



JOHN CORNYN

United States Senator - Texas

CONTACT: DON STEWART

(202) 224-0704 office

(202) 365-6702 cell

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THINGS YOU SHOULD KNOW ABOUT JUSTICE JANICE ROGERS BROWN (BUT WON'T HEAR FROM HER CRITICS)

U.S. Sen. John Cornyn, a member of the Senate Judiciary Committee and chairman of the subcommittee on the Constitution, made the following statement Tuesday in advance of Wednesday's nomination hearing for California Supreme Court Justice Janice Rogers Brown, nominee for the U.S. Court of Appeals for the D.C. Circuit:

"The attacks by partisan special interest groups against Justice Janice Rogers Brown may succeed as fundraising tools and sound bites, but their rhetoric withers in the light of the facts.

"At the Judiciary Committee hearing Wednesday, you are likely to hear arguments—written by special interest groups and parroted by partisans on the committee—that Justice Brown is 'anti-civil rights,' 'anti-woman' and 'out of the mainstream of judicial thought.' But their claims serve only to make clear that they have not read the cases they cite as arguments against this fine justice, nor have they heard from the people of California, whom she has served so ably for many years."

The following information on two oft-cited cases—discussing racial preferences and parental consent—is provided to help you decipher the attacks, and to debunk what critics have alleged and will continue to allege at the hearing for this well-qualified nominee:

California Law on Racial Preferences

California Supreme Court: *Hi-Voltage Wire Works, Inc. v. City of San Jose* {Cal. 2000} (Prop. 209 case)

- Justice Brown authored the majority opinion for a unanimous California Supreme Court to enforce the clear terms of Proposition 209.
- Every single judge involved in that case – at the trial, appellate, and state Supreme Court – agreed with her that the challenged San Jose program violated the will of the voters as expressed in Proposition 209.
- Then-Justice Stanley Mosk – the court's "leading liberal" according to the SF Chronicle – joined Justice Brown and wrote a concurring opinion stating that "I agree with the court in the substance of its analysis" and, if anything, "I would go farther than it does."
- Justice Brown: "discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society." The U.S. Constitution "does not preclude race-conscious programs" to remedy past discrimination.

Proposition 209 and the California State Constitution (Article I, Section 31)

“The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.”

- more -

U.S. Supreme Court

“[I]n California, . . . racial preferences in admissions are prohibited by state law.”

Grutter v. Bollinger, 123 S.Ct. 2325, 2346 (2003) (Justices O’Connor, Stevens, Souter, Ginsburg, and Breyer)

California Law on Parental Consent

California Supreme Court: *American Academy of Pediatrics v. Lungren* (Cal. 1997)

- The California Legislature enacted a common-sense law requiring parental consent before a minor can obtain an abortion.
- California Supreme Court issued a divided 4-3 opinion invalidating that law.
- Justice Brown would have upheld the law. She was not alone – then-Justice Stanley Mosk – the court’s “leading liberal” according to the SF Chronicle – also voted to uphold the law.

The American people

82% of Americans support parental consent laws.

Los Angeles Times poll (6/18/2000)

San Francisco Chronicle: *After* the 1997 decision on parental consent

“It takes judges with a deep respect for the law, and a willingness to set aside their personal views when making decisions. It takes judges with fearlessness, with a sense of confidence that the ‘right’ outcome will not always be the most popular. Californians have a chance to cast a vote for an independent judiciary on November 3 by retaining . . . Supreme Court justices who . . . have all demonstrated a commitment to sound decision making. . . . If you don't like a law -- or if it conflicts with the state constitution -- change it. The judiciary's job is to make sure that laws are applied fairly. . . . Brown [has] approached this duty with diligence and integrity. [She] should be retained.”

San Francisco Chronicle editorial, *Vote for Independent Court* (9/27/1998)

California voters during the 1998 elections: *After* the 1997 decision on parental consent

	Yes %
Justice Janice Brown	76
Chief Justice Ronald George	75
Justice Stanley Mosk	70
Justice Ming Chin	69

San Francisco Chronicle (11/5/1998) (100% of precincts reporting)

Sen. Cornyn chairs the subcommittee on the Constitution, Civil Rights & Property Rights, and is the only former judge on the committee. He served previously as Texas Attorney General, Texas Supreme Court Justice, and Bexar County District Judge. He will introduce Justice Brown at Wednesday’s hearing.

