

# REPAIRING THE FAULTS IN THIS NATION'S FOUNDATION

In observance of the Fourth of July holiday, I've written a handful of essays for this site over the past five years. One year I wrote two posts, on and before the holiday.

2022: A Republic, If You Can Keep It

2020: Still Dreaming of the American Dream

2020: The Fourth Ahead and the Forgotten

2019: In Order to Form a More Perfect Union

2018: Happy Fourth of July: Remembering the Why

Looking back I realize now writing about the Fourth became imperative because of anti-democratic efforts by Trump and the GOP who enabled his autocratic behaviors.

By exercising our democracy, Trump was removed from office. This is what the nation's founders envisioned, a leader who could be removed either by election or by impeachment and conviction, when voters revoked and bestowed consent to be governed.

Last year and this year, however, critical faults in the founders' efforts to create a more perfect union have been revealed, and in a particularly ugly way.

With the *Dobbs v. Jackson Women's Health Organization* decision in June 2022, a majority of Supreme Court jurists told more than half the nation they did not have bodily autonomy depending on the state they lived in. Equal protection for their fundamental human rights was voided.

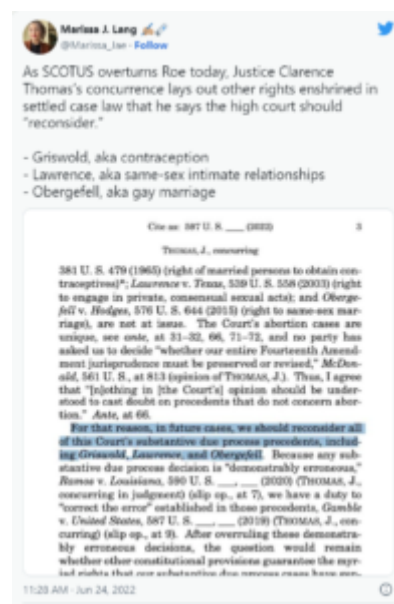
This year with the *303 Creative LLC v. Elenis* decision, a majority of the Supreme Court felt empowered to use a hypothetical case – not an

actual case in which any citizens' rights were violated, and a case which may have relied upon false statements – to sharply turn back the clock on civil rights and weaponize the First Amendment to allow open discrimination.

These unelected arbiters chose to ignore *stare decisis*, making lies of their sworn statements during nomination hearings before the Senate Judiciary Committee.

GOP-appointed Supreme Court jurists have abrogated their role defined in the Constitution, and have now set about making law in a star chamber created by partisan appointments, in turn enabled by bad faith through gerrymandering, voter suppression, and an Electoral College created to protect a white land-owning minority class in order to assure their white patriarchal power continues.

The only good thing any one of these revanchists has done in the course of seizing Americans' rights is a warning – surprisingly, by the most corrupt of the lot, Clarence Thomas:



Thomas warned us in *Dobbs* the extremist revanchist faction of SCOTUS was coming for our right to privacy on which the people of this country have relied to make personal, intimate decisions about their loves and their bodily autonomy.

And lo – this June the revanchists came for LGBTQ+ rights, though not in the way we might have expected. They took a made-up threat to establish a right to exercise in commerce a way to deny LGBTQ+ persons the same access to goods and services. They did so in a way which may allow this country to return to Jim Crow – this time not only seating Blacks at the back of the corporate-owned bus but denying any protected class the equal rights they should have as human beings.

Again, equal protection under the law has been discarded by unelected federal employees with lifetime appointments.

This cannot stand; the problem is bigger than Thomas's targets, *Griswold*, *Lawrence*, and *Obergefell*.

They are going after our unenumerated rights, using enumerated rights to do so.

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Political historian Eli Merritt has an op-ed in today's Los Angeles Times: The Fourth of July is all about America's first principle – the right of revolution.

After the seditious conspiracy and insurrection of January 6, 2021, one might reasonably be put off by the title of this essay. It's this premise Trump's seditiousists relied upon when they stormed the U.S. Capitol in order to obstruct the certification of the 2020 election, summoning the spirit of 1776 as they did so.

We can't argue that this country wasn't born of revolution – it's fact.

But we can remember as Merritt points out that revolution wasn't necessarily intended to be violent:

For the founders, the right of revolution did not imply violent overthrow of government. Rather, it was an idea that encompassed the right to resist unconstitutional acts through

nonviolent civil disobedience – and, only when this failed after long sufferance, by formal withdrawal from unjust government in the defense of freedom, equality and the right of the people to govern themselves.

The revolution which created this country wasn't the work of armed rebellion alone beginning 1765 and ending in 1783 with the Treaty of Paris. Our fellow contributor Ed Walker has been examining the second founding, which continued the revolution and evolution of this country from a colonial outpost of monarchical empire to an independent, sovereign democratic republic in which equality for all might be realized through amendments to the Constitution.

We're now confronted with unconstitutional acts by constitutional officers attempting to undo the second founding – specifically, the Ninth Amendment:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The right to control our bodies belongs to no state, no nation. No judicial decision should encroach upon that fundamental right.

And yet the Roberts' SCOTUS conservatives found otherwise with its *Dobbs* decision, in spite of precedent acknowledging the right to privacy about our bodily autonomy.

The same court puts itself at odds with the Constitution regarding regulating commerce in *Creative 303* – if a *theoretical* business relies on religion to limit its client base, is it really a business or is it a church?

(It's a wholly dishonest exercise when the business doesn't even exist; the same Christianist business would be unlikely in reality to win LGBTQ+ business because in

reality, clients don't want hire service providers for work which undermines their lives.)

We are further insulted not only by unconstitutional decisions but by the corruption which shaped them. These are not just works, they are not legitimate; they were generated for corrupt purposes and thwart the evolution toward a more perfect union.

How now are we to respond?

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We must remember once again this Fourth of July that this country has not always ensured all of its people have equality, in spite of its founding manifesto:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

The work of the first and second founding are not yet done; we are still and always becoming what we set out to be. Frederick Douglass saw an arc to the path ahead:

...my spirit is also cheered by the obvious tendencies of the age. Nations do not now stand in the same relation to each other that they did ages ago. No nation can now shut itself up from the surrounding world and trot round in the same old path of its fathers without interference. ...

We reject that same old path to which the extremist revanchists wish us to return.

We reject their divisive, exclusionary ideology which will not yield a more perfect union.

We may engage in nonviolent civil disobedience

to this end; Martin Luther King, Jr. held our feet to the fire in his 1963 Letter from a Birmingham Jail:

YOU express a great deal of anxiety over our willingness to break laws. This is certainly a legitimate concern. Since we so diligently urge people to obey the Supreme Court's decision of 1954 outlawing segregation in the public schools, it is rather strange and paradoxical to find us consciously breaking laws. One may well ask, "How can you advocate breaking some laws and obeying others?" The answer is found in the fact that there are two types of laws: there are just laws, and there are unjust laws. I would agree with St. Augustine that "An unjust law is no law at all."

MLK told us we have "a moral responsibility to disobey unjust laws."

But we should – we must – take every available measure in our democratic framework to revoke our consent and remedy the unconstitutional faults before they fester into worse. This means active engagement in all levels of the democratic political process, from our local school boards to the White House. We can't take any political office for granted; they are held only with our consent, and our consent is assumed when we are not engaged.

Help new voters obtain ID and register to vote. Ensure they can get to the polls in spite of voter suppression. Educate yourself about the candidates; make sure no seat goes uncontested where a revanchist GOP holds office or runs without opposition. Vote in the primary. Vote up and down the entire ticket – in doing so, you express your consent to be governed.

Do not let them assume you have given consent to an imperfect union, that you consent to their corruption as they take our innate human rights.

I ask once more this holiday as I have before:

I wrote four years ago during the Trump administration, after posting a copy of the Declaration of Independence:

The signatories to this document knew they also signed their death warrant. They debated this document thoroughly, understanding their lives, fortunes, and possibly the same of friends and family were staked on the success of the undertaking launched by this declaration ("corruption of blood" in family's case, which so concerned the founders it was cited later in the Constitution's Article III).

They staked blood and treasure for their thoughts and beliefs that the colonies must be free. The least we can do is remember this bravery and consider our own willingness to fight for this American democracy.

When asked in 1787 at the end of the Constitution Convention what form of government had been created, Ben Franklin answered, "A Republic, if you can keep it."

What will we do to keep it?

What will we do to keep this democratic republic's foundation from faulting even further?