

THE 2025 NATIONAL GUARD DEPLOYMENTS AND THEIR CHILLING EFFECT ON THE FIRST AMENDMENT

B Y K A I T L Y N C I E P L Y



The 2025 National Guard Deployments and their Chilling Effect on The First Amendment

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This Article examines the June 7, 2025, presidential memorandum, “Department of Defense Security for the Protection of Department of Homeland Security Functions,” which authorized the activation and deployment of the National Guard to quell domestic civil unrest. The Article argues that the authorizations within the memorandum, and the actions that stemmed from it, constitute an impermissible chilling effect on the First Amendment.

Utilizing the four-part O’Brien test, the Article demonstrates how these deployments fail to meet the exception for when the government can create incidental limitations on otherwise protected speech. Furthermore, the Article contends that these actions – having resulted in the infringement of statutory and constitutional limits – were taken while the president operated at the “lowest ebb” of executive authority. Finally, the Article considers this chilling effect on the First Amendment within a broader trend of declining adherence to the rule of law and proposes safe and meaningful actions Americans can take in response.

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Introduction

Politicians in general have a reputation for failing to follow through with their campaign promises. To his credit, President Trump has done much of what he said he would.² This is likely pleasing to his supporters, but “even if one agrees with various policies put into action by executive order, whether regarding immigration or executive war powers, the question remains whether establishing such policies by unilateral presidential action accords with the structures and procedures of the Constitution as written. If not... the action is not legal.”³ The focus of this paper is specifically related to the June 7, 2025, presidential memorandum titled “Department of Defense Security for the Protection of Department of Homeland Security Functions.” It begins with an overview of the First Amendment, provides an illustration of how it is being impeded, and ends with suggestions for how the common person should respond.

I. First Amendment

Consider the Constitution as a dinosaur – not because of its age or to suggest that it has sharp teeth – but because Americans are left with mere footprints and fossils rather than a complete genetic model. Courts and scholars can study these fossils and try to derive some meaning from additional sources, like evidence of the types of flora and fauna that fed into the Founding Fathers’ way of thinking, but analysis based on text alone is limited and may present problems when it is applied to modern controversies. This problem is illustrated well by Michael Crichton’s “Jurassic Park.” John Hammond and his InGen scientists were able to extract some dinosaur DNA from a

² *Promises Made, Promises Kept – One Year Later*, THE WHITE HOUSE (November 5, 2025), <https://www.whitehouse.gov/articles/2025/11/promises-made-promises-kept-one-year-later/>.

³ Bruce P. Frohnen & George W. Carey, *Constitutional Morality and the Rise of Quasi-Law* 6-7 (2016).

fossil, but they could not succeed in resurrecting the species with just that fraction of the genetic code.⁴ Just as the scientists used frog DNA to fill gaps in dinosaur DNA,⁵ jurists use precedents to fill gaps left by the text of the Constitution. This is not a new creation of a partisan judge. It is a common and longstanding practice in legal systems – like ours – that are dependent on common law.

The First Amendment reads: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”⁶ The purest of textualists might interpret this to mean that the First Amendment only constrains the legislative branch, but it has been interpreted to apply to all branches of government. For example, as Justice Black noted in *New York Times Co. v. United States*, “[t]o find that the President has inherent power to halt the publication of news by resort to the courts would wipe out the First Amendment and destroy the fundamental liberty and security of the very people the Government hopes to make secure.”⁷

This is more than just dicta wrapped up in a concurring opinion. This case was not easily decided. All nine justices wrote separately. The only thing they seemed to agree on was that the executive branch could not limit the *New York Times*’ ability to publish the contents of a classified study without first overcoming a “heavy presumption against its constitutional validity.”⁸ If the

⁴ Michael Crichton, *Jurassic Park* (1990).

⁵ *Id.*

⁶ U.S. Const. Amend. I

⁷ *New York Times Co. v. United States*, 403 U.S. 713, 719 (1971) (Black, J., concurring) (citation modified).

⁸ *New York Times Co. v. United States*, 403 U.S. 713, 714. (1971).

executive branch could lawfully impede the exercise of First Amendment rights, the case would have been much simpler, and the New York Times would not have won.

This is not to say the right to speech is absolute. Precedent allows the federal government to abridge First Amendment speech when there is a compelling governmental interest to do so. Take for example *Schenck v. United States*⁹ and *United States v. O'Brien*.¹⁰ Both cases involved an attempt by the Supreme Court to delineate the outer limits of First Amendment protections for expressive behaviors that interfere with a significant government interest – particularly in a time of war or other great national need.

The events of *Schenck* occurred during WWI. Congress enacted the Espionage Act of 1917 which made it a crime for any person, during a time of war, to willfully “make or convey false reports or false statements with intent to interfere” with the military success, “to promote the success of its enemies,” or to “obstruct the recruiting or enlistment service of the United States.”¹¹ Schenck was found in violation of this act because he distributed leaflets which were critical of the draft to draftees. This, in the government’s view, amounted to a conspiracy to violate the Espionage Act through an attempt to cause insubordination within the military and obstruction in military recruitment. Schenck disagreed. He argued his First Amendment rights had been violated. The Court decided speech which ordinarily would be protected by the First Amendment may be

⁹ *Schenck v. United States*, 249 U.S. 47 (1919).

¹⁰ *United States v. O'Brien*, 391 U.S. 367 (1968).

¹¹ *The Espionage Act of 1917*, DIGITAL HISTORY (Last visited November 20, 2025), https://www.digitalhistory.uh.edu/disp_textbook.cfm?smtid=3&psid=3904, see also Megan Peterson, JD, *Schenck v. United States*, QUIMBEE (Last visited November 20, 2025), https://www.quimbee.com/cases/schenck-v-united-states?origin=quimbee_search.

prohibited if it is used in such circumstances and is of such a nature as to create a clear and present danger of the substantive evils that Congress has a right to prevent.¹²

The “substantive evils” line made for a difficult to apply test and *Schenck* was overturned, but the idea behind it remains. The *O’Brien* case came about 49 years after *Schenck*, around the time of the Vietnam conflict.¹³ By this time, every American man was required to register for the draft. After doing so, they were assigned a number and given a draft card. O’Brien was convicted for burning his draft card in violation of the Universal Military Training and Service Act which made it a crime to “forge, alter, knowingly destroy, knowingly mutilate, or in any manner change a registration certificate.”¹⁴ O’Brien appealed on the grounds that the act violated his First Amendment rights.

The appellate court agreed, but the Supreme Court held, when there is conduct containing both speech and nonspeech elements, the government may be justified in regulating the nonspeech element – even if it created an incidental limitation on protected speech – “if 1) the regulation is within the constitutional power of the government, 2) the regulation furthers an important or substantial governmental interest, 3) the governmental interest is unrelated to the suppression of free expression, and 4) the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.”¹⁵

¹² Peterson, *supra* Note 11.

¹³ Congress never declared war on Vietnam. The conflict was fought under the authority of the Gulf of Tonkin Resolution which authorized the President to use military force without a formal declaration. This suggests there is no difference in how the principles in *Schenck* and *O’Brien* would apply in NIACs, IACs, or formally declared wars.

¹⁴ *United States v. O’Brien*, 391 U.S. 367 (1968), See also Megan Peterson, JD, *United States v. O’Brien*, QUIMBEE (Last visited November 20, 2025), <https://www.quimbee.com/cases/united-states-v-o-brien>.

¹⁵ *Id.*

A. Impediment on Freedom of Speech and Assembly

This paper focuses on one presidential memorandum, but to understand the broader picture it is important to point out that the current administration is arguably impeding First Amendment rights in three different yet related contexts. First, numerous international students involved in protests – particularly those which were pro-Palestinian – had their F-1 visas revoked by the Trump administration.¹⁶ Second, the Pentagon required its Press Corps to sign highly restrictive reporting rules imposed by the Secretary of Defense.¹⁷ One of these rules “would leave journalists vulnerable to expulsion if they sought to report on information... that had not been approved by [the Secretary of Defense] for release.”¹⁸ Finally, the focus of this paper is on the deployment of the National Guard.¹⁹ Doing so – in response to protests against the President’s immigration policies and fears of executive overreach²⁰ – creates an impermissible chilling effect on the First Amendment.²¹ All of these things are related and stem from the same policies and government actors. They are mentioned here separately to demonstrate the extent of the problem at hand; however, to narrow the focus of this paper, the discussion below will be limited to the National Guard deployments.

¹⁶ Alana Wise, *Trump administration advances immigration crackdown on foreign student protesters*, NPR (March 29, 2025), <https://www.npr.org/2025/03/28/g-s1-56780/trump-administration-advances-immigration-crackdown-on-foreign-student-protesters>.

¹⁷ David Bauder, *Journalists turn in access badges, exit Pentagon rather than agree to new reporting rules*, ASSOCIATED PRESS (October 15, 2025), <https://apnews.com/article/pentagon-press-access-hegseth-trump-restrictions-5d9c2a63e4e03b91fc1546bb09ffbf12>.

¹⁸ *Id.*

¹⁹ *Mapped: Trump’s Deployment of National Guard Troops*, DEMOCRACY DOCKET (October 20, 2025), <https://www.democracydocket.com/news-alerts/mapped-trumps-deployment-of-national-guard-troops/>.

²⁰ KGW Staff, *Timeline of events leading up to the National Guard deployment in Portland*, KGW8 (Updated November 19, 2025), <https://www.kgw.com/article/news/local/protests/timeline-national-guard-deployment-portland/283-6e4fc443-8040-4800-a8f6-e01c9b03f3c2>.

²¹ Brief of American Civil Liberties Union, American Civil Liberties Union of Illinois, Foundation for Individual Rights and Expression, Knight First Amendment Institute at Columbia University, and Rutherford Institute as *amici curiae* in Support of Respondents, *Illinois v. Trump*, 25A443.

In June 2025, the President signed the executive order titled “Department of Defense Security for the Protection of Department of Homeland Security Functions.”²² In doing so, he authorized the Secretary of Defense to call *at least* 2,000 National Guard into federal service.²³ This force could then be augmented with additional members of the National Guard or members of the regular Armed Forces.²⁴ The Secretary of Defense has done so and the National Guard was activated for federal missions in fifteen states. This includes Title 10 deployments – against the governors’ wishes – in California, Oregon, and Illinois.²⁵

But why was this order implemented in the first place? People in Los Angeles, Portland, and Chicago; as well as, the surrounding areas, have been involved in protests against certain policies of the Trump Administration – particularly those related to immigration enforcement. The Trump Administration and the involved states disagree as to the amount and severity of criminal activity occurring, but there does appear to be some crime involved in what would otherwise be considered peaceful protests. This is important for First Amendment analysis because *O’Brien* allows the government to regulate nonspeech elements – or conduct – even if doing so creates an incidental limitation on protected speech. However, it can only do so if the four-part test is satisfied.

B. Is the Regulation Within the Constitutional Power of the Government?

The states and the President seem to agree that the purpose of activating the National Guard was to deter crime, but they disagreed as to whether or not the National Guard was necessary to

²² Department of Defense Security for the Protection of Department of Homeland Security Functions (June 7, 2025).

²³ *Id.*

²⁴ *Id.*

²⁵ *Mapped: Trump’s Deployment of National Guard Troops*, DEMOCRACY DOCKET (October 20, 2025), <https://www.democracymapped.com/news-alerts/mapped-trumps-deployment-of-national-guard-troops/>.

do so.²⁶ Attorneys for the government argued the National Guard was only being used in a protective capacity – not to execute the laws.²⁷ This paper analyzes both beginning with the execution of laws through a framework given *Youngstown*, *Dames & Moore*, *Zivotofsky*, *Public Citizen*, and *Curtiss-Wright*.²⁸

First, Congress has not given the President express or implied authorization to deploy the National Guard to execute the laws, under the conditions described above, to any state. However, moving to the second point, Congress has not been silent on the issue. The authority the President purported to use to deploy these troops is 10 U.S.C. § 12406, but the Supreme Court held the statutory requirements under that section had not been met.²⁹ Moving to the third point, even if the conditions were met, the Posse Comitatus Act would bar the “willful[] use [of] any part of the [federalized armed forces] as a posse comitatus or otherwise to execute the laws” unless “expressly authorized by the Constitution or Act of Congress.”³⁰

The Constitution charges the President with taking care “that the Laws be faithfully executed,”³¹ but that does not give him license to use the military to do so. Congress has provided conditional authorization through the Insurrection Act.³² However, for the Insurrection Act to

²⁶ See *Newsom v. Trump*, 3:25-cv-04870, (N.D. Cal. 2025), *Newsom v. Trump*, 25-3727, (9th Cir. 2025), *Newsom v. Trump II*, 25-5553, (9th Cir. 2025), *Oregon v. Trump*, 3:25-cv-01756 (D. Or. 2025), *Oregon v. Trump*, 25-6268 (9th Cir. 2025), *Illinois v. Trump*, 1:25-cv-12174 (N.D. Ill. 2025), *Illinois v. Trump*, 25-2798 (7th Cir. 2025), *Illinois v. Trump*, 25A443 (2025).

²⁷ *Id.*

²⁸ Dan Maurer, *Rational National Security: Can presidents do that?*, POLITICS BY OTHER MEANS (March 31, 2025), <https://dmaurer.substack.com/p/rational-national-security-can-presidents>, see also *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), *Dames & Moore v. Regan*, 453 U.S. 654 (1981), *Zivotofsky v. Kerry*, 576 U.S. 1 (2015), *Public Citizen v. Department of Justice*, 491 U.S. 440 (1989), *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936).

²⁹ *Illinois v. Trump*, 607 U. S. ____ (2025).

³⁰ *Id.*, see also 10 U.S.C. § 1385

³¹ U.S. CONST. Art. II §3

³² 10 U.S.C. §§ 251-255

apply it must be invoked, and the President has not done so. This moves to the final point, which is to say that preventing the President from using the military to enforce domestic law is within the Article I powers of Congress. It is. The Constitution grants Congress the power “To make Rules for the Government and Regulation of the land and naval Forces.”³³ This means the President is at his “lowest ebb of authority; courts should be most skeptical [and] least deferential...”³⁴

Congress did not give the President express or implied authority to exercise protective power but, as they have been silent on the matter, the “President and Congress are in the Zone of Twilight where resolution comes through political, not legal, process.” So, if the purpose was to execute the laws the regulation is likely not within the President’s Constitutional power. However, if it was to exercise protective power the issue is unclear. In that case, it might be within the President’s Constitutional power. This factor could lean in either direction.

C. Does the Regulation Further an Important or Substantial Governmental Interest?

The substantial and important governmental interest in deploying the National Guard to Los Angeles, Portland, and Chicago was to protect “United States Government personnel who are performing Federal functions... and to protect Federal property...”³⁵ Undoubtedly, this is a legitimate governmental interest. However, it is unclear whether the deployments furthered that interest. Each of these cities had experienced a decrease in criminal activity.³⁶ There does not seem

³³ U.S. CONST. Art. I §8 cl. 14

³⁴ Maurer, *supra* Note 28

³⁵ Department of Defense Security for the Protection of Department of Homeland Security Functions (June 7, 2025).

³⁶ *Report: Los Angeles City on Pace for Lowest Homicide Total in Nearly 60 Years*, MAYOR KAREN BASS: AN OFFICIAL WEBSITE OF THE CITY OF LOS ANGELES (July 9, 2025), <https://mayor.lacity.gov/news/report-los-angeles-city-pace-lowest-homicide-total-nearly-60-years>, *What the Data Tells Us: Portland Leads National Decline in Violent Crime*, PORTLAND OPPORTUNITIES INDUSTRIALIZATION CENTER (August 26, 2025), <https://www.portlandoic.org/news-events/portland-crime-rates-2025>, William Brangham & Sam Lane, *Chicago sees*

to be any indication that these cities were so dangerous that federal personnel and property needed any sort of additional protection outside of what is already provided by local law enforcement or federal agents already so assigned. As to this element, a court could decide either way.

D. The Governmental Interest is Related to the Suppression of Free Expression

The governmental interest here, at the very least, appeared to be directly related to the suppression of free expression. The President had shown a certain disdain for the expression of free speech, “call[ing] protesters in Los Angeles animals and a foreign enemy.”³⁷ Referencing protests in Portland, the President called those involved “professional agitators and anarchists” and made unsubstantiated claims that there were “crazy people” trying to burn down buildings.³⁸ Perhaps most tellingly, the President posted a video to his social media accounts showing what appeared to be an AI-generated video of himself wearing a crown while piloting a plane dropping excrement on a crowd of protestors.³⁹ Additionally, the President complained about the protesters, saying that he “think[s] it’s a joke... I looked at the people. They’re not representative of this country... I guess it was paid for by Soros and other radical-left lunatics.”⁴⁰ With these statements

historic drop in violent crime during first half of 2025, PBS NEWS HOUR (July 3, 2025), <https://www.pbs.org/newshour/show/chicago-sees-historic-drop-in-violent-crime-during-first-half-of-2025>.

³⁷ *Trump Calls Los Angeles Protesters ‘Animals’ and ‘a Foreign Enemy’ in Speech Meant to Mark Army’s 250th Anniversary*, ASSOCIATED PRESS (June 10, 2025), <https://news.wttw.com/2025/06/10/trump-calls-los-angeles-protesters-animals-and-foreign-enemy-speech-meant-mark-army-s>.

³⁸ KATU Staff, *Pres. Trump again calls out Portland: ‘I don’t know how anybody lives there. It’s anarchy,’* KATU2 ABC (Updated September 25, 2025), <https://katu.com/news/local/pres-trump-again-calls-out-portland-i-dont-know-how-anybody-lives-there-its-anarchy-protests-ice-facility-south-national-guard-mayor-wilson-president-oregon-remarks>, Daniel Dale, *Fact check: Trump falsely claims, again, that Portland is burning down*, CNN POLITICS (October 2, 2025), <https://www.cnn.com/2025/10/22/politics/fact-check-trump-portland-burning-fire>.

³⁹ Donald J. Trump, @realDonaldTrump, TRUTH SOCIAL (October 18, 2025), <https://truthsocial.com/@realDonaldTrump/posts/115398251623299921>.

⁴⁰ Niall Stange, *The Memo: Trump betrays irritation after huge ‘No Kings’ protests*, THE HILL (October 20, 2025), <https://thehill.com/homenews/administration/5564304-trump-reacts-no-kings-protests/#:~:text=In%20any%20event%2C%20Trump%20also,No%20Kings%20protests%20were?>.

and the video in mind, a court reviewing this issue should hold that the governmental interest was related to the suppression of free expression.

E. The Incidental Restriction on Alleged First Amendment Freedoms is Greater than is Essential to the Furtherance of the Governmental Interest

By deploying the National Guard, the President created a chilling effect that impeded the exercise of First Amendment rights to a much greater degree than would be the case if traditional law enforcement means were utilized. The military is fundamentally different from civilian law enforcement. They are perceived as an occupying force and their combat-oriented training leads to increased fear and a higher risk that rights will be violated.

The ability to peacefully protest is not just constitutionally protected. It's vitally important. All three branches of the government are dominated by actors prone to conservatism and it would be naïve to suggest that governance is free of politics. Conservatism in itself is not wrong but, outside of election season, people opposed to the President's policies will likely feel Congress and the courts cannot provide adequate relief for what they perceive as wrongdoing. Outside protest, it may seem as though they have no other lawful way to effect change. This frustration, particularly in the face of what is – at the very least – perceived lawlessness, could very easily lead to violent outbursts. This is not unlike the repeated injuries and usurpations that led to the American Revolution, and that is not an ideal outcome.

As mentioned above, the protests at the center of this issue were in response to the President's immigration policies and perceived instances of executive overreach. It is worth going into the background here to understand what type of expression is being impeded. To start, the President has kicked off his second term with an extremely hard stance against illegal immigration. That in itself is not a bad thing, but his methods of combating this crisis are extreme to the point

of illegality. Among other things, he unlawfully invoked the Alien Enemies Act⁴¹ and allowed for – if not endorsed – his administration’s failure to give adequate notice prior to deportation.⁴²

The U.S. Court of Appeals for the Fifth Circuit ruled that the President’s invocation of the Alien Enemies Act to deport Venezuelan migrants was unlawful because the statutory requirements of an “invasion” or “predatory incursion” were not met as mass immigration cannot be equated to “sending an armed, organized force to occupy, to disrupt, or to otherwise harm the United States.”⁴³ Similar arguments were made in the National Guard cases, which will be discussed in greater detail below. There the President has relied on language in 10 U.S.C. § 12406 to justify the federalization and deployment of the National Guard in states where the governors – the Commanders of their state National Guards – are opposed to doing so.⁴⁴ Just like with the Alien Enemies Act, courts are finding that there is no “rebellion” to justify the President’s actions.⁴⁵

These examples matter because it demonstrates an underlying rule of law issue fueling protests in American cities. Generally speaking, the rule of law is “governance according to settled norms,” without which the ruled “live at the whim and caprice of a powerful person or group who may be virtuous and kind, but then again may not, and in any event will at times act hastily, irrationally, or out of narrow self-interest.”⁴⁶ This system is dependent “on an unspoken but fundamental bargain between the individual and the state, the governed and the governor, by which

⁴¹ *W.M.M. v. Trump*, 25-10534, 2025 WL 2508869 (5th Cir. Sept. 2, 2025).

⁴² See *What the Constitution says about noncitizens’ rights as Trump doubts need for due process*, PBS NEWS HOUR (May 5, 2025), <https://www.pbs.org/newshour/show/what-the-constitution-says-about-noncitizens-rights-as-trump-doubts-need-for-due-process>.

⁴³ *W.M.M. v. Trump*, 25-10534, 2025 WL 2508869 (5th Cir. Sept. 2, 2025).

⁴⁴ See generally *Newsom v. Trump*, 3:25-cv-04870, (N.D. Cal. 2025), *Newsom v. Trump*, 25-3727, (9th Cir. 2025), *Newsom v. Trump II*, 25-5553, (9th Cir. 2025), *Oregon v. Trump*, 3:25-cv-01756 (D. Or. 2025), *Oregon v. Trump*, 25-6268 (9th Cir. 2025), *Illinois v. Trump*, 1:25-cv-12174 (N.D. Ill. 2025), *Illinois v. Trump*, 25-2798 (7th Cir. 2025), *Illinois v. Trump*, 25A443 (2025).

⁴⁵ *Id.*

⁴⁶ See Bruce P. Frohnen & George W. Carey, *Constitutional Morality and the Rise of Quasi-Law* 19, 22 (2016).

both sacrifice a measure of the freedom and power they would otherwise enjoy.”⁴⁷ A breach in this system – the impediment on First Amendment rights in this case – seems so egregious because while Americans as a whole have accepted they cannot exercise unbridled freedom, the current administration has failed to do its part in limiting itself to all that it is *authorized* to do. That is what people are protesting.

This chilling effect is no incidental restriction on First Amendment freedoms. The interest in preserving these freedoms is far greater than the claimed governmental interest in causing it. The *O’Brien* test is an element test. Not all the elements are met here. It does not authorize the government to use the National Guard to create a chilling effect on the exercise of First Amendment rights for either the purpose of executing the laws or exercising the President’s protective power.

II. Suggestions for What The People Can Do

The First Amendment issues above are not a singular problem. There have also been findings of Fourth⁴⁸ and Fifth⁴⁹ Amendment violations. The Founding Fathers left a suggestion for what to do in scenarios like this: “whenever any Form of Government becomes destructive of [unalienable rights and maintaining a system where governments derive their power from the consent of the governed], it is the Right of the People to alter or to abolish it, and to institute a new Government.”⁵⁰ This reads as a call to action, but Americans should not follow in the Founding Fathers’ footsteps. There is not a codified or otherwise agreed upon definition for what constitutes

⁴⁷ See Sir Thomas Bingham, Lord Chief Justice of England and Wales, *The Rule of Law*, University of Cambridge (November 16, 2006) (Located at [https://www.cpl.law.cam.ac.uk/sir-david-williams-lectures2006-rule-law/rule-law-text-transcript#:~:text=%22that%20in%20America%20THE%20LAW,put%20the%20point%20very%20explicitly\).](https://www.cpl.law.cam.ac.uk/sir-david-williams-lectures2006-rule-law/rule-law-text-transcript#:~:text=%22that%20in%20America%20THE%20LAW,put%20the%20point%20very%20explicitly).)

⁴⁸ See *Noem v. Vasquez Perdomo*, 606 U. S. ____ (2025).

⁴⁹ See Compl., *Abrego Garcia v. Noem*, 8:25-cv-00951 (D. Md. March 24, 2025).

⁵⁰ The Declaration of Independence (U.S. 1776).

a rebellion or an insurrection. Doubtlessly another civil war would amount to either or both. In either case, it would mean the President could *lawfully* deploy any branch of the U.S. Armed Forces domestically.⁵¹

Revolution is a terrible idea, but it is far from the only idea. To start, the First Amendment has been impeded, not repealed. For those courageous enough to exercise it, it can still be a viable method for recourse. Publicly showing disdain for executive policies *should* amount to a call of action for representatives in Congress. In response, they *should* act – whether it be by enacting new legislation or filing articles of impeachment. If they will not, there is another form of recourse. They can elect new representatives.

This Congress might not choose to act. However, this Congress does not exist in perpetuity. Congressmen retire. They die. Over time their ranks are backfilled with U.S. citizens. The most productive thing people can do is prepare to fill those roles and/or make educated decisions as to whom to entrust with their representation. In his Constitution Day remarks in 2025, Professor Dan Maurer identified – and I wholeheartedly endorse – eight ways this can be done.⁵²

First, is understanding that pluralism is greater than tribalism. By overcoming tribalism – the natural tendency of people to organize themselves into groups, families, teams, parties, etc. – “we remain open to new ways of looking at our shared problems.”⁵³ This is not to say that these groups should be forsaken entirely, or that individualism is somehow wrong, but that Americans should identify themselves as Americans rather than by emphasizing their part in groups that might otherwise be divisive.

⁵¹ 10 U.S.C. §§ 251-255

⁵² Dan Maurer, *What is a “Constitutional Crisis,”* POLITICS BY OTHER MEANS (September 16, 2025), <https://dmaurer.substack.com/p/what-is-a-constitutional-crisis>.

⁵³ *Id.*

Second, Americans should practice community engagement rather than isolationism. To govern ourselves; as well as the government, Americans have to “engage[] with others openly and publicly, especially with others who do [not] look, sound, talk, or belie[ve] like we do.”⁵⁴ To grow in this respect, Americans should venture outside of the closed spaces of social media groups and actively seek out healthy, respectful, and logic-based arguments with each other.

The third and fourth examples are rather straightforward. Americans should recognize that “[t]yranny of the minority is still a tyranny,” and should choose leaders – trusted with “environmental protection, disease control, education, national security, tax policy, and foreign relations” – for their expertise and experience rather than their passion and ignorance.⁵⁵

Fifth, Americans should place a greater level of importance on preventing and mitigating present and future harms rather than trying to avoid action because of historical practices, traditions, or to otherwise preserve the status quo. “[W]ell, we[have] always done it that way,” is not a good excuse – particularly when dealing with a “history of unjustified violence, blatant bigotry, unlawful discrimination, racism, sexism, homophobia, rashness, poor judgement, and mistaken beliefs.” Americans can acknowledge those shortcomings and still be “willing to serve this country’s ideals and goals.”⁵⁶

Sixth, Americans must understand that “[r]especting and enforcing the rule of law requires understanding the constraints, freedoms, rights, and governing structure and processes that sustain the rule of law.”⁵⁷ That there would be no viable consequences for violating the law because the attorney general would never agree to prosecute for domestic charges, the International Criminal

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

Court lacks jurisdiction, or victimized nations lack military force to retaliate does not make an otherwise illegal act acceptable. If not only by the structural division of power in American governance, leaders should be constrained by both internal and external senses of reason and morality.

Seventh, Americans should exercise their ability to recognize and call out what Professor Maurer characterizes as “untruths and bullshit”⁵⁸ Maurer encourages Americans to accept “objective, demonstrable facts” rather than cast them aside as “fake because they contradict earlier assertions or would undermine... legal policy argument[s].”⁵⁹ This directly ties into the eighth point which is that “not all beliefs deserve equal credence or deserve matching moral weight.”⁶⁰ “[T]he most basic, axiomatic civic value” is that no matter how vile someone thinks another human’s beliefs are, it is “never justified, never humorous, never meme-worthy” to use violence against a fellow human.⁶¹

III. Conclusion

The First Amendment protects Americans from restrictions imposed by all branches of the government – not just Congress. The National Guard deployments present a chilling effect on the exercise of First Amendment rights, and there likely will be no assistance from *this* Congress. But Americans are not entirely powerless. There are still viable lawful means for effecting change and many of them are internal.

⁵⁸ See Harry G. Frankfurt, *On Bullshit*, (2005) (Frankfurt’s term, according to Professor Maurer, is a widely accepted philosophical definition referring to speech intended to persuade without regard for the truth. This is distinguishable from lying but is something more than a simple omission).

⁵⁹ Maurer *supra* note 51.

⁶⁰ *Id.*

⁶¹ *Id.*