

# Talking Turkey: Is the Supreme Court the Biggest Threat to Our Democracy?

By JIM SMITH

Conventional wisdom and conventional teaching of history tells us that the U.S. Supreme Court is the supreme law of the land, that the only branch of government which isn't elected can tell the other two branches of government what is and is not constitutional.

But Thom Hartmann took his readers to school on this topic in his Oct. 20th column, *The Hartmann Report*.

According to Hartmann, "There is literally *nothing* in the Constitution that gives the Supreme Court the exclusive right to decide what the Constitution says or means and impose it on the other two branches of government, or on the rest of America. That is a power the Supreme Court took onto itself in that 1803 decision of its own, *Marbury v. Madison*."

Hartmann continues:

"Instead of putting the Supreme Court in charge of American laws, the Framers of the Constitution did the opposite: they put Congress in charge of the Supreme Court.

"As they wrote in Article 3, Section 2 of the Constitution:

"[T]he Supreme Court shall have

appellate jurisdiction, both as to law and fact, with such Exceptions, and under such Regulations as the Congress shall make.

"Republicans know this well.... Most recently, in the wake of the *Obergefell* gay marriage decision, Republicans in Congress offered a law stripping from the Court its power to rule that gay people could get married. The Marriage Protection Act, which passed the House of Representatives on July 22, 2004 but failed in the Senate, explicitly says:

"No court created by Act of Congress shall have any jurisdiction, and the Supreme Court shall have no appellate jurisdiction, to hear or decide any question pertaining to the interpretation of, or the validity under the Constitution of, section 1738C or this section."

*[End of Hartmann excerpts]*

We have heard that Congress has the power to increase the number of justices on the Supreme Court, but it turns out, according to the Constitution, that it has complete power over the Supreme Court and how it functions.

Now the Court has been overtaken

by rightwing extremists poised, among other things, to make gay marriage illegal, to validate the power of the 30 Republican-controlled state legislatures to ignore presidential balloting and send electors of their choice to the Electoral College, to abolish all forms of local gun control, to end affirmative action by private colleges, and to further gut the 1967 Voting Rights Act.

If that sounds extreme, just consider what the Court has already done:

> It overturned *Roe v. Wade*.

> In *Citizens United*, it allowed unlimited political donations by corporations and their billionaire owners.

> It gutted the power of the EPA to regulate carbon and water pollution.

> It gutted the Civil Rights Act and Voting Rights Act.

> It approved extreme gerrymandering in Wisconsin, Louisiana and Alabama that demonstrably disenfranchised voters of color.

> It eliminated the right of citizens to sue police officers who don't read them their Miranda rights.

> It eliminated protection against unreasonable search and seizure by the Border Patrol or other federal officers

within 100 miles of any border, including the ocean. No warrant necessary!

All those decisions and the ones to come in the Supreme Court's current term are based on that 1803 decision in *Marbury v. Madison* in which the court *empowered itself* to overrule both Congress and the Presidency.

The backlash against *Marbury* was so great that the Court didn't rule on the constitutionality of laws again for over 70 years. But today, it's routine.

Congress has the power to rein in the Supreme Court, revoke its right to overrule its laws and even change the number of justices. Hartmann maintains in his Oct. 20th column that the time is now, because "*if we fail, 2024 may be this nation's last [popular] election for president.*"

You can read the full Hartmann column at <https://hartmannreport.com/p/are-scotus-republicans-in-on-a-plot>.

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