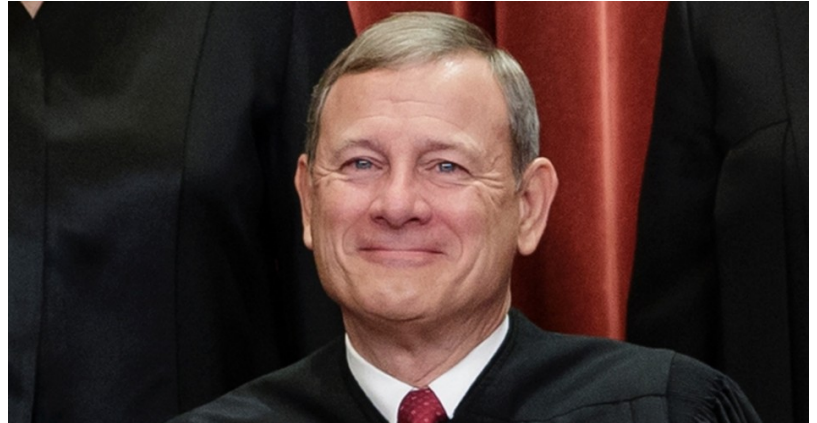




Chief Justice Roberts: The Great Liberal Hope?

Like Lucy pulling the football away just as Charlie Brown tried to kick it, supposedly conservative judges have been frustrating conservatives and pleasing liberals for decades.



With President Donald Trump poised to nominate a third judge to the U.S. Supreme Court should another vacancy occur, liberals who view the federal judiciary as just another avenue to advance their progressive agenda are now hoping that Chief Justice John Roberts (shown) will be the latest in a long string of “conservative” judges who have disappointed the Right and thrilled the Left.

Every presidential election we hear that we need to vote for the Republican candidate for president because of judicial nominations. Yet, as far back as President Dwight Eisenhower and his selection of Earl Warren as chief justice in the 1950s, Republican presidents have given us some awful justices (from the point of view of not basing their opinions on original intent and the clear language of the Constitution). Other examples in addition to Warren abound — Harry Blackmun, John Paul Stevens, David Souter, Anthony Kennedy, and Sandra Day O’Conner. It is true that there have been some others — Antonin Scalia, Clarence Thomas, Neal Gorsuch, and Samuel Alito come to mind — who have mostly pleased conservatives who take the Constitution seriously. And of course, there are the appointments by Democrat presidents that can be expected to toe the liberal line, with almost compass-like reliability.

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It seems that it is almost like Lucy pulling the football away as Charlie Brown tries to kick it — when we think the Supreme Court is finally going to have a constitutionalist majority, one of the supposedly good (constitutionally-minded) justices flips to the progressive side. Conservatives have been waiting for almost 50 years for the reversal of the infamous *Roe v. Wade* decision, with its mumbo-jumbo of emanations, penumbras, and shadows.

Roberts is a prime example of a justice who somehow finds a way to uphold progressive Big Government. Who can forget his betrayal in 2012, when he provided the decisive fifth vote to uphold the clearly unconstitutional Affordable Care Act (ObamaCare)?

It should be conceded that Roberts has also been on the side of some 5-4 decisions that have pleased conservatives — in January, Roberts voted to uphold the Trump administration’s exclusion of most transgender people from serving in the armed forces. He also joined in upholding the Trump travel ban. But right on schedule, with the latest “conservative” pick, Brett Kavanaugh, putting on the black robe to replace the previous “swing” vote (Anthony Kennedy), Roberts seems to be incrementally sliding into



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that position, giving the Left some hope that “Lucy has pulled the football away” once again. For example, it was Roberts’ vote that was decisive in the Court’s decision to take a look at the mental competence of a death-row inmate. Why? Well, the inmate says he just can’t remember the crimes he committed.

Roberts also joined with the liberals on the Court to block Trump from curbing bids for asylum at the Mexican border. Most ominously, he kept Louisiana from enforcing new abortion restrictions that required abortionists to get admitting privileges at a local hospital. What makes this action most curious is that Roberts dissented in 2016, when the Court struck down an almost-identical Texas measure.

Roberts argued just last month, “People need to know that we’re not doing politics. They need to know that we’re doing something different, that we’re applying the law.”

To which one is tempted to shout back at him, “Then do it!”

Actually, it is widely believed that Roberts makes political calculations, crafting decisions (such as when he went through contortions to find a plausible legal reasoning to uphold ObamaCare) that avoided the appearance of partisanship. But that is not Roberts’ job — he took an oath to uphold the Constitution, not an oath to maintain an appearance of non-partisanship.

President Trump expressed frustration in November of last year at the predictable leftist decisions of the Ninth Circuit Court of Appeals in California, calling it a “disgrace.” Trump said, “Every case that gets filed in the Ninth Circuit, we get beaten. And then we end up having to go to the Supreme Court, like the travel ban, and we won. This was an Obama judge.”

After President Barack Obama chose the occasion of the State of the Union message to directly attack the Supreme Court justices sitting in front of him for their *Citizens United* decision, which invoked the First Amendment protections of free speech, Roberts never challenged Obama. But in the case of Trump, he publicly challenged the president, saying, “We do not have Obama judges or Trump judges, Bush judges or Clinton judges. What we have is an extraordinary group of dedicated judges doing their level best to equal right to those appearing before them.”

Roberts added, “That independent judiciary is something we should all be thankful for.”

However, if Roberts’ intent was to remove the Supreme Court from politics, he had an odd way of doing it, publicly challenging the president, which was a blatantly political statement. Predictably, Democrats in office and in the media hailed Roberts as a hero for his statement. Senator Richard Blumenthal (D-Conn.) even called the Trump presidency a “dark era,” and said the “independent judiciary” will be “the heroes.” CNN legal analyst Renato Mariotti said, “Trump’s attack on Chief Justice Roberts is just his latest assault on our independent judiciary. He attacks judges, the press, the FBI and the Justice Department because they can check his power and hold him accountable. This is a serious threat to the rule of law.”

On the contrary, the “serious threat to the rule of law” is the thinking that the media, federal judges, the FBI, and anyone else can publicly express their opinion, but the president of the United States cannot express his. Donald Trump did not lose his right of free speech when he took the presidential oath. In fact, the president is a key player in the nation’s political landscape. Federal judges, such as Roberts, are not to be players in politics, at all. They are supposed to simply “call balls and strikes,” not throw the pitches or swing the bat, as Roberts himself said during his confirmation hearings.

Hopefully, Roberts will not continue the drift to the Left that has been far too common of the nominees



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of Republican presidents going back decades.

Photo of Chief Justice John Roberts: AP Images



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