

Understanding the Dangers of Judicial Activism

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The difference between a strict constructionist who interprets the constitution and a liberal judicial activist is clearly seen in the judicial philosophy of Supreme Court Justice Stephen Breyer.

Breyer, in his book *Active Liberty*, wrote "Since law is connected to life, judges, in applying a test in light of its purpose, should look to consequences, including contemporary conditions, social, industrial and political of the community to be affected."

In other words, interpreting the Constitution and the framers intent is not a judge's standard. Other considerations are taken into account, based on the subject of political philosophy of the judges.

Breyer has said, "I tend to explore purpose and consequences, other-emphasis language, a more liberal tending of the text, history and tradition."

Here is how this plays out:

A Texas religious monument on display for many years without complaint was constitutional. But the display at a Kentucky courthouse that was newer and more likely to stir complaint was unconstitutional. Totally subjective.

This is really the court subjectively legislating, not interpreting, the law. Weighting the law's impact on the community is what the legislator is for, not judges. Breyer and other judicial activists became unelected, unaccountable, unpredictable dictators, instead of judges.

Or take the 1st Amendment and free speech. Breyer voted to uphold the McCain-Feingold-Cochran Campaign Reform Bill that tramples free speech.

His justification was purely political and subjective speculation, "We have to do something to make that playing field a little more level in terms of money."

In other words, it's okay to suppress free speech and trample the 1st Amendment to ensure all speech is equally protected. This is his opinion being imposed on us, not constitutional interpretation.

This is why we need to replace judicial activists with strict constructionalists.