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| THE SUPREME COURT |

**The Supreme Court Is Not Supposed to Have This Much Power, And Congress should claw it back. -** By [Nikolas Bowie](https://www.theatlantic.com/author/nikolas-bowie/) and [Daphna Renan](https://www.theatlantic.com/author/daphna-renan/) **-** The Atlantic, June 8, 2022

It’s June again—that time of year when Americans wake up each morning and wait for the Supreme Court to resolve our deepest political disagreements. To decide what the Constitution says about our bodily autonomy, our power to avert climate change, and our ability to protect children from guns, the nation turns not to members of Congress—elected by us—but to oracles in robes : the nine Supreme Court Justices. This annual observance of *judicial supremacy* is an odd affliction for a nation that will close the month ready to celebrate our independence from an unelected monarch.

Contrary to what many people have come to believe, judicial supremacy is not in the Constitution, and does not date from the founding era. It took hold of American politics only after the Civil War, when the Court overruled Congress’s judgment that the Constitution demanded civil-rights and voting laws. The Court has spent the 150 years since sapping our national representatives of the power to issue national rules. Even worse, the Court’s assertion of the power to invalidate federal laws has stripped Americans of the expectation, once widely shared, that the most important interpretations of the Constitution are expressed not by judicial decree but by the participation of “We, the People,” in enacting national legislation.

Through the Civil War and the Reconstruction era that followed, the politically dominant Republicans in Congress enacted legislation to build a multiracial democracy in the United States for the first time. Some of these laws boldly overruled the Court, including statutes in 1862 and 1866 that began the abolition of slavery and recognized the citizenship of Black people. Others prevented the Court from retaliating against Congress’s interpretation of the Constitution, such as legislation stripping the Court of jurisdiction over certain matters.

Decades after the Court in *Marbury v. Madison* first anticipated that it might disagree with Congress about a federal law’s constitutionality, the justices finally convinced skeptics of the need for this authority by disempowering Congress and unraveling its legislative efforts to establish political equality.

Rather than look to the Court to glimpse some fundamental truth from scant constitutional text, Americans ought to demand that their elected representatives engage in the hard work of national lawmaking. Congress must act, even if it means overriding the interpretations of the Court and reshaping its jurisdiction.

Encouragingly, members of the House have recently passed bills to enforce their understanding of what federal laws our nation demands and our Constitution permits—including reproductive freedom and voting rights. But the bills have all stalled in the Senate for two reasons that remain within its control. One, the filibuster, will be abolished as soon as 50 senators recognize that a permanently incapacitated Senate is far more destructive than an active Senate that might one day be controlled by an opposing party. But the other obstacle may be more pernicious: a fear among legislators that there is no point to legislating if the Court will simply invalidate anything Congress achieves.

The question is not whether some commitments—abolition, reproductive freedom, racial equality—are worth making supreme and constitutive of a national American identity. Rather, the question is who gets to decide the content of those commitments for all Americans: the 50 states, a five-justice majority, or our national legislature.

1/ Elucidate the following underlined passages :

“the nation turns not to members of Congress—elected by us—but to oracles in robes : the nine Supreme Court Justices”

“This annual observance of *judicial supremacy* is an odd affliction for a nation that will close the month ready to celebrate our independence from an unelected monarch.”

Contrary to what many people have come to believe, judicial supremacy is not in the Constitution, and does not date from the founding era.

2/ Explain how the case Marbury v. Madison paved the way for judicial review.

3/ Do you think the author of the article is right in asserting that a strong legislative is more democratic ?