

SOME ARGUMENTS, TOOLS, TACTICS AND STRATEGIES FOR STATES TO CONSIDER IN CONFRONTING THE STRONG UNITARY EXECUTIVE THEORY

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I. INTRODUCTION

SCOTUS may shortly have before it several cases that could dramatically reshape the historical system of checks and balances and vastly further increase the power of the President. Among those cases is *Wilcox v Trump*,ⁱ a case in which SCOTUS has already issued a stay of a lower court order. SCOTUS's stay permits the President to remove and replace a member of an independent non-partisan board contrary to statute.ⁱⁱ Other cases that may be brought before SCOTUS address other features of Presidential power such as a claim of inherent right to impound funds,ⁱⁱⁱ to impose tariffs without Congressional authorization, or the ability to deploy National Guard troops in the absence of a "rebellion" or an "insurrection" and without orders for these purposes being issued by the governor.

The concerns that gave rise to states' efforts to "Trump proof" their states were based upon campaign speeches given by Trump and Project 2025,^{iv} which is largely premised upon a strong unitary executive theory (SUET) as formulated by a few scholars and adopted by the Heritage Foundation and Russel Voght. SUET would leave independent federal regulatory agencies under the control of a President both ill-disposed to effectively enforce federal law and disposed to selectively enforce federal law.^v Versions of SUET that SCOTUS could adopt in the near term could declare federal statutory constraints on Presidential power unconstitutional, including for example the following:

- Any and all Congressional constraints on Presidential removal of department heads, and other inferior officers, could be ruled unconstitutional. This will effectively eliminate the

independence of a large number of federal agencies and subject them to immediate Presidential control.

- The Civil Service Reform Act may be ruled unconstitutional in whole or part, and the related agencies, the Office of Personnel Management, the Merit Systems Protection Board, and the Federal Labor Relations Authority would be stripped of independence if they remained in existence. This, with minor limits, would reinstate the spoils system in which employment and “offices” may be secured through financial and political support.^{vi}
- The Impoundment Control Act could be unconstitutional. This would remove congressional control over the withholding of appropriated funds and effectively permit the President to punish states for not complying with Presidential objectives.
- Provisions of the federal Administrative Procedures Act inconsistent with SUET could be unconstitutional. Statutory limitations and constraints on how the President is to execute the laws, interpret the laws, and promulgate and rescind formal rules, could be regarded as inconsistent with the Vesting clause, which has been frequently described by adherents to SUET as vesting ALL executive Power in a President of the United States.

Axios has listed 10 new precedents of Presidential powers that are consistent with SUET.^{vii} Apparently all of these new precedents of Presidential powers, so far tolerated by SCOTUS, cannot give rise to criminal or civil liability of the President under the precedent of *Trump v United States*, 603 US __ (2024), discussed at greater length below, and are unlikely to be enjoined under SCOTUS’s current approach, which is also discussed below.

If SCOTUS were to issue rulings conferring on the office of the President any of the prerogatives, rights, and powers of SUET it would result in an extremely radical reshaping of American government. It would grant the President monarchical powers. A series of decisions by SCOTUS already have gone a long way in that direction.

States must first awaken to the tremendous threat this new theory of law presents. The challenge is “we have to adapt to a new historical era.”^{viii} SCOTUS may not continue to march forward with idea of converting the United States into an authoritarian regime. However, in several decisions members of the Court have adopted some of this theory and there is no evidence that those members will abandon the theory. The evidence from a decision on an application for stay in *Wilcox v Trump* in just late May of this year is that a legal/political disaster is looming. As Lincoln put it, we must think and act anew. The object of this memo is to begin the process of thinking of those strategies, tactics and arguments States may employ to thwart SCOTUS’s new theory.

II. STATEMENT OF PROBLEM

A. EARLY EFFORTS AT “TRUMP PROOFING” STATES

Following the Presidential election of 2024, California, Illinois, and other states began the process of what is called “Trump proofing” their states.^{ix} Opponents of Project 2025 began researching and preparing complaints and briefs in opposition to its four pillars and the dozens of policies and proposed structural changes designed for the Executive Branch. State Attorneys General prepared for litigation. As summarized in *The Nation*:

Constitutional scholars in California seem to agree that in the early days of the administration, the divisions of power between the federal government and the states were still holding. The federal-state balance seems fine or normal right now.” *So long as that remains the case, he argued, California is in a good position to weather the storm.* (Emphasis added.)^x

The efforts at “Trump Proofing” have produced a few very limited results, several of which have been stayed by SCOTUS. In an article titled *America Is Watching the Rise of a Dual State*, Professor Aziz Huq looks to a work by Ernst Fraenkel, explaining how the Nazi regime was able to move from a normative state to a “prerogative state:”

As Fraenkel explained it, a lawless dictatorship does not arise simply by snuffing out the ordinary legal system of rules, procedures, and precedents. To the contrary, that system—which he called the “normative state”—remains in place while dictatorial power spreads across society. What happens, Fraenkel explained, is insidious. Rather than completely eliminating the normative state, the Nazi regime slowly created a parallel zone in which “unlimited arbitrariness and violence unchecked by any legal guarantees” reigned freely. In this domain, which Fraenkel called the “prerogative state,” ordinary law didn’t apply. (A prerogative power is one that allows a person such as a monarch to act without regard to the laws on the books; theorists from John Locke onward have offered various formulations of the idea.) In this prerogative state, judges and other legal actors deferred to the racist hierarchies and ruthless expediencies of the Nazi regime.

The key here is that this prerogative state does not immediately and completely overrun the normative state. Rather, Fraenkel argued, dictatorships create a lawless zone that runs alongside the normative state. The two states cohabit uneasily and unstably. On any given day, people or cases could be jerked out of the normative state and into the prerogative one.

Today, we are witnessing the birth of a new dual state. The U.S. has long had a normative state. That system was always imperfect. Our criminal-justice system, for example, sweeps in far too many people, for far too little security in exchange. Even so, it is recognizably part of the normative state.

What the Trump administration and its allies are trying to build now, however, is not. The list of measures purpose-built to cleave off a domain in which the law does not apply grows by the day: the pardons that bless and invite insurrectionary violence; the purges of career lawyers at the Justice Department and in the Southern District of New York, inspectors general across the government, and senior FBI agents; the attorney general's command that lawyers obey the president over their own understanding of the Constitution; the appointment of people such as Kash Patel and Dan Bongino, who seem to view their loyalty to the president as more compelling than their constitutional oath; the president's declaration that he and the attorney general are the sole authoritative interpreters of federal law for the executive branch; the transformation of ordinary spending responsibilities into discretionary tools to punish partisan foes; the stripping of security clearances from perceived enemies and opponents; the threat of criminal prosecutions for speech deemed unfavorable by the president; and the verbal attacks on judges for enforcing the law.^{xi}

Actions directed toward states, such as the impoundment or withholding of monies,^{xii} calling up the National Guard into federal service to deploy national guard troops and marines into the state of California, seeking to enjoin states from bringing claims under the Clean Air Act, issuing orders to keep coal fired power plants open in defiance of state orders^{xiii} the arrest of a state court judge and state lawmakers all directly impact state government and are not in any sense normal. The role of state governments in our federal system is being moved slowly but solidly into what Fraenkel called the "prerogative state."

III. LIMITS OF FEDERAL JUDICIAL RELIEF FROM A LAWLESS FEDERAL EXECUTIVE BRANCH OR A STRONG UNITARY EXECUTIVE THEORY.

In the very recent past, SCOTUS has substantially cut back on the ability of private citizens to bring private causes of action to enforce federal laws when the President does not.^{xiv} Enforcement of the laws enacted under the spending clause was limited to termination of federal funds – if the President so chose:

The spending power allows Congress to offer funds to States that agree to certain conditions. See, e.g., *South Dakota v. Dole*, 483 U. S. 203, 207–208 (1987). But when a State violates those conditions, “the typical remedy” is not a private enforcement suit “but rather action by the Federal Government to terminate funds to the State.’

See *Medina v Planned Parenthood*.^{xv}

The relief that can be obtained by states through the federal judiciary has been sharply curtailed by SCOTUS through the doctrines of absolute, presumptive, and qualified immunity, issues of standing, justiciability and by excessive deference to the Executive Branch. Efforts to obtain injunctive relief also have been faced with delays, significant limits on its availability and on the form of relief available.

A. CRIMINAL AND CIVIL IMMUNITY.

Trump v United States, 603 US ___, 114 S Ct 2312, 219 L Ed 2d 991 (2024), held that the President has absolute immunity from criminal liability while performing “core constitutional powers” (i.e., where the President’s authority is “conclusive and preclusive”), and “some immunity” for criminal liability when performing other official acts. In that decision SCOTUS virtually wrote a textbook on the unwillingness of SCOTUS to curtail the powers of a lawless President. SCOTUS recites its prior holdings on the President’s absolute immunity from civil liability for damages for acts within the “outer perimeter” of his official duties. The President’s immunity from civil liability for damages extends to cases where the President acts with improper motive or to retaliate against an individual. 114 S Ct at 1918-1919, 219 L Ed 2d at 2334. While other executive branch officers have some potential criminal liability, they can be pardoned by the President and have qualified immunity from civil liability.

B. EQUITABLE RELIEF LIMITATIONS.

In order to secure a stay against government action formerly the general rule required the application of the “four factor” test. *Noem v Doe*, 605 US ___, Order on Application for Stay, dated May 30, 2025, illustrates the practice of a majority of SCOTUS to issue stays favoring the executive branch in the absence of any showing of irreparable harm to the Executive Branch. In *Noem v Doe*, the United States District Court had entered a stay preventing half a million Cuban, Haitian, Nicaraguan and Venezuelan noncitizens from being deported while the lawfulness of the order revoking their temporary protected status was adjudicated. Noem sought an emergency stay of the lower court’s stay, without making any showing of irreparable harm. SCOTUS granted it. The following is from Justice Jackson’s dissent.^{xvi}

The Court has plainly botched this assessment today. It requires next to nothing from the Government with respect to irreparable harm. And it undervalues the devastating consequences of allowing the Government to precipitously upend the lives and livelihoods of nearly half a million noncitizens while their legal claims are pending. Even if the Government is likely to win on the merits, in our legal system, success takes time, and the stay standards require more than anticipated victory. I would have denied the Government's application because its harm-related showing is patently insufficient. The balance of the equities also weighs heavily in respondents' favor. While it is apparent that the Government seeks a stay to enable it to inflict maximum predecision damage, court-ordered stays exist to minimize—not maximize—harm to litigating parties.

A similar stay by the majority was granted on the same day in another case, *Social Security Administration v AFSCME*, 605 US __ June 6, 2025. Again, the government made no showing of irreparable harm. In that case SCOTUS protected communications with the President from discovery saying:

The portions of the District Court's April 15 discovery order that require the Government to disclose the content of intra-Executive Branch USDS recommendations and whether those recommendations were followed are not appropriately tailored. Any inquiry into whether an entity is an agency for the purposes of the Freedom of Information Act cannot turn on the entity's ability to persuade. Furthermore, separation of powers concerns counsel judicial deference and restraint in the context of discovery regarding internal Executive Branch communications. Cf. *Cheney v. United States Dist. Court for D. C.*, 542 U. S. 367, 385 (2004) (“[S]pecial considerations control when the Executive Branch's interests in maintaining the autonomy of its office and safeguarding the confidentiality of its communications are implicated.”). On remand of the case, the Court of Appeals should take appropriate action to narrow the April 15 discovery order consistent with this order.

US Doge Service v CREW, at <https://www.scotusblog.com/cases/case-files/in-re-u-s-doge-service-et-al/>

Another example that highlights SCOTUS's blatant favoritism to the Executive Branch is the majority's June 23, 2025 shadow docket decision on an application for stay in *Department of Homeland Security v DVD*, the third country removal case challenging the forcible removal of non-citizens to a country which the non-citizen has no prior contact with such as Libya, El Salvador and South Sudan.^{xvii} The Court granted the Executive Branch emergency relief from a district court order enjoining transfers to those countries without notice and process. DHS had repeatedly violated the district court injunction prior to seeking a stay. Notwithstanding the unclean hands of DHS, SCOTUS granted DHS a stay. Here is from the dissent:

The Due Process Clause represents “the principle that ours is a government of laws, not of men, and that we submit ourselves to rulers only if under rules.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579, 646 (1952) (Jackson, J., concurring). By rewarding

lawlessness, the Court once again undermines that foundational principle. Apparently, the Court finds the idea that thousands will suffer violence in far flung locales more palatable than the remote possibility that a District Court exceeded its remedial powers when it ordered the Government to provide notice and process to which the plaintiffs are constitutionally and statutorily entitled. That use of discretion is as incomprehensible as it is inexcusable. Respectfully, but regretfully, I dissent.

The United States and its Department of Homeland Security on June 24, 2025, filed a formal legal Complaint, i.e., a lawsuit, i.e., against fifteen United States Judges and the United States District Court of Maryland alleging in the Introduction to the Complaint:

[S]everal hundred years of history,” *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944), teach that injunctive relief “is an ‘extraordinary’ equitable remedy that is ‘never awarded as of right,’” even where a plaintiff claims or shows that he will suffer irreparable harm without one, *Starbucks Corp. v. McKinney*, 602 U.S. 339, 345 (2024). *And injunctions against the Executive Branch are particularly extraordinary because they interfere with that democratically accountable branch’s exercise of its constitutional powers—including, as relevant here, the core Article II powers to enforce the Nation’s immigration laws and shape and manage its relationships with foreign nations.* See *United States v. Texas*, 599 U.S. 670, 679 (2023) (explaining that, in the context of immigration, the “Executive’s enforcement discretion implicates not only ‘normal domestic law enforcement priorities’ but also ‘foreign-policy objectives’”) ^{xviii} (Emphasis added.)

It is apparent that likelihood of success on the merits is not playing much of a role in the DOJ’s or SCOTUS’s analysis when equitable relief is sought against the Executive Branch.

The mere delay in staying an illegal action by the President or his administration can often be case determinative. For example, when the Court delays a stay of the wrongful withholding or impoundment of funds, the injured party may be forced to cancel a program, capitulate, or negotiate a resolution of the matter, foregoing their rights under law. As a practical matter this means the President and administration can violate the law with impunity.

Compounding these decisions on July 27th SCOTUS issued its decision in *Trump v Casa*^{xix} barring nationwide injunctions:

Universal injunctions likely exceed the equitable authority that Congress has given to federal courts. The Court grants the Government’s applications for a partial stay of the injunctions entered below, but only to the extent that the injunctions are broader than necessary to provide complete relief to each plaintiff with standing to sue. Syllabus

Trump v Casa means that each individual or state affected by an executive order must bring a suit for injunctive relief and obtain injunctive relief. This is catch-me if you can jurisprudence. As stated in Justice Jackson’s dissent in that case: “The Court’s decision to permit the Executive to

violate the Constitution with respect to anyone who has not yet sued is an existential threat to the rule of law.”

It is also very notable and worrisome that Justice Alito in a concurring opinion in *Trump v Casa* questioned the standing of states to bring suit to address their handling of birthright citizens which is addressed *infra*.

C. FEDERAL COURTS ARE “HIGHLY DEFERENTIAL TO THE PRESIDENT.”

In the area of foreign affairs and national security the Roberts’ Court has hewed very close to Nixon’s “But when the President does it, that means it is not illegal.”^{xx} An example of the deference to the President’s authority in the area of foreign affairs is the DOJ’s suit against Michigan, and a parallel suit against Hawaii addressing those states separate efforts to enforce the Clean Air Act.^{xxi} Under SUE, state efforts to enforce federal law may well run into claims that state regulation conflicts with the President’s asserted exclusive and preclusive role in the area of foreign relations. In *Trump v Hawaii*, 585 US ___ (2018), the Muslim travel ban case, the Court granted the President extraordinary deference in the sphere of foreign affairs. The following excerpt from the opinion gives sufficient taste of the Court’s majority’s deference to the President:

Moreover, plaintiffs’ request for a searching inquiry into the persuasiveness of the President’s justifications is inconsistent with the broad statutory text and the deference traditionally accorded the President in this sphere. “Whether the President’s chosen method” of addressing perceived risks is justified from a policy perspective is “irrelevant to the scope of his [§1182(f)] authority.” *Sale*, 509 U. S., at 187–188. And when the President adopts “a preventive measure . . . in the context of international affairs and national security,” he is “not required to conclusively link all of the pieces in the puzzle before [courts] grant weight to [his] empirical conclusions.” *Holder v. Humanitarian Law Project*, 561 U. S. 1, 35 (2010).

* * * *

For our purposes today, we assume that we may look behind the face of the Proclamation to the extent of applying rational basis review. That standard of review considers whether the entry policy is plausibly related to the Government’s stated objective to protect the country and improve vetting processes. See *Railroad Retirement Bd. v. Fritz*, 449 U. S. 166, 179 (1980). As a result, we may consider plaintiffs’ extrinsic evidence but will uphold the policy so long as it can reasonably be understood to result from a justification independent of unconstitutional grounds.

These recent cases are inconsistent with precedent under the previous administration. The current administration has asserted in the cases of Michigan’s and Hawaii’s Clean Air Act claims that

Presidential power under an executive order, an executive agreement, the President's claimed foreign relations interest, and dormant foreign and interstate commerce clause arguments are not consistent with a decision just two years earlier:

On May 11, 2023, the Supreme Court issued an opinion in *National Pork Producers Council v. Ross* affirming a lower court decision dismissing a lawsuit that California's Proposition 12, which forbids selling pork from certain pigs that are confined in a cruel manner, violates the Dormant Commerce Clause. In reaching its decision, the Court rejected an argument that Proposition 12 violated an extraterritoriality doctrine that would forbid[] enforcement of state laws that have the 'practical effect of controlling commerce outside the State,' even when those laws do not purposely discriminate against out-of-state economic interests. The Court also rejected an argument that Proposition 12 violated the Dormant Commerce Clause under the *Pike v. Bruce Church Inc.* line of cases, which the petitioners had argued provides that courts should assess 'the burden imposed on interstate commerce' by a state law and prevent its enforcement if the law's burdens are 'clearly excessive in relation to the putative local benefits.'^{xxii}

In the case addressing the President's calling up the National Guard, *Newsome v Trump*, the Ninth Circuit in voiding the District Court's stay did so because the court applied a "highly deferential" standard of review:

Nonetheless, we are persuaded that, under longstanding precedent interpreting the statutory predecessor to § 12406, our review of that decision must be highly deferential. Affording the President that deference, we conclude that it is likely that the President lawfully exercised his statutory authority under § 12406(3), which authorizes federalization of the National Guard when "the President is unable with the regular forces to execute the laws of the United States."^{xxiii}

Prior to *Zivotofsky v Kerry*, 576 US 1, (2015)," in every prior instance where the Supreme Court considered executive action in the field of foreign affairs that conflicted with the requirements of a federal statute, the Court had ruled the executive action invalid. *See id.* at 62 (Roberts, C.J., dissenting) (For our first 225 years, no President prevailed when contradicting a statute in the field of foreign affairs."^{xxiv} This began to change with the Trump administration.

D. THE UPSHOT OF THESE SCOTUS DECISIONS

The result of SCOTUS created immunities from criminal and civil liability, lower court delay in the granting stays, the extraordinary deference granted the President by SCOTUS, its disinclination to enjoin the Executive Branch, and its virtual prohibition on nationwide injunctions is that the President or the Executive Branch get to violate the Constitution or federal statutes for days, weeks, months, or years, if not indefinitely without either criminal or civil penalty or meaningful stays of its actions.

SCOTUS has left “We the People” with a President largely unaccountable to law. Mankind’s history is against any presumption of regularity or good faith of those with power. The presumption should be the other way.^{xxv} The hypotheticals explored in *Trump v United States*, presage a country to be run by a dictator.^{xxvi} Intimidation, bribery and corruption of elected officials who might otherwise hold the President are thus permitted if not legalized.

SCOTUS’s reliance on the legislative branch’s threat of impeachment as being sufficient to deter a President from committing “Treason, Bribery, or other high crimes and misdemeanors” is absurd. **No system of checks and balances contemplated by the Founders ever envisioned a President accountable to the People only if he is unsuccessful at intimidating, threatening, bribing, arresting, charging, or otherwise co-opting or corrupting one vote more than one third of the Senate to prevent impeachment and removal.**^{xxvii}

IV. WILCOX V TRUMP.

SUET’s antagonism to independent administrative agencies, such as the NLRB, FCC, SEC and other agencies, radically rebalances and restructures the relationship between the President and Congress. This also very significantly increases the President’s power over states because the “bipartisan administrative bodies carrying out expertise-based functions with a measure of independence” have been replaced with bodies functionally directed by the President, freed of the expertise and impartiality that federal civil service brings. This is particularly significant where federal statutes have preempted state regulation in areas of vital significance to the exercise of state police powers. The following from the dissent on the application for stay in *Trump v Wilcox*, 605 US __ (May 22, 2025) summarizes legal background and briefly describes the significant impact of just one of the consequences of SUET:

For 90 years, *Humphrey’s Executor v. United States*, 295 U. S. 602 (1935), has stood as a precedent of this Court. And not just any precedent. *Humphrey’s* undergirds a significant feature of American governance: bipartisan administrative bodies carrying out expertise-based functions with a measure of independence from Presidential control. The two such agencies involved in this application are the National Labor Relations Board (NLRB) and Merit Systems Protection Board (MSPB). But there are many others— among them, the Federal Communications Commission (FCC), Federal Trade Commission (FTC), and Federal Reserve Board. Congress created them all, though at different times, out of one basic vision. It thought that in certain spheres of government, a group of knowledgeable people from both parties—none of whom a President could remove without cause—would make decisions likely to advance the long-term public good. And that congressional judgment, *Humphrey’s* makes clear, creates no conflict with the Constitution.

Technically, the Court in *Wilcox* has not yet reached the merits of the case, which still remains to have cert granted, must less be heard, but the majority granted the application for stay in reliance

of some prior precedent: *Seila Law LLC v Consumer Financial Protection Bureau*, 591 US 197, 215-218 (2020), and *Free Enterprise Fund v. PCAOB*, 561 U.S. 477 (2010).

An abstract to an amicus filed in the Supreme Court asserted that granting the President the power to remove agency heads without cause was not supported by history:

As courts ask whether *Free Enterprise* and *Seila Law* call into question *Humphrey's Executor* and independent officers or agencies, the more immediate questions should be focused on new historical evidence and new fact-checking finding pervasive and repeated historical errors and misinterpretations at the foundation of the unitary executive theory of removal.

Since the Supreme Court decided *Seila Law*, a wave of new historical research has shown that the Founding generation did not understand Article II to grant the President an indefeasible removal power over executive officials. In response, pro-unitary executive scholars have tried to offer new historical support. That evidence has not withstood scrutiny. For example, unitary theorists have been unable to address core critiques of their interpretations of sources from the First Congress. They cannot identify a single sentence from the voluminous Ratification Debates suggesting Article II “executive power” implied removal. Instead, they have repeated serious errors about English sources, the Ratification Debates, and the First Congress, including misquotations of Blackstone, repeatedly taking sources out of context, and what appears to be at least one grossly misleading statement (if not a demonstrably false statement) about the Ratification Debates.^{xxviii}

Wilcox presages a future where not only will federal agencies no longer be independent and impartial, and with expertise, but the boards and commissions will have become unstable, with members subject to removal repeatedly. In the few cases after *Humphrey's Executor*, Justice Roberts severed the provisions of federal law instilling agency independence, leaving the agency otherwise intact, but with its enforcement prerogatives directly and totally under Presidential control. When coupled with impoundment of congressional appropriations, aggressive offensive use of conditioned grants, and assertions that states and local governments are interfering with the President’s “conclusive and preclusive constitutional authority”^{xxix} – particularly within the area of foreign affairs,^{xxx} we will have arrived at “competitive autocracy.”

V. STATE APPROACHES.

A. PERSUADE CONGRESSIONAL OFFICERS TO ACT TO DIMINISH PRESIDENTIAL POWER.

States do not, and under current law cannot, control their Congressional officers. However, strong efforts at persuading their Congressional delegation can be undertaken at the gubernatorial and state attorney general level to countervail Presidential threats and intimidation. As Michael Waldman of the Brennan Center has said “We are going to need a new agenda of democracy strengthening reforms going forward.”^{xxxix} Federal ethics reform is among those new democracy strengthening reforms needed. Moreover, a comprehensive revision of Congressional delegation of powers to the President is a central, crucial, pivotal vital part of that reform. There is a desperate need for Congress to identify provisions in which Congress has given too much discretion to the President or has not set forth clear justiciable standards for the exercise of authority. Given SCOTUS’s extreme deference to the President’s exercise of discretion, procedures for fact finding, discovery, and standards for judicial review are necessary. Congress must formulate non-severable reviewable standards for declaring an emergency^{xxxix}. States should encourage their Congressional delegations to begin this review immediately. As soon as it is politically achievable, Congress should enact those laws. In the field of foreign affairs SCOTUS has diminished Congress’s authority.

B. STATE TOOLS AND STRATEGIES FOR REBALANCING STATE GOVERNMENT POWER.

The question posed is whether States are willing to tolerate a President that is a dictator, exclusively in control of the execution or failure to execute federal laws, who can impound funds appropriated by Congress to bend states to the President’s will, to station troops in them, and with great deference issue executive agreements and executive orders proclaiming national emergencies preempting states’ enforcement of federal laws or their own state laws enacted under their police powers? We know that "all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed."^{xxxix} The answer seems clear.

Timothy Snyder’s “*On Tyranny*” offers twenty lessons which could well be adapted to create state strategies to address the competitive autocracy which is developing.^{xxxix}

States face at least two impediments to replacing something like the earlier federal regulatory scheme, as states generally don't have the taxing authority of the federal government and individually will not be able to replicate the expertise lost by the federal government due to the

federal government's movement to a "spoils system." Moreover, acting on their own could trigger a "race to the bottom."^{xxxv}

Nonetheless, States would seem to have several tools and arguments to retain broad regulatory authority when SCOTUS is considering SUEP or has changed the rules, structure, form, or authority of a federal agency,

How *Wilcox v Trump*, or cases on impoundment, federal civil service, or the federal Administrative Procedures Act may be shaped by SCOTUS or exactly how it might apply SUEP cannot be known. The following, however, are some broad outlines of potential state responses.

C. IF CERTIORARI IS GRANTED IN WILCOX V TRUMP, OR CASES THREATENING TO IMPOSE THE STRONG UNITARY EXECUTIVE THEORY, FILE AMICI BRIEFS OPPOSING THE STRONG UNITARY EXECUTIVE THEORY.

1. **History:** Historians should be solicited to attack the SUEP arguments about the historical support for SUEP. See: e.g., Abstract, Amicus in *Wilcox v. Trump* on Presidential Removal and Unitary Executive Theorists' Errors https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5177014
2. **Attack Judicial Arrogance.** Now 249 years after the Constitution was ratified, six Justices have the arrogance to decide we have a King. This is not judicial modesty! This is the height of judicial arrogance. Justices who previously expressed support for SUEP must recuse themselves.
3. **In *Wilcox*, Attack the Bespoke Exception for the Federal Reserve Commission.** There is no rationale legal basis for making an exception for the Federal Reserve Commission, but there is a blatant political reason. Having the President able to replace the members of the Federal Reserve Commission would terrify investors and destabilize financial markets.
4. **Argue that SUEP Violates the Guarantee of a Republican Form of Government.** While the guarantee of a Republican form of Government is frequently dismissed as raising a worthless argument or avoidable claim, this has not always been so. See ArtIV.S4.3 Meaning of a Republican Form of Government^{xxxvi} SCOTUS is giving us a dictator for four years unchecked by the Judiciary and a Congress whose members are justly fearful of threats by the dictator.

5. **Attack Severability.** Where SCOTUS has invalidated Congressional restraints on the President’s removal of an officer, States should strongly consider asserting that the restriction on removal, and independence of the agency, was a central objective of the legislation. Congress intended to create an office that was independent of the President, bipartisan, stable, insulated from partisan or electoral politics, regional or state-based motivations and expertise-driven. Declare the whole act unconstitutional and send Congress back to the drawing boards to address national problems, if states cannot address the problem.

6. **Argue to Eliminate Federal Preemption.** Where preemption is express, it is severable from the remainder of the statute as Congress would not have passed the statute vesting such power in an uncontrollable President. Where preemption had been implied or is being implied because the federal regulatory scheme “occupied the field” such asserted preemption should not be implied. Neither *Garmon* nor *Machinists* preemption^{xxxvii} should be permitted and state legislatures should fill the gap. This ties in with the Major Question Doctrine set forth below.

D. RESPOND AGGRESSIVELY TO THE MERITS OF *WILCOX v TRUMP*. CONSIDER DECLARATORY JUDGMENT ACTIONS

1. **Major Question Doctrine.** The major question doctrine, in which SCOTUS has held that questions of major political or economic significance may not be delegated by Congress to executive agencies absent sufficiently clear and explicit authorization see e.g., *West Virginia v EPA*, 597 US 697 (2022). The major question doctrine can come in different forms. Assert a strong version of the Major Questions Doctrine arguing that Congress must express in the strongest and clearest language any intent to delegate broad authority to the President, or to interfere with the state’s exercise of a state’s police powers within the state.

2. **Unlawful Delegation of Authority to the President.** While the current approach toward delegation requires that Congress “clearly delineates the general policy, the public agency which is to apply it, and the boundaries of this delegated authority” in many instances the standards as interpreted by SCOTUS, as applied to the President, the standards are so unbounded and vague as to require no factual proof that the standard has been fairly and uniformly applied. Where the standards are such that the President can or does argue that courts have no authority to review the President’s decision, SCOTUS should find that there has been a violation of the separation of powers. The President and all other Executive

branch officers must be fully capable of being second guessed. They must be required to present substantial evidence of the factual predicates for their action and to negate improper motives.

3. **Anti-commandeering Doctrine.** A central focus of SUET is to bend states or state governments or public programs to the President’s will. Press to expand the doctrine laid out in *National Federation of Independent Business v Sebelius*, 567 US 519, 580 (2012)^{xxxviii} to any conditional grant that asserts a lawful, nonpartisan condition not tied directly, clearly and exclusively to the grant as being barred by the 10 Amendment to the US Constitution.
4. **Loper Bright Enters. v. Raimondo**, 144 S. Ct. 2244 (2024). Consistent with the Supreme Court’s holding in that case, decline to defer to federal agency interpretations of statutes and seek independent judgement of the court.^{xxxix}
5. **Seven County Infrastructure Coalition v Eagle County**. Where applicable, assert that the question adjudicated at the lower court or agency level was not a question of law but of fact reviewable only under, at worst, the arbitrary and capricious standard and thus no deference is required. To effectuate this, seek a full evidentiary hearing either before an independent and impartial fact finder, such as a state court judge entitled to Full Faith and Credit, an Article III judge, and assert the right to one.
6. **Due Process** – Given the Presidential authority under SUET neither the President nor the administrative law judges are impartial and independent adjudicators required by Due Process. Agency fact findings thus do not comport with due process and are void. This would expand the due process issue beyond the current boundaries in *SEC v Cochran* and *Axon v FTC*.

E. RESPONSE TO FEDERAL SUITS AGAINST A STATE AND “EXECUTIVE ORDERS:”

1. **In Defending Suits Brought by the Federal Government Raise All Available Defenses and Insist on All “I’s” being dotted and All “T’s” Being Crossed.** A broad range of Affirmative Defenses should be raised. Among the Affirmative Defenses to be raised if applicable are:
 - a. **Roberts’ *Shelby County v Holder*: “Doctrine of The Equality of the States.”**
While the theory is bogus, the Court has adopted it. Presidential discrimination

against states, and their residents based on their policies, voting preferences, partisan preferences, and similar improper motives would violate the principle.

- b. Laboratories of Democracy.** States have different histories, populations, different geographic features, sizes, industries, and needs. The Court must respect the state's right to experiment with democracy where it does not clearly violate established constitutional principles. See *Patterson v. Kentucky*, 97 U.S. 501, 504 (1878) ("Whether the policy thus pursued by the State is wise or unwise, it is not the province of the national authorities to determine. That belongs to each State, under its own sense of duty, and in view of the provisions of its own Constitution.")
- c. Denial of Access to the Courts.** In the case of Michigan and Hawaii, the DOJ has sought to enjoin the States from going to state courts and seeking judicial relief. This is a clear and unconstitutional denial of access to courts.
- d. Violation of State's *Parens Patriae* Rights.** States have police power to protect their residents and citizens. Except in extremely limited circumstances, the federal government does not.
- e. The Spending Clause bars the United States' claims.** This affirmative defense was raised by the State of Maine in the suit by the United States against Maine arising out of the transsexual athlete suit.
- f. The United States' claims are barred because it cannot demonstrate that Congress unambiguously imposed as a condition for receiving federal funds the condition that the United States now seeks to enforce.
- g. The Tenth Amendment bars the United States' claims.
- h. The United States' claims, and/or the relief the United States seeks, are barred by the Equal Protection and Due Process Clauses of the United States Constitution.
- i. Conflict of Interest. The Executive Branch of the United States has a fiduciary duty to represent the legal interests of the people of the state and cannot claim *parens patriae* standing to simultaneously sue the state government or state government leaders who represent them.

F. FILE A COUNTERCLAIM AGAINST THE PRESIDENT.

The above affirmative defenses could all be asserted against the President in a Counterclaim to any suit brought by the United States, with these added on.”

- i. Violation of Art II, Sec 3.
 1. **Refusal and Failure to Faithfully Execute the Laws.** The State should assert any and all instances where the President has at that time failed to faithfully execute the laws.
 2. **Failure to Take Care.** Negligent omissions by the President to enforce the law should be addressed as well as violation of laws.
- ii. Violation of the Tenth Amendment.
- iii. **Executive Agreements Are Not the Supreme Law of the Land.** Under the express provision of the Constitution: the “Constitution, and the Laws of the United States which shall be made in Pursuance thereof and all Treaties made, under the Authority of the United States, shall be the supreme law of the land . . .”^{xl} Except to the extent that Congress has enacted an executive agreement into law, an executive agreement is not among the provisions entitled to the benefits of the Supremacy clause.
- iv. **Openly Mock “Executive Orders” and “Executive Agreements.** The Supremacy Clause is extremely clear. Those are NOT the supreme law of the land. Executive orders and executive agreements with foreign countries or foreign bodies do not have the force of law binding on anyone other than officers and employees in the executive branch and then only to the extent they are lawful. They are not entitled to the deference that SCOTUS currently gives Presidential orders and agreements.

G. HAVE STATE OFFICIALS INSTITUTE AND PROSECUTE BAR GRIEVANCE AND DISBARMENT PROCEEDINGS AGAINST AUSAAS WHO VIOLATE RULES OF PROFESSIONAL CONDUCT.

The former separation between the Attorney General and the President, where the President could not direct the actions of the Department of Justice, direct or compel punishing investigations, prosecutions and civil suits is gone. This gives rise to a DOJ that does not feel constrained by professional ethics. Disbarment proceedings may not be effective because there is no constitutional

requirement the Attorney General or DOJ lawyers must be licensed to practice law, and it is entirely possible bar authorities will be reluctant to pursue such remedies. See e.g., the Bar Grievance filed against Pam Bondi at <https://ldad.org/wp-content/uploads/2025/06/Pamela-Bondi-Ethics-Complaint-6.5.25-1.pdf> However, it can have a positive effect if the government attorney contemplates a career as a lawyer in private practice.

H. REPEATEDLY SEEK TO HAVE SCOTUS REVISIT ITS CONTROVERSIAL AND ERRONEOUS DECISIONS.

In *Cooper v Aaron*, 358 US 1, 18, 78 S Ct 1401, 3 L Ed 2d 5 (1958) the SCOTUS emphatically declared that state courts were bound by their decisions.^{xlii}

In *Knick v Township of Scott, Pennsylvania*, 588 US 180, 203; 139 S Ct 2162 (2019) the Court identified several factors to consider in deciding whether to overrule or amend its prior rulings.^{xliii}

Stare decisis doctrine “is at its weakest when we interpret the Constitution,” as we did in *Williamson County*, because only this Court or a constitutional amendment can alter our holdings. *Agostini*, 521 U.S., at 235.

We have identified several factors to consider in deciding whether to overrule a past decision, including “the quality of [its] reasoning, the workability of the rule it established, its consistency with other related decisions, . . . and reliance on the decision.” *Janus v State, County, and Municipal Employees*, 585 U.S. ___, ___–___ (2018) (slip op., at 34–35)

Examine challenging prior SCOTUS decisions, either with or without other state AGs based on faulty assumptions, bad history, workability, the harmful consequences of a decision. Legal literature is replete with assertion of SCOTUS’s error on grounds sufficient to challenge stare decisis. Some examples where SCOTUS has committed errors which threatens democracy would include decisions in the following areas of law:

1. **Campaign Finance Decisions** – beginning with *Buckley v Valeo*. Not only does the public distrust the integrity of elected officials who appear to be bought and paid for, but SCOTUS, in the spectrum of political speech, has made the right to make campaign contributions much more protected than the right to vote.
2. **Voting Rights Decisions** – beginning with *Shelby County v Holder*, 570 US 529 (2013).
3. **Gerrymandering Decisions** – particularly *Rucho v Common Cause*, 588 US 684 (2019)

4. **Bribery and Corruption and Gratuities Decisions** -- particularly those decisions claiming that vagueness, over inclusiveness and free speech issues, make honest services statutes ineffective, require lenity, or redefine official acts to exclude acts that an official “customarily” performs. This would require the Court to reexamine *McNally v. United States*, 483 U.S. 350 (1987) *United States v. Sun–Diamond Growers of Cal.*, 526 U.S. 398 (1999) *Skilling v. United States*, 561 U.S. 358, (2010); *McDonnell v. United States*, 579 U.S. 550 (2016) and *Snyder v United States*, 601 US ___, (2024). Again, gifts and contributions that look unseemly are given more protection than voting.

5. **Attack the Purcell Game.** The Purcell Game is based upon *Purcell v Gonzalez*, 549 US 1 (2006) and is where the federal judiciary postpones a decision in an election case until close to an election and SCOTUS then postpones the application of the decision to a future elections on the grounds that it would cause confusion in the election. In *Merrill v Milligan*, 599 US 1, (2023) Justices Kavanaugh and Alito asserted that under the Purcell Principle the "traditional test for a stay does not apply (at least not in the same way)." States are probably disinclined to oppose the Purcell doctrine when the necessary timing of the Court’s decision would truly raise havoc with the upcoming election – however castigating the Purcell Doctrine while urging the Court to make its decision promptly and avoid the “doctrine” would avoid the game of denying voters their rights until some future election years in the future.

6. **Prior Unitary Executive Theory Decisions.** *Seila Law LLC v Consumer Financial Protection Bureau*, he591 US 197, 215-218 (2020) and *Free Enterprise Fund v. PCAOB*, 561 U.S. 477 (2010)

7. **The Trump Immunity Decision.** Some men are now above the law? Crazy!^{xliii}

8. Freedom of Religion Decisions Pertaining to the Religious Freedom Restoration Act.

9. **NLRB v Noel Canning**, 573 US 513 (2014) with respect to intra-session appointments and vacancies that occurred during a session. Inter-session and intra-session recesses have been a tool that Presidents have used to avoid careful Senate scrutiny of appointments.

I. MOVE TO DISQUALIFY THE JUSTICES.

Not only are there the notorious unethical practices of Thomas and Alito, but to put it mildly: “There’s an unwritten rule that allows the justices to say what kinds of cases they would like to

hear – they sometimes write that stuff in statements accompanying the Court’s decision not to hear particular cases.” Litman, *Lawless*, p 65. Alito has a habit of speaking to the Federalist Society. For example, Liptak “In Unusually Political Speech, Alto Says Liberals Pose Threat to Liberties” November 13, 2020.^{xliv} Since *Bonham’s Case*, in 1610, *aliquis non debet esse iudex in propria causa*” when Judge Coke used the principle to instruct the king that he could not personally judge a dispute between himself and his subject, this has been a foundational constitutional principle. States should not sit idle on this principle.

J. STATE CONSTITUTIONAL AND STATUTORY RESPONSES.

States do not and should not need to wait for a decision on a SUET case to begin to enact or implement these constitutional and statutory responses. States must enact statutory protection of state prerogatives against Presidential authoritarian rule and a federal police state and must enforce those laws against state and federal actors.

1. **Enact an analog of 42 USC 1983 and 18 USC 242, 42 USC 1988 and the federal criminal analogs.** – but include all federal constitutional violations and federal statutory violations and all state constitutional and state statutory violations and broadly define the statutory provisions to which it is applicable, avoiding the type of limitations SCOTUS and federal courts imposed beginning with *Gonzaga v Doe*, 536 US 273 (2002) in which rights created by federal statute, were not enforceable despite the plain language of 42 USC 1983, also the new Bivens limitations,^{xlv} and limits on justiciability.
2. **Formally Adopt Extraterritoriality Statutes.** Most states have recognized extraterritoriality for civil and criminal offenses occurring outside their states but having an impact within the state. Statutory or state constitutional provisions strengthening the extraterritoriality of state enforcement should be examined. For an example see the Model Penal Code at Section 1.03 ^{xlvi}
3. **Broaden and Enhance State RICO Statutes.** Investigate and enhance the Georgia RICO statute as a model. That state’s RICO statute is among the most expansive in the nation, allowing prosecutors to build racketeering cases around violations of both state and federal laws — and even activities in other states^{xlvii} Eliminate any financial gain requirement of some state RICO statutes. Add violations of key portions of State Election Law and state civil rights laws and include the criminal laws of the United States. Make misfeasance and malfeasance in failure to enforce a crime – criminal neglect of duty. Include in addition strong injunctive and mandamus remedies and fee and cost recovery for violation of RICO.

4. **Adopt and Enforce a Bribery Statute Which Also Governs and Criminalizes Gratuities** that Includes a Strong Workable Definition of Honest Services. The decisions in *Skilling v United States*, 561 U.S. 358,130 S. Ct. 2896, 177 L. Ed. 2d 619 (2010) *McDonnell v United States*, 579 U.S. 550,136 S. Ct. 2355,195 L. Ed. 2d 639 (2016) *Percoco v United States*, 598 U.S. ___,143 S. Ct. 1130,215 L. Ed. 2d 255 (2023) *Ciminelli v United States*, 598 U.S. ___,143 S. Ct. 1121,215 L. Ed. 2d 299 (2023) and *Snyder v United States*, 601 U.S. ___, 144 S. Ct. 941, ___ L. Ed. 2d ___ (2024) have greatly weakened public integrity enforcement. Enact state statutes patterned after the proposed Public Corruption Prosecution Improvements Act proposed by Senators Leahy, Cornyn, Kirk, Whitehouse, Klobuchar, Feinstein and Blumenthal, See: <https://www.congress.gov/bill/112th-congress/senate-bill/401/text>, Make these statutes clearly applicable to state and federal officers and employees and to private parties.
5. **Adopt an Obstruction of an Official Proceeding Statute, e.g., 18 USC Sec 1512(c)(2)**. Make Certain the Statute Does Not Embody or Incorporate Language that Limits Its Applicability as In *Fischer v United States*, 603 US __ (2024).
6. **Adopt a State Analog of 18 USC 1001**. Disinformation is a part of autocrats’ propaganda repertoire. A study has shown that “disinformation helps rulers to stay in power as regimes with higher levels of disinformation are less likely to experience democratization episodes. In democracies, on the other hand, disinformation increases the probability of autocratization onsets.”^{xlviii}
 - a. Require testimony before official bodies subject to the act to address disinformation.
 - b. Prosecute to the full extent of the law those false statements.

Take the following example, on June 20, 2025, Homeland Security Kristie Noem made an absurd and likely false claim that Noem claimed in the discussion panel, organized by the conservative group America’s Future Tour, that “many” transnational gang members are crossing into the country via the northern border after the southern border had experienced increased security since President Donald Trump took office.

Noem warned conservative allies that undocumented immigrants could enter by land, sea, or road border crossings like the Ambassador Bridge.^{xlix} State Police, or a Committee of the Legislature could ask to interview Noem or her office and ask her to repeat the statement and provide evidence in support of her claims. If she failed to respond, assert that she refused to provide any evidence in support of her wild claim.

If she responded, then the State Police or legislative committee could investigate any facts provided. The public would either be protected from lies or from terrorists.

7. **Adopt A Tolling Statute Which Tolls Criminal and Civil Periods of Limitation While an Officeholder Is Holding Office.**
8. **Adopt a Model Anti-Militia Law.** The Institute for Constitutional Advocacy and Protection has drafted such a model bill.ⁱ Beginning with *Presser v Illinois*, 116 US 252 (1886) it has been recognized that the Second Amendment “does not prevent the prohibition of private paramilitary organizations.” *District of Columbia v. Heller*, 554 U.S. 570, 621 (2008). State law should be able to prevent unidentified and non-instigated, persons from acting as state or federal law enforcement officials. Serious criminal sanctions should accompany violations.
9. **Examine and adopt state statutes which are analogs of many of the federal regulatory statutes** and evaluate whether to retain various federal law or case law exceptions to effective enforcement such as: no private cause of action, immunity, statute of limitations.
10. **Get the National Popular Vote Interstate Compact passed and effective and develop other protective interstate compacts.** Give adoption of the national popular vote interstate compact priority. Expand the role and number of interstate compacts which do not require congressional approval, under for example, the precedent of *United States Steel Corporation v Multistate Tax Commission*, 434 US 452 (1978).
11. **A Baseline Protection Act.** Enacting a bill that would preserve the status quo of the state’s current safeguards as the federal government rolls back the federal standards and rules. Illinois drafted such a bill which protected the baseline provisions of a large number of federal statutes.ⁱⁱ
12. **Draft Statutes Which Avoid Dormant Commerce Clause Issues** and Press for the Elimination of the Traditional Framework of the Dormant Commerce Clause Theory.
13. **Protect state public servants and public officials from stalking and doxing.** A statute like Colo Rev Stat Sec 18-3-602 making “true threats” a crime could be modified to comply with *Counterman v Colorado*, 600 US __ (2023) by adding an element that the defendant was aware that his statements could be understood as threats. Illinois passed a doxing statute providing for civil liability for doxing, Public Act 103-0439, which could be used as a model.ⁱⁱⁱ

14. Make the most of *parens patriae* and consider the advantages of making *parens patriae* statutory or a matter of state constitution. See e.g., 15 USC Sec 15c. Justice Alito’s concurrence in *Trump v Casa* threatens the standing of states to vindicate the Constitutional and federal law rights of its residents:

But at a minimum, we have said that a litigant seeking to assert the legal rights or interests of others must demonstrate ordinary Article III standing for itself and answer the additional “threshold question whether [it has] standing to raise the rights of others.” *Kowalski v. Tesmer*, 543 U. S. 125, 129 (2004). But see *FDA v. Alliance for Hippocratic Medicine*, 602 U. S. 367, 398 (2024) (THOMAS, J., concurring). This latter requirement, as we have explained, entails a showing that the litigant has a “close relationship” to the right holder and that there is some “hindrance” to the right holder’s ability to “protect his own interests.” *Kowalski*, 543 U. S., at 130 (quoting *Powers*, 499 U. S., at 411). **So long as third-party standing doctrine remains good law, federal courts should take care to apply these limitations conscientiously, including against state plaintiffs. (Emphasis added.)**

Given the threat to democracy and the rule of law that SCOTUS presents, states should consider enacting state statutes or constitutional provisions specifically finding that many resident of a state are hindered from protecting their own interests and federal constitutional and statutory rights, lack the financial means and access to legal counsel to secure their rights. To secure those rights the attorney general of the state has authority to bring actions and intervene on behalf of the state in actions to assure that the rights of its residents are conscientiously and effectively protected by state and federal courts.

15. **Coordinate Strategies and Tactics with other states with similar Interests.**

K. ENFORCE STATE RIGHTS THROUGH STATE COURT LITIGATION.

1. **State enforcement should avoid pleading a federal question**. The Supreme Court has made clear that under the well-pleaded complaint rule, if no federal claim is alleged, even if the federal law defense is actually raised, and even if it in fact presents a federal issue (even the only disputed issue) there is no federal jurisdiction, and the defendant can’t remove the case to federal court. See e.g., *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 14 (1983).

2. **Avoid diversity jurisdiction to avoid removal to a federal court.**
3. **States should avoid naming the specific federal law enforcement officials within the scope of 28 USC 1442 to further avoid removal to a federal court.**
4. **Amplify and Enact into Law a Common Fund Doctrine and State Constitutional Vindication Qui Tam Law.** States do not have as much tax revenue to fund complex litigation against federal government defendants. Common fund and qui tam litigation by private parties should incentivize private parties to bring claims in state courts that are not capable of being removed to federal courts.^{liii}
5. **By granting the state attorney fees for successfully pressing a state claim for a violation of a state constitutional provision.**
6. **By requiring through statute and court rule that state courts expedite resolution of state and federal constitutional claims.**
7. **Adopt Brennan Center suggestions that state constitution provisions may provide broader rights than the US Constitution** and its approach of using state history – see e.g., A Practical Guide to Using State History to Overcome Federal Precedent <https://statecourtreport.org/our-work/analysis-opinion/practical-guide-using-state-history-overcome-federal-precedent>. See also, Marcia Coyle, State courts, voters increasingly turning to state constitutions to protect rights, August 18, 2023 National Constitution Center at <https://constitutioncenter.org/blog/state-courts-voters-increasingly-turning-to-state-constitutions-to-protect-rights>

L. ASSERT THE UNCONSTITUTIONALITY OF THE FEDERAL VACANCIES REFORM ACT OF 1998.

The Vacancies Reform Act of 1998 is not consistent with Article II, Section 2, Clause 3 as it permits the President to fill vacancies for short terms while the Senate is in Session, without Senatorial confirmation. Here is the vacancies clause:

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

The Vacancies Reform Act would require Senate confirmation and slow removal and replacement of executive offices and stabilize the federal government. The constitutionality of the Vacancies Reform Act has been questioned on other grounds. See Stayan, *Why the Federal Vacancies Reform*

M. EXERCISE GREATER CONTROL OVER THE STATE’S NATIONAL GUARD BY ADDRESSING PROCEDURES FOR REFUSING ILLEGAL ORDERS AND REVIEW OF LEGALITY OF FEDERALIZATION ORDERS.

The Governor or other heads of the State Militia should issue directives to the effect that:

1. All members of the state national guard shall emphasize training that an unlawful order by the President is not to be obeyed.
2. A determination by the state executive authority that an order is unlawful, including an order federalizing the National Guard shall not be obeyed is determinative of the legality of an order, unless and until that determination is set aside by a court of competent jurisdiction and full and close determination of facts.

The Constitution in Art 1 Sec 8 addresses the Militia, providing as follows:

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to discipline prescribed by Congress.

Trump has, in the brief time since his inauguration, claimed eight “emergencies.” In violation of 10 USC Sec 12406 he has federalized the National Guard, contending there was a “rebellion.” The federalization of the national guard could well be a critical step in fomenting rebellion leading to the imposition of martial law by a President immediately in advance of a Presidential election.

N. RIDICULE

Autocracy thrives on fear, on a belief that the autocrat is invincible and powerful. State leaders collectively and publicly ridiculing the autocrat is an enormously effective weapon.

VI. CONCLUSION.

As an enemy force, the Heritage Foundation and others drafting Project 2025 exposed all the weaknesses they could find. It is now our responsibility to fix those weaknesses without yielding to the temptation to over-correct. A SCOTUS that would impose SUEC on a republic 249 years after its founding bespeaks an arrogance of vast dimensions. We must not minimize the danger that just five of six pre-disposed members of the currently constituted SCOTUS pose. We must realize that this is highly likely to happen, not in the next decade, but in the next session of the Court and we must be ready for it. SCOTUS, with its obvious partisanship and corruption may no longer be viewed as anything other than a highly likely enemy of democracy unwilling to protect We the People from a very corrupt autocratic or dictatorial rule..

The strategies and tactics suggested here are clearly not desirable in other circumstances, but they are far better than the alternative of living under a dictatorship. We must ask, if not these strategies and tactics, which strategies and tactics will save our republic from dictatorial or autocratic Presidents. There is no claim that these strategies or tactics are the best. Better strategies and tactics must be developed.

VII. ENDNOTES

- i. Trump v Wilcox, 605 US ___, 145 S Ct 1415 (2025). Order on application for stay, May 22, 2025.
- ii. Trump v Wilcox, 605 US ___, 145 S Ct 1415 (2025). Order on application for stay, May 22, 2025.
- iii. See e.g., Newsome v Trump, Complaint for Declaratory and Injunctive Relief, Case 3:25-cv-04870, (N D Cal.) State of California v United States Department of Transportation, C.A. No. 25-cv-208-JJM-PAS (D R.I.) Preliminary Injunction, June 19, 2025.
- iv. The Heritage Foundation’s “Mandate for Leadership, The Conservative Promise, Project 2025”
- v. Steve Vladeck, in One First email of July 7, 2025, discusses the letters of Attorney General Bondi asserting that the President and the Attorney General will not enforce and forever relinquish any claim that a company is violating the “Protecting Americans From Foreign Adversary Controlled Applications Act” by making TikTok available, asserting Presidential authority over national security and foreign affairs. https://embed.documentcloud.org/documents/25989866-25-3980-nd-cal-response-07032025/?utm_source=substack&utm_medium=email. This variant of the “take Care that

the Laws shall be faithfully executed” clause of US Const Art II, Sec 3” in which exempted both retrospective application of the criminal laws, but prospective applications of the criminal and civil law as being the “dispensing” power: “claimed by pre-18th-century English kings was the power to decide, on an ad hoc basis, which laws could and should be set aside in individual cases—to exempt the King’s favorites not just from the retrospective operation of criminal laws (for which after-the-fact pardons could have the same effect), but from the retrospective and prospective application of civil laws, as well. The idea was that the King could literally “dispense” with application of whichever laws he wanted, for whatever reasons he wanted, in whatever cases he wanted.”

- vi. The decision on the application for stay in *Wilcox v Trump*, also addressed the Merit Systems Protection Board. A line of cases following *Elrod v. Burns*, 427 U.S. 347 (1976) and *Branti v Finkel*, 445 US 507 (1980) currently provides some protection from a pure spoils system. In those cases, the Supreme Court concluded that political patronage dismissals impinge upon a public employee's First Amendment rights of speech and association and held that a dismissal solely on account of an employee's political affiliation violates the First Amendment unless "the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved." *Branti*, 445 U.S. at 518. In other words, a "government's interest in securing employees who will loyally implement its policies can be adequately served by choosing or dismissing certain high-level employees on the basis of their political views." *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 74 (1990). This often turns on the extent to which the position involves policy-making or a confidential relationship with an elected official."
- vii. Mike Allen, 1 big thing: Unprecedented new precedents, June 28, 2025 at https://www.axios.com/newsletters/axios-am-2e16e2b2-51fd-41e7-99da-9411fbbacfa5.html?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axiosam&stream=top . The list of new Presidential powers is:
1. Presidents can limit the classified information they share with lawmakers after bombing a foreign country without the approval of Congress.
 2. Presidents can usurp Congress's power to levy tariffs, provided they declare a national emergency.
 3. Presidents can unilaterally freeze spending approved by Congress and dismantle or fire the heads of independent agencies established by law.
 4. Presidents can take control of a state's National Guard, even if the governor opposes it, and occupy the state for as long as said president wants.

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5. Presidents can accept gifts from foreign nations, as large as a \$200 million plane, even if it's unclear whether said president gets to keep the plane at the end of the term.
 6. Presidents can actively profit from their time in office, including creating new currencies structured to allow foreign nationals to invest anonymously, benefiting said president.
 7. Presidents can try to browbeat the Federal Reserve into cutting interest rates, including by floating replacements for the Fed chair before their term is up.
 8. Presidents can direct the Justice Department to prosecute their political opponents and punish critics. These punishments can include stripping Secret Service protections, suing them and threatening imprisonment.
 9. Presidents can punish media companies, law firms and universities that don't share their viewpoints or values.
 10. Presidents can aggressively pardon supporters, including those who made large political donations as part
- viii. viii The phrase is taken from Brooks, "The Democrats' Problems Are Bigger Than You Think" June 5, 2025 New York Times, at <https://www.nytimes.com/2025/06/05/opinion/democrats-trump-winning.html?searchResultPosition=1>. While this may all blow over with the next ruling by SCOTUS, there is no evidence of that. The evidence is that a legal/political revolution is looming and that, as Lincoln put it, we must think and act anew.
- ix. ix See Stinger, California Democrats pass twin bills to "Trump-proof" the state, Feb 3, 2025 at <https://www.msn.com/en-us/politics/government/california-democrats-pass-twin-bills-to-trump-proof-the-state/ar-AA1ypUtj>. The bills were an additional \$25 million to the state's Department of Justice and "\$25 million for grants and contracts to lawyers representing immigrants facing deportation." Illinois undertook slightly different steps, examining a so-called baseline statute and enacting the equivalent of the National Labor Relations Act. Abramsky, Is California's Plan to Trump-Proof the State Enough?" The Nation, May 8, 2025 Miller, "Dems are revving their engines to further 'Trump-proof' Illinois" November, 8, 2024 Chicago Sun Times, <https://chicago.suntimes.com/columnists/2024/11/08/illinois-democrats-trump-laws-regulations-rights-governor-pritzker-rich-miller>
- x. x Abramsky, Is California's Plan to Trump-Proof the State Enough?" The Nation, May 8, 2025, <https://www.thenation.com/article/politics/trump-proofing-california/>. Miller, "Trump-proofing" Illinois, Muddy River News, Nov 9, 2024 at <https://muddyrivernews.com/opinion/miller-trump-proofing-illinois/20241109180800/>

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- xi. xiAziz Huq, America Is Watching the Rise of a Dual State, The Atlantic, March 23, 2025 at: https://www.theatlantic.com/magazine/archive/2025/05/trump-executive-order-lawlessness-constitutional-crisis/682112/?utm_source=apple_news
- xii. xii United States v Maine Department of Education, Answer of the Maine Department of Education,” The Department admits that after the President incorrectly asserted that “[w]e are the federal law” and “you’re not going to get any federal funding at all if you don’t [treat an Executive Order as the law] . . .” at <https://storage.courtlistener.com/recap/gov.uscourts.med.67924/gov.uscourts.med.67924.12.o.pdf>
- xiii. xiiiEmilio Perez Ibarguen, Michigan coal plant’s future unclear as some wonder if feds will keep it open, Bridge June 24, 2025 at https://www.bridgemi.com/michigan-environment-watch/michigan-coal-plants-future-unclear-some-wonder-if-feds-will-keep-it?utm_source=Bridge+Michigan&utm_campaign=5d1da759d9-Bridge+Newsletter+06%2F25%2F2025&utm_medium=email&utm_term=0_c64a28dd5a-5d1da759d9-82339204
- xiv. xiv Gonzaga Univ. v. Doe, 536 U. S. 273, (2002) and Medina v Planned Parenthood, . 606 US ____ (2025) at <https://www.documentcloud.org/documents/25984395-medina-v-planned-parenthood/>
- xv. xv Medina v Planned Parenthood, . 606 US ____ (2025) at <https://www.documentcloud.org/documents/25984395-medina-v-planned-parenthood/>
- xvi. xvi In the One First, email from Steve Vladek for June 2, 2025, entitled 155. What District Court Critics Aren’t Telling You, Vladek described the Court’s decision as follows: Justice Jackson wrote an eight-page dissent, joined by Justice Sotomayor, in which she argued (quite persuasively, in my view) that the balance of the equities should have overwhelmingly weighed against granting emergency relief here. As she put it, “the Court allows the Government to do what it wants to do regardless, rendering constraints of law irrelevant and unleashing devastation in the process.” Alas, this is hardly the first time that the Court has failed to adequately account for the equities in resolving an emergency application. And the more that these rulings reflect little more than the justices’ predictions of how they would rule on the (undeveloped and unbriefed) merits, the more the justices are inviting every litigant to whom they may be sympathetic, and not just the Trump administration, to keep bringing emergency applications in contexts in which there is no actual emergency. That is a recipe for more high-profile rulings on the emergency docket, not less.
- xvii. xvii See: https://www.supremecourt.gov/opinions/24pdf/24a1153_l5gm.pdf
- xviii. xviii <https://storage.courtlistener.com/recap/gov.uscourts.mdd.584990/gov.uscourts.mdd.584990.1.o.pdf>

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- xix. xix Slip opinion available at: https://www.supremecourt.gov/opinions/24pdf/24a884_8n59.pdf
- xx. xx Interview with David Frost. See e.g., <https://www.youtube.com/watch?v=dMt8qCl5fPk>
- xxi. xxi See Zraick, Hawaii Announced a Climate Lawsuit. So the Government Sued Hawaii First., NY Times, May 1, 2025 <https://www.nytimes.com/2025/05/01/climate/michigan-hawaii-climate-lawsuits.html> and the Complaint the DOJ filed against the state of Michigan at <https://storage.courtlistener.com/recap/gov.uscourts.miwd.115297/gov.uscourts.miwd.115297.1.o.pdf> The Complaint seeks to deny Michigan the ability to even file a complaint to address climate change harms to Michigan, a denial of access to the courts. The DOJ alleges that Michigan’s contemplated suit conflicts with President Trump’s Executive Order on National Energy Emergency. The Executive Order concluded that interference with energy production, transportation, and refining . . .” constitutes an unusual and extraordinary threat to our Nation’s economy, national security, and foreign policy.” Complaint at par 2. The DOJ alleged Preemption (Count 1): “Unconstitutional Extraterritorial Regulation” (Count 2); Violation of the Interstate Commerce Clause/Dormant Commerce (Count 3); Violation of the Foreign Commerce Clause (Count 4); and Foreign Affairs Preemption (Count 5).
- xxii. xxii Constitution Annotated, at https://constitution.congress.gov/browse/essay/artI-S8-C3-7-1/ALDE_00013307/
- xxiii. xxiii Newsome v Trump, Order of June 19, 2025 at p 3, https://cdn.ca9.uscourts.gov/datastore/opinions/2025/06/19/25-3727.pdf?utm_source=substack&utm_medium=email
- xxiv. xxiv Constitution Annotated, Art II.S1.C1.8 The President’s Foreign Affairs Power, Curtiss-Wright and Zivotofsky at https://constitution.congress.gov/browse/essay/artII-S1-C1-8/ALDE_00013797/#ALDF_00029459
- xxv. xxv As stated by Lord Acton in his Letter to Bishop Mandell Creighton, of April 5, 1887: I cannot accept your canon that we are to judge Pope and King unlike other men, with a favourable presumption that they did no wrong. If there is any presumption it is the other way against holders of power, increasing as the power increases. Historic responsibility has to make up for the want of legal responsibility. Power tends to corrupt and absolute power corrupts absolutely. Great men are almost always bad men, even when they exercise influence and not authority: still more when you superadd the tendency or the certainty of corruption by authority.
- xxvi. xxvi The dissent in Trump v United States wrote:

Thus, even a hypothetical President who admits to having ordered the assassinations of his political rivals or critics, see, e.g., Tr. of Oral Arg. 9, or one who indisputably instigates an unsuccessful coup, *id.*, at 41-43, has a fair shot at getting immunity under the majority's new Presidential accountability model. That is because whether a President's conduct will subject him to criminal liability turns on the court's evaluation of a variety of factors related to the character of that particular act—specifically, those characteristics that imbue an act with the status of "official" or "unofficial" conduct (minus motive). In the end, then, under the majority's new paradigm, whether the President will be exempt from legal liability for murder, assault, theft, fraud, or any other reprehensible and outlawed criminal act will turn on whether he committed that act in his official capacity, such that the answer to the immunity question will always and inevitably be: It depends.

- xxvii. xxvii The impeachment system is largely believed to be broken. See e.g., Brennan Center: "When Impeachment Fails" at <https://www.brennancenter.org/our-work/analysis-opinion/when-impeachment-fails>
- xxviii. xxviii Abstract, Amicus in *Wilcox v. Trump on Presidential Removal and Unitary Executive Theorists' Errors* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5177014
- xxix. xxix *Trump v United States*, 603 US ___, 144 S Ct 2312, 219 L Ed 2d 991, 1011 (2024): "No matter the context, the President's authority to act necessarily "stem[s] either from an act of Congress or from the Constitution itself." *Youngstown*, 343 U.S., at 585, 72 S. Ct. 863. In the latter case, the President's authority is sometimes "conclusive and preclusive." *Id.*, at 638, 72 S.Ct. 863 (Jackson, J., concurring). When the President exercises such authority, he may act even when the measures he takes are "incompatible with the expressed or implied will of Congress." *Id.*, at 637, 72 S. Ct. 863. The exclusive constitutional authority of the President "disabl[es] the Congress from acting upon the subject." *Id.*, at 637-638, 72 S. Ct. 863. And the courts have "no power to control [the President's] discretion" when he acts pursuant to the powers invested exclusively in him by the Constitution. *Marbury*, 1 Cranch, at 166.
- xxx. xxx See e.g., Justice Sutherland's dicta in *United States v. Curtiss-Wright Export Corp.* 299 US 304, 315-316, 318, 319 (1936) and *Trump v United States*, 219 L Ed 2d at 1011. He also has important foreign relations responsibilities: making treaties, appointing ambassadors, recognizing foreign governments, meeting foreign leaders, overseeing international diplomacy and intelligence gathering, and managing matters related to terrorism, trade, and immigration. *Trump v. United States*, 144 S. Ct. 2312, 219 L.Ed.2d 991 (2024)
- xxxi. Statement of Michael Waldman, Substack Live with Joyce Vance and the Brennan Center's Michael Waldman,. Beginning at 27:29. https://joycevance.substack.com/p/substack-live-with-joyce-vance-and?utm_source=podcast-email&publication_id=607357&post_id=164199061&utm_campaign=email-

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substack&utm_content=watch_now_button&r=645f6&triedRedirect=true&utm_medium=email

- xxxii. xxxii See: Congressional Research Service, Definition of National Emergency under the National Emergencies Act, March 1, 2019, at https://www.congress.gov/crs_external_products/LSB/PDF/LSB10267/LSB10267.2.pdf Making the ability of the President or other Executive Branch officer to declare an emergency and exercise emergency powers dependent upon a non-severable requirement court upholding State standing to challenge the exercise of those powers and the controversy justiciable would go a long way to addressing the present unbridled use of “emergency” powers.
- xxxiii. xxxiii Declaration of Independence.
- xxxiv. They are: (1) Do not obey in advance; (2) Defend Institutions;; (3) Beware the One Party State; (4) Take Responsibility for the face of the world; (5) Remember Professional Ethics; (6) Be Wary of Paramilitaries; (7) Be reflective if you must be armed; (8) Stand out; (9) Be kind to our language; (10) Believe in truth; (11) Investigate; (12) Make eye contact and small talk; (13) Practice corporal politics; (14) Establish a private life; (15) Contribute to good causes; (16) Learn from peers in other countries; (17) Listen for dangerous words; (18) Be calm when the unthinkable arrives; (19) Be a patriot; (20) Be as courageous as you can.
- xxxv. See e.g., *Louis K. Liggett Co. v. Lee*, 288 U.S. 517 (1933) dissent of Justice Brandeis.” The race was one not of diligence but of laxity.”
- xxxvi. Found at https://constitution.congress.gov/browse/essay/artIV-S4-3/ALDE_00013637/. Treating a provision of the Constitution as a merely useless ineffectual exhortation is insulting to the founders.
- xxxvii. See e.g., Congress.Gov Supreme Court Considers Preemption Under the National Labor Relations Act, which discusses the types of preemption and notes:
- If the Supreme Court were to conclude that the NLRA does not preempt state tort claims involving the intentional destruction of an employer's property, unions are likely to think more carefully about when they will strike and their strike tactics. The possibility of state court lawsuits might not only deter or alter some strikes but could lead to varying decisions about liability, a result that might arguably be viewed as contrary to national labor policy. Congress could consider amending the NLRA to include an express preemption provision that clarifies whether tort claims such as the one at issue in *Glacier Northwest* are preempted.
- xxxviii. <https://www.congress.gov/crs-product/LSB10912>

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- xxxix. See e.g., Cornell Law School, Legal Information Institute, Amdt 10.4.2 Anti Commandeering Doctrine, <https://www.law.cornell.edu/constitution-conan/amendment-10/anti-commandeering-doctrine>.
- xl. “Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires. Careful attention to the judgment of the Executive Branch may help inform that inquiry. And when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it. But courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.”
- xli. Article VI, Clause 2.
- xlii. *Marbury v. Madison*,¹ 1 Cranch 137, 177, 2 L. Ed. 60, that it is emphatically the province and duty of the judicial department to say what the law is. This decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. It follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the *Brown* case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.’
- xliii. The Court said: *Stare decisis* doctrine “is at its weakest when we interpret the Constitution,” as we did in *Williamson County*, because only this Court or a constitutional amendment can alter our holdings. *Agostini*, 521 U.S., at 235.
- xliv. We have identified several factors to consider in deciding whether to overrule a past decision, including “the quality of [its] reasoning, the workability of the rule it established, its consistency with other related decisions, . . . and reliance on the decision.” *Janus v State, County, and Municipal Employees*, 585 U.S. ___, ___–___ (2018) (slip op., at 34–35)
- xlv. See Brenna Center: “Historians’ Amicus Brief in *Trump v United States*,” at <https://www.brennancenter.org/our-work/research-reports/historians-amicus-brief-trump-v-united-states>
- xlvi. In an unusually caustic and politically tinged speech, Justice Samuel A. Alito Jr. told a conservative legal group that liberals posed a growing threat to religious liberty and free speech.

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- xlvi. The remarks, made at the Federalist Society’s annual convention.’
<https://www.nytimes.com/2020/11/13/us/samuel-alito-religious-liberty-free-speech.html?pgtype=Article&action=click&module=RelatedLinks>
- xlvi. In *Bivens v Six Unknown Fed Narcotics Agents*, 403 US 388 (1971) because 42 USC 1983 doesn’t apply to federal officers the Court recognized a federal constitutional tort commonly law cause of action In the *Bivens* case the claim was based on the Fourth Amendment. In 1983 SCOTUS began limiting the types of constitutional violations which were subject to *Bivens*. See *Egbert v Boule*, 596 US 482 (2022)
- xlix. The Model Penal Code provides:

Section 1.03. Territorial Applicability.

(1) Except as otherwise provided in this Section, a person may be convicted under the law of this State of an offense committed by his own conduct or the conduct of another for which he is legally accountable if:

(a) either the conduct which is an element of the offense or the result which is such an element occurs within this State; or

(b) conduct occurring outside the State is sufficient under the law of this State to constitute an attempt to commit an offense within the State; or

(c) conduct occurring outside the State is sufficient under the law of this State to constitute a conspiracy to commit an offense within the State and an overt act in furtherance of such conspiracy occurs within the State; or

(d) conduct occurring within the State establishes complicity in the commission of, or an attempt, solicitation or conspiracy to commit, an offense in another jurisdiction which also is an offense under the law of this State; or

(e) the offense consists of the omission to perform a legal duty imposed by the law of the State with respect to domicile, residence or a relationship to a person, thing or transaction in the State; or

(f) the offense is based on a statute of this State which expressly prohibits conduct outside the State, when the conduct bears a reasonable relation to a legitimate interest of this State and the actor knows or should know that his conduct is likely to affect that interest.

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- I. See Gardner and Dawsey, *Georgia probe of Trump broadens to activities in other states*, Washington Post, June 2, 2023 at: <https://www.washingtonpost.com/nation/2023/06/02/trump-georgia-election-investigation-fulton-county/>
 - li. Sato and Wiebrecht, *Disinformation and Regime Survival*. 77 *Political Research Quarterly*, Issue 3 <https://journals.sagepub.com/doi/full/10.1177/10659129241252811>
 - lii. *Michigan Advance*, June 23, 2025.
 - liii. *Model Anti-Paramilitary Legislation*. See: <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2023/02/ICAP-State-Anti-Paramilitary-Model-Bill-Updated.pdf>
 - liv. *Illinois considered a bill, SB2213 which aimed “to preserve the status quo of Illinois’ current safeguards as the federal administration continues to roll back environmental standards,” the IEC claimed at the time. “The Illinois Baseline Protection Act would prevent the weakening of any current Illinois standard below the federal standard already in place.” Chicago Sun Times, Dems are revving their engines to further “Trump-proof Illinois, Nov 8, 2024.* <https://chicago.suntimes.com/columnists/2024/11/08/illinois-democrats-trump-laws-regulations-rights-governor-pritzker-rich-miller>; see also: *Sierra Club 2018 Fact Sheet, Keep Illinois Safe From Federal Rollbacks*, <https://www.sierraclub.org/sites/www.sierraclub.org/files/sce/sierra-club-illinois-chapter/documents/HB1438SB2213-FedRollbacks.pdf>. What do the Baseline Standards cover? HB1438/SB2213 would prevent state and local agencies from weakening Illinois environmental or labor standards below the federal standards existing as of January 1, 2017, or “baseline standards” for the following federal statutes: • Clean Air Act • Clean Water Act • Safe Drinking Water Act • Endangered Species Act • Occupational Safety and Health Act • Mine Safety and Health Act • Federal Labor Standards Act.
 - lv. See: <https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=103-0439>
 - lvi. See, e.g., Aaron R. Petty, *How Qui Tam Could Fight Governmental Corruption*, 39 *U Mich J Law Reform* 851 (2005-2006).
 - lvii. Anthony Sanders, the author summarized the point in the following: A case I reported on for State Court Report last year is typical. The court noted: “Although petitioners bring their claims under the Equal Protection Clause and Article I, Section 1 of the Wisconsin Constitution, they do not provide an independent argument under the Wisconsin Constitution.” There was no separate briefing about the state constitution’s text, history, or even policy. Thus, the claim was waived. Finding similar attorney failures is not difficult.