

Remarks to the 2023 Federalist Society National Student Symposium

GOVERNOR GREG ABBOTT*

Thank you all very much. Let me start out tonight with a couple of quick questions. One, I see some people in cowboy hats, and I wonder: for those in cowboy hats, how many of you are wearing it for the first time? Just a couple. From Boston, right? Good to have you here.

Second question: Please raise your hand if you are currently in law school. Fantastic. That's what I was looking for because I'm on a recruiting mission tonight. I want to talk about what's going on in our world—more importantly, what's going on in our country—and reflect on it through the lens of my legal career.

As we speak, the country is in a battle for the soul of the future of America. On one side are the social justice warriors and anti-constitutionalists. On the other side are those who believe in the rule of law. I happen to believe in the rule of law. That's why I went to law school.

The founders of our country, the authors of the United States Constitution, instilled the rule of law into our Constitution because they wanted to create a country that was based upon the rule of law, not the rule of man. And that fledgling country has gone on to be the most successful country in the history of the entire world. And I submit to you that a principal reason for that success—the principle that causes America to stand apart from all other countries—is our Constitution and our adamant insistence on the rule of

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law. If we allow our elected officials to undermine the rule of law, I believe it will destroy our country.

There are two categories of people involved in this battle: those in the field and those on the sidelines. You're either in the game, or you're on the sidelines. I believe those who believe in the rule of law are outnumbered. The other team has more people in the field, but we must change that. We need more people who believe in the rule of law, more people who believe in the Constitution, in the field engaged in that battle.

Despite our position on the side of righteousness, if we come up short in numbers, who knows what may happen. And I want to quickly guide you through my career and show you that during the course of your careers, even now when you're in law school, you have plenty of on-ramps to get into the battle. And we need you if we're going to win this fight for the soul of America.

For me, the fight began when I was in law school. When I was in law school sitting in constitutional law, I was both amazed and concerned when I saw opinion after opinion that seemed to rewrite the Constitution, skirt around the words of the Constitution, and make up new law. I knew that if we continued down that path, we would soon be governed by the rule of men.

The idea of five justices possessing the power to determine the fate of our laws motivated me to enter this fight for the rule of law. I knew when I left law school that I wanted to be engaged in this fight for the rule of law. The problem is that things changed for me after I left law school. I moved to Houston with my wife where I had taken a job with a large law firm. I was studying for the bar exam, ten days away from taking it. And I wanted to take a break, so I went out for a jog.

While I was out jogging, a huge oak tree, taller than the ceiling in this room, crashed down onto my back, fractured my vertebrae and my spinal cord, and left me immediately paralyzed for the rest of my life—altering the course of my life. Some of you are thinking, "Man, I don't want to have to use that as an excuse for missing the bar exam." It set me back a year in my career because I had to go through hospitalization and rehabilitation. But I eventually was

able to go to work, long before the Americans with Disabilities Act of 1990¹ was even in place, and I moved forward, navigating different challenges.

In fact, when I went to take the bar exam a year after my accident, my wife dropped me off at the convention center in downtown Houston, Texas, and for me to get into the convention center, I had to hop a curb. And when I hopped the curb, I had to do just a little wheelie, then my wife would lift up the rest of the chair.

On this particular day, the bar exam was beginning in fifteen minutes, and when I lifted up my wheelchair, the front wheel came off. We had no idea how to get back it on. And yet, somehow, somehow, we got that wheel back on, got me in there, and I was able to take the exam.

Here's a tip for those preparing for the bar exam—it appears that most in the room have raised their hands: you'll be taking the bar one of these days, and the reality is you won't know the answers to all the questions. This is not the SAT. If you get every question right, you probably overstudied. Have some fun with it, even if you don't get everything right.

When I took the bar exam, I got a question: "What is a *writ of capias*?" I had no idea. Instead of skipping it, I decided to amuse the grader by writing that it was a type of fish. I might have gotten credit for it. Who knows?

I successfully passed the bar exam and began practicing law. I may have been the only litigator in Houston in a wheelchair. And in my early days, one of the primary tasks for a litigator was showing up to argue motions. Every Monday was motion day. You go to the courthouse, and there would be various motions to address, such as motions for summary judgment. Court started at 9:00 a.m., and I got there about five minutes before 9:00.

When I came in, every possible seat was taken. So I improvised and went next to the jury box, which extended from one side to the

1. 42 U.S.C. §§ 12101–13.

other. I sat right here at the end, just in time before the bailiff announced, “All rise.” Everyone stood up as the judge entered and took his seat.

For those who may practice or have ever practiced in Houston, the judge was Wyatt Heard.² Judge Heard ascended the bench, scanned the room, and saw me seated next to the jury box. He looked at me and said, “Sir, when the bailiff says, ‘All rise,’ that means stand up.” I wheeled out a little bit and said, “Your Honor, I would if I could, but I can’t.” He turned beet red, and I won the motion that day. Word spread so fast at the law firm, and anyone with a motion in Wyatt Heard’s court said, “Let Abbott have it. He’s gonna win it.”

But it got even more amazing because eventually you go from motions to trials. I had a trial against a guy who claimed he could not go to work because he was hurt. Because he was supposedly injured, he testified in front of the witness stand with a cane.

For those who want to be litigators, this is a handy tool: there are some advantages to being in a wheelchair, one of which is being close to the jury. To cross-examine the person who was bringing the lawsuit, I pulled up next to the jury box as though I was sitting there with them. I wasn’t just presenting an argument to them—I was one of them. So, my suggestion to you is, if you ever become a litigator, pull up a chair next to the jury box when cross-examining someone or making your closing argument. As opposed to standing over them and telling them what to do, join with them.

During my cross-examination of the guy with the cane, the irony of his claim that he couldn’t work was not lost on the jury. No kidding, the guy got out of the witness box and started beating my wheelchair with his cane. Case dismissed—it was over.

I continued to represent an array of clients, from individuals to some of the largest businesses in the United States. But along the way, I encountered a frustrating reality. I invested significant time and money in meticulously crafting motions, ensuring every detail

2. Wyatt Heard, UVALDE LEADER-NEWS (July 23, 2017), <https://www.uvaldeleadernews.com/articles/wyatt-h-heard/> [<https://perma.cc/LPF8-9TWY>].

and citation was impeccable, only to enter the courtroom and have a judge say, “Listen. I haven’t read all this stuff. I know Donny Joe over there, and Donny Joe’s a good guy. And I know what he’s thinking is right, so I’m just going to go with him.” I have no idea how much money I racked up on behalf of my client only to have a judge make impulsive decisions rather than consider the detailed motions.

At that moment, I made a decision. I was going to use that frustration as an on-ramp to return to the mission I had in law school, which was to ensure that the rule of law prevailed in our society. In Texas, we elect our judges. So, I decided, at that moment, “By God, not only am I going to run for judge, I’m going to run for judge in that court against that judge.” Well, that judge saw the writing on the wall and decided not to run. And not only did I run, but I won the election, and served there for three years.³

At the time, George W. Bush was governor of Texas.⁴ He appointed me to be a justice on the Texas Supreme Court where I was elected and reelected before eventually being elected as attorney general.⁵ As attorney general, I needed to assemble a team of outstanding lawyers to make sure that Texas would be the standard-bearer for the United States in upholding the rule of law. I brought in people I had never met before who possessed extraordinary talent and capability. For my solicitor general, I brought in Ted Cruz,⁶ who I’d never met before, but he turned out to be pretty good.

And as a special counsel, I brought in a guy named Donny Ray. Donny Ray Willett, Judge Willett, who I saw earlier in some smashing pants. Don, Ted and others guided me in the early days of my tenure as attorney general. And we tried to do our best to ensure that the rule of law was applied.

3. *About Texas Attorney General Greg Abbott*, ATT’Y GEN. TEX. GREG ABBOTT (Sept. 3, 2013), https://web.archive.org/web/20131017181451/https://www.oag.state.tx.us/agency/agga_bio.shtml [<https://perma.cc/NW3X-MTU2>].

4. *Id.*

5. *Id.*

6. *Solicitor General Ted Cruz*, UNIV. ST. THOMAS (May 11, 2005), https://www.stthom.edu/Public/getFile.asp?File_Content_ID=3434&isDownlo.. [<https://perma.cc/52ZJ-RXN6>].

Until one day, an atheist walked across the Texas Capitol grounds. And then he got offended when he saw the Ten Commandments.⁷ It sounds like the beginning of a joke. But it actually was the beginning of a lawsuit against the State of Texas to have that Ten Commandments monument torn down. I told my team, “Not on our watch will we allow the Ten Commandments to be torn down on the Texas Capitol grounds.” The case⁸ went all the way to the United States Supreme Court, and gave me the opportunity that I’d been looking for.

If you want to be a litigator, the ultimate place to litigate is the United States Supreme Court. And I got my chance in this consequential First Amendment case. We then get to the Court and prepare for argument only to realize I’m not going to fit at the podium.

On this particular day, Chief Justice Rehnquist was absent for oral argument because he was ill. So the presiding judge was Justice Stevens, and he told me to argue from the table, which I did. At the conclusion of my argument, Justice Stevens said I had demonstrated that “it’s not necessary to stand at the lectern in order to do a fine job.”⁹ But he ruled against us. This just goes to show, just because you get a compliment from a judge does not mean they’re going to rule in your favor.

I based my argument on Justice O’Connor’s jurisprudence—the then leading author of the First Amendment and freedom of religion cases. So it didn’t matter who asked me a question, I was going to respond with an answer that I thought appealed to Justice O’Connor. For example, Justice Scalia asked me a very predictable question attempting to pin me down to say that the reason the Ten Commandments were on the Texas Capitol grounds was to convey a religious message. I said it was not. He disagreed with me strongly.¹⁰ And I thought, “The last person that’s going to vote

7. See *Van Orden v. Perry*, 545 U.S. 677, 682 (2005).

8. *Id.*

9. Transcript of Oral Argument at 45, *Van Orden v. Perry*, 545 U.S. 677 (2005) (No. 03-1500).

10. *Id.* at 29.

against the Ten Commandments is Scalia, so don't worry about that."

So I geared everything towards Justice O'Connor. When the opinion came out at the end of June, we won 5-4. We lost Justice O'Connor's vote, but for some reason, gained Justice Breyer's.¹¹ As a result, those Ten Commandments still stand on the Texas Capitol grounds today.¹²

After this case, America and the presidency changed. The galvanization and organization of the social justice warriors led to the anti-constitutionalists. The installation of Barack Obama as president evidenced this change because just as we were enforcing the rule of law, someone was circumventing it. And that person was none other than the President. So much so, that it led to a recharacterization of my office. I told people that as attorney general, I wake up, I go into the office, I sue Barack Obama, and I go home. In fact, I set a record for the most lawsuits filed against Barack Obama.¹³

One of these suits involved Obamacare.¹⁴ It doesn't matter where you stand on healthcare. Obamacare had one flaw, but it was the one thing needed in order for it to be effective—the individual mandate. The individual mandate was something that was never before seen in our country's history. Congress relied on the Commerce Clause to argue that healthcare was commerce, and therefore it could impose this mandate.¹⁵ Even though Congress and courts had continuously expanded the Commerce Clause's scope and meaning, the Court had never construed the clause so broadly as to apply it to someone who refused to engage in commerce. The rule is that

11. *Perry*, 545 U.S. at 678.

12. *Ten Commandments Monument*, TEX. STATE PRESERVATION BD., <https://tspb.texas.gov/prop/tcg/tcg-monuments/08-ten-commandments/index.html> [<https://perma.cc/M2D5-3CSF>].

13. Dan Frosch & Jacob Gershman, *Abbott's Strategy in Texas: 44 Lawsuits, One Opponent: Obama Administration*, WALL ST. J. (June 24, 2016), <https://www.wsj.com/articles/abbotts-strategy-in-texas-44-lawsuits-one-opponent-obama-administration-1466778976> [<https://perma.cc/3KWR-48QV>].

14. See Nat'l Fed. of Indep. Bus. v. Sebelius (*NFIB*), 567 U.S. 519 (2012).

15. Cf. *id.* at 536 (discussing the Commerce Clause in the context of Obamacare).

if you engage in commerce, then Congress can regulate it.¹⁶ But if you abstain from commerce, Congress has no authority to regulate you or your behavior.¹⁷

But Congress did just that with the individual mandate. It forced you to participate in Obamacare. To us this was clearly unconstitutional. All the know-it-alls said we were fools for even thinking that. But Texas and twelve other states—we called ourselves the thirteen original colonies of Obamacare—which became twenty-six, a majority of the States, sought to overturn Obamacare.¹⁸ And it went to the Supreme Court.¹⁹

We were at the Court not just for the argument but also when the decision was handed out. The oral argument wasn't an hour, which is typical, nor was it one day. It lasted for three days.²⁰ The opinion of the Court was read by Chief Justice Roberts. It first discussed that Obamacare was not a tax for purposes of the anti-tax injunction act.²¹

Chief Justice Roberts then got to the heart of it—the Commerce Clause.²² He explained exactly what our position was, that Article I, Section 8 does not authorize Congress to force somebody into the stream of commerce.²³ And thus, Congress could not enact Obamacare based on the Commerce Clause.²⁴ The Court then went to the Necessary and Proper Clause argument.²⁵ The Chief Justice read that whether or not Obamacare was necessary, it was not

16. *Cf. id.* (discussing Congress's Commerce Clause power).

17. *See id.* at 551 (“Construing the Commerce Clause to permit Congress to regulate individuals precisely *because* they are doing nothing would open a new and potentially vast domain to congressional authority.”).

18. *Id.* at 520 (noting that twenty-six states had sued).

19. *See generally id.*

20. *See Supreme Court Health Care Law Oral Argument, Day 3, Severability*, C-SPAN (March 28, 2012), <https://www.c-span.org/video/?305134-1/supreme-court-health-care-law-oral-argument-day-3-severability> [<https://perma.cc/4XR5-CFG6>].

21. *NFIB*, 567 U.S. at 546.

22. *See id.* at 546–58.

23. *See id.* at 551.

24. *See id.*

25. *Id.* at 558–61.

proper.²⁶ And then, the Court got to the argument we thought was the easiest of them all—whether or not Obamacare was a “tax.”

The law clearly said that if you don’t have health care, you’ll be subject to a “penalty.”²⁷ “Penalty” is the word that was used. But more importantly, Congress meant to use the word “penalty,” not “tax,” because Congress knew they did not have the votes to get it passed if it was a tax. And President Obama was clear. The way he sold it to America was, “This is not a tax.”²⁸

The point is this: The executive branch said that it was not a tax. The legislative branch said it was not a tax. Only one person said that it was a tax, and that was Chief Justice Roberts.²⁸ And that was all it took to join with four other justices to uphold Obamacare.²⁹ But in doing so, we were successful in doing what I wanted to achieve, going back to my law school days, and that was to rein in the abuses that I saw taking place by the never-ending expansion of the Commerce Clause.

So we go from there to me running for and getting elected to be Governor of Texas, which happened in November 2014.³⁰ And just a few weeks after the election, there was a nationally televised presentation by President Obama on November 20, 2014. During that presentation, he told America something that he’d been dealing with during his entire presidency. His entire presidency—his own party was nudging the president, pushing him, condemning him for doing nothing with regard to loosening the immigration laws of the United States.

26. *Id.* at 560.

27. *Id.* at 564.

28. ABC News, *President Obama in 2009: Mandate is Not a Tax*, YOUTUBE (Sept. 20, 2009), https://www.youtube.com/watch?v=_0ZUBMqMnWs [<https://perma.cc/2DYD-2VET>].

28. See *NFIB*, 567 U.S. at 566 (“[W]hat is called a ‘penalty’ here may be viewed as a tax.”).

29. *Id.* at 529.

30. *Texas Election Results*, N.Y. TIMES, Dec. 17, 2014, <https://www.nytimes.com/elections/2014/texas-elections> [<https://perma.cc/5272-4PHE>].

And he said he couldn't do anything about it. It was up to Congress.³¹ He said many times³² that he didn't have the ability to do anything about it until, on November 20, 2014, he announced he was taking executive action to grant amnesty to five million people who were in the country illegally.³³ The president does not have the authority to make law. President Obama knew he made law by granting that amnesty.³⁴

I knew that was wrong. I knew it was an abuse of executive authority. I knew it had to be stopped, but I was on my way out of office. I needed to do something about it urgently. Thirteen days later, I filed a lawsuit to put a stop to it.³⁵ I was able to do it that quickly and that effectively because of the lead counsel who was in charge of it. One of the most brilliant people I've ever met: Andy Oldham,³⁶ now Judge Oldham on the Fifth Circuit.³⁷

Also, along the way, I omitted a name, not purposely. I forgot to bring it up. When we filed that lawsuit, that Obamacare lawsuit, my solicitor general at that time was Jim Ho, now Judge Ho on the

31. Joel Rose, *President Obama Also Faced A 'Crisis' At The Southern Border*, NPR (Jan. 9, 2019, 2:29 PM), <https://www.npr.org/2019/01/09/683623555/president-obama-also-faced-a-crisis-at-the-southern-border> [<https://perma.cc/8ZM2-XK4M>].

32. Jan C. Ting, *Obama's Own Words Refute His Stand on Immigration Authority*, N.Y. TIMES: ROOM FOR DEBATE (July 8, 2015, 5:09 PM), <https://www.nytimes.com/room-fordebate/2014/11/18/constitutional-limits-of-presidential-action-on-immigration-12/obamas-own-words-refute-his-stand-on-immigration-authority> [<https://perma.cc/DFX4-WYW3>].

33. Tanya Somanader, *"We Were Strangers Once, Too": The President Announces New Steps on Immigration*, THE WHITE HOUSE: PRESIDENT BARACK OBAMA (Nov. 20, 2014, 9:25 PM), <https://obamawhitehouse.archives.gov/blog/2014/11/20/we-were-strangers-once-too-president-announces-new-steps-immigratio> [<https://perma.cc/449D-CNVQ>].

34. See Ting, *supra* note 33.

35. David Montgomery and Julia Preston, *17 States Suing on Immigration*, N.Y. TIMES, Dec. 3, 2014, <https://www.nytimes.com/2014/12/04/us/executive-action-on-immigration-prompts-texas-to-sue.html> [<https://perma.cc/QEL7-HFSL>].

36. Emma Platoff, *A Texas Lawsuit Killed One Obama Immigration Policy. Can the Same Strategy Defeat DACA?*, THE TEX. TRIBUNE (May 7, 2018, 12:00 PM), <https://www.texastribune.org/2018/05/07/texas-lawsuit-daca-dapa-ken-paxton/> [<https://perma.cc/QYE2-P2TK>].

37. *5th Circuit Judges*, U.S. CT. APPEALS FOR THE FIFTH CIRCUIT, <https://www.ca5.uscourts.gov/about-the-court/fifth-circuit-judges> [<https://perma.cc/J8U9-JXWU>] (last visited Feb. 10, 2024).

Fifth Circuit as well.³⁸ So I see him over there, standing next to my current General Counsel, James Sullivan. It looks like a murderer's row over there. That's what you call legal talent right there.

And so, what I'm doing tonight, I'm trying to help you understand that we need legal talent like that to get in the game: people who can make a difference. That's exactly what they did, and I didn't finish the story about the court. In the case that Andy filed, we won in the trial court.³⁹ It went all the way to the Supreme Court.⁴⁰ Andy was then in my general counsel's office as governor at the time, but the Supreme Court ruled in favor of the lawsuit that we filed, upholding our position that the President had exceeded his executive powers.⁴¹

So once again, all of this relates to ways in which we must take action to ensure that all actors are going to conduct their affairs constitutionally. It's the rule of law. The only way that we will survive as a country is to ensure that the rule of law is protected. The only way we'll achieve that goal is to have people like those in the room tonight. As you move forward in your careers, in your pathways, you will keep in mind the necessity to have you not on the sidelines, but in the game. If you do that, I can assure you the United States will remain the mightiest, strongest, and best country in the history of the world. Thank you all. God bless you all. And God bless the great state of Texas.

38. *Id.*

39. *Texas v. United States*, 86 F.Supp.3d 591, 677–78 (S.D. Tex. 2015)

40. *United States v. Texas*, 579 U.S. 547 (2016).

41. *Id.* at 548.