WRITTEN TESTIMONY – MISSOURI SOLICITOR GENERAL LOUIS CAPOZZI

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Subcommittee on Courts, Intellectual Property, Artificial Intelligence, and the Internet

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I. Introduction

Chairman Issa, Ranking Member Johnson, and distinguished members of the Subcommittee, thank you for the opportunity to appear before you this morning.

In the Federalist 81, Alexander Hamilton responded to objections raised against the structure of the federal judiciary under the proposed Constitution. These objectors argued that, instead of creating an independent Supreme Court, the Constitution should vest the judicial power in a component of the Congress—as Great Britain did with its House of Lords. This would, they argued, allow Congress to remedy decisions of the lower courts that it perceived as incorrect.

We should be grateful that our Constitution's framers rejected that approach. They understood that an independent Supreme Court was essential to the rule of law. The Supreme Court's insulation from partisan politics preserves its ability to adjudicate disputes on what the law requires, not the fleeting goals of political actors.

Nonetheless, at various points in our history, partisans have proposed reforms that would undermine the Supreme Court's independence—with court packing being the obvious example. Thankfully, past American statesmen were wise enough to reject such proposals. Today, I urge Congress to do the same.

II. The Supreme Court's ability to command respect for its judgments has been a centuries' long and hard fought effort.

I'd like to start will by emphasizing what is at stake. The Supreme Court, as with all courts, relies on respect for its judgments. This critical respect did not arise automatically. As Justice Breyer has explained, during the nineteenth century, "an independent judiciary was on occasion

more an aspiration than a reality."[1] As an illustration, Justice Breyer pointed to President Andrew Jackson's infamous refusal to respect the Supreme Court's decision in *Worcester v. Georgia*—leading to the removal of the Cherokee from their native homeland in Georgia and enduring the forced march to Oklahoma dubbed the Trail of Tears.[2]

Fortunately, by the twentieth century, respect for the Court became firmly entrenched. Thus, despite southern efforts to resist desegregation, state officials eventually followed the courts' orders to do so.[3] The century's worth of respect for the Court's independence between *Worcester* and the desegregation cases cannot be understated.

Because the Court relies on such respect, attacks on its legitimacy are incredibly dangerous to the rule of law. If too many come to view the Supreme Court as a partisan actor rather than a neutral arbiter of the law, losing parties will be tempted to disregard court orders. If that occurs, an essential underpinning of our constitutional government will be lost.

That is why I am alarmed by the current trend of attacking the Supreme Court's legitimacy. But even on their own terms, the current criticisms of the Supreme Court make little sense.

III. The Supreme Court does not favor President Trump.

First, critics frequently claim the Supreme Court consistently rules in favor of President Trump. But this is demonstrably false. During his first term, the Supreme Court ruled against President Trump in several crucial cases—including on rescinding DACA, adding a citizenship question to the 2020 census, and allowing subpoenas of the President's personal-financial records.[4]

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[1] Stephen Breyer, *Judicial Independence: Remarks by Justice Breyer*, 95 GEO. L. REV. 903, 906 (2007).
[2] *Id.*
[3] *See Cooper v. Aaron*, 358 U.S. 1, 8–9 (1958).
[4] *See, e.g.*, *Dep't of Homeland Sec. v. Regents of Univ. of Cal.*, 591 U.S. 1 (2020) (finding rescission of DACA arbitrary and capricious); *Dep't of Commerce v. New York*, 588 U.S. 752 (2019) (initially rejecting citizenship question for 2020 census); *Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571 (2017) (per curiam) (refusing to stay portions of injunction barring

The Supreme Court has also not hesitated to rule against President Trump during his second term. For example, the Court struck down the President's tariffs; prevented him from deploying the National Guard in major cities; and barred the removal of Lisa Cook from the Federal Reserve.[5]

At the same time, the Supreme Court upheld several of the Biden Administration's controversial policies—including his refusal to detain illegal immigrants at the border and a COVID vaccine mandate for healthcare workers.[6] No presidential administration in modern history can seriously claim that it has been treated differently than the rest. Each administration has signature policies that are challenged and upheld, and each has policies that the Supreme Court finds unlawful. This is as it should be.

IV. The Supreme Court's treatment of its own precedent is in line with history.

Another common attack on the Supreme Court's legitimacy is that it has been more willing to overrule precedent than in the past. A quick look at history refutes this proposition. During the 1930s and 1940s, the Supreme Court revolutionized constitutional law and allowed for the massive growth of the federal government—in large part because of the Justices appointed by President

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enforcement of executive order on entry of foreign nationals from counties presenting heightened terrorism risks); *Trump v. Mazars USA, LLP*, 591 U.S. 848 (2020) (allowing congressional subpoenas of President Trump's personal financial records); *Trump v. Vance*, 591 U.S. 786 (2020) (allowing state criminal subpoena of President Trump's personal financial records).

[5] *Learning Res., Inc. v. Trump*, 146 S. Ct. 628 (2026) (invalidating tariffs President Trump imposed under IEEPA); *Trump v. Illinois*, 146 S. Ct. 432 (2025) (per curiam) (preventing deployment of the Guard in Illinois); *Trump v. Cook*, 146 S. Ct. 79 (2025) (refusing to immediately stay lower court order reinstating executive branch official fired by President Trump).

[6] *See, e.g.*, *United States v. Texas*, 599 U.S. 670 (2023) (holding that States do not have standing to challenge President's arrest or prosecution policies in immigration context); *Biden v. Missouri*, 595 U.S. 87 (2022) (upholding vaccine mandate for healthcare workers); *Biden v. Texas*, 597 U.S. 785 (2022) (allowing Biden Administration to terminate Trump Administration immigration policy); *Murthy v. Missouri*, 603 U.S. 43 (2024) (finding plaintiffs lacked standing to challenge alleged social media censorship during COVID-19 pandemic).

Franklin Roosevelt.[7] The Warren Court regularly overruled precedent and dramatically overhauled many areas of the law.[8] For example, in *Reynolds v. Sims*, the Supreme Court overhauled the structure of state legislatures across the country—finding the States' equivalents of the U.S. Senate unconstitutional.[9]

Compared to its predecessors, the current Supreme Court overrules precedent at a *slower pace*.[10] Indeed, the Supreme Court has conspicuously declined to overrule precedent in several recent, important cases.[11] But at the same time, the Supreme Court can and should overrule precedent when it believes a past decision was wrong.[12] The Supreme Court continues to strike a balance between preserving precedent and correcting its mistakes—just as it has always done.

V. Conclusion: The Supreme Court and its judgments demand respect.

As Solicitor General of Missouri and a recent Supreme Court clerk, I can attest that the Supreme Court is working exactly as it should be. The Supreme Court derives its legitimacy from the fact that it is not a partisan institution—no political group gets everything it wants there. This is inherent to a healthy legal system. Disagreeing with the Supreme Court's decisions is no excuse to threaten judicial independence—a cornerstone of our Republic that took centuries to build. I urge Congress to continue its tradition of respecting the Supreme Court's independence.

Thank you again for your invitation to be here today. I look forward to your questions.

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[7] *See, e.g.*, Kurt T. Lash, *The Constitutional Convention of 1937: The Original Meaning of the New Jurisprudential Deal*, 70 FORDHAM L. REV. 459, 462–63 (2001).
[8] Frederick Schauer, *Has Precedent Ever Really Mattered in the Supreme Court?*, 24 GA. ST. U. L. REV. 381, 397 (2007).
[9] *Reynolds v. Sims*, 377 U.S. 533, 568 (1964).
[10] *See, e.g.*, Jonathan H. Adler, *Still the Stare Decisis Court (At Least For Now)*, Volokh Conspiracy (2025), https://reason.com/volokh/2025/10/20/still-the-stare-decisis-court-at-least-for-now/.
[11] *See, e.g.*, *Fulton v. City of Philadelphia*, 593 U.S. 522, 534 (2021); *Gamble v. United States*, 587 U.S. 678, 707–10 (2019).
[12] *See, e.g.*, *Brown v. Bd. of Ed. of Topeka*, 347 U.S. 484, 494–95 (1953).