

THE TENNESSEAN

The Constitution will guide us in the Trump era

There are many unknowns, but the courts will be a key ally to all Americans as they fight to preserve their rights.

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As a former political strategist, I am as shocked as anyone about President-elect Trump's upset victory last Tuesday.

Campaign autopsies will issue in due course, but right now we must remember that what happens *between* Election Days is far more important than what happens *on* Election Day.

The Constitution will be my guide, and I hope it will be yours, too.

Many Americans are worried about the civil-liberties implications of Mr. Trump's victory on Election Day.

His campaign rhetoric was chock-full of bullying invective. He and some of his frenzied supporters openly denigrated our LGBTQ brothers and sisters, immigrants, people of color, women, and religious minorities with a boldness I have never seen in my lifetime.

So how should Americans prepare for a potentially authoritarian President Trump?

Practically speaking, we have less to fear than some might think. President Trump will likely behave like President Ronald Reagan in that he will delegate decision-making authority to others.

Mr. Trump has never really wanted to govern as much as he wants people to view him as a winner, and he now has that prize.

"But Mike Pence supports gay conversion therapy!" some have admonished, reflecting the basic truth of governance that personnel is policy. Openly gay billionaire Peter Thiel, however, has also joined the Trump transition team.

That should encourage disaffected progressives, who may also find solace in a 2000 Advocate magazine interview of Mr. Trump.

In it, our next president defended LGBTQ and immigrants' rights at a time when Democrats were largely silent.

Still, "eternal vigilance is the price of liberty." Defending against President Trump's potential missteps will require hard work, and probably some additional frustrating losses. (Just ask Obamacare's challengers, who scored a pyrrhic victory when the Court reined in Congress's exercise of plenary power under the Constitution's Commerce Clause while upholding the individual mandate under the Taxing and Spending Clause.)

Even after Obergefell v. Hodges legalized same-sex marriages across the country, we do not know exactly how federal courts — indeed, the U.S. Supreme Court — will treat LGBTQ rights in analyzing the constitutionality of all so-called anti-gay laws. But that same legal uncertainty existed under President Obama, and it is not a product of Mr. Trump's upset win on Nov. 8. So it will be up to activists and advocates to continue persuading fellow citizens, lawmakers, and courts of the correctness of a particular worldview.

Thankfully, we do know how courts treat the rights of women, immigrants, and other minorities when lawmakers overreach. But the judicial branch is, by design, a passive branch of government. It will be up to all of us to enforce everyone's personal and economic rights against the potential excesses of a single-party government, for the next four years and for posterity.

As my former Cato Institute colleague Gene Healy observed in his book "The Cult of the Presidency: America's Dangerous Devotion to Executive Power," the Founders saw the presidency as "republican in form and substance." Not only would the Constitution constrain the president's governing powers, but he (or she) was to have few honorifics, lest anyone place him (or her) on a pedestal.

Over time, for various cultural and historical reasons that Healy recounts, the American vision of the presidency has changed for the worse.

Before voting, I wish everyone would ask, "Would I be okay with 'the other guy' having the amount of power that I think 'my guy' should have to create the kind of society I want?" I suspect the answer would often be "no."

That's important to keep in mind, because upset elections are not without precedent. Supporting the expansion of presidential power just because one's chief is running the tribe is a dangerous game of political Russian roulette.

If we work together to limit the president's power for all time, however, we will have much less to fear the next time a President Trump comes along.

For all these challenges, the Constitution will be our guide.