed.

But those on the side of freedom did not give up, and they finally achieved a legal breakthrough in federal court in Western Pennsylvania, where 8 out of 10 active judges were appointed by Trump. There the University of Pittsburgh is playing football, while Penn State’s Nittany Lions were sidelined by the Big 10 conference.

Judge Stickman observed that the shutdown order by Gov. Wolf was supposedly necessary to “flatten the curve” and protect hospital capacity against an overflow of patients. No such overflow ever happened and yet the unjustified shutdown continues.

Plaintiffs challenged Gov. Wolf’s restrictions as violations of the First Amendment freedom of assembly, and both the Due Process and Equal Protection clauses of the 14th Amendment. Judge Stickman held against Democrat Wolf on all of the above in a brilliant 66-page decision which disavows the overly deferential approach taken by other Republican-appointed judges.

“The fact is that the lockdowns imposed across the United States in early 2020 in response to the COVID-19 pandemic are unprecedented in the history of our Commonwealth and our Country. They have never been used in response to any other disease in our history,” Judge Stickman wrote.

Indeed, Judge Stickman traced the origin of the shutdowns, not merely the virus, to China itself, which he pointed out does not protect individual liberties as we do in the United States. The lockdown approach spread like a domino effect from Wuhan, and “were unheard of by the people of this nation until just this year,” he pointed out.

Gatherings of more than 25 persons indoors and more than 250 persons outside have been prohibited for months in Pennsylvania. This has impeded the ability of President Trump to hold his massive rallies in this all-important state of 20 Electoral College votes.

“Congratulations Pennsylvania,” tweeted President

Trump in response to the news that Judge Stickman had struck down its Democrat governor’s restrictions. The Pennsylvania Governor vowed a swift appeal to the Third Circuit, where a panel with a 2-1 majority of George W. Bush-appointed judges unfortunately stayed the district judge’s good ruling.

Short-term restrictions amid an emergency may be entitled to some deference, Judge Stickman wrote, but “that deference cannot go on forever. It is no longer March. It is now September and the record makes clear that Defendants have no anticipated end-date to their emergency interventions.”

He rejected the governor’s invocation of the anachronistic 7-2 decision of *Jacobson v. Massachusetts* (1905), which is often cited by supporters of mandatory vaccination because it allowed Massachusetts to compel the vaccination of a minister against smallpox. As the judge pointed out, that decision predated the vast expansion of individual rights in the 20th century.

In 1905 the government could infringe on many individual rights, such as freedom of speech, and later denied the right to own gold, which would be unthinkable today. And the Supreme Court carefully limited its *Jacobson* decision by saying that government overreach on vaccination should still be checked by the courts.

Judge Stickman rejected the overly deferential standard of the 115-year-old *Jacobson* decision. He pointed out that “the ongoing and indefinite nature of” Democrat Gov. Wolf’s actions “weigh strongly against application of a more deferential level of review.”

He found persuasive a recent opinion by Supreme Court Justice Alito, joined by Justice Thomas and Trump-appointed Justice Kavanaugh, when they objected to the Court’s refusal to grant an application for relief to a church in Nevada. “We have a duty to defend the Constitution, and even a public health emergency does not absolve us of that responsibility,” Justice Alito wrote.

Judge Stickman criticized the Democrats’ “one-size fits all approach,” whereby the “vast diversity of the Commonwealth” of Pennsylvania is treated uniformly by the shutdown. Pennsylvania “has dense urban areas, commuter communities servicing the New York metropolitan area, small towns and vast expanses of rural communities,” over which the “virus’s prevalence varies greatly.”

Democrats’ shutdown orders have created “a topsy-turvy world where Plaintiffs are more restricted in areas traditionally protected by the First Amendment than in areas which usually receive far less, if any, protection.” Penn State football and the entire Nation should applaud this decision against shutdowns that infringe on our fundamental rights.

Failure to Protect the President

Americans have received a sobering reminder of how important it is to protect our president. The news that President Trump was admitted to a hospital for the Wuhan coronavirus rattled our entire country, including the stock market.

Only a month before Election Day, liberals initially thought Trump's illness would be advantageous to them, and many of them cheered his misfortune. They want Americans to vote Trump out of office in November, and they were thrilled that he briefly left the White House even earlier.

But quickly Democrats were dismayed to see how important the health of the president is to nearly every American. Average people, including even those who had voted against him last time, waited anxiously for updates about how our president was doing.

Unrelenting critics of Trump in the media suddenly felt compelled to report sympathetically on the status of his recovery, and how long he would remain in the hospital. Joe Biden, who had called Trump vile names during the nationally televised debate a few days earlier, had no choice but to tweet out a message of support for Trump against this disease.

Trump's foray out of the hospital for a little joy ride on that Sunday afternoon even sparked intense national coverage by the press. His uneventful circling of the hospital was more important to Americans than who was winning the NFL football games being played in empty or near-empty stadiums.

There is an American tradition of rallying around our flag, and around our president against illness or attack. In this case both appear to be happening, as the illness apparently results from a virus spread by our greatest potential enemy, Communist China.

Though downplayed in the media, suspicion grows that COVID-19 was produced in a lab in Wuhan, which makes it a weapon of mass destruction different from past pandemics. Li-Meng Yan, a Chinese virologist who was a researcher at the Hong Kong School of Public Health, has explained why she believes the virus was made in a military laboratory by combining two bat coronaviruses.

If you have not heard of Dr. Yan, it is probably because Twitter has censored her, too. As reported by *Newsweek*, Twitter suspended her account in mid-September without public explanation, despite her nearly 60,000 followers.

The communist Chinese have recently arrested her mother as retaliation. But Joe Biden and Democrats are silent about this human rights abuse and remain unwilling to hold China accountable for causing so much harm.

The Deep State is allied with Democrats and has failed to protect our president against this Chinese viral invasion. Apparently tanks and planes are easier to repel than a virus, particularly if genetically designed to cause harm.

All of Fauci's horses and all of Fauci's men have been useless in protecting Trump and our country. The reliance on testing obviously failed to keep the virus out of the White House.

Rapid-response testing delivers a false sense of confidence because it cannot detect the potential spread of the virus by travelers recently exposed to it elsewhere.

Participants in the White House nomination ceremony for Amy Coney Barrett were tested as urged by Fauci acolytes, but that test could not screen out those in recent contact with the virus on an airplane or in a car. Roughly a dozen attendees at that event have since contracted COVID-19, including the president himself.

But the president did not test positive until five days later, so perhaps he and others did not contract the virus at the mostly outdoor event after all. The CDC sought to perform contact tracing on all the attendees in order to conduct surveillance of all their activities, but President Trump wisely blocked that Big Brother monitoring.

Many who attended that event are political activists or conservative senators whose daily movements should not be subjected to the prying eyes of the Deep State. Endless mischief would result from intrusive inquiries into whom certain conservatives met with in celebrating the nomination of Judge Barrett or helping on her confirmation.

Attempts to blame President Trump for the spread of the coronavirus at the White House suffered an additional setback when top officials at the Pentagon went into quarantine after the Coast Guard vice commandant tested positive. Notice that the media do not blame the top brass there.

Meanwhile, the leftist approach of forcing schoolchildren to wear masks all day is worse than the drills of the 1950s, when children practiced hiding under their desks in the event of a nuclear attack. At least those drills were merely fleeting inconveniences, while the masking of schoolchildren has unlimited disruptive duration.

Americans cheered when President Trump, perhaps acting against medical advice, exited the hospital on Monday evening. Imagine how much more they will cheer if he wins reelection in November.

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