



The Rule of Law and the Role of an Independent Judicial System

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Mahalo for inviting me--roadmap for today

- ▶ What is the rule of law?
- ▶ Hawaii Supreme Court statement March 2025
- ▶ Challenges to the Independence of Lawyers: Executive Orders directed at large law firms March 2025
- ▶ Challenges to the Independence of the Judiciary
- ▶ Challenges to the Election Process, and the Role of the Judiciary in Resolving Those Disputes
- ▶ Alliance of Former Chief Justices, and its activities
- ▶ Questions

What is the rule of law?

- ▶ Massachusetts Constitution of 1780
- ▶ Art. XXX: a government “of laws not of men.”
- ▶ Preamble: “It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation and a faithful execution of them.”

World Justice Project Definition

- ▶ The rule of law . . . delivers . . . accountability, just law, open government, and accessible and impartial justice.
- ▶ **Accountability:** The government as well as private actors are accountable under the law.
- ▶ **Just Law:** The law is clear, publicized, and stable and is applied evenly. It ensures human rights as well as property, contract, and procedural rights.
- ▶ **Open Government:** The processes by which the law is adopted, administered, adjudicated, and enforced are accessible, fair, and efficient.
- ▶ **Accessible and Impartial Justice:** Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are accessible, have adequate resources, and reflect the makeup of the communities they serve.

March, 2025 statement of the Hawaii Supreme Court

- ▶ At the Judiciary, we are responsible for ensuring the promise of equal justice for all and upholding the rule of law for the people of Hawaii.
- ▶ We have . . . worked to eliminate bias within our own organization, and collaborated with community partners to address inequities and provide for the fair administration of justice.
- ▶ Our goal is to maintain a judiciary that has the most qualified judges and staff, who reflect the community they serve. . . [so] persons from all backgrounds know their voices will be heard and their disputes will be resolved fairly.

Challenges to the Independence of the Legal Profession

- ▶ Hawaii Rules of Professional Conduct Rule 2.1: “In representing a client, a lawyer shall exercise independent professional judgment and render candid advice.”
 - ▶ Rule 1.7 (a) (2): a conflict of interest arises when representation of client will be materially limited by “a personal interest of the lawyer.”

March 2025 Executive Orders (EOs) Against Six Large Law Firms

- ▶ “[G]lobal law firms have for years played an outsized role in undermining the judicial process and the destruction of bedrock American principles.”
- ▶ Reasons given included hiring of certain attorneys including Robert Mueller; taking certain positions in litigation, including election litigation; and supporting DEI policies.
- ▶ Possible sanctions included loss of attorneys’ security clearances or access to government buildings; loss of clients’ federal contracts on which the firms had provided work
- ▶ Eventually four firms sued to invalidate the EOs, and nine firms settled with the Administration. Settlements included a total commitment of nearly \$100 million in pro bono services to causes approved by the Administration

EO 14244: Addressing Remedial Action by the Paul Weiss firm

- ▶ The firm will be:
- ▶ adopting a policy of political neutrality with respect to client selection and attorney hiring;
- ▶ taking on a wide range of pro bono matters representing the full political spectrum, and dedicating the equivalent of \$40 million in pro bono legal services;
- ▶ committing to merit-based hiring, promotion, and retention, instead of “diversity, equity, and inclusion” policies;

May 2025: USDC grants summary judgment to Perkins Coie

- ▶ No American President has ever before issued executive orders like the one at issue in this lawsuit targeting a prominent law firm with adverse actions to be executed by all Executive branch agencies but, in purpose and effect, this action draws from a playbook as old as Shakespeare, who penned the phrase: **“The first thing we do, let’s kill all the lawyers.”**
- ▶ Using the powers of the federal government to target lawyers for their representation of clients and avowed progressive employment policies in an overt attempt to suppress and punish certain viewpoints, however, is contrary to the Constitution, which requires that the government respond to dissenting or unpopular speech or ideas with “tolerance, not coercion.”

Lawsuits by the four firms are pending in the DC Circuit

- ▶ Oral argument held in May before three-judge panel
- ▶ Amicus briefs filed on both sides, including one by 279 former judges (I was a member of that group)
- ▶ Former judges' brief contends "The four Orders before the court undermine the rule of law by threatening the independence of lawyers and litigants to petition courts to redress their grievances." It cites Rule of Professional Conduct 2.1.
- ▶ Government's brief contends: "This appeal of those [four] sweeping decisions is not about the sanctity of the American law firm; it is about lower courts encroaching on the constitutional power of the President to discuss and address invidious racial discrimination, national security risks, and other problems with certain law firms."

There is a grass-roots movement by lawyers to commit to Principles for the Independence of the Legal Profession

- ▶ We acknowledge our role as attorneys to:
 - ▶ Defend our constitutional right to be free from government coercion or retaliation for activities that are protected by the First Amendment, including representing clients, donating to causes of concern, and expressing beliefs regarding the value of equal opportunity.
- ▶ The Principles have been endorsed by nearly 1,000 lawyers and former judges, more than 90 present and former law school deans, the Alliance of Former Chief Justices and the American Bar Association's House of Delegates.

12/15/25: Open Letter Announcing Alliance of Former Chief Justices

- ▶ *While commenting on whether particular cases were rightly or wrongly decided is a basic part of public discourse, assertions that judges are mere politicians in robes are different. Such attacks undermine the integrity of the rule of law and threaten the promise of equal justice.*
- ▶ By their oath, judges promise equal justice to all without regard to means, position, background, or social standing—and certainly without regard to politics.
- ▶ The Alliance is a non-partisan group with 60 members. We are supported by Keep Our Republic, a non-partisan, non-profit educational organization.

Challenges to the Nov. Elections

- ▶ In his July 17 prime time address, the President said our election system is “so broken and so vulnerable that no one can possibly defend it.”

Delegitimizing judges and the judiciary

- ▶ Criticism of Judge Boasberg for ruling in deportation case
 - ▶ “This Radical Left Lunatic of a judge, a troublemaker and agitator who was sadly appointed by Barrack Hussein Obama . . . Should be IMPEACHED!!!”
 - ▶ Response by CJ Roberts: “impeachment is not an appropriate response” to disagreement with a ruling. “The normal appellate process exists for that purpose.”

Vice President JD Vance responded to a judge’s order by declaring that “judges aren’t allowed to control the executive’s legitimate power.”

Presidential advisor Stephen Miller called adverse court decisions “an insurrection against the laws and constitution of the United States ”

Then-Deputy AG Todd Blanche: its “a war . . . [we must] keep on fighting.”

Additional examples

- ▶ The President said he was “ashamed” of the justices who ruled against him in the tariff case and described them as “fools and lapdogs.” Justices Neil Gorsuch and Amy Coney Barrett were “an embarrassment to their families.”
 - ▶ CJ Roberts issued a statement that said “[p]ersonally directed hostility is dangerous and it’s got to stop,” but added that intemperate criticism of the judiciary comes “from all over.”
- ▶ After mail ballot ruling on Sept. 14, the President posted “These are not the people I interviewed to serve on the United States Supreme Court, they are a mere shell of their former selves,” and said they had been “bullied and cajoled by the Radical left.”

Threats to federal judges presiding in controversial cases

- ▶ Rhode Island federal Judge John McConnell received 400 threatening calls including six credible death threats while presiding over a funding case against the Administration. A pizza was delivered to his house in the name of a judge's son who was shot to death by an aggrieved attorney in 2020.
- ▶ U.S. District Judge John Coughenor of Washington received “dozens, if not hundreds” of death threats after he temporarily blocked President Trump's executive order on birthright citizenship. He also faced a false emergency report at his home and a bomb threat the following day.

Under the Elections Clause, *states* have primary responsibility for administering federal elections

- ▶ “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . . But the Congress may at any time by Law make or alter such regulations.” Art. I, section 4.
- ▶ What are some of the potential challenges to elections that have been identified?

Newly-adopted – but for now blocked--USPS Rules Governing Mail-in Voting

- ▶ Restrictions on mail-in voting imposed by EO 14399 in March, and United States Postal Service in August 26, 2026 rule making. Would have required submission of lists of voters by states to USPS, which could refuse to accept ballots that did not match the lists
- ▶ A lower court entered an order blocking their implementation while a challenge to the rules is resolved. On Monday, Sept. 14, the U.S. Supreme Court declined to intervene, so the rules will *not* go into effect for the November election. The vote was 7-2.

The presence of armed federal agents at the polls

- ▶ Stephen Bannon told his podcast audience that the president should send an “up-armored ICE presence at these polling booths.”
- ▶ Federal law (18 USC 592) makes it a felony to station armed troops or agents at a polling place, though there is an exception for repelling armed enemies of the United States
- ▶ DOJ attorneys who monitored primaries in Wyoming last month were reported by the state’s Republican Governor to be “aggressive” and “irregular” and wanted to examine voting machines.

Search Warrants seeking election materials while election certification is still pending

- ▶ The concern: breaking the chain of custody of state or local election officials over those items, when law enforcement takes possession of them.
- ▶ Chain of custody ensures that no ballots are altered, or added to or removed from those validly cast.
- ▶ Possible steps that judges can take: delay issuance of the warrant until after certification; provide law enforcement with copies, rather than originals; invite briefing by election officials or amicus

Presidential declaration of an emergency

- ▶ When asked about it last month, President Trump responded “let me just say that stranger things have happened, okay? I’ll leave it at that.”
- ▶ There are about 150 statutes which provide emergency powers for the President. According to Hofstra law professor James Sample, none of them would allow the president to nationalize elections.

Refusal to certify election results, or defiance of results

- ▶ Some election commissioners have refused to certify results. In New Mexico's Otero County three commissioners refused to certify the results until a court ordered the election certified; two of the Commissioners then acquiesced.
- ▶ In Avenal, CA, the mayor and three council members refused to abide by the certified results of a recall election and continued to conduct business until a court ordered them to leave office.

The importance of education about the rule of law and the role of courts

- ▶ While sitting judges can talk generally about the law and the legal system, they cannot speak about pending or impending cases, or engage in partisan activity
- ▶ The Alliance of Former Chief Justices and the Article III Coalition are working to educate voters about the rule of law, with support from Keep Our Republic
- ▶ In some states, lawyers have organized groups to support the rule of law, such as Georgia Lawyers for the Rule of Law
- ▶ People can trust in the courts to fairly and impartially resolve the disputes that arise in the electoral process

Justice in Motion bus tour in PA, OH, and MI: July 2026

- ▶ USA Today: Traveling by bus over four days this week, the group made a dozen stops across Pennsylvania, Ohio and Michigan, speaking with elementary and high school students, lawyers, activists and concerned citizens about the importance of an independent judiciary and the rule of law. Funded by nonpartisan pro-civic engagement groups – [Democracy Rising Collaborative](#) and [Keep Our Republic](#) – the trip served as a test case for whether Americans are concerned about challenges to the judicial branch's powers.



Tour stop in Columbus, OH

WA Post: In Cracker Barrels and town squares, a group of judges and other civic leaders have raised alarms this week over a judiciary they consider under attack.

By bus, the group — which includes both sitting and retired judges — traveled from the suburbs of Pittsburgh to outside Detroit, eating barbecue and warning crowds about physical threats to judges and a rising tide of criticism from elected officials, one of the participants said.

The “[Justice in Motion](#)” tour, which ends today in Grosse Pointe, Michigan, is unusual for members of the judiciary, who in general are reluctant to make political statements or speak on issues outside of their courtrooms.



Mahalo!

- ▶ Happy Constitution Day on Sept. 17th
- ▶ Upcoming rule of law and democracy events in Hawaii include:
 - ▶ Panel discussion, “The Constitution During Uncertain Times,” Judiciary History Center, Wednesday, Sept. 16, at 5:30 pm
 - ▶ Panel discussion, “Civil Cafe, Election Integrity Roundtable,” Punahou School, Luke Lecture Hall, Thursday Sept. 17 at 5:30 pm