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CAN U.S. SUPREME COURT JUSTICES SURVIVE SCRUTINY UNDER THE STATE BAR's SO-CALLED "GOOD MORAL CHARACTER" STANDARD ?

By Evan Gutman CPA, JD (2002)

Can the Justices of the U.S. Supreme Court satisfy the IRRATIONAL moral character standard applied by the State Bars, if U.S. Supreme Court opinions were subjected to the same disclosure standards required of a State Bar Applicant. The answer is that there is not the slightest chance. No Justice who has ever sat on the Court since this nation's inception would be admitted to the Bar. It is specifically the fact that the Justices perform their duties in a competent, brave and heroic manner (as I fervently believe they do) that would preclude them from satisfying the IRRATIONAL moral character standard adopted by the State Bars. The reason is as follows.

To be a competent and brave member of the U.S. Supreme Court, the Justice must be willing to point out each and every logical flaw in the reasoning of the other Justices who are not in agreement with their position. That is quite simply put, the only way in which the public can be sure the probability of arriving at a correct decision is maximized. If the Justices did not criticize each other, but instead all agreed unanimously in each and every case, the logical flaws in the legal positions adopted would not be exposed. And all legal positions have some logical flaw. The public has a right to know the weaknesses and potential ramifications of any legal position taken in every case. That unavoidably requires good U.S. Supreme Court Justices to be critical of each other's opinions.

I am quite well satisfied, and in fact proud that unlike many State Supreme Courts which have essentially just become institutional rubber stamps of approval, the Justices of the U.S. Supreme Court constantly ensure that the process of truth-finding is maximized. They accomplish this by criticizing the opinions of each other without hesitation. They freely point out, as they should, where opinions adverse to their own are misleading, appear to present false information, fail to disclose material information, or appear to be a product of manipulative tricks with logic.

The following quotes from some of their opinions are demonstrative. It is noteworthy that none of the Justices, whether conservative or liberal are exempt. They all do it, and they all should do it. The selection of the following opinion excerpts is designed solely to demonstrate how none of the Justices could pass muster under the State Bar's irrational "good moral character" standard. The selections therefore should not in any manner be construed by the reader as this author's approval or disapproval of the opinions expressed, some of which this author agrees with, and some which this author disagrees with.

More importantly, the inability of the Justices to sustain scrutiny under the State Bar's IRRATIONAL moral character standard, is obviously not an adverse reflection upon their character. Quite to the contrary. The Justices are clearly doing their job exceptionally well. Rather instead, it is an indictment of the State Bar's IRRATIONAL moral character standard and its' application. The Justices in my view, have admirably lived up to their responsibility to the public by writing passionate and critical opinions in which they express their viewpoints without any hesitation. This should be encouraged, not discouraged. I would be significantly more concerned if the opinions were all unanimous, replete with mutual admiration instead of containing sharp and biting criticism. That would lead me to believe that the Justices were hiding things from the public. But, I am quite pleased and proud to say that such is obviously not the case, as indicated by the following quotes.

I submit that the severe criticisms the Justices throw at each other conclusively demonstrate that they are each, whether conservative or liberal, doing their job to the best of their ability, and that it is the

IRRATIONAL nature of the State Bar's moral character review process which makes them falsely appear as immoral. The Justices are doing fine. The State Bars need to change because no U.S. Supreme Court Justice who has ever sat on the bench since this nation's inception can truly satisfy their IRRATIONAL standard of moral character. And that is because no human being who has ever existed on the face of this earth could do so. The so-called "good moral character" standard applied by the State Bars today is quite simply put, a ridiculous and unattainable standard which, if applied objectively and evenly would preclude every person on earth from being admitted to the State Bar. Consequently, the State Bars have resorted to applying it subjectively, discriminatively and unequally. To put the matter simply, they admit the people they "like," and deny admission to those that they "dislike."

The most applicable words and phrase in the U.S. Supreme Court opinion excerpts have been "BOLDED" by this author. They are as follows:

"The Court simply misses the point. . . ."

Secretary of State of Maryland v. Joseph H. Munson Co., 467 U.S. 947 (1984)
Justice Rehnquist, Dissenting Footnote 2

". . . it is the dissent that "simply misses the point" . . . ."

Secretary of State of Maryland v. Joseph H. Munson Co., 467 U.S. 947 (1984)
Justice Blackmun, Lead Opinion, Footnote 16

"Today the majority takes an extraordinary doctrine, developed cautiously by this Court over the past 50 years, and applies it to a circumstance, and in a manner, that is without precedent. Because of this unwarranted expansion of our previous cases, I dissent.
. . .
Finally, the Court asserts that I do not understand the nature of the conduct at issue here. . . . But of course, this is wrong. . . .Thus, it is the majority -- and not I -- that is guilty of "recharacterizing" the activity that Lakewood licenses."

City of Lakewood v. Plain Dealer Publ. Co., 486 U.S. 750 (1988)
Justices White, Stevens and O'Connor, Dissenting

"I regret to say -- and I do so with deference -- that **the majority has, by its broadside, swept away one of our most precious rights**, namely, the right of self-preservation.

Keyishian v. Board of Regent, 385 U.S. 589 (1967)
Justices Clark, Harlan, Stewart and White, Dissenting

"I do not believe that **giving this Court's seal of approval to such a gross misuse of the judicial process** is likely to lead to greater respect for the law, any more than it is likely to lead to greater protection for First Amendment freedoms."

Walker v. City of Birmingham, 388 U.S. 307 (1967)
Justices Warren, Brennan and Fortas, Dissenting

"And **the Court does so by letting loose a devastatingly destructive weapon** for suppression of cherished freedoms heretofore believed indispensable to maintenance of our free society.
. . .
The Court today lets loose a devastatingly destructive weapon for infringement of freedoms jealously safeguarded not so much for the benefit of any given group of any given persuasion as for the benefit of all of us. . . . Convictions for contempt of court orders which invalidly abridge First Amendment freedoms must be condemned equally with convictions for violation of statutes which do the same thing."

Walker v. City of Birmingham, 388 U.S. 307 (1967)
Justices Brennan, Warren, Douglas and Fortas, Dissenting

"The **Court's holding seems to me to carry seeds of mischief** that may impair the conceded ability of the authorities to regulate the use of public thoroughfares in the interests of all."

Shuttlesworth v. City of Birmingham, 394 U.S. 147 (1969)
Justice Harlan, Concurring

"The **Court has spun an intricate, technical web** but I fear it has **ensnared itself in its own remorseless logic** and arrived at **a result having no support in the facts** of the case or the governing law.
. . .
. . . But **surely the Court has its tongue in its cheek** when it infers from this record the possibility that Street was not convicted for burning the flag, but only for the words he uttered."

Street v. New York, 394 U.S. 576 (1969)
Justice White, Dissenting

"**Our failure to reverse is a serious setback for First Amendment rights** in a troubled field."

Jones v. State Board of Education of Tennessee, 397 U.S. 31 (1970)
Justices Douglas and Brennan, Dissenting

"Our Brother White agrees that the protection afforded by the First Amendment depends upon whether the issue involved in the publication is an issue of public or general concern. He would, however, confine our holding to the situation raised by the facts in this case, that is, limit it to issues involving "official actions of public servants." **In our view, that might be misleading**."

Rosenbloom v. Metromedia, 403 U.S. 29 (1971)
Justices Brennan, Burger and Blackmun in reference to Justice White

"With all respect, **I consider that the Court has been almost irresponsibly feverish** in dealing with these cases."

New York Times Co. v. United States, 403 U.S. 713 (1971)
Justices Harlan, Burger, and Blackmun, Dissenting

"I fully join in MR. JUSTICE BLACKMUN's dissent against **the bizarre result reached by the Court**."

Gooding v. Wilson, 405 U.S. 518 (1972)
Justice Burger, Dissenting

"It seems strange, indeed, that, in this, day a man may say to a police officer who is attempting to restore access to a public building, "White son of a bitch, I'll kill you," and "You son of a bitch, I'll choke you to death," . . . and yet constitutionally cannot be prosecuted and convicted under a state statute that makes it a misdemeanor to "use to or of another, and in his presence . . . opprobrious words of abusive language, tending to cause a breach of the peace. . . ." This, however, is precisely what the Court pronounces as the law today.
. . .
. . . I feel that, by decisions such as this one and, indeed, *Cohen v. California*, 403 U.S. 15 (1971), **the Court, despite its protestations to the contrary, is merely paying lip service to *Chaplinsky*.**

Gooding v. Wilson, 405 U.S. 518 (1972)
Justices Blackmun and Burger, Dissenting

"**The tortured route which the majority takes** to give this oath a supposedly constitutional interpretation merely emphasizes the unconstitutional effect those words would have were they given their natural meaning."

Cole v. Richardson, 405 U.S. 676 (1972)
Justice Douglas, Dissenting Footnote 3

"**There is no merit, therefore, to the Court suggestion** that the question of whether "appellant's particular behavior was protected by the First Amendment" . . . is not presented."

Grayned v. City of Rockford, 408 U.S. 104 (1972)
Justice Douglas, Dissenting Footnote

"I cannot accept the validity of that analysis. In the first place, the Court makes no effort to define what it means by "substantial overbreadth." We have never held that a statute should be held invalid on its face merely because it is possible to conceive of a single impermissible application. . . .

More fundamentally, **the Court offers no rationale** to explain its conclusion that, for purposes of overbreadth analysis, deterrence of conduct should be viewed differently from deterrence of speech, even where both are equally protected by the First Amendment. . . .
. . .
. . . if today's decision necessitates the drawing of artificial distinctions between protected speech and protected conduct, and if the "chill" on protected conduct is rarely, if ever, found sufficient to require the facial invalidation of an overbroad statute, then the effect could be very grave indeed."

Broadrick v. Oklahoma, 413 U.S. 601 (1973)
Justices Brennan, Stewart and Marshall, Dissenting

"Rather than considering the "evidence" in the light most favorable to the appellee and resolving credibility questions against the appellant, as many of our cases have required, **the Court has instead fashioned its own version of events** from a paper record, some "uncontroverted evidence," and a large measure of conjecture. Since this is not the traditional function of any appellate court, and is surely **not a wise or proper use of the authority of this Court**, I dissent."

Hess v. Indiana, 414 U.S. 105 (1973)
Justices Rehnquist, Burger and Blackmun, Dissenting

"**These assertions are, of course, no less judicial fantasy** than that which the dissent charges the majority of indulging."

Parker v. Levy, 417 U.S. 733 (1974)
Justices Blackmun and Burger, Concurring

"And I believe **the rationale by which the Court reaches its conclusion is unsound**.
. . .
. . . Turning to the question of the State's interest in the flag, it seems to me that **the Court's treatment lacks all substance,"**

Spence v. Washington, 418 U.S. 405 (1974)
Justices Rehnquist, Burger and White, Dissenting

"The Court . . . states that the Virginia Supreme Court placed no limiting interpretation on its statute and that it implied that the statute might apply to doctors, husbands, and lecturers. **The Court is in error**: the Virginia Supreme Court stated that it would not interpret the statute to encompass such situations."

Bigelow v. Virginia, 421 U.S. 809 (1975)
Justice Rehnquist, Dissenting Footnote 1

"In so doing, the Court attempts to distinguish *Flowers* from this case. That attempt is wholly unconvincing, both on the facts and in its rationale."

Greer v. Spock, 424 U.S. 828 (1976)
Justices Brennan and Marshall, Dissenting

"Not only does the Court's forum approach to public speech blind it to proper regard for First Amendment interests, but also the Court forecloses such regard by studied misperception of the nature of the inquiry required in Flower. . . . Thus, **contrary to the Court's inaccurate reformulation**, Flower did not go so far as to require that the military "abandon any right to exclude civilian vehicular and pedestrian traffic," . . . .
. . .
. . . Most important, however, in advancing such a justification, **the Court engages in a rude refusal** even to acknowledge the firmly fixed limitation on governmental control of First Amendment activity afforded by the doctrine against prior restraints."

Greer v. Spock, 424 U.S. 828 (1976)
Justices Brennan and Marshall, Dissenting

". . . Yet the Court's opinions in this case . . . go distressingly far toward deciding that fundamental constitutional rights can be denied to both civilians and servicemen whenever the military thinks its functioning would be enhanced by so doing.

The First Amendment infringement that the Court here condones is fundamentally inconsistent with the commitment of the Nation and the Constitution to an open society."

Greer v. Spock, 424 U.S. 828 (1976)
Justice Marshall, Dissenting

"There are undoubted difficulties with an effort to draw a bright line between "commercial speech," on the one, hand and "protected speech," on the other, and **the Court does better to face up to these difficulties than to attempt to hide them under labels."**

Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc. 425 U.S. 748 (1976)
Justice Rehnquist, Dissenting

"**The Court has plainly departed** from the teaching of these cases. . . .
Under our cases, therefore, **more is required to be shown than the Court's opinion reveals** to affirm the issuance of the injunction."

Wooley v. Maynard, 430 U.S. 705 (1977)
Justices White, Blackmun and Rehnquist, Dissenting in part

"**The logic of the Court's opinion leads to startling, and, I believe, totally unacceptable, results,"**

Wooley v. Maynard, 430 U.S. 705 (1977)
Justices Rehnquist and Blackmun, Dissenting

"In my view**, the Court's holding is a grave repudiation** of nearly 200 years of judicial precedent and historical practice. . . .

I find it very disturbing that fundamental principles of constitutional law are subordinated to what seem the needs of a particular situation. . . ."

Nixon v. Administrator of General Services, 433 U.S. 425 (1977)
Justice Burger, Dissenting

"I think that not only the Executive Branch of the Federal Government, but the Legislative and Judicial Branches as well, **will come to regret this day when the Court has upheld an Act of Congress that trenches so significantly on the functioning of the Office of the President**."

Nixon v. Administrator of General Services, 433 U.S. 425 (1977)
Justice Rehnquist, Dissenting

"**The Court's fundamental error** is its failure to realize that the state regulatory interests in terms of which the alleged curtailment of First Amendment rights accomplished by the statute must be evaluated are themselves derived from the First Amendment. . . . Moreover, **the result reached today in critical respects marks a drastic departure from the Court's prior decisions** which have protected against governmental infringement the very First Amendment interests which the Court now deems inadequate to justify the Massachusetts statute."

First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978)
Justices White, Brennan and Marshall, Dissenting

"**MR. JUSTICE WHITE argues, without support** in the record, that, because corporations are given certain privileges by law, they are able to "amass wealth" and then to "dominate" debate on an issue."

First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978)
Justice Powell, Lead Opinion Footnote 30

"The **ultimate irony of the Court's analysis is that** (Sec.) 5.13(d) because of its broad sweep, actually **encourages deception**."

Friedman et al. v. Rogers et al., 440 U.S. 1 (1979)
Justices Blackmun and Marshall, Concurring in part and Dissenting in part

"In my view, **the Court's holding departs from the precedent it purports to follow** and precludes effective judicial review of the conditions of pretrial confinement. . . .

. . .

Although the Court professes to go beyond the direct inquiry regarding intent and to determine whether a particular imposition is rationally related to a nonpunitive purpose, this exercise is, at best, a formality. . . . Yet this toothless standard applies irrespective of the excessiveness of the restraint or the nature of the rights infringed."

Bell v. Wolfish, 441 U.S. 520 (1979)
Justice Marshall, Dissenting

"For the Court seems to use the term "intent" to mean the subjective intent of the jail administrator. This emphasis can only "encourage hypocrisy and unconscious self-deception."

Bell v. Wolfish, 441 U.S. 520 (1979)
Justices Stevens and Brennan, Dissenting

"**The Court egregiously errs** in holding that *Greer v. Spock*, 424 U.S. 828 (1976) compels the validation of these regulations."

Brown v. Glines, 444 U.S. 348 (1980)
Justice Brennan, Dissenting

"The Court's analysis, in my view, is wrong in several respects. . . . I also think that the Court errs here in failing to recognize that the state law is most accurately viewed as an economic regulation. . . . Finally, the Court, in reaching its decision, improperly substitutes its own judgment for that of the State. . . .

. . .

. . . The Court's analysis ignores the fact that the monopoly here is entirely state-created. . . .

. . .

The Court's decision today fails to give due deference to this subordinate position of commercial speech. The Court in so doing returns to the bygone era of *Lochner v. New York*, 198 U.S. 45 (1905). . . .

. . .

The Court's analysis in this regard is in my view fundamentally misguided. . . .

. . .

. . . **Otherwise, as here, the Court will have no factual basis for its assertions**."

Central Hudson Gas v. Public Service Commission of New York, 447 U.S. 557 (1980)
Justice Rehnquist, Dissenting

"As said by Mr. Justice Jackson, concurring in the result in *Brown v. Allen*, 344 U.S. 443, 540 (1953), **"we are not final because we are infallible, but we are infallible only because we are final."**

. . .

However high-minded the impulses which originally spawned this trend may have been, and which impulses have been accentuated since the time Mr. Justice Jackson wrote, **it is basically unhealthy to have so much authority concentrated in a small group of lawyers who have been appointed to the Supreme Court and enjoy virtual life tenure."**

Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980)
Justice Rehnquist, Dissenting

"**I shall not again seek to demonstrate the errors of analysis in the Court's opinion** in *Gannett*."

Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980)
Justice Blackmun, Concurring Footnote 3

"Despite **the rhetorical hyperbole of THE CHIEF JUSTICE's dissent**, there is a considerable amount of common ground between the approach taken in this opinion and that suggested by his dissent. . . .
. . .
Despite his belief that this is "the essence of . . . democracy," this has never been the approach of this Court when a legislative judgment is challenged as an unconstitutional infringement of First Amendment rights.
. . .
Taken literally, THE CHIEF JUSTICE's approach would require reversal of the many cases striking down antisolicitation statutes on First Amendment grounds. . . . Despite the dissent's assertion to the contrary, however, it has been this Court's consistent position that democracy stands on a stronger footing when courts protect First Amendment interests against legislative intrusion, rather than deferring to merely rational legislative judgments in this area. . . .
. . .
Because **THE CHIEF JUSTICE misconceives** the nature of the judicial function in this situation, **he misunderstands** the significance of the city's extensive exceptions to its billboard prohibition. . . ."

Metromedia Inc. v. City of San Diego, 453 U.S. 490 (1981)
Justices White, Stewart, Marshall and Powell, Lead Opinion

"**The plurality's treatment** of the commercial-noncommercial distinction in this case **is mistaken** in its factual analysis of the San Diego ordinance, and **departs from this Court's precedents**."

Metromedia Inc. v. City of San Diego, 453 U.S. 490 (1981)
Justices Brennan and Blackmun, Concurring

"**Today the Court takes an extraordinary -- even a bizarre -- step.** . . .
. . . **The Court's disposition of the serious issues involved exhibits insensitivity** to the impact of these billboards. . . . Indeed, **lurking in the recesses of today's opinions is a not-so-veiled threat** that the second option, too, may soon be withdrawn. . . .
. . .
. . . **This is the essence of both democracy and federalism, and we gravely damage both** when we undertake to throttle legislative discretion and judgment at the "grass roots" of our system.
. . .
In a bizarre twist of logic, the plurality seems to hold . . . .
. . .
The plurality today trivializes genuine First Amendment values. . . .
. . .
The **Court today unleashes a novel principle, unnecessary and, indeed, alien to First Amendment doctrine** announced in our earlier cases. . . . The **plurality gravely misconstrued** the commercial-noncommercial distinction of earlier cases. . . ."

Metromedia Inc. v. City of San Diego, 453 U.S. 490 (1981)
Justice Burger, Dissenting

"(1) . . . **it is a genuine misfortune to have the Court's treatment of the subject be a virtual Tower of Babel, from which no definitive principles can be clearly drawn; and (2) I regret even more keenly my contribution to this judicial clangor. . . ."**

Metromedia Inc. v. City of San Diego, 453 U.S. 490 (1981)
Justice Rehnquist, Dissenting

"Because **the Court's lenient approach** towards the restriction of speech for reasons of aesthetics **threatens seriously to undermine the protections of the First Amendment**, I dissent.

. . . **the answers that the Court provides reflect a startling insensitivity** to the principles embodied in the First Amendment. . . .
. . .
Regrettably, the Court's analysis is seriously inadequate."

Members of the City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789 (1984)
Justices Brennan, Marshall and Blackmun, Dissenting

"Believing that in this case the overbreadth doctrine is not merely "strong medicine," . . . but "bad medicine," I dissent.
. . .
The Court, therefore, is simply mistaken when it claims that "there is no core of easily identifiable and constitutionally proscribable conduct that the statute prohibits.
. . .
. . . As noted, **the Court simply misunderstands** the primary purpose and effect of the statute. . . . **its vision proves sadly deficient."**

Secretary of State of Maryland v. Joseph H. Munson Co., 467 U.S. 947 (1984)
Justices Rehnquist, Burger, Powell and O'Connor, Dissenting

"It trivializes the First Amendment to seek to use it as a shield in the manner asserted here. And it tells us something about why many people must wait for their "day in court" when the time of the courts is preempted by frivolous proceedings that delay the causes of litigants who have legitimate, nonfrivolous claims."

Clark v. Community for Creative Nonviolence, 468 U.S. 288 (1984)
Justice Burger, Concurring

"**The Court's disposition of this case is marked by two related failings**. First, **the majority is either unwilling or unable to take seriously the First Amendment claims** advanced by respondents. . . . Second, **the majority misapplies the test** for ascertaining whether a restraint on speech qualifies as a reasonable time, place, and manner regulation. . . .
. . .
. . . **the Court thereby avoids examining closely the reality** of respondents' planned expression. . . .

Clark v. Community for Creative Nonviolence, 468 U.S. 288 (1984)
Justices Marshall and Brennan, Dissenting

"A disquieting feature about the disposition of this case is that it lends credence to the charge that judicial administration of the First Amendment . . . tends systematically to discriminate against efforts by the relatively disadvantaged to convey their political ideas."

Clark v. Community for Creative Nonviolence, 468 U.S. 288 (1984)
Justice Marshall, Dissenting Footnote 14

"**JUSTICE REHNQUIST's effort** to prop up his position by relying on our decisions upholding certain provisions of the Hatch Act . . . **only reveals his misunderstanding** of what is at issue in this case."

FCC v. League of Women Voters of California, 468 U.S. 364 (1984)
Justice Brennan, Lead Opinion Footnote 27

"The key to this paradoxical result lies in the fact that somewhere between the beginning and the end of his opinion, **JUSTICE WHITE stops reviewing the statutes . . . and begins assessing a statutory scheme of his own creation. . . .**

. . .

Because **the First Amendment interests** at stake in this case **are denigrated by the Government . . . and all but ignored by JUSTICE WHITE**, it becomes necessary to emphasize their nature and importance. . . ."

Regan v. Time, Inc., 468 U.S. 641 (1984)

Justices Brennan and Marshall, Concurring in part, Dissenting in part

". . . **JUSTICE STEVENS, largely ignoring the text of the statute** . . . seems to treat the "purposes" language as though it adds nothing to the "publications" requirement. **I believe he thereby carries the principle** of construing statutes in order to save them from constitutional attack **"to the point of perverting the purpose. . . ."**

Regan v. Time, Inc., 468 U.S. 641 (1984)

Justice Brennan, Concurring in part, Dissenting in part Footnote 1

"**One does not have to read the Court's opinion very closely to realize** that its interpretation of the Act is, in fact, based on **a thinly disguised conviction** that the Act is unconstitutional. . . . Indeed, **the Court tips its hand** when its discusses the Court's decisions in *Lovell v. City of Griffin*. . . ."

Lowe v. SEC, 472 U.S. 181 (1985)

Justices White, Burger and Rehnquist, Dissenting

"The **Court's decision** to the contrary **is wholly inconsistent with the purpose and history** of . . . well-established principles respecting interlocutory review of preliminary injunctions, and common sense.

. . .

Contrary to the Court's assertion, there is much more than a "semantic difference" between a finding of likelihood of success sufficient to support preliminary relief and a final holding on the merits.

. . .

. . . **Having thus mischaracterized the District Court' decision, the Court then purports** "to decide this case on the merits,". . . .

. . .

. . . **the opinion of the Court seizes upon the underlying purposes** of (Sec.) 1252 in order **to evade** the well-established rule prohibiting appellate courts from even purporting to "intimate . . . views" on the ultimate merits when reviewing preliminary injunctions. . . .

Walters v. National Association of Radiation Survivors, 473 U.S. 305 (1985)

Justices Brennan and Marshall, Dissenting

"The Court does not appreciate the value of individual liberty. . . .

. . .

. . . I must comment on two aspects of the Court's rhetoric. . . .

. . .

. . . Just as I disagree with the present Court's crabbed view of the concept of "liberty," so do I reject its apparent unawareness of the function of the independent lawyer as a guardian of our freedom.

. . .

Unfortunately, **the reason for the Court's mistake today is all too obvious. It does not appreciate the values of individual liberty."**

Walters v. National Association of Radiation Survivors, 473 U.S. 305 (1985)

Justices Stevens, Brennan and Marshall, Dissenting

"**The way the Court utilizes the *Mathews v. Eldridge* procedural due process analysis is somewhat misleading. . . .**"

Walters v. National Association of Radiation Survivors, 473 U.S. 305 (1985)
Justice Stevens, Dissenting Footnote 19

"**JUSTICE STEVENS misunderstands** the nature of the Superior Court's limiting construction of the statute. . . ."

Posadas de Puerto Rico Associates v. Tourism Company of Puerto Rico, 478 U.S. 328 (1986)
Justice Rehnquist, Lead Opinion Footnote 9

"In so doing, **the Court** significantly and **irrationally expands** the definition of "public concern". . . . Because I believe **the Court's conclusions rest upon a distortion** of both the record and the Court's prior decisions, I dissent.
. . .
The **Court reaches the opposite conclusion only by distorting** the concept of "public concern." . . . .
. . .
The **Court's sweeping assertion . . . is simply contrary to reason and experience**."

Rankin v. McPherson, 483 U.S. 378 (1987)
Justices Scalia, Rehnquist, White and O'Connor, Dissenting

"The **dissent accuses us of distorting** and beclouding the record, evidently because we have failed to accord adequate deference to the purported "findings" of the District Court. . . . We find the District Court's "findings" from the bench significantly more ambiguous than does the dissent."

Rankin v. McPherson, 483 U.S. 378 (1987)
Justice Marshall, Lead Opinion Footnote 8

"Therefore, the dissent concludes, the actual ordinance at issue involves no "activity protected by the First Amendment," and thus is not subject to facial challenge. However, **that reasoning is little more than a legal sleight-of-hand**, misdirecting the focus of the inquiry. . . ."

City of Lakewood v. Plain Dealer Publ. Co., 486 U.S. 750 (1988)
Justices Brennan, Scalia, Marshall and Blackmun, Lead Opinion

"The dissent suggests that the *Kovacs* plurality's distinction of *Saia* is somehow not good law, because four other Justices (three of whom were in dissent) adopted the broader rationale that *Saia* was actually repudiated. JUSTICE WHITE's interpretation of *Kovacs* does not square with out settled jurisprudence: when no single rationale commands a majority, "the holding of the Court may be viewed as that position taken by those Members who concurred in the judgment on the narrowest grounds." . . . . In any event, history has vindicated the plurality's distinction. *Saia* has been cited literally hundreds of times in its 40-year history (a strange phenomenon had that case been "repudiated"), and never with the notation "overruled on other grounds."

City of Lakewood v. Plain Dealer Publ. Co., 486 U.S. 750 (1988)
Justice Brennan, Lead Opinion Footnote 9

"**The Court today abandons** Martinez" fundamental premise. In my opinion, its suggestion that three later opinions applying reasonableness standards warrant this departure . . . is disingenuous.
. . .
". . **. the Court applies a manipulable "reasonableness" standard** to a set of regulations that too easily may be interpreted to authorize arbitrary rejections of literature addressed to inmates."

Thornburgh v. Abbott, 490 U.S. 401 (1989)
Justices Stevens, Brennan and Marshall, Concurring in part, Dissenting in part

"The Court's role as the final expositor of the Constitution is well established, but its **role as a platonic guardian admonishing those responsible to public opinion as if they were truant schoolchildren has no similar place in our system of government."**

Texas v. Johnson, 491 U.S. 397 (1989)
Justices Rehnquist, White and O'Connor, Dissenting

"I do not agree with the plurality's conclusion that the overbreadth defense is unavailable when the statute alleged to run afoul of that doctrine has been amended to eliminate the basis for the overbreadth challenge**. It seem to me strange judicial theory** that a conviction initially invalid can be resuscitated by postconviction alteration of the statute under which it was obtained. . . .
. . .
The **plurality seeks to cloak** its extravagant constitutional doctrine in conservative garb borrowed from an entirely different area of the law . . . ."

Massachusetts v. Oakes, 491 U.S. 576 (1989)
Justices Scalia and Blackmun; and Justices Brennan, Marshall and Stevens in part, Concurring in part, Dissenting in part

"**JUSTICE SCALIA's statement** that "the defendant here apparently intended to send his stepdaughter's photograph" to one of the "pornographic magazines that use young female models," . . . therefore **seems to me inappropriate."**

Massachusetts v. Oakes, 491 U.S. 576 (1989)
Justice Brennan, Dissenting Footnote 5

"Indeed, to reach its result, the majority must characterize as "dicta" the Court's reference to "least restrictive means" analysis . . . although this reference seems integral to the Court's holding . . . ."

Board of Trustees of State University of NY v. Fox, 492 U.S. 469 (1989)
Justice Blackmun, Dissenting Footnote 1

"Although **JUSTICE KENNEDY repeatedly accuses** the Court of harboring a "latent hostility" or "callous indifference" toward religion . . . nothing could be further from the truth, and **the accusations could be said to be as offensive as they are absurd. . . .**

JUSTICE KENNEDY's accusations are shot from a weapon triggered by the following proposition. . . .

. . . JUSTICE KENNEDY thus has it exactly backwards when he says that enforcing the Constitution's requirement that government remain secular is a prescription of orthodoxy. . . . Although **JUSTICE KENNEDY accuses the Court of "an Orwellian rewriting of history," . . . perhaps it is JUSTICE KENNEDY himself who has slipped into a form of Orwellian newspeak. . . ."**

County of Allegheny v. ACLU, 492 U.S. 573 (1989)
Justices Blackmun, Brennan, Marshall, Stevens and O'Connor, Lead Opinion

"This view of the Establishment Clause reflects an unjustified hostility toward religion, a hostility inconsistent with out history and our precedents, and I dissent from this holding. . . .

. . .

As a general rule, the principle of stare decisis directs us to adhere not only to the holdings of our prior cases but also to their explications of the governing rules of law. Since the majority does not state its intent to overrule *Lynch*, I find its refusal to apply the reasoning of that decision quite confusing.

. . .

In addition to disregarding precedent and historical fact, the majority's approach to government use of religious symbolism threatens to trivialize constitutional adjudication. **By mischaracterizing the Court's opinion in *Lynch* as an endorsement-in-context test, . . . JUSTICE BLACKMUN embraces a jurisprudence of minutiae. . . .**

. . .

. . . **The Court thus lends its assistance to an Orwellian rewriting of history as many understand it. I can conceive of no judicial function more antithetical to the First Amendment.**

County of Allegheny v. ACLU, 492 U.S. 573 (1989)
Justices Kennedy, Rehnquist, White and Scalia, Concurring in part, Dissenting in part

"**Once stripped of this fiction, JUSTICE KENNEDY's opinion transparently lacks a principled basis**. . . .

. . .

JUSTICE KENNEDY is clever but mistaken in asserting that the description of the menorah . . . purports to turn the Court into a "national theology board."

County of Allegheny v. ACLU, 492 U.S. 573 (1989)
Justice Blackmun, Lead Opinion Footnotes 57 and 60

"The **criticism that JUSTICE KENNEDY levels at JUSTICE O'CONNOR's endorsement standard for evaluating symbolic speech . . . is not only "uncharitable," . . . but also largely unfounded. . . .**"

County of Allegheny v. ACLU, 492 U.S. 573 (1989)
Justice Stevens, Concurring in part, Dissenting in part, Footnote 6

"**JUSTICE STEVENS is incorrect** when he asserts that requiring a showing of direct or indirect coercion in Establishment Clause cases is "out of step with our precedent." . . . ."

. . .

"**The majority illustrates the depth of its error** in this regard by going so far as to refer to the concurrence as dissent in *Lynch* as "our previous opinions. . ."

County of Allegheny v. ACLU, 492 U.S. 573 (1989)
Justice Kennedy, Concurring in part, Dissenting in part, Footnote 1 and 6

"**Justice SCALIA's transmogrification** of *Ginzburg*, however, is far from innocuous."

FW/PBS v. City of Dallas, 493 U.S. 215 (1990)
Justice Brennan, Concurring Footnote 1

"I join the Court's opinion. **As one of the "Orwellian" "censors" derided by the dissent** . . . . I write separately to explain my views in this case."

Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990)
Justice Brennan, Concurring

"In permitting Michigan to make private corporations **the first object of this Orwellian announcement**, the Court today endorses the principle that too much speech is an evil that the democratic majority can proscribe. I dissent because that principle is contrary to our case law and incompatible with the absolutely central truth of the First Amendment. . . .

. . .

Which is why the Court puts forward its second bad argument. . . .

. . .

. . . **Under this mode of analysis, virtually anything the Court deems politically undesirable can be turned into political corruption** -- by simply describing its effects as politically "corrosive," which is close enough to "corruptive" to qualify. It is sad to think that the First Amendment will ultimately be brought down not by brute force but by poetic metaphor.

. . .

. . . **Today's reversal of field will require adjustment of a fairly large number of significant First Amendment holdings.** . . .

. . .

I would not do justice to the significance of today's decisions to discuss only its lapses from case precedent and logic. . . .

. . .

Because **today's decision is inconsistent with unrepudiated legal judgments** of our Court, but even more because **it is incompatible with the unrepealable political wisdom of our First Amendment**, I dissent.

Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990)
Justice Scalia, Dissenting

"In the course of doing so, **the Court reveals a lack of concern** for speech rights that have the full protection of the First Amendment."

Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990)
Justices Kennedy, Scalia and O'Connor, Dissenting

"Thus, the new principle that the Court today announces will be enforced by a corps of judges (the Members of this Court included) who overwhelmingly owe their office to its violation. Something must be wrong here, and I suggest it is the Court."

Rutan v. Republican Party of Illinois, 497 U.S. 62 (1990)
Justices Scalia, Rehnquist and Kennedy, Dissenting

"**We therefore disagree with JUSTICE SCALIA. . . . In our view, his analysis turns our constitutional doctrine on its head**. Instead of interpreting statutes in light of First Amendment principles, he would interpret the First Amendment in light of state statutory law. It seems to us that this proposal bears little relation to the values that the First Amendment was designed to protect."

Lehnert v. Ferris Faculty Association, 500 U.S. 507 (1991)
Justices Blackmun, Rehnquist, White and Stevens, Lead Opinion

"The Court suggests . . . that the cost of NEA assistance would not be chargeable under the "statutory duties" test because the use of such assistance is not affirmatively *required* by the Michigan statute. This distorts what I mean by the "statutory duties" test."

Lehnert v. Ferris Faculty Association, 500 U.S. 507 (1991)
Justice Scalia, Concurring in part, Dissenting in part, Footnote 4

"**JUSTICE SCALIA's views are similar to those of the Court, and suffer from the same defects**."
Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991)
Justices White, Marshall, Blackmun and Stevens, Dissenting

"**JUSTICE SOUTER's analysis is at least as flawed as that of the Court**."
Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991)
Justice White, Dissenting Footnote 2

"The Court's discussion of this question is limited to an ambiguous and noncommital paragraph toward the very end of the opinion. . . . Since that was the question decided by the Court of Appeals below, the question which divides the court of appeals, and the question presented in the petition for certiorari, one would have thought that the Court would at least authoritatively decide, if not limit itself to, that question."
Forsyth County v. Nationalist Movement, 505 U.S. 123 (1992)
Justices Rehnquist, White, Scalia and Thomas, Dissenting

"This case could easily be decided within the contours of established First Amendment law. . . . **Instead, "finding it unnecessary" to consider the questions upon which we granted review, . . . the Court holds** the ordinance facially unconstitutional on a ground that was never presented to the Minnesota Supreme Court, a ground that has not been briefed by the parties before this Court, a ground that requires serious departures from the teaching of prior cases and is inconsistent with the plurality opinion in *Burson v. Freeman*. . . .

This Court ordinarily is not so eager to abandon its precedents. . . .

But in the present case, **the majority casts aside long-established First Amendment doctrine** without the benefit of briefing and adopts an untried theory. **This is hardly a judicious way of proceeding**, and the **Court's reasoning in reaching its result is transparently wrong**.
. . .
Today, **the Court has disregarded two established principles of First Amendment law** without providing a coherent replacement theory. . . . **The decision is mischievous at best**, and will surely confuse the lower courts."
R.A.V. v. City of St. Paul, 505 U.S. 377 (1992)
Justices White, Blackmun, O'Connor and Stevens, Concurring

"**I regret what the Court has done in this case.** The majority opinion signals one of two possibilities: it will serve as precedent for future cases, or it will not. Either result is disheartening.

. . . It is sad that, in its effort to reach a satisfying result in this case, **the Court is willing to weaken First Amendment protections.**

In the second instance is the possibility that this case will not significantly alter First Amendment jurisprudence, but, instead, will be regarded as an aberration -- **a case where the Court manipulated doctrine** to strike down an ordinance whose premise it opposed, namely, that racial threats and verbal assaults are of greater harm than fighting words. . . ."
R.A.V. v. City of St. Paul, 505 U.S. 377 (1992)
Justice Blackmun, Concurring

". . . **the Court's revision of the categorical approach seems to me something of an adventure in a doctrinal wonderland**, for the concept of "obscene antigovernment" speech is fantastical. . . .
. . .
. . . This new absolutism in the prohibition of content-based regulations severely **contorts** the fabric of settled First Amendment law.
. . .
. . . Stated directly, **the majority's position cannot withstand scrutiny**.

R.A.V. v. City of St. Paul, 505 U.S. 377 (1992)
Justices Stevens, White and Blackmun, Concurring

"**JUSTICE STEVENS seeks to avoid the point** by dismissing the notion of obscene anti-government speech as "fantastical," . . . apparently believing that any reference to politics prevents a finding of obscenity. Unfortunately for the purveyors of obscenity, that is obviously false."

R.A.V. v. City of St. Paul, 505 U.S. 377 (1992)
Justices Scalia, Lead Opinion Footnote 4

"The **Court's analysis rests on an inaccurate view of history**."

International Society for Krishna Consciousness v. Lee, 505 U.S. 672 (1992)
Justices Kennedy, Blackmun, Stevens and Souter, Concurring

"I continue to believe that this Court took a wrong turn with *Bates v. State Bar of Arizona* . . . and that it has compounded this error by finding increasingly unprofessional forms of attorney advertising to be protected speech."

Lee v. International Society for Krishna Consciousness, 505 U.S. 830 (1992)
Justice O'Connor, Dissenting

"The judgment in today's cases has an appearance of moderation and Solomonic wisdom, upholding as it does some portions of the injunction while disallowing others. **That appearance is deceptive**."

Madsen v. Women's Health Center Inc.
Justices Scalia, Kennedy and Thomas, Concurring in part, Dissenting in part

"That possibility is simply not considered. Instead, the Court begins . . . with the following optical illusion. . . .
. . .
The utter lack of support for the Court's test in our jurisprudence is demonstrated by the two cases the opinion relies upon. . . ."

Madsen v. Women's Health Center Inc.
Justices Scalia, Kennedy and Thomas, Concurring in part, Dissenting in part

"JUSTICE STEVENS believes that speech-restricting injunctions "should be judged by a more lenient standard than legislation" because "injunctions apply solely to those who, by engaging in illegal conduct, have been judicially deprived of some liberty." . . . **Punishing unlawful action by judicial abridgement of First Amendment rights is an interesting concept; perhaps Eighth Amendment rights could be next."**

Madsen v. Women's Health Center Inc.
Justice Scalia, Concurring in part, Dissenting in part, Footnote 1

"Instead, the Court chooses to deny the petition for certiorari. . . .

No possible resolution of Madsen could have shown this case more flatly wrong than the opinion that issued. by holding the petition for Madsen, and then, in light of Madsen, letting the challenged injunction stand**, we send a confusing message to the North Carolina courts. And also, of course, we leave a clear judicial abridgement of petitioner's First Amendment rights in effect.** For these reasons, I dissent from the denial of certiorari."

Winfield v. Kaplan, 512 U.S. 1253 (1994)
Justices Scalia, Kennedy and Thomas, Dissenting

"I do not know where the Court derives its perception that "anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and dissent." . . . I can imagine no reason why an anonymous leaflet is any more honorable, as a general matter, than an anonymous phone call or an anonymous letter."

McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995)
Justice Thomas, Concurring

"Last Term's decision in Madsen . . . has damaged the First Amendment more quickly and more severely than I feared."

Lawson v. Murray, 515 U.S. 1110 (1995)
Justice Scalia, Concurring

"What secret knowledge, one must wonder, is breathed into lawyers when they become Justices of this Court that enables them to discern that a practice which the text of the Constitution does not clearly proscribe, and which our people have regarded as constitutional for 200 years, is in fact unconstitutional."

Board of County Commissioners v. Umbehr, 518 U.S. 668 (1996)
Justices Scalia and Thomas, Dissenting

"The people should not be deceived. While the present Court sits, a major, undemocratic restructuring of our national institutions and mores is constantly in progress.
. . .
The Court must be living in another world. Day by day, case by case, it is busy designing a Constitution for a country I do not recognize.

Board of County Commissioners v. Umbehr, 518 U.S. 668 (1996)
Justices Scalia and Thomas, Dissenting

"The plurality cannot bring itself to apply strict scrutiny, yet realizes it cannot decide the case without uttering some sort of standard; so it has settled for synonyms. "Close judicial scrutiny," . . . is substituted for strict scrutiny, and "extremely important problem," . . . is substituted for "compelling interest." . . .

These restatements have unfortunate consequences. The first is to make principles intended to protect speech easy to manipulate. **The words end up being a legalistic cover** for an ad hoc balancing of interests. . . . Second, the plurality's exercise in pushing around synonyms for the words of our usual standards will sow confusion in the courts bound by our precedents."

Denver Area Educational Telecommunications v. FCC, 518 U.S. 727 (1996)
Justices Kennedy and Ginsburg, Concurring in part, Dissenting in part

"This is a wonderful expansion of judicial power. . . . **There is no precedent for this novel and dangerous proposition.**

. . .

Today's opinion makes a destructive inroad upon First Amendment law. . . . And it makes a destructive inroad upon the separation of powers in holding that an injunction may contain measures justified by the public interest apart from remediation of the legal wrong that is the subject of the complaint."

Schenck v. Pro-Choice Network of Western New York, No. 95-1065
Justices Scalia, Kennedy and Thomas, Concurring in part, Dissenting in part

"I concur in today's judgment, but, in doing so wish to dissociate myself from the "equal protection" rationale employed by the Court to justify its conclusions.

The "equal protection" analysis of the Court is, I submit, a "wolf in sheep's clothing," for that rationale is no more than a masquerade of a supposedly objective standard for *subjective* judicial judgment. . . ."

Williams v. Illinois, 399 U.S. 235 (1970)
Justice Harlan, Concurring

"My disagreement with the opinion of the Court and that of MR. JUSTICE WHITE goes far beyond mere puzzlement, however, for **these opinions seriously invade the constitutional prerogatives of the States**, and regrettably hark back to the heyday of substantive due process."

Eisenstadt v. Baird, 405 U.S. 438 (1972)
Justice Burger, Dissenting

"With all due respect, I dissent. **I find nothing in the language or history of the Constitution to support the Court's judgment**."

Doe v. Bolton, 410 U.S. 179 (1973)
Justices White and Rehnquist, Dissenting

"**I do not believe that this claim** was properly preserved below or **is properly before this Court**. . . .

. . . **I believe that the Court errs in rendering an advisory opinion on the merits, an error compounded by the absence of any record below amplifying those merits. The Court not only renders an advisory opinion; but it renders it in a vacuum."**

Fuller v. Oregon, 417 U.S. 40 (1974)
Justice Douglas, Concurring

"**The majority obfuscates the issue** in this case . . . ."

Fuller v. Oregon, 417 U.S. 40 (1974)
Justices Marshall and Brennan, Dissenting

"But I think the Court has failed to come to grips with the real constitutional defect in the challenged statute."

Estelle v. Dorrough, 420 U.S. 534 (1975)
Justices Stewart, Brennan and Marshall, Dissenting

"The merits of this case can be dealt with very briefly. For it is, I believe, apparent on the face of the Court's opinion that **today's holding is flatly contrary to several recent decisions**. . . ."

Weinberger v. Salfi, 422 U.S. 749 (1975)
Justices Brennan and Marshall, Dissenting

"The **Court's conclusion . . . comes out of thin air**."

Stanton v. Stanton, 429 U.S. 501 (1977)
Justice Rehnquist, Dissenting

"Unfortunately, more than a century of decisions under this Clause of the Fourteenth Amendment have produced neither of these results. They have, instead, produced a syndrome wherein this Court seems to regard the Equal Protection Clause as a cat-o'-nine-tails to be kept in the judicial closet . . . ."

Trimble v. Gordon, 430 U.S. 762 (1977)
Justice Rehnquist, Dissenting

"The Court's opinion in this case serves the unusual purpose of supplying as good a line of reasoning as is available to support a two-paragraph per curiam opinion almost six years ago in *Younger v. Gilmore*, 404 U.S. 15 (1971), **which made no pretense of containing any reasoning at all**."

Bounds v. Smith, 430 U.S. 817 (1977)
Justices Rehnquist and Burger, Dissenting

"I conclude by indicating the same respect for *Younger v. Gilmore*, 404 U.S. 15 (1971), as has the Court, in relegating it to a final section set apart from the body of the Court's reasoning *Younger* supports the result reached by the Court of Appeals in this case, but **it is a two-paragraph opinion which is most notable for the unbridged distance between its premise and its conclusion**. . . . I would not have the slightest reluctance to overrule *Younger*. . . ."

Bounds v. Smith, 430 U.S. 817 (1977)
Justices Rehnquist and Burger, Dissenting

"**Nothing in the Court's opinion justifies its wholesale abandonment of traditional principles of First Amendment analysis**."

Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S. 119 (1977)
Justices Marshall and Brennan, Dissenting

"I cannot join the opinion of the Court. **To hold, as the Court does . . . seems to me to misc**onceive the meaning of that constitutional guarantee. . . .

I do not agree with the Court that there is a "right to marry" in the constitutional sense. That right, or more accurately, that privilege, is, . . . limited by state law."

Zablocki v. Redhail, 434 U.S. 374 (1978)
Justice Stewart, Concurring

"The Court is understandably reluctant to rely on substantive due process. . . . But **to embrace the essence of that doctrine under the guise of equal protection serves no purpose but obfuscation**."

Zablocki v. Redhail, 434 U.S. 374 (1978)
Justice Stewart, Concurring

"The **Court's misapprehension** of the role of the institutionalized police function in a democratic society obfuscates the true significance of the distinction between citizenship and alienage."

Foley v. Connelie, 435 U.S. 291 (1978)
Justices Stevens and Brennan, Dissenting

"Our Nation was founded on the principle that "all Men are created equal." Yet candor requires acknowledgement that the Framers of our Constitution, . . . openly compromised this principle of equality with its antithesis: slavery. The consequences of this compromise are well known, and have been aptly called our "American Dilemma."

Regents of the University of California v. Bakke, 438 U.S. 265 (1978)
Justices Brennan, Marshall, Blackmun and White, Concurring in part, Dissenting in part

"Most importantly, had the Court been willing in 1896, in Plessy v. Ferguson, to hold that the Equal Protection Clause forbids differences in treatment based on race, we would not be faced with this dilemma in 1978. We must remember, however, that the principle that the "Constitution is colorblind" appeared only in the opinion of the lone dissenter. . . . The majority of the Court rejected the principle of color blindness, and for the next 60 years . . . ours was a Nation where, by law, an individual could be given "special" treatment based on the color of his skin.
. . .
I fear that we have come full circle. . . . For almost a century, no action was taken, and this nonaction was with the tacit approval of the courts."

Regents of the University of California v. Bakke, 438 U.S. 265 (1978)
Justice Marshall, Separate Opinion Concurring part, Dissenting in part

"Much as Caesar had his Brutus; Charles the First his Cromwell," Congress and the States have this Court to ensure that their legislative Acts do not run afoul of the limitations imposed by the United States Constitution. But this Court has neither a Brutus nor a Cromwell to impose a similar discipline on it."

Orr v. Orr, 440 U.S. 268 (1979)
Justices Rehnquist and Burger, Dissenting

"But **claims that the state judiciary itself has purposely violated the Equal Protection Clause are different**. There is a need in such cases to ensure that an independent means of obtaining review by a federal court is available on a broader basis. . . ."

Rose v. Mitchell, 443 U.S. 545 (1979)
Justices Blackmun, Brennan, Marshall, White and Stevens, Lead Opinion

"Dissenting opinions are more likely than not to quarrel with the Court's exposition of the law, but my initial quarrel is with the accuracy of the Court's paraphrasing and selective quotation from the Illinois statute. . . .
. . .
Only through this mischaracterization of the Illinois statute may the Court attempt to fit this case into the *Mosley* rule. . . .

. . . In fact, the very statute which the Court today cavalierly invalidates has been hailed by commentators. . . .
. . .
. . .The Court apparently believes it has a license to import the more relaxed standing requirements of First Amendment overbreadth into equal protection challenges. This however, is not and should not be the law."

Carey v. Brown, 447 U.S. 455 (1980)
Justices Rehnquist, Burger and Blackmun, Dissenting

"The fundamental flaw in the Court's due process analysis, then, is its failure to acknowledge that the discriminatory distribution of the benefits of government, can discourage the exercise of fundamental liberties. . . ."

Harris v. McRae, 448 U.S. 297 (1980)
Justices Brennan, Marshall and Blackmun, Dissenting

"**There is "condescension" in the Court's holding. . . . there truly is "another world out there, the existence of which the Court, I suspect, either chooses to ignore or fears to recognize**". . . ."

Harris v. McRae, 448 U.S. 297 (1980)
Justice Blackmun, Dissenting

"The **court today purports** to apply this standard, but in actuality fails to scrutinize the challenged classification in the manner established by our governing precedents. **I suggest that the mode of analysis employed by the Court in this case virtually immunizes social and economic legislative classifications from judicial review**."

U.S. Railroad Retirement Board v. Fritz, 449 U.S. 166 (1980)
Justices Brennan and Marshall, Dissenting

"Because **the Court** is willing to accept a tautological analysis of congressional purpose, an assertion of "equitable" considerations contrary to the expressed judgment of Congress, and a classification patently unrelated to achievement of the identified purpose, it **succeeds in effectuating neither equity nor congressional intent**."

U.S. Railroad Retirement Board v. Fritz, 449 U.S. 166 (1980)
Justices Brennan and Marshall, Dissenting

"**The comments in the dissenting opinion** about the proper cases for which to look for the correct statement of the equal protection rational basis standard, and about which cases limit earlier cases, **are just that : comments in a dissenting opinion."**

U.S. Railroad Retirement Board v. Fritz, 449 U.S. 166 (1980)
Justice Rehnquist, Lead Opinion Footnote 10

"**Because I can find no support for this novel constitutional doctrine in either the language of the Federal Constitution or the prior decisions of this Court, I respectfully dissent**."

Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456 (1981)
Justice Stevens, Dissenting

"JUSTICE STEVENS concedes the flaw in his argument when he admits that "a state court's decision invalidating state legislation on federal constitutional grounds may be reversed by this Court if the state court misinterpreted the relevant federal constitutional standard." . . . And contrary to his argument that today's judgment finds "no precedent in this Court's decisions, . . . we have frequently reversed State Supreme Court decisions invalidating state statutes or local ordinances on the basis of equal protection analysis more stringent than that sanctioned by this Court. . . .

Indeed, JUSTICE STEVENS has changed his own view. . . . **Thus, JUSTICE STEVENS' argument in the dissenting opinion that today's treatment of the instant case is extraordinary and unprecedented, . . . is simply wrong.**"

Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456 (1981)
Justice Brennan, Lead Opinion Footnote 6

"The Court's disposition of this case is twice flawed : first, there is no jurisdiction to vacate the judgment. . . . second, the record does not sustain the factual inferences required to support the Court's judgment.
. . .
The Court asserts that "it is appropriate to treat the due process issue as one "raised" below and proceed to consider it here." . . . However, the Court fails to cite any passage from the record in which the alleged conflict of interest was presented to the state courts as a problem of constitutional dimension."

Wood v. Georgia, 450 U.S. 261 (1981)
Justice White, Dissenting

"The practice of holding hostages to coerce another sovereign to change its policies is not new; nor, in my opinion, is it legitimate. California acknowledges that its discrimination against Ohio citizens within its jurisdiction is specifically intended to coerce the Ohio Legislature into enacting legislation favored by California. Today the Court holds that this state purpose is legitimate."

Western & Southern Life Ins. Co. v. Board of Equalization, 451 U.S. 648 (1981)
Justice Stevens and Blackmun, Dissenting

"**We trespass on the assigned function of the political branches** under our structure of limited and separated powers when we assume a policymaking role as the Court does today.

The court makes no attempt to disguise that it is acting to make up for Congress' lack of "effective leadership". . . .

The Court's holding today manifests the justly criticized judicial tendency to attempt speedy and wholesale formulation of "remedies" for the failures . . . of the political processes of our system of government. The court employs, and, in my view, abuses, the Fourteenth Amendment. . . .
. . .
. . . **If ever a court was guilty of an unabashedly result-oriented approach, this case is a prime example**."

Plyler v. Doe, 457 U.S. 202 (1982)
Justices Burger, White, Rehnquist and O'Connor, Dissenting

"The **Court's opinion is disingenuous**. . . ."

Plyler v. Doe, 457 U.S. 202 (1982)
Justice Burger, Dissenting Footnote 12

"**In rejecting appellees' equal protection challenge** on the basis that the State is proceeding "one step at a time," **the plurality today gives new meaning to the term "legal fiction**."

Clements v. Fashing, 457 U.S. 957 (1982)
Justices Brennan, Marshall, Blackmun and White, Dissenting

"The **plurality's sudden focus** on the fairness of the restriction to the individual, as opposed to the class**, is as episodic as it is novel.** For in writing for the Court in Weinberger v. Salfi, 422 U.S. 749, 781 (1975), JUSTICE REHNQUIST refused to hold that an otherwise valid legislative classification should be invalidated on the basis of the characteristics of the individual plaintiff."

Clements v. Fashing, 457 U.S. 957 (1982)
Justice Brennan, Dissenting Footnote 3

"**I dissent from the Court's unprecedented intrusion into the structure of a state government**."

Washington v. Seattle School District No. 1, 458 U.S. 457 (1982)
Justices Powell, Burger, Rehnquist and O'Connor, Dissenting

"**Nothing in *Hunter* supports the Court's extraordinary invasion** into the State's distribution of authority. . . .

Hunter, therefore is simply irrelevant. **It is the Court that, by its decision today, disrupts the normal course of state government.**"

Washington v. Seattle School District No. 1, 458 U.S. 457 (1982)
Justices Powell, Burger, Rehnquist and O'Connor, Dissenting

"Although I disagree today's holding, it is worth stressing how extraordinarily narrow it is, and how empty of likely precedential value."

Brown v. Thompson, 462 U.S. 835 (1983)
Justices Brennan, White, Marshall and Blackmun, Dissenting

"The **Court attempts to escape these stark facts** through two lines of reasoning, each relying on an unspoken legal premise. Neither withstands examination.

First the Court apparently assumes that the only aspect of unequal representation that matters is the degree of vote dilution. . . . The Court is mistaken."

Brown v. Thompson, 462 U.S. 835 (1983)
Justices Brennan, White, Marshall and Blackmun, Dissenting

"The Court surprisingly announces that "there is no constitutional right to an appeal.". . . That statement, besides being unnecessary to its decision, is quite arguably wrong."

Jones v. Barnes, 463 U.S. 745 (1983)
Justice Brennan, Dissenting Footnote 1

"The **Court's misinterpretation** of the language of the statute is compounded by the **Court's subtle confusion** of statutory construction with constitutional interpretation."

United Brotherhood of Carpenters v. Scott, 463 U.S. 825 (1983)
Justice Blackmun, Dissenting Footnote 3

"The majority's attempts to distinguish these precedents are unconvincing. . . . No basis is advanced for this theory, because no basis exists."

Metropolitan Life Ins. Co. v. Ward, 470 U.S. 869 (1985)
Justices O'Connor, Brennan, Marshall and Rehnquist, Dissenting

"This bold assertion marks a drastic and unfortunate departure from established equal protection doctrine. . . .In addition to unleashing an undisciplined form of Equal Protection Clause scrutiny, the Court's approach today has serious implications for the authority of Congress. . . .
. . .
. . . More importantly, to the extent **the Court today purports** to find in the Equal Protection Clause an instrument of federalism, it entirely misses the point of JUSTICE BRENNAN's analysis."

Metropolitan Life Ins. Co. v. Ward, 470 U.s. 869 (1985)
Justices O'Connor, Brennan, Marshall and Rehnquist, Dissenting

"**Today's opinion charts an ominous course. I can only hope this unfortunate adventure away from the safety of our precedents will be an isolated episode**."

Metropolitan Life Ins. Co. v. Ward, 470 U.s. 869 (1985)
Justices O'Connor, Brennan, Marshall and Rehnquist, Dissenting

"Having interpreted the statute so as to generate some discrimination, and then having declared the discrimination "wholly arbitrary," **the Court felicitously retreats to a holding sufficiently narrow as to strip its decision of any constitutional significance**."

Williams v. Vermont, 472 U.S. 14 (1985)
Justices Blackmun, Rehnquist and O'Connor, Dissenting

"In my view, **the Court's remedial approach is both unprecedented . . . and unwise. . . .**
. . .
The Court's opinion approaches the task of principled equal protection adjudication in what I view as precisely the wrong way. . . . No guidance is thereby given as to when **the Court's free-wheeling, and potentially dangerous, "rational basis standard"** is to be employed. . . ."

City of Cleburne, Texas v. Cleburne Living Center, Inc., 473 U.S. 432 (1985)
Justices Marshall, Brennan and Blackmun, Concurring in part, Dissenting in part

"In reaching the equal protection issue despite petitioner's clear refusal to present it, **the Court departs dramatically from its normal procedure without any explanation**. . . .
. . .
. . . it is **a strange jurisprudence** that looks to the arguments made by respondent to determine the breadth of the questions presented for our review by petitioner. Of course, such a view is directly at odds with our Rule 21.1(a). . . .

. . .Thus, at bottom, his position is that we should overrule an extremely important prior constitutional decision of this Court on a claim not advanced here, even though briefing and oral argument on this claim might convince us to do otherwise. I believe that "decisions made in this manner are unlikely to withstand the test of time.". . .
. . .
Because the Court nonetheless chooses to decide this case on the equal protection grounds not presented, it may be useful to discuss. . . ."

Batson v. Kentucky, 476 U.S. 79 (1986)
Justices Burger and Rehnquist, Dissenting

"**With little discussion and less analysis, the Court also overrules** one of the fundamental substantive holdings. . . . Because **I find the Court's rejection of this holding both ill-considered and unjustifiable** under established principles of equal protection, I dissent."

Batson v. Kentucky, 476 U.S. 79 (1986)
Justices Rehnquist and Burger (Separate Opinion), Dissenting

"The **Court's evaluation** of the significance of petitioner's evidence **is fundamentally at odds with our consistent concern for rationality. . . ."**

McCleskey v. Kemp, 481 U.S. 279 (1987)
Justices Brennan, Marshall, Blackmun and Stevens, Dissenting

"**The Court's projection of apocalyptic consequences for criminal sentencing is thus greatly exaggerated**. **The Court can indulge in such speculation only by ignoring its own jurisprudence** demanding the highest scrutiny on issues of death and race. As a result, it fails to do justice to a claim in which both those elements are intertwined -- an occasion calling for the most sensitive inquiry a court can conduct."

McCleskey v. Kemp, 481 U.S. 279 (1987)
Justices Brennan, Marshall, Blackmun and Stevens, Dissenting

"More important, the "neutrality" argument on its merits is both **deceptive and deeply flawed**."

Lyng v. International Union, 485 U.S. 360 (1988)
Justices Marshall, Brennan and Blackmun, Dissenting

"Today, **the court continues the retreat from the promise of equal educational opportunity**. . . . Because I do not believe that this Court should sanction discrimination against the poor . . . . I dissent.
. . .
I believe the Court's approach forgets that the Constitution is concerned with "sophisticated as well as simpleminded modes of discrimination."

Kadrmas v. Dickinson Public Schools, 487 U.S. 450 (1988)
Justices Marshall and Brennan, Dissenting

"**The Court's decision to the contrary "demonstrates once again a 'callous indifference to the realities of life for the poor**.'" . . **. the Court fails** in its constitutional duties when it refuses, as it does today, to make even the effort to see. . . . **the Court denies equal opportunity and discourages hope**."

Kadrmas v. Dickinson Public Schools, 487 U.S. 450 (1988)
Justices Marshall and Brennan, Dissenting

"Moreover, **JUSTICE MARSHALL's suggestion** that discrimination findings may be "shared" from jurisdiction to jurisdiction **is unprecedented, and contrary to this Court's decisions**."

City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989)
Justice O'Connor, Lead Opinion

"The majority is wrong to trivialize. . . ."

City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989)
Justices Marshall, Brennan and Blackmun, Dissenting

"Such insulting judgments have no place in constitutional jurisprudence."

City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989)
Justices Marshall, Brennan and Blackmun, Dissenting

"Yet **this Court, the supposed bastion of equality**, strikes down Richmond's efforts as though discrimination had never existed or was not demonstrated in this particular litigation. . . .

So the Court today regresses."

City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989)
Justices Blackmun and Brennan, Dissenting

"Today **the Court manipulates** existing and complex rules for employment discrimination cases in a way certain to result in confusion."

Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)
Justices Kennedy, Rehnquist and Scalia, Dissenting

"The **Court's application** of a lessened equal protection standard to congressional actions **finds no support** in our cases or in the Constitution."

Metro Broadcasting Inc. v. FCC, 497 U.S. 547 (1990)
Justices O'Connor, Rehnquist, Scalia and Kennedy, Dissenting

"Since, in my view, **today's decision contradicts well established law in the area of equal protection** and of standing, I respectfully dissent.
. . .
Thus, today's holding cannot be considered in accordance with our prior law. It is a clear departure."

Powers v. Ohio, 499 U.S. 400 (1991)
Justices Scalia and Rehnquist, Dissenting

"Today's opinion makes a mockery of that requirement."

Powers v. Ohio, 499 U.S. 400 (1991)
Justices Scalia and Rehnquist, Dissenting

"Beyond this**, the Court has misstated the law**."

Edmonson v. Leesville Concrete Co., Inc., 500 U.S. 614 (1991)
Justices O'Connor, Rehnquist and Scalia, Dissenting

"The majority's approach is also unsound because it will serve only to confuse the law."

Gregory v. Ashcroft, 501 U.S. 452 (1991)
Justices White and Stevens, Concurring in part, Dissenting in part

"In repudiating *Snowden*, moreover, the Court threatens settled principles not only of the Fourteenth Amendment, but of the Eleventh. . . .

I understand the Court prefers to distinguish *Allegheny Pittsburgh*, but, in doing so, **I think the Court has left our equal protection jurisprudence in disarray."**

Nordlinger v. Hahn, 505 U.S. 1 (1992)
Justice Thomas, Concurring in part

"Application of the standard (or standards) announced today has no justification in precedent. . . ."

U.S. v. Fordice, 505 U.S. 717 (1992)
Justice Scalia, Concurring in part, Dissenting in part

"The **Court today chooses** not to overrule, but rather **to sidestep**, *UJO*."

Shaw v. Reno, 509 U.S. 630 (1993)
Justices White, Blackmun and Stevens, Dissenting

"The Court today answers this question in the affirmative, and its answer is wrong. . . . **A contrary conclusion could only be described as perverse."**

Shaw v. Reno, 509 U.S. 630 (1993)
Justice Stevens, Dissenting

"In my view, there is no justification for the Court's determination to depart from our prior decisions. . . .
. . .
The **Court offers no adequate justification**. . . ."

Shaw v. Reno, 509 U.S. 630 (1993)
Justice Souter, Dissenting

"The Court's opinion suggests that African-Americans may now be the only group to which it is unconstitutional to offer specific benefits from redistricting. Not very long ago, of course, it was argued that minority groups defined by race were the only groups the Equal Protection Clause protected in this context."

Shaw v. Reno, 509 U.S. 630 (1993)
Justice Stevens, Dissenting Footnote 4

"So well-entrenched was this exclusion of women that, in 1880, this Court . . . expressed no doubt that a State "may confine the selection (of jurors) to males."

J.E.B. v. Alabama ex rel T.B., 511 U.S. 127 (1994)
Justices Blackmun, Stevens, O'Connor, Souter and Ginsburg, Lead Opinion

"The civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. . . . The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator."

Bradwell v. State, 16 Wall 130, 141 (1872)

"Today's opinion is an inspiring demonstration of how thoroughly up-to-date and right-thinking we Justices are in matters pertaining to the sexes. . . and how sternly we disapprove the male chauvinist attitudes of our predecessors. The price to be paid for this display -- a modest price, surely -- is that **most of the opinion is quite irrelevant to the case at hand."**

J.E.B. v. Alabama ex rel T.B., 511 U.S. 127 (1994)
Justices Scalia, Rehnquist and Thomas, Dissenting

"Although **the Court's legal reasoning in this case is largely obscured** by anti-male-chauvinist oratory, to the extent such reasoning is discernible, it invalidates much more than sex-based strikes."

J.E.B. v. Alabama ex rel T.B., 511 U.S. 127 (1994)
Justices Scalia, Rehnquist and Thomas, Dissenting

". . . **the Court imperils** a practice that has been considered an essential part of fair jury trial since the dawn of the common law."

J.E.B. v. Alabama ex rel T.B., 511 U.S. 127 (1994)
Justices Scalia, Rehnquist and Thomas, Dissenting

"In dissent, JUSTICE STEVENS criticizes us for "delivering a disconcerting lecture about the evils of governmental racial classifications," . . . . With respect, we believe his criticisms reflect a serious misunderstanding of our opinion.
. . .
JUSTICE STEVENS chides us . . . ."
Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995)
Justice O'Connor, Lead Opinion

"Ironically, after all of the time, effort, and paper this Court has expended in differentiating between federal and state affirmative action, **the majority today virtually ignores the issue**. . . . It provides not a word of direct explanation for its sudden and enormous departure from the reasoning in past cases."
Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995)
Justices Stevens and Ginsburg, Dissenting

"**The Court's suggestion** that it may be necessary in the future to overrule Fullilove in order to restore the fabric of the law, . . . **is even more disingenuous**. . . .
. . .
. . . **And the majority's concept of *stare decisis* ignores the force of binding precedent**."
Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995)
Justices Stevens and Ginsburg, Dissenting

"If merely stating this alleged "equal protection" violation does not suffice to refute it, **our constitutional jurisprudence has achieved terminal silliness.**
. . .
The **Court's portrayal . . . is so false as to be comical**. . . .
. . .
. . . **What the Court says is even demonstrably false at the constitutional level**. . . .
. . .
Today's opinion has no foundation in American constitutional law, and barely pretends to. . . ."
Romer v. Evans, 517 U.S. 620 (1996)
Justices Scalia, Rehnquist and Thomas, Dissenting

"As I have explained on prior occasions, I am convinced that the Court's aggressive supervision of state action . . . is seriously misguided. . . .

. . . **The Court inadequately explains its answer to the first question, and it avoids answering the second** because it concludes that its answer to the third disposes of the case. In my estimation, the Court's disposition of all three questions is most unsatisfactory."
Shaw v. Hunt, 517 U.S. 899 (1996)
Justices Stevens, Ginsburg and Breyer, Dissenting

"**The dissent's reading is flawed by its omission**."
Shaw v. Hunt, 517 U.S. 899 (1996)
Justice Rehnquist, Lead Opinion Footnote 8