

ANALYSIS

How to Push Back

Congress and the states must respond to the tragedy in Minnesota.



Michael Waldman

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Government Power

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Two hundred fifty years ago last week, Thomas Paine published [Common Sense](#) [link-2]. He was an immigrant who had arrived only two years before. The pamphlet went viral, a widely bootlegged bestseller with 150,000 copies in print. It galvanized support for independence and built colonial

conviction for democratic arguments. Paine wrote: "In America THE LAW IS KING."

That founding principle is under attack. Over the last week alone, we've seen just how far this administration will go to bend the law to its will. As the 2026 election approaches, with new pressures on our voting system, there are new reasons to worry.

We all saw the videos capturing the fatal shooting of Renee Good by an ICE agent in Minnesota. We saw angry, violent aggression by some federal officers, not the protesters.

ICE ripped off the mask, so to speak. What can we do? Earlier today, New York Gov. Kathy Hochul delivered her State of the State speech. She endorsed giving citizens a right under state law to sue officials who violate their rights under the U.S. Constitution. The proposal echoes similar plans, introduced by State Sen. Zellnor Myrie and Assemb. Micah Lasher, analogous to a landmark federal law, [Section 1983](#) [\[link-3\]](#). [Other states](#) [\[link-4\]](#) — including California, Illinois, Maine, Massachusetts, and New Jersey — already have statutes like this.

Hochul is hardly a firebrand. Her creative move reflects the growing public alarm and anger at a federal government that has overstepped

the boundaries of the law and the moral standards of its citizens.

States have other options as well. They can bar masked officers, for example, and limit arrests in sensitive places like schools, courts, and hospitals. And more.

Congress too has a role to play. It can pass the so-called Bivens Act, extending the right to protect people's constitutional rights against infringements by federal officers.

Action like this is needed in the face of a relentless abuse of executive authority. The Justice Department has launched a criminal probe of Federal Reserve Chair Jerome Powell, seemingly as part of a campaign to press the central bank to lower interest rates. Powell issued a stunningly direct, Volodymyr Zelenskyy–like [video](#) [\[link-5\]](#) vowing that he would not bend to “pretexts” and “intimidation.” Seemingly shaking

with emotion, he declared, “Public service sometimes requires standing firm in the face of threats.”

Traders [dumping dollars](#) [\[link-6\]](#) have responded to the attack on the Fed’s independence with “Sell America.”

Sen. Thom Tillis, Republican of North Carolina, [said](#) [\[link-7\]](#) yesterday, “If there were any remaining doubt whether advisers within the Trump Administration are actively pushing to end the independence of the Federal Reserve, there should now be none. It is now the independence and credibility of the Department of Justice that are in question.”

Even so, the White House seems to think that the Justice Department is not feral enough. Vice President JD Vance [announced](#) [\[link-8\]](#) that a new assistant attorney general would “get tougher at the people who are defrauding the United States by inciting violence against

our law enforcement officers” — and would work out of the White House. The notion that the Justice Department should be walled off from politics has been smashed to matchwood.

We have every reason to worry that the same lawlessness will now be turned on elections.

In his weekend [interview](#) [\[link-9\]](#) with *The New York Times*, Donald Trump mused that he “should have” ordered the National Guard to seize voting machines in 2020. Somehow, that would have proven fraud, he claimed. The election lawyer Marc Elias has pointed to more that Trump said: the Guard may not have been “sophisticated enough” to carry out that particular bit of thuggery. That raises the question of whether Trump aims to use the military or even ICE in 2026.

As Hochul’s proposal shows, there is much we can all do. We can have free and fair elections in November,

but we will have to fight for them — harder than we might ever have imagined. On Friday, a third federal court [blocked](#) [\[link-10\]](#) parts of Trump’s executive order bidding to take presidential control over elections, which started with effectively requiring a passport to register to vote. An earlier case brought by the Brennan Center and allies won a permanent injunction in October. Pam Bondi’s Justice Department has appealed.

Today’s great constitutional issue is the presidential power grab. What power do states and citizens have to resist abuse? Laws that allow suits against federal officials must be carefully crafted and would no doubt will face challenges if claims

are pursued. But a strong [constitutional argument](#) [\[link-11\]](#) buttresses state sovereignty. And creative activists and officials will need to keep finding ways to step up against an overreaching national government untethered from law.

Reform often follows scandal — often, but not always. It will be up to all of us to ensure that the corruption and decay of 2026 do not supplant the democratic spirit of 1776. It will be up to us to ensure the law, not a person, reigns supreme.

I am always moved by part of Paine’s peroration at the end of *Common Sense*: “We have it in our power to begin the world over again.”

Links

link-1: here [https://go.brennancenter.org/briefing?](https://go.brennancenter.org/briefing?cid=7013s000000a0ZIAAY&ms=EML_mainsite_general&utm_medium=WEB&utm_source=mainsite&utm_content=general)

[cid=7013s000000a0ZIAAY&ms=EML_mainsite_general&utm_medium=WEB&utm_source=mainsite&utm_content=general](https://go.brennancenter.org/briefing?cid=7013s000000a0ZIAAY&ms=EML_mainsite_general&utm_medium=WEB&utm_source=mainsite&utm_content=general)

link-2: Common Sense <https://www.gutenberg.org/files/147/147-h/147-h.htm>

link-3: Section 1983 <https://www.law.cornell.edu/uscode/text/42/1983>

link-4: Other states <https://statecourtreport.org/our-work/analysis-opinion/resuscitating-state-damages-remedies-against-federal-officials>

link-5: video <https://www.federalreserve.gov/newsevents/speech/powell20260111a.htm>

link-6: dumping dollars <https://fortune.com/2026/01/12/sell-america-stocks-fed-independence/>

link-7: said <https://x.com/SenThomTillis/status/2010514786467959269>

link-8: announced <https://www.washingtonpost.com/politics/2026/01/08/vance-ice-shooting-minneapolis/>

link-9: interview <https://www.nytimes.com/2026/01/11/us/trump-voting-machines-2020-election.html>

link-10: blocked https://storage.courtlistener.com/recap/gov.uscourts.wawd.346612/gov.uscourts.wawd.346612.126.0_1.pdf?inline=1

link-11: constitutional argument [https://statedemocracy.law.wisc.edu/wp-content/uploads/sites/1683/2025/08/Converse-1983-Explainer-Formatted-Final-8-1-25.pdf?](https://statedemocracy.law.wisc.edu/wp-content/uploads/sites/1683/2025/08/Converse-1983-Explainer-Formatted-Final-8-1-25.pdf?inline=1#:~:text=Conceptually%2C%20converse%201983%20actions%20do,the%20federal%20Constitution%20by%20helping)

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