

Introduction

*Ilya Shapiro**

This is the 17th volume of the *Cato Supreme Court Review*, the nation's first in-depth critique of the Supreme Court term just ended, plus a look at the term ahead. We release this journal every year in conjunction with our annual Constitution Day symposium, less than three months after the previous term ends. We're proud of the speed with which we publish this tome and of its accessibility, at least insofar as the Court's opinions allow. I'm particularly proud that this isn't a typical law review, whose submissions' esoteric subject matter is matched only by their pedantic execution and superfluous footnoting. Instead, this is a book of essays on law intended for everyone from lawyers and judges to educated laymen and interested citizens.

And we're happy to confess our biases: We approach our subject from a classical Madisonian perspective, with a focus on individual liberty that is protected and secured by a government of delegated, enumerated, separated, and thus limited powers. We also maintain a strict separation of law and politics. Whether the president is Barack Obama, Donald Trump, or anyone else, just because something is good policy doesn't mean it's constitutional—and vice versa. Moreover, just because being faithful to the text of a statute might produce unfortunate results doesn't mean that judges (or administrative agencies!) should take it upon themselves to rewrite the law—as the new “junior justice,” Neil Gorsuch, has already reminded us. Accordingly, just as judges must sometimes overrule the will of the people—as when legislatures act without constitutional authority or trample individual liberties—resolving policy problems caused by poorly conceived or inartfully drafted legislation must be left to the political process.

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This was the first full term with the Court back at its “full strength” of nine justices after Justice Antonin Scalia’s death, so all eyes were on Justice Gorsuch to see how he would fit in—and how the Court’s internal dynamic and voting patterns would shift. While early reports, based on what turns out to be unsubstantiated speculation, spoke of tensions between the newest justice and several of his colleagues, he quickly settled in and ended up writing many thoughtful opinions, including casting a handful of deciding votes and being assigned to write for the majority in several important cases.

Gorsuch’s first full term was part of what made this a Supreme Court year for the ages. I don’t know if I would necessarily count any of the rulings as ones we’ll look back on as setting historic precedents—unlike, say, *District of Columbia v. Heller* (Second Amendment), *Citizens United v. FEC* (campaign finance), *Shelby County v. Holder* (voting rights), and *Obergefell v. Hodges* (same-sex marriage)—but as a whole it was a year where a new court came together. To be sure, there were several “big” cases, like *Murphy v. NCAA* (sports gambling/federalism), *South Dakota v. Wayfair* (state sales tax on e-commerce), and *NIFLA v. Becerra* (compelled speech in crisis pregnancy centers). We cover these cases in this volume, but they won’t necessarily roll off layman tongues.

Even *Trump v. Hawaii* (Travel Ban 3.0), while launching millions of Twitter wars, doesn’t break new ground given the broad discretion that Congress gives the president on immigration law and the deference courts (rightly) give the executive on matters of national security. Recall that most experts were predicting this wouldn’t even be a 5-4 split (that the administration would win more handily)—and it really wasn’t, because Justice Stephen Breyer, joined by Justice Elena Kagan, merely filed a technocratic opinion about needing more evidence before really being able to decide, declining to enlist in the judicial #Resistance that only garnered two votes (Justices Sonia Sotomayor and Ruth Bader Ginsburg).

The cases that arguably had the greatest potential for changing the legal landscape, *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (First Amendment challenge to antidiscrimination law) and *Gill v. Whitford* (partisan gerrymandering), fizzled. Instead, the most long-lasting rulings from a practical purpose were *Carpenter v. United States* (police need a warrant to collect cell phone location data) and *Janus v. American Federation of State, County, and Municipal*

Employees (public-sector unions can't charge nonmembers fees). So there was a lot going on, in many fields of law, but it seemed that the Court was really playing second-fiddle to whatever was happening in the political world.

At least that was true until Wednesday, June 27, the last day of the term (and also my birthday). Not only did the Court hand down *Janus*—provoking paroxysmal fits among the “anti-authoritarians” who can't get enough of telling people what to do or think—but, three hours later, Justice Anthony Kennedy announced his retirement.

Kennedy has long been the Court's “swing” vote—though he hates that term—and thus was most often in the majority in those 5-4 cases that split along conventional ideological lines. Well, this term there were 19 such hotly split decisions. Of those 19, 15 featured Kennedy joining the four “conservatives” and *none* had him joining the four “liberals.” (Two of them did have Chief Justice John Roberts joining the liberal bloc.) That simply hadn't happened in the 13 years since Justice Samuel Alito replaced Justice Sandra Day O'Connor to put Kennedy in his vaunted role as the man in the middle.

So while it's simplistic to characterize particular terms as liberal, conservative, or anything else—recall that there was even a “libertarian moment” in 2012–14 when *Cato* went 15-3 and 10-1 in our amicus brief filings—this term gave progressives plenty of heartburn. And now it should only get worse for them. President Trump has followed through on his promise to pick from his fabulous list of terrific judges (they really are the best, believe me). Assuming Senate Majority Leader Mitch McConnell shepherds Judge Brett Kavanaugh through the Senate—neither Susan Collins (R-ME) nor Lisa Murkowski (R-AK) has yet wavered on judicial votes—the confirmation of *Justice* Kavanaugh will mean that the chief justice becomes the median vote.

I don't want to oversell that point. John Roberts will have even more incentive to indulge his minimalist fantasies to lead the Court from the squishy commanding heights, but—incrementalist judicial restraint and all—he is a far surer vote for conservatives (if not necessarily libertarians) than Kennedy ever was. He even agreed with *Cato* more than any other justice both this and last year!

President Trump, who likely wouldn't have won the election had it not been for the Scalia vacancy, has now ensured that a major part of his legacy will be in the judicial realm. Having appointed an eighth

of all federal circuit (appellate) judges in less than 18 months, he will have had back-to-back lifetime appointments to the Supreme Court. And Justices Ginsburg (85), Breyer (80), and Thomas (70 and by some accounts getting restless) aren't getting any younger, so we may see more opportunities—at least if the Republicans keep the Senate this fall. In short, the 2017–2018 term, while rolling out in fits and starts, ended up giving a lot to those who want the law applied as written and see constitutional structure as a way to secure liberty. But we're just getting started.

Moving to more of the statistics I've been sprinkling in, this term the Court somehow beat last year's record for low output by ruling on only 60 cases after argument. Unlike last term, it no longer had the excuse of being limited to eight members (though it did issue one 4-4 affirmance), but did end up dismissing six cases it had taken up, as well as issuing 11 summary reversals. At the same time, the justices perhaps had more work to do behind the scenes, with only 39 percent of decisions on the merits being unanimous (28 of 71).¹ The previous term it was 59 percent, and the preceding five terms registered 48, 41, 66, 49, and 45, respectively (so you see the anomalies that were the mostly eight-justice October Term 2016 and the October Term 2013 that papered over real doctrinal differences). Indeed, this was the lowest rate of unanimous cases since October Term 2008. Some of this can be attributed to lingering controversies held over from the previous deadlocked term, but really we're seeing stark doctrinal differences—even if Justices Roberts and Kennedy facilitated punts on the partisan-gerrymandering cases.

As mentioned earlier, the term produced 19 5-4 decisions—26 percent of the total, a bit high but within modern norms—including one 5-3 ruling that counts for comparison's sake. Again, 15 of those were “conservative” majorities, while another two had the chief justice joining the liberals, and one very interesting one, *Sessions v. Dimaya*, where Gorsuch joined the liberals.²

¹ The total includes the 11 summary reversals (without oral argument), eight of which were unanimous. All statistics taken from Kedar Bhatia, Final Stat Pack for October Term 2017 and Key Takeaways, SCOTUSblog, June 29, 2018, <https://bit.ly/2vKZP2s>. For detailed data from previous terms, see Statpack Archive, SCOTUSblog, <http://www.scotusblog.com/reference/stat-pack>.

² See Ilya Shapiro, Surprised by Neil Gorsuch's Ruling? You Weren't Paying Attention, Wash. Examiner, Apr. 17, 2018, <https://washex.am/2PeoAMk>.

The increased disagreement naturally resulted in more dissenting opinions, 49, whereas in the previous term there were 32 (the yearly average going back to 2005–2006 is 52). Not surprisingly, the total number of all opinions (majority, concurring, and dissenting) was also high—165, up from 139 last term and not far from the 13-year average of 171 despite the lower number of cases. Justice Thomas per usual wrote the most opinions (31, including eight dissents), followed by Justice Sotomayor (23, including nine dissents), Breyer (19), and Gorsuch (17). Justice Thomas also produced the most opinion pages (340), followed by Justices Alito (317) and Sotomayor (311). Justice Kagan wrote the least this term, with nine opinions totaling 133 pages.

The Court reversed or vacated 52 lower-court opinions—74 percent of the 71 total, including the separate cases that were consolidated for argument—which is lower than last term but in line with recent trends. Of the lower courts with a significant number of cases under review, the U.S. Court of Appeals for the Ninth Circuit attained a 2-12 record (86 percent reversal), maintaining its traditional crown as the most-reversed court, followed by the Eleventh Circuit (1-5, 83 percent reversal). State courts also fared poorly, with a 2-6 record (75 percent reversal). But really, whatever court you're appealing from, it's safe to say that getting the Supreme Court to take your case is most of the battle.

Also interesting is *which* justices were in the majority. Chief Justice Roberts edged Justice Kennedy, being in the majority in 93 percent of all cases (and 89 percent of divided cases). Kennedy was 92 percent, while Justice Gorsuch was next at 85 percent. Justice Sotomayor brought up the rear (68 percent and just 49 percent of divided cases).

Chief Justice Roberts also won in 5-4 cases, being in the majority in 17 of the 19 (89 percent). Justices Kennedy and Gorsuch were each in the majority in 16 of those (84 percent), followed by Justices Thomas and Alito at 15 (79 percent). Justice Kagan was in the majority in only 3 of 18 5-4 cases (17 percent). Notably, Justice Gorsuch wrote *five* majority opinions in 5-4 cases—more than any other justice which means that the average strength of the majority in cases he authored was lowest on the Court.

For the first time, Justice Alito became the leading “lone dissenter,” writing two of those. Justices Thomas and Gorsuch each wrote one, with Thomas's 13-year average of 2.2 solo dissents per term more

than doubling his closest colleague. Chief Justice Roberts and Justice Kagan have still *never* written one of those during their entire tenures (13 and 8 terms, respectively).

More news comes from judicial-agreement rates. Three terms ago, the top six pairs of justices most likely to agree, at least in part, were all from the “liberal bloc.” Last term, Justices Thomas and Gorsuch voted the same way in every single case (17 of them once Gorsuch joined the Court), but this term their agreement fell to 56 of 71 cases (81 percent). It was Justices Ginsburg and Sotomayor who were most in accord (68 of 71 cases, or 96 percent), followed by Justices Thomas and Alito (93 percent), Breyer and Kagan (93 percent), Sotomayor and Kagan (91 percent), and Roberts/Kennedy and Breyer/Sotomayor (90 percent). The rest of the pairings were below 90 percent. Justices Alito and Sotomayor and Gorsuch voted together less than anyone else (in 35 of 71 cases, or 49 percent). The next three lowest pairs were Justices Thomas and Sotomayor (51 percent), then Ginsburg/Alito and Breyer/Alito (54 percent each).

My final statistics are more whimsical, relating to the number of questions asked at oral argument. In this post-Scalia world, Justice Sotomayor has solidified her title as most-frequent interlocutor. She asked more than 24 questions per argument, asked the most in 37 percent of the cases (and top-3 in 81 percent of them). Justice Breyer asked just over 21 questions per case, including the most in 27 percent of the cases. Justice Gorsuch has settled into the middle of the pack at just over 15 questions per case. Justice Ginsburg maintained her run as first interrogator (in 54 percent of arguments), followed by Sotomayor (17 percent) and Kennedy (13 percent). Justice Thomas remained silent.

Moving closer to home, Cato filed in 15 merits cases. One of those got dismissed because of legislative developments (*United States v. Microsoft*), leaving 14 opinions. (I’m including in that count two briefs filed by our Project on Criminal Justice but not the one filed in *Trump v. Hawaii* because it was an immigration-policy brief which no Cato lawyer signed.) Improving on last year’s 9-4 performance, Cato achieved an 11-3 showing. Perhaps most importantly, we handily beat our biggest rival, the federal government, which amassed an 11-15 record. (It’s an inexact comparison, I know, because the government typically appears as a party, not simply as amicus, and almost always participates in oral argument.) Cato also effectively

drew votes from across the judicial spectrum, winning 13 votes from Chief Justice Roberts, 12 from Justice Kagan, 11 each from Justices Kennedy and Gorsuch, 9 each from Justices Thomas, Breyer, and Alito, and 7 each from Justices Ginsburg and Sotomayor.

Turning to the *Review*, the volume begins as always with the previous year's B. Kenneth Simon Lecture in Constitutional Thought, which in 2017 was delivered by Professor Philip Hamburger of Columbia Law School. Hamburger, whom I had the pleasure of having as a professor when he was at the University of Chicago, recently founded the New Civil Liberties Alliance, which he describes as "the only civil rights organization entirely devoted to checking the administrative state." It's altogether fitting, then, that his Simon Lecture covered the administrative threat to personal freedom. Hamburger focuses on the systemic threats to individual rights wrought by a virtually unchecked fourth branch of government. Tracing executive power in the Anglo-American legal tradition from England through the present day, he explains how checks and balances have been subverted, leading to a loss of procedural rights that makes the constitutional protection of substantive rights a hollow promise. "Administrative power is a profound threat to civil liberties," Hamburger concludes, enumerating the ways. "In the ongoing struggle, there is a role for everyone, not just lawyers."

Then we move to the 2017–18 term, starting with Josh Blackman's evaluation of the "travel bans"—which he so names because there have been three executive orders, each with different legal and political salience. Blackman, a professor at South Texas College of Law Houston and Cato adjunct scholar, details the fascinating and fast-paced litigation that culminated in *Trump v. Hawaii*. This was an unusual case in that "the president has the statutory and constitutional authority to deny entry to aliens from certain countries based on national-security concerns. Yet the judiciary still moved at warp speed to halt President Donald Trump's signature policy." That's because the ultimate tension here wasn't over the legal issues as such, Blackman argues, but about whether to treat this case as a "normal" one or something different given the identity of the current wielder of executive power. It's a thought-provoking essay.

My colleague Walter Olson then provides a fascinating ride through what could've been the term's biggest cases—*Gill v. Whitford* and *Benisek v. Lamone*—but ultimately became just the latest in a long series

of punts on challenges to partisan gerrymandering. (Olson, in addition to his brilliant writings on civil litigation, also happened to have been co-chair of the Maryland Redistricting Reform Commission.) Academics had teed up a tale of “efficiency gaps” and “wasted votes,” but still Justice Kennedy apparently didn’t find the administrable standard he had long sought for determining when, as a constitutional matter, politicians had employed too many political considerations in drawing district lines. Olson concludes nevertheless that “there are good reasons for states to act on their own to curb the evils of partisan gerrymandering without looking to One First Street.”

Trevor Burrus, this journal’s managing editor, enlisted superstar legal intern James Knight to help tackle *Carpenter v. United States*, in which a dastardly robber of Radio Shacks and T-Mobile stores was hoisted by his own cell phone (“ironically enough,” noted Chief Justice Roberts). The FBI used cell-site location information (CSLI) to place Timothy Carpenter at the crime scenes. To create CSLI, all you need is a cell phone on your person—most readers can relate, I’m sure—that automatically connects with cell towers and can roughly identify your location. But do police need a warrant to access that data, which is stored by your cell phone carrier? The majority said yes, but wasn’t clear about why. More interesting, argue Burrus and Knight, are the dissents, especially Justice Gorsuch’s. Gorsuch saw *Carpenter* as an opportunity to launch “the opening salvo in what will likely be a career-long attempt to rework the Court’s Fourth Amendment jurisprudence.”

Lucian Dervan, a law professor at Belmont University, does a deep dive into an overlooked criminal-procedure case, *Class v. United States*. This case looked at a particularly thorny aspect of plea bargaining: what rights does a criminal defendant waive when he pleads guilty? Although the facts are colorful—involving a self-described “constitutional bounty hunter”—the issues the case raises go to the heart of deep concerns with the criminal-justice system. As Dervan puts it, *Class* raises “fundamental questions regarding the operation of the plea-bargaining machine, the psychology of defendant decision-making, and the voluntariness of plea bargaining given our growing understanding of the phenomenon of factually innocent defendants pleading guilty.”

Our next essay covers *Masterpiece Cakeshop*, which could’ve been Justice Kennedy’s defining case but ended up as a bookend to his

opinion in *Romer v. Evans* (1996), in which the Court struck down a state constitutional amendment preventing political subunits from treating homosexuality as a protected class. *Romer* took no position on whether discrimination against gays and lesbians was always suspect under equal-protection principles—and so it’s not as iconic as *Lawrence v. Texas* (2003) or *Obergefell v. Hodges* (2015)—but it effectively ushered in such protections. University of St. Thomas law professor Thomas Berg argues that *Masterpiece* essentially did the same thing for religious objectors.³ Even as the Court shied away from declaring a First Amendment right not to participate in same-sex weddings, it found that evidence of “hostility” toward religion had prejudiced the enforcement of an antidiscrimination law.

Janus turned out instead to be the biggest First Amendment case, and we have Cleveland State law professor David Forte analyzing the high-profile ruling. Overturning a 40-year precedent that allowed states to authorize public-sector unions to charge nonmembers certain “agency fees”—which can constitute some 80 percent of full union dues—the Court struck a blow for the freedom of association. No longer will workers in the 22 states affected by this decision be forced to support positions they oppose. As Justice Alito described in his majority opinion, Mark Janus “is not a free rider on a bus headed for a destination that he wishes to reach but is more like a person shanghaied for an unwanted voyage.” Moreover, the distinction between “chargeable” expenses relating to collective bargaining and “nonchargeable” politics-related expenses is illusory in the public sector, where negotiating for, say, teacher tenure protection rather than merit pay (or vice versa) has real impact on budgets and education policy.

Then we have Robert McNamara and Paul Sherman of the Institute for Justice, two experienced First Amendment advocates both in the courts and the court of public opinion, evaluating *NIFLA v. Becerra*. This case revolves around California’s regulation of (pro-life) crisis-pregnancy centers in a way that’s different from regulations affecting clinics that offer abortion services: by mandating certain

³ Berg is one of three lawyers to have signed briefs supporting both Jim Obergefell and Jack Phillips (owner of Masterpiece Cakeshop). The other two are University of Virginia law professor Douglas Laycock—his co-counsel and the dean of religious-liberty legal scholars—and me. Cato is the only organization in the entire country to have filed briefs supporting those respective positions.

statements about the availability of state-financed abortions; and for unlicensed centers without doctors on staff, disclosures about the absence of licensed medical professionals. Setting aside the underlying controversy over abortion, this was a case about speech, and, more specifically, First Amendment protection for professional or occupational speech. The authors explain why “*NIFLA* cements the Roberts Court as the most libertarian in our nation’s history on free-speech issues.”

The dean of Widener University Delaware Law School, Rodney Smolla, examines *Minnesota Voters Alliance v. Mansky*, an intriguing case regarding what voters can wear—or what states can stop them from wearing—to the polls. This was probably the least-controversial free-speech case of the term, but it still raised fraught questions of what kind of speech is so “political” that it disrupts the solemnity of the voting area. I happen to agree with Smolla that the Court, while striking down Minnesota’s broad and vague ban on “political” apparel, didn’t go far enough—that the passive wearing of slogans or symbols is different than electioneering or obstruction (which are already banned in all states). “American voters are not so squeamish, frail, or fragile as to be intimidated or defrauded by a fellow voter’s T-shirt or button,” Smolla concludes. “Nor are they . . . driven to fisticuffs or undignified outbursts at the mere sight of the very opposing views to which they have been unrelentingly exposed” during the campaign.

Next we have the attorney general of Arizona, Mark Brnovich, writing on the term’s big federalism case, *Murphy v. NCAA*. *Murphy* involved a 25-year-old federal law that prohibited states from facilitating sports gambling—so it’s appropriate that the author not only represented his state in supporting the challenge to this law, but had previously been the director of its department of gaming. It came as no surprise that the Supreme Court, by a wide margin, struck down the law as a sort of “regulation on the cheap,” with Congress telling the states to do something it didn’t want to itself. Sports-betting policy will now be allowed to develop state-by-state, which is as it should be, but the case has wide-ranging implications beyond that. “On a host of issues, [*Murphy*] promises to produce the kind of federal-state tension on which our federal system thrives,” Brnovich explains. “That federalism, in turn, helps secure our liberties.”

In *South Dakota v. Wayfair*, the Supreme Court reversed its own long-held rule that only businesses with a physical presence in a state

may be subject to that state's sales tax. It remains to be seen what impact this ruling will have on e-commerce, but I'm glad that we have Joseph Bishop-Henchman to unpack it all. Bishop-Henchman is the executive vice president and general counsel of the Tax Foundation and knows more about tax law—from constitutional heights to regulatory nits—than anyone I know. He presents here an engaging history not just of internet sales taxes but of all state taxes that have affected interstate commerce. "*Wayfair* may prove to be the first case where the Supreme Court truly confronted the need to pair, on one hand, constitutional and legal systems that define protections and obligations based on physical presence . . . [and] economic activities that are increasingly borderless, instantaneous, and nonphysical."

Our final article about a decided case looks at *Lucia v. SEC*, which some may view as arcane pedantry but actually goes to the heart of our republican order. If you call an employee of an executive agency a "judge" and give that person broad discretion and decisionmaking authority, is that person a mere clerk or bureaucrat, or more an agency official? As Scalia Law School's Jennifer Mascott details, the answer to that question is both important as a matter of constitutional design and clear from the historical record. Although the Court got the narrow question right—that SEC administrative law judges (ALJs) are "officers of the United States" and thus must be appointed by the commissioners themselves instead of rising through the ranks of the civil service—it left open bigger questions both as to the removal of these ALJs and how to determine whether ALJs in other agencies are similarly subject to executive appointment.

The volume concludes with a look ahead to October Term 2018 by Erin Murphy of Kirkland & Ellis. As of this writing—before the term starts—the Court has taken up 38 cases, a bit low given recent history but actually above where we were at this point last term. The term so far doesn't have any blockbusters to match the top half-dozen cases from last term, but there should still be a little something for everyone. Here are some of the issues: judicial deference to administrative agencies regarding the Endangered Species Act (*Weyerhaeuser Co. v. U.S. Fish & Wildlife Service*); the delegation of legislative authority to the executive (*Gundy v. United States*); the procedural hoops property owners must jump through to vindicate their rights (*Knick v. Township of Scott*); state sovereign immunity (*Franchise Tax Board of California v. Hyatt*—for the third time up at the Court);

the constitutionality of successive prosecutions by state and federal governments (*Gamble v. United States*); and the “incorporation” of the Excessive Fines Clause against the states (*Timbs v. Indiana*). There’s something for every legal nerd, really, but the Court may well take up cases of interest to normal people too, such as sexual-orientation discrimination, (more) partisan gerrymandering, the Establishment Clause, and the Second Amendment. “At worst,” Murphy concludes, “we will still learn whether you can use your hovercraft in Alaska, what constrains the state from trying to seize your Land Rover, and where to turn if the state mandates public access to your private cemetery.”

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This is the 11th, and final, volume of the *Cato Supreme Court Review* under my editorship, and the fourth with Trevor Burrus as managing editor. Trevor, who will now be taking the editorial reins, has been a huge help over the years with both the *Review* and our amicus brief program—this past year was particularly challenging—so I’m delighted to give credit where it’s due. I’m also most thankful to our authors, without whom there would literally be nothing to edit or read. We ask leading legal scholars and practitioners to produce thoughtful, insightful, readable commentary of serious length on short deadlines—this term only two cases we covered were decided before June—so I’m grateful that so many agree to my unreasonable demands every year.

My gratitude goes also to my colleagues Bob Levy, Clark Neily, Walter Olson, and Jay Schweikert, who provide valuable counsel and editing in legal areas less familiar to me. Legal associate Matthew Larosiere took over the administrative side of this journal, keeping track of the editing being done by his colleagues Aaron Barnes, Meggan DeWitt, Michael Finch, Nathan Harvey, and Reilly Stephens, plus interns James Knight, Zane Lucow, and Charles Yates, who in turn performed many thankless tasks without complaint. Neither the *Review* nor our Constitution Day symposium would be possible without them.

Finally, thanks to Roger Pilon, who founded Cato’s Center for Constitutional Studies 30 years ago and also conceived this journal. Roger is one of the giants of classical-liberal legal thought, having contributed immensely to rights theory and constitutionalism—and

the separation of law and policy—with an intellectual openness and integrity that even Cato’s harshest critics respect. He’s the best mentor I could’ve had as I grew from baby lawyer to think-tank scholar. It’s my honor to succeed him as director of Cato’s Robert A. Levy Center for Constitutional Studies and publisher of this journal.

I reiterate our hope that this collection of essays will secure and advance the Madisonian first principles of our Constitution, giving renewed voice to the Framers’ fervent wish that we have a government of laws and not of men. In so doing, we hope also to do justice to a rich legal tradition in which judges, politicians, and ordinary citizens alike understand that the Constitution reflects and protects the natural rights of life, liberty, and property, and serves as a bulwark against government abuses. In these uncertain times when the people feel betrayed by the elites—legal, political, corporate, and every other kind—it’s more important than ever to remember our proud roots in the Enlightenment tradition.

We hope that you enjoy this 17th volume of the *Cato Supreme Court Review*.

