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FRIDAY, JULY 08, 2005

Down With Activist Judges!

by Michael in New York on [7/08/2005 01:25:00 PM](#)

Here's some good prep for the SCOTUS battles. This very amusing [NYT op-ed looks at "activist judges."](#) The column's one flaw is that it says this term is used by people both on the left and right to describe a judge who makes a ruling they disagree with. I disagree with THAT -- I'd say the term is almost entirely a fiction employed by the far right. The only time it's used by people on the left is to mock the idea of an "activist" judge.

But the heart of the column is very good. It decides to define an activist judge as one who votes to strike down a law passed by Congress. That is the gist of one of the far right's complaints -- that the elected Congress passes a law and that the unaccountable, unelected Supreme Court has the nerve to declare it unconstitutional, interfering with the will of the people. Obviously sometimes a law *should* be declared unconstitutional, but a justice's propensity for doing it again and again is about as good an argument for being an "activist" judge as one could ask for. Of course, no surprise here: the justices who were BY FAR willing to frustrate the will of Congress since 1994, when the court took its current shape were on the right:

- Thomas 65.63 %**
- Kennedy 64.06 %**
- Scalia 56.25 %**
- Rehnquist 46.88 %**
- O'Connor 46.77 %**
- Souter 42.19 %**
- Stevens 39.34 %**
- Ginsburg 39.06 %**
- Breyer 28.13 %**

So keep this in mind the next time someone screams about activist judges -- you can shout back, Yeah, I can't stand Thomas or Scalia either.



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