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## ‘Indispensable’ to Preserving Our Constitutional Democracy



By [Jerry H. Goldfeder](#)

In May 2019 I had the privilege of [addressing the graduating class](#) of Fordham Law School. One of my themes was that lawyers have a significant role in preserving our constitutional democracy. My short-hand admonition was “Save the Republic.” I had already raised a concern that peaceful succession might be elusive (“[A Donald Trump Coup if He Loses in 2020?](#)”, *USA Today*, March 14, 2019), but little did I appreciate how imperative our task would be following the presidential election.

Immediately after last November’s vote, we witnessed some 60 cases [brought in both state and federal courts to overturn certified results](#); an extraordinary extra-legal effort by the defeated president to persuade election officials [to “find” additional votes](#) or ignore actual totals; a concerted attempt to have the [U.S. Department of Justice declare results in certain states as fraudulent](#); and [to pressure Congress and the Vice President](#) to name President Trump the winner of the electoral college vote. It was against this backdrop that supporters of the president, some of whom were armed, [invaded the United States Capitol](#) in the most egregious attack on our constitutional process since the Civil War.

These assaults on the rule of law are quite worrisome, and portend uncertainty for the 2024 presidential election. The former president would have been the [first of 11 defeated presidents](#) to disregard election results and hold onto power. His attempt failed, but he unleashed a veritable army of supporters who question the legitimacy of our electoral process and emboldened numerous states to restrict voting rights and strip otherwise objective election administrators of their authority to canvass and report accurate results. See [Voting Laws Roundup](#), Brennan Center, October 2021.

As lawyers, we have a special obligation, and opportunity, to respond to such norm-busting conduct that threatens our republic. In fact, various bar associations have already stepped up to the plate. For instance, the New York City Bar Association recently issued a report on the rule of law and lawyers' "important, even indispensable, roles ... in making democracy work." See [The Consent of the Governed: Enforcing Citizens' Right To Vote](#). After a comprehensive summary of voting issues, the NYCBA suggests how lawyers can defend the rule of law, by (1) affirmatively using litigation, (2) advocating legal reform in bar associations, (3) modeling democratic values as law school professors, and (4) asserting leadership in civic and other community organizations.

Like the City bar, the New York State Bar Association is also leading the way. It recently created a [Voting Rights and Democracy Task Force](#) to focus on educating its members and advocating reforms of the electoral process. Its work has just begun.

New York lawyers are not alone. For many years the [American Bar Association](#) has addressed voting rights issues, and has several standing committees focusing on election reform. The Texas Young Lawyers Association has created a [voter registration program](#), and its parent organization, the Texas Bar Association, recently looked at the "[History of Voter Suppression](#)" at its annual meeting. And next week the Boston Bar Association is conducting a webinar on "[The Right to Vote in 2021—Legal Challenges and Opportunities.](#)"

Beyond the work of bar associations, individual lawyers and firms are working side-by-side with voting rights organizations to challenge restrictive voting laws—assisting established civil rights organizations like the NAACP Legal Defense Fund, Latino Justice PRLDEF and Lawyers for Civil Rights Under Law, and newer groups such as Fair Fight Action, based in Georgia. Indeed, there are scores of not-for-profits who are in courthouses throughout the country on behalf of voters. A good place for lawyers who wish to explore the many groups can be found at the [Charity Navigator](#). This site provides a good snapshot of the variety of organizations involved in these efforts.

For those who wish to steep themselves in the panoply of legal issues, there are numerous sites populated by first-rate election scholars who write law review articles and short blogs that are immensely helpful. An excellent place to start is at [ElectionLawBlog.org](#). Its founder, the prolific commentator Richard L. Hasen, recently published an excellent summary of the current state of voting issues in [Identifying and Minimizing the Risk of Election Subversion and Stolen Elections](#)

[in the Contemporary United States](#). In addition to reviewing exigent legal issues, Professor Hasen offers several solutions worth considering by lawyers and bar associations advocating for legislative and regulatory reforms to ensure safe and fair elections: (1) improved transparency, chain of custody and auditing capacity of elections through a requirement that all voting machines have a paper ballot component; (2) more limited discretion by election administrators who certify vote totals; (3) more effective checks on the politicization of election administration; and (4) more aggressive prosecution of those who tamper with voting or intimidate election officials.

Readers should also keep an eye out for commentary by Profs. [Richard H. Pildes](#) and [Edward B. Foley](#), two constitutional scholars who can always be counted on to provide thoughtful and provocative analysis. And [NYU's Brennan Center for Justice](#) has a robust website with many articles worth consulting.

In a word, then, during this fraught era when our constitutional democracy is undergoing a stress test like no other time in our lives, lawyers have many opportunities to make a critical difference. Each of us should, and I trust that these resources will facilitate such action.

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