

An Essay on Democracy, The Rule of Law, and the 2024 U.S. Presidential Election

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Introduction

This essay is based on a talk I gave at Nanzan University Center for American Studies in July of 2024. Here I will focus on some of the threats to democracy, the rule of law, and the civil rights and civil liberties of Americans that could be at risk depending on the outcome of the 2024 United States election. By the time this essay is in print the election will be over, but the concerns addressed herein are important regardless of who wins the election. If Vice President Harris wins, the risks will not be immediate, but unless the MAGA movement and its supporters were to completely disappear the risks will remain in the background. If Trump wins, the risks will be both immediate and potentially devastating to democracy in the United States.

The views expressed in this essay are my own and are based on the sources cited herein. It is essential to note that I am primarily a legal scholar with a significant focus on law and religion issues as well as Japanese law issues. Therefore, my opinions on some of the issues addressed in this essay are as much based on my substantial experience as a global scholar with a vast amount of experience in Asia as on my expertise as a legal scholar. Parts I and III of the essay are based in my global experience, but also reflect opinion supported by the sources cited in those parts. Part II is heavily based on my experience as a legal scholar. Part IV is essentially based in common sense given that much of the information comes from recorded and widely disseminated statements made by Trump in recent years. The final section sets forth a brief conclusion.

I: Democracy Versus Authoritarianism

The United States is a representative democracy and while most political systems are far from perfect, democratic systems operate far better than

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authoritarian, theocratic, or dictatorial systems, especially for protecting the rights and liberties of the people.¹ Trump demonstrated during his time as president, and since that time, that he has an unusual affinity for authoritarian leaders such as Vladimir Putin, Victor Orban, and Kim Jong Un, among others. Moreover, Trump has said repeatedly that he would seek revenge on those he perceives to have wronged him, including political rivals and those in the media.² In fact, there is some speculation that this at least partly influenced Jeff Bezos's decision to prevent *The Washington Post*, which Bezos owns, from endorsing Vice President Harris.³

Trump's frequent references to various iterations of "us" and "them," while berating and dehumanizing "them," is straight out of the authoritarian nationalist playbook.⁴ Trump's attempts to prevent recognition of the outcome of the 2020 presidential election and the peaceful transfer of power, along with the events of January 6, 2021, are also authoritarian moves, as are the rhetoric and many of the policies Trump has advocated which would target and harm less powerful social groups.⁵

Examples of Trump's authoritarian rhetoric include the scapegoating of Haitian immigrants in Ohio, claiming that they were eating people's pets,⁶ claiming that if Jewish people do not support him they will be to blame for losing the election,⁷ and claiming that democrats will actively try to steal the election when there is no evidence to support the claim.⁸ Examples of Trump's authoritarian policies are his threats to send the DOJ after media outlets if he wins, laws that would further limit the rights of women and members of the LGBTQ community as outlined in

1. Of course, some authoritarian and theocratic nations are also dictatorships, so these concepts are not mutually exclusive.

2. NPR, "A Look Into Trump's Recent Rhetoric Focusing on Revenge and Threats," October 21, 2024, <https://www.npr.org/2024/10/21/1211597189/a-look-into-trumps-recent-rhetoric-focusing-on-revenge-and-threats> (accessed November 4, 2024).

3. Bill Press, "Jeff Bezos Kills the Once-Great Washington Post," *The Hill*, October 29, 2024, <https://thehill.com/opinion/4958091-billionaires-ban-newspaper-endorsements/> (accessed October 30, 2024).

4. Orcun Selcuk, *The Authoritarian Divide: Populism, Propaganda, and Polarization* (University of Notre Dame Press, 2024). Selcuk explains how authoritarian leaders create a dichotomy of inclusion and exclusion to motivate their followers. The creation of ingroups and outgroups helps authoritarians take and maintain control over the people they govern.

5. *Ibid.*

6. Marilyn Thomas and Mike Wendling, "Trump Repeats Baseless Claims About Haitian Immigrants Eating Pets," *BBC News*, September 15, 2024, <https://www.bbc.com/news/articles/c77128myezko> (accessed October 27, 2024).

7. Gram Slattery and Tim Reid, "Donald Trump Says Jews will be Partly to Blame if He Loses Election," *Reuters*, September 20, 2024.

8. Ali Breland, "The Next 'Stop the Steal' Movement Is Here: The Right Already Saying the Election is Rigged," *The Atlantic*, October 28, 2024.

Project 2025,⁹ and the threat to use the military to suppress riots (when he does not like those rioting).¹⁰

In 2024 the United States Supreme Court decided *Trump v. United States*,¹¹ which dramatically expanded the breadth of presidential immunity. That decision effectively renders presidential actions immune from prosecution.¹² This applies to decisions and conduct done in a presidential capacity and not to acts or decisions carried out outside presidential capacity.¹³

As a result, there is arguably an imbalance of power in favor of the president and executive officers. Therefore, having a president with some level of impulse control and historical understanding is important and there are genuine concerns that Trump significantly lacks both impulse control and even the most basic historical understanding. His apparent ignorance of both general history and geopolitical history are obvious simply from his many documented statements and his lack of impulse control has been well documented by those who served with him and by his own social media posts.

The lack of historical and geopolitical perspective combined with the lack of impulse control and a general desire to do what he wants regardless of the legality, support from experts, or thoughtful engagement with others who have relevant experience, renders Trump a unique threat to democratic principles. It also renders him more prone to authoritarianism. His closest supporters do not seem to care or are openly supportive of this.¹⁴

Moreover, the recent Supreme Court ruling on presidential immunity empowers a president with limited impulse control or respect for the rule of law to regularly open investigations into those who oppose or criticize him whether in the media or in politics.¹⁵ While the First Amendment would likely protect those investigated, the sheer risk of investigation might cause media and even political self-censorship. This is not just an empty concern as demonstrated by the above-referenced situation where Jeff Bezos ordered *The Washington Post* not to publish its endorsement of Kamala Harris out of apparent fear of angering Trump and

9. Project 2025 is a document and movement of the Heritage Foundation. It lays the groundwork for policies that would be high priority should the Republicans win the election. These include significant limitations on abortion and LGBTQ rights as well as limitations on government programs such as social security and other programs that many Americans rely on. "Project 2025, Presidential Transition Project," <https://www.project2025.org/>.

10. Darlene Superville, Tim Sullivan, and Aaron Morrison, "Trump Threatens Military Force Against Protestors Nationwide," *Associated Press*, June 2, 2020.

11. 603 U.S. ____ (2024).

12. *Ibid.*

13. *Ibid.*

14. John W. Dean and Bob Altemeyer, *Authoritarian Nightmare: Trump and His Followers* (Melville House, 2020).

15. *Trump v. United States*, 603 U.S. ____ (2024).

potentially losing government contracts as a result.¹⁶ If there is already self-censorship at one of the top newspapers in the United States it is scary to think what might follow were Trump to win the presidency.

II: Civil Rights and Civil Liberties

In recent years the United States Supreme Court has overturned the constitutional right to an abortion prior to viability,¹⁷ eviscerated Establishment Clause protections (often referred to as the Separation of Church and State),¹⁸ overturned long-standing deference to administrative agencies,¹⁹ limited civil rights protections,²⁰ and dramatically expanded presidential immunity.²¹ The only personal rights expanded by the Court in recent years have been gun rights.²² Many of these decisions have been unpopular with the American public.

Justices appointed by Donald Trump have been in the majority in each of these cases, and without the Trump-appointed justices most of the cases would likely have come out differently. Moreover, the abortion issue is on the ballot in multiple states during the 2024 election. This might point in favor of a democratic victory in some of these states, but that remains to be seen as of the time of this writing.

Either way, the limitation of rights, limitation on protections from discrimination, and decreased regulatory oversight are hallmarks of Project 2025, which is essentially a blueprint for policy were Trump to win the election.²³ Depending on how the election is decided in each house of Congress this threat may extend beyond executive power into formal law. Therefore, a national ban on abortions is a real risk depending on how the election goes. After the Supreme Court overturned the right to an abortion before viability in 2022, the issue was left to the states, but federal law may undo the state right to an abortion before viability, even in states that have those rights. On the other side, Harris has supported a federal right to abortion before viability which would have the opposite impact.

Christian nationalists have been a significant source of support for Trump and

16. See n. 3 and accompanying text.

17. *Dobbs v. Jackson Women's Health Center*, 597 U.S. 2015 (2022).

18. *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022).

19. *Loper Bright Enterprises v. Raimondo*, 603 U.S. ___, 144 S. Ct. 2244 (2024).

20. *Brnovich v. Democratic National Committee*, 594 U.S. ___, 141 S. Ct. 2321 (2021).

21. *Trump v. United States*, 603 U.S. ___ (2024).

22. *Garland v. Cargill*, 602 U.S. ___ (2024); *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. ___ (2022); see, for example, *United States v. Rahimi*, 602 U.S. ___ (2024). A state may temporarily limit access to guns for someone found by a court to pose a threat of physical violence to someone else.

23. See n. 9 and accompanying text.

their hope to further intertwine government and religion at both the federal and state level is evidenced in Project 2025 and by recent state laws or actions in Oklahoma, Louisiana, Texas, and elsewhere.²⁴ Recent decisions by the U.S. Supreme Court increase the risk that government favoritism towards socially conservative Christians will be upheld against constitutional challenge.²⁵ While there are important theoretical debates about whether the Establishment Clause should be considered a clause that protects individual rights or rather as a structural or federal provision,²⁶ there is no doubt that for religious minorities and those who do not adhere to any religion government favoritism toward dominant religion(s) is a palpable threat to rights and freedoms.²⁷ This is yet another field in which a Trump victory might threaten those who are different from his supporters.

Christian nationalists are also part of a larger set of Trump supporters who strongly oppose rights for the LGBTQ community.²⁸ In the state of Michigan, where this author lives, Trump and his allies have regularly run ads disparaging Harris's support for same-sex couples and transgender people using increasingly vulgar caricatures. Since the Supreme Court overturned the right to an abortion prior to viability there is concern that it may limit the right to same-sex marriage. For a variety of legal reasons beyond the scope of this essay, overturning same-sex marriage is less likely than many people think. Still, the possibility that under Trump the federal government will limit medical support for transgender people under federal programs is a significant concern.

Trump has long demonstrated a discomfort with immigrants and people of color. This has been both an explicit and implicit aspect of his rhetoric as a candidate and his actions as president. Moreover, the justices he appointed to the Supreme Court were essential to the rollback of the Voting Rights Act and of affirmative action in higher education.²⁹ He has been open about his intent to

24. Okla. Admin. Code § 210:35-3-251 (effective August 25, 2024); Frank S. Ravitch, "Louisiana's 'In God We Trust' Law Tests Limits of Religion in Public Schools," *The Conversation* (October 2023).

25. See notes 17-18 and accompanying text.

26. Steven D. Smith, *Foreordained Failure* (Oxford University Press, 1995); Daniel O. Conkle, "Toward a General Theory of the Establishment Clause," 82 *Nw. U.L. Rev.* 1113, 1133-34 (1988).

27. Frank S. Ravitch, *Masters of Illusion: The Supreme Court and the Religion Clauses* (New York University Press, 1997); Frank S. Ravitch, *School Prayer and Discrimination: The Civil Rights of Religious Minorities and Dissenters* (Northeastern University Press, 1999); Stephen M. Feldman, *Please Don't Wish Me a Merry Christmas: A Critical History of the Separation of Church and State* (New York University Press, 1997).

28. Shealah Craighead, "US Election 2024: Donald Trump and the Rise of the Christian Nationalists," *The Conversation* (August 2, 2024).

29. *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. ____ (2023); *Brnovich v. Democratic National Committee*, 594 U.S. ____, 141 S. Ct. 2321

deport and limit the rights of immigrants.³⁰ His actions toward communities of color during his first term and his rhetoric about calling in the military to stop protests like the Black Lives Matter protests after the killing of George Floyd do not bode well for civil rights were he to win the election.³¹

Overall, Trump, the judges he appointed, and Project 2025 suggest that if he were to win the election, civil rights and civil liberties would be drastically reduced. This is especially so for those not viewed as part of the mainstream by his supporters.

III: National Security and Geopolitics

The impact of a Trump victory on U.S. national security and on geopolitics is also a significant concern. If Harris wins, foreign policy is likely to remain reasonably stable with commitments to NATO maintained and a deep understanding and connection with Asian partners such as Japan, South Korea, and some of the rapidly developing ASEAN nations. National security will also be less likely at risk under a Harris presidency than under Trump. This is clearly demonstrated by the warnings from multiple high-ranking national security officials in the former Trump administration that he poses a fundamental threat to national security.³² These officials include his former Secretary of Defense, Mark Esper, his former Chief of Staff, General Kelly, the former Chairman of the Joint Chiefs of Staff, General Milley, and his former FBI Director, Christopher Wray. The risks are also demonstrated by his treatment of classified documents as well documented in the indictment and filings in the classified documents case brought against Trump and some of his associates by Special Counsel Jack Smith.

The reasons these national security officials who served under Trump have warned about the risk to national security were he to win are manifold. First is the classified documents situation. After leaving office Trump had a large number of highly classified national security documents among his personal belongings at Mar-a-Lago in Florida and Bedminster in New Jersey. It is not unprecedented for former high-ranking government officials to accidentally have classified documents mixed in with their belongings when they leave office, but the norm is to turn those documents over as soon as they are found. Trump turned a few documents over only after the National Archives requested them but according to

(2021).

30. Jasmine Garsd, "Trump has Promised Deportations on an Unprecedented Scale," *NPR* (July 19, 2024), <https://www.npr.org/2024/07/19/nx-s1-5044582/trump-has-promised-deportations-on-an-unprecedented-scale> (accessed September 12, 2024).

31. See n. 10 and accompanying text.

32. Nia Prater, "All the Top Trump Officials Warning Against Voting for Him," *New York Magazine*, *Intelligencer* (October 23, 2024).

allegations in an indictment filed against him, he knowingly did not turn over most of the documents and in fact went out of his way to have them hidden from investigators. Most of these documents were recovered after the FBI searched Mar-a-Lago.

Holding on to classified documents that a former government official knows are in their possession is a federal crime. Obstructing government access to classified documents is also a federal crime. Moreover, these crimes created a profound threat to national security because many people had access to Mar-a-Lago and Bedminster.

Second, shortly after Trump took office in 2017, he openly boasted to Russian officials about highly classified intelligence, potentially outing an allies' source of information.³³ This incident was captured in photos and there was immediately concern by people in the national security community that some allies might stop sharing robust intelligence with the Trump administration out of fear that he might compromise intelligence, or sources and methods of gathering intelligence.³⁴ This is a clear threat to U.S. and global security that is unique to Trump due to his apparent need to self-aggrandize, lack of understanding of national security issues, and lack of impulse control.

In another famous incident, then-candidate Donald Trump suggested Putin and Russia could interfere in the 2016 elections if doing so favored him. This may have been tongue in cheek at the time but there is no doubt that since then Trump has had close ties to Putin even after the start of the war in Ukraine.³⁵ From Putin's side this might be beneficial for many reasons given Trump's apparent affinity for Putin. Most notably, Trump is the first U.S. president to question support for NATO. On the positive side his requests that NATO countries contribute more to military spending may have had a positive impact on that spending after Russia invaded Ukraine.³⁶ On the negative side, Trump refuses to acknowledge the well-documented reality that NATO allies are now paying a significant amount for defense and has also said he would let Russia do what they want to NATO countries that do not pay an adequate amount into defense.³⁷

The NATO alliance is important for U.S. national security and global security, but Trump seems to lack any historical or geopolitical understanding of this. Other NATO countries have begun to "Trump proof" NATO so that the organization could survive and thrive even if Trump were to win. This, however,

33. Greg Miller and Greg Jaffe, "Trump Revealed Highly Classified Information to Russian Foreign Minister and Ambassador," *The Washington Post* (May 15, 2017).

34. *Ibid.*

35. Bob Woodward, *War* (Simon & Schuster, 2024).

36. Clara Falkenek, "Who's at 2 percent? Look How NATO Allies Have Increased their Defense Spending Since Russia's Invasion of Ukraine," *Atlantic Council* (July 8, 2024).

37. Meg Kinnard and Michelle L. Price, "Donald Trump Stands by Remarks About not Defending NATO Members After Backlash," *Associated Press* (February 14, 2024).

is a significant blow to U.S. soft power and also to U.S. standing in Europe and globally. If Harris wins the election, relations with NATO are likely to remain strong and support for the Putin regime would not be an issue.

Trump also inadvertently empowered China in the South China Sea and with ASEAN nations by pulling out of the Trans-Pacific Partnership or TPP. Throughout Trump's presidency it seemed that he had little understanding of the concept of soft power, and perhaps no decision he made reflected this more than the withdrawal from the TPP. This hurt key United States allies like Japan and South Korea and it also empowered China throughout South Asia while giving China an edge in access to some of the fastest-growing markets in the world such as Vietnam. Moreover, it dramatically weakened U.S. soft power throughout South Asia, one of the most important strategic regions in the world. China has further stepped in to fill the void.

In addition to the reduction of U.S. soft power in Asia, and empowering China further, pulling out of the TPP is likely to have a negative impact on the U.S. economy over time.³⁸ The economic impact of withdrawing from the TPP is beyond the scope of this essay. It should be noted, however, that Trump allegedly had two reasons for pulling out of the TPP. The first, which if true is simply childish, is that President Obama had negotiated and signed the TPP into law, so Trump wanted to undo the TPP. The second was that Trump believed the TPP would cost American manufacturing jobs. This was far from clear, but the negative impact on U.S. economic interests that pulling out of the TPP had, and will continue to have, is quite clear.³⁹

IV: Struggles with the Truth and Inconvenient Reality

It is not a secret that Trump has been known to lie repeatedly and to question facts and reality when they go against his preconceptions or his image. This phenomenon is so well documented that it is taken for granted. *The Washington Post* documented 30,573 demonstrably false or misleading claims by Trump while he was president.⁴⁰ This, of course, does not include his frequent lies and

38. Both the negative strategic impact and the economic impact of withdrawing from the TPP have been well documented. Some of the sources most powerfully demonstrating this negative impact are not in any way connected with progressive politics. Timothy R. Heath, *RAND Commentary* (originally published March 26, 2017), <https://www.rand.org/pubs/commentary/2017/03/strategic-consequences-of-us-withdrawal-from-tpp.html> (addressing strategic and economic concerns of withdrawal from the TPP); Colin Grabow, "5 Years Later the United States Is Still Paying for Its TPP Blunder," CATO Institute (February 10, 2022), <https://www.cato.org/blog/5-years-later-united-states-still-paying-tpp-blunder>.

39. *Ibid.*

40. Glenn Kessler, Salvador Rizzo, and Meg Kelly, "Trump's False or Misleading Claims Total 30,573 Over 4 Years," *The Washington Post* (January 24, 2021), <https://www>.

misleading statements while a candidate.

Normally, one blatant lie would be enough to cause significant controversy for a president of the United States, especially if that person were again a candidate for president. Yet, Trump's frequent lies have caused him little harm with his base. It remains to be seen how much harm it will cause him in the upcoming election.

To be clear, the things *The Washington Post* documented were not traditional political "spin," but rather demonstrable falsehoods. What example does this set for America's youth? If the leader of the nation is a serial liar and faces few consequences the impact for the future could be significant. At this point, however, that negative impact on youth is speculative. Not speculative, however, is the real-world impact of what many MAGA supporters call "alternative facts."⁴¹

Trump has masterfully used alternative facts as a tactic to question reality and create a narrative that his followers readily accept. Truth no longer matters and if you say a falsehood often enough, he believes, people will believe it. This had a horrific impact during COVID-19 where deaths were higher among Republicans and self-identified Trump supporters than the public at large because even after vaccines became available,⁴² Trump supporters were less likely to follow social distancing or to receive vaccines once they were available and this is reflected in the data.⁴³

The pandemic demonstrated that Trump is more concerned about image than reality or science. Importantly, Trump did do some good things during the pandemic such as greenlighting fast vaccine production. Yet he did nothing to stop the antivax and anti-mask movement that was rampant among his own followers. They readily accepted narratives not based in science or evidence. For some, it cost them their lives or the lives of their family or friends. Once reality goes out the window and alternative facts become as acceptable as demonstrable facts this phenomenon is not surprising.

The same is true for January 6 and the rampant election denialism among Trump supporters. Trump lost every legal challenge to the election because his attorneys could not present adequate evidence of voter fraud, yet he continues to deny he lost the 2020 election. Numerous state officials, including Republican

washingtonpost.com/politics/2021/01/24/trumps-false-or-misleading-claims-total-30573-over-four-years/ (accessed October 28, 2024).

41. S. I. Strong, "Alternative Facts and the Post-Truth Society: Meeting the Challenge," 165 *U. PA. L. Rev.* 137 (2017).

42. See Jacob Wallace, Paul Goldsmith-Pinkham, and Jason L. Schwartz, "Excess Death Rates for Republican and Democratic Registered Voters in Florida and Ohio During the COVID-19 Pandemic," *J. of Am. Med. Assoc. Int. Med.*, 183, no. 9: 916-23. doi: 10.1001/jamainternmed.2023.1154 (July 24, 2023), which shows increased death rates among Republicans after vaccines became available.

43. *Ibid.*

state officials, have said the election was fair and there was no significant election fraud. This has been verified by election security officials. Yet, Trump continues to deny the 2020 election results and to make false claims about election fraud.⁴⁴ Election fraud is a context where lies intersect with anti-democratic tendencies.

Conclusion

Were Donald Trump to win the 2024 presidential election democracy and the rule of law in the United States will be at significant risk. Moreover, the civil rights and civil liberties of many in the United States will also be at risk. There will also be significant national security and geopolitical risks that would be unlikely to arise if Harris wins the 2024 presidential election.

44. Brett Samuels, "Trump's 2020 Election Claims Back in the Spotlight in Closing Weeks of Campaign," *The Hill* (October 8, 2024), <https://thehill.com/homenews/campaign/4920303-trump-refusal-election-loss/>.