



Janice Rogers Brown – “Far Out Of The Mainstream”

By pushing Janice Rogers Brown, Republicans aren’t only going nuclear on our system of checks and balances—they’re going nuclear on Social Security. Social Security may be wildly popular with most Americans, but not Janice Rogers Brown. Brown called the New Deal “the triumph of our own socialist revolution” and said it “cut away the very ground on which the Constitution rests.”¹ Social Security is, of course, the centerpiece of the New Deal. Forget privatization—start thinking annihilation. Brown also said, “Today’s senior citizens blithely cannibalize their grandchildren.”² As the *Atlanta Journal Constitution* concluded, Brown’s views are “far out of the mainstream of accepted legal principles.”³

Brown sides with big corporate interests against ordinary Americans. She has criticized opposition to the *Lochner* decision, which began the period when the Supreme Court issued its most pro-corporate rulings—rulings that struck down laws requiring minimum wages, regulating working hours and conditions, and banning improper business practices.⁴ The California Supreme Court majority critiqued her effort to take away retirement benefits from workers as an attempt to “remake the law.”⁵

Why should we overturn 200 years of checks and balances to put a far right judicial activist on the bench? Brown’s duty as a California Supreme Court justice is to interpret the law, not rewrite it, but Brown repeatedly issues opinions attempting to write her own beliefs into law.⁶ California’s judicial evaluation committee said Brown is “prone to inserting conservative political views into her appellate opinions” when weighing in on her nomination to the state Supreme Court.⁷

Brown is so radical that even a former backer criticized her. The day after Brown’s judiciary committee hearing, a law professor who was singled out by Committee Chair Orrin Hatch for signing a letter of support for Brown wrote to Hatch that after watching her before the committee, he could “no longer support her nomination.”⁸

Name-callers who say Brown’s opponents are racist and sexist are dead wrong. In fact, it is Brown who has a judicial record hostile to equal opportunity for persons of color and women. Brown issued an opinion arguing that courts should not be allowed to consider black women a “cognizable group” when determining whether a prosecuting attorney has violated equal protection rights in jury selection processes.⁹ And Brown downplays the damaging effects of discrimination. In one dissent, Brown suggested age discrimination “does not mark its victim with a ‘stigma of inferiority and second class citizenship.’”¹⁰ In another, she criticized the majority’s holding that repeated racial slurs create a hostile work environment.¹¹ The president of the California Association of Black Lawyers explained that, despite its desire to see more African American women in prominent judicial positions, it could not support Brown’s nomination to the D.C. Circuit because she is “diametrically opposed to our goals.”¹²

[More on Janice Rogers Brown and the Nuclear Option](#)

¹ Brown speech to Federalist Society (April 20, 2000) at 8.

² Brown speech to Institute for Justice (Aug. 12, 2000) at 2.

³ “Judicial Pick Not Fit For U.S. Court,” *Atlanta Journal Constitution* (Oct. 29, 2003)

⁴ Brown Speech to Federalist Society (April 20, 2000) at 8.

⁵ *Metropolitan Water Dist. v. Superior Ct.*, 32 Ca. 4th 491, 497 (2004)

⁶ PFAW Report on JRB Committee Hearing <http://www.pfaw.org/pfaw/general/default.aspx?oid=12764>

⁷ Maura Dolan, “Bar Faults High Court Nominee in Key Areas,” *Los Angeles Times* (April 26, 1996) at A1.

⁸ Letter from Stephen R. Barnett to the Honorable Orrin Hatch (Oct. 23, 2003)

⁹ *People v. Robert Young*, 34 Cal.4th 1149, 1237 (2005).

¹⁰ *Stevenson v. Superior Court*, 941 P.2d 1157, 1187 (Cal. 1997)

¹¹ *Aguilar v. Avis Rent A Car Systems, Inc.* 980 P.2d 846 (Cal. 1999), cert. denied, 529 U.S. 1138 (2000)

¹² C. Cooper, “Bush Taps Brown for D.C. Circuit,” *Sacramento Bee* (July 26, 2003)