

Sen. Ted Cruz is threatening judicial independence

The founders sought to protect us against this

By Nancy Atlas, Royal Furgeson, Barbara Lynn, T. John Ward, Lee Yeakel and Yaman Desai

The founding fathers were adamant: An independent federal judiciary is essential to the Constitution. In Federalist No. 78, Alexander Hamilton emphasized the role of federal courts to “declare all acts contrary to the manifest tenor of the Constitution void,” without which “reservations of particular rights or privileges would amount to nothing.”

Sen. Ted Cruz, a member of the Senate Judiciary Committee, recently convened a hearing he called “Impeachment: Holding Rogue Judges Accountable.” At the hearing, he argued that impeachment is an appropriate response to perceived erroneous judicial decision making by federal trial judges.

The six of us writing here include a trial lawyer and five retired federal judges appointed by Democratic and Republican presidents. The former judges among us are members of the Article III Coalition, a group devoted to the independence of the judiciary. We see a serious political threat to the separation of powers that made this country’s system of governance the envy of the world.

Federal courts have long-established and appropriate procedures to deal with supposedly erroneous judicial decisions. The parties can appeal. Interested

persons or entities with standing may file amicus briefs, stating their positions as friends of the court, or seek to intervene. And members of the public can criticize a judge's decision and seek publicity for their criticisms. But attempted removal of a federal judge merely because some might disagree with a particular ruling is unprecedented.

Historically, the drastic measure of impeachment has been reserved for egregious offenses outside of the courtroom. Since 1803, the House of Representatives has voted to impeach 15 federal judges. Only eight of those impeached were convicted in the Senate, for offenses including tax evasion, perjury and conspiracy to solicit a bribe, sexual assault, obstruction and impeding an official proceeding, and accepting bribes. None was charged with making incorrect rulings.

On the other hand, the thought of impeaching judges for their rulings on pending matters has long been considered beyond the pale. Former Chief Justice William Rehnquist, appointed by President Richard Nixon, wrote a book in 1992 entitled *Grand Inquest: Historic Impeachments of Justice Samuel Chase and President Andrew Johnson*, noting that Chase's acquittal established the accepted norm that judicial acts would not be a basis for impeachment.

In March 2025, Chief Justice John Roberts echoed that sentiment: "For more than two centuries, it has been established that impeachment is not an appropriate response to disagreement concerning a judicial decision. The normal appellate review process exists for that purpose." Chief Judge William Pryor of the 11th U.S. Circuit Court of Appeals praised the position of the chief justice, stressing the "unbroken tradition in American history that we don't impeach judges for decisions that are unpopular or that we may think are wrong or right [or] controversial."

Cruz's approach is part of a rising chorus publicly demonizing federal judges who rule against the current administration. President Donald Trump has recently demeaned "rogue" judges who he then labeled "criminals," and Elon Musk has stated that the only way to restore rule of the people in America is to impeach judges.

Heeding that call, members of the House have introduced various resolutions calling for the impeachment of several federal district judges who ruled against the Trump administration's policies and positions, accusing the judges of bias, corruption and unwarranted activism. Two examples will demonstrate the nature of the resolutions.

Rep. Derrick Van Orden, R-Wis., introduced a resolution to impeach Judge Paul Engelmayer of the Southern District of New York, claiming he "engaged in Judicial misconduct when he halted [the] Executive order establishing [DOGE] on purely political grounds, demonstrating clear bias and prejudice against the President and the 74,000,000 Americans who voted for [Trump]."

Rep. Andy Ogles, R-Tenn., introduced resolutions to impeach Judge John Bates, a district judge in Washington. Bates had ordered certain federal agencies to temporarily restore clinical data and medical/gender care information to their webpages. Ogles also sought to impeach Judge Amir Ali, also of Washington, after Ali ordered the restoration of certain foreign aid payments to contractors and recipients of USAID grants. Ogles accused both of “conduct so utterly lacking in intellectual honesty and basic integrity” that each was “guilty of high crimes and misdemeanors.”

In every case, judicial process was available to challenge the orders in question. That process is the proper mechanism to dispute court orders.

Cruz’s approach — normalizing impeachment of federal trial judges for doing their jobs — is deeply threatening to the independence of federal judges and contrary to our founding principles.

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