

The lawless obstructionism of Beltway elites

By [Hugh Hewitt](#) March 9

There is a deep divide in the United States, and it isn't blue-red or liberal-conservative. It's between those who believe in applying the law as it exists and those who think they have the right — through various government authorities — to ignore laws they don't like.

“Rule of law” conservatives are a subset of the coalition that elected President Trump. They were concerned about the vacancy on the Supreme Court (and a hundred federal bench vacancies below it); executive orders and regulations that greatly overreached existing statutory authority; and the general idea — spreading like kudzu — that duly enacted laws can be ignored by federal, state and local officials when inconvenient to the perceived “will of the people.”

They were concerned, in other words, about preserving constitutional government.

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Sanctuary cities and marijuana legalization statutes are examples of local and state governments ignoring federal law. But federal authorities and elected officials who vent about those subjects should look to their own disregard of the law. Two recent instances of the lawlessness of Beltway elites concern the U.S.-Mexico border barrier and the Export-Import Bank of the United States (Ex-Im).

The [Secure Fence Act of 2006](#) called for the construction of 700 miles of barriers along the U.S.-Mexico border. Not even the most shameless sophist will argue that anything like that happened. Far fewer than even 100 miles of high fencing followed. The feds did lay down vehicle barriers and counted those as “miles” toward compliance, but it's laughable to contend that the law was implemented in any meaningful way.

Then there is Ex-Im. A small slice of conservatives — the sort who enjoy “[Hayek/von Mises](#)” cruises on the Danube — hate the bank with a passion. Most ordinary Americans don't know what Ex-Im is, while most of those who do say that of course the U.S. government should use “export credits” — subsidies — to favor U.S. companies fighting for international business against

foreign competitors backed by their own governments' subsidies. Ex-Im levels a lopsided international trading field. It operated for decades — in the black, without controversy — until purists decided they needed a ritual sacrifice to the Austrian school. They fought hard to kill Ex-Im. Fine. That's their right. But they lost. And it wasn't close.

Congress and President Barack Obama reauthorized the bank. In 2015, a House supermajority voted to fully fund Ex-Im after a broad, bipartisan coalition broke the blockade of the true believers. In the Senate, the vote was 64 to 29 in favor.

Did the bank then spring back into action and fund the long line of credit guarantees for U.S. companies waiting for approval? Nope. About 40 transactions, worth \$30 billion in U.S. products, are stuck in limbo because anti-Ex-Im dead-enders have blocked the bank's board from getting the quorum of confirmed members. Without this quorum, transactions of more than \$10 million cannot move forward. Thousands of U.S. jobs are imperiled by this lawless obstructionism.

Last year, Senate Banking Committee Chairman Richard Shelby (R-Ala.) refused to allow the committee to consider confirmation of two pending nominees — one Republican and one Democrat — needed for a quorum. This year, three spots need to be filled. Ex-Im is the law, but as with the border fence, sanctuary cities, and states purporting to legalize marijuana, the law is being ignored. In each case the storyline is the same: Do we respect our constitutional forms, and the laws those forms produce, or do we get to pick and choose?

Consistency is key. Ex-Im should get its board, the fence should get built, and state and local governments should obey federal law on every subject. (It is not called the "supremacy clause" of the Constitution for nothing.) You can't call yourself a conservative if you don't stand with the Constitution over your personal preferences. I'm not sure you can even brand yourself a good citizen if you view the laws of the land like choices on a menu.

The president has again and again drawn the ire of media elites after speaking on controversial topics. In many of these instances — and especially with regard to immigration issues and national security leaks — he is referencing an underlying lawlessness that the public perceives and resents. Social instability is inevitable when protected classes and individuals operate under a separate set of rules than those that apply to everyone else.

The answer, of course, is to apply the federal law as passed — in every case — and for the president and the Justice Department to insist on it. As for defenders of sanctuary cities, Ex-Im plotters, marijuana defenders and border-fence foes, they should ask themselves: Do we really want government, at any level, to pick and choose which of the Constitution's provisions will apply today?

That way lies arbitrary application of law. Once the law is whatever any authority says it is, the result is chaos. Let's stick with the Constitution. It has worked since 1789.

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