



# The Seila Law case: Liberty and political firing

BY DAVID M. DRIESEN, OPINION CONTRIBUTOR — 07/01/20 07:30 PM EDT

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In *Seila Law*, the [Supreme Court](#) gave President Trump a constitutional right to fire the director of the Consumer Financial Protection Bureau for political reasons, nullifying a statute that only authorizes him to fire the director for good cause in a 5-4 decision. The “presidentialist” majority’s reasoning creates a broad constitutional rule authorizing firing almost any powerful executive branch official for wholly political reasons. *Seila Law* legitimizes President Trump’s repeated abuse of the power to fire federal officials, which he has used to undermine the rule of law.

Astonishingly, Chief Justice John Roberts’s majority opinion associates the president’s ability to use political firing to instill fear in government employees with the preservation of liberty. The majority, in keeping with conservative political philosophy, sees government bureaucrats as the primary threat to liberty. But almost all of world history, including our own experience in the Revolutionary War, suggests that the chief executive constitutes the primary threat to liberty and democracy itself and that an autocrat destroys democracy through command of subordinates.

The majority creates a constitutional right to fire officials carrying out their duties properly in the midst of a presidential campaign against our democracy that uses abusive political firings to destroy the rule of law. The list of those let go for obeying the law and revealing information about government abuses includes: District Attorney [Geoffrey Berman](#), for conducting investigations of the president’s associates; Inspector General [Michael Atkinson](#), for obeying law requiring sharing a whistleblower

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complaint with Congress; [many other inspectors general](#), for checking governmental corruption; Homeland Security Director [Kirstjen Nielsen](#), for obeying some immigration law; Attorney General [Jeffrey Sessions](#), for obeying legal ethics rules; and FBI Director [James Comey](#), for investigating Russian involvement in the 2016 election. All government officials now know that speaking the truth or obeying the law on matters important to Trump endangers their livelihood.

The rule of law has more or less collapsed in the federal government under this pressure, as the lower courts, at least, seem to recognize. The Trump administration has lost an astonishing [91 percent](#) of its regulatory cases (the typical win rate is above 69 percent). Congress largely denies the president funding for his border wall, but he starts to [build one](#) anyway. Congress requires a panel of inspectors general to make sure that massive outlays responding to the coronavirus are spent properly, but again, the president [fires the inspector general](#) overseeing the effort and then hides information on expenditures from Congress.

Trump will surely view *Seila Law* as vindicating his abuse of executive power, and his supporters (at least) will likely view it that way as well. *Seila Law* also hamstring Congress, limiting its capacity to protect the rule of law from Trump and future demagogues who might endanger our democracy.

Moreover, experience abroad indicates that giving the chief executive unchecked control over powerful officials can lead to [permanent destruction](#) of democracy. Indeed, the sort of control the court mandated in *Seila* constitutes a hallmark of autocracy.

Many autocrats have secured constitutional changes resembling those our activist court just put in place in *Seila Law*, albeit through formal constitutional amendments, not judicial fiat. These constitutional amendments gave these autocrats complete control over formerly independent prosecutors and government agencies. The autocrats Trump so admires, such as Hungary's Viktor Orbán and Turkey's Recep Tayyip Erdoğan, [have used that authority](#) to drive neutral experts from the government in favor of lackeys who protect the head of state's corrupt supporters and persecute his enemies. Such power ends democracy and liberty. Erdogan [jails](#) his opponents, while Orbán sidelines them with bogus and oppressive corruption [investigations](#) conducted by pliant prosecutors.

Trump follows in their footsteps, having subverted the Department of Justice to protect his supporters and urged it to persecute his political opponents as well. Now that *Seila Law* has declared that the president has complete control of law execution, prosecutors may find it hard to refuse to open baseless investigations of political opponents.

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The constitutional text does not require the court to create a presidential right to abuse removal power. It nowhere mentions a presidential removal authority and authorizes Congress to regulate the executive branch. The court derives the president's political removal authority from the president's power to execute the law. But the power to fire for political

reasons constitutes a power to interrupt and upend faithful law execution.

Even if our democracy survives President Trump, the Justices just placed a time bomb in the Constitution — likely to go off next time a demagogue seeking absolute power assumes the office.

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