

GUEST ESSAY

The Constitution Doesn't Belong to Trump or the Supreme Court

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In case after case over the past eight months, a majority of justices on the Supreme Court have acquiesced to President Trump's lawless and authoritarian actions, often without offering any explanation. The court has allowed the administration to summarily deport migrants to countries where they have no connection. It has condoned racial profiling by federal immigration officers. And it has suggested that it will jettison 90 years of precedent by holding that the president can fire, without cause, the heads of independent agencies.

The combination of Mr. Trump's authoritarian moves and the Supreme Court's authorization of them has produced, for many, a deepening despair. But here is the essential fact: The Constitution's meaning is not the Supreme Court's alone to define. It belongs to "we the people." And when we organize collectively, we can

change it, even without ratifying formal amendments. The text, structure and history of the Constitution already contain broad commitments to democracy, equal protection and liberty. Collective mobilization can make those promises real.

For the past two decades, Americans have watched the Roberts court dismantle constitutional rights and disable government from regulating in the public interest: overruling *Roe v. Wade*; invalidating limits on corporate campaign spending; striking down reasonable gun restrictions; and rolling back environmental safeguards.

But since the country's founding, constitutional meaning has never emerged solely from an elite cadre of justices. Nor has judicial supremacy — what some call “juristocracy” — ever been the reality on the ground. When enough people have organized around a constitutional vision, they have managed to prevail even against a hostile Supreme Court.

Consider the fight for labor rights. During the early 20th century, the court repeatedly invalidated laws protecting unions; judges even jailed labor leaders who led strikes. When Congress, during the Great Depression, passed the National Labor Relations Act enshrining the rights to organize, bargain and strike, most observers believed the Supreme Court would deem the law unconstitutional. But workers organized to defend their rights, articulating a bold constitutional vision rooted in the First Amendment's rights of free expression and association, the 13th Amendment's promise of free labor and Congress's regulatory authority. In the face of huge protests and strikes, and a threat from President Franklin Roosevelt to pack the court with more justices, the Supreme Court relented and upheld the statute.

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When courts close doors, people can open new ones. In the 1910s and '20s, the Supreme Court repeatedly struck down federal laws protecting children from exploitation. Undeterred, labor advocates demanded that their elected representatives try again. Reformers even pushed a constitutional amendment. Though it failed, the campaign created the momentum for the Fair Labor Standards Act of 1938, which prohibited child labor and guaranteed minimum wages and overtime protections. By the time a challenge reached the Supreme Court, its composition had changed, and a majority of its justices no longer viewed such labor laws as unconstitutional.

After the Supreme Court overturned *Roe v. Wade*, voters in Ohio, Michigan, California and other states amended their constitutions to guarantee reproductive freedom. These campaigns not only secured rights for millions, but they also provided a foundation for potential federal change by demonstrating the depth of popular support for constitutionally protected reproductive rights.

What lessons should we take from this history now? First, Americans must embrace our collective role in upholding and interpreting the Constitution. This requires shedding the myth of juristocracy, which paralyzes us. The Constitution deliberately disperses interpretive power to Congress, the president and state officials. More important, as the preamble to the document makes clear, "we the people" are the ultimate sovereigns.

Second, we must pursue the Constitution's democratic promise. A Constitution faithful to the ideal that every person should be able to participate meaningfully in self-government should robustly protect voting rights, freedom of speech, equal opportunity and due process for all. It should also empower the government to secure the social and economic conditions that enable equal political participation in practice: labor rights, freedom from oligarchic rule, health care, education and a clean environment.

Third, if we want to stop this government's authoritarian consolidation of power, we must act. That means organizing mass movements around a set of constitutional commitments, as the right has done in recent years, instead of

relying only on courtroom battles. It means holding meetings and debating the promise of the Constitution and our aspirations for government. It means persuading neighbors and co-workers and people of very different backgrounds that constitutional democracy is worth saving, including by advocating a system of government that is responsive to working people, not only to corporations and elites. It means protesting en masse when the president defies the Constitution's promise — and when the Supreme Court and Congress acquiesce.

It means electing members of Congress who will reclaim their constitutional role, whether by passing robust civil rights and labor laws or using their power of the purse to block unconstitutional policies. It means using state constitutions as a source of rights; they already contain protections for democracy, freedom and equality, and they are easier to amend than the U.S. Constitution when they fall short.

Finally, it means insisting that any presidential candidate who challenges Mr. Trump's warped constitutional vision offer a different one, committed to democracy and freedom for all — and be ready to use every tool consistent with the rule of law to advance that vision, from executive orders to the bully pulpit to judicial nominations. After all, presidents from Franklin Roosevelt to Ronald Reagan — and most troublingly, Mr. Trump — have demonstrated their great power to reshape the meaning of the Constitution.

Skeptics will say that changing the Constitution is unrealistic. History proves otherwise. From abolitionists to suffragists, from labor organizers to civil-rights activists, generations of Americans have transformed the Constitution through vision, struggle and persistence — without waiting for the Supreme Court's permission. They did not begin with majority support either in the court or across the nation, yet through conviction and politics they reshaped public opinion and, ultimately, the law itself.

Our Constitution is not dying. It is waiting — waiting for us to claim it. The conservative majority on the court may seek to freeze us in a past of hierarchy and exclusion, or to accede to a vision of the executive as king. But the best reading of

the Constitution and the history of the people who have fought to fulfill it point in another direction: toward a more democratic, more equal, more free America.

The question is not whether nine justices will save our democracy. The question is whether we will.

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