The Phyllis Schlafly Report

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Trump Cemented Legacy with SCOTUS Pick

With his second conservative nomination to the Supreme Court, President Trump has already exceeded Ronald Reagan. Brett Kavanaugh is stellar on immigration and sovereignty, the life issue, and the Second Amendment.

Trump made this look easy, but liberals did everything they could to dissuade him from selecting Brett Kavanaugh to fill the vacancy left by Justice Kennedy on the Supreme Court. A coordinated, sophisticated campaign to criticize Kavanaugh from some on the right was both insincere and deceptive.

The tiny Never-Trump wing of the Republican Party does not like how Kavanaugh has long agreed with Trump on core issues. Unlike Kavanaugh's liberal rivals for nomination to the Supreme Court, he has participated in more than 3,800 cases and unflinchingly defended principles loathed by liberals.

How refreshing it is to actually have a Supreme Court nominee who supports American sovereignty, and does not defer to international law! Writing alone as he has often had to do on the liberal D.C. Circuit, Judge Kavanaugh has explained that the War Powers Clause is not restricted by international law.

That was in a 2016 decision which considered a challenge to a military commission by Ali Hamza Ahmad Suliman Al Bahlul, who was convicted as the personal assistant to Osama bin Laden. Judge Kavanaugh stood strong against the lawsuit, as the entire Court of Appeals should have.

In another case that began in 2007, Judge Kavanaugh dissented from a decision that gave illegal aliens the same rights as American workers in forming unions for collective bargaining. Kavanaugh explained in his dissent that "an illegal immigrant worker is not an 'employee' under the NLRA for the simple reason that, ever since 1986, an illegal immigrant worker is not a lawful 'employee' in the United States."

On the Second Amendment, Judge Kavanaugh was on the panel that heard a challenge to Washington, DC's strict gun controls after the Supreme Court established an individual right under the Second Amendment to keep and bear arms. The majority of that panel then upheld the gun control as courts do across the country now.

Judge Kavanaugh strongly dissented from that pro-gun-control decision, and wrote in favor of a Second Amendment that should be defended as strongly by courts as the First Amendment is. Justice Clarence Thomas will have a strong ally on the Supreme Court for the Second Amendment once Kavanaugh is confirmed.

None of the other eight justices on the Supreme Court, including Neil Gorsuch, would join Justice Thomas's dissent in February 2018 decrying how gun control laws are being upheld by Courts of Appeals and how the Supreme Court is refusing to accept those cases to review and reverse. The stark reality is that the Supreme Court has not taken a real Second Amendment case in years, and lower courts have gotten the message that they can uphold gun control laws without fear of being reversed.

Trump's brilliant nomination of Kavanaugh to the High Court changes that. We can expect Kavanaugh to call out his colleagues if they continue to duck Second Amendment appeals, and his strong legal reasoning should help protect that fundamental right against further erosion.

On the life issue, liberals of course sharpened their knives to try to block Kavanaugh from confirmation by insisting that he might overturn *Roe v. Wade*. But that was a very tough sell by the Left, as young people are increasingly pro-life and nearly a half-dozen Democratic Senators were running for reelection in pro-life states that Trump carried by a landslide.

The issue of *Roe v. Wade* has never sunk a nominee in the Senate, despite all the hoopla by pro-abortion feminists pretending that they can block a nominee on that issue. They failed in trying to block Justice Clarence Thomas on that issue, and were unable to block the confirmation of John Roberts or Samuel Alito, either.

Kavanaugh did not grovel to pro-abortion senators as they demanded reassurances that the fallacy of *Roe v. Wade* be enshrined forever even though it has absolutely

no basis in the Constitution. Kavanaugh need not answer questions about the issue, just as Justice Ruth Bader Ginsburg set the precedent herself for declining to answer specific questions about cases.

The isolated criticisms of Kavanaugh by the Never-Trump crowd have been unjustified. His ruling to uphold a narrow part of a campaign finance law relating to political parties is not a core issue to the conservative movement, and certainly not a basis for opposing his nomination.

Justice Anthony Kennedy turned to the right in his final year on the bench, both in his decisions and in allowing Trump to fill his vacancy. It is unlikely that Justice Kennedy would find anything to criticize in this nomination of Kavanaugh for the seat that Kennedy is leaving, and neither should have any Republican or moderate Democrat.

Trump Fulfills Phyllis Schlafly's Vision

The thrilling confirmation of Brett Kavanaugh to the Supreme Court fulfills the vision of Phyllis Schlafly in her early endorsement of Trump. By trouncing the radical feminists in this high-stakes battle for the Supreme Court, President Trump has transformed the Republican Party just as Phyllis wanted.

Kavanaugh's 50-48 confirmation by the Senate was also a victory for the rule of law over rule by a mob. "You don't hand matches to an arsonist," Trump declared afterwards, and "you don't give power to an angry leftwing mob."

It was a close call, when you consider that one woman on George Soros' payroll almost succeeded in bringing Kavanaugh down – by screaming at Jeff Flake while he was trapped in an elevator as cameras rolled. Ana Maria Archila, the woman who confronted Senator Flake, reportedly draws a six-figure salary from a Soros-funded outfit called the Center for Popular Democracy, which grew out of the wreckage of the now-defunct ACORN.

But Christine Blasey Ford's uncorroborated accusations against Kavanaugh were simply not credible to the fair-minded Senators. Their reigning moderate, Susan Collins, delivered a compelling hour-long speech detailing the many deficiencies.

Ford's accusations against Kavanaugh were worse than being implausible. They were also unworthy of the heightened attention given to them by the liberal media and the 48 Democratic Senators who voted against him.

Even if Ford's accusations had some basis in fact, they were not serious enough to be considered at this late date. The Senate demeaned itself by forcing Kavanaugh to explain what he meant in his writings as a 17-year-old in his personal diary and his high school yearbook.

By her own account, Ford said she attended and drank beer at an unsupervised house party along with older teenage boys. She alleges that at some point she was groped by two of the boys, whose identities remain unknown, but she admitted that everyone was fully clothed at all times.

If such a complaint had been made then, the police would not have even bothered to pursue it. It would have been such a minor, unprovable infraction that criminal charges would never have been brought.

The silence by Ford for 29 years afterwards suggests that even if it did happen, it was not particularly significant to her. Most likely it did not happen at all.

Yet while talking to a therapist nearly three decades later, Ford supposedly "recovered" a memory that could easily exaggerate key details and make mistakes of identity. On the basis of her recovered memory, she tried to bring down Brett Kavanaugh's career, while keeping her own identity secret in order to avoid the risk of cross-examination.

There is a moment when a movement loses its initial credibility with the general public, and this Kavanaugh confirmation may be that moment for the #MeToo movement. The collapse of support for the reelection of Democratic Senator Heidi Heitkamp, who ultimately voted against Kavanaugh, illustrates the backlash against doubtful accusations publicized by radical feminists.

Forty years ago, in the 1970s, an earlier wave of feminism called "women's liberation" was cresting. Led by then-ACLU attorney Ruth Bader Ginsburg, the feminists came close to putting their harmful "equal rights" amendment (ERA) into the U.S. Constitution.

But then the feminists also overplayed their hand, much as they just did with Kavanaugh. With a special appropriation of federal tax money in 1977, they held 50 state conventions for women, culminating in a national convention in Houston to promote International Women's Year.

The nation watched in dismay as a parade of angry liberal women screamed and screeched their demands, primarily about lesbian rights and taxpayer-funded abortions. The public turned away, the ERA never garnered another state, and five states that had hastily ratified it rescinded their previous ratifications.

A similar fate awaits the overly hyped #MeToo movement, which started a year ago in response to the lurid accusations against Harvey Weinstein, Bill Cosby and others. Ostensibly a protest against the proverbial casting couch, which has always existed in Hollywood, the #MeToo movement is a double standard as it does not complain about many women who willingly use sex to advance their show-biz careers.

Meanwhile, our nation benefits from the new respect for ancient legal safeguards against false accusations. These include innocent until proven guilty, the right to confront your accuser, and the need for a short statute of limitations on accusations of sexual assault.

When Phyllis Schlafly met Donald Trump on March 11, 2016, before introducing him to a cheering crowd of thousands of supporters in St. Louis, she asked the candidate to appoint judges who would defend the Constitution. With the seating of Justice Kavanaugh on the Supreme Court, President Trump has honored his pledge in a spectacular way.

Congress AWOL as Courts Derail the Trump Train

President Trump's party controls Congress, but one would never know that by how it has been AWOL (absent without leave) while courts block Trump at every turn. Paul Ryan, the outgoing Speaker of the House who retired at the age of only 48, was doing so little that the public might have wondered if he was still in office.

Meanwhile, the judicial war of resistance against Trump continues unabated. Federal courts have issued rulings requiring Trump to restart DACA, fund sanctuary cities, stop asking about citizenship in the census, include transgenders in the interpretation of Title IX, reunite illegal alien "families" even where the adults are criminals who have already been deported, and so on.

Attorney General Jeff Sessions issued a powerful statement criticizing the rash of judicial activism against the Trump Administration. "We have recently witnessed a number of decisions in which courts have improperly used judicial power to steer, enjoin, modify, and direct executive policy," General Sessions explained.

"This ignores the wisdom of our Founders and transfers policy making questions from the constitutionally empowered and politically accountable branches to the judicial branch," he said. General Sessions vowed that the "Trump Administration and this Department of Justice will continue to aggressively defend the executive branch's lawful authority and duty to ensure a lawful system of immigration for our country."

New lawsuits against policies Trump campaigned on are being filed by the Left nearly every day. Four liberal-controlled cities – Baltimore, Chicago, Cincinnati, and Columbus – asked a federal court to force Trump to support Obamacare.

Imitating a familiar pattern pursued by liberals in other cases, the new lawsuit for Obamacare quotes out-of-court statements by President Trump as though they were evidence. For example, the lawsuit demands relief because Trump has said that "essentially, we have gotten rid of" Obamacare.

The power vacuum on Capitol Hill encourages judicial supremacy, as courts see that Congress is not providing any check or balance to the overreach by the judicial branch. Like unsupervised kids in a candy store, judges will grab as much power as they can until Congress checks their conduct.

The Supreme Court does too little, too late to rein in lower courts that legislate from the bench. Deciding only 58 argued cases during its term that ended in 2018, the Supreme Court has been barely more than a remote outpost that takes far too long to protect our Constitutional rights.

In 2017-2018 the Supreme Court ducked issues and declined to accept appeals on anti-Second Amendment rulings upholding gun control, and an anti-First Amendment ruling censoring videos taken by pro-life David Daleiden. This renders liberal Courts of Appeals the last word on key issues.

In a tactic known as forum shopping, Trump's opponents file their lawsuits in courts where Democratic trial judges will likely rule in their favor at the district court level. Then, a year or two later at the appellate level, the overwhelmingly Democrat-nominated judges in the Fourth and Ninth Circuits predictably affirm.

Trump ultimately prevailed when the Supreme Court reinstated his temporary, so-called travel ban from several hostile nations, but it took nearly a year-and-a-half to do so, even with the expedited attention that case received. That wasteful litigation consumed more than a third of Trump's entire first term in office, and far too much of his personal time, allowing uncertainty to persist and undermine other actions that Trump could have been taking for our country.

The Ninth Circuit presides over a fifth of our nation's population – more than 64 million people – and as of 2018 more than two-thirds of its active judges were appointed by Presidents Clinton and Obama. Despite many vacancies on that Circuit for Trump to fill, through 2018 the Senate confirmed only two, including a compromise nominee opposed by more than half the Republican senators due to his weakness on the Second Amendment.

More than a decade ago, Congress did take an important step to curb judicial hostility to the Second Amendment. The Protection of Lawful Commerce in Arms Act (PLCAA) prohibits all courts, both federal and state, from entertaining lawsuits against gun manufacturers for crimes committed by their products.

This good law stands as a model of what Congress should also be doing to rein in the courts on additional issues where they are out of control. Despite the resounding success of the PLCAA in achieving its stated goal to "preserve a citizen's access to a supply of firearms and ammunition," Congress has not yet expanded this approach to eliminate other judicial activism.

Immigration policy is an issue uniquely within the domain of the President and Congress, and courts should have little say in the matter. Congress should take heed of Attorney General Sessions' criticisms of judicial overreach on immigration, and withdraw the issue from the courts.

California versus Trump on Phony Net Neutrality

As part of its never-ending resistance to the Trump agenda, the California legislature passed a bill in 2018 to reinstate the discredited concept of "net neutrality" for access to the internet. A bill described as the nation's strongest form of net neutrality then went to the desk of its lame duck Governor Jerry Brown, who signed it on September 30.

Net neutrality is as phony as "free trade," in that both are wonderful only for those getting the better end of the deal. Google, Facebook, and other California companies have been getting a free ride on net neutrality because it enables them to avoid paying their enormous share of internet traffic.

Net neutrality is a fiction invented by Silicon Valley monopolies to stop cable companies from charging them for their huge amounts of traffic. Yet these same monopolies do not believe in neutrality in how they conduct business, by censoring political content they dislike.

The many billions in profits flowing to the Silicon Valley companies is partly due to how they hog traffic on the internet for free, without paying their full costs. They avoid paying, for example, the many billions of dollars needed to bring internet service to people's homes.

Imagine a toll road where big trucking companies did not have to pay a dime. This would result in overuse of the toll road by trucks, and underfunding of road improvements.

The free market would be far superior to the phony net neutrality that enriches only Silicon Valley, because the free market enables the owner to charge fees based on use of its property. Free enterprise is also better in protecting free speech and preventing censorship.

Once the favoritism is ended, whether on the internet or roads, then better facilities would be built and more efficient usage would occur. The internet could be light years ahead of where it is now, if net neutrality stopped giving billionaire companies a free ride.

Without net neutrality, the public would have far better and faster internet service than we have today, because cable companies could raise money from the traffic hogs to improve the service. Instead, billions of dollars line the wallets of Silicon Valley executives who invest very little of it in improving internet service.

Under the superior, free-market-based approach adopted by President Trump, companies that carry internet traffic would be able to negotiate with the traffic hogs to compel them to pay their fair share of costs rather than freeload off others. Google and Facebook would then no longer be able to discriminate against conservatives and shift their costs to us, too.

The public who pays the cable costs could then insist on access to the content that they want, which they cannot do now as Silicon Valley censors it.

The Silicon Valley companies do not want any rules of neutrality to apply to them, of course, as they exclude conservatives to appease their liberal base. They demand net neutrality only when it favors them, and oppose any requirement that they be fair to content with which liberals disagree.

The California legislators know who butters their bread, and their Democrat majority passed a bill that interferes with President Trump's better approach of allowing competition to rule the internet. Governor Jerry Brown then signed SB 822 into law.

This new California law would prohibit cable companies and other internet service providers from charging high-traffic users more. This ban is an encroachment on the rights of private property, because the owner of the internet service should be able to require traffic hogs to pay rather than freeload on their private property.

Under the new California law, cable companies and their millions of customers could not tell Google and Facebook to stop discriminating against content that people want. The California law inverts the internet by allowing Silicon Valley to dictate content on the internet, when users and internet providers should be able to tell Google to stop discriminating against Dennis Prager and other conservatives.

It is Google and Facebook that block access, and they want leverage to continue doing so. That is backwards as Trump and his Federal Communications Commission (FCC) recognize, and they sued in federal court after California Governor Brown signed this ill-advised bill into law.

Meanwhile, Congress held a hearing to review San Francisco-based Twitter's bias against conservatives. The FTC should be investigating Google's unfair business practices, as Senator Orrin Hatch pointed out.

The FCC did sue to overturn the California law, which would establish one system in that State which is different from most other States. This bad California law was then put on hold pending the outcome of another lawsuit relating to "net neutrality."

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