UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
Joel W. Solomon United States Courthouse
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Chattanooga, Tennessee 37402

THE ULTIMATE SOURCE OF LAW IS THE CONSTITUTION, NOT CURRENT MAJORITY PUBLIC OPINION

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As discussed in our last article, there is an inherent tension between two of our key democratic principles, the will of the people and the rule of law. Comments to recent news articles in national publications call attention to this tension. One comment read: "We the People seem to have no power at all over the law." Another read: "The current makeup of the court simply does not reflect majority public opinion on most issues. It is completely out of balance." And a third: "This is what happens when ordinary people lose faith in Justice under the Law. Eventually, frustrated or misinformed, they take matters into their own untrained yet still angry hands."

We can assume that the sentiments expressed in these comments are not isolated to the individual commenters but are shared by many others. All three comments share the idea that the law should respond to and coincide with the immediate wishes of individuals. The comments also suggest a lack of understanding of how the rule of law functions in our democratic republic and the role and function of courts in that democratic republic. The will of the people does indeed involve power over the law, but it must be exercised in a way that conforms with the rule of law.

THE PEOPLE'S POWER OVER LAW

The idea that the people have no power over law overlooks how laws are enacted. We do not live in a direct democracy where each citizen votes on every law. Rather, we elect representatives who vote on laws on our behalf. The people's power over law thus comes from electing these representatives, communicating with them about our wishes and desires, and collaborating with our fellow citizens to advance those wishes and desires. If our representatives do not support laws we favor, then the people's power is to vote them out of office.

The idea that the people have no power over law may also be directed at the courts. Some may lament the inability to control what judges decide—particularly when judges issue counter-majoritarian decisions, as they inevitably sometimes will. But this idea misunderstands how judges function and their role in our governmental system. Judges are not supposed to

respond to the momentary desires of citizens. The judge's role is to adhere to the law, regardless of public sentiment, and not give the public control over the judge's decisions. That is the rule of law.

If the idea that the people have no power over law takes root in our society, then the outcome will be frustration and people taking the law into their own hands, as indicated in the third comment quoted above. Mob mentality and mob action would result, leading to anarchy.

THE CONSTITUTION IS THE BEDROCK OF AMERICAN LAW.

The Constitution was enacted by "We the People" and is the ultimate expression of the people's power over the law. All laws and all actions of elected officials must comply with the Constitution. It is not some dusty, obsolete piece of paper. Nor is it completely static. Through Article V, "We the People" hold the power to amend the Constitution in our democratic system. While amending the Constitution is by no means a simple or common process, our country has done so eighteen times: once with the Bill of Rights, and seventeen more times, for a total of twenty-seven amendments.

The Constitution is what our government is based on. It is the ultimate source of our laws. And within our system, it is the role of the courts to state what the law is and, in doing so, ensure that laws and acts of elected officials comply with the Constitution. Those who favor a certain law or action will not be pleased to see a court strike down that law or action and may naturally express dissatisfaction with the outcome. But the process is necessary to maintain the rule of law, as established and safeguarded by our Constitution.

CIVICS EDUCATION IS ESSENTIAL IN A DEMOCRATIC REPUBLIC.

Knowledge of the Constitution, the rule of law, and the role and function of the courts is indispensable for us to have an effective and fully functional democratic republic. When people express misunderstandings on these subjects, it is incumbent on those who understand these important concepts to educate them. Our populace, as public surveys over the past several years have shown, is sorely lacking in civics knowledge. An understanding of the Constitution, the rule of law, and the role and functions of our courts does not come from breathing the air or drinking the water; it does not come through osmosis. That knowledge must be taught, discussed, modeled, and practiced. This education must be intentional. If successful, such knowledge will eventually be internalized. Then, debate about the future of our law and democracy will focus not on frustration with the tension between the rule of law and the will of the people, but on what laws and policies will best serve our country as we move into the future.

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