

Did the U.S. Supreme Court Just Nullify the U.S. Constitution?

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On June 26th, the U.S. Supreme Court issued its 5-4 majority decision in the landmark case of ["Trump v. Hawaii"](#), about President Trump's commonly misnamed 'Muslim ban'. This decision probably established a new precedent: that national security is an interest that overrides the First Amendment to the U.S. Constitution. Here is how it does this outrageous thing, which is so shocking for such persons — who are oath-bound to uphold the U.S. Constitution — to do:

The First Amendment to the U.S. Constitution says, in full:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The traditionally-called "Establishment Clause" is the part of the First Amendment that says: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

On the opening page of [its 92-page decision](#), the Supreme Court says,

"We now decide whether the President had authority under the Act to issue the Proclamation, and whether the entry policy violates the Establishment Clause of the First Amendment."

On the 7th page, it says,

"Plaintiffs [the 'Hawaii' side in the case of 'Trump v. Hawaii'] further claimed that the Proclamation violates the Establishment Clause of the First Amendment, because it was motivated not by concerns pertaining to national security but by animus toward Islam."

Page 26 says,

"The First Amendment provides, in part, that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.' Our cases recognize that '[t]he clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another'."

The Court's decision asserts, first, that Trump's Muslim ban, of any immigrants from any of the five nations of **Iran, Syria, Yemen, Somalia, and Libya** — all of which 5 nations have Muslim majorities — is not discriminatory on the basis of religion; and that therefore no religious denomination is being officially preferred over another, in that ban or "Proclamation."

Second, here is how the decision asserts — at least provisionally, and (as will be shown) likely permanently — that national security overrides the Establishment Clause (and therefore overrides the Constitution itself): On page 29, it says,

"plaintiffs seek to invalidate a national security directive. ... Their claim accordingly raises a number of delicate issues regarding the scope of the constitutional right [right to "the free exercise thereof"] and the manner of proof. The Proclamation, moreover, is facially neutral toward religion. Plaintiffs therefore ask the Court to probe the sincerity of the stated justifications for the policy."

The Court's decision then entirely ignores — and never even so much as touches upon — the "sincerity" matter, at all, or in any form. Therefore, the majority decision is implicitly asserting that the sincerity of the rationale that Trump gave for his "Proclamation" (his so-called 'Muslim ban') is immaterial to this case, not relevant to determining whether or not the Proclamation "officially" prefers any religion over any other. The 5-member majority are, in effect, asserting that, by the term "officially," is meant "explicitly," or publicly admitted. For example (in another hotly-debated historical instance): If Adolf Hitler did not publicly admit that his intention was to exterminate every Jew on Earth, then (according to this reasoning from those five jurists) he was not responsible for the Holocaust (the attempt by his followers to exterminate Jews, within each of those officials' own sphere of authority, as granted to them by Hitler). Those five jurists are saying that, since Trump never publicly admitted that he was a bigoted person and never explicitly asserted that religion had anything to do with his Proclamation, Trump's Proclamation simply did not violate the Establishment Clause. That's the end of the story — Hawaii's assertion that Trump's publicly declared reason needs to be challenged on the basis of its *sincerity* is simply, and peremptorily, rejected — to "ask the Court to probe the sincerity of the stated justifications for the policy" is placed, by them, simply out-of-bounds.

However, prosecution for any crime requires any court to consider what the motivations of any possible defendant for that crime were in the given matter. To obtain a criminal conviction, the prosecution must establish the presence of two elements at the time of the alleged crime — namely, *actus reus* ("guilty act") and *mens rea* ("guilty mind"); but these five members of the U.S. Supreme Court effectively rule out-of-bounds the very possibility that a U.S. President (or, specifically, *this* U.S. President) might, on any occasion (but specifically, *this* occasion), have been "insincere" (or had "a guilty mind" — guilty of actually having violated the First Amendment, in this case). So: these five jurists proved their *own* guilty minds — and they thereby impose upon the entire nation this nullification of our nation's Constitution, simply casting aside both executive accountability and the Constitution's supreme legal authority in our land. Is that treasonous? It certainly violates their oaths-of-office. But is it treasonous?

It is, in any event, the way that these 5 judges dismissed any consideration of Trump's motive for his 'Muslim ban' — this particular "entry policy" issued by the Proclamation.

However, what about the question itself, of “whether the entry policy violates the Establishment Clause of the First Amendment.” Well, if you aren’t being allowed to question what its *motive* was, then you aren’t being allowed to question the Constitutionality of the ban, either.

The Court’s mega-scandalous decision closes:

The Government has set forth a sufficient national security justification to survive rational basis review. We express no view on the soundness of the policy. We simply hold today that plaintiffs have not demonstrated a likelihood of success on the merits of their constitutional claim.

[Section] V

Because plaintiffs have not shown that they are likely to succeed on the merits of their claims, we reverse the grant of the preliminary injunction as an abuse of discretion. *Winter v. Natural Resources Defense Council, Inc.*, 555

U. S. 7, 32 (2008). The case now returns to the lower courts for such further proceedings as may be appropriate.

They declare (but are they sincere about this?) that “We express no view on the soundness of the policy.” They bounce the matter back down to “the lower courts,” without even so much as having considered the *mens rea* issue — which was central to the case before them. The President’s having avoided admitting the fact that bigotry was involved in his Proclamation, has been accepted as final on the matter, for these five jurists. But would it be final if Hawaii were to continue in “the lower courts” to challenge the Proclamation? According to [CNBC’s news-report about the decision](#):

“Neal Katyal, attorney for the challengers, said in a statement. ‘Now that the Court has upheld it, it is up to Congress to do its job and reverse President Trump’s unilateral and unwise travel ban’.”

Obviously, Ketyal won’t take the matter back down to the lower court in the case. Perhaps his challenge to the ban had actually been only political, to embarrass Republicans, in order that the Democratic Party can continue to holier-than-thou moralize their supposed superiority above the bigotry and/or sheer stupidity, of the President’s (and Republican-supported) “ban.”

Here is the actual type of “establishment of religion” that I believe that Trump is here imposing (and which the five far-right jurists today are trying to help him to impose upon the nation) — it’s more against *Shiite* Muslims than against Sunnis — who constitute the vast majority of Muslims and virtually the entirety of the ones who have perpetrated terrorism anywhere other than in Israel (and this President is not supposed to be the President of Israel):

This case is **not** , as Hawaii (Ketyal) was asserting, a Trumpian bigotry against Islam. Only five nations were included in the ban, and so it applies to only a small percentage of the world’s Muslims. Though the Court accepted the

President's flimsy assertion that these, and only these, nations pose such a national-security threat to the United States as to warrant a total immigration-ban, [the actual evidence regarding Islamic terrorism in the United States has been overwhelming that virtually only fundamentalist Sunnis have perpetrated it; no Shiites have](#). With the lone exception of Somalia, none of these five banned nations is Sunni majority and Sunni controlled — they're all either Shiite majority or Shiite-dominated, or (in the case of Libya) failed states without any nationwide government because of the U.S.-and-allied invasion in 2011. (And so, Trump is banning refugees from that country which his Democratic predecessor Obama had destroyed — let them escape to Europe instead!) [The U.S. Deep State has been trying since 1949 to overthrow Syria's Government and replace it with one that would be controlled by the fundamentalist-Sunni Saud family who own Saudi Arabia and are allied with the U.S. aristocracy \(America's "Deep State"\)](#). Yemen right now is being bombed to smithereens by the U.S.-Saudi-UAE alliance, and this operation is supporting, instead of opposing, fundamentalist Sunnis (such as ISIS in Yemen, and Al Qaeda in Yemen, neither of which group of jihadists is in the Shiite region of Yemen, which we're bombing and destroying, while we're claiming that this is 'anti-terrorist'). [The actual facts indicate that any "Muslim ban" should be focused against Saudi Arabia](#) — and this ban would be authentically to protect against terrorism, not to disadvantage any particular religion — [but Trump instead sold the Saudis \\$350 billion of U.S.-made weapons](#). That global all-time-record high U.S. military sale to the Saudis gives them far more clout over the U.S. Government than the U.S. Government has over them. No wonder why [the U.S. Government protects them for 9/11, etc.](#)

Regarding Somalia, the only article online about ["Somalia-United States Relations"](#) is at Wikipedia and doesn't indicate any terrorist incidents in the U.S. as having been at all Somali. Furthermore, Wikipedia's article ["Foreign Relations of Somalia"](#) goes country-by-country, but doesn't indicate anywhere any link to terrorism, against any country, at all.

However, notwithstanding the actual facts in this case, these five far-right jurists just trashed the U.S. Constitution, and thereby allowed this President's bigoted and/or stupid Proclamation, which possesses no authentic national-security justification whatsoever, to become imposed, regardless even of whether it is sincere, or comports with the Establishment Clause. The precedent here is carte-blanche to this President and to any of his successors. A U.S. President's will, supersedes the U.S. Constitution, if a 'national security' excuse — no matter how flimsy or even counterfactual — is being asserted. His/her sincerity — and even the facts as opposed to the mere allegations from a President — cannot be challenged in U.S. courts.

Hawaii's (Ketyal's) challenge, under the Establishment Clause, was sloppy, presuming as it did, that Trump is "anti-Musim" instead of anti-Shiite, which seems to be more like the reality. But, in any event, both the challenge, and the way that the U.S. Supreme Court handled it, were incompetent, at best. This pathetic Court decision establishes not only the precedent for banning consideration in U.S. courts of whether a sitting President may effectively be challenged as to his sincerity on a given matter, but also precedent for treating "national security" as being more important than the U.S. Constitution itself. If Trump had intelligently formulated his ban on the basis of the relevant data, then *maybe* these five jurists could have put together some sort of intelligent case to uphold his ban. But, instead, those jurists made a mess of everything, and a zero of the U.S. Constitution that they are duty-bound to uphold.

No lower court can make good on the harm that those jurists — Roberts, Alito, Thomas,

Gorsuch, and Kennedy — did and do. Mark Joseph Stern's [article at Slate](#) opened with an accurate summary of it:

On Tuesday, the Supreme Court affirmed and expanded the president's power to exclude entire classes of immigrants from the country. Its 5-4 decision in *Trump v. Hawaii* is a historic triumph for Donald Trump and a crushing blow to immigration activists, who had hoped the courts might rein in the president's sweeping order. Justice Neil Gorsuch, Trump's appointee to the court, cast the decisive fifth vote to uphold the ban. While Chief Justice John Roberts' opinion for the court strives to rise above politics, *Hawaii* will almost certainly be remembered as a deeply partisan opinion in which five Republican appointees willfully ignored the flagrant bigotry of a Republican president.

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