
THE EROSION OF CONSTITUTIONAL SAFEGUARDS: CHALLENGES AND REFORMS IN THE MODERN AMERICAN LEGAL LANDSCAPE

Prithivi Raj, Assistant Professor of Law, Birla Global University, Odisha.

ORCID: <https://orcid.org/0000-0003-2464-2852>

ABSTRACT

Constitutional law in the United States is experiencing significant transformation, influenced by rapid technological progress, evolving political landscapes, and pivotal court decisions. This paper offers a critical analysis of the key emerging challenges facing U.S. constitutional law and explores their impact on democratic values, individual freedoms, and the distribution of governmental power. It focuses on five major areas: presidential immunity (as addressed in *Trump v. United States*, 2024), digital privacy and artificial intelligence, abortion rights in the aftermath of *Dobbs*, the application of the Fourteenth Amendment's Insurrection Clause, and the growing authority of the executive and judiciary. The study contends that the Supreme Court's broad interpretation of presidential immunity threatens executive accountability, while the absence of robust legal standards for AI and digital surveillance raises concerns over the balance between civil liberties and national security. The overturning of *Roe v. Wade* has reignited complex federalism debates, leading to divergent state laws on reproductive rights and interstate travel. Furthermore, the Court's reluctance to clearly define "insurrection" in *Trump v. Anderson* (2024) casts uncertainty on democratic protections. At the same time, the application of the "major questions doctrine" is curbing the authority of federal agencies, potentially weakening the government's ability to regulate effectively. This paper assesses whether these developments reinforce or erode the foundational principles of constitutional governance—namely, checks and balances, equal protection, and democratic integrity. Ultimately, it argues that without decisive legislative action and judicial prudence, the nation risks entering a constitutional crisis characterized by unchecked presidential power, inconsistent rights, and diminishing democratic norms. The paper concludes with policy and legal reform recommendations to address these urgent issues.

Keywords: Administrative Law, Technological Privacy, Democratic Accountability, Constitutional Reform, Reproductive Rights.

Introduction

The U.S. Constitution, conceived as a flexible and enduring framework for governance, now faces extraordinary pressures from contemporary developments. In recent years, the convergence of rapid technological innovation, intensifying political division, and a highly assertive Supreme Court has altered constitutional interpretation in ways that may undermine long-established legal doctrines. This paper investigates some of the most pressing and transformative issues confronting constitutional law today, evaluating how judicial rulings, legislative trends, and societal movements are reshaping the contours of executive power, civil liberties, and democratic governance.

A pivotal moment came with the Supreme Court's 2024 ruling in *Trump v. United States*, which conferred criminal immunity upon former presidents for actions deemed "official." This decision introduces ambiguity in distinguishing between official duties and personal conduct, potentially shielding future presidents from legal consequences and encouraging authoritarian tendencies. The ruling intensifies long-standing concerns about the growth of presidential authority and the diminishing role of institutional checks, particularly in the aftermath of the January 6 Capitol attack and ongoing disputes surrounding the Fourteenth Amendment's Insurrection Clause. In *Trump v. Anderson* (2024), the Court's refusal to determine whether Trump's actions amounted to "engagement in insurrection" left a critical constitutional safeguard unresolved.

In parallel, the legal system is struggling to keep pace with technological progress, especially in areas involving digital privacy and artificial intelligence. Contemporary surveillance tools, predictive policing algorithms, and efforts to regulate online speech present novel constitutional questions under the First and Fourth Amendments. Ongoing litigation, such as *Murthy v. Missouri*, probes the extent to which governmental influence over social media platforms infringes on free expression. The absence of comprehensive federal AI regulation has heightened concerns regarding discrimination, due process, and transparency—raising the broader issue of whether originalist frameworks can adequately address challenges unforeseen by the Constitution's drafters.

The legal terrain of reproductive rights has also shifted dramatically since the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* (2022), which dismantled the federal protection of abortion rights established under *Roe v. Wade*. The resulting delegation

of authority to individual states has produced a fragmented legal landscape, with some states enacting severe restrictions—including limits on out-of-state travel for abortion services—while others codify reproductive freedoms. Emerging "fetal personhood" statutes further complicate matters by threatening access to in vitro fertilization and contraceptive care. These rapid legal reversals have destabilized substantive due process jurisprudence and provoked new federalism conflicts.

Additionally, the Court's reinforcement of the "major questions doctrine," as demonstrated in *West Virginia v. EPA* (2022), represents a fundamental reorientation of administrative law. By requiring clear congressional mandates for significant regulatory initiatives, the doctrine places substantial limits on federal agencies' ability to address multifaceted issues such as climate change, public health, and economic oversight. This judicial trend reflects increasing skepticism toward bureaucratic governance and raises important concerns about the functional balance of power within the federal system.

Taken together, these developments pose a serious test for the adaptability and durability of the U.S. Constitution. This paper contends that absent meaningful interventions—whether through legislative clarification, judicial moderation, or civic engagement—the nation risks entering a period of constitutional disarray defined by unrestrained executive authority, inconsistent protections of individual rights, and weakened democratic institutions. The sections that follow provide a detailed examination of these legal shifts, offering both critical insights and potential strategies for reinforcing constitutional stability in the face of evolving challenges.

2. Presidential Immunity and the Expansion of Executive Power

The Supreme Court's 2024 ruling in *Trump v. United States* marked a dramatic turning point in the doctrine of executive accountability. In a highly consequential decision, the Court held that former presidents are entitled to absolute immunity from criminal prosecution for actions undertaken in their official capacity, while denying such protection for private conduct. The case, stemming from former President Donald Trump's alleged involvement in efforts to overturn the 2020 election, including the events of January 6, did not definitively determine whether Trump's specific actions were protected. Instead, the Court remanded the case, directing lower courts to evaluate which of his actions constituted "official acts" under the new framework. This distinction introduces substantial legal uncertainty, delegating immense

discretion to future judges and potentially altering the balance between the executive and the broader constitutional system.

The ruling has ignited a contentious debate over its implications. Advocates argue that immunity from prosecution is necessary to shield presidents from retaliatory legal action, preserving the office's ability to function effectively even after a president leaves office. They caution that, without such protections, political prosecutions could deter decisive action or invite endless litigation. Critics, however, view the ruling as a judicial endorsement of executive exceptionalism—one that dangerously elevates the presidency above the law. They stress that the Constitution's drafters intentionally rejected monarchical immunity, instead designing mechanisms like impeachment to hold presidents accountable. In granting a form of legal invulnerability through judicial interpretation, the Court has arguably introduced a power the Founders never intended, threatening the delicate architecture of checks and balances.

A key weakness in the decision lies in its refusal to articulate a clear standard for what constitutes an "official act." The Court offered no concrete test, leaving lower courts to interpret the distinction case by case. This ambiguity will likely foster inconsistent rulings and strategic litigation, as future presidents may attempt to frame controversial actions as official to secure immunity. For instance, if a sitting president pressures state officials to alter certified election results, does that fall within their constitutional duty to ensure electoral integrity, or is it a personal effort to retain power? In modern governance, where presidential conduct often straddles public and private spheres, this lack of clarity risks inviting abuse. The absolutist tone of the ruling overlooks the complexity of executive action in the digital and political age, and in doing so, may entrench a model of the presidency that is increasingly impervious to legal scrutiny.

Historically, the ruling represents a departure from the constitutional vision espoused by the Founders. The framers of the Constitution, wary of concentrated authority, designed a tripartite system meant to restrain unilateral power—particularly in the executive. In *Federalist No. 69*, Alexander Hamilton contrasts the presidency with hereditary monarchy, emphasizing the legal accountability of elected leaders. The *Trump v. United States* decision arguably undermines this foundational principle by carving out a legal sanctuary around the presidency. Even if motivated by a desire to limit politically charged prosecutions, the Court's broad grant of immunity undercuts the notion that no one, including the president, is above the law. This shift

risks opening the door to authoritarian behavior cloaked in the legitimacy of "official duty."

The consequences of this precedent could be far-reaching. First, it threatens to weaken the structural safeguards intended to constrain executive overreach. If presidents can assert immunity for any action plausibly linked to their official role, the judiciary may be less willing—or even unable—to intervene. Congressional oversight, already hampered by partisanship, may be the only remaining check. Second, the decision could discourage the Department of Justice from investigating former presidents, fearing accusations of political motivation. This hesitation may embolden future officeholders to act with impunity. Third, public confidence in the rule of law may deteriorate, reinforcing perceptions that political elites are insulated from accountability. The Court's own legitimacy, already under public scrutiny, may suffer further as it is seen to be facilitating executive impunity.

Ultimately, *Trump v. United States* may be remembered as a defining moment in the constitutional evolution of presidential power. By insulating official conduct from legal accountability, the Court has shifted the balance of power in favor of the executive, with significant implications for the future of democratic governance. The decision's ambiguity ensures continued litigation and uncertainty, while its underlying rationale empowers future presidents to test—and potentially expand—the boundaries of their authority. Without legislative intervention or judicial recalibration, this ruling could usher in a new phase of executive supremacy, challenging the core tenets of constitutional democracy. The critical question is whether other branches of government—or the electorate itself—will act to reaffirm the principle that in a constitutional republic, no individual is above the law.

3. Digital Privacy and Constitutional Boundaries: AI, Data, and the Future of the Fourth Amendment

The rapid advancement of digital technology has created unprecedented challenges for Fourth Amendment jurisprudence, forcing courts to reconcile 18th-century constitutional principles with 21st-century surveillance capabilities. In *Carpenter v. United States* (2018), the Supreme Court grappled with whether warrantless access to historical cell phone location data violated the Fourth Amendment's protection against unreasonable searches. The 5-4 decision marked a pivotal shift, recognizing that modern data collection creates "a detailed chronicle of a person's physical presence" that demands constitutional protection. However, *Carpenter* left critical questions unresolved—particularly regarding other forms of surveillance such as geofence

warrants, real-time tracking, search histories, and biometric data harvested through wearables. These technologies have created a legal gray zone where law enforcement capabilities increasingly outpace judicial oversight, raising fundamental questions about privacy in a digitized society.

Artificial intelligence has introduced even more complex constitutional dilemmas, especially through its deployment in predictive policing systems. These systems, often marketed as neutral tools, can reinforce structural inequalities by disproportionately targeting minority communities for surveillance and law enforcement presence. Programs like Chicago's now-defunct Strategic Subject List and Los Angeles's Operation LASER have drawn criticism for their opaque methodologies and racial biases. This raises serious concerns under the Fourteenth Amendment's Equal Protection Clause, particularly when the algorithmic decision-making process remains shielded from public or judicial scrutiny. Courts have at times focused narrowly on evaluating the "inputs and outputs" of these systems, ignoring the black-box nature of the algorithms themselves. This superficial approach fails to address the deeper structural issue: algorithmic bias may institutionalize discrimination under the veneer of objectivity, fostering what scholars term "automated inequality."

The intersection of government power and social media moderation adds another layer of complexity, as illustrated in the pending case of *Murthy v. Missouri*. This case examines whether federal officials violated the First Amendment by allegedly pressuring social media platforms to suppress COVID-19 "misinformation." Plaintiffs argue that such pressure constitutes unlawful state action and censorship-by-proxy, while the government insists it was engaging in legitimate public health coordination. The outcome may redefine the line between permissible government speech and unconstitutional coercion, particularly in what some now call the "digital public square." If platforms like Facebook and X (formerly Twitter) perform functions akin to traditional public forums, should they be subject to First Amendment scrutiny despite their private status? Lower courts have issued conflicting rulings—some likening platforms to common carriers, others treating them as private publishers—highlighting the growing tension between corporate autonomy, free speech, and democratic accountability.

Historical constitutional frameworks offer limited guidance in resolving these tensions. When James Madison authored the Fourth Amendment in 1791, he envisioned protections against physical searches of "persons, houses, papers, and effects," not the extraction of cloud-stored

messages or real-time geolocation. Originalists argue that only those digital intrusions that mirror traditional physical searches merit protection. This rigid textualism clashes with living constitutionalist approaches, which advocate interpreting the framers' principles in light of contemporary realities. The Court has attempted a middle path—most notably through the “reasonable expectation of privacy” test used in *Carpenter*—but its application has been inconsistent. For instance, while cell-site location data may be protected, metadata such as IP addresses, search logs, or browsing patterns often are not, despite revealing equally intimate information.

Complicating matters further is the rise of private data brokers, which has exposed a critical gap in constitutional protections. Today, corporations collect more personal data than government agencies, often under the guise of voluntary disclosure. Under the third-party doctrine—first articulated in *Smith v. Maryland* (1979) and reaffirmed by later rulings—individuals lose Fourth Amendment protection over data shared with third parties. This precedent persists despite the fact that participation in modern life (e.g., using GPS, smartphones, or cloud services) all but necessitates such sharing. Legal scholar Orin Kerr has dubbed this the “third-party doctrine paradox”: law enforcement can simply buy sensitive information from brokers rather than obtain a warrant, effectively bypassing constitutional safeguards and undercutting the *Carpenter* ruling.

The absence of comprehensive federal legislation has only exacerbated these issues. Unlike the European Union, which has enacted robust regulations like the General Data Protection Regulation (GDPR) and the AI Act, the U.S. continues to rely on a fragmented patchwork of state laws and outdated federal statutes like the 1986 Electronic Communications Privacy Act. In this vacuum, courts are forced to act as ad hoc regulators, often without the technical expertise or institutional capacity to do so effectively. The consequences are visible across sectors: police departments use facial recognition software with minimal oversight; schools experiment with emotion-detecting AI on students; and employers deploy productivity-tracking algorithms that verge on surveillance—all in a regulatory landscape riddled with inconsistencies.

These domestic challenges are further magnified by global divergence in digital governance. U.S.-based tech firms often operate under permissive domestic laws while simultaneously navigating strict compliance regimes abroad. This not only creates logistical and economic

hurdles but also calls into question whether digital rights are to be treated as universal human entitlements or contingent commodities. As the regulatory gap widens, we may see an increasingly fragmented internet, divided along national or ideological lines.

Ultimately, the Fourth Amendment's continued relevance in the algorithmic age will hinge on either judicial boldness or legislative modernization. The courts could extend *Carpenter* to newer technologies such as AI-driven behavioral profiling or location-based dragnet surveillance. Alternatively, Congress could enact comprehensive legislation addressing data privacy, algorithmic transparency, and limits on warrantless access to digital information—much like the Wiretap Act of 1968 responded to telephone surveillance. Without such interventions, the constitutional right to privacy risks fading into obsolescence, reduced to a historical artifact in a world where every digital footprint—from keystrokes to heartbeats—is tracked, stored, and commodified. The challenge lies not only in interpreting the Fourth Amendment for new technologies but in preserving its enduring spirit against the tides of technological transformation.

4. Abortion Rights, Federalism, and the Legal Landscape After *Dobbs*

4.1 The Aftermath of *Dobbs*

The U.S. Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* (2022) overturned both *Roe v. Wade* and *Planned Parenthood v. Casey*, thereby eliminating the constitutional right to abortion and transferring the authority to regulate abortion laws back to individual states. This landmark decision sparked immediate legislative responses across the country—some states implemented sweeping bans, while others took steps to reinforce abortion access. For example, Arizona revived a near-total abortion ban from 1864, which led to significant legal confusion until a temporary 15-week limit was enforced. In a similar vein, Florida's Supreme Court upheld a six-week ban but also permitted a 2024 ballot initiative that could secure abortion rights in the state constitution.

Alongside these legal shifts, the idea of “fetal personhood” has begun gaining traction in several jurisdictions. Recognizing fetuses as legal persons could have far-reaching implications for reproductive healthcare, potentially criminalizing embryo destruction in IVF treatments and undermining access to contraception by redefining the legal start of life. These developments reveal the legal and medical uncertainty triggered by *Dobbs*, as states adopt increasingly

aggressive restrictions that could redefine reproductive rights in broader terms.

4.2 Analytical Perspectives

4.2.1 Federalism or an Erosion of Rights?

Proponents of the *Dobbs* decision assert that it appropriately restored abortion policymaking to elected state legislatures, consistent with federalist principles. However, opponents argue that the ruling goes beyond decentralization—it weakens the doctrine of substantive due process, which has historically protected rights related to personal autonomy, such as same-sex marriage and access to contraception. By discarding the notion that reproductive freedom is constitutionally protected, the decision sets a dangerous precedent for other privacy-related rights.

The uneven state-level responses have resulted in a fragmented system where abortion access is determined by geographic location. This disparity especially burdens low-income individuals who lack the means to travel for reproductive care, effectively creating a tiered structure of reproductive rights across the country.

4.2.2 Legal Disputes Across State Lines

The *Dobbs* decision has also led to inter-state legal confrontations. One contentious issue is whether states can prevent their residents from obtaining abortions in jurisdictions where it remains legal. In *Idaho v. United States*, the federal government has contested Idaho's strict abortion laws, arguing that they conflict with the Emergency Medical Treatment and Labor Act (EMTALA), which mandates emergency care, including abortion in life-threatening situations. The outcome of this case could determine whether federal law can override state-level abortion bans under emergency circumstances.

Additionally, concerns over digital surveillance have emerged. Prosecutors in some states have sought access to users' data from period-tracking apps and search histories to investigate suspected abortions, raising significant Fourth Amendment issues. In response, states like California have enacted "data shield" laws to block the transfer of reproductive health data to out-of-state law enforcement. These legal clashes emphasize that abortion restrictions are now influencing areas far beyond clinics—including digital privacy and interstate rights.

4.3 Long-Term Consequences

4.3.1 Political and Electoral Response

Despite the Court's ruling, public sentiment continues to favor abortion rights, fueling a political backlash. Voter-led initiatives protecting abortion access have succeeded in traditionally conservative states like Kansas (2022) and Ohio (2023), reflecting widespread opposition to draconian bans. These outcomes suggest that *Dobbs* has galvanized pro-choice movements and made reproductive rights a prominent electoral issue. Several states, including Florida and Maryland, are set to vote on constitutional amendments to secure abortion rights in 2024, potentially reshaping the national legal framework further.

4.3.2 Emerging Legal Approaches

With federal constitutional protections eliminated, legal scholars and advocates are examining alternative legal grounds to safeguard abortion access. One avenue is the Commerce Clause, which allows Congress to regulate interstate commerce. Since abortion pills are commonly shipped across state lines, the federal government may argue that it has the authority to override state-level bans. The Biden administration has already invoked this argument in defending the mail-order distribution of mifepristone, although this expansion of federal power may face resistance in conservative courts.

Another strategy involves invoking equal protection claims, asserting that abortion bans unjustly discriminate against women by restricting their bodily autonomy in ways not imposed on men. Additionally, some argue that such bans infringe on religious freedoms for individuals whose beliefs support abortion rights. While success under these theories remains uncertain in current judicial climates, they represent innovative legal responses to the vacuum left by *Dobbs*.

The *Dobbs* decision has ignited a multifaceted and ongoing legal struggle over reproductive rights, federalism, and digital privacy. While certain states have enacted harsh prohibitions, others have fortified access, resulting in a divided legal landscape. The rise in interstate legal clashes, electoral mobilization, and inventive constitutional arguments suggests that *Dobbs* has not ended the abortion debate—it has transformed and intensified it. The legal and political reverberations of this shift will continue to shape American jurisprudence and public discourse

in the years ahead.

5. The Insurrection Clause and Democratic Stability: A Constitutional Crisis Unresolved

The U.S. Supreme Court's ruling in *Trump v. Anderson* (2024) significantly curtailed the enforceability of Section 3 of the Fourteenth Amendment, which disqualifies individuals involved in insurrection from holding public office. The Court held that states cannot disqualify federal candidates under this provision without explicit congressional legislation, leaving Section 3 effectively dormant. The case stemmed from legal attempts to bar Donald Trump from appearing on the 2024 ballot due to his alleged role in the January 6 Capitol attack, considered by many as an "insurrection." While the Court unanimously overturned Colorado's disqualification of Trump, it avoided addressing whether January 6 legally constituted an insurrection or whether Trump's conduct met the threshold for disqualification. As a result, the ruling left Section 3's intent intact but hollowed out its practical application, endangering constitutional safeguards meant to protect democratic stability.

5.1 Judicial Avoidance vs. Constitutional Duty

By refusing to determine whether Trump's actions amounted to insurrection, the Court sidestepped a core constitutional issue. Section 3 was intended to prevent individuals who violated their oath through insurrection from holding office. However, the majority reframed it as a matter for Congress, despite the amendment's text lacking any requirement for enabling legislation—unlike Section 5. Historically, during Reconstruction, states enforced Section 3 without awaiting congressional action. Scholars such as Laurence Tribe argue that the Court undermined Section 3's self-executing nature by fabricating a legislative prerequisite. This decision effectively shifts the responsibility for disqualifying insurrectionists to a politically divided Congress—an outcome the drafters of the Fourteenth Amendment sought to avoid. In today's partisan climate, this creates a perverse incentive: those who challenge democracy may remain eligible for office if protected by congressional allies.

5.2 The Ghost of January 6: Unanswered Questions and Future Risks

The Court's avoidance leaves unresolved the legal classification of January 6 and Trump's conduct, inviting continued legal ambiguity. Although the Court rejected the claim that Section 3 does not apply to presidents, it provided no guidance for assessing insurrectionist acts. This

ambiguity allows Trump and supporters to claim exoneration and hampers future disqualification efforts. Moreover, the ruling implies that bipartisan congressional consensus is needed to disqualify federal candidates—an unlikely scenario in the current polarized climate. If a future insurrection were to occur, partisan divisions in Congress could prevent accountability, weakening the constitutional mechanism designed to protect democratic institutions.

5.3 Erosion of Democratic Norms

The decision contributes to the erosion of democratic norms by weakening consequences for anti-democratic actions. Allowing Trump—a central figure in attempts to overturn an election—to remain on the ballot without judicial evaluation dilutes deterrence against similar conduct. Political scientists warn that this fosters a “precedent of impunity,” emboldening election deniers. In 2024, over 150 candidates still reject the legitimacy of the 2020 election, reflecting the spread of this mindset. The ruling also undermines public trust in the judiciary’s impartiality, especially given the Court’s conservative majority, three of whom were appointed by Trump.

5.4 Congressional Inaction and Institutional Failure

The Court’s reliance on congressional action to enforce Section 3 ignores the reality of legislative dysfunction. Since the January 6 attack, Congress has failed to pass even basic electoral reforms, let alone a bipartisan enforcement mechanism for Section 3. Although the House’s January 6 Committee issued criminal referrals against Trump, it did not pursue post-presidency impeachment, and efforts to establish an investigative commission were blocked in the Senate. With a Republican-controlled House in 2024 and continued partisan division, the likelihood of enacting enabling legislation is virtually nonexistent. This paralysis renders the Court’s ruling practically unworkable.

5.5 Long-Term Consequences: A Blueprint for Insurrection

The *Anderson* decision may serve as a roadmap for future insurrectionists. By requiring congressional authorization, the Court has created an exploitable loophole: as long as a candidate’s political party holds power in one chamber of Congress, they are shielded from disqualification. This dynamic enables authoritarian figures to incite unrest, gain office, and

then manipulate gridlock to avoid consequences. While the Court prohibited states from disqualifying federal candidates, it left open the possibility for states to apply Section 3 to state-level races. This inconsistent application could result in bizarre outcomes, such as a person being disqualified from running for governor but allowed to run for president, further undermining public confidence in legal coherence.

The *Trump v. Anderson* ruling leaves Section 3 of the Fourteenth Amendment in constitutional limbo—technically valid, yet functionally ineffective. The Court's refusal to address core issues has intensified the threat to democratic stability, offering no deterrent to future political violence or election denialism. This case exemplifies how judicial inaction, paired with legislative gridlock, can hollow out constitutional protections. Unless reversed or clarified, Section 3 risks becoming a symbolic provision without force, and the price of that inaction may ultimately be paid not in theory, but in the unraveling of democratic order itself.

6. The "Major Questions Doctrine" and the Decline of Administrative Power: A Critical Analysis

6.1. The Rise of the Major Questions Doctrine

The Supreme Court's reinvigoration of the "major questions doctrine" marks a seismic shift in administrative law, redefining the balance of power between Congress, agencies, and the judiciary. Rooted in the principle that agencies cannot regulate on issues of "vast economic or political significance" without explicit congressional authorization, the doctrine asserts that only elected legislators—not unelected bureaucrats—should resolve transformative policy questions. This judicial philosophy gained prominence in **West Virginia v. EPA** (2022), where the Court struck down the Clean Power Plan, ruling that the Environmental Protection Agency (EPA) lacked clear statutory authority to mandate a nationwide transition from coal to renewable energy. By demanding specificity in congressional delegations of power, the doctrine challenges decades of agency discretion under broad statutes like the Clean Air Act, effectively narrowing the scope of regulatory authority.

6.2. Recent Cases Reshaping Administrative Governance

i) **West Virginia v. EPA (2022)**: This landmark case centered on the EPA's authority to regulate greenhouse gas emissions under Section 111(d) of the Clean Air Act. The Court's 6-

3 decision invoked the major questions doctrine, concluding that Congress did not plainly authorize the EPA to devise industry-wide emission caps or force energy generation shifts. The ruling signaled the Court's skepticism of agency-initiated systemic reforms, emphasizing that Congress must "speak clearly" on major policy decisions. Critics argue this undermines agencies' ability to address evolving crises like climate change, while proponents laud it as a restoration of legislative accountability.

ii) **Securities and Exchange Commission v. Jarkesy (2024)**: Extending the judiciary's scrutiny of administrative power, **Jarkesy** expanded Seventh Amendment rights by requiring jury trials for defendants facing Securities and Exchange Commission (SEC) enforcement actions seeking civil penalties. The 6-3 majority held that such penalties are akin to traditional legal—not equitable—remedies, thus triggering constitutional jury guarantees. This decision disrupts the SEC's longstanding use of in-house administrative law judges (ALJs), potentially delaying enforcement and increasing litigation costs. It reflects a broader trend of curbing agency autonomy by imposing procedural constraints rooted in constitutional interpretation.

6.3. Checks on Bureaucracy or Judicial Overreach?

The major questions doctrine and decisions like **Jarkesy** have ignited debates over judicial role redefinition. Supporters frame these rulings as necessary checks on the "administrative state," arguing that agencies have usurped legislative authority by resolving contentious policy debates under vague statutory mandates. By demanding explicit congressional approval for consequential regulations, the Court aims to preserve democratic accountability and prevent bureaucratic overreach.

However, critics contend the doctrine constitutes judicial activism, enabling courts to second-guess agency expertise under the guise of textualism. Historically, Congress has delegated broad authority to agencies to tackle complex issues, trusting their technical proficiency. Requiring granular legislative directives for every significant regulation risks paralyzing governance, particularly in fast-evolving domains like technology, public health, and climate policy. The doctrine's nebulous standard—what constitutes a "major question"—grants judges disproportionate influence over policy outcomes, politicizing statutory interpretation.

6.4. Impact on Governance and Regulatory Efficacy

The practical consequences of these rulings are profound:

i) **Stalled Climate Action: West Virginia v. EPA** has emboldened legal challenges to federal climate rules, delaying emissions reductions critical to mitigating global warming.

ii) **Financial and Public Health Risks:** Agencies like the Securities & Exchange Commission and FDA may hesitate to address emerging risks (e.g., crypto markets, pandemics) without explicit congressional mandates, creating regulatory gaps.

iii) **Procedural Burdens: Jarkesy's** jury trial requirement complicates enforcement, diverting agency resources to court battles and weakening deterrence against corporate misconduct. These impacts highlight a tension between legal formalism and functional governance. While the doctrine seeks to rebalance constitutional powers, it risks ossifying the administrative state's capacity to respond to crises, particularly in a gridlocked Congress unlikely to pass detailed legislation.

6.5. Long-Term Implications

The Court's skepticism of administrative authority reflects a broader judicial project to redefine the separation of powers. By elevating congressional intent and constitutional procedure over agency flexibility, the rulings prioritize structural accountability over adaptive governance. Yet this shift may exacerbate systemic vulnerabilities:

- a) **Congressional Dysfunction:** Reliance on hyper-specific legislation ignores political realities, where partisan divides often preclude nuanced policymaking.
- b) **Judicial Centralization:** Courts increasingly arbitrate policy outcomes, transforming judges into de facto regulators.
- c) **Erosion of Expertise:** Deterring agencies from proactive rulemaking sidelines specialized knowledge, potentially harming public welfare.

The major questions doctrine and related rulings represent a pivotal reordering of administrative law, privileging legislative clarity and judicial oversight over agency initiative. While these decisions aim to curb bureaucratic overreach, they risk undermining the regulatory state's ability to address complex, interdisciplinary challenges. The long-term test will be whether this recalibration strengthens democratic accountability or entrenches governance paralysis in an era demanding agile, expert-driven solutions. As the judiciary continues to

redraw the boundaries of administrative power, the delicate balance between legality, efficiency, and adaptability remains at stake.

7. Conclusion: A Constitutional Crisis in the Making?

Recent judicial, technological, and political developments have pushed American constitutional governance to a precarious tipping point. The Supreme Court's expansive rulings, such as granting presidential immunity in *Trump v. United States* (2024) and its refusal to enforce the Fourteenth Amendment's Insurrection Clause in *Trump v. Anderson* (2024), have weakened critical checks on executive power and emboldened anti-democratic forces. Meanwhile, the lack of robust protections for digital privacy and reproductive rights has created a fragmented legal landscape, where core liberties depend on geographic and political factors. Together, these trends signal a looming constitutional crisis marked by institutional decay, unequal citizenship, and the rise of authoritarian tactics.

7.1. Expanding Executive Power and the Threat to Accountability

The *Trump v. United States* ruling, which shields presidents from criminal liability for "official acts," undermines the principle that no one is above the law. By protecting actions plausibly tied to presidential duties, this decision enables future presidents to push legal boundaries without fear of prosecution, threatening the foundation of a democratic system where accountability is paramount.

7.2. Digital Rights: A Constitutional Void in the Algorithmic Age

The Fourth Amendment's protections are outdated in the digital age, as law enforcement exploits loopholes in digital privacy, such as purchasing data from brokers or using facial recognition. The absence of federal digital privacy protections leaves individuals vulnerable to surveillance and exploitation, creating a constitutional void that has yet to be addressed by lawmakers or courts.

7.3. Post-Dobbs Federalism: The Balkanization of Rights

The overturning of *Roe v. Wade* has resulted in a patchwork of state-level policies on reproductive rights, creating second-class citizenship for women in restrictive states. The rise of "fetal personhood" laws further threatens reproductive freedom, while gerrymandered

legislatures continue to defy majority opinion, exposing the vulnerabilities of federalism.

7.4. Democracy at Risk: The Insurrection Clause's Paralysis

The Court's decision in *Trump v. Anderson* to effectively nullify Section 3 of the Fourteenth Amendment has left democracy vulnerable to insurrectionists. By requiring congressional action to disqualify candidates, the ruling incentivizes bad actors to incite violence and manipulate partisan gridlock to remain in power. This, combined with *Trump v. United States*' immunity shield, signals a weakening of constitutional safeguards.

7.5. Recommendations: Pathways to Constitutional Renewal

The U.S. must respond to these constitutional challenges through comprehensive reform:

- i. **Legislative Reforms:** Clarify presidential immunity, distinguishing between legitimate acts and abuses of power. Operationalize Section 3 of the Fourteenth Amendment with independent tribunals for disqualification claims.
- ii. **Constitutional Amendments:** Introduce a "Digital Privacy Amendment" to extend Fourth Amendment protections to digital data and regulate social media platforms as public utilities under the First Amendment.
- iii. **Federal Intervention:** Congress should use its authority to protect fundamental rights across state lines, including reproductive rights and ballot initiatives.
- iv. **Judicial Restraint:** Implement judicial reforms, including term limits for Supreme Court justices and stricter ethics rules, to ensure a neutral judiciary.
- v. **Public Mobilization:** Continue grassroots efforts to defend democratic norms and ensure the preservation of fundamental rights.

7.6. The Constitution's Resilience at a Crossroads

The American Constitution faces an existential challenge: adapt to modern realities or risk fracture under its contradictions. While recent trends have weakened the separation of powers, the Constitution's resilience lies in its ability to adapt through amendments, legislation, and public demand. The future requires bold action: Congress must reclaim authority, courts must

balance originalism with equity, and citizens must vigilantly defend democracy. If not, the Constitution may become a relic, unable to safeguard liberty in the face of autocratic forces. The crisis is avoidable, but it requires confronting hard truths about power, accountability, and the pursuit of "a more perfect Union."

REFERENCES:

- i. Liberty University Journal of Statesmanship & Public Policy. (2023). Cassady, K. *Bureaucratic overreach and the role of the courts in protecting representative democracy*, 4(1), Article 1. <https://doi.org/10.70623/FDCC1147>
- ii. WakeUpToPolitics. (n.d.). *When I will call something a “constitutional crisis”*. <https://www.wakeuptopolitics.com/p/when-i-will-call-something-a-constitutional>
- iii. RAJ, P., & NOORANI, M. S. (2021). Entity Of Privacy In The Era Of Technology. *Journal of Contemporary Issues in Business and Government Vol*, 27(1).
- iv. Trump v. United States, 603 U.S. 593 (2024)
- v. Trump v. Anderson, 601 U.S. 100 (2024)
- vi. MURTHY, SURGEON GENERAL, ET AL. v. MISSOURI ET AL., CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, No. 23–411. Argued March 18, 2024—Decided June 26, 2024
- vii. Roe v. Wade, 410 U.S. 113 (1973)
- viii. Raj, P. (2023). Regulating Surrogacy in India: Legal Frameworks, Ethical Considerations and Lessons from Global Practices. *Nyaayshastra L. Rev.*, 4, 1.
- ix. Dobbs v. Jackson Women’s Health, 597 U.S. 215 (2022)
- x. West Virginia v. EPA, 597 U.S. 697 (2022)
- xi. Carpenter v. United States, 585 U.S. 296 (2018)
- xii. Raj, P., & Noorani, M. S. (2020). Applicability of Hans Kelsen's' Grundnorm'. *Issue 2 Int'l JL Mgmt. & Human.*, 3, 559.
- xiii. Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992)
- xiv. Idaho v. United States, 533 U.S. 262 (2001)

- xv. West Virginia v. EPA, 597 U.S. 697 (2022)
- xvi. Securities & Exch. Comm’n v. Jarkesy, No. 22-859 (2024) (“Jarkesy”)
- xvii. Dobbs v. Jackson, 142 S. Ct. 2228 (2022)
- xviii. RAJ, P., & NOORANI, M. S. (2021). EXISTENCE OF SEPARATION OF POWER AND RULE OF LAW IN DEMOCRACY & REPUBLICAN FORM OF GOVERNMENT IN THE ERA OF TRANSFORMATIVE CONSTITUTIONALISM. *Ilkogreti m Online*, 20(5).
- xix. American Academy of Arts & Sciences. (2021, June 16). *Constraining bureaucracy beyond judicial review*. <https://www.amacad.org/publication/daedalus/constraining-bureaucracy-beyond-judicial-review>
- xx. Cato Institute. (2022, November 1). *Reining in the unreasonable executive* (Policy Analysis No. 935). <https://www.cato.org/policy-analysis/reining-unreasonable-executive>
- xxi. Sohoni, M. (2022, November). The major questions quartet. *Harvard Law Review*, 136(1). <https://harvardlawreview.org/print/vol-136/major-questions-quartet/>
- xxii. Raj, P., & NOORANI, M. S. (2020). Constitutional Amendment: A Critical Analysis. *International Journal of Legal Science and Innovation*, 2(3).
- xxiii. Congressional Research Service. (2024, September 16). *Judicial review under the Administrative Procedure Act (APA)* (LSB10558). <https://www.everycrsreport.com/reports/LSB10558.html>
- xxiv. Raj, P. (2024). From Medicalism to Legalism Evolving Perspectives in Mental Health Legislation and the Protection of Individual Rights. *International Journal of Science and Healthcare Research*. <https://doi.org/10.52403/ijshr.20240429>
- xxv. Rozell, M. J. (2020). Executive privilege and the Trump administration: Implications for American democracy. *Presidential Studies Quarterly*, 50(2), 276–295. <https://doi.org/10.1111/psq.12656>

- xxvi. Solove, D. J. (2021). The myth of the privacy paradox. *George Washington Law Review*, 89(1), 1–45.
- xxvii. Ziegler, M. (2022). After Roe: The lost history of the abortion debate. *Yale University Press*.
- xxviii. Baude, W., & Paulsen, M. S. (2023). The sweep and force of Section Three. *University of Pennsylvania Law Review*, 172(1), 1–60.
- xxix. Citron, D. K., & Pasquale, F. (2014). The scored society: Due process for automated predictions. *Washington Law Review*, 89(1), 1–33.