

Originally published in

## *New York Law Journal*

### **Law Day Column**

May 1, 2024

# **Saving Our Republic**

By [Jerry H. Goldfeder](#)

In May 2019, I had [the opportunity to address](#) the graduating class of Fordham Law School. After I gave the relatively common advice to the soon-to-be-lawyers to adopt a flexible attitude toward their careers, [I focused on the following year's election](#):

“As a teacher of election law I would be remiss not to say this. It is not partisan to acknowledge that the state of our nation is fraught. That the rule of law is being compromised. So whomever you may support in the presidential election, this graduating class has a solemn duty to be involved, to make certain that our constitutional democracy is preserved—to save our Republic.”

Little did I realize that the normative and institutional guardrails of our republic would be severely tested in the ensuing year and a half—a defeated president who attempted to foil peaceful succession; a wide-ranging plot by attorneys to undermine the legitimacy of the electoral process, coupled with a slew of frivolous lawsuits; and an armed attack on the United States Capitol.

Fortunately, like 10 of his defeated predecessors, former president Trump left Washington after losing. Yet, there is [a swath of the population that continues to question the integrity of our elections](#), including the former president who is seeking to reclaim the Oval Office; there are [foreign governments involved in disinformation campaigns](#) on social media that are fueling the “big lie”; and we are witness to traditionally [neutral election administrators quitting under pressure](#) or being replaced by [partisans](#).

[Bar associations and a variety of civic groups across the country are working overtime to preserve our democratic norms and the rule of law](#)—and [these efforts](#) are deep and broad. Examples include the filing of [amicus briefs](#) opposing restrictive voting laws; [op-eds](#), [podcasts](#), [seminars](#) and [reports on legal issues](#) impacting the presidential election; and an [active monitoring of legal ethics](#) of those involved in campaign-related litigation. Indeed, with an eye toward holding accountable those who attempted to upend the 2020 election, a robust cottage industry of [legal commentators](#) has emerged to [analyze and explain the various civil cases and criminal trials](#) against the former president and his allies.

Attorneys are thus quite engaged in 2024.

However, there is an abiding sense that all of this may not be sufficient to stave off a highly contentious election whose procedures and results will be challenged at every step of the way. The number of lawsuits, though prevalent in almost every election since *Bush v. Gore*, [reached a crescendo in 2020](#), and will undoubtedly increase this year—potentially creating confusion and inconsistencies in how Americans in fifty-one jurisdictions cast their ballots and whether they will be counted.

Worse than such judicialization of our elections, though, is a fear that political violence, like we saw in [Lansing, Michigan in 2020 and at the United States Capitol in 2021](#), may be a prelude to disruptive conduct at polling sites in November and at Electoral College meetings in December. [In fact, a prominent candidate for the United States Senate is encouraging her supporters to arm themselves ahead of the election.](#)

So, while former Secretary Jeh Johnson of the U.S. Department of Homeland Security wisely determined that [election infrastructure was a national security issue](#), DHS now needs to affirmatively work with state law enforcement agencies and local bar associations to protect polling places and Electoral College meetings.

As we approach our 60th presidential election, let's be honest—it is shaping up to be unlike any other since the Civil War and its aftermath. Preparation by federal and state authorities to ensure a free and fair election, with the active support of the legal community, is, I am sad to say, necessary. One need not be an alarmist to think this—just a cold-eyed realist.

I will conclude this essay with two stories. After the 1876 presidential election was stolen from him, the Democratic candidate, Samuel J. Tilden, spoke at a meeting in Manhattan and said the following:

“Everybody knows that, after the recent election, the men who were elected by the people as President and Vice President were counted out; and the men who were not elected were counted in and seated. If my voice could reach throughout our country and be heard in its remotest hamlet, I would say: Be of good cheer. The Republic will live. The institutions of our fathers are not to expire in shame. The sovereignty of the people shall be rescued from this peril and re-established.”

I like to recount his remarks because I believe doing so nurtures optimism about the future, and, so far, Tilden's view has been borne out. I certainly hope he continues to be right.

My last story features a Runyonesque character of New York politics. His name was [Danny DeFrancesco](#). He was from East Harlem, and rose up through the ranks at the New York City Board of Elections to become executive director. He always had a smile, and although not an attorney himself, was eager to advise young lawyers, whether representing insurgents or incumbents. His main tenet was there would always be another election, so keep your powder dry and don't take wins or losses too personally. But, when all was said and done, he had to make sure that votes were counted properly and those taking office actually won and losers did

not feel cheated. To fulfill this goal, he had a simple credo: “Every Election Day I pray. I pray for a just result. And toward that end, I pray for a landslide.”

This year, as attorneys from across our nation seek to ensure a fair process and a just result, let’s keep in mind that probably the best insurance is a decisive electoral margin. Lawyers who might feel more comfortable in court or conference rooms would, therefore, be well advised to take on the additional role of political advocates. At the end of the day, perhaps that is the most effective way to save our republic and preserve the rule of law that we so cherish. [We need to prove Tilden right.](#)

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