

**THE ROBERT L. LEVINE
DISTINGUISHED LECTURE**

HOW DID WE GET HERE?

*Michael J. Klarman**

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INTRODUCTION

President Donald J. Trump's second administration has transgressed basic rules and norms of democracy and the rule of law in myriad ways. Below, I have laid out my own top ten list of transgressions, though others could surely have made out a good case for their own "favorites." It would not be difficult to come up with a longer list, yet the purpose of my Levine Lecture is less to describe where we are than to explain how we got here. Following an enumeration of Trump administration transgressions, my lecture turns to two questions. First, why have traditional checks on executive usurpation—both from within government and from civil society—failed? Second, why have tens of millions of Americans become so alienated from politics and society that they would prefer an openly authoritarian president to democracy and the rule of law?

I. THE TRUMP ADMINISTRATION'S
TOP TEN TRANSGRESSIONS

A 2026 report by the Varieties of Democracy Institute, a Swedish nonprofit organization that measures democratic trends worldwide, declares, "[t]he speed with which American democracy is currently [being] dismantled is unprecedented in modern history."¹

First, the Trump administration routinely uses the U.S. Department of Justice (DOJ or "Justice Department") to investigate and prosecute its political adversaries on patently pretextual grounds.² For example, the administration has criminally investigated—and sometimes criminally charged—former Federal Bureau of Investigation (FBI) Director James B. Comey, New York State Attorney General Letitia James, U.S. Senator Adam Schiff, and Federal Reserve Governor Lisa D. Cook and Chairman Jerome H. Powell.³ The DOJ has targeted several of these individuals for alleged mortgage fraud,⁴ a charge that could be directed against Trump himself.⁵ The head of the Federal Home Finance Agency, William J. Pulte, apparently

1. MARINA NORD, DAVID ALTMAN, TIAGO FERNANDES, ANA GOOD GOD & STAFFAN I. LINDBERG, V-DEM INST., *DEMOCRACY REPORT 2026: UNRAVELING THE DEMOCRATIC ERA?* 5 (10th ed. 2026).

2. See Alan Feuer & Lily Boyce, *How Trump Is Using the Justice Department to Target His Enemies*, N.Y. TIMES (Oct. 17, 2025), <https://www.nytimes.com/interactive/2025/10/07/us/politics/trump-enemies-justice-department-investigations.html> (on file with the *Fordham Law Review*).

3. See *id.*; Colby Smith, *Fed Changes Course and Takes on Trump's Political Fight*, N.Y. TIMES (Jan. 12, 2026), <https://www.nytimes.com/2026/01/12/business/federal-reserve-changes-course-trump-administration.html> (on file with the *Fordham Law Review*).

4. See Alan Rappeport, *Housing Official's Push on Mortgage Fraud Gives Trump a Political Weapon*, N.Y. TIMES (Aug. 26, 2025), <https://www.nytimes.com/2025/08/26/us/politics/housing-mortgage-fraud-trump-lisa-cook.html> (on file with the *Fordham Law Review*).

5. See Justin Elliot, Robert Faturechi & Alex Mierjeski, *Trump's Own Mortgages Match His Description of Mortgage Fraud, Records Reveal*, PROPUBLICA (Dec. 8, 2025, at 05:30 ET), <https://www.propublica.org/article/trump-mortgage-fraud-florida-principal-residences> [<https://perma.cc/H8PN-M4AR>].

spends his time combing through the mortgage applications of Trump's political adversaries in search of evidence that they sought mortgages on second homes without sufficiently clarifying that they did not intend to make these homes their place of primary residence.⁶ Pulte is not chastened by the fact that his own parents have committed this same offense.⁷

There has been no serious effort to hide this classic authoritarian move; Trump has addressed a public message to then–Attorney General Pamela J. Bondi demanding that she commence such investigations and prosecutions of Trump's political adversaries.⁸ Bondi immediately complied with Trump's demands.⁹ Federal prosecutors who resisted violating their oaths of office by signing onto such prosecutions have been summarily dismissed.¹⁰ Trump's demands would likely have warranted his own criminal prosecution, except that the U.S. Supreme Court, in its infinite wisdom, created criminal immunity for such presidential behavior.¹¹

Second, Trump has issued executive orders targeting law firms whose partners he does not like or whose clients he disapproves of.¹² These orders purport to deny security clearances to the firms' lawyers, threaten cancellation of government contracts with the firms, and bar firms' lawyers from government buildings.¹³ These executive orders are transparent violations of the First and Sixth Amendments, as the four lower courts to evaluate them have agreed.¹⁴ Yet law firms reasonably feared that their

6. See Rachel Siegel, *Democrats Say Bill Pulte 'Abused' His Role with Mortgage Fraud Probe*, WASH. POST (Sep. 26, 2025), <https://www.washingtonpost.com/business/2025/09/26/pulte-mortgage-fraud-investigations/> (on file with the *Fordham Law Review*).

7. See Matthew Chapman, *Trump's Attack Dog Who Accused Fed Official of Fraud Has Parents Who Did Same Thing*, RAW STORY (Sep. 5, 2025, at 20:46 ET), <https://www.rawstory.com/bill-pulte-2673966236/> [<https://perma.cc/8QR3-XRPW>].

8. See Donald J. Trump (@realdonaldtrump), TRUTH SOCIAL (Sep. 20, 2025, at 18:44 ET), <https://truthsocial.com/@realDonaldTrump/posts/115239044548033727> [<https://perma.cc/TV2S-CKGX>].

9. Kyle Cheney, Erica Orden & Hassan Ali Kanu, *How Trump's Message to 'Pam' Got Exactly the Results He Wanted*, POLITICO (Oct. 10, 2025, at 05:55 ET), <https://www.politico.com/news/2025/10/10/trump-doj-prosecutions-comes-james-00601838> [<https://perma.cc/F6MH-8D7G>].

10. Ruth Marcus, *Donald Trump's Firing of a Federal Prosecutor Crosses the Reddest of Lines*, NEW YORKER (Sep. 21, 2025), <https://www.newyorker.com/news/the-lede/donald-trumps-firing-of-a-federal-prosecutor-crosses-the-reddest-of-lines> (on file with the *Fordham Law Review*).

11. See generally *Trump v. United States*, 144 S. Ct. 2312 (2024) (holding that Trump's discussions with and threats to fire the attorney general were absolutely protected from criminal prosecution).

12. See, e.g., Exec. Order No. 14230, 90 Fed. Reg. 11781 (Mar. 6, 2025) (targeting Perkins Coie LLP for representing Hillary Clinton's 2016 presidential campaign); Exec. Order No. 14237, 90 Fed. Reg. 13039 (Mar. 14, 2025) (targeting Paul, Weiss, Rifkind, Wharton & Garrison LLP for employing Mark Pomerantz, who investigated Trump while at the Manhattan District Attorney's Office); Exec. Order No. 14250, 90 Fed. Reg. 14549 (Mar. 27, 2025) (targeting Wilmer Cutler Pickering Hale and Dorr LLP for employing former Special Counsel Robert Mueller, who investigated Trump's 2016 campaign for possible collusion with Russia).

13. See, e.g., *supra* note 12.

14. See *Perkins Coie LLP v. U.S. Dep't of Just.*, 783 F. Supp. 3d 105, 150 (D.D.C. 2025); *Jenner & Block LLP v. U.S. Dep't of Just.*, 784 F. Supp. 3d 76, 94 (D.D.C. 2025); *Wilmer*

clients would be disinclined to wait around to see if the orders were upheld.¹⁵ Facing such financial pressure, nine of the nation's largest law firms have capitulated, collectively offering roughly one billion dollars in "pro bono" legal services to the federal government to secure relief from the executive orders.¹⁶ The second Trump administration has also threatened to seek sanctions against lawyers filing "frivolous, unreasonable, and vexatious" litigation against administration policies.¹⁷

Third, the administration has attacked universities based on their diversity, equity, and inclusion (DEI) policies; their tolerance of transgender female athletes on women's sports teams; and (especially) accusations of antisemitism (which are, for the most part, risible).¹⁸ For example, based on claims of antisemitism, the administration is reviewing \$9 billion in federal grants and contracts awarded to Harvard University (which is big bucks even for Harvard!).¹⁹ The administration's threats raise serious questions under the First Amendment (telling universities whom to hire and what to teach), the congressional spending power, and statutory procedural requirements for cutting off federal grants to universities.²⁰ In addition to being unconstitutional, the administration's policy is inane: driving away many of the world's best scientists, who are relocating in droves to countries like China and France, where they will be left alone to do their important work.²¹

Fourth, the administration has abolished, or is in the process of abolishing, federal agencies established by Congress—most notably, the U.S. Agency for International Development (USAID) and the U.S. Department of

Cutler Pickering Hale & Dorr LLP v. Exec. Off. of the President, 784 F. Supp. 3d 127, 150 (D.D.C. 2025); Susman Godfrey LLP v. Exec. Off. of the President, 789 F. Supp. 3d 15, 41 (D.D.C. 2025).

15. See, e.g., Eric Tucker, *Law Firm Targeted by Trump Could Have Been 'Destroyed,' Chairman Says in Explaining Deal with Trump*, ASSOCIATED PRESS (Mar. 23, 2025, at 19:55 ET), <https://apnews.com/article/trump-law-firm-retribution-2bd698e21528511bfa54506f0483ef5c> [https://perma.cc/F7CV-TZ58].

16. Michael S. Schmidt et al., *Law Firms Made Deals with Trump. Now He Wants More from Them.*, N.Y. TIMES (Apr. 16, 2025), <https://www.nytimes.com/2025/04/16/us/politics/law-firms-deals-trump.html> (on file with the *Fordham Law Review*).

17. Memorandum on Preventing Abuses of the Legal System and the Federal Courts, 2025 DAILY COMP. PRES. DOC. 387 (Mar. 22, 2025).

18. See Emma Green, *Inside the Trump Administration's Assault on Higher Education*, NEW YORKER (Oct. 13, 2025), <https://www.newyorker.com/magazine/2025/10/20/inside-the-trump-administrations-assault-on-higher-education> (on file with the *Fordham Law Review*); Erwin Chemerinsky, *The Assault on Academic Freedom*, 51 HUM. RTS. 45, 46 (2025).

19. Alan Blinder, Stephanie Saul & Anemona Hartocollis, *Trump Administration Will Review Billions in Funding for Harvard*, N.Y. TIMES (Mar. 31, 2025), <https://www.nytimes.com/2025/03/31/us/trump-administration-harvard-funding.html> (on file with the *Fordham Law Review*).

20. Review Staff, *Harvard Wins District Court Decision Lifting Research Freeze*, CORN. REV. (Sep. 6, 2025), <https://www.thecornellreview.org/harvard-wins-district-court-decision-lifting-research-freeze/> [https://perma.cc/DN7G-US8Y].

21. Alexandra Witze, *75% of US Scientists Who Answered Nature Poll Consider Leaving*, NATURE (Mar. 27, 2025), <https://www.nature.com/articles/d41586-025-00938-y> (on file with the *Fordham Law Review*).

Education (DOE).²² This is an obvious violation of the separation of powers.²³

Fifth, the Trump administration has refused to spend money appropriated by Congress (impoundment)²⁴ and has spent money that Congress did not appropriate.²⁵ Both of these actions are obvious violations of the constitutional separation of powers: only Congress can appropriate money, and the president is obliged to “take care” that congressional laws, such as those appropriating funds, be executed.²⁶

Sixth, the administration has regularly denied appropriated funds to states with Democratic governments to punish them for policies of which the president disapproves.²⁷ These funding denials are seeming violations of the First Amendment and various statutes, as courts have held.²⁸ For example, the administration paused \$10 billion in funding for childcare and social services in five blue states, apparently on the bare allegation of fraud in such

22. Emily Davies, Abigail Hauslohner, John Hudson & Antonio Olivo, *Trump Administration Moves to Formally Abolish USAID*, WASH. POST (Mar. 28, 2025), <https://www.washingtonpost.com/politics/2025/03/28/trump-usaid-abolish-earthquake-congress/> (on file with the *Fordham Law Review*); Michael C. Bender, *Trump Administration Announces Steps to Dismantle Education Department*, N.Y. TIMES (Nov. 18, 2025), <https://www.nytimes.com/2025/11/18/us/politics/trump-education-department.html> (on file with the *Fordham Law Review*).

23. See EMILY M. MCCABE, CONG. RSCH. SERV., IN12500, USAID UNDER THE TRUMP ADMINISTRATION 1 (2025) (stating that the president does not have authority to abolish USAID without congressional authorization).

24. Tony Romm, *Trump Administration Wrongly Impounded Infrastructure Aid, Watchdog Finds*, N.Y. TIMES (May 22, 2025), <https://www.nytimes.com/2025/05/22/us/politics/trump-federal-funds-gao.html> (on file with the *Fordham Law Review*); Alicia Parlapiano, Emily Badger & Alex Lemonides, *In Budget Logs It Tried to Hide, White House Wrests More Control Over Spending*, N.Y. TIMES (Aug. 29, 2025), <https://www.nytimes.com/2025/08/29/upshot/trump-congress-federal-budget.html> (on file with the *Fordham Law Review*).

25. See Tony Romm, *How Trump Played ‘Budgetary Twister’ to Pay Some Workers During the Shutdown*, N.Y. TIMES (Oct. 21, 2025), <https://www.nytimes.com/2025/10/21/us/politics/trump-shutdown-pay.html> (on file with the *Fordham Law Review*).

26. See Zachary S. Price, *Trumpian Impoundments in Historical Perspective*, 78 STAN. L. REV. ONLINE 19, 21–23 (2025); see also U.S. CONST. art. I, § 9, cl. 7 (granting Congress the exclusive power to appropriate money); U.S. CONST. art. II, § 3 (requiring the president to “take Care that the Laws be faithfully executed”).

27. Chandler Rankin, *Challenging Politically Discriminatory Funding Cuts*, HARV. L. REV. BLOG (Feb. 1, 2026), <https://harvardlawreview.org/blog/2026/02/challenging-politically-discriminatory-funding-cuts/> [<https://perma.cc/QZ2M-756L>].

28. See, e.g., *City of Saint Paul v. Wright*, 816 F. Supp. 3d 65, 74–76 (D.D.C. 2026) (striking down the termination of DOE grants on equal protection grounds, while dismissing the First Amendment claims for lack of third-party standing); *New York v. Admin. for Child. & Fams.*, No. 26-CV-172, 2026 WL 673848, at *17, *21 (S.D.N.Y. Mar. 10, 2026) (enjoining the freezing of the Administration for Children and Families (ACF) funding on Administrative Procedure Act (APA) grounds without reaching the constitutional claims); see also Complaint ¶¶ 80–84, *Wright*, 816 F. Supp. 3d 65 (No. 25CV03899) (alleging First Amendment violations); Complaint ¶¶ 4, 158, 182, *Admin. for Child. & Fams.*, 2026 WL 673848 (No. 26-cv-172) (same).

services in Minnesota.²⁹ The same allegations served as part of the administration's justification for sending 3,000 U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) officers into the streets of Minneapolis and St. Paul, where they terrorized law-abiding citizens for several weeks.³⁰ President Trump vetoed a bipartisan bill funding a water project in Colorado and threatened state Supplemental Nutrition Assistance Program (SNAP) benefits following the governor's refusal to pardon Tina Peters, an election administrator convicted of breaching a county voting system in 2020 as part of the effort to help Trump overturn the results of the presidential election on the basis of his fact-free fraud allegations.³¹ Such actions raise serious First Amendment, Spending Clause, and constitutional separation-of-powers issues.³²

Seventh, President Trump's Federal Communications Commission (FCC) Chairman, Brendan Carr, has regularly threatened the media with license revocations for speech of which he and Trump disapprove.³³ Doing his best mafioso impression, Carr sought to intimidate ABC (with some initial success) into firing late night television host Jimmy Kimmel for his remarks after the assassination of Charlie Kirk, telling the network that "[w]e can do this the easy way or the hard way."³⁴ More recently, Carr threatened further license revocations for media outlets not covering the war in Iran according to the administration's wishes.³⁵ Apparently eager not to be outdone, White House Press Secretary Karoline Leavitt warned CBS News to air an interview

29. Minh Kim, *Health Dept. Freezes \$10 Billion in Funding to 5 Democratic States*, N.Y. TIMES (Jan. 6, 2026), <https://www.nytimes.com/2026/01/06/us/politics/child-care-funding-cuts-trump.html> (on file with the *Fordham Law Review*).

30. See *Surge in Federal Officials in Minnesota Focuses on Alleged Fraud at Day Care Centers*, AP (Dec. 30, 2025, at 12:28 ET), <https://apnews.com/article/minnesota-fraud-immigration-enforcement-somali-76e246b70d582f1dd42f1242cf7d7a66> [<https://perma.cc/BY3D-KPCG>]; see, e.g., Amy O'Kruk et al., *What 74 Days of Federal Operations Looked Like in Minnesota, Frame by Frame*, CNN (Feb. 13, 2026), <https://www.cnn.com/interactive/2026/02/us/minnesota-federal-agents-visual/> (on file with the *Fordham Law Review*) (detailing federal agents' terrorizing presence during the Minnesota campaign).

31. See Dan Merica & Matthew Choi, *Why Trump Cares About a Clean Water Pipeline in Colorado*, WASH. POST (Jan. 7, 2026), <https://www.washingtonpost.com/politics/2026/01/07/why-trump-cares-about-clean-water-pipeline-colorado/> (on file with the *Fordham Law Review*); *Colorado v. Trump*, No. 25-cv-3482, slip op. at 14 (D. Colo. Oct. 29, 2025) (order granting preliminary injunction and explaining that the attack on SNAP followed within a week of the president's public criticisms of Colorado's governor).

32. See Amended Complaint for Declaratory and Injunctive Relief at 17, *Colorado v. Trump*, No. 25-cv-3482 (D. Colo. Jan. 8, 2026) (arguing violation of the First Amendment); *id.* at 85–86 (arguing violation of the Spending Clause); *id.* at 6 (arguing violation of separation of powers).

33. See Ashley Ahn, *F.C.C. Chair Threatens to Revoke Broadcasters' Licenses over War Coverage*, N.Y. TIMES (Mar. 14, 2026), <https://www.nytimes.com/2026/03/14/world/middleeast/fcc-broadcasters-iran-war.html> (on file with the *Fordham Law Review*).

34. James Poniewozik, *The F.C.C. Threatened to Punish Kimmel 'the Hard Way.'* *ABC Made It Easy.*, N.Y. TIMES (Sep. 18, 2025), <https://www.nytimes.com/2025/09/18/arts/television/jimmy-kimmel.html> (on file with the *Fordham Law Review*).

35. Ahn, *supra* note 33.

with Trump “in full,” or “we’ll sue your a** off.”³⁶ The U.S. Department of Defense’s restrictions on journalists’ access to the Pentagon were so obviously unconstitutional³⁷ that even Fox News, usually a shill for the administration, could not abide them.³⁸

Eighth, late in the first year of the second Trump administration, ICE and CBP began terrorizing American cities, routinely violating the First Amendment rights of protestors, breaking into homes without warrants in violation of the Fourth Amendment, and even tracking peaceful protestors to their homes to further intimidate them.³⁹ Citizens have been arrested and have faced lengthy detentions for appearing foreign or speaking in Spanish or with an accent.⁴⁰ Federal judges have condemned these agencies for nearly one hundred violations of court orders that had commanded them to cease their clearly unconstitutional behavior.⁴¹

ICE now employs undertrained agents,⁴² recruited through white nationalist videos,⁴³ who are (wrongly) instructed by the nation’s vice president that they have absolute criminal immunity for even the most egregious behavior.⁴⁴ Federal judges have repeatedly enjoined these federal

36. Isabel Keane, *Karoline Leavitt Warned CBS That Trump Will ‘Sue Your A** Off’ If Interview Was Cut*, INDEPENDENT (Jan. 18, 2026, at 15:48 GMT), <https://www.independent.co.uk/news/world/americas/us-politics/karoline-leavitt-cbs-trump-interview-b2902756.html> [https://perma.cc/L5J2-MU34] (offensive language redacted).

37. See generally *N.Y. Times v. Dep’t of Def.*, No. CV 25-04218, 2026 WL 788689 (D.D.C. Mar. 20, 2026) (holding that this policy violated the First and Fifth Amendments); see also Erik Wemple, *Judge Rules Pentagon Restrictions on Press Are Unconstitutional*, N.Y. TIMES (Mar. 20, 2026), <https://www.nytimes.com/2026/03/20/business/media/pentagon-press-restrictions-new-york-times.html> (on file with the *Fordham Law Review*) (describing this ruling).

38. Sara Fischer, *Fox News Declines to Sign Pentagon’s New Press Policy*, AXIOS (Oct. 14, 2025), <https://www.axios.com/2025/10/14/fox-news-pentagon-press-policy-pete-hegseth> (on file with the *Fordham Law Review*).

39. Dan Herman et al., *The Trump Administration’s ICE and CBP Have Become a Threat to Americans: Congress Must Ensure That DHS Follows the Law and Adopts Commonsense Reforms*, CTR. FOR AM. PROGRESS (Jan. 28, 2026), <https://www.americanprogress.org/article/the-trump-administrations-ice-and-cbp-have-become-a-threat-to-americans-congress-must-ensure-that-dhs-follows-the-law-and-adopts-commonsense-reforms/> [https://perma.cc/KM4F-XCT8].

40. Jazmine Ulloa, Allison McCann & Jennifer Medina, *‘I’m From Here!’: U.S. Citizens Are Ending Up in Trump’s Dragnet*, N.Y. TIMES (Sep. 29, 2025), <https://www.nytimes.com/2025/09/29/us/trump-immigration-agents-us-citizens.html> (on file with the *Fordham Law Review*); Amy O’Kruk et al., *supra* note 30.

41. Alan Feuer, *Judge in Minnesota Says ICE Has Violated Nearly 100 Court Orders*, N.Y. TIMES (Jan. 28, 2026), <https://www.nytimes.com/2026/01/28/us/politics/judge-minnesota-ice-court-orders.html> (on file with the *Fordham Law Review*).

42. Nicholas Nehamas & Hamed Aleaziz, *Training for New ICE Agents Is ‘Deficient’ and ‘Broken,’ Whistle-Blower Says*, N.Y. TIMES (Feb. 23, 2026), <https://www.nytimes.com/2026/02/23/us/politics/ice-training-whistle-blower.html> (on file with the *Fordham Law Review*).

43. Pedro Camacho, *DHS Using White Supremacist and Neo-Nazi Symbols in ICE Recruitment, Study Finds*, MSN (Aug. 29, 2025), <https://www.msn.com/en-us/politics/government/dhs-using-white-supremacist-and-neo-nazi-symbols-in-ice-recruitment-study-finds/ar-AA1Lv8Yv> [https://perma.cc/3KGG-7XPS].

44. See Jesus Mesa & Gabe Whisnant, *JD Vance Says ICE Agent Has ‘Absolute Immunity’ After Minneapolis Shooting*, NEWSWEEK (Jan. 8, 2026, at 15:56 ET), <https://www.newsweek.com/jd-vance-says-ice-agent-has-absolute-immunity-after-minneapolis-shooting-1711111>.

agents from the unprovoked use of flash-bang grenades, tear gas, and pepper spray—even instances that have occurred in close proximity to a Halloween costume parade with children present, whom a federal judge had to remind CBP posed no “immediate threat.”⁴⁵ In early October 2025, ICE agents in Chicago rappelled from Black Hawk helicopters, breaking down apartment doors and zip tying residents.⁴⁶ Many of these residents were U.S. citizens and none of them were charged with any crime.⁴⁷ This is not immigration enforcement but rather fascistic terrorizing of a civilian population to pressure them into abandoning peaceful political protest.⁴⁸

Ninth, the administration has deported, without due process and in violation of a federal court order, hundreds of Venezuelans it alleged were members of the prison gang Tren de Aragua based on the risible claim that the gang had “invaded the United States.”⁴⁹ Those deported were sent to a gulag in El Salvador where former detainees described conditions amounting to torture.⁵⁰ For weeks, the administration refused to bring Kilmar Abrego Garcia back to the United States, even though it conceded that he had been deported in violation of a court order.⁵¹ Then, it fired the Justice Department lawyer, Erez Reuveni, who refused to defend the administration’s illegal behavior in court.⁵²

Tenth and finally, Trump has issued a patently unconstitutional executive order, invalidated by several courts, interfering with state election processes

www.newsweek.com/jd-vance-minneapolis-ice-shooting-defense-immunity-minnesota-11331877 [https://perma.cc/TE4S-UCXK].

45. See *Chi. Headline Club v. Noem*, 810 F. Supp. 3d 842, 989 (N.D. Ill. 2025), *vacated and appeal dismissed*, 168 F.4th 1033 (7th Cir. 2026) (granting a preliminary injunction restricting the use of force by federal agents in Chicago protests); Kim Bellware, David Nakamura & Robert Klemko, *Judge Warns Border Patrol That Tear Gas Use Appears to Violate Court Order*, WASH. POST (Oct. 28, 2025), <https://www.washingtonpost.com/immigration/2025/10/28/judge-warns-border-patrol-leader-that-tear-gas-use-appears-violate-court-order/> (on file with the *Fordham Law Review*) (quoting U.S. District Judge Sara Ellis).

46. Sergio Martínez-Beltrán, *Chicago South Shore Building Residents Recount ‘Humiliating’ ICE Raid*, NPR (Oct. 24, 2025, at 03:46 ET), <https://www.npr.org/2025/10/24/nx-s1-5570113/chicago-south-shore-building-residents-recount-humiliating-ice-raid> [https://perma.cc/2RMR-XUNV].

47. *Id.*

48. *Cf. Chi. Headline Club*, 810 F. Supp. 3d at 972, 982, 985 (repeatedly describing the protesters as peaceful).

49. See NPR Washington Desk, *Federal Judge Says U.S. Must Give Due Process to Deported Venezuelans*, NPR (Dec. 23, 2025, at 14:43 ET), <https://www.npr.org/2025/12/22/nx-s1-5652187/alien-enemies-act-deportations-case> [https://perma.cc/X2PP-2WET]; Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Aragua, Proclamation No. 10903, 90 Fed. Reg. 13033 (Mar. 14, 2025).

50. See Sergio Martínez-Beltrán & Manuel Rueda, *‘Hell on Earth’: Venezuelans Deported to El Salvador Mega-Prison Tell of Brutal Abuse*, NPR (July 27, 2025, at 07:21 ET), <https://www.npr.org/2025/07/27/nx-s1-5479143/hell-on-earth-venezuelans-deported-to-el-salvador-mega-prison-tell-of-brutal-abuse> [https://perma.cc/5YZF-RNRF].

51. Alan Feuer, *Key Events in the Administration’s Pursuit of Abrego Garcia*, N.Y. TIMES (Dec. 31, 2025), <https://www.nytimes.com/2025/12/31/us/politics/abrego-garcia-timeline-trump.html> (on file with the *Fordham Law Review*).

52. Carrie Johnson, *Fired Justice Department Lawyer Accuses Agency of Planning to Defy Court Orders*, NPR (June 24, 2025, at 11:27 ET), <https://www.npr.org/2025/06/24/g-s1-74316/justice-department-immigration-whistleblower> [https://perma.cc/YP7Q-32ZQ].

by requiring proof of citizenship for voter registration and presentation of voter identification to actually cast a ballot.⁵³ The president plainly has no such power; only *Congress* can revise state regulations of the time, place, and manner of federal elections.⁵⁴ With opinion polls showing the president to be well under water, and special and state elections delivering massive defeats to Republican candidates,⁵⁵ the administration has apparently determined that it has no chance to win free and fair elections, so it will try to ensure that such elections do not happen.

The second Trump administration is not orchestrating a gradual descent into autocracy, as happened over the last two decades in Viktor Orbán's Hungary and Recep Tayyip Erdoğan's Türkiye.⁵⁶ Rather, we are witnessing a full-out sprint towards authoritarianism.

II. WHY ARE THE TRADITIONAL CHECKS AND BALANCES FAILING?

How did we get here? Why are the traditional checks and balances that were intended to check executive autocracy failing us?

A. Congress

Why is Congress not resisting President Trump's authoritarian turn? After all, much of his agenda consists of direct usurpations of congressional authority—over declaring war,⁵⁷ appropriating funds,⁵⁸ and abolishing

53. See Exec. Order No. 14248, 90 Fed. Reg. 14005 (Mar. 25, 2025); see, e.g., *California v. Trump*, No. 25-cv-10810, 2026 WL 1826535, at *25 (D. Mass. June 24, 2026); *League of United Latin Am. Citizens v. Exec. Off. of the President*, 818 F. Supp. 3d 34, 116–17 (D.D.C. 2026); *Washington v. Trump*, 814 F. Supp. 3d 1173, 1214 (W.D. Wash. 2026).

54. U.S. CONST. art. I, § 4 (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.”); see also *California v. Trump*, 2026 WL 1826535, at *2–3 (describing this power in the context of the Trump executive order).

55. See Nate Silver & Eli McKown-Dawson, *How Popular Is Donald Trump?*, SILVER BULL., <https://www.natesilver.net/p/trump-approval-ratings-nate-silver-bulletin> (on file with the *Fordham Law Review*) (last visited June 12, 2026); Mandy Taheri, *List of 2025 Elections Where Democrats Overperformed Trump's Margins*, NEWSWEEK (Dec. 3, 2025, at 12:02 ET), <https://www.newsweek.com/list-of-2025-elections-where-democrats-overperformed-trumps-margins-11150315> [<https://perma.cc/N9BX-PY3U>].

56. See generally STEVEN LEVITSKY & DANIEL ZIBLATT, *HOW DEMOCRACIES DIE* 72–96 (2018) (detailing how elected leaders like Orbán and Erdoğan gradually dismantle democratic institutions).

57. Weeks into the war with Iran, which Congress played no role in originating, congressional Republicans were still refusing to call administration officials to testify and explain or justify the war. See Megan Mineiro, *Deferring to Trump, G.O.P. Lawmakers Resist a Public Accounting on Iran*, N.Y. TIMES (Mar. 20, 2026), <https://www.nytimes.com/2026/03/20/us/politics/congress-iran-trump.html> (on file with the *Fordham Law Review*).

58. See *supra* notes 22–23 and accompanying text.

administrative agencies.⁵⁹ Why was James Madison so wrong in his prediction that ambition would counteract ambition?⁶⁰

1. Extreme Political Polarization

First, Madison and his fellow framers were not anticipating the development of political parties (factions, yes; political parties that were durable, well-organized, and empowered with the distribution of political patronage, not so much).⁶¹

But this explanation can hardly be sufficient. The United States has had political parties since the early 1790s. (Indeed, Madison himself was a major player in creating one of them.)⁶² Yet American democracy has survived for well over 200 years without a major threat to the democratic system, other than during the Civil War era.⁶³

Extreme political polarization is an important part of the explanation. In the 1950s, political scientists worried that the two major political parties were not sufficiently ideologically sorted.⁶⁴ President Richard M. Nixon resigned from the presidency in 1974 after party leaders, like former Republican presidential candidate Barry M. Goldwater, told Nixon that he had lost sufficient support within his party to prevent Congress from impeaching and removing him from office if he did not resign.⁶⁵

By contrast, Trump faces essentially no resistance from today's Republican Party.⁶⁶ No matter how crazy his behavior—starting a war for no obvious reason with Iran⁶⁷ and then appearing to threaten the nation with genocide,⁶⁸ or writing to Norway's prime minister threatening to take control

59. See *supra* notes 24–26 and accompanying text.

60. See THE FEDERALIST NO. 51 (James Madison).

61. Michael J. Klarman, *Foreword: The Degradation of American Democracy—and the Court*, 134 HARV. L. REV. 1, 105 (2020); Daryl J. Levinson & Richard H. Pildes, *Separation of Parties, Not Powers*, 119 HARV. L. REV. 2312, 2313 (2006); see also JACK N. RAKOVE, ORIGINAL MEANINGS: POLITICS AND IDEAS IN THE MAKING OF THE CONSTITUTION 268 (1996) (“That was hardly the result the framers intended, nor was it even an outcome that they could plausibly imagine.”).

62. See Klarman, *supra* note 61, at 258.

63. Cf. LEVITSKY & ZIBLATT, *supra* note 56, at 61 (noting that prior to 2016, no major presidential candidate “had cast such doubt on the democratic system”).

64. See Klarman, *supra* note 61, at 154.

65. See David Crary, *GOP Unlikely to Reprise Role It Played in Nixon's 1974 Exit*, ASSOCIATED PRESS (Oct. 5, 2019, at 16:14 ET), <https://apnews.com/article/ff1504ddaa5446e5903d4e883e79ff51> [<https://perma.cc/XLV8-6B2N>]; David E. Rosenbaum, *Senators Unable to Agree on Any Move Over Nixon*, N.Y. TIMES (Aug. 8, 1974), <https://www.nytimes.com/1974/08/08/archives/senators-unable-to-agree-on-any-move-over-nixon-senators-unable-to.html> (on file with the *Fordham Law Review*).

66. See Crary, *supra* note 65 (describing the Republican Party under Trump as “cast[] . . . to an ineffectual sideline”).

67. Franco Ordoñez, *What the Trump Administration Says About Why It Went to War with Iran*, NPR (Mar. 7, 2026, at 02:23 ET), <https://www.npr.org/2026/03/07/nx-s1-5734381/white-house-messaging-iran-us-israel-war> [<https://perma.cc/ENW4-NKLN>] (listing the Trump administration's varied and inconsistent justifications for the war).

68. See Michelle L. Price, *Trump Uses the Language of Annihilation to Threaten Iran Ahead of Deadline*, AP (Apr. 7, 2026, at 19:39 ET), <https://apnews.com/article/trump-iran->

of Greenland because Norway did not award Trump the Nobel Peace Prize⁶⁹—almost no Republican politician will call out the mad king.

One consequence of extreme political polarization is that no matter how atrociously one's own side behaves, the other side always seems worse. To many Trump supporters, Democrats are—to paraphrase the president—communists, traitors, and domestic terrorists.⁷⁰ Before the 2024 election, 87 percent of voters believed America would suffer permanent damage if the other side won.⁷¹ Such a belief eliminates almost all accountability for one's own side.

This problem is exacerbated by partisan gerrymandering, which creates mostly noncompetitive legislative districts (at both the state and federal levels), leaving officeholders with a powerful incentive to appeal to extremists in the primary election because general elections are usually not competitive.⁷² Barely 10 percent of seats in the U.S. House of Representatives are competitive today, compared with closer to 40 to 50 percent of seats a few decades ago.⁷³ The Republican-controlled Supreme Court has decreed that partisan gerrymandering is a nonjusticiable issue—meaning there is no court solution to it.⁷⁴ As Justice Kagan pointed out in her dissenting opinion in *Rucho v. Common Cause*,⁷⁵ the majority was wrong when it claimed there was no “manageable judicial” solution to partisan gerrymandering.⁷⁶

threats-civilization-war-crimes-758eb5cd680d7d275c4e1c38b2e01e6d [https://perma.cc/5XBR-T8AE].

69. Jon Henley & Patrick Wintour, *Donald Trump Links Greenland Threats to Nobel Snub as EU Trade War Looms*, *GUARDIAN* (Jan. 19, 2026, at 13:05 ET), <https://www.theguardian.com/us-news/2026/jan/19/donald-trump-greenland-threats-nobel-prize-snob-letter> [https://perma.cc/E4A2-GC5Q].

70. See Donald J. Trump (@realdonaldtrump), TRUTH SOCIAL (Nov. 23, 2025, at 15:16 ET), <https://truthsocial.com/@realDonaldTrump/posts/115600849874066478> [https://perma.cc/S9RF-MR3J] (posting a screenshot that says “[t]he Democrat party has become the party of Domestic Terrorists!”); Donald J. Trump (@realdonaldtrump), TRUTH SOCIAL (Nov. 23, 2025, at 15:21 ET), <https://truthsocial.com/@realDonaldTrump/posts/115600871102876776> [https://perma.cc/G8AM-7NE4] (posting a screenshot that refers to “pompous traitorous communists”).

71. Rick Hasen, “*America Is Having a Panic Attack Over the Election; Voters See Permanent Damage to the Country If Their Candidate Loses; ‘There are Not Enough Gummies I Can Take to Soothe the Angst!’*,” *ELECTION L. BLOG* (Oct. 27, 2024), <https://electionlawblog.org/?p=146658> [https://perma.cc/8K4W-MXMR].

72. See Ashley Lopez, *Only a Fraction of House Seats Are Competitive. Redistricting Is Driving That Lower*, *OR. PUB. BROAD.* (Feb. 22, 2026), <https://www.opb.org/article/2026/02/22/how-americas-most-partisan-voters-hold-the-most-voting-power/> [https://perma.cc/D5M6-QDGV]; Michael Li & Gina Feliz, *The Competitive Districts That Will Decide Control of the House*, *BRENNAN CTR. FOR JUST.* (Oct. 24, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/competitive-districts-will-decide-control-house> [https://perma.cc/4BL3-ULBE].

73. Lopez, *supra* note 72; Li & Feliz, *supra* note 72.

74. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506–07 (2019).

75. 139 S. Ct. 2484 (2019).

76. See *id.* at 2509 (Kagan, J., dissenting).

Money in politics also has a severely polarizing effect; both big- and small-money donors tend to push politics in extreme directions.⁷⁷ Of course, the Supreme Court, in its infinite wisdom, has declared that the First Amendment protects virtually unlimited spending in political races.⁷⁸ This interpretation of the First Amendment was conjured out of thin air in the mid-1970s⁷⁹ and conservative justices have run with it ever since, gradually but consistently eviscerating restrictions on campaign finance.⁸⁰

The nationalization of politics has also exacerbated polarization. It is no longer realistically possible for, say, a Democratic candidate from West Virginia or Montana to win a Senate seat by running a more moderate, locally oriented political campaign.⁸¹ With only a couple of exceptions, party affiliation now swamps everything else. The Jon Testers and Jim Jeffords of the political world no longer exist.⁸²

Authoritarianism flourishes in a deeply polarized political environment. When the opposition party is the enemy, one's own party is preferred, no matter how ridiculous, corrupt, or authoritarian it has become.

2. Overlapping Political Agendas

Extreme political polarization is only part of the explanation for a Republican-controlled Congress's failure to check Trump; too many Republican politicians have tolerated Trump's authoritarianism because they agree with significant portions of his political agenda.⁸³ This factor probably explains the behavior of Republican congressional leaders, such as Speaker of the House Paul Ryan and Senate Majority Leader Mitch McConnell, during Trump's first term, as well as that of several of the Republican-appointed Supreme Court justices.⁸⁴ These individuals are especially motivated by the neoliberal political agenda—endless tax cuts, massive deregulation, and evisceration of the social safety net.⁸⁵ Enacting this agenda may require tolerating a fair amount of discomfort with the antidemocratic stuff (e.g., openly using the Justice Department to prosecute the president's political enemies), the buffoonery stuff (e.g., the threats to go to war over Greenland), and the personally repulsive stuff ("fine people on

77. Klarman, *supra* note 61, at 166–67.

78. *See, e.g.*, *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 365 (2010).

79. *See Buckley v. Valeo*, 424 U.S. 1, 15–18 (1976).

80. Klarman, *supra* note 61, at 204–05.

81. JAMIE L. CARSON, JOEL SIEVERT & RYAN D. WILLIAMSON, *NATIONALIZED POLITICS: EVALUATING ELECTORAL POLITICS ACROSS TIME* 94–113 (2024).

82. *See* Carl Hulse, *Tester's Fight for Political Survival Is Democrats Last Stand on the Great Plains*, N.Y. TIMES (Oct. 12, 2024), <https://www.nytimes.com/2024/10/12/us/politics/jon-tester-democrats-great-plains.html> (on file with the *Fordham Law Review*); Dave Gram, *Former Sen. James Jeffords, Who Reshaped the Senate in 2001, Dies at 80*, PBS (Aug. 18, 2014, at 12:55 ET), <https://www.pbs.org/newshour/politics/sen-james-jeffords-reshaped-senate-2001-dies-80> [<https://perma.cc/49CB-C3AW>].

83. *See* Klarman, *supra* note 61, at 70–71.

84. *See id.*

85. *See id.* at 70.

both sides” of the white supremacist confrontation in Charlottesville⁸⁶ or depicting the Obamas as apes in a social media clip⁸⁷).

The failure of congressional Republicans to object to the Department of Government Efficiency (DOGE) running roughshod over federal agencies in the first months of Trump’s second term is a good illustration of this phenomenon. Almost no congressional Republicans objected to DOGE’s flagrant violation of statutory and constitutional rules because most of them affirmatively want to gut the federal government but are afraid of supporting legislation to do so because their constituents strongly support Medicare, Social Security, and the Affordable Care Act (ACA).⁸⁸

3. Fear

Fear of political retaliation from President Trump also explains the absence of constraint from congressional Republicans. One word from Trump can destroy a political career, as the former ultra-MAGA Congresswoman Marjorie Taylor Greene recently discovered.⁸⁹ Early in President Trump’s second term, Senators Joni Ernst and Thom Tillis openly contemplated opposing the president’s nomination of the utterly unqualified and reputationally challenged nominee for U.S. Secretary of Defense, Pete Hegseth.⁹⁰ Ernst quickly backed down in response to MAGA threats to primary her before having to embarrassingly renounce a reelection bid

86. Rosie Gray, *Trump Defends White-Nationalist Protesters: ‘Some Very Fine People on Both Sides,’* ATLANTIC (Aug. 15, 2017), <https://www.theatlantic.com/politics/archive/2017/08/trump-defends-white-nationalist-protesters-some-very-fine-people-on-both-sides/537012/> (on file with the *Fordham Law Review*).

87. Craig Hoyle, *Trump Shocks With ‘Disgusting’ Truth Post Depicting Barack and Michelle Obama as Apes*, INDEPENDENT (Feb. 6, 2026, at 11:16 GMT), <https://www.independent.co.uk/news/world/americas/us-politics/trump-obama-video-truth-social-barack-michelle-b2915822.html> [<https://perma.cc/DZD9-YKXU>].

88. Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered sections of the U.S. Code); see Hannah Knowles & Meryl Kornfield, *DOGE Complicates Republican Efforts to Steer Clear of Social Security*, WASH. POST (Apr. 4, 2025), <https://www.washingtonpost.com/politics/2025/04/04/doge-complicates-republican-efforts-steer-clear-social-security/> (on file with the *Fordham Law Review*).

89. See Aaron Pellish & Meredith Lee Hill, *Marjorie Taylor Greene Resigns from Congress After Clash with Trump*, POLITICO (Nov. 21, 2025, at 20:31 ET), <https://www.politico.com/news/2025/11/21/marjorie-taylor-greene-resigns-from-congress-after-clash-with-trump-00665972> [<https://perma.cc/WY4C-JVSS>].

90. See Allison McManus, Dan Herman & Laura Kilbury, *Pete Hegseth Is Unfit to Lead the Pentagon*, CTR. FOR AM. PROGRESS (Jan. 10, 2025), <https://www.americanprogress.org/article/pete-hegseth-is-unfit-to-lead-the-pentagon/> [<https://perma.cc/K38Q-KDYB>] (explaining the reasons why Hegseth should not have been confirmed); Rachael Bade & Dasha Burns, *How Trump’s Orbit Used Blunt Force to Squeeze Hegseth Through*, POLITICO (Jan. 28, 2025, at 20:00 ET), <https://www.politico.com/news/2025/01/28/hegseth-confirmation-senate-trump-00201033> [<https://perma.cc/PP6A-X4LC>].

anyhow.⁹¹ It was pretty much the same story for Tillis.⁹² One might hope for greater personal courage from public servants, but that hope appears to be ill-justified.

Nor should we understate the risk of actual physical violence directed toward public officials from MAGA supporters.⁹³ Senator Lisa Murkowski put the point succinctly: “We are all afraid.”⁹⁴ Former Senator Mitt Romney explained that when he voted to convict President Trump in his first impeachment trial, colleagues informed him that they could not do the same because they could not afford the thousands of dollars that Romney paid daily for his security detail.⁹⁵ A Minnesota state legislator was assassinated in her home in 2025 by a man who reportedly voted for President Trump in the 2024 election.⁹⁶ When Republicans in the Indiana Senate blocked President Trump’s determined efforts to pressure them into gerrymandering congressional districts at a special session in 2025, most of them received death threats, were swatted, or had pizzas delivered to their homes (a tactic generally perceived as a threatening message: “we know where you live”).⁹⁷

Trump himself cultivates violence while trying to maintain plausible deniability.⁹⁸ During a presidential debate with President Joseph R. Biden

91. See Bade & Burns, *supra* note 90; Lalee Ibssa & Allison Pecorin, *Ernst Says She’ll Vote to Confirm Hegseth as Defense Secretary*, ABC NEWS (Jan. 14, 2025, at 20:25 ET), <https://www.yahoo.com/news/ernst-says-shell-vote-confirm-012512202.html> [https://perma.cc/9WW4-S65X]; Caroline Vakil & Brett Samuels, *Ernst Expected to Retire from Senate, Forgo Reelection Campaign*, HILL (Aug. 29, 2025, at 13:41 ET), <https://thehill.com/homenews/campaign/5477639-ernst-iowa-senate-retirement/> [https://perma.cc/28ZL-E9NW].

92. See Bade & Burns, *supra* note 90.

93. Gabriel Sherman, “*They’re Scared S***less*”: *The Threat of Political Violence Informing Trump’s Grip on Congress*, VANITY FAIR (Feb. 19, 2025), <https://www.vanityfair.com/news/story/trump-congress-political-violence> (on file with the *Fordham Law Review*) (offensive language redacted).

94. Giselle Ruhyyih Ewing, “*We Are All Afraid*”: *Murkowski Says Fear of Retaliation from Trump Administration Is ‘Real’*, POLITICO (Apr. 17, 2025, at 11:41 ET), <https://www.politico.com/news/2025/04/17/lisa-murkowski-trump-retaliation-00295852> [https://perma.cc/MV8Q-FNVE].

95. MCKAY COPPINS, ROMNEY: A RECKONING 278–79 (2023); Mark Leibovich, *Romney, Defying the Party He Once Personified, Votes to Convict Trump*, N.Y. TIMES (Jan. 6, 2021), <https://www.nytimes.com/2020/02/05/us/politics/romney-trump-impeachment.html> (on file with the *Fordham Law Review*).

96. *Manhunt for Suspect in Political Assassination Rattles Minnesota*, N.Y. TIMES (June 23, 2025), <https://www.nytimes.com/live/2025/06/14/us/minnesota-shootings> (on file with the *Fordham Law Review*).

97. Megan Brand & Raquel Coronell Uribe, *At Least 11 Indiana Republicans Were Targeted with Threats or Swatting Attacks Amid Redistricting Pressure from Trump*, NBC NEWS (Dec. 1, 2025, at 16:56 ET), <https://www.nbcnews.com/politics/2026-election/indiana-republicans-swatting-attacks-redistricting-rcna246689> [https://perma.cc/Q6FH-3NM8].

98. Tamara Keith, Scott Detrow & Avery Keatley, *President Trump’s Responses on Political Violence Over Time*, NPR (Sep. 13, 2025, at 17:21 ET), <https://www.npr.org/2025/09/13/nx-s1-5538082/president-trumps-responses-on-political-violence-over-time> [https://perma.cc/PDR5-MDE9]; Klarman, *supra* note 61, at 32; cf. MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY 427–28 (2004) (describing Southern segregationist politicians who incited violence while maintaining plausible deniability).

Jr. in 2020, rather than condemning the Proud Boys, Trump instructed them to “stand back and stand by.”⁹⁹ One of Trump’s first acts in his second term was to pardon nearly all of the January 6, 2021 insurrectionists, including those convicted of serious violence perpetrated against U.S. Capitol Police, which resulted in multiple deaths.¹⁰⁰

B. The Supreme Court

If a Republican Congress has proved useless in checking Trump, what about the Supreme Court as a potential checking force? Lower courts, including many Republican judges, some of whom were even appointed by Trump, have done an extraordinary job invalidating most of the obviously illegal and unconstitutional actions of the administration.¹⁰¹ By contrast, the Supreme Court, mostly on the emergency docket, has largely proved complicit in enabling Trump’s authoritarian agenda.¹⁰² In the hundreds of cases challenging the administration’s actions in federal district court, Trump has lost 60 percent of the time.¹⁰³ By contrast, in twenty-five cases resolved on the Supreme Court’s emergency docket in the 2025–2026 term, the administration won 90 percent of the time, even in cases in which the administration is likely to lose on the merits.¹⁰⁴

Without approving the administration’s actions on the merits, the Court has stayed lower court injunctions barring administration policies dismantling congressionally established agencies, deporting undocumented immigrants without due process to countries with which they have no prior relationship, racially profiling ICE targets, and invalidating birthright citizenship.¹⁰⁵ On the emergency docket, the justices have overwhelmingly

99. Kathleen Ronayne & Michael Kunzelman, *Watch: Trump Doesn’t Disavow White Supremacy, Tells Far-Right Extremist Group to ‘Stand By,’* PBS (Sep. 30, 2020, at 15:23 ET), <https://www.pbs.org/newshour/politics/watch-trump-doesnt-disavow-white-supremacy-tells-far-right-extremist-group-to-stand-by> [https://perma.cc/4QXD-MDJX].

100. Granting Pardons and Commutation of Sentences for Certain Offenses Relating to the Events at or Near the United States Capitol on January 6, 2021, Proclamation No. 10887, 90 Fed. Reg. 8331 (Jan. 20, 2025); *see also* STAFF OF H. COMM. ON THE JUDICIARY, 119TH CONG., REPORT ON PARDONED JANUARY 6TH RIOTERS 4–6 (Comm. Print 2026) (detailing pardons of rioters with prior criminal records and violent offenses).

101. Paul M. Collins Jr., *Even Trump-Appointed Judges Are Ruling Against Him*, UPI (May 6, 2025), <https://www.upi.com/Voices/2025/05/06/usdonald-trump-appointed-judges-rulings/8501746538090/> [https://perma.cc/BSP2-D65Z].

102. *See Interim Docket 2024*, SCOTUSBLOG, <https://www.scotusblog.com/cases/interim-docket/2024/> [https://perma.cc/PEA3-YEJ8] (last visited July 25, 2026).

103. *Where Law Still Rules: The Conspicuous Jump in Trump’s Win Rate as Cases Move from Lower Courts to SCOTUS*, CT. ACCOUNTABILITY (Oct. 2025), <https://www.courtaccountability.org/shadow-docket-analysis> [https://perma.cc/AD8W-S35S] (finding a 60 percent win rate for litigation challengers across 240 district court orders evaluated).

104. *Id.* (documenting a 90 percent administration win rate across emergency shadow docket orders).

105. *See McMahon v. New York*, 145 S. Ct. 2643 (2025) (mem.) (staying a district court order to reinstate employees fired from the Department of Education); *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.) (staying a district court order preventing the U.S. Department of Homeland Security (DHS) from removing undocumented immigrants to countries with which they have no prior relationship); *Noem v. Vasquez Perdomo*, 146 S. Ct.

divided six-to-three, along strictly partisan lines.¹⁰⁶ One plausible interpretation of the conservative justices' behavior is that they are making a strategic calculation not to get involved in a direct confrontation with an administration that has repeatedly threatened to defy judicial orders.¹⁰⁷ Yet one predictable consequence of such judicial appeasement is to expand the power of an autocratic president at a moment when that power could plausibly be checked.

Justice Alito has voted with the Trump administration 95 percent of the time on the emergency docket; he sided with the Biden administration just 18 percent of the time on that docket.¹⁰⁸ Alito's voting record and other public conduct give reason to believe that he agrees with most of the MAGA agenda.¹⁰⁹ Chief Justice Roberts almost certainly does not.¹¹⁰ Yet Roberts has chosen to permit most of that agenda to succeed, at least temporarily, based on the apparent calculation that postponing the inevitable confrontation is sound political strategy.

Perhaps even worse, the Court has chosen to largely abandon lower federal court judges who are facing unprecedented physical threats, which are probably facilitated by the administration's characterization of them as "judicial insurrectionists"¹¹¹ and "rogue activist judges" with whom the administration is at "war."¹¹² For example, Justices Gorsuch and Kavanaugh have accused lower court judges of defying Supreme Court orders¹¹³—a

1 (2025) (mem.) (staying a district court order preventing the Government from stopping individuals based on race in ICE raids in Los Angeles); *Trump v. CASA, Inc.*, 145 S. Ct. 2540 (2025) (granting stays to district court nationwide injunctions preventing the enforcement of Trump's executive order denying birthright citizenship).

106. Adam Liptak, *On the Supreme Court's Emergency Docket, Sharp Partisan Divides*, N.Y. TIMES (Sep. 14, 2025), <https://www.nytimes.com/2025/09/14/us/politics/supreme-court-emergency-docket-partisan.html> (on file with the *Fordham Law Review*).

107. Ann E. Marimow, *Supreme Court Walks a Tightrope as It Confronts Trump's Power Moves*, WASH. POST (May 30, 2025), <https://www.washingtonpost.com/politics/2025/05/29/trump-john-roberts-supreme-court/> (on file with the *Fordham Law Review*).

108. Liptak, *supra* note 106.

109. See *id.*; James Romoser, *Samuel Alito, a MAGA-Friendly Justice with a Conservative Legal Vision*, WALL ST. J. (July 10, 2026, at 19:00 ET), <https://www.wsj.com/us-news/law/samuel-alito-practical-originalism-06ce3159> (on file with the *Fordham Law Review*) (noting that Justice Alito has aligned with Trump in 78 percent of the cases he has participated in, the highest of any of the justices); Jodi Kantor, *The Alitos, the Neighborhood Clash and the Upside-Down Flag*, N.Y. TIMES (May 28, 2024), <https://www.nytimes.com/2024/05/28/us/justice-alito-neighbors-stop-steal-flag.html> (on file with the *Fordham Law Review*) (reporting the display of "Stop the Steal" symbols at Justice Alito's home).

110. See *infra* note 115 and accompanying text.

111. Tiana Headley, *Bondi, Senate GOP Push Back on Musk Judicial Impeachment Call*, BLOOMBERG L. (Feb. 12, 2025, at 19:52 ET), <https://news.bloomberglaw.com/us-law-week/bondi-senate-gop-push-back-on-musk-judicial-impeachment-call> (on file with the *Fordham Law Review*).

112. Josh Gerstein, *Todd Blanche on Defending Trump Policies Before 'Rogue Activist Judges': 'It's a War, Man,'* POLITICO (Nov. 7, 2025, at 20:16 ET), <https://www.politico.com/news/2025/11/07/todd-blanche-justice-department-trump-policies-00643602> [https://perma.cc/7HRJ-3FUB].

113. John Fritze, *Gorsuch and Kavanaugh Warn Lower Court Judges in Trump Cases*, CNN POL. (Aug. 25, 2025), <https://edition.cnn.com/2025/08/25/politics/supreme-court-justices-trump-lower-court> [https://perma.cc/9SB8-2GY3].

perverse accusation, given that these judges were accused of defying rulings on the emergency docket that often come with no reasoning at all. Are district court judges supposed to read the minds of Supreme Court justices?

Nor has the chief justice taken a strong stand in defense of lower federal court judges. Roberts's end-of-year report on the federal judiciary only indirectly alludes to verbal assaults and physical threats faced by these judges.¹¹⁴ Only once, in the spring of 2025, has Roberts spoken out against the administration's threats to impeach federal judges.¹¹⁵ How can the chief justice not see his role to encompass defending the lower federal judiciary during a unique moment of existential threat?

Three factors may explain the Court's failure to check the president despite his openly authoritarian tactics. First, the Court is packed with Republican justices. In 2016, Senate Majority Leader Mitch McConnell refused to allow hearings on President Barack Obama's nomination of Judge Merrick Garland to fill the seat vacated by Justice Antonin Scalia's death.¹¹⁶ At a moment in which Democrats seemed likely to secure their first majority on the Supreme Court since 1969, McConnell propagated the lie that the Senate traditionally did not fill Supreme Court vacancies created in the last year of a president's term.¹¹⁷ Four years later, McConnell abandoned that lie when Justice Ruth Bader Ginsburg died six weeks before the 2020 presidential election, and McConnell ensured that Justice Barrett filled the vacancy just one week before the presidential election.¹¹⁸

In addition, five of the current Court's six Republican justices were appointed by presidents (George W. Bush and Donald J. Trump) who first entered the White House having lost the popular vote.¹¹⁹ Four of those justices were confirmed by narrow Republican Senate majorities that represented less than half of Americans.¹²⁰ The vagaries of the electoral

114. See generally SUP. CT., 2025 YEAR END REPORT ON THE FEDERAL JUDICIARY (2025), <https://www.supremecourt.gov/publicinfo/year-end/2025year-endreport.pdf> [<https://perma.cc/T87P-Y36H>].

115. Josh Gerstein, Kyle Cheney & Meredith Lee Hill, *John Roberts, in Rare Statement, Hits Back After Trump Calls for Impeaching Judges*, POLITICO (Mar. 18, 2025, at 13:21 ET), <https://www.politico.com/news/2025/03/18/john-roberts-donald-trump-impeach-federal-judges-00235742> [<https://perma.cc/SX24-NAU3>]. More recently, the chief justice has spoken out against incendiary targeting of federal judges. E.g., Ann E. Marimow, *Chief Justice Says Personal Attacks on Judges are 'Dangerous' and Must Stop*, N.Y. TIMES (Mar. 17, 2026), <https://www.nytimes.com/2026/03/17/us/politics/chief-justice-trump-personal-attacks.html> (on file with the *Fordham Law Review*). At the same time, Roberts was careful, according to the *New York Times*, to make clear that "his comments were not directed at any particular person or political party." *Id.* Roberts's remarks came soon after the president had called the Court's ruling against him on tariffs a "disgrace to our nation." *Id.*

116. Klarman, *supra* note 61, at 247–48.

117. *Id.*

118. Carl Hulse, *How Mitch McConnell Delivered Justice Amy Coney Barrett's Rapid Confirmation*, N.Y. TIMES (Nov. 3, 2020), <https://www.nytimes.com/2020/10/27/us/mcconnell-barrett-confirmation.html> (on file with the *Fordham Law Review*).

119. Klarman, *supra* note 61, at 239, 241–43.

120. See Philip Bump, *The Minoritarian Power Imbalance That Gave Trump Immunity*, WASH. POST (July 1, 2024), <https://www.washingtonpost.com/politics/2024/07/01/supreme->

college and the malapportionment of the Senate enabled Republicans to pack the Court with like-minded justices.¹²¹

Second, as I have already suggested, the Republican justices undoubtedly agree with much of the modern Republican Party's agenda: decimating the modern administrative state, restricting abortion access, ending race-based affirmative action, undermining the political clout of labor unions, and broadening rights to religious exemptions from generally applicable laws and eviscerating the traditional boundary between church and state.¹²² Even for those conservative justices whom we might plausibly speculate are not wholly on board with MAGA, their agreement with the core of the Republican Party agenda may make the trade-off seem worthwhile.¹²³

Third, as already noted, the conservative justices have possibly concluded that Trump must be appeased rather than checked, at least in the short term, to avoid the risk of his defying a direct order.¹²⁴ This sort of strategic calculation happens all the time on the Supreme Court.¹²⁵ For example, the justices believed that the worst thing that could happen after *Brown v. Board of Education (Brown I)*¹²⁶ was that southern states would defy a school desegregation order.¹²⁷ Thus, the justices decided a year later in *Brown v. Board of Education (Brown II)*¹²⁸ to issue a vague and gradualist order, rather than a clear and immediate one.¹²⁹ In practice, white southerners interpreted *Brown II* as weak and vacillating, thus incentivizing the massive resistance to desegregation that followed.¹³⁰ Yet the conservative justices decided in

court-president-senate-immunity/ (on file with the *Fordham Law Review*); Klarman, *supra* note 61, at 235.

121. In addition, Republican domination of today's Court was advanced by the refusal of Justice Ruth Bader Ginsburg to capitulate to President Obama's gentle nudges that she retire in 2013 and by Justice Kennedy's decision to quit under a Republican president (while possibly finagling to ensure that his own former law clerk filled his seat).

122. See generally *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024) (administrative state); *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022) (abortion access); *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141 (2023) (affirmative action); *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448 (2018) (labor unions); *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023) (religious exemptions); *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407 (2022) (church and state); *Carson v. Makin*, 142 S. Ct. 1987 (2022) (church and state); *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021) (religious exemptions); *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719 (2018) (religious exemptions).

123. Aziz Huq, *Conservatives on the Supreme Court May Not Fully Align with Trump*, POLITICO (Feb. 26, 2025, at 12:00 ET), <https://www.politico.com/news/magazine/2025/02/26/supreme-court-conservative-trump-agenda-00206066> [<https://perma.cc/A9VP-9BSU>].

124. Kate Shaw, William Baude & Stephen I. Vladeck, *'There's Just Too Much Lawlessness': Three Legal Experts on an Embattled Supreme Court*, N.Y. TIMES (July 3, 2025), <https://www.nytimes.com/2025/07/03/opinion/supreme-court-trump.html> (on file with the *Fordham Law Review*).

125. See WALTER F. MURPHY, *ELEMENTS OF JUDICIAL STRATEGY* 168–75 (1964).

126. 347 U.S. 483 (1954).

127. See KLARMAN, *supra* note 98, at 311.

128. 349 U.S. 294 (1955).

129. See *id.* at 301; KLARMAN, *supra* note 98, at 312–16.

130. See KLARMAN, *supra* note 98, at 427–29.

the 2025–2026 term to follow a similar approach in dealing with an openly authoritarian Trump administration.

C. *The Federal Bureaucracy*

Traditionally, federal bureaucrats have served a powerful function in checking disreputable political actors: they expose misdeeds, follow facts, acknowledge legal constraints, and bring nonpartisan expertise to governance. Bureaucrats played that role in Trump’s first administration. A whistleblower disclosed Trump’s “not-so-perfect” phone call to Ukrainian President Volodymyr Zelenskyy in July 2019, which resulted in Trump’s first impeachment trial.¹³¹ Then–Secretary of Defense and former military officer Mark Esper apparently talked Trump out of bombing Mexican drug cartels,¹³² and Chairman of the Joint Chiefs of Staff Mark A. Milley discouraged Trump from shooting demonstrators in the legs at George Floyd protests.¹³³

Not so much in Trump’s second administration. DOGE eliminated 9 percent of the federal government’s civilian workforce and gutted entire agencies.¹³⁴ One of the administration’s first actions in office was firing numerous inspectors general, whose job description includes rooting out misfeasance in office.¹³⁵ Whistleblowers have been extirpated.¹³⁶ Both the

131. Arden Farhi, *Read the Whistleblower’s Memo About Trump’s Ukraine Call, as Described to CBS News*, CBS NEWS (Oct. 9, 2019, at 15:02 ET), <https://www.cbsnews.com/news/the-whistleblower-complaint-read-full-text-whistleblower-memo-trump-ukraine-call-described-cbs-news-exclusive/> [https://perma.cc/9DR5-KYHH].

132. Mike Brest, *Trump’s Former Defense Chief Esper: Military Not the ‘Best Tool’ to Stop Drug Interdictions*, MSN (Nov. 11, 2025), <https://www.msn.com/en-us/news/world/trump-s-former-defense-chief-esper-military-not-the-best-tool-to-stop-drug-interdictions/ar-AA1Qfk93> [https://perma.cc/4378-4D8C].

133. Gino Spocchia, *Milley Warned Trump Off Violence Against ‘Penny Packet’ George Floyd Protesters, Book Claims*, INDEPENDENT (Sep. 17, 2021, at 15:12 BT), <https://www.independent.co.uk/news/world/americas/us-politics/milley-trump-george-floyd-woodward-b1922056.html> [https://perma.cc/QF5M-6ZWM].

134. Alex Nowrasteh & Krit Chanwong, *DOGE Produced the Largest Peacetime Workforce Cut on Record, but Spending Kept Rising*, CATO INST. (Dec. 17, 2025), <https://www.cato.org/blog/doge-produced-largest-peacetime-workforce-cut-record-spending-kept-rising-0> [https://perma.cc/T3SW-Q8RZ].

135. Leila Fadel, *President Trump Fired More Than a Dozen Inspectors General. Here’s Why That Matters*, NPR (Jan. 27, 2025, at 04:19 ET), <https://www.npr.org/2025/01/27/nx-s1-5275424/president-trump-fired-more-than-a-dozen-inspectors-general-heres-why-that-matters> [https://perma.cc/VNF3-9HEN].

136. *Breaking: Trump Administration Fires, Suspends Whistleblowers After They Sound the Alarm on Civil Rights Violations in Housing*, SENATE COMM. ON BANKING, HOUS., AND URB. AFFS. (Sep. 29, 2025), <https://www.banking.senate.gov/newsroom/minority/breaking-trump-administration-fires-suspends-whistleblowers-after-they-sound-the-alarm-on-civil-rights-violations-in-housing> [https://perma.cc/MQQ8-6XNX]; see also Jacob Rosen & Olivia Gazis, *Gabbard Sends Criminal Referrals to DOJ for Whistleblower and Watchdog Who Helped Launch Trump’s First Impeachment*, CBS NEWS (Apr. 15, 2026, at 22:41 ET), <https://www.cbsnews.com/news/gabbard-criminal-referrals-doj-whistleblower-watchdog-trump-first-impeachment/> [https://perma.cc/P4LX-7GBA] (U.S. Director of National Intelligence Tulsi Gabbard making criminal referrals to Justice Department of first-term whistleblower and inspector general).

DOJ and the FBI have fired or transferred anyone playing a role in the prosecutions of the January 6 insurrectionists or the prosecution of Trump for obstructing the search for classified documents at Mar-a-Lago.¹³⁷ Three former senior FBI officials alleged that Director Kash Patel admitted that his termination of several agents was illegal.¹³⁸ One cannot get a senior role in the Trump administration without expressing support for the view that the 2020 election was stolen from Trump.¹³⁹

In addition, bureaucrats telling inconvenient truths have been fired. The head of the Bureau of Labor Statistics lost her job for accurately reporting bad job numbers.¹⁴⁰ The head of the Defense Intelligence Agency was fired for questioning the effectiveness of the administration's bombing of Iranian nuclear sites in the summer of 2025 after Trump had said, apparently without any evidentiary basis, that the bombing had "completely and fully obliterated" Iran's nuclear capabilities.¹⁴¹ (Trump's baseless claim complicated his subsequent effort to justify going to war with Iran in February 2026, partly on the theory that Iran posed a nuclear threat to the United States.)¹⁴²

D. The Media

Traditionally, the media has played a critical role in checking usurpations of power by chief executives, which is why autocrats such as Orbán in Hungary have targeted independent media outlets and sought to place political allies in charge of such institutions.¹⁴³ Trump has enjoyed several such successes during his second term.

Two of the nation's largest and longest-serving media corporations, ABC (through its parent company, Walt Disney) and CBS, paid Trump \$15 million

137. E.g., Alan Feuer, *Lawsuit Accuses Justice Dept. Leadership of 'Political Retribution,'* N.Y. TIMES (Mar. 19, 2026), <https://www.nytimes.com/2026/03/19/us/politics/fbi-retribution-lawsuit.html> (on file with the *Fordham Law Review*).

138. See Complaint at 2–3, *Driscoll v. Patel*, No. 25-cv-03109 (D.D.C. Sep. 10, 2025).

139. Josh Marcus, *Inside the Trump Administration Hiring Process Where Hundreds of Applicants Are Rejected for Lack of Loyalty*, INDEPENDENT (Feb. 8, 2025, at 22:24 GMT), <https://www.independent.co.uk/news/world/americas/us-politics/trump-hiring-process-mag-a-loyalty-b2694756.html> [<https://perma.cc/2QST-QPKN>].

140. Ben Casselman & Tony Romm, *Trump, Claiming Weak Jobs Numbers Were 'Rigged,' Fires Labor Official*, N.Y. TIMES (Aug. 1, 2025), <https://www.nytimes.com/2025/08/01/business/economy/trump-bls-firing-jobs-report.html> (on file with the *Fordham Law Review*).

141. Konstantin Toropin, Mary Clare Jalonick & Michelle L. Price, *Hegseth Fires General Whose Agency's Intel Assessment of Damage from Iran Strikes Angered Trump*, MILITARY.COM (Aug. 22, 2025, at 20:48 ET), <https://www.military.com/daily-news/2025/08/22/hegseth-fires-general-whose-agencys-intel-assessment-of-damage-iran-strikes-angered-trump.html> [<https://perma.cc/E4ZD-6PSU>].

142. Amy Sherman, *Fact-Checking Statement Made by Trump to Justify U.S. Strikes on Iran*, PBS (Feb. 28, 2026, at 19:19 ET), <https://www.pbs.org/newshour/politics/fact-checking-statements-made-by-trump-to-justify-u-s-strikes-on-iran> [<https://perma.cc/9UHL-YQN7>].

143. Justin Spike, *How Hungary's Orbán Uses Control of the Media to Escape Scrutiny and Keep the Public in the Dark*, ASSOCIATED PRESS (July 31, 2024), <https://apnews.com/article/hungary-media-democracy-orban-magyar-european-parliament-f6315d7cc252f210c360863de403054e> [<https://perma.cc/CZ6J-G6Q9>].

and \$16 million, respectively, to settle spurious lawsuits he filed against these companies.¹⁴⁴ Meta paid Trump \$25 million for forcing him off Facebook after he incited a violent coup against Congress's electoral vote count on January 6, 2021.¹⁴⁵ Amazon ponied up \$75 million in production costs and promotion fees for an absurd documentary about First Lady Melania Trump that virtually nobody wanted to see.¹⁴⁶ For corporations and their plutocratic owners who are worth tens or hundreds of billions of dollars, forking over \$10 or \$20 million to protect their relationship with the Trump administration is chump change.

The Trump Justice Department approved of Skydance—owned by David Ellison, the son of Trump ally Larry Ellison—buying Paramount, the parent company of CBS, which quickly shifted toward more favorable coverage of the Trump administration.¹⁴⁷ Antiwoke crusader Bari Weiss was put in charge of CBS News, where she almost immediately spiked a *60 Minutes* episode on torture at the Salvadoran prison, CECOT, because the segment's producer had not tried hard enough to get immigration czar Stephen Miller on camera defending the administration's policy.¹⁴⁸ Edward R. Murrow and Walter Cronkite are turning over in their graves.

More recently, Trump announced that he would get “involved” in the attempted purchase of Warner Brothers Discovery (which owns CNN) by Netflix, presumably because he preferred that his allies, the Ellisons, prevail in Paramount's competing hostile takeover bid.¹⁴⁹ (This ploy succeeded,

144. David Folkenflik, *Paramount Agrees to Pay \$16 Million to Settle Trump's CBS Lawsuit*, NPR (July 2, 2025, at 10:00 ET), <https://www.npr.org/2025/07/02/nx-s1-5290171/trump-lawsuit-paramount-cbs-60-minutes-kamala-harris> [https://perma.cc/ZDR4-R7SD].

145. Bobby Allyn, *Meta Agrees to Pay Trump \$25 Million to Settle Lawsuit over Facebook and Instagram Suspensions*, NPR (Jan. 29, 2025, at 18:54 ET), <https://www.npr.org/2025/01/29/nx-s1-5279570/meta-trump-settlement-facebook-instagram-suspensions> [https://perma.cc/XL6E-4UW4].

146. Margaret Hartmann, *Coming to Amazon Prime: A Puzzling Melania Trump Documentary*, N.Y. MAG. (Jan. 6, 2025), <https://nymag.com/intelligencer/article/melania-amazon-documentary-bezos-ratner.html> (on file with the *Fordham Law Review*).

147. David Folkenflik, *Trump Administration Approves Sale of CBS Parent Company Paramount After Concessions*, NPR: ILL. (July 24, 2025, at 17:36 CT), <https://www.nprillinois.org/2025-07-24/trump-administration-approves-sale-of-cbs-parent-company-paramount-after-concessions> [https://perma.cc/9KNH-MHTM].

148. See The Associated Press & Matt Sedensky, *CBS Becomes Bari Weiss' 'Anti-Woke' Arena as the Millennial Media Mogul (and Mainstream Media Critic) Digs In*, FORTUNE (Oct. 8, 2025, at 15:34 ET), <https://fortune.com/2025/10/08/paramount-cable-cbs-becomes-bari-weiss-anti-woke-arena-as-the-mainstream-media-critic-billionaires-news-outlet/> [https://perma.cc/3VPW-FLN5]; Brendan Rascius, *'60 Minutes' Segment Controversially Spiked by CBS News Editor-in-Chief Bari Weiss Finally Airs*, INDEPENDENT (Oct. 8, 2025, at 15:34 ET), <https://www.independent.co.uk/news/world/americas/us-politics/60-minutes-cecot-airs-bari-weiss-cbs-b2902879.html> [https://perma.cc/DCV7-2TCC].

149. See Kevin Liptak & Kristen Holmes, *Battle Over Future of Warner Bros. Discovery Captures Trump's Attention*, CNN POL. (Dec. 8, 2025), <https://www.cnn.com/2025/12/08/politics/netflix-paramount-trump-warner-bros-future> [https://perma.cc/A9J8-M6NP].

though the merger is currently on hold because of an antitrust lawsuit filed by state attorneys general.)¹⁵⁰

Amazon founder Jeff Bezos, a recently converted Trump fan,¹⁵¹ has virtually destroyed the *Washington Post* in Trump's second term.¹⁵² This comes after the paper proudly adopted the motto, "Democracy Dies in Darkness," during Trump's first term.¹⁵³ Just before the 2024 presidential election, Bezos spiked the *Post*'s endorsement of Democratic presidential candidate Kamala D. Harris, apparently calculating that Trump's vengeance would be a price too steep to pay should he win the election.¹⁵⁴ Soon after Trump's victory, Bezos changed the newspaper's editorial policy to favor support for "personal liberties" and "free markets."¹⁵⁵ The *Post* fired a Black journalist who referenced on social media an offensive quotation from Charlie Kirk after Kirk's assassination.¹⁵⁶ Early in 2026, the *Post* laid off one-third of its staff;¹⁵⁷ many star journalists had already departed the sinking ship.¹⁵⁸ The newspaper that brought down Richard Nixon's presidency over the Watergate scandal is being destroyed by an owner obsessed with the need

150. See Joe Flint, *Paramount Wins Bidding War for Warner Discovery After Netflix Drops Out*, WALL ST. J. (Feb. 27, 2026, at 05:05 ET), <https://www.wsj.com/business/media/warner-discovery-says-paramounts-latest-bid-is-superior-to-netflix-deal-e0ceea4c> (on file with the *Fordham Law Review*); Lauren Hirsch, David McCabe & Benjamin Mullin, *Why Paramount Paused Its Blockbuster \$111 Billion Deal for Warner Bros.*, N.Y. TIMES (July 27, 2026), <https://www.nytimes.com/2026/07/26/business/paramount-warner-bros-deal-pause.html> (on file with the *Fordham Law Review*).

151. Sarah Jackson, *Donald Trump and Jeff Bezos' Dinner at Mar-a-Lago Is the Latest Development in their Long History*, BUS. INSIDER (Dec. 19, 2024, at 14:25 ET), <https://www.businessinsider.com/amazon-jeff-bezos-donald-trump-feud-relationship-history-2024-11> [https://perma.cc/V799-KYR4].

152. Hanna Rosin, *How Jeff Bezos Broke The Washington Post*, ATLANTIC (Feb. 5, 2026), <https://www.theatlantic.com/politics/2026/02/how-jeff-bezos-broke-washington-post/685885/> (on file with the *Fordham Law Review*).

153. John Bat, *Washington Post Sells Itself to Readership with New Slogan*, CBS NEWS (Feb. 22, 2017, at 18:29 ET), <https://www.cbsnews.com/news/the-washington-post-introduces-its-new-slogan/> [https://perma.cc/2MHK-2ZSE].

154. Dan Mangan, *Jeff Bezos Killed Washington Post Endorsement of Kamala Harris, Paper Reports*, CNBC (Oct. 26, 2024, at 16:04 ET), <https://www.cnbc.com/2024/10/25/jeff-bezos-killed-washington-post-endorsement-of-kamala-harris-.html> [https://perma.cc/6AQN-ABMC].

155. Nadine Yousif & Madeline Halpert, *Bezos Focuses Washington Post Opinion Section on Free Markets and Liberties*, BBC (Feb. 26, 2025), <https://www.bbc.com/news/articles/c5y44gw5gpro> [https://perma.cc/323B-AK2F].

156. See Karen Attiah, *The Washington Post Fired Me—But My Voice Will Not Be Silenced*, THE GOLDEN HOUR BY KAREN ATTIAH (Sep. 15, 2025), <https://karenattiah.substack.com/p/the-washington-post-fired-me-but> [https://perma.cc/NV4B-6BZR].

157. David Bauder, *Washington Post Cuts a Third of Its Staff in a Blow to a Legendary News Brand*, AP (Feb. 4, 2026, at 09:33 ET), <https://apnews.com/article/washington-post-staff-reduction-layoffs-cuts-923f87d4bd319c8a64b278165d0a6e27> [https://perma.cc/5XS6-UGEM].

158. John Allsop, *The Exodus from the Washington Post*, COLUM. JOURNALISM REV. (Aug. 4, 2025), https://www.cjr.org/the_media_today/exodus-washington-post-wapo-storied-paper-dying-jeff-bezos-donald-trump.php [https://perma.cc/HTX4-TR83].

to demonstrate obeisance to Trump in order to protect the billions of dollars in government contracting he receives for his other businesses.¹⁵⁹

The administration's heavy-handed threats against unfriendly media have led other outlets to self-censor. MSNBC quickly fired commentator Matthew Dowd for declaring, after Kirk's assassination, that "hateful thoughts lead to hateful words, which then ultimately lead to hateful actions."¹⁶⁰ The administration took advantage of the Kirk assassination to intimidate prospective critics. Pentagon staff were ordered to hunt for social media posts criticizing Kirk, and several U.S. soldiers were fired for posting critical remarks.¹⁶¹ Secretary of State Marco Rubio threatened to deport noncitizens who failed to show proper respect for the newly martyred Kirk.¹⁶²

By contrast, nobody at Fox News lost their job for the callous cruelty they displayed when the spouse of then-Democratic House Speaker Nancy Pelosi, Paul Pelosi, had his head caved in by a home intruder or when Minnesota legislator Melissa Hortman was assassinated in her home.¹⁶³ Fox News host Brian Kilmeade, who suggested involuntary euthanasia as a solution to the homelessness crisis, did not lose his job.¹⁶⁴

Even the renowned *New York Times* has become a shell of its former self during the second Trump administration. The *Times* engages in a relentless "bothsideism" and "sanewashing" in its coverage of the authoritarian Trump administration;¹⁶⁵ it declines to provide front-page coverage to anti-Trump

159. See Isaac Stanley-Becker, Aaron C. Davis, Josh Dawsey & Christian Davenport, *For Jeff Bezos and His Businesses, Washington Has Become More Important*, WASH. POST (Oct. 30, 2024), <https://www.washingtonpost.com/nation/2024/10/30/bezos-business-federal-government/> (on file with the *Fordham Law Review*).

160. Benjamin Mullin, *MSNBC Fires Analyst Who Said Charlie Kirk Pushed Hate Speech*, N.Y. TIMES (Sep. 11, 2025), <https://www.nytimes.com/2025/09/11/us/matthew-dowd-charlie-kirk-msnbc-fired.html> (on file with the *Fordham Law Review*).

161. See Courtney Kube & Carol E. Lee, *Pete Hegseth Tells Pentagon Staff to Hunt for Negative Charlie Kirk Posts by Service Members*, NBC NEWS (Sep. 12, 2025, at 18:43 ET), <https://www.nbcnews.com/politics/national-security/hegseth-pentagon-staff-negative-charlie-kirk-posts-service-members-rcna230915> [<https://perma.cc/Ry38-DYPR>].

162. Jennifer Hansler, *Rubio Says State Department Has Denied Visas to People 'Celebrating' Kirk's Murder*, CNN POL. (Sep. 16, 2025), <https://www.cnn.com/2025/09/16/politics/rubio-state-department-denied-visas-charlie-kirk> [<https://perma.cc/PU93-XSY4>].

163. E.g., Greg Evans, *Fox News's Jesse Watters Dismisses Pelosi Attack as 'a Lot of People Get Hit with Hammers'*, INDY100 (Oct. 29, 2022), <https://www.indy100.com/tv/jesse-watters-paul-pelosi-fox> [<https://perma.cc/Z8WF-L5J4>]; Michael Luciano, *Fox's Rachel Campos-Duffy Jokes About Violent Attack on Ex-Speaker's Husband: 'Maybe Paul Pelosi Needs the Hammer'*, MEDIAITE (May 3, 2024), <https://www.mediaite.com/media/tv/foxs-rachel-campos-duffy-jokes-about-violent-attack-on-ex-speakers-husband-maybe-paul-pelosi-needs-the-hammer/> [<https://perma.cc/Y2ED-RH8X>]; cf. Kyle Dunphey, *Sen. Mike Lee Outrages Minnesotans with Social Media Jabs About Hortman Murder*, MINN. REFORMER (June 16, 2025), <https://minnesotareformer.com/2025/06/16/sen-mike-lee-outrages-minnesotans-with-social-media-jabs-about-hortman-murder/> [<https://perma.cc/97G9-BY88>].

164. Associated Press, *Fox Host Apologizes for Saying Mentally Ill Homeless People Should Be Executed*, POLITICO (Sep. 14, 2025, at 14:56 ET), <https://www.politico.com/news/2025/09/14/fox-host-apologizes-for-saying-mentally-ill-homeless-people-should-be-executed-00563440> [<https://perma.cc/C5DB-9Z8T>].

165. Dan Froomkin, *Why Is New York Times Campaign Coverage So Bad?: Because That's What the Publisher Wants.*, PRESS WATCH (Mar. 7, 2024, at 10:03 ET),

rallies and understates crowd sizes at No Kings Day protests;¹⁶⁶ and it empowers conservative opinion columnist Ross Douthat to platform formerly fringe personalities such as Christopher F. Rufo, who has led the national crusade against teaching critical race theory in high schools and colleges.¹⁶⁷

E. Corporate Leadership

However, the prize for pusillanimous response to the Trump administration may go to the nation's business leadership. Corporate officers and Wall Street bankers who have privately railed against the idiocy of Trump's always-changing tariff policies have generally refrained from challenging them publicly.¹⁶⁸ Billionaire investor Bill Ackman denounced the tariffs, then quickly walked back his criticism for fear of retaliation by the administration.¹⁶⁹ Few corporations possessed of clear financial interests to challenge the tariffs have been willing to file lawsuits asserting their illegality. (The Supreme Court eventually invalidated the tariffs.)¹⁷⁰ Amazon threatened to disclose on its website the increased costs that customers would pay because of the tariffs; within hours, the White House declared the company had committed a "hostile and political act," and Amazon immediately backed down.¹⁷¹ Shortly after Jamie Dimon of JPMorgan Chase mildly suggested that the independence of the Federal Reserve Board of Governors was a good idea, Trump lashed out at Dimon and sued JPMorgan for billions of dollars for debanking him after January

<https://presswatchers.org/2024/03/why-is-new-york-times-campaign-coverage-so-bad-because-thats-what-the-publisher-wants/> [<https://perma.cc/SR2N-MCVL>].

166. See, e.g., Brad Reed, *Critics Blast 'Clueless' New York Times for Dismissive Coverage of Historic No Kings Protests*, COMMON DREAMS (Mar. 29, 2026), <https://www.commondreams.org/news/no-kings-nyt-criticism> [<https://perma.cc/N28X-JZFQ>].

167. See generally INTERESTING TIMES WITH ROSS DOUTHAT, *Christopher Rufo on D.E.I., 'Racial Favoritism' and Donald Trump* (YouTube, Mar. 7, 2025), <https://www.youtube.com/watch?v=qjLKRPGGS0> (on file with the *Fordham Law Review*).

168. Chip Cutter & Heather Haddon, *CEOs Break Silence on Trump Trade War*, WALL ST. J. (Apr. 8, 2025, at 16:24 ET), <https://www.wsj.com/business/trump-tariffs-ceo-reactions-11c7cd78b> (on file with the *Fordham Law Review*) (reporting that "chief executives stuck to privately channeling their frustrations to trade groups and lobbyists" because they "feared retribution from the Trump administration" and individually "don't want to be the lightning rod").

169. Gustaf Kilander, *Billionaire Trump Backer Bill Ackman Mercilessly Teased After Hailing President's 'Art of the Deal' Tariffs Climbdown*, INDEPENDENT (Apr. 9, 2025, at 22:36 BT), <https://www.independent.co.uk/news/world/americas/us-politics/donald-trump-bill-ackman-tariffs-b2730570.html> [<https://perma.cc/7WT6-EK7H>].

170. See *Learning Res., Inc. v. Trump*, 146 S. Ct. 628, 646 (2026).

171. See Ariana Balo, *Amazon Says It Won't Display Tariff Costs After Trump Called Bezos over 'Hostile and Political' Move*, INDEPENDENT (Apr. 29, 2025, at 21:52 BT), <https://www.independent.co.uk/news/world/americas/us-politics/amazon-tariff-prices-trump-response-b2741552.html> [<https://perma.cc/A3F9-7T3B>].

6.¹⁷² Facebook, Apple, and Google have all removed from their platforms tools developed for coordinating anti-ICE protests.¹⁷³

An industry trade group has reported that corporations believe the “administration is keeping a list, and no one on K Street wants to be on it.”¹⁷⁴ There was no such corporate inhibition about criticizing the Biden administration for pursuing strong antitrust, environmental, and other regulatory policies.¹⁷⁵ An enormous asymmetry in public debate has developed without the Trump administration’s needing to lift much of a finger, because fear of government retaliation against critics has already been baked into their business calculations.

F. Civil Society Organizations Such as Law Firms and Universities

The administration has largely neutered the checking power of other civil society institutions such as law firms and universities—another tried-and-true tactic of authoritarian governments. The size of the modern administrative state has vastly expanded over the course of the twentieth century. The share of gross domestic product spent by the federal government has grown from 3.4 percent in 1930 to 23.1 percent in 2025.¹⁷⁶

Potentially ruthless hands now control enormous federal largesse that can be leveraged against potential political adversaries in the private sphere. Government contracts, science grants, security clearances, the power to admit foreign students into the United States, the tax-exempt status of universities—all can be manipulated to undermine basic constitutional rights.

In the early months of the second Trump administration, the president issued executive orders threatening law firms of which he disapproved.¹⁷⁷ Nine of the nation’s largest law firms immediately sought settlements.¹⁷⁸

172. See Kalyeena Makortoff, *Trump Hits Back at JP Morgan CEO’s Defence of Federal Reserve*, GUARDIAN (Jan. 14, 2026, at 10:49 ET), <https://www.theguardian.com/business/2026/jan/14/trump-hits-back-at-jp-morgan-ceo-defence-of-federal-reserve-jamie-dimon> [<https://perma.cc/2EFK-M7S2>]; Complaint and Demand for Jury Trial at 3–4, 21, Trump v. JPMorgan Chase Bank, No. 26-cv-21106 (S.D. Fla. Jan. 22, 2026).

173. Ashley Belanger, *Platforms Bend over Backward to Help DHS Censor ICE Critics, Advocates Say*, ARSTECHNICA (Feb. 13, 2026), <https://arstechnica.com/tech-policy/2026/02/platforms-bend-over-backward-to-help-dhs-censor-ice-critics-advocates-say/> [<https://perma.cc/KE7F-FB8T>].

174. Caitlin Oprysko, *‘Everyone Is terrified’: Business and Government Officials Are Afraid to Cross Trump on Tariffs*, POLITICO (Apr. 4, 2025), <https://www.politico.com/news/2025/04/04/trump-tariffs-fear-lobby-business-congress-00006608> [<https://perma.cc/99GP-AEDM>].

175. See, e.g., Suzanne P. Clark, *Regulatory Agencies Are in Overdrive. We Will See Them in Court.*, U.S. CHAMBER OF COM. (May 24, 2024), <https://www.uschamber.com/improving-government/regulatory-agencies-are-in-overdrive-chamber-will-see-them-in-court> [<https://perma.cc/8P2U-9GAQ>].

176. See OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, SUMMARY OF RECEIPTS, OUTLAYS, SURPLUSES OR DEFICITS AS PERCENTAGE OF GDP: 1930–2025, <https://whitehouse.gov/omb/historical-tables/> (on file with the *Fordham Law Review*) (follow “Table 1.2” hyperlink).

177. See *supra* notes 12–15 and accompanying text.

178. See *supra* notes 15–17 and accompanying text.

The four firms that challenged the executive orders won in court; the orders were obvious violations of the First and Sixth Amendments.¹⁷⁹ But the legality or illegality of the orders was of minor consequence when law firms feared their clients would flee any law firm that was on the wrong side of this autocratic administration.¹⁸⁰ The ability of the nation's law firms to collectively resist these unconstitutional executive orders was undermined by the willingness of other firms to swoop in and scoop up clients of resisting firms.¹⁸¹

The impact of these executive orders targeting law firms has been dramatic. In the first year of the first Trump administration, 75 percent of the lawsuits brought against administration policies were initiated by large law firms; the corresponding figure for the first year of the second Trump administration is 15 percent.¹⁸² The largest and wealthiest firms with the most to lose from the administration's attacks have been the most likely to capitulate.¹⁸³ Not one of the nation's twenty-seven largest law firms signed an amicus brief challenging the administration's executive orders attacking law firms as a threat to the rule of law.¹⁸⁴ The American Bar Association (ABA) encountered difficulty procuring lawyers to represent it when it wished to join challenges to these executive orders.¹⁸⁵ Lawyers have been so intimidated by the administration's threats that, when CBS's *60 Minutes* (pre-Weiss) ran a story on the executive orders targeting law firms,¹⁸⁶ the only lawyer willing to go on the air was Marc Elias, whom Trump has targeted by name.¹⁸⁷ Anyone assuming that wealth and social clout correlate with the courage necessary to resist autocratic threats probably should reassess their general assumptions about human motivations.

179. Justin Henry, *Trump Drops Court Fights Against Law Firms Targeted in Orders*, BLOOMBERG (Mar. 3, 2026, at 01:11 UTC), <https://www.bloomberg.com/news/articles/2026-03-02/trump-to-drop-court-fight-against-law-firms-targeted-in-orders> (on file with the *Fordham Law Review*); see, e.g., *Susman Godfrey LLP v. Exec. Off. of the President*, 789 F. Supp. 3d 15, 28 (D.D.C. 2025) (holding that the order "violates the U.S. Constitution and must be permanently enjoined").

180. See *supra* note 15 and accompanying text.

181. See Tucker, *supra* note 15.

182. See Shayna Jacobs, Clara Ence Morse & Mark Berman, *Nation's Biggest Law Firms Back Off from Challenging Trump Policies*, WASH. POST (Oct. 26, 2025), <https://www.washingtonpost.com/national-security/2025/10/26/smaller-law-firms-struggle-trump-administrations-initiatives/> (on file with the *Fordham Law Review*).

183. See *id.*

184. Jack Newsham, *Big Law's Biggest Players Are Absent from Opposing Trump's Attacks on Law Firms*, BUS. INSIDER (Apr. 4, 2025, at 18:25 ET), <https://www.businessinsider.com/trump-big-law-firms-didnt-sign-perkins-coie-brief-2025-4> (on file with the *Fordham Law Review*).

185. See Complaint for Declaratory and Injunctive Relief at 6, *A.B.A. v. Exec. Off. of the President*, No. 25-cv-01888 (D.D.C. June 16, 2025).

186. See generally 60 MINUTES, *How Law Firms Targeted by Trump Are Responding to White House Pressure* (YouTube, May 4, 2025), <https://www.youtube.com/watch?v=U1QSDSnX8Rw> (on file with the *Fordham Law Review*).

187. Devlin Barrett, *With New Decree, Trump Seeks to Cow the Legal Profession*, N.Y. TIMES (Mar. 22, 2025), <https://www.nytimes.com/2025/03/22/us/politics/trump-memo-lawyers.html> (on file with the *Fordham Law Review*).

The Trump administration has also gone after at least a dozen prominent universities on a variety of pretextual grounds: DEI policies, alleged antisemitism, and policies regarding transgender athletes.¹⁸⁸ The administration has threatened universities with rescission of science and medical grants, the right to host foreign students, tax-exempt statuses, and higher endowment taxes.¹⁸⁹ In settlement talks, the administration has demanded, among other things, that these universities hire more conservative faculty members, limit faculty involvement in university governance, and turn over data on admissions.¹⁹⁰ Even though Harvard won its First Amendment lawsuit against the administration,¹⁹¹ many universities have capitulated.¹⁹² For example, Columbia University paid the administration \$200 million, adopted a controversial definition of antisemitism, and expelled students protesting Israeli military actions during the war against Hamas in Gaza.¹⁹³ Brown University coughed up \$50 million for Rhode Island workforce development in exchange for the administration's agreement to restore research funding.¹⁹⁴ Northwestern University paid \$75 million to protect similar funding and to settle a discrimination investigation.¹⁹⁵ All universities prominent enough for the administration to notice and liberal enough in their policies to make them targets have suffered a chilling effect from the administration's obviously illegal attacks upon them.

Universities are under the gun not only from the Trump administration but from Republican state administrations that have adopted MAGA-like policies. Most prominently in Texas, university presidents have been replaced by Republican state politicians, faculty governance is being

188. See *supra* notes 18–19 and accompanying text; Michael C. Bender, Alan Blinder & Jonathan Swan, *Inside Trump's Pressure Campaign on Universities*, N.Y. TIMES (Apr. 14, 2025), <https://www.nytimes.com/2025/04/14/us/politics/trump-pressure-universities.html> (on file with the *Fordham Law Review*).

189. Elissa Nadworny, *All the Ways the Trump Administration Is Going After Colleges and Universities*, NPR (June 10, 2025, at 05:00 ET), <https://www.npr.org/2025/06/10/nx-s1-5424450/ways-trump-administration-is-going-after-colleges> [https://perma.cc/RR58-N5AQ].

190. Troy Closson, *Columbia Agrees to Trump's Demands After Federal Funds Are Stripped*, N.Y. TIMES (Mar. 21, 2025), <https://www.nytimes.com/2025/03/21/nyregion/columbia-response-trump-demands.html> (on file with the *Fordham Law Review*).

191. See *President & Fellows of Harvard Coll. v. U.S. Dep't of Health & Hum. Servs.*, No. 25-cv-11048, 2025 WL 2528380, at *138 (D. Mass. Sep. 3, 2025).

192. See Ben Unglesbee, Laura Spitalniak & Natalie Schwartz, *Tracking the Trump Administration's Deals with Colleges*, HIGHER ED DIVE (Dec. 2, 2025), <https://www.highereddive.com/news/tracking-the-trump-administrations-deals-with-colleges/803434/> [https://perma.cc/32JR-VSJH].

193. See Sharon Otterman, *Columbia Agrees to \$200 Million Fine to Settle Fight with Trump*, N.Y. TIMES (July 23, 2025), <https://www.nytimes.com/2025/07/23/nyregion/columbia-trump-funding-deal.html> (on file with the *Fordham Law Review*).

194. Elissa Nadworny, *Brown University Pays Out First Workforce Grants Under Deal with Trump*, NPR (Jan. 30, 2026, at 12:50 ET), <https://www.npr.org/2026/01/30/nx-s1-5693777/brown-university-workforce-grants-deal-with-trump> [https://perma.cc/YW7A-QZC7].

195. Alana Wise, *Northwestern Settles with Trump Administration \$75M Deal to Regain Federal Funding*, NPR (Nov. 29, 2025, at 16:07 ET), <https://www.npr.org/2025/11/29/nx-s1-5624964/northwestern-trump-funding-settlement> [https://perma.cc/4A5J-4Y5P].

eviscerated, course syllabi are now subjected to review by these politician presidents, gender studies programs have been eliminated, and faculty have been fired or disciplined for what they say about gender identity and race.¹⁹⁶ A poll conducted by a student newspaper at the University of Texas found that 40 percent of faculty respondents were changing their syllabi or teaching as a result of such intimidation tactics.¹⁹⁷

The Trump administration is threatening to broaden its attack on civil society organizations that have traditionally checked the power of autocrats. Administration officials have recently indicated that they plan to challenge the tax-exempt status of liberal philanthropies, such as the Ford Foundation, which has a \$16 billion endowment.¹⁹⁸ In September 2025, Trump signed a memorandum threatening to investigate and prosecute “domestic terrorist” organizations and their financial backers.¹⁹⁹ Targeted groups include those with views that the administration characterizes as extreme on migration and “hostil[e] towards those who hold traditional American views on . . . morality.”²⁰⁰ The irony is rich, coming from a president who pardoned the violent insurrectionists of January 6, including prominent leaders of the Oath Keepers and Proud Boys.²⁰¹ Doubly rich, the administration is now targeting the Southern Poverty Law Center, which has historically fought against neo-Nazis and white supremacists, on the absurd pretext that the organization misled its donors by soliciting funds that were used to pay informants within these far-right organizations.²⁰²

196. Vimal Patel, *The Conservative Overhaul of the University of Texas Is Underway*, N.Y. TIMES (Dec. 13, 2025), <https://www.nytimes.com/2025/12/10/us/university-of-texas-republicans-academic-freedom-faculty.html> (on file with the *Fordham Law Review*); Jessica Priest, *Texas Republicans Are Redefining Higher Ed. It's Creating Confusion About Free Speech on Campuses*, TEX. TRIB. (Oct. 23, 2025, at 11:10 CT), <https://www.texastribune.org/2025/10/23/texas-republicans-higher-ed-college-political-overhaul/> [<https://perma.cc/44LE-A7Z3>].

197. Pili Saravia, Maryam Ahmed, Erika Pernis & Catharine Li, *Faculty Change Syllabi, Teaching Approaches After New Higher Ed Legislation*, DAILY TEXAN (Nov. 18, 2025), <https://thedailytexan.com/2025/11/17/faculty-change-syllabi-teaching-approaches-after-new-higher-ed-legislation/> [<https://perma.cc/32WA-3HV8>].

198. Devlin Barrett, *Justice Dept. Official Pushes Prosecutors to Investigate George Soros's Foundation*, N.Y. TIMES (Sep. 25, 2025), <https://www.nytimes.com/2025/09/25/us/politics/justice-trump-george-soros-foundation.html> (on file with the *Fordham Law Review*).

199. Memorandum on Countering Domestic Terrorism and Organized Political Violence, 90 Fed. Reg. 47225, 47226–27 (Sep. 30, 2025).

200. *Id.* at 47226.

201. See Carrie Johnson, *Trump Offers Long-Promised Pardons to Some 1,500 January 6 Rioters*, NPR (Jan. 20, 2025, at 21:03 ET), <https://www.npr.org/2025/01/20/g-s1-36809/trump-pardons-january-6-riot> [<https://perma.cc/X3UQ-PT7L>].

202. Sarah N. Lynch & Jacob Rosen, *Justice Department Charges Southern Poverty Law Center with Fraud over Investigations into Extremist Groups, Blanche Says*, CBS NEWS (Apr. 22, 2026, at 20:17 ET), <https://www.cbsnews.com/news/southern-poverty-law-center-justice-department-investigation-informants-hate-groups/> [<https://perma.cc/6AU6-ZVHU>].

G. The Resisters

In the face of so much pusillanimity, who thus far has been willing to resist the administration's depredations upon democracy and the rule of law? I believe the resisters fall into two categories.

First, state politicians, many of whom are probably ambitious for higher office, have boldly stood up to the president. Governors such as Gavin Newsom of California and JB Pritzker of Illinois appear to be campaigning for the Democratic nomination for president in 2028 by competing against one another to demonstrate who can be strongest in their resistance to, and denunciation of, the Trump administration.²⁰³ Thank goodness for federalism and the political incentives it creates! As Madison contemplated, the dispersion of governmental power through a federal system constitutes a powerful check on a potentially tyrannical federal administration.²⁰⁴

The other most potent check on the autocratic Trump administration comes from private individuals on podcasts and subscription-based platforms like Substack—people such as Heather Cox Richardson, Robert B. Hubbell, Paul Krugman, Marc Elias, *The Bulwark* contributors, and the quartet of former Obama staffers on *Pod Save America*. For the most part, these individuals are not dependent on government contracts, broadcast licenses, security clearances, or U.S. Department of State (“State Department”) visas. The Trump administration, while clearly authoritarian, has not been able to dominate the private sphere in the manner of a *totalitarian* government, such as China and, increasingly, Russia. However, were the current administration afforded additional time to consolidate its power (a third Trump term, anyone?), it would probably become more totalitarian in its inclination and reach. The administration is already trying to destroy politicians who have dared to resist its agenda, such as Senator Adam Schiff, who is being criminally investigated on the thin reed of mortgage fraud,²⁰⁵ and Senator Mark Kelly, who has been subjected to demotion in military rank for making factually true statements about the obligation of soldiers to refuse to follow obviously illegal orders.²⁰⁶

203. Michael Sainato, *Gavin Newsom Confirms He Is Considering 2028 Presidential Run*, GUARDIAN (Oct. 26, 2025, at 13:31 ET), <https://www.theguardian.com/us-news/2025/oct/26/gavin-newsom-2028-presidential-race> [https://perma.cc/SXT5-BVHA]; Caroline Vakil, *Pritzker's Trump Posture Ramps Up 2028 Chatter*, HILL (May 4, 2025, at 06:00 ET), <https://thehill.com/homenews/campaign/5280477-illinois-gov-jb-pritzker-trump-critics/> [https://perma.cc/DZ63-BMFD].

204. THE FEDERALIST NO. 51 (James Madison).

205. Rebecca Beitsch, *DOJ Opens Probe into Handling of Schiff Mortgage Investigation*, HILL (Nov. 20, 2025, at 17:52 ET), <https://thehill.com/regulation/court-battles/5616192-justice-department-probe-schiff-mortgage-investigation/> [https://perma.cc/5RZX-WR93].

206. Scott Neuman, *Pentagon Investigates Sen. Mark Kelly for Telling Troops to Refuse 'Illegal Orders'*, NPR (Nov. 24, 2025, at 16:29 ET), <https://www.npr.org/2025/11/24/nx-s1-5619314/pentagon-mark-kelly-trump-hegseth-military> [https://perma.cc/2AGN-ZMSY].

III. THE MAGA BASE

Thus far, I have sought to explain why the traditional checking institutions, both public and private, have not worked to effectively obstruct an authoritarian president in the way that the framers and conventional political science would have predicted. Yet, another puzzle remains to be explained: despite the Trump administration's patently authoritarian behavior, between 35 and 40 percent of Americans still support the president, and a substantial percentage of those supporters love and admire Trump.²⁰⁷ What explains the willingness of so many Americans to support a president who not only openly threatens democracy and the rule of law, but also appears determined to run the United States into the ground: destroying NATO and the post-World War II system of international trade that has greatly benefited the United States; engaging in unprecedented self-dealing corruption; gutting public health agencies to the point that the United States might not be able to survive another pandemic without millions of deaths; using ICE to terrorize American cities;²⁰⁸ inducing the emigration of hundreds of the world's greatest scientists;²⁰⁹ threatening a U.S. invasion of Greenland;²¹⁰ murdering hundreds of fishermen in the Caribbean; and starting a pointless and undefended war with Iran that has roiled the world's energy markets.²¹¹

What might explain the willingness of tens of millions of Americans to prefer an openly autocratic and incompetent Trump to a democratic system that might elect Democrats? Stated somewhat differently, Trump is as much a symptom as a cause of the degradation of American democracy. What is the cause? Here, I identify six relevant factors.

A. Racial Resentment

According to most political scientists, the most important single factor in the degradation of American democracy is racial resentment.²¹² In the 1950s, the population of the United States was about 90 percent white.²¹³ In 1990, the U.S. population was still over 80 percent white.²¹⁴ Today, the U.S. population is less than 58 percent non-Hispanic white.²¹⁵ Demographers

207. See Ruth Igielnik, *Disapproval of Trump Hits Highest Level of His Second Term*, N.Y. TIMES (Apr. 23, 2026), <https://www.nytimes.com/2026/04/23/us/politics/trump-approval-rating-poll.html> (on file with the *Fordham Law Review*).

208. See *supra* notes 38–46 and accompanying text.

209. See *supra* note 21 and accompanying text.

210. See *supra* note 69 and accompanying text.

211. See *supra* note 67 and accompanying text.

212. See Klarman, *supra* note 61, at 107–24.

213. See 1960 *Census of the Population: Supplementary Reports: Race of the Population of the United States, by States: 1960*, U.S. CENSUS BUREAU (Sep. 7, 1961), <https://www.census.gov/library/publications/1961/dec/pc-s1-10.html> [<https://perma.cc/KCB4-HTNA>].

214. See U.S. CENSUS BUREAU, *THE WHITE POPULATION: 2000* (2001), <https://www2.census.gov/library/publications/decennial/2000/briefs/c2kbr01-04.pdf> [<https://perma.cc/JP5G-6XX>].

215. See 2020 *U.S. Population More Racially and Ethnically Diverse Than Measured in 2010*, U.S. CENSUS BUREAU (Aug. 12, 2021), <https://www.census.gov/library/stories/2021>

project that within the next twenty years, the nation will no longer be majority white.²¹⁶

The coloring of the nation—as exemplified by the election of its first African American president in 2008—has proved profoundly unsettling to many Americans, rendering them vulnerable to the appeals of a racist demagogue such as Trump.²¹⁷ As late as the 1980s, the Democratic and Republican parties enjoyed the support of roughly equal percentages of white voters who registered high levels of racial resentment.²¹⁸ Since then, however, such voters have overwhelmingly concentrated in the GOP.²¹⁹ By the time of Obama’s presidency, the percentage of Republican voters scoring high on what political scientists call “racial resentment” had increased to 64 percent.²²⁰ In the 2016 GOP presidential primaries, racial resentment highly correlated with support for Trump.²²¹ The term “racial resentment” is used to describe voters who believe white Americans suffer more today from race discrimination than Black Americans; those who still do not believe that President Obama was born in the United States; and those who relish Trump’s urging of four Black and Brown Democratic congresswomen to return to the nations from which they came (three of them were born in the United States)—countries that he has elsewhere referred to as “s***hole countries.”²²² As Ezra Klein has aptly put it, “Trump didn’t hijack the G.O.P. He understood it.”²²³ Trump’s presidency accelerated the GOP’s

/08/2020-united-states-population-more-racially-ethnically-diverse-than-2010.html [https://perma.cc/MUT2-S63Y].

216. See Dudley L. Poston, Jr., *3 Big Ways That the US Will Change over the Next Decade*, CONVERSATION (Jan. 2, 2020, at 08:42 ET), <https://theconversation.com/3-big-ways-that-the-us-will-change-over-the-next-decade-126908> [https://perma.cc/S57C-W5CR]; Sam Roberts, *In a Generation, Minorities May Be the U.S. Majority*, N.Y. TIMES (Aug. 13, 2008), <https://www.nytimes.com/2008/08/14/washington/14census.html> (on file with the *Fordham Law Review*).

217. See Klarman, *supra* note 61, at 119–22.

218. *Id.* at 117.

219. *Id.*

220. *Id.* at 118.

221. See *id.* at 121–22.

222. See *id.* at 118; Yuvraj Joshi, *The Law of Racial Resentment*, 72 UCLA L. REV. 424, 426 (2025); see, e.g., Dan Merica & Donie O’Sullivan, ‘Birtherism’ to the ‘Big Lie’: Inside Obama’s Fight to Counter Disinformation, CNN POL. (Apr. 10, 2022), <https://www.cnn.com/2022/04/10/politics/obama-birtherism-big-lie-disinformation> [https://perma.cc/58CK-C7QQ] (describing the continued influence of the false conspiracies about President Obama’s place of birth); Katie Rogers & Nicholas Fandos, *Trump Tells Congresswomen to ‘Go Back’ to the Countries They Came From*, N.Y. TIMES (July 14, 2019), <https://www.nytimes.com/2019/07/14/us/politics/trump-twitter-squad-congress.html> (on file with the *Fordham Law Review*) (confirming that three of the four targeted lawmakers were born in the United States); Josh Dawsey, *Trump Derides Protections for Immigrants from ‘S***hole’ Countries*, WASH. POST (Jan. 12, 2018), https://www.washingtonpost.com/politics/trump-attacks-protections-for-immigrants-from-shithole-countries-in-oval-office-meeting/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94_story.html (on file with the *Fordham Law Review*) (offensive language redacted) (reporting on the verbatim comments made during a private Oval Office immigration meeting).

223. *Transcript of Donald Trump Didn’t Hijack the G.O.P. He Understood It*, N.Y. TIMES: THE EZRA KLEIN SHOW (May 6, 2022), <https://www.nytimes.com/2022/05/06/opinion/ezra-klein-podcast-matt-continetti.html> (on file with the *Fordham Law Review*).

radicalization on race. His success showed that white identity politics was a winning formula within the party.

Trump's biography reveals a consistent pattern of racism.²²⁴ He first came to national attention when the DOJ sued him and his father for refusing to rent apartments to Black people in the early 1970s.²²⁵ In 1989, Trump bought full-page advertisements in New York City newspapers calling for restoration of the death penalty so that the Central Park Five could be executed.²²⁶ These were Black and Brown teenagers wrongly charged and convicted of raping a Central Park jogger.²²⁷ When DNA evidence and a confession by the actual perpetrator confirmed the innocence of the Central Park Five more than a decade later, Trump offered no apology.²²⁸ In 2015, Trump descended the golden escalator in Trump Tower and inaugurated his presidential campaign by denouncing Mexican immigrants as criminals and "rapists."²²⁹

Here are some illustrations of the naked racism of the second Trump administration. A Trump social media post portrayed the Obamas as apes.²³⁰ Trump has called Somali Americans "garbage"²³¹ and accused Haitians and Haitian Americans of eating the dogs and cats of their neighborhood in Springfield, Ohio.²³² The Trump administration has renamed U.S. military bases after Confederate generals who owned slaves.²³³ Juneteenth and Dr. Martin Luther King, Jr.'s birthday are no longer "free" days at National Parks—but Trump's birthday is.²³⁴ The National Institutes of Health under

224. See, e.g., David Leonhardt & Ian Prasad Philbrick, *Donald Trump's Racism: The Definitive List, Updated*, N.Y. TIMES (Jan. 15, 2018), <https://www.nytimes.com/interactive/2018/01/15/opinion/leonhardt-trump-racist.html> (on file with the *Fordham Law Review*).

225. Jonathan Mahler & Steve Eder, 'No Vacancies' for Blacks: How Donald Trump Got His Start, and Was First Accused of Bias, N.Y. TIMES (Aug. 27, 2016), <https://www.nytimes.com/2016/08/28/us/politics/donald-trump-housing-race.html> (on file with the *Fordham Law Review*).

226. See Jan Ransom, *Trump Will Not Apologize for Calling for Death Penalty Over Central Park Five*, N.Y. TIMES (June 18, 2019), <https://www.nytimes.com/2019/06/18/nyregion/central-park-five-trump.html> (on file with the *Fordham Law Review*).

227. See *id.*

228. See *id.*

229. Alexander Burns, *Choice Words from Donald Trump, Presidential Candidate*, N.Y. TIMES: FIRST DRAFT (June 16, 2015), <https://www.nytimes.com/politics/first-draft/2015/06/16/choice-words-from-donald-trump-presidential-candidate/> (on file with the *Fordham Law Review*) (quoting the announcement speech directly).

230. See Hoyle, *supra* note 87.

231. Alex Woodward, *Trump Calls Somalis in Minneapolis 'Garbage' Who 'Come from Hell' as ICE Plans Hundreds of Arrests*, INDEPENDENT (Dec. 2, 2025, at 20:27 GMT), <https://www.independent.co.uk/news/world/americas/us-politics/ice-minneapolis-somali-trump-immigration-b2876686.html> [<https://perma.cc/L4SS-N3KQ>].

232. Daniel Arkin & David Ingram, *Trump Pushes Baseless Claim About Immigrants 'Eating the Pets'*, NBC NEWS (Sep. 10, 2024, at 22:49 ET), <https://www.nbcnews.com/politics/2024-election/trump-pushes-baseless-claim-immigrants-eating-pets-rcna170537> [<https://perma.cc/LSB9-P86P>].

233. Jack Detsch & Paul McLeary, *Trump Reverses Army Base Names in Latest DEI Purge*, POLITICO (June 10, 2025, at 20:22 ET), <https://www.politico.com/news/2025/06/10/trump-army-names-confederate-00398568> [<https://perma.cc/2F5W-NKW4>].

234. Kylie Mohr, *National Parks Change Prioritizes Trump Birthday Over Days Honoring Black People*, SFGATE (Dec. 4, 2025), <https://www.sfgate.com/national->

Trump has eliminated funding for hundreds of studies aimed at understanding why African Americans have consistently higher rates of cancer and heart disease than whites, or why pregnant Black women have three times the mortality rate of pregnant white women.²³⁵ “Woke” science, the administration calls such studies.²³⁶ Is the Trump administration indifferent to the deaths of Black people?

The administration has also reduced the annual cap on refugees admitted to the United States from 125,000 during the Biden administration to 7,500.²³⁷ The only refugee group now welcome consists not of our allies in Afghanistan who risked their lives to assist American soldiers, but rather of white Afrikaners from South Africa, who are welcomed to the United States based on the lie of a supposed genocide against white farmers by the South African government.²³⁸

The recently released National Security Strategy of the Trump administration turns “great replacement” theory into United States foreign policy. European nations and NATO allies, according to the Trump administration, are facing the “stark prospect of civilizational erasure” from the uncontrolled immigration of non-Europeans (especially Muslims).²³⁹ “We want Europe to remain European.”²⁴⁰ Moreover, United States policy is to support “patriotic European parties,”²⁴¹ including, by implication, the neo-Nazi party Alternative for Germany.²⁴²

A Trump executive order, entitled “Restoring Truth and Sanity to American History,” assails accounts of American history that emphasize racial discrimination.²⁴³ Trump has directed the Smithsonian Museums to comprehensively review displays to ensure alignment with Trump’s directive

parks/article/national-parks-change-prioritizes-trump-birthday-21219336.php [https://perma.cc/9T93-DNDH].

235. See Roni Caryn Rabin & Irena Hwang, *Trump Administration Scraps Research into Health Disparities*, N.Y. TIMES (Aug. 13, 2025), <https://www.nytimes.com/2025/08/13/health/nih-grant-cancellations-dei.html> (on file with the *Fordham Law Review*).

236. *Id.*

237. Compare Presidential Determination on Refugee Admissions for Fiscal Year 2025, 89 Fed. Reg. 83767 (Sep. 30, 2024) (setting the cap at 125,000), with Presidential Determination on Refugee Admissions for Fiscal Year 2026, 90 Fed. Reg. 49005 (Sep. 30, 2025) (setting the cap at 7,500).

238. See Ishaan Tharoor, *Trump Welcomes Afrikaners but Turns His Back on All Other Refugees*, WASH. POST (May 23, 2025), <https://www.washingtonpost.com/world/2025/05/23/trump-ramaphosa-afrikaners-refugees-south-africa/> (on file with the *Fordham Law Review*); see also Exec. Order No. 14204, 90 Fed. Reg. 9497 (Feb. 7, 2025) (directing the secretary of state and the secretary of homeland security to aid in resettling these Afrikaner refugees).

239. THE WHITE HOUSE, NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA 25 (2025); see Juan Cole, *Trump’s National Security Strategy Is a Blueprint for White Nationalism*, NATION (Mar. 19, 2026), <https://www.thenation.com/article/world/trump-national-security-strategy/> (on file with the *Fordham Law Review*).

240. THE WHITE HOUSE, *supra* note 239, at 25.

241. *Id.* at 26.

242. See Paul Krugman, *Is This the End of the Free World?*, PAUL KRUGMAN (Dec. 8, 2025), <https://paulkrugman.substack.com/p/is-this-the-end-of-the-free-world> [https://perma.cc/Q4L3-NHU7].

243. See Exec. Order No. 14253, 90 Fed. Reg. 14563 (2025).

to celebrate American exceptionalism and remove “divisive narratives.”²⁴⁴ Trump clarifies that he does not wish to hear “how horrible our Country is” and “how bad slavery was.”²⁴⁵ The administration has ordered several National Park Service sites to remove materials related to slavery and Native Americans, including the 1863 photograph of a formerly enslaved man bearing massive, disfiguring scars on his back—an image that graphically represents antebellum slavery.²⁴⁶

ICE recruitment advertisements use white supremacist photos and slogans, implicitly endorsing mass denaturalization of nonwhite American citizens.²⁴⁷ Recruits are told that Trump’s U.S. Department of Homeland Security (DHS) will defend “American culture and identity” and the birthright of “heritage Americans”—messages that receive rave reviews from white supremacists online.²⁴⁸

Because “the fish rots from the head,” the racism of Trump and his administration has seeped deep into the ranks of the GOP. In a Young Republicans National Federation group chat, members called Black individuals “watermelon people” and “monkeys.”²⁴⁹ One Michigander wrote, “I love Hitler.”²⁵⁰ Some chat participants held elected public office and were positioned to become future party leaders.²⁵¹ Rather than condemn such vile racism, Vice President JD Vance ridiculed the “pearl clutching” over the episode and defended the perpetrators as “young boys” (some in their thirties!) doing something “stupid” for which their lives should not be

244. *See id.*

245. Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Aug. 19, 2025, at 14:46 ET), <https://truthsocial.com/@realDonaldTrump/posts/115056914674717313> [<https://perma.cc/5JSQ-HDVV>].

246. *See* Jake Spring & Hannah Natanson, *National Park to Remove Photo of Enslaved Man’s Scars*, WASH. POST (Sep. 15, 2025), <https://www.washingtonpost.com/climate-environment/2025/09/15/national-parks-slavery-information-removal/> (on file with the *Fordham Law Review*).

247. *See supra* note 43 and accompanying text.

248. *See* Grayson Logue, *Homeland Security’s Nativist Pitch to New Recruits*, WASH. POST (Nov. 10, 2025), <https://www.washingtonpost.com/ripple/2025/11/10/article/homeland-security-department-messaging-recruitment-american-identity/> (on file with the *Fordham Law Review*).

249. Jason Beeferman & Emily Ngo, *‘I Love Hitler’: Leaked Messages Expose Young Republicans’ Racist Chat*, POLITICO (Oct. 14, 2025, at 13:15 ET), <https://www.politico.com/news/2025/10/14/private-chat-among-young-gop-club-members-00592146> [<https://perma.cc/95AC-3BN9>].

250. *Id.*

251. *See id.*

ruined.²⁵² Not to be outdone, college Republicans at Florida International University recently counseled, “[a]void the coloreds like the plague.”²⁵³

Around the same time, Tucker Carlson, who has more than 20 million followers on social media, embraced (literally) on his podcast neo-Nazi Nick Fuentes, who has said, “I think the Holocaust is exaggerated. I don’t hate Hitler. I think there’s a Jewish conspiracy.”²⁵⁴ In the face of widespread criticism of Carlson, Kevin D. Roberts, president of the Heritage Foundation, which supplied the blueprint for Trump’s second administration, defended Carlson, a “close friend” of Heritage, for giving Fuentes a platform.²⁵⁵

In Trump’s first term, Darren Beattie, a White House speechwriter, was fired when it became known that he had spoken at a conference of white nationalists.²⁵⁶ Beattie was rehired in the second term to an important diplomatic job at the State Department, despite a recent social media post asserting that “competent white men must be in charge if you want things to work.”²⁵⁷ (Double bonus to the administration for hiring a white nationalist who also happens to be a misogynist!)

As the rot spreads more widely, in several recent incidents, white individuals who have lost their jobs or faced legal consequences for directing the N-word at Black people have been the beneficiaries of hundreds of thousands of dollars contributed on crowd-sourced fundraising pages. Referring to a Cinnabon employee who proudly owned her racism, one

252. Irie Sentner, *Vance Downplays Group Chat Messages: ‘Kids Do Stupid Things, Especially Young Boys.’* POLITICO (Oct. 15, 2025, at 14:24 ET), <https://www.politico.com/news/2025/10/15/vance-group-chat-young-boys-stupid-things-00609645> [https://perma.cc/22G5-YGWF]; David Gilmour, *‘College Group Chat’: JD Vance Dismisses ‘Pearl Clutching’ Over Young Republicans Leak to Attack Jay Jones*, MEDIAITE (Oct. 15, 2025, at 07:50 ET), <https://www.mediaite.com/media/news/college-group-chat-jd-vance-dismisses-pearl-clutching-over-young-republicans-leak-to-attack-jay-jones/> [https://perma.cc/8LKY-9JDU].

253. Adria R Walker, *Florida College Republicans Group Chat Reveals Racist Texts: ‘Avoid the Coloreds Like the Plague,’* GUARDIAN (Mar. 5, 2016, at 14:30 ET), <https://www.theguardian.com/us-news/2026/mar/05/florida-international-university-racist-group-chat> [https://perma.cc/4M9M-K2T2].

254. *Transcript of Tucker Carlson Interviews Nick Fuentes*, TUCKER CARLSON SHOW (Oct. 27, 2025), <https://podcasts.happyscribe.com/the-tucker-carlson-show/tucker-carlson-interview-nick-fuentes> (on file with the *Fordham Law Review*); see Sarah McCammon, *Conservatives Reckon with How to Handle Antisemitism After Tucker Carlson Controversy*, NPR (Nov. 9, 2025, at 08:09 ET), <https://www.npr.org/2025/11/09/nx-s1-5599975/nick-fuentes-comments-on-the-tucker-carlson-show-sparks-backlash-from-conservatives> [https://perma.cc/HFK5-Z7VH].

255. Caitlin Yilek & Fin Daniel Gómez, *Backlash Erupts at Heritage Foundation After Leader Defends Tucker Carlson’s Interview with White Nationalist Nick Fuentes*, CBS NEWS (Nov. 7, 2025), <https://www.cbsnews.com/news/heritage-foundation-kevin-roberts-tucker-carlson-interview-nick-fuentes/> [https://perma.cc/RFN9-ZVTT].

256. See Gary Fields & Jill Colvin, *Official Fired During Trump’s First Term Appointed President of Embattled US Institute of Peace*, ASSOCIATED PRESS (July 26, 2025, at 17:39 ET), <https://apnews.com/article/darren-beattie-us-institute-of-peace-trump-8765ed564a138836de72c9dd7534f027> [https://perma.cc/67V3-KE9Z].

257. Daphne Psalidakis & Simon Lewis, *Trump Administration Taps Right Wing Ideologue for Senior State Dept Job*, REUTERS (Feb. 4, 2025), <https://www.reuters.com/world/us/trump-administration-taps-right-wing-ideologue-senior-state-dept-job-2025-02-04/> [https://perma.cc/7AJB-6PMM].

contributor wrote, “[n]o White person should lose their job for refusing to be harassed by Somalians.”²⁵⁸ A recent survey from a conservative think tank reveals that over one-third of Republicans between the ages of thirty and forty-nine openly express racist views.²⁵⁹ It bears emphasizing: the Trump administration is not just authoritarian, but also white supremacist.

B. Christian Nationalism

A second factor in the MAGA-fication of a significant percentage of the American population is Christian nationalism.²⁶⁰ The backdrop for the rise in Christian nationalism is the dramatic decline over the last half-century in the religiosity of Americans and a significant shift in the nation’s religious demography.²⁶¹

Hard as it is to believe, in the 1960s, Democratic and Republican voters hardly differed at all in their relative religiosity.²⁶² The culture-war issues of the 1960s and 1970s—such as prayer in public school, abortion, and the legal regulation of homosexuality—gradually pushed religious conservatives into the GOP.²⁶³ In the late 1970s, Reverend Jerry Falwell’s Moral Majority mobilized millions of white evangelical Christians—mostly in the South—to participate in politics in support of Ronald Reagan and the Republican Party.²⁶⁴

Beginning around 1990 and accelerating ever since, religious conservatives have recognized they were losing battles over the normalization of homosexuality and gay marriage, the loosening of sexual mores, and changing gender norms.²⁶⁵ In recent decades, religious conservatives have seen their children and grandchildren leaving their churches in record numbers.²⁶⁶ Today, approximately 67 percent of Americans aged sixty-five and above are white Christians, while only about 29 percent of Americans aged eighteen to twenty-nine are.²⁶⁷ The number of Americans claiming no religious affiliation at all has more than

258. Clyde McGrady, *Cinnabon Worker Was Fired for a Racist Slur. Her Supporters Have Raised \$130,000.*, N.Y. TIMES (Dec. 10, 2025), <https://www.nytimes.com/2025/12/10/us/cinnabon-fired-worker-video-racial-slur.html> (on file with the *Fordham Law Review*).

259. Jenna Sundel, *Millennial Republicans More Likely to Identify as Racist Than Boomers: Poll*, MSN (Dec. 3, 2025), <https://www.msn.com/en-us/news/politics/millennial-republicans-more-likely-to-identify-as-racist-than-boomers-poll/ar-AA1RDYWq> [https://perma.cc/9QZ5-6E3M].

260. See Klarman, *supra* note 61, at 133–35. See generally, e.g., KATHERINE STEWART, MONEY, LIES, AND GOD: INSIDE THE MOVEMENT TO DESTROY AMERICAN DEMOCRACY (2025) (discussing Christian nationalism); TIM ALBERTA, THE KINGDOM, THE POWER, AND THE GLORY: AMERICAN EVANGELICALS IN THE AGE OF EXTREMISM (2023) (same).

261. Klarman, *supra* note 61, at 124–35.

262. *Id.* at 124–25.

263. See *id.* at 126–29.

264. *Id.* at 127.

265. *Id.* at 130–33.

266. *Id.*

267. *Id.* at 131.

quadrupled—from roughly 7 percent in 1974 to nearly 30 percent today.²⁶⁸ Among Americans aged eighteen to twenty-nine, the number is closer to 40 percent.²⁶⁹ By 2024, for the first time in American history, white Christians were no longer projected to be a majority of the national electorate.²⁷⁰

Such developments have been profoundly disorienting for those who conceive of the United States as a white Christian nation, which it has been—unofficially—for nearly all of its history.²⁷¹ In 2012, nearly 80 percent of white evangelical Christians voted for the GOP.²⁷² Vice President Vance recently announced that the United States is and always has been “a Christian nation.”²⁷³

Here are some extraordinary Christmas greetings issued by the president, cabinet officials, and federal government agencies. Trump: “The First Lady and I send our warmest wishes to all Americans as we share in the joy of Christmas Day and celebrate the birth of our Lord and Savior, Jesus Christ.”²⁷⁴ (Trump is, in fact, probably the least religious president in modern memory,²⁷⁵ and he has reportedly made fun of the religiosity of his famously pious first-term vice president, Mike Pence.)²⁷⁶ Secretary Pete Hegseth posted: “Merry Christmas to all. Today we celebrate the birth of our Lord and Savior, Jesus Christ.”²⁷⁷ A video from the Department of Homeland Security declared: “We are blessed to share a nation and a

268. See *Religious Identification: 1974–2024*, NORC AT THE UNIV. OF CHI. (2025), https://gssdataexplorer.norc.umd.edu/trends?category=Religion%20%26%20Spirituality&measure=relig_rec [<https://perma.cc/W6A7-YMK4>] (reporting approximately 7 percent unaffiliated in 1974); Gregory A. Smith et al., *Decline of Christianity in the U.S. Has Slowed, May Have Leveled Off*, PEW RSCH. CTR. (Feb. 26, 2025), <https://www.pewresearch.org/religion/2025/02/26/religious-landscape-study-executive-summary/> [<https://perma.cc/J77B-ARWY>] (reporting 30 percent in 2025).

269. 2024 PRRI Census of American Religion, PRRI (May 5, 2025), <https://prri.org/spotlight/2024-prri-census-of-american-religion/> [<https://perma.cc/G5L6-T4DD>].

270. See ROBERT P. JONES, *THE END OF WHITE CHRISTIAN AMERICA* 105 (2016); see also 2024 PRRI Census of American Religion, *supra* note 269 (confirming demographic trends showing gradual decline in the percentage of white Christians in the American population since 2013).

271. Klarman, *supra* note 61, at 255–56.

272. *Id.* at 129.

273. Amira Abuzeid, *Vice President Vance Presents a Christian Vision of Politics*, EWTN NEWS (Dec. 23, 2025, at 09:27 ET), <https://www.ewtnnews.com/world/us/vice-president-vance-presents-a-christian-vision-of-politics> [<https://perma.cc/BEL8-KR4R>].

274. *Presidential Message on Christmas*, THE WHITE HOUSE (Dec. 25, 2025), <https://www.whitehouse.gov/briefings-statements/2025/12/presidential-message-on-christmas/> [<https://perma.cc/ZT2T-67P7>].

275. See MJ Lee, *God and the Don*, CNN: STATE MAG. (June 2017), <https://www.cnn.com/interactive/2017/politics/state/donald-trump-religion/> [<https://perma.cc/FJ4S-LYDR>].

276. Dylan Stableford, ‘Did Mike Make You Pray?’: Trump Reportedly Mocks Pence’s ‘Religiosity,’ YAHOO NEWS (Oct. 16, 2017, at 11:27 ET), <https://www.yahoo.com/news/mike-make-pray-trump-reportedly-mocks-pences-religiosity-152748785.html> [<https://perma.cc/A28A-VCL5>].

277. Secretary of War Pete Hegseth (@SecWar), X (Dec. 25, 2025, at 13:30 ET), <https://x.com/SecWar/status/2004182968286564502?s=20> [<https://perma.cc/9WHT-EJ8Q>].

Savior.”²⁷⁸ The message to Jews, Muslims, Hindus, and others is unmistakable: This is not your country; you are fortunate that we choose to tolerate you.²⁷⁹

As if on cue, on Christmas Day 2025, Trump ordered U.S. missile attacks in Nigeria on the grounds that the nation, which is nearly half Christian, deliberately tolerated Islamicist attacks on Christians.²⁸⁰

DHS social media posts now voice overtly Christian nationalist themes.²⁸¹ The Military Religious Freedom Foundation received hundreds of complaints from soldiers early in the war against Iran to the effect that commanders preached end-of-times Christian messages in preparing their troops for battle.²⁸² Secretary Hegseth has similarly imbued U.S. military actions in Iran with a Christian meaning.²⁸³

At the state level, Republican regimes have resumed displaying the Ten Commandments in public schools (in direct violation of a Supreme Court precedent),²⁸⁴ resumed organized prayer in public schools (another clear violation),²⁸⁵ and provided direct financial aid to a Catholic charter school

278. Homeland Security (@DHSgov), X (Dec. 24, 2025, at 16:18 ET), <https://x.com/DHSgov/status/2003862964336759062?lang=en> [<https://perma.cc/ZTX2-M95K>]; Staff Writer, *Homeland Security, ICE Share ‘Christ Is Born’ Christmas Videos*, PROTESTIA (Dec. 26, 2025), <https://protestia.com/2025/12/26/homeland-security-ice-share-christ-is-born-christmas-videos/> [<https://perma.cc/8PFU-K5JD>].

279. Cf. Sudiksha Kochi, *Trump, Allies Lean into Religious Messaging on Christmas*, HILL (Dec. 26, 2025, at 17:57 ET), <https://thehill.com/homenews/administration/5663921-trump-christmas-religious-themes-nigeria-strikes/> [<https://perma.cc/X2PQ-3HVP>] (discussing criticisms of the Trump Administration’s religious messaging).

280. See Helene Cooper, Saikou Jammeh & Eric Schmitt, *U.S. Strikes ISIS in Nigeria After Trump Warned of Attacks on Christians*, N.Y. TIMES (Dec. 25, 2025), <https://www.nytimes.com/2025/12/25/us/politics/trump-isis-nigeria-strike.html> (on file with the *Fordham Law Review*); Conrad Hackett, *5 Facts About Religion in Nigeria*, PEW RSCH. CTR. (Nov. 11, 2025), <https://www.pewresearch.org/short-reads/2025/11/11/5-facts-about-religion-in-nigeria/> [<https://perma.cc/BTN2-ZH2K>].

281. See Ian M. Giatti, *DHS Defends Use of Bible Verses in Social Media Videos, Slams ‘Gutter State of Journalism’*, CHRISTIAN POST (Aug. 21, 2025), <https://www.christianpost.com/news/dhs-defends-use-of-bible-verses-in-social-media-videos.html> [<https://perma.cc/Q87L-ZEWM>].

282. See Nick Mordowanec, *Commanders Accused of Framing Iran War as Biblical Mandate, Jesus’ ‘Return,’* MIL. DAILY NEWS (Mar. 11, 2026, at 12:43 ET), <https://www.military.com/daily-news/2026/03/03/military-officers-accused-of-framing-iran-war-biblical-mandate.html> [<https://perma.cc/5HAQ-HVH3>].

283. Greg Jaffe & Elizabeth Dias, *Hegseth Invokes Divine Purpose to Justify Military Might*, N.Y. TIMES (Mar. 20, 2026), <https://www.nytimes.com/2026/03/20/us/politics/hegseth-christianity-military.html> (on file with the *Fordham Law Review*).

284. See, e.g., Pooja Salhotra, *What to Know About the Push to Display the Ten Commandments in Classes*, N.Y. TIMES (Apr. 21, 2026), <https://www.nytimes.com/2026/03/19/us/ten-commandments-schools-states.html> (on file with the *Fordham Law Review*); see *Stone v. Graham*, 449 U.S. 39, 41 (1980).

285. Chip Rotolo, *Support for Christian Prayer in U.S. Public Schools Varies Widely by State*, PEW RSCH. CTR. (June 23, 2025), <https://www.pewresearch.org/short-reads/2025/06/23/support-for-christian-prayer-in-us-public-schools-varies-widely-by-state/> [<https://perma.cc/G6YR-HNU7>]; see *Engel v. Vitale*, 370 U.S. 421, 430 (1962).

(which the conservative Christian majority on today's Supreme Court seems likely soon to approve).²⁸⁶

C. Neoliberalism

A third factor rendering significant numbers of Americans vulnerable to MAGA appeals is economic: the extraordinary growth in the power and reach of neoliberalism over the past half-century.²⁸⁷ Radical libertarians, who were largely politically marginalized after the Great Depression and World War II, began a cultural and political comeback in the 1960s and 1970s.²⁸⁸

Libertarian billionaires led by brothers Charles G. and David H. Koch began investing in libertarian think tanks such as The Heritage Foundation and Cato Institute.²⁸⁹ They exerted influence on college campuses through the John M. Olin Foundation and in law schools through the Federalist Society.²⁹⁰ They gained political ascendancy during the presidency of Ronald Reagan, who taught Americans that government was always the problem, never the solution; undermined labor unions and eviscerated environmental regulation; reduced antitrust enforcement; and loosened regulations enabling corporations to enrich their executives, thus contributing to extraordinary modern wealth disparities.²⁹¹

This libertarian renaissance culminated in the modern GOP, which generally denies human-caused climate change, pursues tax cuts and deregulation that overwhelmingly benefit corporations and the wealthy, and eviscerates the social safety net.²⁹² One good illustration of this libertarian extremism is former House Speaker Paul Ryan's declaration that free school lunches for poor children gave them "a full stomach and an empty soul."²⁹³ Another is the statement by former North Dakota Governor Doug Burgum (now Trump's Secretary of the Interior), when his state had the highest per capita COVID-19 rate of any jurisdiction *in the world*, that placing legal limits on reckless behavior is "not a job for government."²⁹⁴

286. See Amanda Litvinov, *Will the Supreme Court Force States to Fund Religious Charter Schools?*, NAT'L EDUC. ASS'N (Apr. 29, 2025), <https://www.nea.org/nea-today/all-news-articles/will-supreme-court-force-states-fund-religious-charter-schools> [https://perma.cc/3RF6-ZX2Z].

287. See Klarman, *supra* note 61, at 135–48.

288. See *id.* at 136–41.

289. *Id.* at 140.

290. *Id.*

291. See *id.* at 142–45.

292. See *id.* at 135–48.

293. Glenn Kessler, *A Story Too Good to Fact Check: Paul Ryan and the Tale of the Brown Paper Bag*, WASH. POST (Mar. 6, 2014), <https://www.washingtonpost.com/news/fact-checker/wp/2014/03/06/a-story-too-good-to-check-paul-ryan-and-the-story-of-the-brown-paper-bag> (on file with the *Fordham Law Review*).

294. See William Wan & Jacqueline Dupree, *U.S. Hits Highest Daily Number of Coronavirus Cases Since Pandemic Began*, WASH. POST (Oct. 23, 2020), <https://www.washingtonpost.com/health/2020/10/23/covid-us-spike-cases/> (on file with the *Fordham Law Review*).

The radical libertarians have never prized democracy because of the risk that a majority of voters would not support plutocratic policies. Elon Musk and Peter Thiel, for example, have explicitly declared that democracy and freedom may be incompatible.²⁹⁵ By “freedom,” they mean the ability of billionaires to do whatever they like, regardless of the costs to society. As GOP economic policies have become more radically libertarian and less popular, Republican politicians have had no alternative but to cultivate racial and religious grievances in order to win votes.

D. *Wealth Inequality*

The fourth factor contributing to democratic decline is the flipside of the third: as neoliberal thought has come to dominate the Republican Party (and, to a lesser extent, the Democratic Party of the 1990s and early 2000s), economic inequality has skyrocketed, rendering the white working class vulnerable to white supremacist and Christian nationalist appeals.²⁹⁶ The wages of the American working class roughly doubled between 1935 and 1960 and then doubled again over the next generation.²⁹⁷ During those years, blue-collar workers without college degrees—partly because of strong labor unions—were able to buy homes and send their children to college on single incomes, and their offspring were likely to fare even better economically.²⁹⁸

However, since 1980, over one half of the gains from economic growth in the United States have gone to the top 10 percent of earners.²⁹⁹ Between 1990 and 2022, the share of national wealth held by families in the top 10 percent has grown to 69 percent, while the share held by families in the bottom 50 percent is just 3 percent.³⁰⁰ The net worth of the top 0.1 percent of households in the United States reached \$25 trillion this year, while the wealth of the bottom 50 percent is just \$4.27 trillion.³⁰¹ Disparities in the rest of the world are not nearly so extreme.³⁰²

As a result of this massive upwards redistribution of wealth, American workers now have lower life expectancies than do their counterparts in comparable Western democracies.³⁰³ Their babies have higher infant

295. Robert Reich, *Elon Musk and Peter Thiel's War on Democracy*, TRUTHDIG (May 28, 2024), <https://www.truthdig.com/articles/elon-musk-and-peter-thiels-war-on-democracy/> [https://perma.cc/9G8J-TZRZ].

296. See Klarman, *supra* note 61, at 148–53.

297. *Id.* at 149.

298. *Id.*

299. See Austin Clemens, *New Data Reveals How U.S. Economic Growth Is Divided*, WASH. CTR. FOR EQUITABLE GROWTH (July 1, 2019), <https://equitablegrowth.org/new-data-reveal-how-u-s-economic-growth-is-divided/> [https://perma.cc/85P9-JX2V].

300. See generally CONG. BUDGET OFF., *TRENDS IN THE DISTRIBUTION OF FAMILY WEALTH, 1989 TO 2022* (2024).

301. See *Distribution of Household Wealth in the U.S. Since 1989*, FED. RSRV., <https://www.federalreserve.gov/releases/z1/dataviz/dfa/distribute/table/> [https://perma.cc/G2F4-AVWT] (last visited July 25, 2026).

302. See Klarman, *supra* note 61, at 150.

303. See *id.* at 150–52.

mortality rates.³⁰⁴ They have much worse access to healthcare than workers in comparable countries, despite paying twice as much for that healthcare.³⁰⁵ Life expectancies in some age ranges of the white working class have declined—an unprecedented development in world history outside of world wars and pandemics—as a result of “deaths of despair”—i.e., deaths resulting from suicide, drug overdoses, and alcoholism.³⁰⁶

Worsening economic inequality and its attendant social pathologies have created a golden opportunity for a racist, faux-populist demagogue such as Trump to appeal to white, economically dispossessed workers. While they ought to be blaming their ills on globalization, technological change, and neoliberal government policies that have savaged the working class, Trump and the Republican Party have sought to convince disaffected white workers instead to blame Mexicans, Muslims, and Satan-worshipping child molesters in the Democratic Party (though, ironically, it turns out that Trump himself is the pedophile-protector-in-chief.)³⁰⁷

For the disaffected working class, the economic and political system is no longer working: “only Trump can fix it” and the sole solution is to “burn it all down.” This mindset has enabled Trump’s authoritarian turn. That Trump is an existential threat to democracy and the rule of law is not a compelling argument for the white working class that perceives those systems to have failed to serve their interests.

E. Antimajoritarian Features of the American Political System

Several features of the American political system have fed political polarization and negative partisanship: partisan primaries, extreme partisan gerrymandering, winner-take-all districted elections, and the virtually unrestricted flow of money into politics.³⁰⁸ In turn, political polarization and negative partisanship have led a deeply disaffected segment of the electorate to view their political opponents as such an existential threat to their way of life that democracy has lost its once-sacred status for them.

In addition, various structural features of the American political system have enabled frequent minority control of government.³⁰⁹ These include geographic clustering; partisan gerrymandering; the Senate’s vast

304. JACOB S. HACKER & PAUL PIERSON, *AMERICAN AMNESIA: HOW THE WAR ON GOVERNMENT LED US TO FORGET WHAT MADE AMERICA PROSPER* 32 (2016).

305. *Id.* at 147.

306. ANNE CASE & ANGUS DEATON, *DEATHS OF DESPAIR AND THE FUTURE OF CAPITALISM* 37 (2020); see Klarman, *supra* note 61, at 150.

307. Dave Jamieson, *Ford Auto Worker Who Called Trump A ‘Pedophile Protector’ Still Has Job, Union Says*, HUFFPOST (Feb. 9, 2026, at 13:41 ET), https://www.huffpost.com/entry/ford-worker-trump-taunt-uaw_n_698a212ee4b09f934ad1545d [https://perma.cc/28U7-WEAW].

308. See Klarman, *supra* note 61, at 153–66.

309. See *id.*

malapportionment; and the milder malapportionment of the electoral college, together with that system's other vagaries.³¹⁰

Before 2024, Democrats had won the popular vote in seven of the preceding eight presidential elections—a feat never previously achieved by a political party in American history.³¹¹ Yet those seven popular vote victories translated into only five electoral college wins for the Democrats.³¹²

The electoral college, in combination with another feature of today's partisan geography—the relatively high concentration of white working-class voters in several narrowly divided states, such as Pennsylvania, Michigan, and Wisconsin—has significantly advantaged GOP presidential candidates.³¹³ Former Secretary of State Hillary Clinton received three million more votes than Trump in 2016 but did not become president.³¹⁴ Had the presidency been determined by popular vote—a reform that roughly 80 percent of Americans supported in the early 1970s—Trump would have become a historical footnote.³¹⁵ Instead, he has become one of the most consequential actors in world history.

Similarly, in the two years before the 2022 midterm election, there were fifty Democratic senators and fifty Republican senators, but those Democratic senators represented 40 million more voters.³¹⁶ Because of today's partisan geography, which features a stark divide between the political preferences of urban and rural voters, the Republican Party benefits enormously from the Senate's malapportionment.³¹⁷ The Democrats could have ameliorated that problem in 2021 by making Puerto Rico and the District of Columbia states,³¹⁸ but they failed to do so, largely because of opposition from Democratic Senators Joe Manchin III and Kyrsten Sinema.³¹⁹

310. See *id.*

311. See David Leonhardt, 'A Crisis Coming': The Twin Threats to American Democracy, N.Y. TIMES (June 21, 2023), <https://www.nytimes.com/2022/09/17/us/american-democracy-threats.html> (on file with the *Fordham Law Review*).

312. See *Electoral College Results*, NAT'L ARCHIVES, <https://www.archives.gov/electoral-college/results> [<https://perma.cc/CXR6-68FR>] (last visited July 25, 2026).

313. See Klarman, *supra* note 61, at 47; Lazaro Gamio & Dan Keating, *How Trump Redrew the Electoral Map, from Sea to Shining Sea*, WASH. POST (Nov. 9, 2016), <https://www.washingtonpost.com/graphics/politics/2016-election/election-results-from-coast-to-coast/> (on file with *Fordham Law Review*).

314. Klarman, *supra* note 61, at 36.

315. See Dave Roos, *How the Electoral College Was Nearly Abolished in 1970*, HISTORY (Feb. 18, 2025), <https://www.history.com/articles/electoral-college-nearly-abolished-thurmond> [<https://perma.cc/9UNX-KF2C>]; see also ALEXANDER KEYSSAR, WHY DO WE STILL HAVE THE ELECTORAL COLLEGE 252–62 (2020) (describing the reform and why it was ultimately defeated).

316. See Leonhardt, *supra* note 311.

317. See Klarman, *supra* note 61, at 235.

318. See *id.* at 237.

319. See Kristina Peterson, *D.C. Statehood Effort Stalls as Manchin Opposes Democrats' Bill*, WALL ST. J. (Apr. 30, 2021, at 20:01 ET), <https://www.wsj.com/politics/policy/d-c-statehood-faces-setback-as-manchin-opposes-democratic-push-11619827306> (on file with the *Fordham Law Review*).

These features of the American political system have enabled a minority political party to hold onto power rather than systematically lose elections, which would have forced it to shift its policy positions.³²⁰ These political structures have also enabled the right wing of the Republican Party to dominate the Supreme Court, which is more conservative today than at any time since the 1930s.³²¹ Presidents George W. Bush and Donald J. Trump—neither of whom initially entered the White House with even a plurality of the popular vote—have appointed five of today’s six Republican justices. Four of these justices were confirmed by sufficiently narrow Senate votes that the Republican senators who approved them did not represent a majority of Americans.³²² Were the Senate and electoral college more reflective of majority will, the severely right-wing orientation of today’s Supreme Court would not have been possible.

Today’s Court undermines democracy and operates as a wing of the GOP. The conservative majority has upheld voter suppression measures,³²³ gutted the Voting Rights Act of 1965,³²⁴ unleashed nearly unlimited torrents of money into politics,³²⁵ and declined to intervene against partisan gerrymandering.³²⁶ In addition, the Court has overturned the right to abortion,³²⁷ nearly barred race-based affirmative action,³²⁸ invalidated gun-control measures,³²⁹ and—nearly across the board—advanced the U.S. Chamber of Commerce’s position on issues ranging from class-action litigation,³³⁰ punitive damages,³³¹ corporate arbitration agreements,³³² and the rights of labor unions.³³³ Recent empirical studies have shown that today’s Court is the most reliable protector of corporate interests of any Court in the last one hundred years.³³⁴ The plutocratic political coalition, through

320. See STEVEN LEVITSKY & DANIEL ZIBLATT, *TYRANNY OF THE MINORITY: WHY AMERICAN DEMOCRACY REACHED THE BREAKING POINT* 143 (2023) (“Since Republicans can win and exercise power *without building national electoral majorities*, they lack the normal incentives to adapt to the fundamental changes taking place in American society.”).

321. See Erwin Chemerinsky, *The Supreme Court and Racial Progress*, 100 N.C. L. REV. 833, 833 (2022).

322. See Bump, *supra* note 120; *supra* notes 119–21 and accompanying text.

323. See Crawford v. Marion Cnty. Election Bd., 553 U.S. 181, 204 (2008).

324. Pub. L. No. 89-110, 79 Stat. 437 (codified as amended in scattered sections of 52 U.S.C.); see Shelby Cnty. v. Holder, 570 U.S. 529, 556–57 (2013).

325. See Citizens United v. Fed. Election Comm’n, 558 U.S. 310, 372 (2010).

326. See Rucho v. Common Cause, 139 S. Ct. 2484, 2506–07 (2019).

327. See Dobbs v. Jackson Women’s Health Org., 142 S. Ct. 2228, 2284 (2022).

328. See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 143 S. Ct. 2141, 2166 (2023).

329. See, e.g., N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen, 142 S. Ct. 2111, 2156 (2022); District of Columbia v. Heller, 554 U.S. 570, 635–36 (2008).

330. See, e.g., Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 366–67 (2011).

331. See State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 426–29 (2003).

332. See AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 348–51 (2011).

333. See, e.g., Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31, 138 S. Ct. 2448, 2486 (2018).

334. See Lee Epstein & Mitu Gulati, *A Century of Business in the Supreme Court*, 107 MINN. L. REV. HEADNOTES 49, 57 (2022); *Corporations and the Supreme Court*, CONST. ACCOUNTABILITY CTR., <https://www.theconstitution.org/series/chamber-study/> [<https://percc/V5WB-PGVQJ>] (last visited June 10, 2026).

its investments in the Federalist Society, has positioned the Court to do just that.

Democrats should have packed (or unpacked) the Court in 2021 when they had the opportunity.³³⁵ Expanding the size of the Court is almost certainly constitutional (which does not mean that this Court would not put up a fight against it).³³⁶ If Democrats do not do this the next time they are positioned to do so, the entirety of their political agenda will be at the sufferance of this Court.

F. *The Fox News Effect*

A sixth and final factor in the MAGA-fication of the American electorate is the “Fox News effect”—that is, the creation of a media environment that tolerates and even incentivizes misinformation from conservative news sources that leaves many GOP voters susceptible to manipulation.³³⁷ Fox News is unconstrained by traditional journalistic norms of truth-telling.³³⁸ If it reports, as Fox News did, that the 2020 election was not stolen from Donald Trump, it loses viewers to Newsmax because those viewers do not want to hear this perspective, even if it is true.³³⁹

Fox has repeatedly treated lies emanating from the second Trump administration as truth—whether it be that Haitian immigrants in Springfield, Ohio, are eating their neighbors’ cats and dogs;³⁴⁰ that Trump was never a passenger on Jeffrey Epstein’s plane;³⁴¹ or that the United States needs Greenland for national security.³⁴²

335. Michael Klarman, *The Democrats’ Last Chance to Save Democracy*, ATLANTIC (Feb. 22, 2021), <https://www.theatlantic.com/ideas/archive/2021/02/expanding-court-now-or-never/618063/> (on file with the *Fordham Law Review*).

336. See JOANNA R. LAMPE, CONG. RSCH. SERV., R47382, CONGRESSIONAL CONTROL OVER THE SUPREME COURT 7–10 (2023) (noting the agreement among legal scholars that changing the size of the Court is constitutionally permissible and highlighting potential objections that might be raised against such a measure).

337. See YOCHAI BENKLER, ROBERT FARIS & HAL ROBERTS, NETWORK PROPAGANDA: MANIPULATION, DISINFORMATION, AND RADICALIZATION IN AMERICAN POLITICS 268 (2018); Klarman, *supra* note 61, at 161–64; EZRA KLEIN, WHY WE’RE POLARIZED 234–40 (2020).

338. Adam Serwer, *Why Fox News Lied to Its Viewers*, ATLANTIC (Feb. 19, 2023), <https://www.theatlantic.com/ideas/archive/2023/02/fox-news-dominion-lawsuit-trump/673132/> (on file with the *Fordham Law Review*).

339. Sarah Ellison, Paul Farhi & Jeremy Barr, *Fox News Feared Losing Viewers by Airing Truth About Election, Documents Show*, WASH. POST (Feb. 17, 2023), <https://www.washingtonpost.com/media/2023/02/17/fox-news-dominion-ratings-fear/> (on file with the *Fordham Law Review*).

340. Media Matters Staff, *Fox Anchor Pushes Debunked Racist Claim About Haitian Migrants “Eating” Pets*, MEDIA MATTERS FOR AM. (Sep. 10, 2024, at 14:52 ET), <https://www.mediamatters.org/fox-news/fox-anchor-pushes-debunked-racist-claim-about-haitian-migrants-eating-pets> [<https://perma.cc/59FQ-2P26>].

341. Joe Sommerlad, *Fox’s Sean Hannity Claims Trump Never Flew on Epstein Plane Despite Numerous Flight Log Entries*, INDEPENDENT (Jan. 14, 2026, at 17:25 GMT), <https://www.independent.co.uk/news/world/americas/us-politics/trump-epstein-plane-sean-hannity-b2900504.html> [<https://perma.cc/SZ2U-NJMF>].

342. Nick Moyle, *‘Sometimes Daddy Need to Be Told No’: Fox News Hosts Spar over Trump’s Latest Fixation*, NJ.COM (Jan. 15, 2026, at 12:09 ET), <https://www.nj.com/politics>

Such things were not possible in the 1960s, when the vast majority of Americans got their news from three television networks, all of which were subject to the fairness doctrine, which required something other than indoctrination of viewers.³⁴³ But the right wing of the Republican Party attacked the fairness doctrine, recognizing that their side of the political debate was disadvantaged by a doctrine that prioritized truth, in light of the well-known left-wing bias of reality.³⁴⁴ The Reagan administration's FCC repealed the fairness doctrine, though the increasingly GOP-dominated Court would likely have struck it down soon anyway under the First Amendment.³⁴⁵ Almost overnight, right-wing radio host Rush Limbaugh rose to prominence,³⁴⁶ and then a decade later, Fox News was launched, to grow increasingly extreme over the next thirty years.³⁴⁷ Today, at a time in which Trump is roughly twenty points underwater in national opinion polls, the president is up seventy points among Fox News viewers.³⁴⁸

What enables right-wing media to outcompete “mainstream” media? Most importantly, the right-wing media ecosystem is funded by supportive billionaires such as Rupert Murdoch and the Mercer family in a way that has no analog on the political left.³⁴⁹ Just as the political contributions of billionaires systematically favor the Republican Party,³⁵⁰ so do their media

/2026/01/sometimes-daddy-need-to-be-told-no-fox-news-hosts-spar-over-trumps-latest-fixation.html [https://perma.cc/6SZW-AL5Z].

343. See BENKLER, FARIS & ROBERTS, *supra* note 337, at 315–21.

344. See generally NICOLE HEMMER, *MESSENGERS OF THE RIGHT: CONSERVATIVE MEDIA AND THE TRANSFORMATION OF AMERICAN POLITICS* 124–25 (2016) (noting that opposition to the fairness doctrine became “a fundamental part of the conservative creed” and that conservative media organizations decried the regulation as a “dastardly collateral attack on freedom of speech”).

345. See Robert D. Hershey Jr., *F.C.C. Votes Down Fairness Doctrine in 4–0 Decision*, N.Y. TIMES (Aug. 5, 1987), <https://www.nytimes.com/1987/08/05/arts/fcc-votes-down-fairness-doctrine-in-a-4-0-decision.html> (on file with the *Fordham Law Review*).

346. See Al Tompkins, *How Rush Limbaugh's Rise After the Gutting of the Fairness Doctrine Led to Today's Highly Partisan Media*, POYNTER (Feb. 17, 2021), <https://www.poynter.org/reporting-editing/2021/how-rush-limbaughs-rise-after-the-gutting-of-the-fairness-doctrine-led-to-todays-highly-partisan-media/> [https://perma.cc/GF25-8FMV]; see also *How Authoritarians Took Over the GOP*, AM. LEADER, <https://theamericanleader.org/timeline-event/the-end-of-fairness-in-media/> [https://perma.cc/7Z5V-QSJ5] (last visited July 10, 2026).

347. *How Fox News Became Fox News*, SLATE (Sep. 18, 2024, at 05:40 ET), <https://slate.com/business/2024/09/fox-news-slow-burn-2024-election.html> [https://perma.cc/Z65Q-T33P]; Matt Gertz, *Timeline: The Decimation of Fox's "News Side,"* MEDIA MATTERS FOR AM. (Feb. 3, 2022, at 11:30 ET), <https://www.mediamatters.org/fox-news/timeline-decimation-foxs-news-side> [https://perma.cc/EY3N-MH97].

348. G. Elliot Morris, *What Your News Diet Says About Your Politics*, STRENGTH IN NOS. (Jan. 2, 2026), <https://www.gelliottmorris.com/p/what-your-news-diet-says-about-your> (on file with the *Fordham Law Review*).

349. Walker Bragman, *Who Pays for Right-Wing Media?*, ACCOUNTABILITY JOURNALISM INST. (Aug. 10, 2023), <https://www.accountabilityjournalism.org/dark-money/who-pays-for-right-wing-media> [https://perma.cc/UAW6-GZDJ].

350. Mike Baker & Steven Rich, *The Scale of Billionaires' Campaign Donations Is Overwhelming U.S. Politics*, N.Y. TIMES (Mar. 9, 2025), <https://www.nytimes.com/2026/03/09/us/billionaires-federal-election-campaign-contributions.html> (on file with the *Fordham Law Review*).

investments favor right-wing outlets. In addition, the MAGA base of the Republican Party is not particularly invested in truth-telling and manifests little interest in hearing opposing political views.³⁵¹ Again, such a mindset is much less prevalent on the political left.

Financial clout and unity of purpose enable a much more effective political propaganda system on the political right than anything the political left could devise, even were it inclined to do so. The Fox News effect is a relentless, amplified political messaging apparatus that is transmitted through an ecosystem of talk radio, podcasters, and Christian evangelical preachers.³⁵² This messaging includes claims that Democrats are pedophiles, transgender girls are ruining female sports, Democrats import undocumented immigrants to steal elections, No Kings Day protesters are paid for by George Soros, and Charlie Kirk was murdered by the left.³⁵³ Without this information ecosystem to propagate lies and suppress truth, Trump could not possibly have maintained solid support within his political base.

IV. REASONS FOR HOPE

I have said much to depress supporters of democracy and the rule of law. Are there reasons to remain hopeful? The opposite of hope is despair, which is equivalent to awarding victory to the autocrats. Yet optimism that is not grounded in empirical reality is a terrible strategy because it understates the severity of the crisis. One must candidly face the fact that the United States could easily go the way of Hungary, Türkiye, and many other nations and lose our democracy.³⁵⁴ It would be easier to be optimistic if the problem were simply Trump, but it is not. A significant percentage of the American

351. *Why MAGA Defends Everything Trump Does*, THE RATIONAL LEAGUE (Mar. 30, 2025), <https://therationalleague.substack.com/p/why-maga-defends-everything-trump> [https://perma.cc/LF5T-VYUC].

352. G. Elliot Morris, *The Strategist's Fallacy in American Politics*, STRENGTH IN NOS. (Oct. 28, 2025), <https://www.gelliottmorris.com/p/the-strategists-fallacy> (on file with the Fordham Law Review).

353. See, e.g., Kiara Alfonseca, *Some Republicans Use False 'Pedophilia' Claims to Attack Democrats, LGBTQ People*, ABC NEWS (May 7, 2022), <https://abcnews.com/US/republicans-false-pedophilia-claims-attack-democrats-lgbtq-people/story?id=84344687> [https://perma.cc/ZP6M-26PN]; Dan Zaksheske, *Megan Rapinoe's Latest Defense of Males in Women's Sports Collapse Under Its Own Hypocrisy*, FOX NEWS (July 14, 2026, at 17:43 ET), <https://www.foxnews.com/outkick-sports/megan-rapinoe-latest-defense-males-womens-sports-collapses-hypocrisy-dan-zaksheske> [https://perma.cc/B2BC-99PR]; Jude Joffe-Block, *6 Facts About False Noncitizen Voting Claims and the Election*, NPR (Nov. 5, 2024, at 20:39 ET), <https://www.npr.org/2024/10/12/nx-s1-5147789/voting-election-2024-noncitizen-fact-check-trump> [https://perma.cc/MW4E-ZJBZ]; Preston Mizell, *Soros Foundation Helps Fund Anti-Trump 'No Kings' Protests Nationwide*, FOX NEWS (Oct. 17, 2025, at 11:17 ET), <https://www.foxnews.com/politics/soros-foundation-helping-fund-anti-trump-no-kings-protests-nationwide> [https://perma.cc/86R9-APXS]; Daniel Dale, *Fact Check: The Fake Photos, False Claims and Wild Conspiracy Theories Swirling Around the Murder of Charlie Kirk*, CNN (Sep. 20, 2025), <https://www.cnn.com/2025/09/20/politics/fact-check-charlie-kirk-murder> [https://perma.cc/UVQ3-GTGZ].

354. Brian Stelter, *US Downgraded in Democracy Index as Press Freedom Concerns Grow*, CNN BUS. (Mar. 18, 2026), <https://www.cnn.com/2026/03/18/media/trump-vdemocracy-media-report> [https://perma.cc/JU6L-3A3H].

people have proven willing to support an openly autocratic president—for reasons that I have tried to identify and which will not simply disappear anytime soon.

For starters, we must recognize that there is no time for long-term solutions. Of course, the U.S. Constitution should be amended to abrogate the electoral college, to end the Senate's vast malapportionment, to reduce the influence of money in politics, and to change the method of selecting Supreme Court justices and their tenure in office. These are fine ideas but not a solution to the immediate and existential threat American democracy faces today.

Here are two suggestions for those who wish to save democracy and the rule of law in the United States. First, Democrats need to understand the reality of the present situation and resolve to fight back more aggressively than they have historically been wont to do. Times are not normal; bringing knives to a gun fight is an unlikely strategy for success. The next time Democrats win simultaneous control of Congress and the presidency, they must—at a minimum—abolish the Senate filibuster, pass national legislation to end Republican voter suppression, create new states to offset the absurd malapportionment of the Senate, and expand the Supreme Court to enable effective Democratic control.

None of this requires Democrats to reject their own fundamental values and become like Republicans. For example, Republicans have largely managed to forget or forgive the January 6 attack on the Capitol. Democrats do not and should not support violent efforts to overturn the results of an election they lost. Neither should Democrats distort voter qualification requirements and election rules to suppress Republican votes, even though Republicans have done this to Democrats in every state they politically control.³⁵⁵

Yet without surrendering their fundamental values, Democrats need to find a way to fight back harder. For example, when California Democrats decided to counter the GOP gerrymander of congressional districts in Texas that Trump demanded, they should not have stopped at securing five more districts favorable to Democrats; they should have gerrymandered the entire state congressional delegation. If Trump and the GOP are violating traditional norms in seeking to maintain control of the House after the 2026 elections despite the party's growing unpopularity, what possible reason is there for Democrats to refrain from trying to beat Republicans at their own game?

Here are a couple of similar examples. As noted earlier, Trump uses illegal and unconstitutional methods of attacking civil society organizations to induce their capitulation to his desires. Democrats should, within the limits of the law, investigate such capitulations for possible criminal prosecution when the relevant statutes have been violated. For example, both ABC and

355. See Klarman, *supra* note 61, at 48–50.

CBS settled absurd defamation lawsuits filed against them by Trump.³⁵⁶ Paying Trump millions of dollars to settle baseless lawsuits sounds a lot like bribing the president.³⁵⁷ Democrats need to make it known that there may be costs for bending the knee to Trump in ways that arguably violate the law. Similarly, Governor Pritzker is right to set up an accountability commission in Illinois to gather evidence for a possible prosecution of ICE officers who arguably violated the law in their mass deportation raids in Chicago.³⁵⁸ And military officers who are participating in what appears to be the unadorned murder of fishermen off the coast of South America should know that they may face criminal prosecution if their actions are later determined to have been taken in compliance with clearly unlawful orders.³⁵⁹ The asymmetric incentive to submit to the commands of authoritarians must be counteracted to the extent possible. Democrats cannot win a battle in which all of the credible threats come from one side of the political spectrum. None of this requires Democrats, unlike Trump, to do anything illegal.

At least of equal importance, Democrats, once restored to power, must pursue the sort of radical economic reform necessary to restore the faith of the white working class in democracy and the rule of law. President Biden's Build Back Better Act was an outstanding start,³⁶⁰ though it was mostly eviscerated by post-COVID inflation and the efforts of not-really Democratic Senators Manchin and Sinema.³⁶¹ That agenda includes raising the minimum wage, bolstering labor unions, and implementing Scandinavian-style social welfare reforms, such as universal healthcare, free childcare, free pre-K

356. See Michael J. Socolow, *ABC's and CBS's Settlements with Trump Are a Dangerous Step Toward the Commander in Chief Becoming the Editor-in-Chief*, KATIE COURIC MEDIA (July 15, 2025), <https://katiecouric.com/news/national-news/what-abc-cbs-trump-settlement-s-mean-for-future-of-news/> [<https://perma.cc/NL3B-3J4L>].

357. Justin Baragona, *Paramount Accused of 'Bribery' for Paying Trump \$16 Million to Settle 'Patently Unconstitutional' Lawsuit*, INDEPENDENT (July 2, 2025, at 21:59 BT), <https://www.independent.co.uk/news/world/americas/us-politics/trump-cbs-60-minute-law-suit-settlement-b2780851.html> [<https://perma.cc/BS7K-VPYT>]; Daniel Barnes, *Democrats Say Companies are 'Bribing' Trump. Legal Experts are Skeptical*, POLITICO (July 3, 2025, at 17:39 ET), <https://www.politico.com/news/2025/07/03/paramount-law-bribery-democrats-00439546> [<https://perma.cc/H3GA-J2V9>].

358. Press Release, Off. of the Governor, Gov. Pritzker Signs Executive Order to Establish the Illinois Accountability Commission (Oct. 23, 2025), <https://ilac.illinois.gov/commission-updates/gov--pritzker-signs-executive-order-to-establish-the-illinois-ac.html> [<https://perma.cc/F6GD-TG5T>]; Ill. Exec. Order No. 2025-06 (Oct. 23, 2025), <https://www.illinois.gov/government/executive-orders/executive-order-executive-order-2025-06.2025.html> [<https://perma.cc/F2PT-3E88>].

359. See Philip Allen Lacovara, *Extra-Judicial Military Killing Is Not a Legitimate Answer to Drug Trafficking*, HILL (Sep. 6, 2025, at 14:00 ET), <https://thehill.com/opinion/judiciary/5488866-extra-judicial-military-killing-is-not-a-legitimate-answer-to-drug-trafficking/> [<https://perma.cc/G8UF-XU6G>].

360. H.R. 5376, 117th Cong. (2021); see Emily Cochrane & Jonathan Weisman, *House Narrowly Passes Biden's Social Safety Net and Climate Bill*, N.Y. TIMES (Nov. 21, 2021), <https://www.nytimes.com/2021/11/19/us/politics/house-passes-reconciliation-bill.html> (on file with the *Fordham Law Review*).

361. Connor O'Brien, *Manchin and Sinema 'Sabotaged' Biden's Plans, Sanders Says*, POLITICO (May 15, 2022, at 13:19 ET), <https://www.politico.com/news/2022/05/15/manchin-sinema-sabotage-sanders-00032579> [<https://perma.cc/ULA4-8KGB>].

education, and free community college. Every one of these proposals commands majority or even supermajority support in public opinion.³⁶²

Democrats should worry less about trying to appear moderate on issues on which supermajority support exists for their reform proposals. President Theodore Roosevelt supported progressive economic reforms to save the country from socialism;³⁶³ his cousin, President Franklin D. Roosevelt (FDR), supported a New Deal that might have been necessary to save the nation from communism during the Great Depression.³⁶⁴ Today, serious economic reform is necessary to save the nation from fascism.³⁶⁵

On other issues, political moderation may be necessary. The Biden administration allowed immigrants to enter the country at a rate of several million per year.³⁶⁶ Although economists mostly agree that the country can easily absorb that many immigrants a year,³⁶⁷ the perception of anarchy at the border pretty clearly helped Trump retake the White House in 2024.³⁶⁸ If liberals do not fix perceived problems over immigration, then fascists will.³⁶⁹

Another important lesson to be derived from FDR and the New Deal, and President Lyndon B. Johnson and the Great Society, is that reformers must act quickly when in possession of political power or risk squandering the opportunity. Landslide presidential victories can be quickly followed by devastating midterm election defeats. Democrats must act quickly and aggressively if they win control of the national government in 2028. The next pandemic, recession, inflationary episode, unexpected war, or terrorist attack is always lurking just around the corner to divert attention, absorb resources, or otherwise erode the possibility of genuine reform.

The sort of redistribution necessary to counteract the massive damage inflicted by neoliberalism will be difficult to achieve in a world in which the

362. *Memo: Voters in 12 Key States Support the Build Back Better Agenda*, DATA FOR PROGRESS, <https://www.dataforprogress.org/memos/voters-in-key-states-support-the-build-back-better-agenda> [https://perma.cc/H8TQ-7V25].

363. Sidney Milkis, *Theodore Roosevelt: Domestic Affairs*, UVA MILLER CTR., <https://millercenter.org/president/roosevelt/domestic-affairs> [https://perma.cc/X44G-X8HU].

364. Thomas Kessner, *The New Deal*, GILDER LEHRMAN INST. AM. HIST., <https://www.gilderlehrman.org/history-resources/essays/new-deal> [https://perma.cc/ZXY6-78AC].

365. Roosevelt Staff, *Restoring a Democratic Economy*, ROOSEVELT INST. (Apr. 29, 2025), <https://rooseveltinstitute.org/publications/restoring-a-democratic-economy/> [https://perma.cc/3KHY-9X8T].

366. *How Many Immigrants Entered the US During Biden Term and Are They Considered Illegal?*, FACTUALLY (Oct. 28, 2025), <https://factually.co/fact-checks/immigration/biden-immigration-numbers-illegal-vs-legal-cabc04> [https://perma.cc/HL47-SC4V].

367. Paul Krugman, Opinion, *Immigration Is Great for Jobs, Actually*, N.Y. TIMES (July 23, 2024), <https://www.nytimes.com/2024/07/23/opinion/immigration-unemployment-inflation.html> (on file with the *Fordham Law Review*).

368. Bo Erickson, Brad Brooks, Tim Reid & Nathan Layne, *Immigration Helped Trump Win the White House—Now Tactics Could Hurt Republicans in Midterms*, REUTERS (Jan. 28, 2026, at 10:20 ET), <https://www.reuters.com/world/us/immigration-helped-trump-win-white-house-now-tactics-could-hurt-republicans-2026-01-28/> [https://perma.cc/V2DJ-ZS9C].

369. *'The Atlantic': If Liberals Won't Enforce Borders, Fascists Will*, NPR: MORNING EDITION (Mar. 22, 2019, at 05:05 ET), <https://www.npr.org/2019/03/22/705729699/the-atlantic-if-liberals-wont-enforce-borders-fascists-will> [https://perma.cc/VG29-ZASL].

ultrawealthy can easily flee jurisdictions that try to make them pay their fair share of the costs of social goods. The massive resistance to redistribution the ultrawealthy manufacture will manifest itself in a political system that places almost no genuine limits on one's ability to translate wealth into power. Witness, for example, the hysterical denunciations of New York City Mayor Zohran Mamdani as a "communist" merely for proposing free bus transportation and childcare.³⁷⁰ A *New York Times* investigation reveals that Trump, over the course of just one year in office, has accumulated a \$2 billion political fund financed with contributions by corporations and the superrich, who have their interests to protect.³⁷¹

What is clear is that none of this reform agenda will be possible without packing the Supreme Court, which in its current composition is almost certain to invalidate any substantial redistributive program. The conservative justices have already made it clear that a national wealth tax would be unconstitutional.³⁷² The justices also invalidated one of President Biden's principal redistributive efforts, after the Build Back Better Act failed in the Senate: student loan forgiveness.³⁷³ That ruling was based on an absurd interpretation of unambiguous statutory text, with the aid of a recently manufactured doctrine of administrative law known as the "major questions doctrine."³⁷⁴ This is the same Court that has already gutted any significant campaign-finance regulations on the basis of made-up interpretations of the First Amendment.³⁷⁵ This is also the Court that came within a hair's breadth of invalidating the Affordable Care Act³⁷⁶—again, on the basis of an entirely unprecedented interpretation of the Commerce Clause—until the chief justice apparently chickened out at the last minute.³⁷⁷ If Democrats recapture national political power, enact a radical reform agenda, and allow the Supreme Court to gut it, why would proponents of redistribution ever trust them with power again?

370. Ella Moore & Amy Sherman, *Fact Check: Is Zohran Mamdani a Communist?*, AL JAZEERA (Jun. 27, 2025), <https://www.aljazeera.com/news/2025/6/27/fact-check-is-zohran-mamdani-a-communist> [https://perma.cc/9DEQ-Q6G4].

371. See Karen Yourish, Kenneth P. Vogel & Charlie Smart, *Hundreds of Big Post-Election Donors Have Benefited from Trump's Return to Office*, N.Y. TIMES (Dec. 22, 2025), <https://www.nytimes.com/interactive/2025/12/22/us/politics/trump-donors-fundraising-benefits.html> (on file with the *Fordham Law Review*).

372. See Jay Willis, *The Conservative Justices Picked a Different Day to Kill a Wealth Tax*, BALLS & STRIKES (June 20, 2024), <https://ballsandstrikes.org/scotus/moore-v-united-states-wealth-tax-opinion-recap-supreme-court/> [https://perma.cc/Z92L-6TD5] (explaining that the conservative justices' various opinions in *Moore v. United States*, 144 S. Ct. 1680 (2024), suggest "that they are reserving the right to outlaw wealth taxes for another day").

373. *Biden v. Nebraska*, 143 S. Ct. 2355, 2375 (2023).

374. *Id.* at 2372–74.

375. See *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 356–66 (2010).

376. See *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 561 (2012).

377. Avik Roy, *The Inside Story on How Roberts Changed His Supreme Court Vote on Obamacare*, FORBES (Aug. 12, 2014, at 23:08 ET), <https://www.forbes.com/sites/theapotheary/2012/07/01/the-supreme-courts-john-roberts-changed-his-obamacare-vote-in-may/> [https://perma.cc/EJ5V-2AHG].

In the short term, Democrats are out of power at the national level, so they need to organize and vote. From the perspective of mid-2026, their chances of winning free and fair elections in the fall seem high, if such elections occur.³⁷⁸ Trump is flailing in opinion polls;³⁷⁹ the results of special and off-year elections have been incredibly promising for Democrats;³⁸⁰ and the prediction markets believe that Democrats are likely to win control of the House and quite possibly the Senate as well.³⁸¹

It would be foolish to ignore the possibility that Trump, desperate to hold onto power, will interfere with free and fair elections.³⁸² In such circumstances, a general strike might be necessary to save democracy.³⁸³ Few autocrats are so powerful that they can rule by force alone.³⁸⁴ Yet successful resistance to an open effort to steal elections requires overcoming a massive collective action problem.³⁸⁵ A bold resistance movement in Minneapolis has proved that such organization is possible, though this was achieved on a much smaller scale³⁸⁶ by a political community that is well known for its civic-mindedness.³⁸⁷

One point of solace for the resistance: Trump is much less popular than many of the world's leading autocrats. For much of their times in power,

378. G. Elliot Morris, *Democrats Have a Large Turnout Advantage in Non-Presidential Elections*, STRENGTH IN NOS. (Apr. 22, 2025), <https://www.gelliottmorris.com/p/democrats-have-a-huge-turnout-advantage> (on file with the *Fordham Law Review*).

379. See Silver & McKown-Dawson, *supra* note 55.

380. Sean McMinn, Jessica Piper & Aaron Pellish, 'A Trend That Can't Be Ignored': *Dems Have Made Up Ground in Nearly Every Election Since Trump Took Office*, POLITICO (Apr. 18, 2026, at 14:00 ET), <https://www.politico.com/news/2026/04/18/democrats-special-election-results-analysis-00879021> [<https://perma.cc/3SLL-X2A7>].

381. Aliss Higham, *Democrats' Chances of Flipping Senate and House This Year Hit Record High*, NEWSWEEK (Mar. 14, 2026, at 13:48 ET), <https://www.newsweek.com/democrats-chances-of-flipping-senate-and-house-this-year-hit-record-high-11678269> [<https://perma.cc/W8LM-5ZT6>].

382. See Jacob Knutson, *Trump's Plan to Control Elections Is Coming into Focus*, DEMOCRACY DKT. (Mar. 17, 2025), <https://www.democracymodel.com/analysis/trump-control-elections-plan/> [<https://perma.cc/VS9L-F8BE>]; David A. Graham, *Donald Trump's Plan to Subvert the Midterms Is Already Under Way*, ATLANTIC (Oct. 28, 2025), <https://www.theatlantic.com/magazine/archive/2025/12/2026-midterms-trump-threat/684615/> (on file with the *Fordham Law Review*).

383. Brad Reed, *Gallego Says 'Grind the Country to a Halt' with National Strike If Trump Tries to Rig Midterms*, COMMON DREAMS (Feb. 6, 2026), <https://www.commondreams.org/news/ruben-gallego-general-strike> [<https://perma.cc/H2F8-U2D9>].

384. Viktor Orbán's Era Is Over: *Hungarians Celebrate as Longtime Far-Right Leader Suffers Landslide Loss*, DEMOCRACY NOW (Apr. 13, 2026), https://www.democracynow.org/2026/4/13/hungary_orban [<https://perma.cc/435Q-GS38>].

385. Maria J. Stephan, *Big Tents and Collective Action Can Defeat Authoritarianism*, JUST SEC. (June 3, 2025), <https://www.justsecurity.org/113995/collective-action-defeats-authoritarianism/> [<https://perma.cc/FUC4-QZPL>].

386. David Mattingly, *The Power of Community Organizing: Four Lessons from Minneapolis*, FUND GLOB. HUM. RTS. (Feb. 11, 2026), <https://fundhumanrights.org/commentary/the-power-of-community-organizing-four-lessons-from-minneapolis/> [<https://perma.cc/N2XZ-2SPN>].

387. Nick Lentz, *Minnesota Leading Nation in Voter Turnout, with Wisconsin Still Counting Votes*, CBS NEWS (Nov. 22, 2024, at 14:43 CT), <https://www.cbsnews.com/minnesota/news/minnesota-voter-turnout-wisconsin-counting-votes/> [<https://perma.cc/NUL9-U78C>].

Orbán and Erdoğan have been extremely popular.³⁸⁸ Trump has not been. While his approval ratings at the start of his second term were near 50 percent, today more than 60 percent of the population disapproves of his performance in office, and the trend line is consistently downward.³⁸⁹ It may be that Trump's only realistic alternative to a massive political defeat in the fall is to intervene against free and fair elections.³⁹⁰

Another point of solace: history reveals that reformers have achieved hard things before. Slavery abolitionists were incredibly unpopular in the 1830s, when antiabolitionist mobs in Boston conducted "mock lynchings" of William Lloyd Garrison;³⁹¹ thirty-five years later, slavery was abolished in the United States by constitutional amendment.³⁹² Women's suffragists led by Susan B. Anthony and Elizabeth Cady Stanton unsuccessfully pressed for the right to vote in the Fourteenth and Fifteenth Amendments in the late 1860s;³⁹³ neither woman lived to see women enfranchised throughout the nation by the Nineteenth Amendment in 1920.³⁹⁴ Gay marriage claims were laughed out of court in the early 1970s,³⁹⁵ only to become the law of the land in 2015.³⁹⁶

Unfortunately, today's defenders of democracy and the rule of law do not have the luxury of time. Authoritarians consolidate power as the clock ticks. Trump has moved against democracy more quickly and aggressively in the first year of his second term than almost any autocrat currently occupying the world stage. The arc of the moral universe does not bend toward justice quickly enough to defeat Trump and his MAGA cronies without a lot of help.³⁹⁷ The resistance movement must succeed quickly, or American democracy will suffer a potentially fatal blow.

388. Andrew Higgins, *How Orbán, a Wizard of Populism, Lost His Magic Touch*, N.Y. TIMES (Apr. 13, 2026), <https://www.nytimes.com/2026/04/13/world/europe/orban-hungary-election-magyar-populism.html> (on file with the *Fordham Law Review*); Suzan Fraser, *How Turkey's President Maintains Popularity Despite Economic Turmoil*, INDEPENDENT (May 23, 2023, at 08:14 BST), <https://www.independent.co.uk/news/world/americas/us-politics/recep-tayyip-erdogan-ap-turkey-ankara-syria-b2343955.html> [<https://perma.cc/T8P9-8Y9U>].

389. See Igielnik, *supra* note 207.

390. See Graham, *supra* note 382.

391. HENRY MAYER, *ALL ON FIRE: WILLIAM LLOYD GARRISON AND THE ABOLITION OF SLAVERY* 203–09 (1998).

392. U.S. CONST. amend. XIII.

393. See ELEANOR FLEXNER, *CENTURY OF STRUGGLE: THE WOMEN'S RIGHTS MOVEMENT IN THE UNITED STATES* 152–54 (1975).

394. U.S. CONST. amend. XIX; see also FLEXNER, *supra* note 393, at xxxii, 212, 232 (noting that Elizabeth Cady Stanton died in 1902 and Susan B. Anthony died in 1906, and observing that the "[o]ld suffragists who forged the first links were dead when it ended").

395. MICHAEL J. KLARMAN, *FROM THE CLOSET TO THE ALTAR: COURTS, BACKLASH, AND THE STRUGGLE FOR SAME-SEX MARRIAGE* 17–22 (2013).

396. *Obergefell v. Hodges*, 576 U.S. 644, 681 (2015).

397. This metaphor is in reference to the words of Dr. Martin Luther King Jr. See Dr. Martin Luther King, Jr., *Speech in Montgomery, Alabama: Our God Is Marching On!* (Mar. 25, 1965) (transcript available at <https://kinginstitute.stanford.edu/our-god-marching> [<https://perma.cc/PN3J-BYKT>]).