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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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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