

US Supreme Court Justice John Paul Stevens to retire in June

John Burton
10 April 2010

John Paul Stevens, appointed to the Supreme Court by Gerald Ford in 1975 and the longest serving justice presently on the court, has announced that he will retire after the current term ends in late June. Stevens turns 90 on April 20, although by all accounts he remains in remarkably good health.

Stevens has become prominent in recent years as the leader of a four-vote moderate bloc, which frequently finds itself in dissent against the five-justice majority, particularly since extreme right-wing Associate Justice Samuel A. Alito, Jr., replaced the more traditionally conservative Sandra Day O'Connor in January 2006.

As the senior justice, Stevens had the authority to assign the writing of decisions in cases where he was in the majority and the chief justice was in the minority. That role will now pass to Ruth Bader Ginsburg, the 76-year-old Clinton appointee who is currently battling cancer.

Stevens was confirmed as an associate justice six years after Richard Nixon appointed Warren Burger to replace Earl Warren—himself a Republican nominee—as Chief Justice, signaling the beginning of the end of an era when the high court was widely viewed as a defender of civil rights. Stevens replaced William O. Douglas, a Franklin Roosevelt appointee who had a liberal record on civil rights and democratic rights during the heyday of the Warren court.

When Stevens joined the Supreme Court, its liberal wing was led by William J. Brennan, Jr., another liberal appointed by a Republican, and Thurgood Marshall, a Democratic appointee who previously was among the most prominent civil rights lawyers of the 1950s and 60s.

Although some perceived Stevens as becoming more liberal over the years, Stevens noted in a 2007

interview for the *New York Times Magazine* that he is “pretty darn conservative,” and that his views have not changed since 1975.

“Including myself,” Stevens said during the interview, “every judge who’s been appointed to the court since Lewis Powell” —nominated by Richard Nixon in 1971— “has been more conservative than his or her predecessor. Except maybe Justice Ginsburg. That’s bound to have an effect on the court.”

Emphasizing this historical assessment, Stevens wrote in his dissent to the 2007 ruling which invalidated school district integration plans, “No member of the Court that I joined in 1975 would have agreed with today’s decision.” (See “US Supreme Court rules school districts cannot consider race in integration plans”)

The high court’s right-wing trajectory is even more pronounced when it comes to defending corporate interests. The *World Socialist Web Site* noted in 2007 that this “shift is not a product solely of the court’s right-wing bloc of Justices Roberts, Scalia, Alito and Thomas, in alliance with “moderate” conservative Justice Anthony Kennedy. The so-called ‘liberal’ justices, Breyer, Souter [since retired and replaced by Sonia M. Sotomayor] and Ginsburg, who wrote many of the majority opinions, are also instrumental in this development. More and more, aging Justice John Paul Stevens is an isolated dissenter in cases challenging corporate economic power, as he is in cases upholding attacks on fundamental constitutional rights of privacy and due process.” (See “US Supreme Court continues pattern of pro-corporate rulings”).

Historically, Stevens may well be best remembered for his passionate dissent to the Supreme Court’s December 2000 ruling which blocked the counting of Florida votes and stole the presidential election for

George W. Bush. After lambasting the majority for siding with Bush's "assault on the Florida election procedures," Stevens wrote, "Although we may never know with complete certainty the identity of the winner of this year's Presidential election, the identity of the loser is perfectly clear. It is the Nation's confidence in the judge as an impartial guardian of the rule of law."

On January 21 this year, a clearly agitated Stevens read from the bench long excerpts of his 90-page dissent in *Citizens United v. Federal Election Commission*, excoriating the majority for invalidating laws on campaign finance reform. Echoing his dissent in *Bush v. Gore*, Stevens wrote, "The Court's ruling threatens to undermine the integrity of elected institutions across the Nation. The path it has taken to reach its outcome will, I fear, do damage to this institution."

Despite the rightward shift on the high court, however, Stevens was able to obtain high court majorities in notable decisions limiting the Bush administration's "war on terror," writing the majority opinions in *Hamdan v. Rumsfeld* (2006), invalidating military tribunals at the Guantánamo Bay detention camps, and *Rasul v. Bush* (2004), affirming the right of detainees to file for habeas corpus.

Stevens became increasingly opposed to the death penalty, frequently dissenting from court orders denying review of petitions filed by condemned prisoners. He wrote for a six-justice majority in *Atkins v. Virginia* (2002), that the Eighth Amendment prohibition against cruel and unusual punishment prohibited the execution of the mentally retarded.

Not all Stevens's notable opinions have been of a socially liberal character. In a ruling which opened the door to the right-wing's destabilization campaign against the Clinton presidency, Stevens wrote the opinion in *Clinton v. Jones* (1997), forcing the president to submit to a deposition and respond to accusations related to extra-marital sex. Bill Clinton's less than candid testimony about his interactions with White House intern Monica Lewinsky provided the basis for Special Prosecutor Kenneth W. Starr's witch hunt, and Clinton's eventual impeachment by the House of Representatives.

Stevens displayed what he himself described as his traditional conservatism in his dissent to *Texas v. Johnson* (1990), a decision written by Brennan which

holds that the burning of the American flag is speech protected by the First Amendment. "In my considered judgment," Stevens wrote, "sanctioning the public desecration of the flag will tarnish its value—both for those who cherish the ideas for which it waves and for those who desire to don the robes of martyrdom by burning it. That tarnish is not justified by the trivial burden on free expression occasioned by requiring that an available, alternative mode of expression—including uttering words critical of the flag—be employed."

Stevens also wrote the majority opinion in *Gonzales v. Raich* (2005), upholding the federal prohibition of non-commercial cultivation and possession of marijuana in California, where voters enacted a medical marijuana law. (See "Supreme Court upholds federal ban on medical marijuana use").

The media speculation over the identity of President Obama's second nominee to the Supreme Court began even before the Stevens' announcement, along with threats from Senate Republicans to filibuster any nominee who can be characterized as a "judicial activist," i.e., anyone of even slightly more liberal views than those of the Gerald Ford Republican, John Paul Stevens.



To contact the WSWS and the
Socialist Equality Party visit:

wsws.org/contact