

Congress of the United States
Washington, DC 20510

April 11, 2025

Members of the Wyoming Bar,

Thank you for your letter of March 26, 2025 regarding judges, judicial independence, and the rule of law.

In Federalist 78, our Founding Father Alexander Hamilton wrote that “the judiciary, from the nature of its functions, will always be the least dangerous” and that judges “have neither FORCE nor WILL[.]”¹ In recent years, we have become increasingly concerned with how our country has strayed from this Hamiltonian aspiration. We have seen judges across the political spectrum assume both “FORCE” and “WILL.” Many Americans are worried judges are misusing their independence by imposing policy preferences on our country—all with no accountability.

Many agree that judges have transgressed their proper constitutional role.² A Georgetown Law professor said it best:

Let’s be clear: The Court does not have the last word on the Constitution. The text does not say it. Our precedents from the early republic do not support it. American presidents Andrew Jackson, Abraham Lincoln and Franklin Roosevelt have contested it. Distinguished liberal and conservative attorney generals from Robert H. Jackson to Ed Meese have opposed it. Many of the framers, though supportive of the idea of judicial review, would be shocked by the Court’s more extreme insistence that it has the final say on the Constitution—as opposed to playing a co-equal role in interpreting the document along with the elected branches.³

This is indeed the view of the Founders. James Madison, when debating the Bill of Rights said, “the Constitution is the charter of the people to the Government...if the Constitutional boundary of either be brought into question, I do not see that anyone of these independent departments has more right than another to declare their sentiments on that point.”⁴ The country is witnessing a healthy debate right now about the appropriate role of judges. Both the legislative and the executive branches are rightfully using their constitutional checks and balances to address judicial overreach.

¹ Alexander Hamilton, Federalist No. 78 (1788), available at https://avalon.law.yale.edu/18th_century/fed78.asp.

² See, e.g., Edwin Meese III, *How Congress Can Rein in the Courts*, Hoover Digest, Oct. 30, 1997, <https://www.hoover.org/research/how-congress-can-rein-courts> (noting that “power corrupts; absolute power corrupts absolutely.”); Brad Snyder, *The Supreme Court Has Too Much Power, and Liberals Are to Blame*, Politico, Jul. 27, 2022, <https://www.politico.com/news/magazine/2022/07/27/supreme-court-power-liberals-democrats-00048155>; Thomas Jipping, *How Much Power are Unelected Judges Supposed to Have*, Heritage Found., Jun. 23, 2018, <https://www.heritage.org/courts/commentary/how-much-power-are-unelected-judges-supposed-have> (last visited Apr. 1, 2025); Kim R. Holmes, Ph.D., *Has the Supreme Court Become Too Powerful*, Heritage Found., Feb. 25, 2016, <https://www.heritage.org/crime-and-justice/commentary/has-the-supreme-court-become-too-powerful> (last visited Apr. 1, 2025) (“Ever since at least the 1960s (and frankly even before), we have increasingly allowed the Supreme Court to decide controversial issues we have been unwilling to solve legislatively.”).

³ Brad Snyder, *The Supreme Court Has Too Much Power, and Liberals Are to Blame*, Politico, Jul. 27, 2022, <https://www.politico.com/news/magazine/2022/07/27/supreme-court-power-liberals-democrats-00048155>.

⁴ 1 *Annals of Cong.* 439 (1. Gales ed. 1789).

The Supreme Court has consistently noted that political questions should be kept at arm's length by the judiciary.⁵ Unelected judges imposing their policy biases on our nation without democratic legitimacy are the root cause of today's controversy.

Our Constitution impels all members of the judicial branch to administer justice with impartiality. Congress is using the power granted to it under Article III of the U.S. Constitution to ensure courts fulfill their core mission of providing impartial justice based on the law, not narrow partisan preferences.

We recently co-sponsored legislation, including the *Judicial Relief Clarification Act* and the *No Rogue Rulings Act*—alongside dozens of our peers—to terminate use of nationwide injunctions.⁶ Legislation was also introduced in the previous Congress, under a previous administration.⁷ Similarly, legislation has been introduced to make forum shopping based on judges' perceived policy preferences more difficult.⁸ These bills, introduced by both sides of the aisle, are clear evidence there is a crisis in the judiciary—and that it is time to fix this broken system.

We are disappointed you failed to express your concerns with us directly before rushing to publish your letter. A robust discussion about addressing the challenges and concerns facing our nation would be more beneficial than attempting to score political points through the press.

We look forward to working with each of you to secure a prosperous future for Wyoming and to ensure a return to the non-partisan rule of law.

Sincerely,



Cynthia M. Lummis
United States Senator



John Barrasso, M.D.
United States Senator



Harriet M. Hageman
Member of Congress

⁵ See, e.g., *Zivotofsky v. Kerry*, 576 U.S. 1 (2015); *Baker v. Carr*, 369 U.S. 189 (1969).

⁶ See *Judicial Relief Clarification Act of 2025*, S. 1206, 119th Cong., 1st Sess. (2025); *No Rogue Rulings Act*, H.R. 1526, 119th Cong., 1st Sess. (2025).

⁷ *Stop Helping Outcome Preferences Act*, S. 4095, 118th Cong., 2d Sess. (2024).

⁸ See *End Judge Shopping Act*, S. 4096, 119th Cong., 2d Sess. (2024).