

# [***Media's Dangerous Assault On Christianity Defies History; Middle East Tensions Amid The Israel-Hamas War; The Unconstitutionality Of The Special Counsel Jack Smith's Office.***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6BG2-TSH1-JCS1-6128-00000-00&context=1516831)

Fox News LIFE, LIBERTY, LEVIN 8:00 PM EST

March 2, 2024 Saturday

Copyright 2024 Fox News Network LLC All Rights Reserved

**Section:** NEWS; International

**Length:** 6488 words

**Byline:** Mark Levin, Jon Scott

**Guests:** Robert Greenway, Steven Calabresi

**Body**

[20:00:35]

MARK LEVIN, FOX NEWS CHANNEL HOST, "LIFE, LIBERTY & LEVIN": Hello America. I am Mark Levin and this is "LIFE, LIBERTY & LEVIN" Saturday.

One of the reasons I love doing these shows on Fox is it gives me an opportunity not only to introduce you to some stellar individuals, but to talk about history and philosophy and economics in all of these things that are generally not discussed on platforms like this.

American History, maybe I ought to do a show on American History every week, but we are going to use tonight's show, it's going to be very exciting, I think, very informative to discuss some American History. Why? Because there are reprobates, historical illiterates on other channels who want you to believe certain things that are not true, why?

Well, mostly because they are not very bright, and so as I said the other day, part of my job here is to unravel what they do and more importantly in the next 15 minutes, you are going to learn more about American History that you probably have ever learned. Certainly more than you've ever learned on TV or radio, and mostly more than you've ever learned in high school or college.

We are going to start by using as a foil a reprobate who is a POLITICO reporter and Washington DC who appeared on MSNBC where we all go to get facts and information, don't we? I want to deal with this because this is a frontal assault on Christianity.

We have had a frontal assault on Judaism and Jews for the last many months in this country. It has been given voice by MSNBC and CNN, "The New York Times," "The Washington Post," and the usual platforms.

But now, they are pushing the idea of Christian nationalism which they are trying to link up with the Klan and things of that sort. The media in this country, they abuse their authority. They lie and they try and preach the radical left agenda.

How about we do a little bit of history tonight and straighten things out.

So, this is from last week, a POLITICO reporter on MSNBC, a terrible poisonous combination. Go.

(BEGIN VIDEO CLIP)

HEID PRZYBYLA, NATIONAL INVESTIGATIVE CORRESPONDENT, POLITICO: There are many different groups orbiting Trump, but the thing that unites them as Christian nationalists not Christians by the way because Christian nationalist is very different, is that they believe that our rights as Americans, as all human beings do not come from any earthly authority. That will don't come from Congress, it will come from the Supreme Court, they come from God.

The problem with that is that they are determining -- man -- men -- it is men are determining what God is telling them. And in the past, that so- called natural law is, you know, it is a pillar of Catholicism for instance that has been used for good in social justice campaigns. Martin Luther King evoked it in talking about Civil Rights.

But now, you have an extremist element of conservative Christians who say that this applies specifically to issues including abortion, gay marriage and it is going much further than that.

(END VIDEO CLIP)

LEVIN: You know, ladies and gentlemen, the sanctimony that the left has when they are spewing stupid things is remarkable to me.

Obviously, she doesn't know a thing about American History or America's founding other than what she has heard from some left wing tenured professor or her friends.

The founders of this country, the most important philosopher at the time was John Locke. John Locke wrote a number of essays and treatises including "The Second Treatise on Government." This had an enormous impact on the founders of this country.

Other historians have looked very carefully at the pamphlets that were written at the time, Thomas Paine, was a pamphleteer, but there were many and John Locke was cited more than any other pamphleteer. And why? John Locke talked about the free will, the individual, unalienable rights, natural rights, natural law and in some ways, he was borrowing from Aristotle.

Aristotle talked about two characters of the law. He talked about natural law, which is universal law. In other words, murder is wrong whether man passes a law or not, it is wrong in America. it is wrong in China. The fact that governments don't follow it and individuals don't follow it is a different story.

But morality does not come from man, morality comes from a higher authority. In other words, what he called particular law. What is particular law? Law made by man.

So there is universal truth, universal law, God-given, particular laws created by man, some are just, some are unjust, some are democratic, some are authoritarian, whatever it is.

This is basic stuff for those of us who have studied them over the decades. And the founders of our country during the revolutionary period when they wrote the Declaration of Independence, what did they rely on? Who did they rely on? They relied on Aristotle. They relied on a great Roman senator by the name of Cicero.

They relied on John Locke. They relied on Montesquieu. They relied on a gentleman by the name of Sidney. They relied on all of these great thinkers, Aquinas, that is who they relied on. Why? Because really, this is about western enlightenment.

Western enlightenment: This is about a nation founded on Judeo-Christian principles, and yet we are told every day that it is not. We are told every day this is an unjust country. We are told every day it's about White privilege. We are told everyday something that's is a lie.

Well, I would remind them that Karl Marx was right, too, so was their hero, Franklin Roosevelt. He was White, too. So is their hero, Joe Biden who is actually translucent if you want to know the truth.

But for instance, Aristotle wrote "Nicomachean Ethics." In one of his essays on that, he talks about this. John Locke, "The Second Treatise on Government." Virtually every single founder read that book. Sidney on "Discourses Concerning Government." Cicero "On the Republic and on the Laws."

And I could go on and on and on. It is all there for the understanding where she, POLITICO, MSNBC, and the bobble heads that are just saying "yes, yes, yes," who do they rely on?

They are so moronic they don't even know who they rely on. You know who they rely on? Philosophers like Rousseau and Hegel and Marx stole from Hegel. All three White men by the way, I just want to remind the left and that is the modern-day Democratic Party.

That man gives us rights and privileges and we need the right man, certain types of men. So in other words it's a very dangerous ideology that is preposterous.

Now I want to talk about the Declaration of Independence that relies on John Locke and Aristotle and those. Follow me carefully. Now we get into a really smart part.

If colleges were actually teaching this subject, they should be teaching something like this. Listen to this: Reason cannot by itself explain why there is a reason. Science cannot by itself explain why there is science. Man's discovery and application of science are products of reason. Reason and science can explain the existence of matter, but they cannot explain why there is matter.

They can explain the existence of the universe, but they cannot explain why there is a universe. They can explain the existence of nature and the law of physics, but they cannot explain why there is nature and the law of physics.

They can explain the existence of life, but they cannot explain why there is life. They can explain the existence of consciousness, but they cannot explain why there is consciousness.

Science is a critical aspect of human existence, but it cannot address the spiritual and moral nature of man.

In this respect, science is a dead end around which the atheist refuse to reason. Reason itself informs man of his own limitations and in doing so, directs them to the discovery of a force greater than himself.

A supernatural force responsible for the origins of not only human existence, but all existence, at which itself has always existed and will always exist.

These are my opinions on "Liberty and Tyranny," but they were also the views of the founders of your country.

For most, the supernatural reveals itself with The Creator, God. Man seeks God's guidance through faith and prayer. The agnostics accepts the supernatural, but is not sure of the form of its existence.

The Deist accepts that God treated the universe and man's condition, but left it to man to sort things out to reason. But man is more than a physical creature. As Edmund Burke who was at the time crucially important Irish member of the British Parliament, who looked at the American Revolution and supported it. He looked at the French Revolution and strongly opposed it because he said the American Revolution was about representative government, the French Revolution was about destroying their society, much like the revolution of the left today.

What did he say? There is but one law for all. Namely the law which governs all law, the law of our creator, the law of humanity, justice, equity, the law of nature and of nations. This is the natural law that penetrates man's being in which, the Founding Fathers -- my words -- adopted as the principle around which civilized American society would be organized.

Your Declaration of Independence which was the consensus position of the colonists appeals specifically to the laws of nature and nature's god. It provides further, we hold these truths to be self-evident that all men are created equal, that they are endowed by their Creator with certain unalienable rights that among these are life, liberty, and the pursuit of happiness. That is John Locke.

The founders were enlightened men, but not purely of the age of enlightenment, they were highly educated, well-informed men who excelled that reason and subscribed to science, but worshipped neither.

They comprehended them, their strengths as well as weaknesses. At least to founder, Thomas Jefferson and Benjamin Franklin are widely believed to have been deist. They were men of varying denomination, but united and emphatic in the belief that the creator was the origin of their existence and the source of their reason.

Look, I'm not preaching religion here, although I am a man of faith. I am telling you your history which in a 50-second soundbite is eviscerated, obliterated by a numbskull on MSNBC from POLITICO.

Now, deeper. Ready to go deeper with me? Come on, this is fun.

Is it possible there is no natural law and man can know moral order and unalienable rights from his own reasoning unaided by the supernatural or God? There are of course those who argue this case including the atheists and others who attempt to distinguish natural law from divine providence.

It is not the view adopted by the founders. This position would, it seems lead man to arbitrarily create his own morality and rights or create his own arbitrary morality and rights, right and wrong, just and unjust, good and bad would be relative concepts susceptible to circumstantial applications.

We see it all over the world. We see it all over the world.

Moreover, by what justification with life, liberty, and the pursuit of happiness be unalienable rights if there is no natural law? Since reason alone cannot make them invaluable, what then is natural law if its origin is unknown or rejected?

It is nothing more than a human construct, an individual may benefit from the moral order and unalienable rights around which society functions, while rejecting their divine origin, but the civil society cannot organize itself that way. It would become unstable, and vulnerable to anarchy and tyranny, imperiling all within it, especially the individual.

The abandonment of natural law is the adoption of tyranny in one form or another because there is no humane or benevolent alternative to natural law.

Now some resist the idea of natural laws' relationship to divine providence for they fear it leads to intolerance even theocracy. They have it backwards. If man is endowed by the Creator with certain unalienable rights, he is endowed with these rights no matter his religion or whether he has allegiance to any religion or whether he believes in God.

It is natural law defined by God and discoverable by reason that prescribes the inalienability of the most fundamental and eternal human rights, rights that are not conferred on man by man and therefore cannot legitimately be denied to man by man.

Liberty, individual liberty, free will -- we do not get that from Congress. We do not get that from the Supreme Court. We don't get that from Marxist dictators or fascists. Where does it come from?

Now, people may be atheist, that's fine. They may not believe in God, they may not know what they believe, but this society, this culture was created around the belief that God created these principles and it is the divine nature of natural law that makes permanent man's right to life, liberty and the pursuit of happiness.

The last sentence of the Declaration of Independence, the Founders proclaimed and for the support of this declaration with a firm reliance on the protection of divine providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

Now, one other thing about Christianity and I say this as a Jew who thanks God every day, that thanks God every day with the benevolence of Christians and their faith, despite its different denominations, Christianity was and is America's dominant religion. There is no dispute that Judeo-Christian values and traditions have and do influence America's fundamentals laws and policies.

However, despite its varying practices and applications in the colonies in the early years of the States, Christianity itself does not preach operational dominance over the body ***politic*** or seek justification from it even while it promotes and defends its teaching through proselytism and activism.

In a contrasting Christianity to say Islam in this respect, Alexis de Tocqueville observed that Mohammed professed to derive from heaven and he has inserted in the Quran, not only a body of religious doctrines about political maxims, civil and criminal laws and theories of science. The Gospel, the Christian Gospel on the contrary only speaks of the general relations of men to God and to each other. Beyond which it inculcates and imposes no point of faith, which is why we have the First Amendment, the free exercise of religion. It does not say the free exercise of Christianity and Christianity only.

Long story short, if we follow POLITICO and MSNBC, we will cease to be a free society. They may not know it, but they are embracing the ideology of tyrants and totalitarians of Marx, Hegel and Rousseau and they are rejecting the entire basis for the American system of government and they are doing it because they want to trash and smear Christianity.

Now, one additional point. I want you to look at something. This is Arlington National Cemetery, I want you to look at Arlington National Cemetery. I want you to look at this. Row after row after row after row, the vast majority of those headstones have a cross on them. Not all of them, the vast majority.

The vast majority of people who have died for this country were buried at Arlington and other military sites are White Christian men.

I am sick and tired -- sick and tired of this idea of White privilege, Christian nationalism, the attack of the people who are so responsible for this nation.

When you look at Arlington Cemetery, my question to you is this: Do you think those people there and many of them who died at 17, 18, 20, 25, 30 years old, do you think they are privileged? Do you think they were White privileged Christians? They died defending this country including the First Amendment. Natural law, the law of nature, morality, truth, universal truth, and they populate that cemetery like no other group.

I will be right back.

(COMMERCIAL BREAK)

LEVIN: Welcome back, America.

People say, Mark, what is your hobby? I read. I read. I am obsessed with reading. I am obsessed with knowledge, and not just people I might agree with, but people I don't agree with, and I am not talking about mostly people who are in the media, I am talking about ancient history, modern history, also science and philosophy, and one of the things I keep reading is that the regime in Iran is able to produce seven nuclear weapons, it is just now a matter of them fusing the technology that they have developed with intercontinental ballistic missiles, and now, their nuclear technology.

And I wanted to bring a great expert on the program to talk about this. Robert Greenway, former national security council senior director under President Trump.

One of the principal architects of the Abraham Accords, director of the Allison Center for National Security at the Heritage Foundation, Robert Greenway, I am not watching the media ringing the bells, banging the pots and pans that Iran is a blink away -- we are going to wake up one day, oh my God, they have the seven nuclear missiles.

I am not hearing nothing from the White House despite the fact that "Admiral Kirby" is over there and should be informing the American people what is coming because it is coming. I am not hearing a thing from Joe Biden.

All I am seeing is the constant campaign, trashing the state of Israel, kissing up to the Islamic state of Iran, while they are building, not just theoretical anymore, they are on the precipice.

What do you make of all this?

ROBERT GREENWAY, FORMER NATIONAL SECURITY COUNCIL MEMBER WHO LED THE ABRAHAM ACCORDS PEACE INSTITUTE: Well, I appreciate you having me on and as always, you are a hundred percent correct and I am concerned, too.

And look, the reason I think they are not calling attention to it is because their partners in government are complicit. Look, the Biden administration as we all know, you know certainly better than most, they are paying for it.

By not enforcing existing sanctions, we subsidize the program, and so not only are they engaged in terrorism throughout the region, but they are developing and they are a hair's breath away.

Look, if they don't test a weapon by the end of the year, it is only their incompetence that prevents them from doing it and it might, but it might not, and as you stated, they have the delivery systems already in the inventory that can reach Europe and certainly, Israel.

And unlike other states including North Korea, they have the stated intent and the motive to use it, and so it is an incredibly dangerous time.

And let me add too that this was the last conversation that I had with the president in the Oval Office before leaving the administration was addressing this particular issue and so, this has been something we have watched for a long time.

But I think successive administrations in the US have stated this is unacceptable for a reason and the reason is, they would have control over the global energy market and a significant portion of the world's trade.

We do not want to give the regime the ability to do that and to attack Israel and the United States.

LEVIN: And yet, the Biden administration is coddling Iran, even though Iran is attacking our Armed Forces through its surrogates. The Biden administration has paid for the October 7 attack on Israel. It has paid effectively for the weapons being used against our troops and our sailors.

It has paid for them to rearm themselves, build up their economy and that as you just pointed, they are paying for this nuclear arms program. It has paid effectively for the weapons being used against our troops and our sailors. It has paid for them to rearm themselves, build up their economy, and that as you just pointed out, they are paying for this nuclear arms program and the Biden administration had the worst possible human being on the face of the earth negotiating on our behalf, Robert Malley, who has been given the hook under some kind of secret process.

His classification has been pulled, and he brought three people in, at least one of whom was back channeling to the Foreign Minister of Iran.

This make the Alger Hiss case look like a joke. What do you make of this?

GREENWAY: Yes, it is amazing to me that we outsourced our negotiations to Iran to Iranians that were acting, by all accounts, appearing under the direction and control and certainly coordinating their public positions with the government of Iran.

It is inexplicable to me, but the outcome bears all evidence of it and so if you look at what resulted, when we transitioned administrations, they were enriching to less than four percent. Now, they are enriching to 60 percent habitually, but we tested, the IEA has reported over 83 percent.

They had 500 centrifuges in operation when we transitioned and the inauguration occurred. Now, there are over 5,000. And so again, what has happened is not the withdrawal from the JCPOA as they like to claim, the reality is the policy of appeasement has funded the expansion of the program and that is exactly what has resulted.

LEVIN: So this administration runs to the UN and they want a ceasefire resolution against the state of Israel. This administration is now investigating Jewish citizens in Judea and Samaria and issued an external executive order targeting them.

This administration, their State Department is conducting an investigation of Israel "potential war crimes." This administration is now demanding that Israel present it with a list of what it will do within it weapons it will now receive and this administration is trying to organize Europe and the Arab countries to unilaterally recognize a separate Palestinian state that will be a Palestinian terrorist state, all the while, lifted all of the restrictions on Iran that is a whisper away from having nuclear weapons.

My question to you is this, where is the counter pressure coming from? I do not even hear Republicans talking about this.

GREENWAY: You are absolutely right and to a certain extent, this has now become a domestic political issue for the left and for the president as they are challenged now to make sure they've got the turnout and the votes to support their position.

The reality is, you're exactly right. We are supporting the government of Tehran, we are subverting our partners and allies in Israel at a time when they desperately need our support, and believe me, no one in the region understands exactly what this is happening.

They had low expectations I think when the admission came in, but I think they have been shocked at the degree to which we are undermining our partner and ally in Jerusalem and supporting the government in Tehran. And the results again bear evidence of it.

And I think what's going to happen in the next phase of this inevitably is Israel finishes the job in Rafah. We are now likely to see Hezbollah initiate operations and Israel will have to respond, in I think a ground operation in Southern Lebanon is an almost certainty, and when that occurs, it is going to be hard to put this back in the bottle.

LEVIN: We've got this tiny little country with a very small population with a small industrial base. They rely on us in many respects when they purchase certain armaments and so forth. We're putting the screws to this country. It is the only country standing between us and Iran because the president of the United States, in my view, his behavior, his conduct I will say this, you don't have to, is truly in my view, treasonous.

You cannot have a commander-in-chief who has an administration, a Department of State that is enabling, funding the terrorist activities, funding the nuclear programs if not directly, indirectly of a state that is threatening us.

We will be right back.

(COMMERCIAL BREAK)

JON SCOTT, FOX NEWS CHANNEL ANCHOR: Welcome to "Fox News Live." I'm Jon Scott in New York.

Former President Trump picking up more delegates across several key states today as he continues to inch closer to becoming the Republican presidential nominee.

Mr. Trump is projected to win both Missouri and Idaho's caucuses and Michigan's Republican Convention. He has won more than 200 delegates so far. Trump already has his sights set on next week's Super Tuesday when more than a dozen states will hold their primaries.

A dangerous blizzard is slamming Northern California with hurricane force winds and several feet of snow. The Sierra Nevada could be blanketed under more than 10 feet of snow before it is all over.

Millions in the region are under winter weather alerts and tens of thousands have lost power. Blizzard conditions are expected to last through tomorrow, but snow is forecast to fall over the region well into next week.

I am Jon Scott. Now back to LIFE, LIBERTY & LEVIN.

LEVIN: Welcome back Robert Greenway, former National Security Council senior director under President Trump.

Robert Greenway, you just mentioned when Israel is done with Hamas, although the Biden administration is doing everything it can to prevent Israel from actually having a victory against Hamas which is mind-boggling.

Iran has already given word to Hezbollah, the other end to go ahead and attack Israel. Why do you think Iran is doing all of this?

GREENWAY: Look, I think the calculation was to take the axis of resistance which was always designed to be an offense deterrent so that if anyone struck inside Iran, it would be employed to threaten their adversaries.

And I think the decision has been made to put it into complete offense and to initiate the operations we saw beginning on October the 7th. The idea is gradually and incrementally bring Israel to the point of exhaustion where it can no longer strike and impede the completion of their nuclear weapons program, which would ensure regime survival and allow it to exert its influence unchecked across the region, and I think that's exactly what we are seeing, and I think that is what is likely to occur as Israel completes its operation and Hezbollah enters into the fray at scale.

LEVIN: Well, let me put a fine point on this because I think that is a brilliant point. You are saying Iran, right now, has orchestrated all of this through its terrorist surrogates to keep Israel bogged down knowing we have a man in the White House who is coddling, appeasing Iran and their terrorist surrogates. And now is the time to break out with their nuclear weapons, is that your point?

GREENWAY: Absolutely. So, as you see now, a circumstance they never imagined where the US would not prevent them and in fact, enable them by constraining Israel. Now, the only obstacle to them and their objectives is Israel, and if they can bring them exhaustion and the US is complicit, they achieve their goals, and this is when Khamenei is now positioning himself and a successor to ensure the second regime succession plan and I think that is very much a top of mind for him.

They saw what happened in Libya, North Korea and in Ukraine. They know that regime survival is contingent upon possession of nuclear weapons. I think that is where they are headed.

LEVIN: Wow. I think you are now right on. I think this is a hundred percent correct.

I want to swing back to the media. There is no discussion of this in the vast majority of the media. I see nothing being done in Congress whether its Republican committees in the House or Democrat committees in the Senate.

I see no discussion by party leadership particularly the Democrats about any of this, because they just circle the wagon around Biden. In fact it is worse.

You see by Biden kowtowing to political elements and political movements that are led by individuals, led by individuals like Tlaib who keep talking about the river to the sea and Joe Biden is so worried about saving himself his own ass in this election that he is doing everything possible to undermine the state of Israel publicly, privately, militarily, economically. Iran sees it. That Palestinian terrorists see it, our other enemies see it.

This has created this horrendous circumstance in this country and yet our media -- is our media simply incapable of explaining this or unwilling to explain this?

GREENWAY: I think it is a little bit of both, but I think their inclination is to support the policies and objectives of the administration and they have been fully complicit supporters since Obama was attempting to sell the JCPOA, and so I think at the end of the day we are seeing a media that certainly supports the ideas and are complicit in, you see a distracted political class with a conflict in Europe, with the potential risk in Taiwan.

I think there is little political capital and time to do it and unfortunately, that is what the mullahs are counting on to complete the job.

LEVIN: Finally, what happens if Iran gets nukes which they are going to get apparently because Biden is not doing a damn thing to stop them and neither is Congress.

GREENWAY: If they do, they are going to control by default the world's global energy markets and 25 percent of the world's trade and information flow as we have seen the Houthis disrupt undersea cables. When that happens, we could move easily into a global recession and potentially depression as they try to exert control over it.

Again China requires above all else, access to oil in order to fund its military ambitions and they need 43 percent of that from the Middle East, both of those things are at play.

LEVIN: Iran, North Korea, China, and Russia -- this is more than a Cold War, isn't it? The axis powers exist. They are exerting power and Joe Biden is incapable of even confronting it. Is that about right?

GREENWAY: It is taking shape before our eyes and we are actually engineering the construction of it.

LEVIN: Unbelievable. Yes, he is worse than Neville Chamberlain. Neville Chamberlain did not pay for the Third Reich, Joe Biden is paying for these axis of powers.

Robert Greenway, Heritage Foundation. Keep up your great work. We appreciate you, my friend.

GREENWAY: An honor to join you.

Thank you sir.

LEVIN: We will be right.

(COMMERCIAL BREAK)

LEVIN: Welcome back, America.

One of the gentlemen I worked with at the Department of Justice under former Attorney General Meese was Steven Calabresi, brilliant guy. He has a law professor at Northwestern University, former law clerk to Justice Antonin Scalia among other things.

You have been writing extensively, you've been filing briefs and one of the briefs that you were involved in, Steven Calabresi, was a brief with the former Attorney General Edwin Meese for whom we both worked.

You are challenging the appointment of Special Counsel Jack Smith under the Appointments Clause of the Constitution.

Tell the American people what that is all about.

STEVEN CALABRESI, LAW PROFESSOR, NORTHWESTERN UNIVERSITY: Okay, so the Appointments Clause says that principal officers have to be nominated by the president and confirmed by the Senate and Jack Smith, of course, is not a principal officer.

Inferior officers can be appointed if Congress by law vests in the head of the Cabinet Department the power to appoint a senior officer, and Congress has passed no law vesting in the attorney general the power to appoint a special counsel like Jack Smith.

Congress has vested power to appoint inferior officers in the Secretaries of Energy, Education, Transportation and HHS, but it has not done so with the Justice Department and therefore, Jack Smith's appointment is illegal and unconstitutional, and every single thing he has done since he was appointed a year-and-a-half ago is illegal, null and void.

LEVIN: I want the American people to understand your background. You used to serve as a top legal adviser to a former attorney general of the United States. You and I worked with the Office of Legal Counsel, which is considered the legal constitutional brain trust of the federal government.

You are not coming out of left field here, you are looking at the Constitution, you are looking at the statutes and you're saying, wait a minute, this is an illegal unconstitutional appointment.

And Steven Calabresi, the man has enormous power. He is pushing the edges of the Constitution in every direction whether it's immunity, whether it is attorney-client privilege, whether it is due process. He is throwing all of these things on the table, forcing the Supreme Court to address each and every one of them.

He sure is hell is acting like somebody who has some kind of authority. So, what did the attorney general do to give him any authority?

CALABRESI: The attorney general has a regulation that says he can appoint independent counsels and he invoked that regulation and cited a few irrelevant statutes, but he has no power under the Constitution to appoint Jack Smith. And, in essence, by appointing Jack Smith, what he is attempting to do is to prevent Donald Trump from being elected president and it is a complete outrage. It is a sham. There is no authority whatsoever for this.

The biggest problem I am facing is that although Ed Meese and I and Gary Lawson have been raising this point in an amicus brief, President Trump's lawyer in the Supreme Court, John Sauer has not yet made the argument and it very important in the upcoming presidential immunity case that John Sauer make this argument as well as us, making it in an amicus brief because the court may otherwise say that the issue is not raised by the party to the case.

So, that will be one very important thing that could help.

LEVIN: And Congress knows how to do this. You just pointed out with other departments that did exactly this. If there is an inherent power for a Cabinet Secretary to make these kinds of appointments, then why would Congress have passed these statutes in the first place?

You are exactly right. Nobody conferred the power on the attorney general of the United States. To appoint a special counsel with this kind of power, go right ahead.

CALABRESI: If it could appoint a special counsel with this kind of power, he could appoint a hundred special counsels to investigate people who he does not like.

Now, you have got to remember that Jack Smith was a private citizen when Merrick Garland lifted him off the street and gave him the power to prosecute Donald Trump, and the power to lift a private citizen off the street and turn them in effect into a US attorney is a formidable power and a very dangerous power.

There is a way in which attorney generals can appoint independent counsels. They can designate Senate confirmed US attorneys to act as an independent counsel outside of the district that the US attorney is appointed in.

So for example Patrick Fitzgerald who was the US attorney for the Northern District of Illinois prosecuted Vice President Cheney's chief-of-staff Scooter Libby in the DC District court. That is constitutional. Naming a US attorney to be a special counsel is permissible, what the attorney general cannot do is lift private citizens off the street or employees of the Justice Department and make them special counsel.

LEVIN: We will be right back.

(COMMERCIAL BREAK)

LEVIN: Welcome back, America.

Professor Steven Calabresi, you've written about Letitia James, the judge in that case, how they are trying to steal half a billion dollars from Donald Trump and forcing him perhaps to sell properties as a basis for even appealing.

You have written extensively that this violates numerous parts of our Constitution. Explain.

CALABRESI: Letitia James has accused Trump of a crime in which there are no victims. She claims that he defrauded bankers who loaned him money by inflating the value of his property, but all of those bankers did their own independent assessments of the value of his property and they agreed to lend money to them.

Trump paid all the loans back. There is no victim here. No banker is complaining they were defrauded. In fact, Trump put on testimony from bankers saying they would gladly lend to him in the future.

So, there is no victim here. This is a victimless crime and he is being fined $450 million for it. This violates the Excessive Fines Clause of the Eighth Amendment. It is a selective prosecution that violates the due process and equal protection clauses because Trump is being singled out for prosecution due to his political views in violation of the First Amendment and his right to freedom of speech and of the press.

And in essence, what Attorney General James has done is to take a very vague New York statute that is rarely used and turned it into a bill of attainder to drain Donald Trump of all of his cash right as he is running for election as a president and needs his cash in order to finance his campaign.

This is the kind of thing that happens in Russia, to people like Alexei Navalny. It is un-American, it is threat to the rule of law. It is an outrage and unfortunately, Trump has to appeal through the New York state court system before he can get to the US Supreme Court. But the US Supreme court should hear this case and should overrule the trial court.

LEVIN: And if it follows its own precedent, just four years ago in the Timbs case, they will do exactly that and they will do it very, very quickly. That was a nine-zero decision with a seven-majority opinion, two additional opinions.

CALABRESI: Absolutely.

LEVIN: And this is a lot worse than the Timbs case. And the more Letitia James, Professor is out there, patting herself on the back for the good deed she has done, the more evidence she provides against herself when it goes to the Supreme Court.

I want to have you back in the future, I want to discuss immunity. I want to discuss the Klan Act that's being used against Donald Trump. I want to discuss with you all of these other laws that are being thrown at him, because you have a very good handle on this, I believe.

I went to thank you, Steven Calabresi, Professor at Northwestern University. A good friend of mine, a former colleague of mine.

God bless you, my friend.

CALABRESI: God bless you, Mark.

LEVIN: We will be right back.

(COMMERCIAL BREAK)

LEVIN: Welcome back, America.

Man, do we have a great show tomorrow night, Sunday night 8:00 PM Eastern, 5:00 PM Pacific, just like this one. Chip Roy and Ted Cruz. We are going to discuss the border, immigration, the slavery that has been unleashed as a result of Biden's policies, the murder mayhem in our own country.

The Democratic Party and Biden kowtowing to Rashida Tlaib and her supporters and voters in places like Dearborn, Michigan.

We are going to talk about Mitch McConnell, who should replace him, and we are going to talk about the debt because the interest on the debt within the next few months will be larger than the entire Defense budget and this is where the country is heading.

I want to do a public service announcement to the reprobates at MSNBC, CNN and -- this is called the Constitution of the United States. You might also grab a copy of the Declaration of Independence.

The Constitution is 4,400 words long, so you should be able to read it. Take your face out of the Communist Manifesto, stop reading your talking points from the White House and educate yourselves.

You are humiliating yourselves.

I'll see you next time, tomorrow night on LIFE, LIBERTY & LEVIN.

**Load-Date:** March 3, 2024

**End of Document**