

**Presentation to Making Waves for Democracy  
What's at Stake in the Federal Courts Right Now,  
What the ACLU is Doing, and What Grassroots Groups Can Do**

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Thank you for inviting me to speak with you all today. Before I start, I have to issue a trigger warning about just about everything I am going to say in the first part of my remarks. Sometimes I worry that I've turned from being a baby boomer into becoming a baby doomer. But I will try by the time I finish to leave you with some hope and suggestions about what we all can do now.

**I. The current situation**

As I'm sure you are all aware, we are living in an unprecedented, uncertain, unsafe, and upsetting time.

Present Trump and his regime have been on a mission to amass power, further enrich the wealthiest in our country, and undo decades of progress that had been made to forge a more caring, free, diverse, equitable, and inclusive society.

He has deployed a number of tactics to do this, but central to them has been an increasingly successful plan to **weaken all of the guardrails** that are essential to check against an imperial and authoritarian Presidency and Executive Branch. Anyone and anything that might stand in his way has been targeted.

He has gone after:

\* **Congress** -- by threatening to primary any Republicans who do not bow to his will and getting Congress to relinquish the power of the purse to him;

\* **States and cities**, by threatening their funding and sending occupying forces of the National Guard and the armed forces into cities, including of course Los Angeles; and

\* **The press** – going beyond his years of attacking their credibility as “fake news” to now suing them, defunding entities dependent on federal funds such as NPR, PBS, Voice of America, and Stars and Stripes; cutting off press access of media that has crossed him to White House briefings and his trips abroad; threatening to block profitable media mergers; and, pressuring TV networks to censor and/or fire dissenting voices;

He’s attacked:

\* **Schools and universities** – by getting (mostly female and people of color) university presidents fired for supposed antisemitism; threatening to sue school districts and institutions of higher education; and withholding all their federal funding and threatening to permanently cut it, including essential federal research grants and student loans--unless schools bow to his agenda of dismantling diversity, equity, and inclusion programs, abolishing academic freedom, and limiting students’ rights.

\* **Law firms**, by threatening to cut their access to federal buildings and their lawyers’ security clearances, and threatening to sue them;

\* **Formerly independent federal agencies**, including the Justice Department, the Office of Special Counsel, the Equal Employment Opportunity Commission, the Federal Elections Commission, the Federal Trade Commission, the National Labor Relations Board, the Merit Systems Protection Board, and the Consumer Product Safety Commission, as well as inspectors general across federal agencies; and

\* **Progressive organizations**, by withholding funding and trying to disband some—even when he has no authority to do so.

He has sought to silence the voices of

\* **Students, immigrants, whistleblowers, and academics**, by seizing, deporting, and threatening to deport them because of their political views;

He's even gone after:

\* **Science**, by cutting or holding up funding; appointing critics of vaccination, climate control, and clean energy; and limiting what those at agencies such as the CDC and the National Institutes of Health can say and do.

\* **The arts**, by taking over and then seeking to rename the Kennedy Center; and slashing funding of the National Endowment for the Arts and the National Endowment for the Humanities;

\* **History**, by renaming military bases, ships, and even bodies of water, and mountains; insisting that federal parks and museums not criticize anything America has ever done and laud only white, straight, cisgender, men; scrubbing the achievements of people of color and LGBTQ people from federal websites; and threatening the funding of schools that have curriculum that takes a critical look at America's failings; and

\* **Even words**, removing mentions from federal websites of more than 250 terms, including accessibility, advocacy, affordable housing, allyship, bias, carbon emissions, climate change, disadvantaged, ethnicity, feminism, gender, hate speech, inequality, and on, and on, and on, and on.

And he's taken steps to limit the former checks on presidential power of

\* **Military leadership**, by firing the chair of the Joint Chiefs of Staff, the head of U.S. Cyber Command, and numerous top level (and especially Black and female) generals and admirals;

\* **Former international allies** who once could put pressure on the United States to comply with international agreements and norms;

\* **and, of course, the courts.**

## **II. The courts**

So, that's what I want to talk about now.

Perhaps the only guardrail on presidential authority that has been at least partially able to put the brakes on Trump have been nonprofit legal organizations, progressive lawyers, and the courts.

By my last count, there have been 796 lawsuits filed against the Trump administration over the last six months challenging Trump's attacks on immigrants, transgender people, birthright citizenship, federal workers, independent agencies and their leaders, law firms, government contractors, universities, arts programs, scientific research, mental health services, disaster preparedness, transportation infrastructure, environmental protections, free trade, and voting rights.

As with all of the institutions I referenced earlier, Trump and his allies have bullied and tried to intimidate the judges hearing those cases. They have repeatedly castigated any judge who has sought to enforce the Constitution and federal statutes against the Trump regime as rogue, deranged, radicals; left-wing lunatics; and "monsters who want our country to go to hell." Judges who have imposed limits on presidential authority have been attacked as engaging in judicial overreach and judicial abuse of power, usurping the authority of President Trump to carry out the mandate the American people gave him, and waging judicial tyranny and a judicial coup. Judges who will not bend the knee have been threatened with impeachment. They have been made to feel that they and their families are unsafe. The Trump Justice Department is even

prosecuting a state judge who directed an undocumented man to the back door of her courtroom when federal immigration agents were looking for him.

**But here's some good news:** Notwithstanding all the attacks on judges, there have been approximately 180 judicial rulings to date that have partially or fully blocked Trump initiatives through temporary restraining orders or preliminary injunctions.

I don't want to sugarcoat it: We have seen a Supreme Court that repeatedly has allowed Trump to do what he wants, often by issuing stays on lower court injunctions on the court's "shadow docket" without full briefing, without oral arguments, often without any explanation, and frequently in the face of years of contrary legal precedents. Many of those stays have resulted in permitting irreparable harms to be inflicted, like federal employees and appointees losing their jobs, and transgender members of the military being discharged.

The Supreme Court also has prohibited the issuance of nationwide injunctions, where a judge prohibits federal legal violations throughout the United States—even though the Court had no problem with such injunctions in cases brought by conservative states and groups against the Obama and Biden administrations.

But, contrary to many people's impressions, at least so far the Supreme Court has balked at giving Trump **everything** he wants. The Court in two cases has blocked Trump from using the Alien Enemies Act in the ways that he has. The Court kept in place a lower court order calling for disbursement of \$2 billion in foreign aid funds Trump had frozen. It rejected Trump's bid to avoid paying USAID contractors.

And even after some adverse Supreme Court decisions, lower courts have found ways to continue to rule against Trump regime actions.

In addition, most of the Trump regime's victories at the Supreme Court have been temporary and do not mean a loss will necessarily occur when the merits are before the Court, where they may be corrected after full briefing, argument, and deliberation. And some losses have been able to be gotten around. So, although nationwide injunctions are not available, the ACLU and other organizations have begun filing new cases as class actions and states have filed suits on their own behalf and on behalf of their residents that can bring about broad relief.

And, as I said, the lower courts have at least delayed some of Trump's damage. The Trump administration has sometimes backed down. The Supreme Court doesn't have the capacity to hear every appeal. And scores of judges have spoken truth to power in ways that I believe history will remember. The integrity, courage, and eloquence of judges appointed by both Republican and Democratic presidents, including Trump himself, has been an inspiration.

At least so far, the Trump regime has not outrightly defied the authority of the courts. Trump officials have willfully misconstrued judicial rulings. They have prevaricated and lied. They have tried to get away with things. But federal lawyers have shown up in court. They are not refusing to submit briefs or argue motions. They at least have not said out loud in court that they will not obey judicial orders. If those things go, our country certainly will have become a totalitarian dictatorship.

That's what's at stake in the courts right now. They are one of the last remaining bulwarks we have against despotism.

So, I next want to talk about what we can all do. Because despair and resignation are not a strategy. They are a capitulation and an invitation to Trump to do more.

### III. What the ACLU is doing

First, I want to turn to what the ACLU has been doing to try to stem Trump's attacks on democracy, our country's institutions, and its people. We've had a three-part strategy.

**Our first strategy has been to challenge the legality of Trump's actions and try to stop, limit, or at least delay them.** The ACLU has more than 500 staff attorneys at its national and affiliate offices, supported by more than 1,200 other staff, and we collaborate with thousands of additional lawyers working on a pro bono basis with us. And we've all been very busy.

Since January 20<sup>th</sup>, we've taken more than 110 legal actions against the Trump administration—including lawsuits, administrative agency filings, amicus briefs, and Freedom of Information Act demands.

That has included 54 new federal lawsuits.

In 42 of those, we've asked for some kind of emergency relief, either a temporary restraining order, a preliminary injunction, or a stay of removal—that is, trying to block someone from being deported out of the country. And of those 42, we've gotten some kind of emergency relief in 30 of them. **That's a 71% success rate.**

We have blocked Trump's birthright citizenship emergency order from going into effect.

We've had multiple wins, in now 8 cases, preventing removals of individuals under the Alien Enemies Act. We've gotten at least temporary orders blocking the deportation of four lawfully present immigrants in this country who were targeted for arrest, detention, and depuration because of their First Amendment protected speech: Mahmoud Khalil, Rümeysa Öztürk, Dr. Badar Khan Suri, and Mohsen Mahdawi, whom we have now gotten released from federal custody and reunited with his family.

We secured a preliminary injunction against his executive order requiring documentary proof of citizenship for voter registration,

We blocked the U.S. Department of Education's "Dear Colleague" letter, which threatened to defund educational institutions over programming on forbidden topics such as diversity, equity, and inclusion, and subsequent guidance that would have required states, under threat of legal penalties, to certify that their schools weren't teaching or supporting such programs.

We've gotten preliminary injunctions against what was essentially an attempt to impose a national ban on essential healthcare for transgender youth through threats of defunding their medical providers; against efforts to deny transgender people in federal prison medically necessary gender-affirming health care; and against Trump's efforts to bar transgender, intersex, and nonbinary people from getting passports with anything but their sex assigned at birth on them, which was forcing them either not to travel internationally or to be outed, exposing them to harassment, discrimination, and even violence.

We won a ruling that the National Institutes of Health actions targeted research involving "disfavored" topics were unlawful, arbitrary, and capricious, and therefore void.

And we've gotten a court order against the federal government engaging in racial profiling and denying access to counsel in immigration raids in Los Angeles.

**The ACLU's second strategy has been what we're calling creating a "Firewall for Freedom.** We are focusing on efforts to get states, cities, and state and local officials to fight back against Trump.



With ACLU affiliates in all 50 states, Puerto Rico, and Washington, D.C, the ACLU is well-situated to coordinating this effort and calling on state and local governments to take action including:

- \* Enacting policies that make clear they will not voluntarily share their resources – including personnel and data – with federal law enforcement seeking to violate the civil rights of our communities. State and local agencies should just say “no” and refuse to voluntarily cooperate with incursions into civil liberties, wherever possible;

- \* Responding to large scale deportation raids by setting up hotlines, providing pro bono legal assistance and legal assistance funds, preparing educators and faith leaders to provide support, and surging resources to families left behind;

- \* Providing funding for those needing to travel to other states to obtain abortions and gender-affirming care; and

- \* Refusing to let the national guard troops under their command and control suppress peaceful protest or turbocharge immigration raids and detentions, and declining to assist federal troops and federal law enforcement in the commission of rights violations.

Already, seven state legislatures have passed new laws to protect our rights, 16 pieces of guidance have been issued by dozens of state officials telling state agencies to safeguard our information and our families, two governors have issued executive orders, and one county board has also issued guidance. Nearly half of states have said they will not let President Trump disregard the Constitution and violate our rights.

**The ACLU’s third strategy has been deploying resources to educate the public and support community empowerment**

We are working hard to focus the eyes of Congress, the press, and the American people on the illegal actions of the president through campaigns to reach out to elected representatives, petitions, organized comments on proposed regulations, press appearances, blogs, op eds, social media, and talking with groups like yours. We've helped organize demonstrations. We've issued Know Your Rights explanations and cards. We have an initiative called People Power, a grassroots network of activists, volunteers, and supporters organizing their communities.

We've tried to turn every legal battle into a spark for broader organizing, strengthening our shared sense of solidarity, and mobilizing people across the country to come together against government overreach.

#### **IV. What grass roots organizations can do**

I've been asked to also talk about what grass roots organizations such as yours can do.

I'm not sure I have anything particularly original, but here are my thoughts:

\* The ACLU is a nonpartisan organization that doesn't support particular candidates or parties, but I can't urge you strongly enough to get all good-hearted people to register to vote, to work tirelessly to get out their votes, and to support candidates who will stand up to the Trump administration. Talk with family members and friends who didn't vote or voted for Trump to understand their reasons for doing so and to try to find common ground that might cause them to reassess. If Trump loses his current majority support in the House or the Senate, future legislative attacks can be blocked. I can't think of anything more important for grass roots groups to do.

\* But I also think that demonstrations are important. They unify those protesting and fortify people not to give up. The press and politicians take notice. It is demonstrations in other countries that have often led to disempowering depots.

- \* Targeted boycotts and strikes can help temper corporate capitalization to Trump.

Make their cowardice and their greed hurt.

- \* Call, email, send Facebook messages, tweet, and best of all write handwritten letters or try to arrange meetings with your elected representatives about the issues you care about and try to get others to do the same. You can do this on a daily, weekly, or monthly basis. Even those who agree with you need to hear from you.

- \* Attend government meetings and submit public comments.

- \* Write letters to the editor, op eds, blogs, and social media posts that talk about the real harms the Trump administration is inflicting. Try to focus on arguments that might persuade those who don't already agree with you.

- \* Support unbiased new outlets to help make sure good journalism continues to exist.

- \* Urge people who you think can lead to run for political office ... or do so yourself; and

- \* Urge people to financially support the nonprofit groups fighting against the Trump regime. Not just the ACLU, but also Democracy Forward., the NAACP Legal Defense Fund, the National Immigration Law Center, the National Women's Law Center, Lambda Legal, the Southern Poverty Law Center, and the National Resources Defense Council, to name a few.

I'm reading a book by Jordan Lawsen right now called *Staying Grounded: Surviving a Trump Presidency*, and I think it has some excellent suggestions, both about what people can do to fight back and what they can do to stay sane and effective.

## **V      Hope and resilience**

I want to close my remarks with a few thoughts.

First, as bad as things seem, we need to keep where we are in perspective

Just focusing on LGBTQ rights for a moment, which is what I know best: In the past, a number of terrible rulings affecting LGBTQ people were eventually overturned by the Supreme Court or were nullified through advocacy. *Bowers v. Hardwick*, in which the Supreme Court held that the Constitution does not bar states from having and enforcing sodomy laws, was overturned by the Supreme Court 17 years later in *Lawrence v. Texas*. *Baker v. Nelson*, in which the Supreme Court said there wasn't even a substantial constitutional question worth considering regarding state refusals to allow same-sex couples to marry, was overturned 44 years later in *Obergefell v. Hodges*, and since then, 591,000 same-sex couples have wed in the United States. And *Dale v. Boy Scouts of America*, in which the Supreme Court held that the Boy Scouts had a constitutional right to exclude gay scoutmasters and assistant scoutmasters, resulted in concerted advocacy that led the Boy Scouts to change their policy 15 years later. While many, many people were adversely affected in the meantime by all these rulings, in the long run (sometimes very long run) we prevailed.

While she didn't coin this, I always remember the late Ruth Bader Ginsberg saying that our national emblem should not be the bald eagle—a scavenger bird—but instead should be a pendulum. So long as we don't give up, we can help move things in the other direction again.

Moreover, we need to remember that, even during the horrors of slavery, there was resilience, there was community, and there were moments of joy. As Trump and his allies work to erase history, end all efforts to remediate it, and impose new inequalities, all of us need to build and hold onto resilience, create and find strength in community, and continue to find moments of joy. We must engage in self-care and care of others. We must find things to laugh over. Given his fragile ego, laughter at Trump's foibles is one of our strongest weapons.

We need to grieve the current harms, but we also must never give up fighting in the courts and through advocacy to overcome the war being waged against us. As the Rev. Martin Luther King, Jr. famously said, "The arc of the moral universe is long, but it bends towards justice." But, as Sen. Corey Booker brilliantly rephrased it, "The arc of the moral universe is long, but it does not bend automatically." We all have to work to make that happen, eventually.