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LEGISLATIVE ACTION ALERT

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Pa. Republicans overstepped in their defiance of court ruling on redistricting | Opinion

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By **Timothy K. Lewis**

There is no difference when a president of the United States or a state senator from Pennsylvania openly defies an American court. Their actions are equally irresponsible and dangerous, and we must never accept them as anything less. It is perfectly legitimate for anyone, including politicians and policymakers, to voice their disagreement when a court has spoken.

But to threaten the judges who issued an unfavorable decision, or to simply refuse to comply with a duly issued mandate, falls outside the bounds of appropriate and constitutional conduct. As a citizen and as a former federal judge, I am alarmed at the trend among state legislatures, governors, and even the President to challenge the independence of our nation's judiciary. I am appalled at the blatant disregard for [its historic institutional role as a check on the executive and legislative branches](#). And I am worried about the implications.

The most recent example is still unfolding in my home state where, last week, Pennsylvania State Senate Pro Tempore Joseph Scarnati [declared his open defiance](#) to a decision handed down by the Pennsylvania Supreme Court. The Court had ruled that Pennsylvania's congressional districts were exceptionally gerrymandered and violated the state constitution.

It ordered the legislature to hand over any redistricting data it had. In response, Scarnati announced that he would refuse to do so because he considered the Court's order to be unconstitutional. Just how and when Joseph Scarnati became cloaked with the authority to openly defy a mandate of the state Supreme Court because he considered it "unconstitutional" invites an examination of hubris I'll leave to others.

But it gets worse: on Monday, upon learning that the United States Supreme Court had rejected a request by Republican leaders to stay the Pennsylvania Supreme Court's mandate, state Rep. Cris Dush decided to [call for the impeachment](#) of the five state court justices who ruled in favor of

redistricting. This is reminiscent of a strategy implemented some decades ago that today lives where it belongs: in infamy.

The late Strom Thurmond's "[Southern Manifesto](#)", drafted in opposition to the Supreme Court's landmark ruling in *Brown vs. Board of Education*, also accused the Court of a "clear abuse of judicial power." In seeking a return to "states' rights" and segregated public schools, which meant a return of the power they had held for so long (a power the Supreme Court deemed unconstitutional), the signatories to the Manifesto said almost exactly what Scarnati said last week: "This unwarranted exercise of power by the Court [is] contrary to the Constitution."

Of course, the problem then is the problem now: Thurmond and his Southern Manifesto colleagues were not vested with the authority to say what was and was not constitutional as a final matter. Neither is Scarnati. Nor, particularly as an elected official, is he vested with the power to decide which Supreme Court decisions he'll obey and which ones he won't.

This act of defiance is just the latest in a disturbing pattern. In North Carolina, the legislature spent the better part of last year trying to pack the courts with their own partisans by putting itself in charge of appointing judges. This was met with fierce resistance by constituents.

In Kansas, the Governor and several members of the state legislature waged a campaign against their state's Supreme Court Justices so they could appoint their allies to the Court. Once again, an informed public responded. They re-elected each of the targeted Justices.

I believe these resounding responses demonstrate that the public understands the importance of a system of checks and balances. I also believe it shows how seriously the public takes any threat to judicial independence. Of course, President Donald Trump has [launched his own assault on the courts](#). He has repeatedly attacked the federal judiciary, including personal attacks on judges overseeing cases in which he is a party.

Each of these instances poses a clear and present danger to our democracy. And each undermines the courts' vital role in protecting our democracy. When elected officials openly attack the judiciary, or even worse, openly defy a court order, they are violating a sacred principle enshrined in our system of government: no one, particularly a public servant who has taken an oath to uphold the law, stands above it. It is not possible to remain true to that oath while placing the maintenance of political power ahead of a solemn respect for the rule of law.

And we don't have to look far to understand that publicly deriding and ignoring court orders [is a hallmark of democratic decline](#). This tactic has been used in places like Turkey, Hungary and Poland to delegitimize courts and promote authoritarianism. We cannot afford to allow that to happen here and we must remain vigilant in our effort to prevent it. Our ideological differences will always be the cherished core of our democratic institutions. That pluralism is what defines us. To protect and preserve it, we all have a duty to continue to ensure the independence and legitimacy of our courts.

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