

In a recent New York Times article, academics appealed to the Chief Justice's political side. These academics asked him to intervene in the current Supreme Court vacancy, suggesting that it could be a so-called John Marshall moment for Chief Justice Roberts. That is a political temptation that the Chief Justice should resist.

I can't think of anything any current Justice could do to further damage respect for the Court at this moment than to interject themselves into what Chairman BIDEN called the political "cauldron" of an election year Supreme Court vacancy.

In a recent speech, the Chief Justice said: "We're interpreting the law, not imposing our views."

He further stated: "If people don't like the explanation, or don't think it holds together, you know, then they're justified, I think, in viewing us as having transgressed the limits of our role."

Again, with all due respect to the Chief Justice, tens of millions of Americans believe, correctly, that the Supreme Court has transgressed the limits of its role. Tens of millions of Americans believe, correctly, that too many of the Justices are imposing their views and not interpreting the law.

That is the major reason why we should have a debate about the proper role of a Supreme Court Justice. We need to debate whether our current Justices are adhering to their constitutional role.

As the Chief Justice remarked, although many of the Supreme Court's decisions are unanimous or nearly so, the Justices tend to disagree on what the Chief Justice called, in his words, the "hot button issues." We all know what kinds of cases he has in mind when he talks about "hot button issues"—freedom of religion, abortion, affirmative action, gun control, free speech, and the death penalty. One can probably name a lot of others. The Chief Justice was very revealing when he acknowledged that the lesser known cases are often unanimous, and the hot button cases are frequently 5 to 4.

But why is that?

The law is no more or less likely to be clear in a hot button case than another case. For those Justices committed to the rule of law, it shouldn't be any harder to keep personal preferences out of a politically charged case than any other case.

In some cases, the Justices are all willing to follow the law, but in others where they are deeply invested in the policy implications of the ruling, those cases tend to turn out 5 to 4. The explanation of these 5-to-4 rulings must be that in hot button cases some of the Justices are deciding based on their political preferences and not—as they should be—on the law. But if hot button cases are being decided by politicians in robes, then the Supreme Court has no more of a right than the voters to be the final word.

The Chief Justice regrets that the American people believe the Court is no different from the political branches of government. But again, and with respect, I think he is concerned with the wrong problem. He would be well-served to address the reality—not the perception—that too often there is little difference between the actions of the Court and the actions of the political branches. So, Physician, heal thyself. In case after 5-to-4 case, the Justices who the Democrats appointed vote for liberal policy results.

This can't be a coincidence. Democratic Presidents know what they want when they nominate Justices—Justices who will reach politically liberal results regardless of what the law requires. This, of course, is what our current President means when he says that he wants Justices to look to their "heart" to decide the really hard cases. That is an unambiguous invitation for Justices to decide the hot button cases based on personal policy preferences. That, of course, isn't the law, and it is not the appropriate role for the Court. It is no wonder, then, that the public believes the Court is political.

What Democratic Presidents want in this regard is what they get—even before Justice Scalia's death. Leading scholars found this Supreme Court to be the most liberal since the 1960s. Justices appointed by Republicans are generally committed to following the law. There are Justices who frequently vote in a conservative way. But some of the Justices appointed even by Republicans often don't vote in a way that advances conservative policy.

Contrary to what the Chief Justice suggested, a major reason the confirmation process has become more divisive is that some of the Justices are voting too often based on politics and not on law. If they are going to be political actors after they are confirmed, then the confirmation process necessarily is going to reflect that dynamic.

For instance, just last week, after one of my Democratic colleagues met with Judge Garland, the Senator said after discussing issues like reproductive rights: "I actually feel quite confident that he is deserving of my support."

Obviously, I don't know what they discussed during that meeting or what Judge Garland said about reproductive rights, and, to be clear, I am not suggesting anything inappropriate was discussed. My point is this: If Justices stuck to the constitutional text and didn't base decisions on their own policy preferences or what the President asked, based on what is in their heart or on empathy for a particular litigant, then Senators wouldn't deem it necessary to understand whether the nominee supports reproductive rights or not. With this in mind, is it any wonder that the public believes the Court is political?

If we want the confirmation process to be less divisive, if we want the pub-

lic to have more confidence that the Justices haven't exceeded their constitutional role, then the Justices themselves need to demonstrate that in politically sensitive cases their decisions are based on the Constitution and the law and not on political preferences or what comes from the heart or because of some empathy.

So here is where we are about the public perception of the Court being political. When the Justices return to their appropriate role of deciding cases based on the facts and the law, public perception of the Court will take care of itself.

I yield the floor.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. AYOTTE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. MCCONNELL. Madam President, I ask unanimous consent that the Senate be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ARMS SALES NOTIFICATION

Mr. CORKER. Madam President, section 36(b) of the Arms Export Control Act requires that Congress receive prior notification of certain proposed arms sales as defined by that statute. Upon such notification, the Congress has 30 calendar days during which the sale may be reviewed. The provision stipulates that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Senate Foreign Relations Committee.

In keeping with the committee's intention to see that relevant information is available to the full Senate, I ask unanimous consent to have printed in the RECORD the notifications which have been received. If the cover letter references a classified annex, then such annex is available to all Senators in the office of the Foreign Relations Committee, room SD-423.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEFENSE SECURITY
COOPERATION AGENCY,
Arlington, VA.

Hon. BOB CORKER,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-23, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Australia for