

Courage and the Constitution

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For four years I served as the elected Maricopa County Recorder, responsible for voter registration and early voting, among other things. Whenever anyone would say something nice to me on social media, another user would typically counter with: “Why are you praising him? He’s simply doing his job and following the law. Isn’t that the bare minimum?”

Such commenters might similarly question why I’m standing up here today. Why would a nice, intellectual, prestigious organization like the Cato Institute give me the floor?

But if “simply doing my job,” “doing the bare minimum,” or “simply existing” is the rubric for this speaking slot, then it’s no surprise to me that I’m here today because I have a rich history of being recognized or rewarded for doing the bare minimum.

On just the eighth day of my life, Jewish men and women gathered to celebrate me for simply being me. My *bris*—and if you don’t know what that is, I’ll let you look it up—was something I can’t remember soliciting or consenting to, but I’m told the breakfast was good and the turnout was strong.

Throughout my childhood, I collected over 20 “Most Valuable Player” trophies in baseball alone. Given that my athletic career did not end with the New York Yankees, I can only assume that the requirements for such awards were pretty much show up, play, follow the rules, and don’t throw a bat at anybody.

In high school, I showed up as a freshman to the varsity baseball team tryouts and promptly made the team—the benefits of going to a high school with only 240 students, approximately 120 of whom

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were male, and only 15 of whom tried out for the baseball team, which required a minimum of 9 players.

And in January of this year, I secured a plum position at the Harvard Kennedy School, something that was likely the result of simply being an elected Republican who had previously spoken at the school and had neither threatened to defund the school nor deport its students.

I'm happy to say that I'm enjoying the position and my new colleagues immensely.

And yet, while I understand why this might provoke criticism on the internet, we perhaps now live in an age when simply showing up, or simply doing your job, or simply following the law is exactly what is needed to save American rule of law and American liberty.

After all, Mike Pence was simply doing his job on January 6, 2021, when he certified the election results according to established constitutional law.

The challenge that Mike Pence faced was certainly novel. So, too, are many of the other challenges that we face today. We have new technologies. We have a highly polarized country. We have 40 million people in one state alone. A state that—if it were a country—would have the fourth largest economy in the world.

Many politicians and political commentators claim that these new challenges require new solutions. The left has long held that we require a “living Constitution” that adapts to meet the moment. The “new populist right’s” thinking is perhaps best captured in the 2016 essay by Michael Anton titled “The Flight 93 Election,”¹ which argues that exigent times call for exigent measures—that new nationalist conservatives need to fight fire with fire and use the power of the state to strike down enemies, even if that means coloring outside the lines.

I think they are both wrong. Instead of looking for new solutions, we should face our modern challenges with a renewed commitment to constitutional fidelity. In other words, we should follow the law and follow the oath to the Constitution that is taken by every American politician and civil servant. The Constitution predicted such times as the present, and its solutions still meet our needs.

¹ “Publius Decius Mus” (Michael Anton), *The Flight 93 Election*, CLAREMONT REV. OF BOOKS (Sept. 5, 2016), <https://claremontreviewofbooks.com/digital/the-flight-93-election>.

For example, many at the Cato Institute, myself included, are dismayed by the ever-expanding power of the federal government. The authors of the Constitution of course foresaw this challenge and designed safeguards. In Federalist no. 45, James Madison writes that “the powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.”²

And perhaps no writing better gets to the heart of the architecture of our Constitution than does Federalist no. 51, in which Madison writes, “The great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others.”³

Similarly, many look at our 21st-century presidents and worry that we need new solutions to counter their demagogic appeal. But it’s silly to think that the Constitutional Convention didn’t contemplate the idea of a populist president who catered to emotion rather than reason or law. Madison warned in Federalist no. 55 that “in all very numerous assemblies, of whatever character composed, passion never fails to wrest the sceptre from reason.”⁴

And Alexander Hamilton explained the importance of the Electoral College, states’ rights, and the division of power in the federal government by writing in Federalist no. 68 that “talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honors in a single State; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union.”⁵

So while our challenges might be wrapped in a veneer of novelty, I’d suggest that they are, in form, the same challenges that governments, including ours, have faced for many years. And because these aren’t really un contemplated challenges, a lot of the constitutional challenges to acts by recent presidential administrations are actually amusingly straightforward in the application of constitutional law.

² THE FEDERALIST No. 45 (James Madison).

³ THE FEDERALIST No. 51 (James Madison).

⁴ THE FEDERALIST No. 55 (James Madison).

⁵ THE FEDERALIST No. 68 (Alexander Hamilton).

I'll start in one of the domains that I know best: election administration. On March 25, 2025, President Trump signed an executive order titled "Preserving and Protecting the Integrity of American Elections,"⁶ in which he ordered material changes to election administration, including requirements for certification of tabulation equipment and requirements for proof of citizenship.

On August 18, 2025, President Trump teased another election administration executive order by writing on Truth Social that he would ban mail ballots. "Remember," Trump wrote, "the States are merely an 'agent' for the Federal Government in counting and tabulating the votes. They must do what the Federal Government, as represented by the President of the United States, tells them, FOR THE GOOD OF OUR COUNTRY."⁷

But this runs afoul of even the simplest reading of the Constitution. Article 1, Section 4 of the Constitution delegates the "Times, Places and Manner of holding Elections" to "each State by the Legislature thereof."⁸ Anyone who has consistently read Walter Olson's Cato publications—which should be everyone here hopefully—knows that this delegation of election administration authority is a feature, not a bug. In 2022, Walter wrote in the *Cato Handbook for Policymakers*: "There are important reasons to be cautious about allowing Washington to displace or regiment . . . decentralized responsibility. One is the practical value of decentralization in resilience. Innovations adopted piecemeal can be sorted out by local trial and error with less risk of mass failure."⁹ Additionally, Walter writes, thanks to decentralized control of election administration, "no Washington official or agency can start bossing around or removing local election officials."¹⁰

To the extent that this state power can be curbed or overruled by the federal government, the Constitution gives that authority to the

⁶ Exec. Order No. 14248, 90 Fed. Reg. 14005 (Mar. 25, 2025), <https://www.whitehouse.gov/presidential-actions/2025/03/preserving-and-protecting-the-integrity-of-american-elections/>.

⁷ Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Aug. 18, 2025, 7:17 AM), <https://truthsocial.com/@realDonaldTrump/posts/115049485680941254>.

⁸ U.S. CONST. art. I, § 4.

⁹ Walter Olson, *Election Law*, in CATO HANDBOOK FOR POLICYMAKERS 51, 55 (2022), <https://www.cato.org/cato-handbook-policymakers/cato-handbook-policymakers-9th-edition-2022/election-law>.

¹⁰ *Id.*

Congress, not the President. That same section of the Constitution—Article 1, Section 4—reads that “the Congress may at any time by Law make or alter such Regulations.”¹¹ How then to explain the president’s insistence that he can craft election law by decree and that states are mere agents of the federal government? I’d suggest that instead of looking for the hidden brilliance or complexity of such an idea, and then crafting novel solutions to counter it, we accept it for what it is: a straightforward violation of the Constitution in a way the Founders contemplated.

Judge Colleen Kollar-Kotelly of the United States District Court for the District of Columbia agreed. She ruled against significant parts of Trump’s executive order and wrote very simply that “our Constitution entrusts Congress and the States—not the President—with the authority to regulate federal elections.”¹² To me, this was a “duh” ruling. But many on the internet disagreed.

Another constitutional dispute that hits close to home is Harvard’s lawsuit against the Trump administration for having suddenly frozen \$2.8 billion in already-contracted federal grants that were competitively issued for specific research projects. Now, as a preliminary matter, and as a libertarian, I should note that I have significant misgivings about the billions of federal government dollars poured into universities every year. Having the federal government steer the research agenda of the United States is problematic. But more troubling is the situation that Harvard, UCLA, Columbia, Penn, Northwestern, Virginia, and many other research universities now find themselves in, which is that they are reliant on the federal government for a significant portion of their annual revenue—leverage that the federal government now seems interested in exploiting.

But as a legal question, this case is another “duh” matter. As Cato noted in the press release for its amicus brief in the case, “the government may not impose its preferred viewpoint on private parties . . . once the government establishes a benefits program, it cannot condition participation on a recipient’s exercise—or non-exercise—of rights that fall outside the program’s scope.”¹³ The Trump administration

¹¹ U.S. CONST. art. I, § 4.

¹² *League of United Latin Am. Citizens v. Exec. Off. of the President*, 780 F. Supp. 3d 135, 155 (D.D.C. Apr. 24, 2025).

¹³ Vera Eidelman et al., *President and Fellows of Harvard College v. Department of Health and Human Services*, CATO INST. (July 22, 2026), <https://www.cato.org/legal-briefs/president-fellows-harvard-college-v-department-health-human-services-0>.

tried to forestall this First Amendment criticism by saying that it froze the grants because of rampant Jew hatred on Harvard's campus in violation of Title VI. That is a general cause that I am very, very sympathetic to. But the government did not engage in any fact-finding to this effect, and it didn't even acknowledge the notice and remedy component of Title VI.

What the government—namely President Trump—made very clear was that the grant freeze was because of the school's politics. On May 26, 2025, Trump wrote that Harvard is full of “radicalized lunatics.”¹⁴ And on April 16, the President wrote that Harvard shouldn't receive its already-awarded federal funds because the school hired “almost all woke, Radical Left, idiots and ‘birdbrains’ who are only capable of teaching FAILURE to students.”¹⁵ Whether or not it's true that Harvard is filled with radical left lunatics is certainly an interesting question. But more importantly for the constitutional claim, President Trump's comments clearly showed that his decision to freeze the grants had a lot to do with the school's constitutionally protected speech and associational rights.

Judge Allison Burroughs of the United States District Court for the District of Massachusetts ruled in favor of Harvard on summary judgment, writing that the government “used antisemitism as a smokescreen for a targeted, ideologically-motivated assault on this country's premier universities, and did so in a way that runs afoul of the APA, the First Amendment and Title VI.”¹⁶ Despite the bombast and bluster of the internet after the ruling, this was not a hard question of constitutional law.

And of course, these cases are only two examples of what I would suggest is the vast and growing body of easy constitutional cases against the federal government. In 2014, in the case *NLRB v. Noel Canning*, the Supreme Court ruled 9-0 against President Obama, holding that just because the Senate recessed for three days—effectively a weekend—did not mean that the President got to make

¹⁴ Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (May 26, 2025, 8:42 AM), <https://truthsocial.com/@realDonaldTrump/posts/114574185207174304>.

¹⁵ Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Apr. 16, 2025, 7:05 AM), <https://truthsocial.com/@realDonaldTrump/posts/114347313852363347>.

¹⁶ *President & Fellows of Harv. Coll. v. U.S. Dep't of Health & Hum. Servs.*, 798 F. Supp. 3d 77, 136 (D. Mass. Sept. 3, 2025).

recess appointments without Senate oversight.¹⁷ In 2023, in *Biden v. Nebraska*, the Supreme Court ruled that Article I really does give Congress the power of the purse (surprise!) and President Biden couldn't unilaterally give away hundreds of billions of dollars in the form of excused student debt.¹⁸ And in 2025, when Bret Baier asked Justice Amy Coney Barrett if the 22nd Amendment means Trump can only run for President for two terms, she responded, "Well, you know, that's what the Amendment says."¹⁹

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So if these are such straightforward constitutional cases, then why do they keep getting tested by politicians who have sworn an oath to the Constitution? Why do they keep getting litigated? Why do our politics seem so confused, controversial, and combative? I think the answer lies not in our Constitution, but in our people. John Adams famously wrote that small "l" liberalism, and any form of democratic government, are possible only if there exists a moral and religious people. Michael Wear, the CEO of the Center for Christianity and Public Life, was thinking of Adams when he wrote in his latest book that the state of our politics is a reflection of the state of our soul.²⁰ And under such a rubric, I'd suggest that our soul is sick. Very sick.

In September 2025, we witnessed a homegrown 22-year-old US citizen assassinate Charlie Kirk because he hated Kirk's politics and his brashness about his politics. This of course follows the politically motivated assassination of Minnesota state representative Melissa Hortman and her husband, as well as the shooting of Minnesota state senator John Hoffman and his wife. And it follows the assassination, just a few blocks away from where we are today, of two Israeli embassy staffers by a gunman who shouted, "I did it. I did it for Gaza. Free, free Palestine." And we closed last year with the assassination of United-Healthcare CEO Brian Robert Thompson by Luigi Mangione, in what was supposedly a political statement about our health care system.

These horrors were each compounded by online barbarians who shrugged their shoulders about these assassinations and took to the

¹⁷ *NLRB v. Noel Canning*, 573 U.S. 513 (2014).

¹⁸ *Biden v. Nebraska*, 600 U.S. 477 (2023).

¹⁹ Acyn (@Acyn), X (Sept. 8, 2025, 6:17 PM), <https://x.com/Acyn/status/1965177690090258656>.

²⁰ See generally Michael R. Wear, *The Spirit of Our Politics: Spiritual Formation and the Renovation of Public Life* (2024).

internet to type out some form of “well, they had it coming.” I mourn for each of the victims. I mourn for America. I mourn for humanity.

So what is it our political soul is lacking? It’s not knowledge. We don’t lack the knowledge that murdering Charlie Kirk in front of a crowd of 3,000 college students is wrong. We don’t lack the knowledge that breaking into a house and attacking an old man—Nancy Pelosi’s husband—with a hammer is wrong. Similarly, my celebrated accomplishment, validating and standing by the 2020 election, wasn’t born out of a situation in which we lacked knowledge—or at least the ability to gain knowledge—as to the results of the election. And in most cases, we don’t lack knowledge as to what the US Constitution requires of us.

What we lack is courage. The courage to stand up for what we know to be true. Or the courage to stand up for what we know to be right. Or the courage to stand up for the Constitution. Especially when it aggravates our side, our tribe. With respect to standing up for the Constitution, I often think of what my friend Ilya Shapiro said when he ran Cato’s Center for Constitutional Studies for a number of years. He said he was an immigrant. And like all immigrants, he was doing a job most Americans didn’t have the stomach to do: He was defending the US Constitution. I suspect that is even more true today than when Ilya first mentioned it to me 16 years ago.

Today, the cost of standing up for principles or for constitutional rights is very weighty, and many individuals and organizations have taken the road of compliance, appeasement, or surrender. Law firms, media companies, and universities all too quickly surrender their First Amendment speech rights rather than suffer pressure from the federal government. Major retail companies sacrifice their free speech, and sometimes even their physical security, rather than suffer the consequences of the woke mob.

But there are also acts of courage. Here I have to return to one of my personal heroes, Mike Pence, who risked his life and his political career to defend the Constitution in one of the weightiest moments of American history—the ultimate example and a hero. Or people like Greg Lukianoff, CEO of FIRE (Foundation for Individual Rights and Expression), who every day manages to aggravate both the political right and the political left in his unyielding defense of free speech. Or Danielle Sassoon, who accepted her termination as US Attorney for the Southern District of New York rather than engage

in a quid pro quo for the benefit of a corrupt New York City mayor. Or the professor who dissents in a faculty lounge that maybe not everything from 1776 was bad.

Or maybe courage is manifest when an organization never indulges in the political fascination of the day—be it the gross over-expansion of the federal government in the name of “Hope and Change,” or the trampling of the rule of law in the name of “Making America Great Again, Again”—and instead stays true to its guiding principles of “individual liberty, limited government, free markets, and peace.”

The good news is that courage is contagious. We know this. Whether it’s one person standing up to a playground bully. Whether it’s a soldier willing to fight instead of surrendering. Whether it’s one person choosing to march for civil rights. So do the courageous thing. And soon, others will as well. I hope that I fulfilled this responsibility when serving as Maricopa County Recorder, albeit by simply telling the truth. Simply doing my job. Simply following the law. Simply following the Constitution.

But there will be other election administrators, politicians, lawyers, judges, generals, academics, doctors, think tankers, and business leaders in coming years who similarly have to exhibit great courage by simply doing their jobs, simply telling the truth, simply exhibiting sanity, and simply defending the Constitution. To those people, we see your courage, we thank you in advance for defending what is precious, and we look forward to celebrating you.