The Phyllis Schlafly Report

Trump Has Options Against Judicial Overreach

By John and Andy Schlafly

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On Tuesday President Trump called for the impeachment of a federal judge, to which Chief Justice Roberts retorted by urging an appeal instead. Roberts is apparently panicked about the prospect of many impeachments raining down on federal judges based on shocking decisions.

The recent interference by a federal court in D.C. with President Trump's deportation of Venezuelan gang members is an egregious overreach by the federal judiciary. Presidents, not judges, are elected to protect national security against a foreign invasion.

Impeachment is not the only option available to Trump and Republicans in Congress to provide a check-and-balance against the federal judiciary as established by our Constitution. Founding Father Alexander Hamilton described the judiciary as the "least dangerous" branch because the other two branches decide what power to give it, and what rulings to enforce.

Congress has defunded the enforcement of improper judicial decisions in the past, and has withdrawn jurisdiction entirely from federal courts over many topics. Why should a federal court even have authority over a decision by a president to deport dangerous illegal aliens?

Hamilton wrote in Federalist No. 78 that federal judges have "no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments."

In other words, it is entirely up to President Trump whether and how to enforce a decision by a federal court. It is also entirely up to Congress whether and how to fund federal courts, define the scope of their jurisdiction, and finance the implementation of any judicial decisions.

Yet District Court Judge James E. Boasberg ordered the Trump Administration to provide details by noon on Tuesday about the deportation of Venezuelan gang members, including flight information. But the Department of Justice (DOJ) announced on Tuesday that it would not comply with Judge Boasberg's demand for more information.

Newly confirmed Attorney General Pam Bondi and other DOJ attorneys told Boasberg "there is no justification to order the provision of additional information, and that doing so would be inappropriate" because DOJ feels Boasberg's "oral statements were not independently enforceable." Trump's DOJ has already appealed and stated they "should not be required to disclose sensitive information bearing on national security and foreign relations until that motion is resolved."

Trump's DOJ had requested immediate reassignment to another judge because of his "highly unusual and improper procedures—e.g. certification of a class action involving members of a designated foreign terrorist organization in less than 18 hours with no discovery and no briefing from the Government."

DOJ's appeal has gone to the D.C. Circuit, which is dominated by Democrat-appointed judges likely to rule against Trump. From there, it will go to the U.S. Supreme Court as part of the appellate process that Chief Justice Roberts requests be followed.

The Federalist Papers as quoted above are the best source for interpreting the Constitution because its ratification was achieved based on these writings. House Republicans would do well to quote and act on what Alexander Hamilton said about how to curb the federal judiciary.

On Tuesday Congressman Brandon Gill (R-TX) immediately filed articles of impeachment against federal Judge Boasberg for interfering with this deportation of Venezuelan gang members to El Salvador. They are reportedly being held in a prison there under a contract with the United States to take illegal aliens.

Impeachment of federal judges was the approach used by President Thomas Jefferson, but it was unsuccessful. President Andrew Jackson adopted a different style of simply declining to enforce a court ruling he considered improper, as Alexander Hamilton envisioned.

The Constitution does not require the executive branch, over which the president presides, to enforce decisions that he feels are improper or unconstitutional. Our Founders intentionally dispersed power among the three branches of government as a safeguard against the judiciary or any other branch of government asserting more power than it should.

President Abraham Lincoln said, "If the opinion of the Supreme court covered the whole ground of this act, it ought not to control the co-ordinate authorities of this Government. The Congress, the executive and the court, must each for itself be guided by its own opinion of the Constitution."

That was Lincoln's response to the Supreme Court's ruling in the *Dred Scott* case that sided with slave owners and denied all rights to blacks. "Each public officer, who takes an oath to support the Constitution, swears that he will support it as he understands it, and not as it is understood by others," Lincoln said while repudiating that horrible decision.

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