

EDITORIAL: Criticizing the court

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State of the Union addresses have become notable for being, well, unremarkable. They've grown in length and volume without a corresponding increase in substance. To quote Shakespeare, they often are "full of sound and fury, signifying nothing."

President Obama maintained the tradition of boredom Wednesday night. However, the one area where he broke with his recent predecessors produced the event's most memorable moment: His challenging the Supreme Court.

The president criticized the court for its recent ruling in *Citizens United v. Federal Election Commission*, claiming it "reversed a century of law to open the floodgates for special interests — including foreign corporations — to spend without limit in our elections." He then urged Congress to pass legislation that would "correct some of these problems."

TV cameras caught Justice Samuel Alito sitting in the audience shaking his head in disagreement and mouthing the words, "not true."

This is what passed for drama on the night — the restrained, judicial equivalent of Rep. Joe Wilson's infamous blurting out of "You lie!"

The "exchange," for lack of a better term, sent much of the press corps agog. Reporters and commentators described the president's words as "fiery," "harsh" and "in your face." Roger Pilon of the libertarian Cato Institute wrote that it was "an appalling breach of decorum."

Oh, please. The Supreme Court is a co-equal branch of government, not some exalted class of robed masters who are beyond criticism. It's not like the president called the justices names or extended his middle finger toward them. He even prefaced his remarks with, "With all due deference to separation of powers ..."

It was one paragraph in the speech, and it was not unprecedented. As blogger Jack Balkin notes, Franklin D. Roosevelt spent a quarter of his 1937 State of the Union address criticizing the Supreme Court for unanimously striking down portions of his New Deal legislation as being unconstitutional. FDR was so miffed that he tried to pack the court with sympathetic justices. Now there's a president who had a problem with the Supremes!

The problem with Obama's rebuke of the court wasn't that he did it. He's entitled to his opinion. However, he misstated the facts.

The court struck down a section of federal law that prohibited corporate political spending. But it left intact a separate section that expressly forbids foreign nationals and foreign corporations from making an expenditure

on any kind of electioneering.

Furthermore, the court did not overturn “a century of law.” Obama is referring to early 20th-century prohibitions on direct corporate donations to political campaigns. Those restrictions remain in place. Citizens United lifted more recent bans on direct corporate spending (as opposed to legally setting up political action committees) on political advocacy ads.

A president should not shrink from initiating respectful debates on Supreme Court decisions, even if the justices are in attendance. He just needs to stick to the facts when doing it. Otherwise, Obama was not out of line Wednesday night, and neither was Alito.

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