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By ***Jana Nestlerode***

One of the strongest reasons to keep Republican candidates from occupying the Oval Office is the U.S. Supreme Court. Republican presidents have most consistently nominated candidates to the federal bench who choose to interpret the law to favor oligarchs and corporatists, abandoning the very principles upon which this country was founded. The only moderate Republican-nominated Supreme Court jurists in recent history have been David Souter and John Paul Stevens " both later considered traitors by their Republican benefactors.

The choice to select judges who will serve the interests of the elite at the expense of Constitutional principles has been part of a very calculated and deliberate scheme of this party. Quite simply, Republican presidents nominate federal judges who serve the one percent, NOT the people nor the Constitution. The result is the most extreme neoconservative court in the nation's history. The tortured and dishonest decisions handed down by this extremist group have essentially nullified our democracy.

The sudden demise of Antonin Scalia, one of the neoconservative darlings, has presented an opportunity to bring the Court closer to sanity, the prospects of which have the Republican bosses apoplectic. In typical Republican prevarication, they have asserted that there is a "long-standing tradition" of Presidents deferring judicial nominees in an election year. The prostrate press doesn't call them on this nonsense, so the lie stands. But the reality is that there is NO precedent for such delay or deferral. In point of fact, I can find no evidence that any President has ever deferred a judicial nomination in an election year.

The President has not succumbed to these disingenuous tactics. He will nominate a replacement. So the next weapon the Republicans have against Constitutional democracy is to refuse to call Senate hearings when the President names his nominee. Both parties have chosen this tactic in the past, but not for a nominee to the U.S. Supreme Court.

As Sundance said to Butch "Who are those guys"? Let's take a look. Here is the recent makeup of the U.S. Supreme Court.

Justice	Appointed by	Year
Antonin Scalia	Ronald Reagan (R)	1986
Anthony Kennedy	Ronald Reagan (R)	1987
Clarence Thomas	George H.W. Bush (R)	1991
Ruth Bader Ginsburg	William J. Clinton (D)	1993
Stephen Breyer	William J. Clinton (D)	1994
John Roberts	George W. Bush (R)	2005
Samuel Alito	George W. Bush (R)	2005
Sonia Sotomayor	Barack Obama (D)	2009
Elena Kagan	Barack Obama (D)	2010

(image by Jana Nestlerode)

Pundits and commentators like to characterize this court as composed of five conservatives and four liberals. That's inaccurate. The above court was composed of four extremists (Alito, Roberts, Scalia and Thomas), one relatively traditional conservative (Kennedy) and four moderates (Ginsburg, Breyer, Sotomayor and Kagan). We haven't had a true "liberal" on the bench since Thurgood Marshall. Justice Kennedy often sides with his extremist colleagues, giving them the ability to make new laws and change old ones in some very disturbing ways.

Judges have broad discretion to interpret law. "Textualist" jurists claim to look solely to the letter of the law, interpreting it as literally as possible. Thus Justice Hugo Black could not bring it upon himself to overturn a 1958 Connecticut law that criminalized the use of contraception. He could find no right of privacy, even for married couples, in the Constitution. "Non-textualists" are more willing to interpret laws in ways consistent with both the original intent of the authors and the evolution of both technology and culture. Thus Justice Black's brethren could look beyond the literal words of a clause or statute to determine the law's real purpose and render a decision faithful to that. They found that a law criminalizing the use of contraceptives violated an inherent Constitutional right to privacy intended by the founders.

But no judge is a pure "textualist" or a pure "non-textualist". Good judges try to ensure a just outcome consistent with the law they are called upon to review. But some judges decide the outcome they would like to see and then reason backwards to get there. And if those judges want to see a particular party win, they can always find a way to interpret the law to ensure that win. The neoconservative radicals on our current Court have worked hard, torturing the laws and our Constitutional guarantees, to ensure that the corporate elite win, even when an objective application of the law would call for a very different result.

Let's look at a few of the decisions that these Republican -nominated and quite radical jurists have given us.

Bush v. Gore (2000)

National elections are governed largely by state laws. The U.S. Supreme Court had no business granting certiorari in the case, but when they did, many Constitutional scholars realized that political influence was at work. In a rare unsigned opinion, the neoconservative majority awarded the Presidency to George W. Bush. In what was clearly a political decision wholly bereft of any constitutional foundation, the Court stopped the legitimate counting of votes in the state of Florida to ensure a Republican president. The neoconservative majority served its own interests by consciously and deliberately thwarting Florida law and the will of the people. This decision marked a sea change for many constitutional scholars. The abject corruption of the court was now on undisguised display for all of the world to see. Jeffrey Toobin wrote that Justice Souter was so appalled by the behavior of the Court that it was difficult for him to continue. He retired as soon as he was eligible under federal law in 2009. It is a rare event for a U.S. Supreme Court Justice to resign at such a relatively young age, yet that's exactly what he did.

It took orchestrated corruption of our election system to install George W. Bush as President, and the U.S. Supreme Court had to torture the Constitution to ensure the desired outcome. George W. Bush brought us two of the most disastrous presidential terms in our nation's history. The terrible ramifications of his presidency will continue for decades, perhaps for generations. Al Gore was the true winner of that 2000 election, and it is apparent that the entire world would have been better off had he taken his rightful place in the White House.

Ledbetter v. Good year Tire and Rubber Company (2007)

Lily Ledbetter proved that she had been discriminated against on the basis of her gender under Title VII of the Civil Rights Act of 1964. She proved that she had been paid substantially less for the same work as her male counterparts. A federal jury in the U.S. District Court awarded her back pay and damages after hearing strong evidence of gender discrimination against her by Goodyear. Overturning that jury's decision, the neoconservative majority held that the plaintiff could not recover damages because she had not filed her complaint within 180 days of the unlawful employment practice as allegedly required by the statute. According to this callous neoconservative majority, each pay period constituted an employment practice, and the clock was reset every time Goodyear issued a paycheck. It refused to consider or accept the harsh reality that Goodyear was engaging in a continuous act of overt discrimination against the

plaintiff over many years. Nor did the majority consider the fact that such pay discrimination is nearly impossible to discover since salaries of private employees are not public information. They cleverly and effectively found a way to find in favor of the corporation and avoid a just outcome.

The four moderate and dissenting justices stated that the majority had chosen a "cramped interpretation" of the statute wholly incompatible with its purposes of preventing employment discrimination and ensuring equal opportunities for all workers based on merit. A decision consistent with the obvious intent of the law would have been to hold that Goodyear had engaged in a continuous act of discrimination over many years and used privacy protocols to ensure that this discrimination was not discoverable. Such conduct is the kind that Congress meant to proscribe. The neoconservatives chose a hyper-technical interpretation of the law that effectively defeated the very purpose of the law. It was, unfortunately, very typical of a neoconservative majority that never met a corporation it didn't like.

In re Troy Anthony Davis (2009)

Troy Anthony Davis was convicted of murder in the first degree and sentenced to death. Nearly all of the prosecution witnesses subsequently recanted, and several named a prosecution witness as the actual shooter. The moderate justices prevailed in this case, and took the unusual step of ordering the lower federal court to hold a hearing to determine whether the evidence provided credible proof of actual innocence. Justice Stevens reiterated a lower court judge's sentiment in so holding: "it would be an atrocious violation of our Constitution and the principles upon which it is based to execute an innocent person". Rational people universally agree that executing the innocent is not only amoral, but unconstitutional.

Shockingly, and typically, Justices Scalia and Thomas dissented. According to Justice Scalia, "this Court has never held that the Constitution forbids the execution of a convicted defendant who has had a full and fair trial but is later able to convince a habeas court that he is "actually" innocent." Even if Justice Scalia is correct in that statement, it is an outrage that should be corrected. Any human being with a conscience, a moral compass and a rudimentary understanding of the founding principles would agree. Such callousness and disregard for fundamental principles of due process are deplorable in anyone holding a judicial position.

Connick v. Thompson (2010)

In one of the Court's most obscene rulings, the neoconservative majority held that a defendant who had been the victim of egregious prosecutorial misconduct could not collect damages. John Thompson was convicted of murder in the first degree as the result of not one, but four prosecutors withholding exculpatory evidence. John Thompson had spent eighteen years in prison, fourteen of those years on death row awaiting execution, when a defense investigator found the evidence buried in the files of the New Orleans Police Department. Four prosecutors knew of this evidence and failed to turn it over to the defense. Just as importantly, these morally bankrupt prosecutors failed to adhere to their oath to seek justice, not just a conviction. After his release and exoneration, Thompson sued the District Attorney's Office. A federal jury declared their outrage by awarding him fourteen million dollars in damages. The judge concurred and added an award of one million dollars in attorneys' fees. This was a civil matter involving money that would serve as

reparation for taking years of Thompson's life and subjecting him to the horrors of death row. But one could reasonably argue that these prosecutors should be jailed for malicious prosecution and/or obstruction of justice. That didn't happen.

So what did our neoconservative majority do? They overturned the jury's verdict and gave Thompson nothing. Thompson had argued that the District Attorney, Harry Connick should be held liable for failure to train his prosecutors regarding their legal obligation to turn over exculpatory evidence (Brady material) to the defense. In fact, Connick admitted at trial that the training in his office was inadequate. Connick himself had been sanctioned in the past for failure to turn over exculpatory evidence. The neoconservative majority found a way to ignore the overwhelming evidence of liability, and held that under the applicable federal law, Thompson was required to prove a pattern of misconduct, not a single incident of misconduct in order to prevail. They concluded that Thompson had not done so and overturned the jury's award.

The dissent written by Justice Ginsburg and joined by her moderate brethren revealed the true facts which the majority had conveniently disregarded. She was so appalled by the majority's decision that she read her dissent in its entirety from the bench. She stated that the evidence showed categorically (and the federal jury agreed) that at least four prosecutors either misunderstood their obligations under Brady, or deliberately ignored them. Those prosecutors withheld this evidence from the defense and from the Court despite having multiple opportunities to disclose it over nearly two decades.

Brady violations like these are the most common kinds of prosecutorial misconduct and among the most egregious. These violations can and do lead to the wrongful convictions and even wrongful executions of innocent citizens. The importance of a prosecutor's obligation under Brady cannot be overstated. But these prosecutors violated not only these essential obligations; they also violated the most basic tenets of human decency.

Prosecutors have enormous power, and to knowingly allow an innocent man to be put to death is so gross an abuse of that power that is should be punishable in the criminal courts. But our neoconservative majority could not even hold these disgraceful prosecutors civilly liable. The neoconservative majority essentially rubberstamped the transformation of our criminal justice system from one that promises citizens "fundamental fairness" to one more akin to a totalitarian state.

Citizens United v. FEC (2010)

In what has to be the most intellectually disingenuous decision of the present day, the neoconservatives gave the corporate elite the brass ring. Essentially removing all restrictions on campaign donations to elected officials, the Court blessed the United States as an official oligarchy, effectively destroying whatever remains of a democracy we had. It was a staggeringly magnanimous giveaway to the rich -- allowing unprecedented influence and access to those in power. No longer do our elected representatives have to respond to the electorate. They're beholden only to their corporate donors. The voters were rendered irrelevant in one shockingly corrupt decision.

This decision had been a goal of the corrupt for some time. Those seeking to disenfranchise 99% of the voters had built a steady movement to achieve this goal. A 1976 U.S. Supreme Court decision held incongruously that money was the equivalent of speech. That set the groundwork for future decisions to then protest any "limitation" on "speech" and allow

unlimited payoffs to our officials. Citizens United was a complete corruption of our elections and of our democracy -- brought to us by our Republican-nominated neoconservatives.

The Court was initially asked to decide a narrow question about the airing of a film critical of Hillary Clinton. But the nefarious intent of the neoconservatives was apparent when the Chief Justice asked the parties to reframe the issue so that the Court could address the broader issue of whether limitations on campaign spending infringe upon the freedom of speech. Traditionally, the Court addresses only the issue or issues brought to it by the parties. But in this case, the neoconservatives saw an opportunity to provide the corporate elite with near complete control of our elected representatives and they seized the moment.

In a follow-up case, the U.S. Supreme Court reaffirmed the invalidation of campaign spending laws and stated that such spending to influence our elected officials is "a central feature of democracy -- that constituents support candidates who share their beliefs and interests, and candidates who are elected can be expected to be responsive to those concerns." It is axiomatic that the more "support" a candidate receives, the more "responsive" he will be to that supporter. It would seem that bribery of our elected officials is no longer a crime. Charles and David Koch -- the poster children for the privileged and corrupt elite - have pledged to spend nearly one billion dollars to ensure that the next President is one who is loyal to the oligarchy and not the democracy. This outright purchase of our elected representatives is now legal thanks to our neoconservative Republican-nominated jurists.

Shelby County v. Holder (2013)

The Voting Rights Act of 1965 was designed to stop rampant discrimination against black voters prevalent in southern states. The Act required certain states known for their racist practices to obtain preclearance from the Department of Justice before passing voting laws. The formula for preclearance established by the DOJ had worked effectively for decades. The neoconservative political agenda includes suppressing voter turnout whenever and wherever possible. The American Legislative Exchange Council, the corporate lobbying group dedicated to ensuring the election of neoconservatives, provided states with model legislation designed to reduce voter turnout -- the infamous voter identification laws. These laws intentionally target the poor, the elderly, the disabled and urban voters who are less likely to have a drivers' license or state-issued photo identification.

The Republican-nominated majority of the U.S. Supreme Court struck down the preclearance formula that had worked for decades to reduce racial discrimination. The Court reasoned that the formula interfered with states' rights to conduct elections (never mind the contrary holding in Bush v. Gore). Southern states almost immediately passed laws that would have failed the preclearance requirements, effectively rendering tens of thousands of citizens ineligible to vote.

Justice Ginsberg, writing a dissent joined by the other moderates on the bench stated "throwing out preclearance when it has worked " to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet". The neoconservative majority's decision was not based upon Constitutional principles, but on a political agenda designed to ensure that those without means have no voice in our democracy.

Burwell v. Hobby Lobby (2014)

The notion that corporations are persons, with the attendant rights and protections of the Constitution and the Bill of Rights is an absurdity embraced by the neoconservative majority. Thus Hobby Lobby could deny their female employees insurance coverage for certain contraceptive care because of the religious beliefs of the "corporation". Thus, the religious beliefs of the corporation, as determined by its Board of Directors, could be used to penalize those female employees who disagreed with those beliefs. No one was forcing anyone, Director or employee, to violate his or her personal and sincerely held religious beliefs regarding the use of certain contraceptives. But this decision permitted corporate bosses to penalize a subset of their employees who did not share those beliefs. The Court sanctioned this discrimination by awarding closely held for- profit corporations the rights of personhood and equated the obligation to provide health care insurance with deprivation of religious freedom - a conclusion preposterous on its face.

The neoconservatives in control of our High Court have been openly and overtly destructive of Constitutional and democratic principles. The neoconservatives had the audacity to replace the last true liberal, Thurgood Marshall, with his ideological and intellectual opposite: Clarence Thomas. It's time for the Democrats to do the same. Antonin Scalia's place on the Court should be assumed by, if not an outright liberal, then at least a rational moderate. Now is the time to begin reclaiming our democracy and our Court.

Two of the rational voices on the Court are likely to retire in the coming years. The next President will probably have the opportunity to replace Ruth Bader Ginsburg (age 82) and Stephen Breyer (age 79). There is no greater reason to fight for the quick confirmation of an intellectually honest and temperate replacement for Justice Scalia, and then to fight for a President who will continue to put rational jurists on the High Court.