

DAILY BREEZE

For the left, judicial appointments are about politics, not philosophy

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The end of the world is coming. At least, that is what the left believes will happen if the Senate confirms Brett Kavanaugh as an associate justice on the Supreme Court. It will be the legal equivalent of Armageddon.

No doubt the appointment matters. Right-leaning presidents have squandered many opportunities to move if not transform the high court.

In contrast, most of the Democrats' choices performed as expected: promote a "living" Constitution which upholds most every expansion of federal power and transforms society into a liberal nirvana. Where leftish jurists do best is when they advocate vigorously applying the few constitutional provisions which they like—such as free speech and search and seizure. Most everything else in the Constitution, contend liberal justices, has been transcended by history.

The Right has a broad jurisprudential vision rooted in the text and history of the Constitution. That is, it should mean roughly what it was believed to mean at the time.

There is a mix of factors: text, drafters' intent, and political compromise at the time. Not everything is clear, obviously. Nevertheless, if the document, whether Constitution or statute, doesn't have a reasonably fixed meaning, why bother with it? Just admit judges can do what they want.

Which is the essence of liberal jurisprudence.

Whatever the theory, and there are many, jurists should override what those drafting and implementing the document intended to achieve. Of course, laws and even constitutions need to be adapted to changing circumstances. But there is a prescribed way of amending the Constitution.

The courts have become a short-cut, a super-legislative branch that can eliminate the need for political debate or majority support. Which is why the left is going into meltdown over the nomination of Judge Kavanaugh.

I worry about his view of civil liberties and executive power. Nevertheless, Kavanaugh is a talented, intelligent, principled, and well-respected jurist. Yale's Akhil Reed Amar called the appointment "superb" and argued that Kavanaugh "commands wide and deep respect among scholars, lawyers and jurists."

If the left wants to block him, it should explain why his jurisprudential vision is flawed. But activists don't have a judicial philosophy. Rather, they care only about results. They cannot imagine that the Constitution does not mandate their vision of utopia, but rather, leaves that fight up to the political process.

The charges are hot and heavy. Kavanaugh will hurt the vulnerable. "Destroy the civil rights of low-income black children." Turn back the clock for gays. "Favor the wealthy and powerful."

Threaten ObamaCare. Undermine "our democratic institutions." Endanger "our fundamental rights." Threaten "our civil rights." Enable Republicans "to suppress the vote." Harm "the lives of working people" for decades. "Protect corporations at the expense of workers" and "allow corporations and the wealthy to buy elections."

Hurt people's "health, safety, and the environment." Be "hostile to health care for millions, opposed to the CFPB and corporate accountability." Put abortion, "affordable health care, labor unions, and civil rights ... on the chopping block."

Overall Kavanaugh is a "threat to our democracy." He would treat the president as "above the law." Kavanaugh would end legal abortion in America. Which means that his appointment would act as a "death sentence for thousands of women in the United States." Indeed, not just thousands: the nomination "will threaten the lives of millions of Americans for decades to come."

Why, "civilization as we know it today is at risk," since the president "is using this nomination as a destructive tool on a generation of progress for workers, women, LGBT people, communities of color and families, and to radically reverse the course of American justice and democracy."

Wow, Judge Kavanaugh apparently has quite an agenda. All because he doesn't believe Supreme Court justices are de facto legislators.

Instead of throwing temper tantrums, so-called progressives should try to convince Americans to back their positions in events called elections. Indeed, New York Times columnist David Leonhardt made a startling argument: "Progressives can still win many of these issues. They simply will have to do so in a small-d democratic way, by winning elections," he explained.

If Brett Kavanaugh is confirmed, he will push the American constitutional system back toward its original balance. That is what so scares, even panics, the left. If the high court abandons its legislative role, liberal activists will have to convince voters instead of jurists to back their policies.

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