



America's Unaccountable Federal Judiciary

A group of law students at Emory University recently [petitioned](#) the U.S. Supreme Court to take up a case that exposes one of the most glaring contradictions in American law. Tens of thousands of people who work for the federal courts are not covered by landmark civil-rights protections, and they cannot turn to an independent agency for help if they experience harassment or discrimination on the job.

The institution that enforces civil-rights law against every employer in America exempts itself from those same laws. Federal court employees who experience workplace discrimination cannot file a complaint with the EEOC. They cannot sue in federal court under Title VII. They are subject to an internal system where, as the Emory students noted, judges oversee complaints against people they know and work with every day. This is precisely the opposite of the neutral, independent process the law demands for everyone else.

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Judicial Hypocrisy

For instance, [liberal firebrand Ruth Bader Ginsburg](#), while imposing diversity quotas on others, famously declined to live up to her own ideals. In her 13 years as a D.C. Circuit judge, Ginsburg never hired a single black person as a law clerk, a secretary, or an intern, though her staff was composed of 57 positions. This came to light at her Supreme Court [confirmation hearing](#). Senator Orrin Hatch (R-Utah) questioned Ginsburg, who replied by saying, "I am going to try harder, and if you confirm me for this job, my attractiveness to Black candidates is going to improve."

Under pressure as a Supreme Court Justice, she hired exactly one African-American during her 27-year tenure on the nation's highest bench: Paul J. Watford, who clerked for her in the 1998-99 term.

Thomas Jefferson warned with prophetic precision about exactly the dangers of a court that imposes standards on others while exempting itself. In an 1820 [letter to William Jarvis](#), Jefferson wrote:

You seem to consider the judges as the ultimate arbiters of all constitutional questions; a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy. Our judges are as honest as other men, and not more so. They have, with others, the same passions for party, for power, and the privilege of their corps.... Their power [is] the more dangerous as they are in office for life, and not responsible, as the other functionaries are, to the elective control. The Constitution has erected no such single



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tribunal, knowing that to whatever hands confided, with the corruptions of time and party, its members would become despots.

Jefferson was responding directly to the power grab that had already occurred, executed by his political rival Chief Justice John Marshall. In [Marbury v. Madison](#) (1803), Marshall declared that the Supreme Court possessed the authority to strike down acts of Congress as unconstitutional. Actually, no such power appears anywhere in the Constitution. Article III defines the judicial power but says nothing about courts invalidating legislation. The power of judicial review appeared in no other national judiciary in world history at the time, nor in the British common law system upon which America's judiciary was based. Marshall invented it in a case strategically engineered to establish the principle while appearing to rule against his own party's interest.

"Despotism of an Oligarchy"

Alexander Hamilton argued in [The Federalist, No. 78](#) that courts would be the "least dangerous branch" because they controlled "neither sword nor purse." Hamilton did not anticipate a court that would seize the power to nullify the sword and purse of the other two branches entirely, making itself, in Jefferson's terms, a "despotism of an oligarchy."

For two centuries, that oligarchy has expanded its reach with remarkable consistency. When Congress began pushing for a binding Supreme Court ethics code following revelations about certain undisclosed gifts and travel accepted by judges on the bench, Chief Justice John Roberts refused to appear before the Senate Judiciary Committee and instead submitted a written statement accompanied by a voluntary ["Code of Conduct"](#) adopted by the Court in November 2023.

Conservatives and liberals alike noted that the code was light on actual ethics and heavy on assertions of judicial independence — for example, "A justice should uphold the integrity and independence of the judiciary." The code contains no enforcement mechanism, no independent investigator, no penalty for violations, and no external oversight. In other words, the Court will police itself.

This is what the Emory students are now challenging for lower court employees. Roberts dressed up institutional self-protection as ethical leadership, but he defended the Court's most cherished attribute: freedom from accountability to the American people.

On the other hand, Congress possesses [constitutional tools](#) it has almost entirely abandoned. Article III gives Congress the power to define and limit the appellate jurisdiction of the Supreme Court. Congress could strip the Court of jurisdiction over entire categories of cases. It could expand the Court. It could impeach Supreme Court justices — a power used precisely once in American history, unsuccessfully, against Justice Samuel Chase in 1804.

That it does none of these things reflects not constitutional limitation but political cowardice — a legislature that has grown comfortable outsourcing the hardest questions to nine unelected lawyers, while using the excuse that "the courts decided it, not us."

The Emory law students, whatever their intentions, have stumbled onto the oldest and deepest contradiction in American constitutional life. The institution that stands in judgment over every other American institution — that tells Congress what it can legislate, tells the president what he can execute, tells states what they can do — answers, in the end, to no one.

Jefferson called it oligarchy. He was right then. He remains right now.



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