

The Supreme Court's silent opinions undermine its legitimacy

July 16, 2025 at 9:27 am



Raw power without reason is the very essence of arbitrariness and arbitrariness, in turn, is the enemy of the rule of law, writes the columnist. Pictured is The U.S. Supreme Court building in Washington, D.C. (Anna Moneymaker/Getty Images North America/TNS, 2024)



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In an unsigned order with no explanation, the Supreme Court's conservative majority blocked the lower court orders that had stopped President Donald Trump from shuttering the Department of Education.

The decision seems legally wrong to me, given that Congress created the department and only Congress should have the legal power to shut it down. But how can I even make a fair-minded argument to that effect, when the majority — unlike the three liberal dissenters — didn't deign to provide even one word of explanation for its reasoning?

Judicial decision-making without reasons fundamentally undermines the rule of law.

A Supreme Court that issues consequential rulings without giving reasons is on the dangerous path of appearing to act arbitrarily, which is seriously damaging to the legitimacy of the institution itself.

In a precedent-based legal system — like the one we have in the U.S. — you can't know what the law is if you don't have judicial opinions explaining why the courts have reached their conclusions.

In recent months, the Supreme Court has gone worryingly far down this path. As the legal scholar Steve Vladeck points out, in the 15 decisions in the emergency docket decided in favor of the Trump administration, seven, nearly half, came without any explanation.

The Department of Education ruling provides a good example of the problem. The federal district court and the federal court of appeals that blocked Trump's plans gave lengthy explanations of their reasoning. So did the Supreme Court dissent written by Justice Sonia Sotomayor, joined by Justices Elena Kagan and Ketanji Brown Jackson. An open-minded reader can therefore read three different opinions to understand why the shutdown should be considered unlawful.

But if you want to understand why the Supreme Court decided what it did, you have to look at the Trump administration's briefs before those various courts. Under the best of circumstances, briefs — even winning briefs — contain unconvincing arguments that the courts reject. Trump administration briefs are chock-full of weak arguments that even the court's conservatives would not take seriously.

If we don't know, then we can either speculate by reconstructing arguments, or else we must wonder if the justices were basing their decisions on sound legal reasoning in the first place. After all, if the conservatives had good arguments, why not spend a few minutes stating them?

To be sure, the Supreme Court doesn't need to explain its reasoning when it's just upholding decisions made below. Implicitly, it's accepting those courts' reasoning.

Overtaking lower court decisions is a different matter entirely. When the Supreme Court does so without offering any explanation, it is simply wielding raw power. And raw power without reason is the very essence of arbitrariness. Arbitrariness, in turn, is the enemy of the rule of law.

You can see why by asking the simple question: What is the law now? The Department of Education is not the only target of Trump's plans to restructure the executive branch without congressional input. Should lower courts now reject entirely any efforts to block apparently illegal Trump actions before they have irreversible real-world effects? Was there something specifically wrong with the lower court arguments against Trump's attack on the Education Department? Was it a problem with who the plaintiffs were? Does the court think the president has some inherent authority over executive departments, no matter what Congress has said?

The bottom line is that we don't know. We cannot answer these questions. Neither can the lower courts. They will therefore not be able to rely on the Supreme Court's decision as binding or even instructive precedent.

And the whole point of the Supreme Court's decisions is to provide guiding precedent for the whole country. That's why it's Supreme. As Justice Robert Jackson once put it, speaking in the royal "we" of the court: "We are not final because we are infallible, but we are infallible only because we are final." A final, infallible court that doesn't say why it's doing what it is doing isn't clarifying the law — it's turning the job of the lower courts into a guessing game.

Of all people, Chief Justice John Roberts should understand why it's a serious problem to overturn lower court decisions in incredibly important cases without explanation. He cares deeply about the institutional legitimacy of the court, which he has tried hard to protect. A silent court isn't a legitimate court.

Roberts also cares deeply about the craft of judicial decision-making, which demands reasoning. Roberts knows — as do all judges — that writing down your reasons for an opinion forces you to think them through with a sharpness and clarity that would otherwise not be demanded. Knowing that others will review and criticize those reasons is a crucial check on the quality of your logic. Important decisions without reasons violate — and insult — the judicial craft.

Finally, Roberts cares about the law-directing function of the Supreme Court. He doesn't relish the idea of lower courts running off in many different directions without guidance.

The pressures of work on the Supreme Court are considerable. It has the crucial job of standing up to Trump's assault on the rule of law. I'm willing to give the chief justice the benefit of the doubt when I can see that he is trying to preserve the power of the judiciary and avoid conflicts that the courts cannot win.

But reason-giving is the lifeblood of judicial action. Give it up, and you give up the life of the law. The chief justice should create and enforce a new norm for the court: If lower court decisions are going to be reversed in important cases, the justices should say why.

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