

From May 2025 Voter

## The Rule of Law: What Is It, and Why Should We Care?



On March 27, the LWV of Greater Los Angeles hosted a [webinar on the rule of law](#). The presenter was retired Federal Judge Jeremy Fogel, who provided valuable insights into this topic and how it relates to current events. Judge Fogel said there are four basic characteristics of the rule of law, each of which is now facing challenges:

- **Decisions are based on evidence and established principles.** This is being challenged today by a tendency to base decisions merely on perceptions.
- **All parties have the right to be heard.** This is now too often limited by lack of resources, money, or time.
- **Decision makers have integrity and oversight.** Judge Fogel asserted that the selection process for judges is often flawed and judicial performance lacks sufficient oversight.
- **Adverse rulings may be challenged but are ultimately accepted.** The current lack of transparency in explaining rulings negatively affects whether they are accepted and obeyed.

Judge Fogel's presentation continued with observations about the current situation that are concerning:

- **The outcome is more important than the process.** There is a desired result; it doesn't matter how it is reached.
- **Threats and executive orders are being aimed at lawyers and law firms that have represented clients who have taken positions against the current government's policies.** Especially concerning is the fact that several big law firms have buckled under political pressure, agreeing to the government's demands, in some cases even agreeing to perform pro bono work on behalf of the government at its behest.
- **Personal attacks have been waged on individual judges and their families.**
- **In several cases the current government has responded to court orders by acting in bad faith or actually refusing to comply.** This behavior raises a virtually unprecedented question: What recourse is there if the executive or legislative branch fails to comply with a judicial ruling?

So how concerned should we be? According to Judge Fogel, the current situation in the United States is unprecedented since the Civil War. He attributes this situation in some degree to the rise of social media and its ability to divide people by spreading false information. Additionally, the collapse of the rule of law seems to be spreading internationally via attacks on the judiciary. Countries that have recently turned from democracy toward authoritarianism include Turkey, Poland, India, and Hungary. Finally, the disappearance of civics education in our schools is a major problem. People who don't understand the role of the courts often think of judges as "politicians in robes," which is specifically *not* their role. Judge Fogel praised the League for our work and activism in this area.

Are there reasons for optimism? Judge Fogel thought so, and he mentioned a few:

- **There are constitutional "guardrails."** Although the number of judges can be changed, sitting federal judges may not be removed except by impeachment. In the U.S. history, only fifteen federal judges have been impeached, and of those only eight were convicted (most recently in 2010). The process of judicial impeachment is involved and requires a two-thirds vote of the Senate to convict.
- **Our national culture and tradition support the rule of law.** There are countries whose citizens still are not aware that the prosecution can actually lose a case—i.e., that the outcome of a trial or a judicial ruling is not always predetermined. That is not the case in our country, where we still expect that decisions will depend on interpretation of established law, not on the whim or power of a ruler.

- **The legal community is mobilizing.** Although it's frightening that some law firms have "caved" to government demands, Judge Fogel is encouraged by the number of lawsuits currently being filed against the government's attempts to roll back our freedoms.

Finally, what suggestions for changes to the judicial system did Judge Fogel offer? Probably the most significant would be to change the tenure of Supreme Court justices from lifetime to eighteen years, which would not require a constitutional amendment. Terms of Supreme Court justices, Fogel maintains, should be staggered so that no administration is able to "pack" the Court. When a justice's term is over, they could continue to act as a judge in a lower court. Such a system could provide the basis for a "Council of Elders"—a panel of retired justices that would be responsible for enforcing the Supreme Court's Code of Conduct.

[The webinar is available to view online.](#) I strongly encourage everyone to take a look—it's well worth your time.

—Robbie Davis