

Upholding the rule of law in the face of presidential lawlessness

In the wake of controversial executive orders, Gay Grunfeld argues lawyers must become the first line of defense for constitutional principles.

By Gay C. Grunfeld

Just over a month into the second Trump administration, the president has issued scores of illegal, unconstitutional and cruel executive orders. These include:

- Punishing transgender people in the military and federal prison, denying transgender youth healthcare and singling out transgender Americans with baseless attacks;
- Pardoning 1,500 insurrectionists who assisted Trump in his first attempted coup;
- Attempting to end birthright citizenship;
- Criminalizing and attacking those who support lawful programs to eliminate bias and enhance diversity;
- Firing inspectors general, whose job it is to identify fraud and corruption and to serve as a check on abuses of power by the president, and prosecutors and FBI agents who worked on criminal cases relating to Trump;
- Firing the chairs and members of the National Labor Relations Board, the Equal Employment Opportunity Commission and the Federal Election Commission and refusing to replace them, effectively shutting down those independent boards in violation of statute;
- Shutting down and defunding the Consumer Financial Protection Bureau and USAID;
- Impounding billions of dollars of grants appropriated by Congress to USAID, the National Institutes of Health, the Department of Education and the Environmental Protection Agency;



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- Allowing a group of hackers under the auspices of the Department of Government Efficiency to seize control of large swaths of the federal government's computer network;
- Disobeying multiple court orders to release frozen federal funds; and
- Dropping the prosecution of the mayor of New York in exchange for his promise to cooperate in Trump's immigration crackdown.

These and other illegal executive orders are being challenged in courts across the country. More than 80 lawsuits have been filed, with Trump winning 12 and losing 22 so far.

It is no surprise that the courts and lawyers are serving as the first

line of defense. As lawyers, it is our duty to uphold the rule of law. In the words of the American Bar Association: "we urge every attorney to join us and insist that our government, a government of the people, follow the law. It is part of the oath we took when we became lawyers. Whatever your political party or your views, change must be made in the right way. Americans expect no less." "The ABA Supports the rule of law," Feb. 10, 2025, American Bar Association. <https://www.americanbar.org/news/abanews/aba-news-archives/2025/02/aba-supports-the-rule-of-law/>

Upon our admission to the California Bar, we swore to "support the Constitution of the United States and the Constitution of the State

of California, and ... [to], faithfully discharge the duties of an attorney and counselor at law" As these words indicate, it is our duty as California lawyers actively and daily to oppose the unconstitutional and illegal actions being taken by President Trump.

Opposition can take many forms. We can educate and inform ourselves. In today's world, we will need to read more from more sources to stay up to date with rapidly evolving news. The mainstream media is no longer covering the administration accurately or courageously. We should all stop using X and remove it from our phones.

We can refuse to obey in advance, or even after being targeted. On Feb. 25, 2025, Trump issued an

executive order targeting the renowned law firm Covington & Burling LLP for representing former Special Counsel Jack Smith. Trump has also threatened law firms that taken on pro bono cases. Law firms perform critical functions in civil society. Autocrats consolidate their power by breaking civil society bonds and attacking vulnerable groups of people like transgender individuals. Autocracy's best weapon is fear. Do not cooperate. Defy them. Take the risky pro bono case. If civil society holds together during this storm, those who stood up will be respected and their practices will thrive. If civil society falls apart because we did not stand together, the remaining law firms are not going to prosper; they will be shuttered as obsolete when the rule of law is gone. There's only one way out of this for law firms. That is to fight.

We can speak out. This could take the form of emails and calls to your elected representatives, social media posts, emails to friends and family, and discussions in our

daily lives. Speaking out does not have to be a lengthy diatribe, but it should be more than a mere shrug of the shoulders and a rolling of the eyes. Lawyers are leaders on the rule of law and your friends and family want to hear your views.

We can become involved in groups that are seeking change. While many are disillusioned with the Democratic Party, there are any number of other local, state and national organizations eager for your time. These include the Bar Association of San Francisco, the American Constitution Society, Indivisible, Swing Left, faith communities, charities, commissions and a host of others.

We can give generously. Many nonprofits are struggling today and will lose significant funding in the days ahead. National Public Radio is under serious threat. These nonprofits will lead litigation and other opposition efforts.

We can do pro bono work. In doing so, we should pursue cases that will make a difference in the lives of oppressed minorities in our communities. The principal targets

of Trump's wrath are immigrants and transgender people. Those at large law firms can urge the management to participate in impact litigation and thereby reduce the cost of such endeavors. Lawyers can meet their California State Bar 50-hour pro bono requirement by taking on individual cases. The Bar Association of San Francisco has an excellent referral system that can connect you to cases across the country involving reproductive freedom, LGBTQ rights and immigration detention cases. You will gain valuable experience as a lawyer from taking on one of these cases.

We can protest and boycott. Efforts are already underway to encourage people to protest against the oligarchy by not opening their pocketbooks and by marching in the streets.

What we cannot do is give up. As Mariame Kaba proclaimed, "Hope is a discipline." It will take all of us lawyers, doing everything that we can, to uphold the Constitution in the face of an unprecedented and aggressive attack. If we all remain

educated, refuse to obey, speak out, join community groups, give generously, perform pro bono legal work, and engage in mass protest, democracy and the rule of law will prevail.

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