

ANOTHER VIEWPOINT

# White House and Congress plan to suffocate the judiciary



By  
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Speaker of the House Mike Johnson and other Republican leaders have threatened to remake the federal judiciary, not by helping the president fill new judges to vacancies, but by slashing district level courts and judge-ships. They complain that the federal judiciary is thwarting their political

agenda. Critically, the Republican leadership's source of power to eliminate the perceived judicial obstacles is the legislative power of the purse, the ability to create and eliminate courts and fund them or not as Congress sees fit.

Republicans — the current court conflict is clearly a partisan exercise — seek to prevail in a struggle over who decides the fate of Donald Trump's unilateral actions. The actions come primarily from a slew of executive orders, from renaming gulfs and mountains to eliminating entire agencies and punishing lawyers.

Article III of the Constitution created the judicial branch. It only named the Supreme Court specifically and provided Congress the ability to create and maintain (fund) lower courts. It also gave any Senate-confirmed federal judge life tenure. Article II created the executive branch and invested executive power in a president. However, all executive departments and independent agencies were created by Congress, not the president or the Constitution.

Ironically, the legislative power to create and fund the courts is the same authority that conclusively precludes Trump's current unilateral attempts to dismantle an array of agencies, including the Department of Education. That is, Congress created and funded the agencies, and it's the executive branch's obligation to execute the agencies' statutory missions. While the executive has flexibility in how their purposes are implemented, it does not have the prerogative to eliminate or fundamentally change an agency. It makes no difference that the original statutory creation occurred in the distant past or yesterday.

As for the number and nature of the courts, eliminating federal courts because of partisan disagreement with individual judges' decisions in specific cases is an illegitimate use of an otherwise real constitutional power. The political agenda of a party is not — and cannot be — the concern of a judge in ruling on issues in a case. It's critical to remember that a judge's role plays out in an individual case and is possible only as a result of an active, ongoing dispute in an adversarial system.

As such, it's no surprise the president is engaging in a targeted assault of specific law firms who have represented clients or causes Trump views as antagonistic to his past or current agenda. Notably, the idea that a president could use his authority to



U.S. President-elect Donald Trump appears remotely for a sentencing hearing in front of New York State Judge Juan Merchan in the criminal case in which he was convicted in 2024 on charges involving hush money paid to a porn star, at New York Criminal Court in Manhattan in New York.

**BRENDAN MCDERMID/AP**

punish businesses for their lawful behavior has no foundation in principle, or the law, or common sense. The American legal system is predicated on the advocacy of opposing or discordant views and arguments. The whole premise of the judicial process is that such advocacy is the best way to air and resolve disputes, including those that involve the federal government.

The punishment of law firms by barring them from federal facilities and preventing contact with government employees because the lawyers did their jobs as advocates is the antithesis of the American model. The label for such behavior is extortion.

That such tactics have proven successful in forcing major law firms to acquiesce to the president is as damning as the extortion itself. Law firms are businesses and subject to economic leverage, but lawyers as officers of the court constitute the lifeblood of the law in this country. Trump and his entourage know this well — by a long history of using lawyers offensively and defensively — and have effectively used banishment as a weapon. The self-proclaimed need for retribution is really a naked power play to silence opposition and dissent.

The most troubling developments of this nascent era are the sustained broadsides against the judicial branch, both in terms of the decision-making role of judges and the advocacy of lawyers. Every other protection against tyranny and political oppression — that is, every aspect of a stable democratic system — suffers a possibly mortal blow if the basic tenets of an independent judiciary and the adversarial advocacy of lawyers are abandoned or lost.

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