

# March 22, 2022

[Heather Cox Richardson](#) Mar 23   

Right on cue, Republican Senator Mike Braun of Indiana today told a reporter that states not only should decide the issue of abortion but should also be able to decide the issues of whether interracial marriage should be legal and whether couples should have access to contraception. He told a reporter: “Well, you can list a whole host of issues, when it comes down to whatever they are, I’m going to say that they’re not going to all make you happy within a given state, but we’re better off having states manifest their points of view rather than homogenizing it across the country as *Roe v. Wade* did.”

After an extraordinary backlash to his statements, Braun walked back what he had said, claiming he had misunderstood the question. “Earlier during a virtual press conference I misunderstood a line of questioning that ended up being about interracial marriage, let me be clear on that issue—there is no question the Constitution prohibits discrimination of any kind based on race, that is not something that is even up for debate, and I condemn racism in any form, at all levels and by any states, entities, or individuals,” he said.

But he had stated his position quite clearly, and as he originally stated it, that position was intellectually consistent.

After World War II, the Supreme Court used the Fourteenth Amendment to protect civil rights in the states, imposing the government’s interest in protecting equality to overrule discriminatory legislation by the states.

Now, Republicans want to return power to the states, where those who are allowed to vote can impose discriminatory laws on minorities.

Senator Braun is correct: it is not possible to overrule the Supreme Court’s use of the Fourteenth Amendment to protect civil rights on just one issue. If you are going to say that the states should be able to do as they wish without the federal government protecting civil rights on, say, the issue of abortion, you must entertain the principle that the entire body of

decisions in which the federal government protects civil rights, beginning with the 1954 *Brown v. Board of Education* decision ending segregation in the public schools, is illegitimate.

And that is off-the-charts huge.

It is, quite literally, the same argument that gave us the claimed right of states to enslave people within their borders before the Civil War, even as a majority of Americans objected to that system. More recently, it is the argument that made birth control illegal in many states, a restriction that endangered women's lives and hampered their ability to participate in the workforce as unplanned pregnancies enabled employers to discriminate against them. It is the argument that prohibits abortion and gay marriage; in many states, laws with those restrictions are still on the books and will take effect just as soon as the Supreme Court decisions of *Roe v. Wade* and *Obergefell v. Hodges* are overturned.

Braun's willingness to abandon the right of Americans to marry across racial lines was pointed, since Judge Ketanji Brown Jackson, whose confirmation hearing for her elevation to the Supreme Court is currently underway in the Senate, is Black and her husband is non-Black. The world Braun described would permit states to declare their 26-year marriage illegal, as it would have been in many states before the 1967 *Loving v. Virginia* decision declared that states could not prohibit interracial marriages. This would also be a problem for sitting justice Clarence Thomas and his wife, Ginni.

But it is not just Braun talking about rolling back civil rights. This week, Senator Marsha Blackburn (R-TN) has challenged the *Griswold v. Connecticut* decision legalizing contraception, and Senator John Cornyn (R-TX) has questioned *Obergefell*.

Seventy percent of Americans support same-sex marriage. In 2012—the most recent poll I can find—89% of Americans thought birth control was morally acceptable, and the Centers for Disease Control and Prevention reported that as of 2008, 99% of sexually active American women use birth control in their lifetimes. And even the right to abortion, that issue that has burned in American politics since 1972 when President Richard Nixon began to use it to attract Democratic Catholics to the Republican ticket, remains popular. According to a 2021 Pew poll, 59% of Americans believe it should be legal in most or all cases.

A full decade ago, in April 2012, respected scholars Thomas Mann, of the Brookings Institution, and Norm Ornstein, of the American Enterprise Institute, crunched the numbers and concluded: “The GOP has become an insurgent outlier in American politics. It is ideologically extreme; scornful of compromise; unmoved by conventional understanding of facts, evidence and science; and dismissive of the legitimacy of its political opposition. When one party moves this far from the mainstream,” they wrote, “it makes it nearly impossible for the political system to deal constructively with the country’s challenges.”

And yet, in the last decade, the party has moved even further to the right. Now it is not only calling for an end to the civil rights protections that undergird modern America, but also lining up behind a leader who tried to overthrow our democracy. A column by Jennifer Rubin in the *Washington Post* yesterday was titled: “Fringe Republicans are not the problem. It’s the party’s mainstream.”

Rubin points out that Republicans refused to investigate the January 6 attack on the Capitol, refused to reauthorize the Voting Rights Act (which as recently as 2006 enjoyed overwhelming bipartisan support), and refused to impeach Trump for an attempt to overthrow our democracy. The party brought us to the brink of defaulting on the debt, and it tolerates white nationalists in its ranks.

At the state level, prominent Republicans spread covid disinformation, suppress voting, and harass LGBTQ young people. To end abortion, certain Republican-dominated states are offering bounties to anyone reporting women seeking abortions beyond six weeks in a pregnancy. Worse, Rubin notes, “a law in Idaho would force rape victims to endure nine months of pregnancy—while allowing their rapists to collect a bounty for turning them in if they seek an abortion.”

The confirmation hearings this week for the elevation of Judge Ketanji Brown Jackson to the Supreme Court have illustrated that Republican lawmakers are far more interested in creating sound bites for right-wing media and reelection campaigns than in governing. Led by Missouri Senator Josh Hawley and Texas Senator Ted Cruz, Republicans have tried to label Judge Jackson as soft on child pornographers, a smear that has been thoroughly discredited by, among others, the conservative *National Review*, which called it “meritless to the point of demagoguery.” Their attacks, though, will play well to their base on social media.

Similarly, Cruz made a big play of accusing Jackson of pushing Critical Race Theory in a private school on whose board she sits. “Do you agree...that babies are racist?” he asked, sitting in front of a poster with blown-up images from a book by African American studies scholar Ibram X. Kendi that the school has in its library.

On Twitter, the Republican National Committee cut right to the chase, showing a picture of Judge Jackson under her initials, which were crossed out and replaced with “CRT.”

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Notes:

<https://talkingpointsmemo.com/news/braun-supreme-court-interracial-marriage-state-rights>



**Allan Smith** @akarl\_smith

In statement obtained by @JulieNBCNews, Sen. Mike Braun walked back remarks about interracial marriage being left up to the states. Says he "misunderstood" the question, adding, "there is no question the Constitution prohibits discrimination of any kind based on race"

“Earlier during a virtual press conference I misunderstood a line of questioning that ended up being about interracial marriage, let me be clear on that issue - there is no question the Constitution prohibits discrimination of any kind based on race, that is not something that is even up for debate, and I condemn racism in any form, at all levels and by any states, entities, or individuals.” – Senator Mike Braun

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**33** Retweets **71** Likes

<https://fortune.com/2015/06/07/50-years-legal-birth-control-workplace/>



**No Lie with Brian Tyler Cohen** @NoLieWithBTC

GOP senators this week: — Blackburn (TN) comes out against Griswold, which legalized contraception — Cornyn (TX) uses his questioning of KBJ to rail against Obergefell, which legalized gay marriage — Braun (IN) comes out against Loving, which legalized interracial marriage

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**10,429** Retweets **22,673** Likes

<https://www.politico.com/newsletters/playbook-pm/2022/03/22/highlights-from-jacksons-questioning-so-far-00019279>

<https://www.tennessean.com/story/news/politics/2022/03/21/marsha-blackburn-criticizes-1965-supreme-court-ruling-birth-control/7120236001/>

[https://www.washingtonpost.com/opinions/lets-just-say-it-the-republicans-are-the-problem/2012/04/27/gIQAxCVUIT\\_story.html](https://www.washingtonpost.com/opinions/lets-just-say-it-the-republicans-are-the-problem/2012/04/27/gIQAxCVUIT_story.html)

<https://www.washingtonpost.com/opinions/2022/03/21/fringe-republicans-are-not-the-problem-ketanji-brown-jackson-confirmation-hearing-hawley/>

<https://slate.com/news-and-politics/2022/03/ted-cruz-racist-babies-kbj-hearing.html>

<https://news.gallup.com/poll/350486/record-high-support-same-sex-marriage.aspx>

<https://www.politico.com/story/2012/05/poll-9-in-10-say-birth-control-is-ok-076623>

<https://www.pewresearch.org/fact-tank/2021/05/06/about-six-in-ten-americans-say-abortion-should-be-legal-in-all-or-most-cases/>

<https://www.guttmacher.org/fact-sheet/contraceptive-use-united-states>

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