

## Supreme Court Warning to Conservatives: Do Not Confuse Relief with Joy

By Lester Jackson

*The history of liberal judicial activism has largely been a history of Republican handiwork -- in case after case after case, impacting all areas of law (including public safety, crime and capital punishment).*

The most important reason for conservatives to support Mitt Romney is that he is not Barack Obama, period. Never before has there been an American president [ashamed](#) of his own country. Never before has there been a president with complete contempt for the political and economic principles that made it great.

Obama's [disdain](#) for the Constitution and the freedoms it protects is well-known, at least to conservatives. Also, for all its faults, capitalism has been the driving engine that made ours the most creative, productive, and successful economy ever seen. The foundation of capitalism is business. Nevertheless, there have been no Romney commercials quoting Obama's bile-filled declaration that he felt like a "[spy behind enemy lines](#)" when working for a corporation.

Mitt Romney is not ashamed of his country, what it has achieved, and what it stands for. But the virtue of being not-Obama should not be confused with conservative virtue. While defeat of Obama should be a basis for relief, it does not follow that election of Romney should be a cause for joy.

Of course, if Romney were to actually govern as a conservative and not sell out his backers, as Republicans so often have done in the past, there will be time enough to celebrate. Conservatives should rejoice in results, not hope.

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One area of immense wishful thinking is the recently oft-expressed notion that, if Romney is elected, the Supreme Court will magically cease its repeated [lawlessness](#), [usurpation](#), and [abuse](#) of [judicial review](#).

The re-election of Obama would guarantee, for another generation, an out-of-control Court with contempt for both the law and the Constitution. That's surely reason enough to vote for Romney.

But the vote should be cast with eyes wide open. The election of Romney would assure nothing beyond the avoidance of absolutely certain judicial disaster. But avoiding a guarantee of what would happen is not a guarantee that it won't happen anyway. In all likelihood, this Establishment and possibly RINO Republican will have to be vigilantly and vigorously fought by proponents of fealty to duly-enacted law as written rather than concoctions by arrogant justices. Conservatives, if serious, must hold Romney's feet to the fire on judicial appointments.

The last six decades provide little basis for optimism and vast grounds for pessimism. Those who worry about what the Supreme Court will do in the **next** generation if Obama is elected should ponder the immense harm done over the **last two** generations by Republican appointees. Between 1953 and 1991, 15 of 19 justices were appointed by Republican presidents -- and from 1953 to the present, 17 of 25 justices were [appointed](#) by Republicans. Elected Republican officeholders cannot and should not

escape responsibility for what their appointees **foreseeably** have done to the Constitution and to the country.

Make no mistake. The history of liberal judicial activism has largely been a history of Republican handiwork -- in case after case after case, impacting all areas of law and life: curtailment of explicit constitutional rights combined with invention of non-existing "rights," core speech, religious freedom, national security, crime and public safety, life and death, economic well-being, race and gender relations, etc., etc. Again and again, in the most critical cases, Republican appointees have been essential to mutilating the Constitution, with grave consequences for freedom, security, and the well-being of the nation. Often they even imposed liberal positions previously rejected by Democrat appointees. Consider a few choice examples:

In *Roe v. Wade*, which occupies a throne of dishonor in the Hades of judicial abuse, five Republican appointees and two Democrats, opposed by one Republican and one Democrat, created an abortion right [out of thin air](#). As a result, there are now more than 50 million missing Americans, a large proportion of whom would currently be [productive](#) and [paying taxes](#). Later, *Roe* would be [rescued](#) by five Republicans and not a single Democrat.

In cases too numerous to mention here, Republican appointees have made a cruel [mockery](#) of capital punishment, [ruthlessly torturing](#) victims in the process. [Two largely unknown cases](#) cry out for special mention. Long before nose-out-of-joint Establishment Republicans sneered at [Todd Akin](#) over a single verbal lapse for which he instantly apologized, five Establishment Republican justices and two Democrats unapologetically asserted that rape could be "unharmful" and proclaimed "Constitutional" immunity from any punishment whatsoever for new rapes by any barbarian already serving a life sentence for prior murder, attempted murder, rape, and robbery. Later, five Republicans and one Democrat invented "Constitutional" immunity from mandatory capital punishment for new murders by anyone already serving a life sentence for prior murders, effectively enabling punishment-free new murders by the most deprived convicted violent criminals.

The sorry history of mischievous and harmful **Republican** liberal judicial activism demonstrates that optimistic assurance is no substitute for real vetting -- and fighting! Credible objections to nominees must be taken very seriously by constitutionalists rather than set aside just because the president is purportedly conservative.

No Republican president can be truly relied upon. None! Not ever!

It is sobering to realize that two of President Reagan's three appointees, [Sandra Day O'Connor](#) and [Anthony Kennedy](#), have been gross disappointments -- and that's a charitably euphemistic understatement.

In 1981, leftist judicial activists had not yet cranked up their ruthless character-assassination machine. Robert Bork, indisputably the most superior available conservative, could have been confirmed easily. However, for Reagan, brilliance, integrity, accomplishment, and restrained judicial philosophy took a backseat to a nominee's possession of politically correct reproductive organs and genitalia.

This is not 20/20 hindsight. There were warnings in 1981. For all his political talent, it is unlikely that Reagan would have been elected without the vigorous support of *Roe v. Wade* opponents. But he instantly spurned them when they [complained](#) about O'Connor's pro-abortion votes as a state senator. As painful as it may be to acknowledge, although Reagan repeatedly claimed to oppose affirmative action and abortion, one of the earliest acts of his presidency was to make the first affirmative-action Supreme Court appointment, and an abortion-supporter to boot. So it should have surprised no one when O'Connor played a pivotal role in [saving](#) *Roe v. Wade*, along with Republican appointees Kennedy, Souter, Blackmun, and Stevens, and later wrote the [opinion](#) saving affirmative action.

Whereas, by 1981, Bork was widely recognized as an outstanding scholar, lawyer, and solicitor general, O'Connor was a politician, an Arizona Senate majority leader, and an intermediate appellate judge. She was a politician when appointed, and she continued lawlessly acting as a politician [when a justice](#) and [while deciding](#) cases as an appellate judge after leaving the Supreme Court. [Powerful evidence](#) has [been](#) presented [questioning](#) her [ethics](#).

By the time Reagan finally got around to nominating Bork, he insouciantly failed to fight for and defend his nominee against massive scurrilous libel and slander. That's how we ended up with the [pompous](#) and [arrogant](#) Kennedy, who has cast critical deciding votes for (and written) liberal judicial activist decisions too numerous to be listed here. Suffice it to note that the unelected Kennedy considers himself to do "[more important](#)" work than legislators and [better-suited](#) (4) to assess military necessity and national security needs than the [duly elected](#) Congress and president. He also proclaims lawyers [better able](#) than the military to protect security, freedom, and civilization.

When David Souter was appointed, conservatives comforted themselves with the delusion that, because he had little record to be attacked, they had put one over on the left. It seemed to escape their notice that, if the left could have no idea where Souter stood, neither could the right. Even Bork got into the act. In the [paperback edition](#) (363) of his book *The Tempting of America*, he opined that President Bush "may succeed ... with ... Souter" in "chang[ing] the Court's direction dramatically ... [ending] over half a century of liberal policy-making by the judiciary." Actually, there was little basis for hope in light of the recommendations of two Northeast RINO Republicans, [Warren Rudman](#) and [John Sununu](#) (ominously prominent in the Romney campaign). (The Souter selection was especially tragic because, at the time, an extremely qualified female and genuine conservative judge, [Edith Jones](#), was available. That made no difference to the diversity-mongers, whose concept of diversity does not include any female or minority candidate who disagrees with their leftist views. To avoid a vicious and libelous fight, Jones was passed over, to the detriment of the nation.)

Only last June, in the historic ObamaCare case, conservatives were again [dealt a body blow](#) by a Republican nominee they had enthusiastically supported only because they closed their eyes to the reality that John Roberts is a highly skilled lawyer disposed to selling out to [make a case for any position](#), without regard for principles and values. Conservatives were warned in 2005, but they [ignored](#) the warning. The country is now paying the price!

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The tragic lesson of Republican liberal judicial activism is this: if Obama wins, the judicial war will be lost for a generation and possibly forever. But it does not follow that, if Romney wins, the war will be won. A Romney victory promises only the beginning of a protracted judicial struggle -- not only against goon squads recruited from among the most venomous leftist character assassins, but also against the inclinations of Republican presidents to seek "moderation" and to buy easy peace from the assassins by compromising judicial integrity and principles.

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*The original is slightly modified here.*

**Lester Jackson, Ph.D., a former college political science teacher, views mainstream media [suppression of the truth as essential to harmful judicial activism](#). His recent articles are collected [here](#).**