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Judge Would Kill Miss. Heartbeat Bill — Time to Kill Judicial Supremacy

Mississippi's legislature has made the "heartbeat" law. It's time for Governor Bryant to perform his executive duties and enforce it.

With a judge having just blocked Mississippi's "heartbeat" abortion bill, it's clear that the judiciary's actions can kill. What fewer realize is that judges' misfeasance is killing our republic and would be doing so even if they ruled rightly on prenatal infanticide. It's another reminder of why we should kill judicial supremacy.

As the *Clarion Ledger* reports on the current ruling, "U.S. District Judge Carlton Reeves on Friday issued a strongly worded preliminary injunction blocking Mississippi's 'heartbeat' abortion law, that would have banned abortions as early as six weeks into a pregnancy, when a fetal heartbeat is detected."

"Reeves' order will combine the lawsuit against Mississippi's fetal heartbeat ban with an ongoing one against the state's previous 15-week abortion ban," the paper continued.

The bill's opponents and Reeves, an Obama-nominated judge, claim that such laws must be nixed because they're unconstitutional. Why? Because the Supreme Court has claimed that a state cannot ban prenatal infanticide prior to "viability" (the "ability of a fetus to survive outside of the womb").

Unlike in the past, I won't spend much time here examining prenatal infanticide's nuts and bolts and the matter of when human life begins. This isn't only because of space constraints, because that isn't this piece's main topic, and because I've done it many times before.

It's also because that battle is being won.

Prenatal infanticide is a rare issue where society has moved "right" in recent decades. This is likely due to ultrasound technology, which, suddenly, like magic, allows us to see our "children on a black and white screen in real time, blurry but actual," as *American Thinker* wrote Friday. The site continued:

> We see the tiny heart beating from almost moment one. As the pregnancy advances, we see the fetus grow, move about, constantly change positions to get comfortable. By the early 2000s, pregnant women could get a fetal video set to music of their growing baby. This had to be done by about fourteen weeks, when the fetus was still small enough to be captured in his entirety on film. We could watch the baby comfortably move about his fetal environment with what seemed like a distinct personality. This entire process is even more enlightening with a set of twins; they cuddle, hold hands, and push each other about in their fight for space.

Tragically, they can't fight for their own lives. That's up to us, and Mississippi officials do intend to appeal Judge Reeves' opinion. Yet they could do far better.

They could just ignore it.

But, wait, "Doesn't that undermine the rule of law?" you may ask. No — just the rule of lawyers.

Consider: The legislative branch's power to make law is granted by the Constitution. The executive branch's power to enforce law is granted by the Constitution. And the judicial branch's power to strike down law and have its rulings constrain the other two branches of government is granted by … what?

It's *not in the Constitution*.

Rather, this extra-constitutional power — "judicial supremacy" — was declared by the courts themselves, most notably in the *Marbury v. Madison* decision (1803). That's right:

The courts gave the courts the courts' trump-card power.

It's a great con if you can pull it off, which the courts have done because the other two branches, with rare exception, have abided by it ever since.

And the courts are running wild. Congress does have the power under the Constitution's Article III to limit the jurisdiction of federal courts below the Supreme Court and the appellate jurisdiction of the latter, and to *eliminate* any and every federal court except the SCOTUS. Yet cowardice and lack of principle prevent Congress from exercising this power; after all, politicians would then not only be taking what the media would cast as "radical" action, but would also have to settle themselves the tough issues (e.g., marriage) that they're currently letting the courts settle for them.

The result of this dereliction is plain. Aside from Reeve's prenatal-infanticide opinion, a judge just blocked construction of part of our border wall. There was the *Obergefell v. Hodges* faux (same-sex) marriage decision, which, as late Justice Antonin Scalia noted, is "lacking even a thin veneer of law." Judges also stayed President Trump's bans on immigration from certain terrorism-spawning nations, in clear violation of a 50s-era law (which the courts *didn't* "rule" unconstitutional) giving the president such power.

Put simply, judges' rulings should apply only to the individuals in the cases that come before them. Beyond this, courts should act merely, to quote Ambassador Alan Keyes, as "an alarm bell," providing a warning to others that they believe the Constitution has been violated. But today's drunk-on-supremacy judges often behave as activists, imposing their agendas and biases from the bench and, increasingly, just making it up as they go along. Thus did Scalia call *Obergefell* a "threat to American democracy."

But this was predicted. Thomas Jefferson warned in 1820 that "to consider the judges as the ultimate arbiters of all constitutional questions" is "a very dangerous doctrine indeed and one which would place us under the despotism of an Oligarchy." It would, he stated, make the Constitution a "*felo de se*" — an act of suicide.

So the Constitution now is, as Jefferson put it, "a mere thing of wax in the hands of the judiciary." When judges aren't fooling themselves and others with talk about how the Constitution is "living" and they're "pragmatists" (a.k.a. shirkers of duty), they're busy fancying "that whatever hath been done before may legally be done again," to quote Jonathan Swift.

Just consider Judge Reeves' claim that the Mississippi law is unconstitutional. What he really means it's that it's "unprecedentutional."

The Constitution grants no "right" to prenatal infanticide. Rather, the judge claims the prenatal-infanticide law is unconstitutional based on Supreme Court rulings that themselves are unconstitutional; this reflects deference to "precedent." But does it reflect duty? Judges take an oath to uphold the Constitution.

They do not take an oath to uphold other judges.

And neither do statesmen. Mississippi governor Phil Bryant should simply paraphrase President Andrew Jackson and say, "The judge has made his decision. Now let him enforce it."

Some might now state, "But, wait, what about *Roe v. Wade*? It's the law."

No, it's not.

Judges can't make law — only render *opinions*. Legislatures make law.

Mississippi's legislature has made the "heartbeat" law. It's time for Governor Bryant to perform his executive duties and enforce it. In fact, chief executives nationwide should oppose judicial tyrants — those black-robed, living-document oligarchs giving us a dying civilization — before our republic's heartbeat is stilled forever.

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