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The Supreme Court as a Nothingburger, continued

Good morning.

Today we continue our meditation on the Supreme Court as a nothingburger. And I went to the definition in the dictionary of what a nothingburger is: "something completely insignificant, especially that which was previously hyped or promised to be very significant"

I think it's fair to say that the Supreme Court has been understood to be very significant, a third branch of government, ever since our founding 200-plus years ago. But the Supreme Court is very, very capable of losing its credibility, and with it, its legitimacy. And I think the current court and its complete overreach, and its complete religious ideology, has accomplished exactly that.

And I share with you in today's meditation a brilliant article done by Linda Greenhouse, who has been studying the Supreme Court for decades. In fact, she won a Pulitzer Prize for it. In an article recently in New York Times, she says that she realized when following the Dobbs decision, that this was not a decision about the Constitution or about law. It was about religious doctrine.

And she said she realized she couldn't file it under Law. She filed it under Religion.

And as part of a triple play by the Supreme Court, one move being to praise and invite more and more examples of public high school football coaches praying with their team publicly out in the ball field.

This raises so many issues. Because America, first of all, is a pluralistic society, with many religions represented. But a football coach will only represent one, it seems. Furthermore, in our pluralism, there are many people who do not identify as religious. So a public high school, it would seem, should be exempt from pushing public prayers on a football field. But not with this Supreme Court.

And then it took another giant step around religion when it required the state of Maine to subsidize parochial school tuition. I don't think this has ever happened in American society. I attended parochial school for three or four years as a child. But we were not asking the government to pay for it. It was one of the sacrifices for the Catholic Church at that time that the laypeople were willing to make. This opens whole new ground for the confusion of state and church.

And now we have this Roe versus Wade decision. And as Greenhouse says, "It was not constitutional analysis, but religious doctrine that drove the opposition to Roe." And today's Supreme Court is characterized by religion playing what she calls a pervasive role.

And now we have desperate refugees fleeing their homes and their home state in pursuit of reproductive health care, she says.

She also points out that the supposed philosophy behind the majority in the Supreme Court today is something called originalism, which in fact is a very recent philosophy; many lawyers of my generation never heard the word in all their training as lawyers.

But she points out the Dobbs majority due to the absence of the word, abortion in the Constitution to be the main reason for throwing out Roe versus Wade. However, she's done her own counting. And she found that the cat in the constitution's 7600 words, including its 27 amendments, you could not find the word fetus or the word unborn. And these two words played a dominant role in this decision from Dobbs: fetus and unborn, were nowhere in the Constitution.

These so-called originalists are so involved with the original text, sort of like biblical literalism. And that is where this comes from. They think of the Constitution as some kind of Bible that cannot be tweaked, it's done once and for all. Here, their dominant language revolves around the words fetus and unborn, and those words are not in the Constitution either.

So guess what? This is not a judicial document. It is a religious document.

And also there is no expression or study in the whole document or a representation of the lived experience of women. As she puts it, "Women, as I have observed before, are all but missing from the Dobbs document.

So there you have it. There's the sadism I was speaking of yesterday. Women are not even consulted in this document. They are all but missing but they are the ones of course who are paying the ultimate price.

Nothingburger, the Supreme Court, a sad state of affairs.

Thank you. We'll see you tomorrow.