

## IBD EDITORIALS



# Exit, Stage Left

Posted 04/09/2010 06:42 PM ET

**Supreme Court:** Justice John Paul Stevens, a Republican appointment, is retiring, giving President Obama another opening to fill on the high court. It's unlikely, though, that the court's left-right balance will be upset.

Stevens, who made the announcement Friday, is no conservative, as that term is currently understood. Yes, he was placed on the court by GOP President Ford and says he has always thought of himself as a Republican.

And three years ago he told ABC News that he sees himself "as a conservative, to tell you the truth, a judicial conservative."

But his record looks more like that of a justice appointed by a Democrat.

Ilya Shapiro, a fellow in constitutional studies at the Cato Institute, notes that Stevens, who will soon be 90, "grew" from "his country-club Republican roots" to become "the court's liberal lion." New York University law professor Richard Epstein said in the New Yorker magazine last month: "From the beginning of his time as a justice, you could see Stevens' roots in the New Deal Court and his willingness to justify an expanding welfare state."

In its story about his retirement, the Associated Press called Stevens the leader of the court's "liberal bloc."

Jeffrey Toobin wrote in the New Yorker in March that Stevens has even been known as "Chief Justice of the Liberal Supreme Court," a name given to him by Walter Dellinger, an acting solicitor general in the Clinton administration.

In recent years, Stevens has lived up to those characterizations. He opposed property rights in *Kelo v. New London* and refused to protect Second Amendment rights in *D.C. v. Heller*, writing that gun possession was reserved for the militia, not individuals.

Seven years ago, he upheld affirmative action, though he once was openly against racial quotas.

That same year, a statistical analysis of the court of votes cast from 1995 to 2002 found him to be further to the left than any of the justices, including Ruth Bader Ginsburg.

In 1984, nine years after taking his seat on the Supreme Court, Stevens wrote the majority opinion that has become the most cited opinion in the court's history.

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That ruling has let federal agencies in the executive branch, in essence, create law by requiring courts to defer to agencies' interpretations of ambiguous congressional statutes. This goes hard against the principle that this is a nation of laws, not men.

Obama can, and likely will, find a candidate to fill the seat who is much further left than Stevens. And it's just as likely he will, through the large Democratic majority in the Senate, get approval. But it might not come easy.

Republicans know that opinion is swelling against the left and they could, even in the staid Senate, turn the nomination into a bruising battle that draws a bright line between the parties and their respective legal philosophies.

The Obama administration thinks that, after passage of its health care overhaul, it has a green light to enact its left-wing agenda. If the GOP forces the White House to focus its resources on defending its nominee at the expense of other projects, the confirmation process could slow this leftward momentum.

That would bode well for the future of the republic.

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Posted By: BradO(1820) on 4/12/2010 | 10:52 AM ET

Republicans better grow a pair and steal a page from the Durbin, Biden, and Kennedy playbook. Maybe they can "Bork" a leftist nominee like Democrats of old. This ain't your fathers Senate and now ain't the time to go limp. The Democrats held Bush the First hostage to the fillbuster and got Souter out of the process. Learn the lessons of the past Mr. Cornyn, etc. Senate decorum went out the window in the 90's.

Posted By: Vicki551(165) on 4/11/2010 | 3:22 PM ET

"The Obama administration thinks that, after passage of its health care overhaul, it has a green light to enact its left-wing agenda." It's ironic that the 'O' administration claims their 53% electoral margin victory as a 'mandate' for their left-wing agenda and yet a 68% opposition AGAINST their health care bill is NOT a 'mandate'. They are now governing against the will of the people. Expect a 'crisis' in November (riots over amnesty?) to declare martial law and 'postpone/cancel' elections?

Posted By: zenga(1325) on 4/11/2010 | 4:46 AM ET

given the results so far, relying on "the GOP forces" to get anything accomplished seems as unlikely to work as electing, oh, say a community organizer as president. they've done nothing thus far. the vast majority of the congress need a new job. maybe in the janitorial services industry.

Posted By: momcat617(85) on 4/10/2010 | 8:44 AM ET

Didn't realize you couldn't compare the left to the armies who overran Europe during WW2. My bad.

Posted By: momcat617(85) on 4/10/2010 | 8:42 AM ET

According to Bart Slimeball Stupak, leftist democrats want babies aborted because abortion is cheaper than paying to have them born. (Of course, we all know how tenaciously of Bart stood up to protect the



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