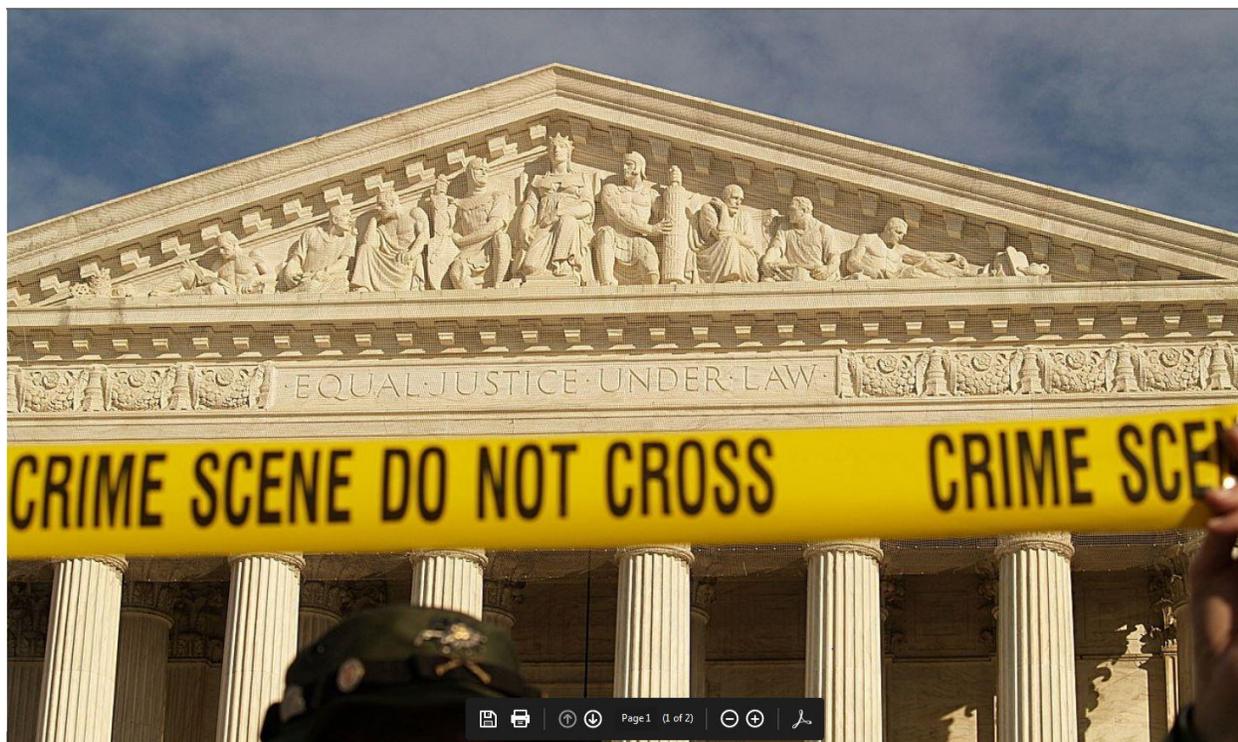


Extra-constitutional judicial supremacy – fact or lunacy?

By Lauralee O'Neil | July 8, 2019



Article I. Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article VI. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.

Article III. Section 2. The judicial Power shall extend to all Cases, in law and Equity, arising under this Constitution, the Laws of the United States...

These three entities are listed as the “supreme law of the land: (1) the Constitution; (2) laws made “in pursuance” of the Constitution; and (3) treaties. These supreme laws bind both State and federal officials.

As Article III, Section 2 states, the Supreme Court does **not** have authority **over** the Constitution. Rather, the Court is given authority to hear certain types of cases arising **under** the Constitution, U.S. **laws**, and treaties. The Court is then intended—mandated—to apply the Constitution to the cases before it.

And yet, over the decades unconstitutional court rulings have given us the legalized murder of unborn babies (61,429,027.5 and **counting**) (*Roe v. Wade*), blasphemous same-sex marriage (*Obergefell v. Hodges*), the elimination of prayer in our public schools (*Engel v. Vitale* and *Abington School District v. Schempp*), and on, and on.

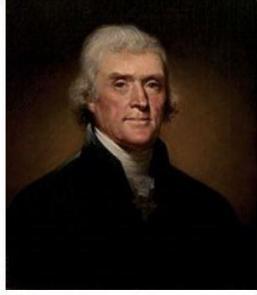
“...does it make sense that people should vote directly on a proposition—or that a law should be passed by Congress and signed by the president, who represents perhaps hundreds of millions of Americans—and then be nixed by one unelected, gavel-wielding lawyer? Is this what the Founders intended?”^[1]

Since it is distinctly stated in our constitution that all the laws of the United States are established **ONLY** by congress, how then does it follow that our courts have the right to **establish** law? And how did the courts gain the power to overturn laws that have been established by Congress?

Truth be told, that the idea that the Supreme Court is the final authority on the Constitution is one **of its own making**. In the landmark Supreme Court ruling *Marbury v. Madison* (1803) they granted themselves **extra-constitutional judicial supremacy**. In other words, it was the courts granting the courts the right to make and/or strike down laws.



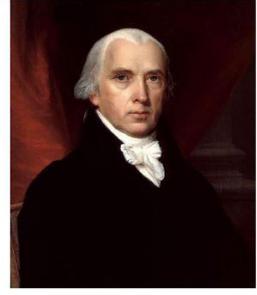
President John Adams, who appointed Marbury just before his presidential term ended.



Thomas Jefferson, who succeeded Adams as President and believed Marbury's undelivered commission was void.



William Marbury, whose commission Madison refused to deliver.



James Madison, Jefferson's Secretary of State, who withheld Marbury's commission.

As Thomas Jefferson warned,

“...to consider the judges as the ultimate arbiters of all constitutional questions” is “a very dangerous doctrine indeed and one which would place us under the despotism of an Oligarchy.”

“The constitution, on this hypothesis, is a mere thing of wax in the hands of the judiciary, which they may twist, and shape into any form they please.”

That said, these many unconstitutional court rulings did not mysteriously implement themselves.

These decisions carry weight because *We the People*, our elected representatives and our presidents have submitted to the courts, choosing to follow the judiciary over state and federal laws. This raises the question—why do we give the Supreme Court and our lower courts so much obedience?

Abraham Lincoln stated in his first inaugural address in 1861:

“...The candid citizen must confess that if the policy of the government, upon vital questions, affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made, in ordinary litigation between parties, in personal actions, the people will have ceased to be their own rulers, having, to that extent, practically resigned their government into the hands of that eminent tribunal.”

There is a solution—a simple remedy to the over-reaching insanity of our courts—**nullification**.

Nullification: Any act or set of acts which results in a particular federal law or program being rendered null and void under the law, or unenforceable in practice.

Thomas Jefferson and James Madison first **formalized** the principles of nullification in the **Kentucky** and **Virginia** Resolutions of 1798. While Jefferson called it “the rightful remedy” to federal overreach, Madison put it a different way, saying a state is “duty bound” to interpose “to arrest the progress of the evil.” Jefferson and Madison were the first to propose nullification specifically, but they didn’t create the idea. In fact, the strategies and principles date back to before the American Revolution. Colonists used **nullification strategies to force Parliament to repeal the Stamp Act**. And during the Virginia ratifying convention, **George Nicholas** said that if Congress were to exercise any power not expressly granted to it, the state of Virginia would be “exonerated from it,” implying that the state would have the authority to ignore or block unconstitutional acts.

Nullification is a fundamental part of the American political system. But what exactly does it mean? There are two definitions. One is legal. When a court strikes down a law, it literally wipes it off the books. But there is also a practical definition – to make something of no value or consequence. When we talk about nullification happening today, we generally mean it in the practical sense – to end the practical effect of a federal act. Here is a succinct definition of nullification as we apply it: *Any act or set of acts which has as its result a particular law being rendered legally null and void, or unenforceable **in practice***. Madison gave us a **blueprint** on how to do this in *Federalist #46*. He suggested four steps to take on counteract and stop federal programs –

whether “warrantable” or “unwarrantable,” the most significant being a “refusal to cooperate with officers of the Union.” The federal government involves itself in almost every aspect of life, but depends on state assistance to do almost everything. If states refuse to help, it becomes nearly impossible for the feds to enforce their laws or implement their programs. We can use this strategy to **undermine and nullify** all kinds of federal acts in practice – from warrantless spying, to gun control, to plant prohibition and more. ^[2]

One myth about nullification is that the Supremacy Clause prohibits it. As *The Tenth Amendment* states,

This probably ranks as the most common nullification objection. According to the naysayers, the Constitution’s supremacy clause makes every federal edict “the supreme law of the land.” As such, a state has no authority to challenge it in any way. This erroneous assertion ignores the most important words in the clause. Only the Constitution and laws “made in pursuance thereof” qualify as supreme. Any federal act not in pursuance of the Constitution is, as Alexander Hamilton put it, “void.” ^[3]

Because our elected representatives take an oath to uphold the constitution and not to uphold agenda-driven ‘legal’ judgements, it follows then that these unconstitutional rulings can and must be reviewed and nullified.

“[I]t is time for states to simply ignore unconstitutional judicial rulings and enforce their duly enacted laws, a phenomenon known as “nullification”.

“Nullification requires just one brave [statesman] willing to get the ball rolling. If such a person rises to the occasion, and eloquently and passionately defends his position, the ice will be broken and others may follow suit. It takes just one man, one intrepid leader, who’s willing to make waves and history as he really helps make America great again.”
^[1]

Do we have such a statesman today?

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¹ SAVE BABIES AND ABORT JUDICIAL SUPREMACY, by Selwyn Duke, *The New American*, July 8, 2019

² **Nullification**, Tenth Amendment Center

³ **Top Five Lies About Nullification**, *Tenth Amendment Center*