



THE PRESIDENT AND THE CONSTITUTION

How Citizens, Congress, the Courts, and the Media Influence Presidential Power



Senator Mike Lee



Senator Patrick Leahy



Dr. Matthew Spalding



Ken Gormley



Julie Silverbrook



Elizabeth Wydra



NATIONAL
CONSTITUTIONAL LITERACY
CAMPAIGN

A Special Report by The Washington Times Advocacy Department and The National Constitutional Literacy Campaign

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CITIZENS, CIVIC KNOWLEDGE AND PRESIDENTIAL ELECTIONS

Why a call for civic education and constitutional literacy 4
Julie Silverbrook

Student competitions spark optimism, civic involvement..... 4
Julie Silverbrook

Effective civic education produces informed voters..... 5
Charles N. Quigley

Civic illiteracy and civic disempowerment..... 6
Dr. Michael B. Poliakoff

A Democratic or Republican election?..... 7
Jeff Hymas

‘Tyranny of the swing states’?..... 8
Kyle Kondik

Get in the game: Empowering America’s next generation to vote..... 9
Meg Heubeck and Gerard Ferri

CONGRESS AND THE PRESIDENT

Founders intended ‘tension’ in co-equal branches 10
George Nethercutt

Political gridlock, past and present 10
Dr. Robert J. Spitzer

Constitution Day: Protecting our democracy..... 11
Sen. Patrick Leahy

The battle to ‘keep’ the American Republic 12
Sen. Mike Lee

Congress and the new imperial presidency 13
Dr. Matthew Spalding

THE COURTS AND THE PRESIDENT

The president, the Constitution and the Supreme Court 14
Elizabeth B. Wydra

How courts expand presidential power beyond constitutional limits 14
Dr. Louis Fisher

Presidents and the Supreme Court: Public battles and quiet respect 15
Ken Gormley

THE MEDIA AND THE PRESIDENT

The Constitution on the campaign trail in 2016 16
Julie Silverbrook

Preserving the ‘genius’ of the Constitution 18
David Keene

Is the media responsible for the too-powerful presidency? 18
Janine Turner and Andrew Langer

How social media gives public opinion wings 19
Shoshana Weissmann

THE EXPANSION OF PRESIDENTIAL AUTHORITY

The ever-expanding power of the presidency 20
Tim Donner

Unteaching Professor Obama’s constitutional lessons..... 21
Josh Blackman

Calvin Coolidge and the ‘two minds’ of the American presidency 22
Dr. Jason W. Stevens

Upholding the right ‘to be let alone’ 23
Scott Michelman

The National Constitutional Literacy Campaign was created in 2015 by Julie Silverbrook, executive director of The Constitutional Sources Project, and venture capitalist and CEO of Essentials in Education Chuck Stetson. Its mission is to increase visibility and financial support for the constellation of organizations educating citizens along the learning spectrum — from kindergarten to adulthood — about the American Constitution and our nation’s history. Campaign partners include: The Constitutional Sources Project (ConSource), Essentials in Education, The National Constitution Center, The Allan P. Kirby, Jr. Center for Constitutional Studies & Citizenship at Hillsdale College, The Joe Foss Institute, American Council of Trustees and Alumni, Intercollegiate Studies Institute, The Ashbrook Center at Ashland University, The Center for Civic Education, The George Nethercutt Foundation, The Diana Davis Spencer Foundation, Education for All, Institute for American Constitutional Heritage at The University of Oklahoma, James Madison Program in American Ideals and Institutions at Princeton University, Marshall-Brennan Constitutional Literacy Project, One Generation Away, The Constitution Bee, The Washington Times, and The Harlan Institute.



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CONSOURCE

The Constitutional Sources Project

Over the last 11 years, The Constitutional Sources Project (www.ConSource.org) has connected tens of thousands of American citizens of all ages to our nation's constitutional history by creating a comprehensive, easily searchable, fully-indexed, and freely accessible digital library of historical sources related to the creation, ratification, and amendment of the United States Constitution. Our team not only curates important digital collections of historical materials, but also creates research reports and educational resources to meet the specific needs of scholars and authors, legal practitioners and government officials, educators and students, journalists and the general public.

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- Early Commentaries on the U.S. Constitution.
- Reconstruction-era Materials

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Why a call for civic education and constitutional literacy?

By Julie Silverbrook

James Wilson, a Founding Father from Pennsylvania, once said that “[l]aw and liberty cannot rationally become the objects of our love, unless they first become the objects of our knowledge.” And, yet, countless reports tell us how little American citizens of all ages know about the Declaration of Independence, United States Constitution and Bill of Rights.

Last year, we launched the National Constitutional Literacy Campaign in a Constitution Day special section of The Washington Times.

The mission of the National Constitutional Literacy Campaign is to increase visibility and financial support for the constellation of organizations educating citizens along the learning spectrum — from kindergarten to adulthood — about the American Constitution and our nation's history.

To achieve our goals, we have assembled a broad and diverse group of organizations, including nonpartisan nonprofits, for-profit entities, and groups from both the left and right who believe

in the fundamental importance of constitutional literacy and civics education.

We believe that by harnessing the power of organizations from the right, left, and center, we can reach and, ultimately, educate a much broader segment of the national population.

Campaign partners include: The Constitutional Sources Project (ConSource), Essentials in Education, The National Constitution Center, The Allan P. Kirby, Jr. Center for Constitutional Studies & Citizenship at Hillsdale College, The Joe Foss Institute, American Council of Trustees and Alumni, Intercollegiate Studies Institute, The Ashbrook Center at Ashland University, The Center for Civic Education, The George Nethercutt Foundation, The Diana Davis Spencer Foundation, Education for All, Institute for American Constitutional Heritage at The University of Oklahoma, James Madison Program in American Ideals and Institutions at Princeton University, Marshall-Brennan Constitutional Literacy Project, One Generation Away, The Constitution Bee, The Washington Times, and The Harlan Institute.

A key aspect of the National

Constitutional Literacy Campaign's efforts is the annual publication of a Constitution Day special section in The Washington Times. Newspapers have historically been an important part of civil society, providing information to citizens and serving as a watchdog against abuses by those in power. Newspapers are also the backbone of America's historical record — The Federalist Papers were originally published in a newspaper, as were most of the Anti-Federalist essays; the records of state-ratifying conventions were published in local newspapers, and in many instances those newspaper reports are the only extant records available of the debates that occurred during the ratification period.

Newspapers serve as the first draft of American history as it is occurring. Americans newspapers have preserved records and detailed accounts of the people, issues and events that have shaped and will continue to shape our nation.

Because of Constitution Day's proximity to this year's presidential election, this year's special section is on “The President and the Constitution.”

We hope citizens across the nation

will read, reflect and learn from the scholars and civic education advocates who submitted articles on this timely topic.

High-quality, lifelong civics education is essential for the continued health of the American Republic. It helps ensure that Americans of all ages, in the words of Noah Webster, value “the principles of virtue and liberty,” and that we “inspire them with just and liberal ideas of government and with an inviolable attachment to their own country.”

On the eve of a major presidential election, there is no better time to pick up a newspaper and invest in your own civic education.

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Julie Silverbrook is the executive director of The Constitutional Sources Project (ConSource.org), a nonprofit organization devoted to increasing understanding, facilitating research, and encouraging discussion of the U.S. Constitution by connecting individuals with the documentary history of its creation, ratification, and amendment. Julie holds a J.D. from William & Mary Law School. In 2015, she and venture capitalist Chuck Stetson founded the National Constitutional Literacy Campaign.

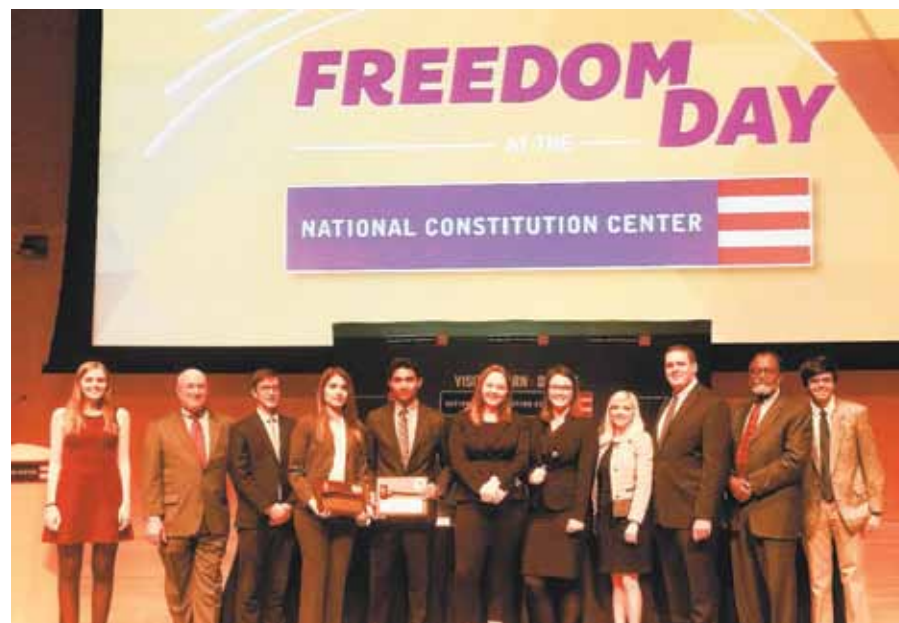
Student competitions spark optimism, civic involvement

By Julie Silverbrook

Every year, thousands of students across the nation take part in civics and history competitions. They work tirelessly to study the United States Constitution, American history and government so they can answer questions in front of panels of esteemed judges or write essays evaluated by experts.

The students who participate in these competitions represent what is best about America. They are engaged, informed, and involved. Many go on to become leaders in their respective fields.

National Constitutional Literacy Campaign partners host several of these annual competitions, including the ConSource-Harlan Institute Virtual Supreme Court Competition, the Center for Civic Education's We the People: The Citizen and the Constitution Competition, the Constitution Bee, the Marshall-Brennan Constitutional Literacy Project's Annual Moot Court Competition, the Nethercutt Foundation Citizenship Tournament, and One Generation Away's Roots of Liberty



Julie Silverbrook (fourth from right), executive director of The Constitutional Sources Project, and Josh Blackman, president of Harlan Institute (third from right), stand with winners and judges of ConSource-Harlan Institute Virtual Supreme Court Competition in April 2016. The students had to write appellate briefs on an affirmative-action case, and argue against other student teams before a panel of attorneys. Image courtesy of ConSource.

national essay contest.

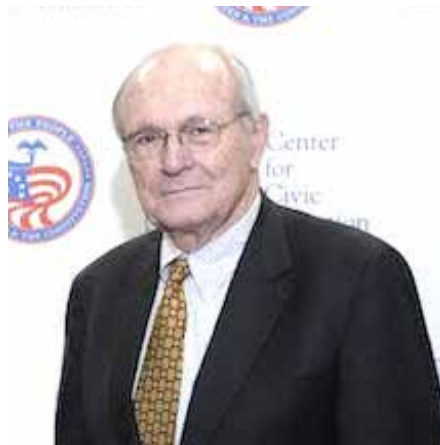
We interviewed the student winners of these competitions to learn more about their views of civic engagement, the Constitution and the balance of powers. Not surprisingly, the views of these young citizens correlate with the views of their adult counterparts. They share similar anxieties and concerns about the future of the country.

Avery Merrill, a 13-year old winner of the Constitution Bee, feels that “[w]e as a country are walking down a very dangerous path.”

Similarly, Ryan Premi, a high school student on the Lincoln High School (Portland, OR) winning class of the Center for Civic Education's national We the People competition, feels that “[a]lthough the U.S. views itself as this shining beacon of freedom, there [are] so many issues that we have at such a fundamental level [and] there are so many abuses of powers, rights and laws that [have caused] so many problems in the USA.”

» see **COMPETITION** | C8

Effective civic education produces informed voters



By Charles N. Quigley

Civic education is the primary way our citizens acquire the knowledge and skills necessary for informed and engaged citizenship. While many institutions, such as the family, the church and social organizations, help forge a person's civic character and propensity to participate, civic education in the schools is the one common experience American citizens share that helps them acquire and learn to use the skills, knowledge and attitudes that prepare them to be competent and responsible citizens throughout their lives.

This is the historic civic mission of schools — a mission considered so important by those who established a free, universal system of public education in the United States that they identified civic education as one of the central purposes of education.

Unfortunately, as the indicators of civic engagement in our nation are dropping, so, too, is the amount of time and attention devoted to civic education in our schools. Without improving the quality and quantity of civic education, we cannot expect that young people will grow up to become informed, capable and engaged voters.

All the Center for Civic Education's K — 12 curricular programs focus upon students' acquisition of the civic knowledge, skills and dispositions necessary for competent and responsible citizenship.

• The We the People: The Citizen and the Constitution program is nationally acclaimed and focuses on the history and principles of the U.S. Constitution. A 2001 survey of We the People alumni revealed that they are better informed and participate at higher rates than their peers. The data suggest that voting rates are significantly higher among alumni than nonparticipating peers surveyed in the 2000 American National Election Study. Eighty-two percent of We the People alumni voted in November 2000, in contrast to a 48 percent turnout by

peers. (For more information on the research of the Center's programs, visit www.civiced.org/research.)

• The Project Citizen program complements the We the People program by helping students learn how to monitor and influence public policy at the local and state government level. Students research a public policy problem in their community, evaluate alternative solutions, develop their own solutions in the form of a public policy, and create a political action plan to convince government officials to adopt their proposed policies. Through the Project Citizen program, which is used in more than 70 other countries, students have influenced laws throughout the nation, learning how to have a voice in government.

• The Citizens, Not Spectators program focuses on ensuring that young people acquire the information and experience they need to be competent and responsible voters. The goal of Citizens, Not Spectators is to increase the voting rate among young Americans by providing engaging voter education to students in fourth to 12th grades. To accomplish this goal, the curriculum demystifies the voting process by teaching elementary, middle and high school students how to cast a vote, how the voting process works, how to become an informed voter and why it is important to cast an informed vote.

The curriculum focuses on hands-on, active learning. Using actual voter registration forms and ballots, students receive instruction in how to register and cast a vote in a simulated election.

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Citizens, Not Spectators can be taught at any time, but is most effective when the course culminates around the time of an actual federal, state or local election.

Participation in this curriculum helps a new generation become active, informed, and engaged citizens prepared to take part in the electoral process. Citizens, Not Spectators was developed through a cooperative effort by the Center for Civic Education and the Aarsalyn Program of the Ludwick Family Foundation.



• The Center's Foundations of Democracy series, used in more than 40 countries, consists of curricular materials for use with students from kindergarten through 12th grade on four concepts fundamental to an understanding of politics and government: Authority, Privacy, Responsibility and Justice. This multidisciplinary curriculum draws upon such fields as political philosophy, political science, law, history, literature and environmental studies. The Authority curriculum is especially appropriate in giving students the background required to make good decisions. It helps students distinguish between legitimate authority and power, and learn how to choose people for leadership positions.

Students analyze the benefits and costs of authority, and evaluate and take and defend positions on the proper scope and limits of authority.

The Center for Civic Education is a nonprofit, nonpartisan educational organization dedicated to promoting an enlightened and responsible citizenry committed to democratic principles and actively engaged in the practice of democracy in the United States and other countries.

The principal goals of the Center's programs are to help students develop (1) an increased understanding of the institutions of American constitutional democracy and the fundamental principles and values upon which they are founded, (2) the skills necessary to participate as competent and responsible citizens, and (3) the willingness to use democratic procedures for making decisions and managing conflict. To learn more about the Center and its programs, visit www.civiced.org.

Voting, and doing so in an informed and thoughtful way, is a fundamental right and responsibility of citizens. But voting during elections is not enough. It is also necessary to keep up-to-date on current events, monitor and attempt to influence public policy, keep our elected officials informed and accountable, and take part in the political and civic life of the community.

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Charles N. Quigley is executive director of the Center for Civic Education.

Civic illiteracy and civic disempowerment



By Dr. Michael B. Poliakoff

Constitution Day provides a critical opportunity for students and citizens to reflect on the importance of America's Founding documents and their relevance to today's culture. In a republican form of government, the dangers inherent in having an ill-informed electorate are real indeed. America's leaders, from the Founding through modern times, have recognized that in order for our system of government to function and thrive, it would by definition require the dedicated and well-informed participation of American citizens.

Through a core education, wrote Thomas Jefferson, a citizen will learn, "to understand his duties to his neighbors and country ... to know his rights; to exercise with order and justice those he retains."

President Kennedy eloquently observed, "There is little that is more important for an American citizen to know than the history and traditions of his country. Without such knowledge, he stands uncertain and defenseless before the world."

The populist stirrings of the 2016 election have the news media suddenly clamoring about the importance of historical and civic literacy as a vital precondition for participation in the American system. Leading historians have reasonably suggested that a council of historians advise the next president of the United States.

But, in truth, these wholly appropriate observations and suggestions are late remedies for problems that have festered for decades.

Recent research from the American Council on Trustees and Alumni documents the civic and historical ignorance of so many of today's college graduates. There is a growing chasm between what the graduates of our colleges and universities actually know — and what they need to know — to fulfill their duties as citizens.

Consider the fact that one-third of college graduates and nearly half of the general population can't identify the Bill of Rights as a name given to a group of Constitutional amendments. More than one in 10 college graduates and nearly a third of the general population were unaware that the U.S. Constitution does not need to be reauthorized every four years.

These findings are representative of an epidemic afflicting American higher education. It's no accident that students are finishing college with such a rudimentary understanding of our country's laws, Constitution and political history. After all, few of their alma maters require them to study these subjects.

value of a U.S. history requirement by allowing such courses as "America Through Baseball" (University of Colorado at Boulder), "Mad Men and Mad Women" (Middlebury) or "Vampires and Other Horrors in Film and Media" (University of California-Davis) to suffice. Is it any wonder, then, that, nearly 10 percent of college graduates think Judith Sheindlin — the television personality better known as Judge Judy — is a member of the Supreme Court?

So it is indeed a welcome development that cultural observers are finally beginning to note the dangers of this erosion in constitutional knowledge. What can higher education leaders do to stem the tide of civic illiteracy?

First, halt the growth of curricular

Institutions should instead require a solid, foundational course in U.S. history or government of all college students. Finally, colleges and universities must rigorously assess the effectiveness of their instruction in American history and government.

There are universities and university leaders who have exercised leadership by giving American history and government its rightful due in the curriculum. Michael Adams, then-president of the University of Georgia, affirmed his school's commitment to a core curriculum in 2013 State of the University address, articulating his belief in the importance of "an understanding of the history of this nation and some shared vision of where it is headed." In 2014, Paul Tribble, president of Christopher Newport University, celebrated his university's establishment of a requirement in American history as "essential preparation for citizenship and career" in a Richmond Times-Dispatch op-ed.

Through focus on our history and our institutions of government, higher education can help to restore the broad awareness of our political and civic past that is necessary for engaged citizenship.

Civic illiteracy, on the other hand, disempowers young citizens, weakening their ability to engage in a democratic government and pass their institutions on to the next generation intact.

One happy result of the unusually contentious presidential campaign of 2016, regardless of one's party affiliation, would be a sober look at what now passes for political discourse and the way that civic illiteracy plays into it. The leadership we get ultimately reflects how well prepared we are, to borrow Ben Franklin's phrase, to keep our republic.

Parents, lawmakers, and voters should demand more of the colleges and universities that ought to prepare Americans for citizenship and leadership. Our students deserve it, and our nation needs it.

Michael B. Poliakoff, Ph.D., is president of the American Council of Trustees and Alumni, an independent, nonprofit organization dedicated to academic freedom, excellence and accountability at America's colleges and universities. In January 2016, ACTA (goacta.org) published a detailed report on civic illiteracy called, "A Crisis in Civic Education," followed by the July release of "No U.S. History? How College History Departments Leave The United States out of the Major."



At some point, students and parents should ask whether courses on reality TV, zombies and "the joys of garbage" are more valuable than a basic grasp of the U.S. Constitution and our three branches of government.

In fact, the vast majority of colleges and universities (82 percent) do not require students to complete foundational coursework in American history. At many of the most highly ranked universities, even a student majoring in history can receive a degree without taking even one course dedicated to U.S. history.

Many institutions also dilute the

bloat. Elective courses with little, if any, relevance to the demands of career and citizenship have multiplied, even as universities have cut back on core curricula. At some point, students and parents should ask whether courses on reality TV, zombies and "the joys of garbage" are more valuable than a basic grasp of the U.S. Constitution and our three branches of government.

A Democratic or Republican election?



By Jeff Hymas

The question on everyone's mind during a presidential election is, "Will we have a Democratic or Republican president?" Of course, that decision is left to the voters — or is it?

If we take a closer look at elections, we can learn some things about the process itself, which yields the far different, fundamental question of, "Will we have a democratic or republican election?"

The Founding Fathers were very clear that the form of government they

were instituting was republican — not democratic (notice, these are terms, not party titles). In a speech delivered by Alexander Hamilton at the Constitutional Convention, he declared, "We are now forming a republican government. Ideal liberty is neither found in despotism or the extremes of democracy, but in moderate governments."

What's so wrong with a democracy and why were the Founders so nervous about it?

A democracy is direct rule by the people. "But that's what America is all about!" you may contend.

However, many of the Founders, including John Adams, shared a low opinion of democracy. He stated, "Remember, democracy never lasts long. It soon wastes, exhausts, and murders itself. There never was a democracy yet that did not commit suicide."

Why is that so? Because the passions of the masses don't lead to ordered civilization or to calm, reasoned arguments about the best way forward. Democracy leads to mobocracy, where a simple majority is the final — indeed the only — determining factor.

In a democracy, redheads, whom the majority hate and want to kill, can be legally disposed of, as long as

They needed a system that was by, for and of the power of the people, but one that checked the human nature tendency of people to abuse such power.

51 percent of the crowd want it so. In a republic, or a rule of law, all such redheads get their day in court, where laws determine their fate.

In a republic, reason and justice prevail. In a democracy, emotion reigns supreme.

It's not that the Founders didn't trust the common man. What they trusted was that it was a common folly among all men — no matter their rank or birth — to be overly swayed by their passions and to act in ways that lead to injustice.

They needed a system that was by, for and of the power of the people, but one that checked the human nature tendency of people to abuse such power.

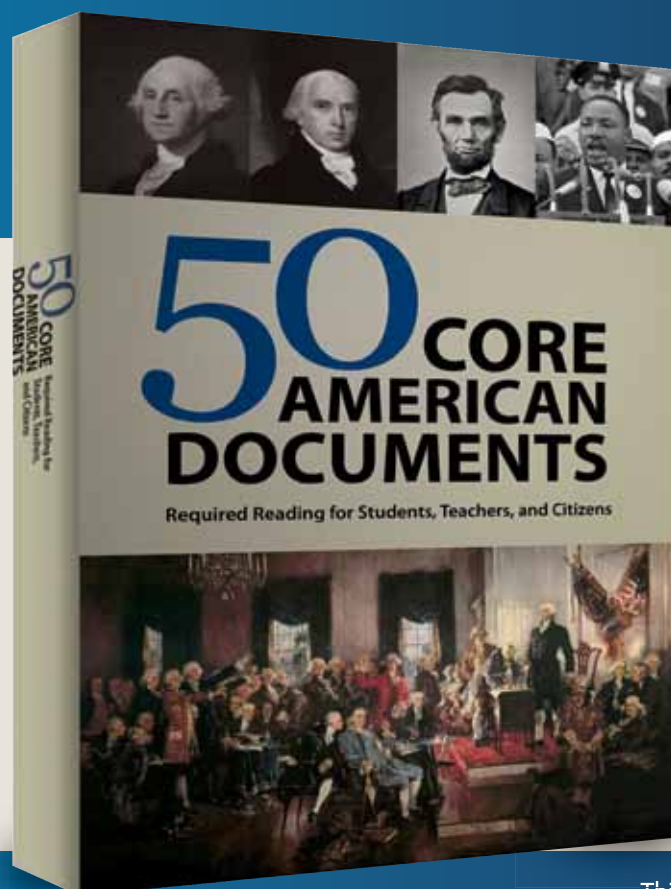
They settled on a representative constitutional republic; a system where

people chose representatives to do their work so as to provide a buffer between the issues and the people; a system where the necessary amount of time and effort to arrive at the right decision was built in, instead of being held hostage by an overzealous individual or group who insisted things be done their way and that they be done immediately.

It is no different when it comes to our Electoral College system, which elects the most powerful governmental office in the world. And, contrary to popular opinion and populist arguments, such a system is not corrupt, it is not archaic and it is not inferior to a system that would employ modern technology to provide for a direct national election. This is because republicanism is based on principles, and principles don't change.

Consider that nearly everyone in America is fed up with empty campaign promises, catchy slogans, robocalls and mudslinging, etc. Would direct election of our president cause those unfavorable elements to increase or to decrease? Would direct election make campaign finance a bigger

» see **HYMAS** | C9



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This collection includes documents such as Ronald Reagan's "A Time for Choosing" speech, Calvin Coolidge's "Speech on the 150th Anniversary of the Declaration of Independence," and the Constitution of the United States.

The Ashbrook Center is an independent center at Ashland University, offering programs with a national scope to restore and strengthen the capacities of the American people for constitutional self-government.



By Kyle Kondik

When the Founding Fathers created our electoral system, they might have been surprised to discover, more than two centuries

later, that these two things could be true at the same time: One, that the country had embraced mass democracy, including giving the franchise to men and women of all races, incomes and classes; and two, that despite doing that, the country was still using the Electoral College system that they had implemented at the dawn of the country — a system that was not designed with the intention of promoting mass democracy.

Grafting the idea of mass democracy onto institutions that may not have been originally designed to support them is not limited to the Electoral College. The way we nominate presidential candidates through conventions is also a somewhat clunky system for this modern age.

Up until the 1970s, voters did not have

‘Tyranny of the swing states’?

all that much direct say in the selection of delegates to national conventions, even though primaries emerged early in the 20th century. But even though voters now greatly control who the delegates to the convention are, and, thus, the nominees as well, the conventions live on anyway — an antiquated institution that, nonetheless, may eventually revert to its traditional role of selecting the nominees if the voters fail to produce a clear verdict. That’s just like how the House gets to pick the president if general election voters fail to give any candidate a majority of the electoral votes, which hasn’t happened since 1824.

The flaws of the Electoral College are clear to anyone who lived through the 2000 election, where the national popular vote winner didn’t actually win the election. But there are other problems, ones that are less obvious.

For one, the Electoral College overrepresents the small states. Each state (and the District of Columbia) are guaranteed at least three electoral votes, even if their population doesn’t merit it. That’s because the electoral votes represent a state’s members of the House and Senate. So even the smallest state, with just a single House member, gets three votes because that state also has two senators. That’s why we have 538 electoral votes — those votes represent 435 House members, plus 100 senators, plus three extra votes for Washington, D.C., which gets a vote for president but not voting members of Congress. This equals 538 total.

But beyond that, the Electoral College, in modern times, also enforces on the

country the choices of just a relatively small amount of voters. That’s because, for all practical purposes, most of the states are so uncompetitive politically that only a handful of states really decide who the president is.

As I explore in my new book, “The Bellwether: Why Ohio Picks the President,” a truly nationalized election strategy used to be reasonable in presidential

But beyond that, the Electoral College, in modern times, also enforces on the country the choices of just a relatively small amount of voters. That’s because, for all practical purposes, most of the states are so uncompetitive politically that only a handful of states really decide who the president is.

elections. In 1960, Richard Nixon fulfilled a promise to campaign in every state (his opponent, John F. Kennedy, campaigned in almost all of them), and while Nixon’s strategy might have helped cost him the election by putting him in sparsely populated Alaska on the eve of Election Day, it wasn’t necessarily crazy: 20 of the 50 states were decided by five points or less in that very close election. That was

also true in 1976, when Jimmy Carter narrowly defeated Gerald Ford.

Nowadays, the map is more fixed: Just four of the 50 states were decided by five points or less in 2012 (Florida, North Carolina, Ohio and Virginia), and 40 of the 50 states have voted the same way in the last four presidential elections. Generally speaking, candidates and campaigns focus almost all of their time, money and staffing on just a handful of states. (Donald Trump has raised eyebrows by holding campaign events in some reliably Democratic states like Connecticut, Maine and Washington, although most observers regard those visits as a curious and likely mistaken strategic decision by an unconventional campaign.)

Unlike some of the other complaints about the Electoral College, like the possibility of a national vote loser capturing its majority or its overrepresentation of small states, its empowerment of a small group of states that vote close to the national average may only be temporary, although it appears the country’s states are moving further apart politically. But for now, one can add the “tyranny of the swing states” to the list of reasonable concerns Americans can have about the way we pick presidents.

Kyle Kondik is managing editor of Sabato’s Crystal Ball, a nonpartisan newsletter on U.S. elections produced by the University of Virginia Center for Politics. He is also the author of “The Bellwether: Why Ohio Picks the President” (2016, Ohio University Press).

COMPETITION

From page C4

Despite expressing deep concerns about where the country is headed, most of the students expressed positive views about the future. They draw this optimism, in part, from their experiences with student competitions, which showed these young citizens how to effect positive change at the local, state and national level.

Tanya Reyna, a winner of the ConSource-Harlan Institute Virtual Supreme Court Competition, noted that while her local community in Texas suffers from “an influx of drugs and criminals” and has dampened her views about the future of her community and the nation, her experience with the Virtual Supreme Court Competition “eased [her] apprehension” about the future. She said that meeting students, lawyers, professors and judges willing to take time out of their busy schedules “to inform younger generations

of citizens about our legal system,” demonstrated to her that “as long as there are citizens like them, America will continue to hold a bright future.”

Similarly, David Ndiyo, a winner of the Marshall-Brennan Constitutional Literacy Project’s Moot Court competition, shared that the experience changed his view of the future of this country substantially. Before taking part in the project, he said, “I have to admit I was slightly worried about how little young people cared or knew about how this nation works, about the Constitution, and about how they affect their day to day lives, but the simple fact that a program such as this exists has given me reason to ease those fears. [Meeting other] people my age ... that are aware and feel so strongly about the Constitution and their citizenship fills me with hope for the future of our country and now I feel we will be in good hands in the future because we will be led by a group of thoughtful individuals who work well in a collaborative environment and care about their communities.”

Furthermore, these young people

have a much richer and deeper appreciation for the value of civic learning and engagement.

Joshua Ross, a winner of the Nethercutt Foundation Citizenship Tournament, believes that “civic engagement is a lot more than marking bubbles on a ballot slip. It requires active involvement in local, state, and national politics. It requires standing up for what [you] believe in. It requires being ‘anxiously engaged in a good cause.’”

Chase Merrill, another Constitution Bee winner, plans to share what he’s learned with people he knows and pledges that when he is old enough to vote he will “help elect honest, wise, and moral men and women to be our representatives.” He believes that a “good citizen studies American history and current events, is respectful of the rights of other citizens, and upholds and defends the principles of the Constitution.”

Our hope is that as we enter the final leg of the 2016 election, citizens of all ages reflect on the views of these incredible young citizens.

For them, in the words of 13-year old Avery Merrill, the Constitution “provides for the three branches of government to check and balance each other, but it is the people’s responsibility to check them all.”

We can ensure that citizens are prepared to fully and ably serve in that role by supporting lifelong civics instruction and the many civics competitions offered to young people all over the country. You can learn more about these competitions and the organizations that run them at www.ConstitutionDays.org.

Julie Silverbrook is the executive director of The Constitutional Sources Project (ConSource.org), a nonprofit organization devoted to increasing understanding, facilitating research, and encouraging discussion of the U.S. Constitution by connecting individuals with the documentary history of its creation, ratification, and amendment. Julie holds a J.D. from William & Mary Law School. In 2015, she and venture capitalist Chuck Stetson founded the National Constitutional Literacy Campaign.

Get in the game: Empowering America's next generation to vote

By Meg Heubeck
and Gerard Ferri

Millennials may be turned off by the current political system — but now there's a new platform to engage them. A recent poll from Gallup entitled, "How Millennials Want to Work and Live" (<http://www.gallup.com/reports/189830/millennials-work-live.aspx>), found that Millennials are politically indifferent and self-identify as politically moderate or independent.

Moreover, in 2012, only half of 18-to-25-year-olds eligible to vote made it to the polls, compared with 72 percent of the elderly, according to the Center for Information and Research on Civic Learning and Engagement.

If Millennials feel disenchanted about the political system, it might be directly related to the fact that they don't make it to the polls — elected officials are loathe to create policy for those who have had little influence in electing them. So Millennials' inaction causes disenchantment — and their disenchantment feeds their inaction.

How to end this vicious cycle?

America's Mock Election was created in the summer of 2015 in reaction to this pattern of nonparticipation in state, federal and local elections (state and local elections garner even lower youth turnout).

The mission of America's Mock Election is to make significant strides in creating the most comprehensive and powerful student-voter education experiences for presidential and local political races for 2016 and beyond.

America's Mock Election founder Gerard Ferri is dedicated to creating a dynamic election program that will ignite an emotional spark and lead students towards a lifetime of voting. Ferri has experience with youth and mock elections, having run a similar campaign in 1992 with CNN.

This time around, Ferri is partnering with the University of Virginia's Youth Leadership Initiative. The university's Center for Politics is widely recognized as a leader in political analysis, as well as civic education, and its Youth Leadership Initiative boasts over 70,000 registered educators and provides an annual mock election that is second to none.

Ferri also brought in other leading civic organizations, as well as philanthropist John Herklotz, to build his dynamic election program. By pulling



the talents of many great organizations, such as The Constitutional Sources Project, Discovery Education, Envision Education and the Center for Civic Education, America's Mock Election will for the first time put the spotlight on kids in an exciting new way. Partnering organizations have offered ideas, networking support and logistical guidance throughout the past year.

The Youth Leadership Initiative's 2016 National Mock Election will open its polls on Monday, Oct. 17. Polls will remain open through 5 p.m. EST on Oct. 27.

Once polls have closed, the results will be sent to America's Mock Election, where they will be used to produce a nationally broadcast online program to be shown in classrooms across the nation. The UVA Center for Politics' Youth Leadership Initiative will provide curriculum materials, including lesson plans comparing the candidates, downloadable decorations, and a customizable ballot for all registered teachers. The ballot will include the offices of president and vice president, U.S. House and Senate, and all gubernatorial races. Teachers can add local races and referenda to make the experience more complete.

"It is really important to us that teachers have the most authentic experience possible, so that when students get to the polls after turning 18, they are comfortable and ready to exercise their right," said Meg Heubeck, director of instruction for the Youth Leadership Initiative.

The initiative's team contacts each state's board of elections to determine the actual ballot order and replicates that on the mock election ballot. "There is evidence that mock elections are successful in influencing a young person's decision to vote upon turning 18," Heubeck added. "This is what inspires both YLI and AME to make the experience as accurate as possible."



On Friday, Oct. 28th, America's Mock Election will meet in Annapolis, Maryland, to film the National Mock Election Results show. Young people will host the event, which will include special guests from supporting organizations introducing the mock election results for each state.

The program will make its way into classrooms across the nation the week prior to Election Day on Nov. 8.

By releasing the results prior to the actual election, students will have a chance to be in the spotlight and be supported by the general public for

their efforts.

"This is all about the kids and the future of America. We live in an apathetic age. We have to change that by taking it to the streets!" Ferri said. "Getting the kids to vote is a crucial first step in them becoming good citizens."

To register to participate in the Youth Leadership Initiative Mock Election, teachers should visit www.youthleadership.net and visit the Mock Election page to prepare their students.

For more information about America's Mock Election's Mock Election Results Program and other exciting, election-related incentives, visit www.americasmockelection.org.

Following the election, America's Mock Election promises to continue inspiring such civic engagement through other programs, including celebrity role model-type concerts.

"It is up to all of us to bring young people into the fold. Our future depends on it and I for one am here to make sure it happens," said Ferri.

Meg Heubeck is director of instruction for the Youth Leadership Initiative at the University of Virginia Center for Politics, and Gerard Ferri is the executive director of America's Mock Election.

HYMAS

From page C7

or smaller issue? Would direct election reward reason and logic, or would it instead reward impassioned demagoguery on special interest platitudes?

A representative system demands that popularity yields to principles.

The 10th Amendment offers interesting insight into this issue. It declares, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Clearly, each state can decide how it votes (as is evident in the Electoral College process, where states get to decide how to bind their Electoral College delegates), and the people get to decide for themselves how to choose their nominees (as is evident in the ability of political parties — private entities — to choose between

primary and caucus systems, each of which has its own pros and cons in relation to the question of direct election.)

In short, our republican system applied to elections favors those who get involved and stay involved in being an informed and active member of the electorate. A newcomer who has sat back and kept his distance from the political process has a hard time making a huge influence over presidential election results, whereas an individual who has worked hard to stay informed and involved will find that she understands the system and knows what to do and how to do it in order to be influential.

Some might call that type of system "rigged." The Founders would call it "republican."

Jeff Hymas is the founder and president of In the Constitution, an organization dedicated to teaching the true principles of freedom found in the U.S. Constitution. Its first national, online Constitution Bee was completed in April with 725 participants in 42 states.

Congress and the President

Founders intended 'tension' in co-equal branches



By George Nethercutt

Two of the three branches of our government — Congress and the White House and its executive branch — are used to interacting with each other. But they don't routinely interact with the Supreme Court.

When the president represents one political party and Congress the other, conflict is automatic. The Constitution, when it made the judicial, executive and legislative branches co-equal, assured that tension existed between them. But when half or all of Congress shares the same political party affiliation as the president, the tension sometimes becomes subservient to political self-interest.

Presidents craft their own legislative agendas. President George W. Bush wanted prescription drug coverage to be included under Medicare so that seniors could better financially manage their health care needs. President Obama wanted "Obamacare" to pass Congress

and become law, and it did — without any Republican votes.

Some congressional members of the president's political party wanted to vote against such government-expanding measures, but party leaders exhorted them to "support the president," alleging that it would be a failure for the president if they didn't vote affirmatively. As a former member of Congress, I heard this argument repeatedly and felt the pressure intended.

Ideally, members of Congress should vote their conscience, doing what's right for all Americans. The Constitution is silent about a congressional obligation to a president with the same political party affiliation. It doesn't offer a complete instruction booklet for any of the three branches. Its guidelines are broad. Presidents and members of Congress are accorded great freedom when elected, as the Constitution intended. I recall being told at my freshman orientation, before being sworn in, that no one could control how I represented my constituents. I was free to be diligent and responsive to their needs or do nothing, though doing nothing would likely make me a one-term congressman, unable to be re-elected. Every member of Congress is accorded such freedom, and so are presidents.

Politically savvy presidents communicate regularly with members of the Senate and House of Representatives, and vice versa. Any president who doesn't communicate is letting America down.

Presidents are best equipped to build personal relationships that can withstand policy differences. Presidents are special, and are accorded great respect by federal legislators. President Lyndon Johnson

was a master at persuading others. His support for the Civil Rights Act in 1964, securing votes of previously anti-civil rights senators, made the difference. Passage was secured by his using personal charm and relying on relationships with members of Congress.

The Constitution doesn't mandate such relationships, but any wise president who expects implementation of his legislative agenda must develop a workable relationship with Congress. Each needs the other, as intended by our Constitution.

Traditionally, Congress and the president have had an antiseptic relationship with the Supreme Court. Court members don't regularly interact or socialize with Congress or the president.

That's because the Supreme Court is intended to remain above any perception of political influence in the decisions it renders — and that's good for the integrity of the American justice system.

Out of respect, some Supreme Court justices attend the president's annual State of the Union remarks in the House Chamber, but that's a phenomenon only commenced in the last century. For the first years of the American government, the president, under the Constitution's Article II, Section 3, delivered the State of the Union in writing to Congress, though some early presidents addressed Congress orally. Delivering State of the Union remarks in person started under President Woodrow Wilson in the early 1900s. Even later presidents delivered written remarks, though. In modern times, Supreme Court justices have been invited to the ceremony. Modern presidents have upheld the tradition, and the high court

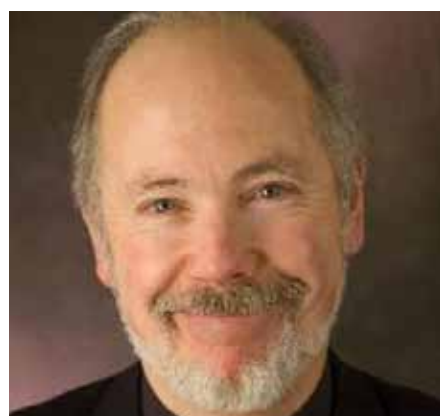
has been represented at such ceremonies.

But presidents and members of Congress are expected to socialize regularly. Members are routinely invited to the White House for its annual Christmas party and seasonal picnics. At events like these, presidents have the opportunity to mingle with members, and White House staff members get to know congressional committee members and vice versa. Otherwise, opportunities for such interactions are more limited.

Legislating for the good of America isn't exclusive to one branch of government. The Founding Fathers intended legislative interaction between the president and Congress. The judicial branch was intended as an objective arbiter of the constitutionality of actions taken by the other two. As such, interaction with the judicial branch to avoid the appearance of political influence has been limited and respected by the other two branches.

The Founders were geniuses when it came to crafting a workable government. Limiting the powers of each branch, restricting their interactions and being ultimately subservient to the Constitution have been the hallmark of the American government since 1776. We Americans can only hope that such principles will be upheld in perpetuity.

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George R. Nethercutt, Jr., (R-Washington) was a member of the House of Representatives (1995-2005). He is an author and commentator, as well as founder and chairman of the George Nethercutt Foundation, a nonprofit, nonpartisan organization dedicated to fostering civic involvement.



By Dr. Robert J. Spitzer

Election night 2010 was a smashing success for congressional Republicans. In a reversal of fortunes after Democrat Barack Obama's 2008 presidential victory, the GOP recaptured control of the

House of Representatives after having lost it to the Democrats four years earlier.

On the night of their triumph, Ohio Congressman and soon-to-be Speaker of the House John Boehner said, "It's the president who sets the agenda for our government."

Huh?

Boehner was neither betraying his party nor caving in to the wishes of the Democratic president, a fact well demonstrated by the inter-branch gridlock to come.

Instead, he was acknowledging what has become the accepted standard for presidential-congressional relations in the modern era: that the president is

legislator-in-chief.

Many past presidents have faced divided party control between the two elective branches, including Eisenhower, Nixon, Reagan, Clinton, and both Bushes. While the likelihood of presidential success in Congress nosedives at such times — for Obama, the rate at which Congress voted with his preferences was almost 97 percent in 2009 and almost 86 percent in 2010, dropping to 57 percent in 2011 — Congress still expects a menu of presidential preferences to help guide its agenda.

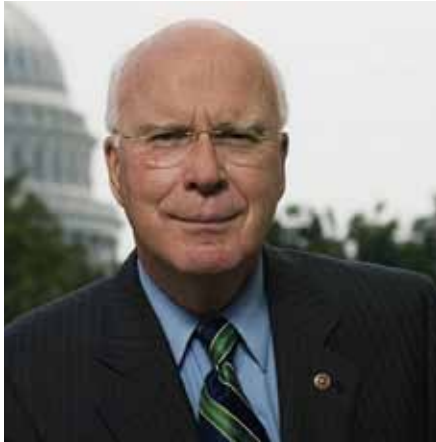
Compare this with a report Congress issued in 1817 in response to President James Monroe's threat to veto a bill

concerning internal improvements: It warned darkly that this veto threat meant that "the Presidential veto would acquire a force unknown to the Constitution, and the legislative body would be shorn of its powers from a want of confidence in its strength." In the eight years of his popular presidency, Monroe vetoed exactly one bill.

Or take Sen. Daniel Webster's vehement exception to a suggestion that President Andrew Jackson should be consulted on the drafting of legislation in order to avoid a possible later veto. Such a step, Webster thundered,

» see **SPITZER** | **C11**

Constitution Day: Protecting our democracy



By Senator Patrick Leahy

When the Framers signed the United States Constitution, they created a federal system of government with three co-equal branches, designed to work cooperatively but also designed to serve as checks and balances. As we celebrate the 229th anniversary of the signing of the Constitution, Americans across this great nation take time to reflect on its enduring legacy and the many challenges that our constitutional system of government faces.

Those of us who took an oath to uphold the Constitution — and that includes every U.S. senator — have a duty to ensure that our government — created by and sustained by our Constitution — continues to function for the good of the American people.

The Senate plays a unique role in relation to the president and the judiciary. Article II, Section 2, Clause 2 of the Constitution provides that the president “with the Advice and Consent of the Senate, shall appoint ... Judges of the Supreme Court.” With this language, the Framers imposed on the Senate the duty to consider a president’s judicial nominees.

This year, unfortunately, Senate Republicans decided to shirk that fundamental constitutional duty. Within hours of the news in February that Justice Antonin Scalia had passed, Senate Republican leadership declared that they would block any consideration of President Obama’s nominee to the Supreme Court. No hearings. No consideration by the Judiciary Committee or committee vote. No up-or-down confirmation vote in the Senate.

This partisan obstruction of a Supreme Court nomination is not only unprecedented but it is contrary to the constitutional design of the Framers. Senate Republicans’ shutdown of any consideration of the Supreme Court nominee diminishes both of the other co-equal branches of government. It imposes a novel time limit on one of the most important constitutional roles of our president. And it diminishes the role that our highest court can play while it operates with a long-standing vacancy.

Six months ago, President Obama fulfilled his constitutional duty by nominating an exceedingly well-qualified jurist to serve on the Supreme Court: Chief Judge Merrick Garland. He is a dedicated public servant who has served for nearly two decades on the D.C. Circuit Court of Appeals — known as the second highest court in the land. He has earned bipartisan praise for being an undeniably fair-minded judge. In 2010, Republican Senator Orrin Hatch said Chief Judge Garland would be “a consensus nominee” and there was “no question” he could be confirmed to the Supreme Court.

Instead of evaluating his qualifications and reviewing his record, however, Republicans have blocked his nomination on the premise that a president should not be able to appoint a Supreme Court justice in the final year of the term of office.

Such a limiting provision on the

president’s powers is found nowhere in the Constitution. There is no “election year” exception in Article II. And the history of our country reflects this fact. Vacancies on the Supreme Court are rare. Vacancies in even-numbered years are rarer still. Yet, more than a dozen Supreme Court justices have been confirmed in presidential election years. Most recently, Justice Anthony M. Kennedy was confirmed by a Democratic-led Senate during President Reagan’s final year in office in 1988.

This partisan obstruction of a Supreme Court nomination is not only unprecedented but it is contrary to the constitutional design of the Framers. Senate Republicans’ shutdown of any consideration of the Supreme Court nominee diminishes both of the other co-equal branches of government.

Appointments to the Supreme Court are among the most important and consequential powers that a president possesses under our Constitution. And the American people have twice voted in record numbers to elect President Obama to exercise this power. In doing so, Americans have granted him the same constitutional authorities of all of our previous presidents for *each* year he serves.

Moreover, the American people rightfully expect their senators — Republicans and Democrats alike — to continue to do their jobs regardless of whether it is an election year. This year should be

no different. We should do our jobs in the Senate rather than do damage to our independent judicial system.

This summer when the Supreme Court completed its most recent term, the damage of Republican obstruction became clear. In seven cases, the diminished high court could not serve as the final arbiter of law when it was unable to garner a majority to issue a final decision on the merits. In another death penalty appeal — a matter of life and death — the justices also deadlocked. And just last month, the high court deadlocked on consideration of an election law case that will impact the constitutional rights of millions of voters ahead of this year’s election.

Next month, the Supreme Court will start its new term and begin hearing cases involving pressing constitutional questions that affect millions of Americans. There is still time for the Senate to correct its course and consider Chief Judge Garland’s nomination. There should not be an empty seat on the bench when the Supreme Court convenes on the first Monday in October.

If there is, it will represent the disrespect that Senate Republicans have not only for the president’s powers under the Constitution but for the independent judiciary that the Constitution created.

On this Constitution Day, I hope that all Americans will take a moment to consider the damage that this partisan obstruction is having on our constitutional system of government. I take seriously the oath I took to uphold the Constitution. I hope that all senators will commit to making sure that our constitutional system of government endures for the next generation.

Sen. Patrick Leahy, Vermont Democrat, is ranking member of the Senate Judiciary Committee. Elected in 1974, he ranks first in seniority in the Senate.

SPITZER

From page C10

“proceeds to claim for the President, not the power of approval, but the primary power, the power of originating laws.” Another of the great legislators of the 19th century, Henry Clay, condemned at length the very idea that presidents should be consulted about legislation before it was ready to send to them for signature or veto. Such prior consultation, Clay warned, was “totally new ... and utterly contrary to the theory of the Government.”

Some presidents of the time shared this belief. In his inaugural address, President William Henry Harrison also rejected any idea that Congress should

consult with the president first on the wisdom of legislation as a way to avoid a veto. “To assist or control Congress in its ordinary legislation could not, I conceive, have been the motive for conferring the veto power on the President.”

Harrison’s successor, John Tyler, provoked congressional fury for using his veto power to block popular legislation — not 50 times, but exactly 10 times in his four-year term. After Tyler’s second veto, Clay complained of Tyler’s “constant encroaching ... on the Legislative authority.” After his third veto, one congressman’s extended harangue included a comparison of Tyler to “Judas Iscariot, who sold his Master for thirty pieces of silver. He was both a traitor and an ingrate. Thus the parallel between him and the President starts fair; but

to assert that it continues throughout, would be doing injustice to the memory of Judas, who repented, returned the money, and hung himself.”

The crescendo of anger over Tyler’s vetoes culminated in a vote, unsuccessful, on articles of impeachment. Two of the counts included allegations of abusive veto use. Ironically, much of the anger over the vetoes stemmed from the very fact that Tyler, along with many at the time, felt it inappropriate for the president to negotiate with Congress over legislative language before it reached the president’s desk.

If those who governed early in our history possessed the most direct knowledge of the intent of the Constitution’s Framers regarding executive-legislative relations, then we must

congratulate their political descendants for their wisdom in departing from such a narrow and wooden view.

The president’s far greater involvement in legislative matters in the last century is a sign of effective governance and political vigor. Sadly, the hyper-gridlock of the last few years threatens a throwback to unwelcome past dysfunction.

Robert J. Spitzer, Ph.D., is Distinguished Service Professor and chair of the political science department at SUNY Cortland, and is the author of several books on the presidency, including “President and Congress” and “The Presidential Veto.”

The battle to 'keep' the American Republic



By Senator Mike Lee

Perhaps the most famous words spoken on the day we commemorate this week — September 17, 1787 — were those of Benjamin Franklin. After the Constitution had been signed and the convention adjourned, Franklin was asked by a group of curious Philadelphians gathered outside Independence Hall what type of government the delegates had created. “A republic,” he replied, “if you can keep it.”

This pithy response — more of a challenge than an answer — is so memorable and quotable that we tend to repeat it more often than we pause to reflect on its meaning. So on the 229th anniversary of Mr. Franklin’s famous proclamation, it’s worth asking ourselves: What exactly does it take to “keep” the American republic?

To my mind, one of the best answers to this question was given by Abraham Lincoln in an address he delivered in 1838, at the ripe old age of 28, to the Young Men’s Lyceum of Springfield, Illinois. The subject of the speech was “the perpetuation of our political institutions,” which he described as the central and perennial task of republican citizenship.

Lincoln said that every generation of Americans has the responsibility to pass along to its descendants the “political edifice of liberty and equal rights” that had been established by the nation’s Founders — our “hardy, brave, and patriotic [...] ancestors.” He insisted that this process of perpetuation — the project of “keeping” the republic — would succeed only if the American people respected the nation’s laws and viewed the government with affection, rather than suspicion or derision.

The “strongest bulwark of any Government” is “the attachment of the People,” Lincoln declared. If “the laws be continually despised and disregarded,” and if the people become estranged from their public institutions, losing trust in the officials charged

with making and enforcing the law, “this Government cannot last.”

Lincoln was right. At the heart of the American Republic is a social compact based on mutual trust between the people and the representatives they elect to administer government on their behalf. Government officials are given power to make and enforce the laws on the condition that they respect and remain accountable to the interests and concerns of the people they represent.

The public’s trust in government can’t be blind. It is made possible by clear lines of accountability that connect

accountability — and the public trust that they enable — have been corroded by the Administrative State: the vast array of rule-writing departments, agencies and bureaus that make up the federal government’s Executive Branch. The “laws” they write — tens of thousands of pages of dos and don’ts every year — are not enacted by the people’s elected representatives in Congress. Instead, they are imposed unilaterally by bureaucrats who never stand for election and, in most cases, whose names the American people will never know.

What’s worse, much of the lawmak-

believe this crisis of confidence in America today is a grave threat to our ability to preserve our public institutions for the next generation. That’s why, earlier this year, I launched the Article I Project — a new network of policymakers working together to develop a legislative agenda that will reclaim Congress’s constitutional lawmaking powers that today are being improperly exercised by the Executive Branch and thereby restore the democratic accountability on which our system of government depends.

If we are to “keep” our republic, as



SHUTTERSTOCK

General George Washington, Major George Ross, Robert Morris, Betsy Ross with the first American flag, approved by Congress on June 14, 1777.

the people to policy and policymakers. Citizens must first be able to identify the government officials responsible for unpopular policies, and then be empowered to change those policies by voting

power now exercised by the Executive Branch was intentionally given away by members of Congress, over the course of decades, to escape the hard work and stringent accountability

Benjamin Franklin challenged us to do 229 years ago, we must rebuild the American people’s trust in the nation’s public institutions. And the only way to do that is by finally making Congress responsible again — both in the sense of discharging its constitutional duties and making itself accountable for the consequences.

Sen. Mike Lee, Utah Republican, serves on the Senate Judiciary Committee. In May, he and six other members of Congress released a policy brief called, “Leashing Leviathan: The Case for a Congressional Regulatory Budget,” to highlight the need for legislative and regulatory reform.

What’s worse, much of the lawmaking power now exercised by the Executive Branch was intentionally given away by members of Congress, over the course of decades, to escape the hard work and stringent accountability inherent in constitutional lawmaking.

those officials out of office. This is why the framers of our Constitution made the most powerful branch of the federal government — Congress — also the most accountable to the people.

But today, these lines of

inherent in constitutional lawmaking.

No wonder only 19 percent of Americans say they can trust the government always or most of the time — meaning that 81 percent don’t!

Following Abraham Lincoln, I

Congress and the new imperial presidency



By Dr. Matthew Spalding

The greatest political revolution in the United States since the establishment of the Constitution has been the shift of power away from the lawmaking institutions of republican government to an oligarchy of unelected experts who rule over virtually every aspect of our lives.

Congress is a significant cause of the problem. Under the original design, Congress's role was to deliberate about the common good and pass laws of general applicability. But instead, it built the bureaucratic state by delegating its powers to the innumerable agencies it created with broad power to make rules over individuals, industries and vast aspects of society.

The result is that most of the actual decisions of lawmaking — decisions previously the constitutional responsibility of elected legislators — are in the hands of administrators whose “rules” have the full force and effect of laws passed by Congress.

And as Congress expanded the bureaucracy under executive control — creating and delegating while neglecting budgeting and relying on after-the-fact oversight — it was also empowering the presidency and fostering the executive overreach prominent today. Like never before, the president can direct the bureaucracy — through executive orders, administrative discretion, creative interpretations of poorly written legislation, and willful neglect and disregard of the law — to policy ends, with or without the consent of Congress.

The result is an increasingly unbalanced structural relationship between a powerful executive-bureaucratic branch willing to exert administrative power and a weak legislative branch unwilling to exercise its constitutional powers to check the executive or rein in a metastasizing bureaucracy.

If this becomes the undisputed norm, accepted not only among the academic and political elites but also by the American people, as the defining characteristic

of the modern state, it imperils our great experiment in self-government.

But Congress is also the key to the solution.

It may be a prudent option to assert checks and balances through litigation; a successful lawsuit could prevent things from getting worse. But let's be clear: courts are not going to solve this problem.

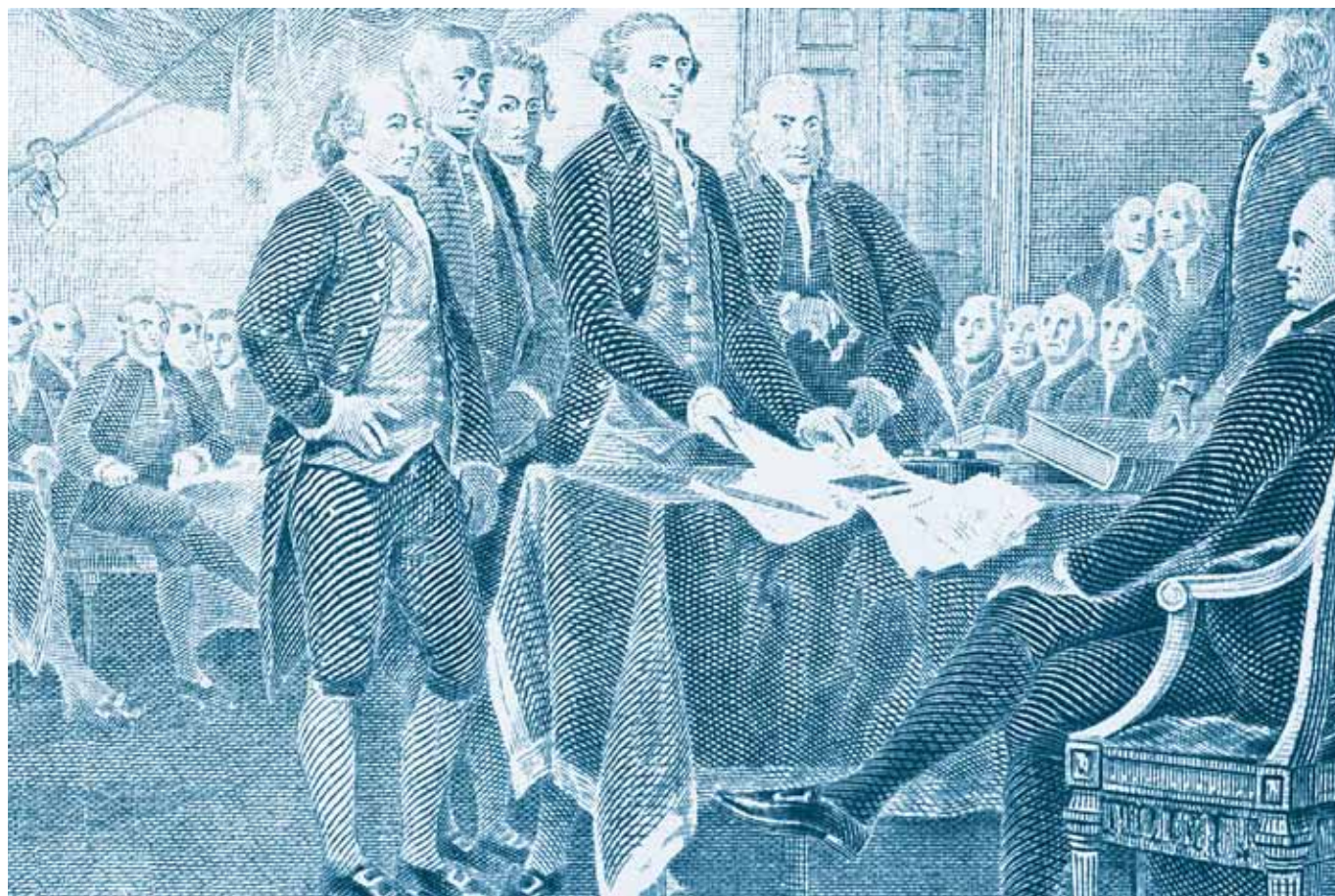
Resolution will only come when Congress rebuilds itself as a co-equal branch of government in our separation of powers system. This is the solution envisioned by our Founders, and is consistent with popular government.

congressional intent, controls rather than widens executive discretion, and insists on rather than undermines judicial review of executive agencies. Better lawmaking up front will result in real oversight after the fact. Regular legislative order, especially the day-to-day back-and-forth of authorizing, appropriating and overseeing the operations of government, will do more than anything to restore the powers of Congress and get control of our unlimited government.

The one place where the power of Congress is not entirely lost — and where there is real opportunity for gaining leverage over an unchecked execu-

appropriated) by Congress.

Fully restoring constitutional government will require more than this, but these steps will go far in rebuilding Congress and restoring the balance in our constitutional system. Utah Sen. Mike Lee and Texas Rep. Jeb Hensarling have launched a project of House and Senate conservatives to reclaim Congress' legislative powers. The central part of House Speaker Paul's Ryan's policy agenda, A Better Way, is a legislative plan for government reform — focusing on checking executive overreach, reining in regulators, reestablishing budget control, and enforcing transparency — that lays out



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The Constitution is grounded in the principle that governments derive their just powers from the consent of the governed. This means that the first step is for Congress to confirm its representative legitimacy by ceasing to delegate its

power — is Congress' power of the purse. Done well, it will prevent Congress from continually getting cornered in large, messy and unacceptable omnibus budgets at the end of the year, the settlement of which works to the advantage of the

the most extensive agenda for constitutional restoration in decades.

If Congress does not act to correct the growing tilt toward executive-bureaucratic power, the structure of our government will be fundamentally, and perhaps permanently, altered. But it's not too late. Congress only need find its atrophied constitutional muscles, think strategically, and once again act as the first branch of constitutional government, regardless of who is the next president.

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Matthew Spalding, Ph.D., is the associate vice president and dean of Educational Programs for Hillsdale College in Washington, D.C., overseeing the Allan P. Kirby Center for Constitutional Studies and Citizenship.

The Constitution is grounded in the principle that governments derive their just powers from the consent of the governed.

power to unelected bureaucrats and to assert its authority to approve or reject any new rules, and reassess and reauthorize any existing ones.

Congress needs to relearn the art of lawmaking so that legislative language clarifies rather than confuses

executive. Strategically controlling and using the budget process will turn the advantage back to Congress, forcing the executive to engage with the legislative branch and get back into the habit of executing laws (and administering programs) enacted (and authorized and

The Courts and the President

The president, the Constitution and the Supreme Court



By Elizabeth B. Wydra

As we celebrate Constitution Day in the middle of a pitched election fight with deep consequences for the country, there is no better time to think about the president and the Constitution. While our Founders created three co-equal branches of government in a system of checks and balances, the person who holds the office of president is the single most recognizable, individual protagonist at any moment in our nation's constitutional story.

The president is the lightning rod for our constitutional hopes, dreams and criticisms. No doubt many Americans across the ideological spectrum have at one time or another grown frustrated with those who hold — or seek to hold — the office of president, and have echoed the cry of frustration we heard over the summer from Gold Star parent Khizr Khan: “Have you even read the United States Constitution?”

To read the Constitution is to read a story of progress and promise. The 18th century Constitution was written by revolutionaries who ushered in an unprecedented system of self-government

— America's birth begins with a thunder-clap of democratic sentiment and love of liberty, creating an enduring constitutional republic.

But these revolutionaries also had the wisdom to know that they were just beginning the story — and thus were sure to write Article V, which provides a mechanism for amending the Constitution. And We the People have done just that: Successive generations have amended the Constitution to remove the stain of slavery from our Founding document and instead enshrine equal citizenship for Americans, regardless of color, creed, class or gender; declare that all persons, immigrant or citizen, are entitled to the equal protection of the laws and due process; and require that states as well as the federal government respect fundamental rights, including the freedom to worship as one pleases (or not at all), the right to impartial and equal justice in our courts and the liberty to live, love and learn free from discrimination.

Any president, of any political party, should be faithful to this constitutional text and history, and embody the values expressed in our Constitution's arc of progress. Our Constitution needs the country's leaders to make sure that its promises are not merely promissory notes that can't be cashed, to invoke the powerful words of Dr. Martin Luther King Jr.

For example, the Reconstruction Amendments — the 13th, 14th and 15th amendments — officially banished all badges and incidents of slavery and guaranteed equality to African

Americans, including the right to vote free from discrimination. But it took nearly a hundred years of blood, sweat and struggle in the civil rights movement to make these constitutional promises more of a reality. Crucial pieces of civil rights legislation, signed into law by President Lyndon B. Johnson, went a long way to end segregation, economic racism, housing discrimination and voter suppression, but we still have much more work to do to ensure that the birthright of equality and liberty declared at our founding is a reality for all.

Any president, at any time in history, is crucial to this constitutional narrative because of his or her ability to work with the legislative branch to pass laws that enforce our constitutional guarantees and take care that those laws are faithfully executed. But this particular presidential election may be especially important because of the impact the next president is likely to have on the Supreme Court.

With several of the high court's justices likely to retire over the next four to eight years, whomever the nation elects in November will have the power to profoundly shape the composition of the Supreme Court, with consequences that will far outlast that president's term.

Will justices be nominated who are faithful to the Constitution's text, history and values? A look back at the most recent few Supreme Court terms tells us what is at stake:

- Whether the federal government will have the power to provide national solutions to national problems such as climate change and health care reform.

- Whether women can exercise their constitutional right to determine for themselves whether or not to have an abortion.

- Whether the executive power to ensure our immigration system is both compassionate and efficient is respected.

- Whether the reality of racism in America — during a police stop, in the classroom, at the voting booth or in the courtroom — is addressed as a systematic problem or instead reduced to platitudes about stopping discrimination simply by wishing it away.

The judges nominated by the next president will be a key reflection of that president's vision of the Constitution. (Of course, the third branch of government needs to play its constitutional role too — hopefully, the current unprecedented and irresponsible blockade by Senate Republicans of President Obama's Supreme Court nominee, Chief Judge Merrick Garland, will not be a recurring theme in our constitutional narrative.)

Given all that is at stake, let's give extra attention this Constitution Day to our national charter and ask all the candidates and our fellow voters Mr. Khan's question: Have you read our inspiring Constitution lately, cover to cover? Like him, I will gladly lend you my copy.

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How courts expand presidential power beyond constitutional limits



By Dr. Louis Fisher

From 1936 to the present time, U.S. presidents have claimed extensive and often exclusive authority over external affairs.

Initially, the Supreme Court rejected such claims as contrary to express language in the Constitution, the principle of self-government and the system of checks and balances — and that analysis persisted until *United States v. Curtiss-Wright Export Corporation* (1936).

But in that year, based on multiple errors of history, the high court promoted a

conception of presidential power in external affairs that was plenary and exclusive.

The 1936 case itself had nothing to do with independent presidential power. It arose when Congress in 1934 authorized the president to place an arms embargo in a region in South America. President Franklin D. Roosevelt relied entirely on statutory authority. No one in the lower courts or the Justice Department argued for inherent, independent, plenary, exclusive or extra-constitutional presidential power.

Writing for the Supreme Court, Justice George Sutherland upheld the delegation of legislative power, but in dicta committed numerous errors to greatly expand presidential authority in external affairs. Among his many errors, he misrepresented a speech that John Marshall gave in 1800 when he served as a member of the House of Representatives.

Marshall said during debate: “The

» see **FISHER** | C15

Presidents and the Supreme Court: Public battles and quiet respect



By Ken Gormley

Throughout our nation's history, U.S. presidents have struggled with the Supreme Court, vying for power and tussling to get the upper hand over the judicial branch. Some presidents have even relished the fight.

In a testament to the brilliance of the American system, however, once the high court has issued definitive rulings in important cases — even controversial ones — most chief executives have accepted their fate with dignity.

The sparks and tension between the executive and judicial branches should not come as a surprise: The language spelling out the powers of the presidency in Article II of the Constitution, which consists of barely a thousand words, is famously imprecise. The Framers,

including Alexander Hamilton, consciously left many of the details of this unprecedented new office to be filled in over time. They were gambling that George Washington — a steady and cautious leader — would be selected as the first president and chart a wise course for future chief executives.

Washington fulfilled that plan in magnificent fashion. Yet many of his successors were left to write on a blank slate, as they dealt with fast-moving events, crises and historic challenges and forced to flesh out the powers of this novel American office. And when presidents have felt their turf is being threatened, they haven't been shy about calling out the Supreme Court.

Thomas Jefferson was openly skeptical of Chief Justice John Marshall (his distant cousin) and loathed Marshall's landmark opinion in *Marbury v. Madison* (1803), establishing the principle of "judicial review" and giving the Court final say over what the Constitution meant. Jefferson railed against this decision long after he left office.

Martin Van Buren, the eighth president, tried to influence the Supreme Court to adopt his strong pro-slavery position. In the famous *Amistad* case, a group of Africans who'd been seized by Spaniards from their homes in Sierra Leone and sold into slavery in Cuba, revolted. After killing the ship's captain and ordering the crew to return to Africa, they were apprehended in U.S. waters outside Connecticut and charged with mutiny and murder.

President Van Buren sided with Spain,

arguing that the Africans belonged to that nation and directing his attorney general to convince the Supreme Court of this position. Ironically, former president John Quincy Adams — now a member of Congress and an ardent abolitionist — argued the case in the Supreme Court against Van Buren's administration, contending that the Africans were free men and needed to be released.

The Supreme Court agreed with Adams, and the Africans were returned to Sierra Leone. This was a public embarrassment for Van Buren, but he quietly took his lumps.

Teddy Roosevelt, former boxer and free-swinging Progressive president, was outraged when the Supreme Court (and his own appointee Oliver Wendell Holmes) struck down a key piece of his Progressive agenda in *Lochner v. New York* (1905). TR began a campaign to whittle down the judicial branch, but ran out of gas before he left office. Yet TR's distant cousin, Franklin D. Roosevelt, continued the family tradition by trying to pack the Supreme Court with additional justices after the Court invalidated key pieces of his New Deal legislation. When the high court did an about-face and supported FDR's New Deal legislation, FDR dropped his court-packing plan and declared victory.

In modern time, George H.W. Bush — a decorated World War II Navy pilot and avowed patriot — bristled when the Supreme Court handed down its decision in *Texas v. Johnson* (1989), holding that burning an American flag could amount

to protected speech under the First Amendment. Yet when Congress next tried to pass a law making flag-burning illegal and punishable by jail time, Bush refused to sign the bill.

Despite his own distaste for the Supreme Court's decision, Bush respected that institution's preeminent power to interpret the Constitution. He urged Congress to pass a Constitutional amendment to override the Court's flag-burning decision if it wished to undo *Texas v. Johnson*, but he refused to defy the high court.

By design, the boundary lines between the presidency and the judicial branch are often unclear. Yet when push has come to shove, most presidents have accepted the final verdict of the Supreme Court with resignation, and even grace.

History suggests that friction and sparks will continue to mark the relationship between American presidents and the Supreme Court; yet history also illustrates the durable nature of the system constructed by the Framers. It provides reason to hope that the tradition of mutual respect between presidents and the high court, and their practice of working out differences, will continue — even in loud, deeply partisan, and seemingly noncooperative times.

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From page C14

President is the sole organ of the nation in external relations, and its sole representative with foreign nations."

The expression "sole organ" meant a president who communicates with other nations after policy has been decided by both branches, either by statute or treaty. Yet Sutherland interpreted that sentence to attribute to the president authority granted by the legislature "plus the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations."

Evidently Sutherland and the justices who joined his opinion did not bother to read Marshall's entire speech. It merely explained that when President John Adams transferred to Great Britain an individual charged with murder, he did so not on the basis of some kind of independent presidential power but solely on an extradition

provision in the Jay Treaty. Thus, Adams did not single-handedly make foreign policy. He carried it out.

Although Sutherland committed plain error, the sole-organ doctrine expanded presidential power beyond constitutional limits from one decade to the next, until partially corrected last year by the Supreme Court in *Zivotofsky v. Kerry*.

In its 6-3 decision in *Zivotofsky*, the high court manufactured a new model that is close cousin to the sole-organ doctrine. In upholding for the first time an exclusive power of the president to recognize foreign governments, the high court said that only the president can speak with "one voice," offer "unity" at all times, and speak "for the Nation."

Relying on an essay by Alexander Hamilton, it argued that with "unity comes the ability to exercise, to a greater degree, [d]ecision, activity, secrecy, and dispatch." The six justices in the majority did not understand that those same four qualities can greatly harm the nation, including these

presidential actions: Lyndon Johnson's escalation of the Vietnam War, Richard Nixon's Watergate, Ronald Reagan's Iran-Contra, and the decision by George W. Bush to go to war against Iraq based on six false claims that Iraqi President Saddam Hussein possessed weapons of mass destruction.

Presidential power also extended beyond constitutional boundaries when President Harry Truman went to war against North Korea without first obtaining congressional authority. During Senate debate on the U.N. Charter, Truman wired a note to Sen. Kenneth McKellar on July 27, 1945, pledging that if any agreements were negotiated to require U.S. troops in a U.N. military action, "it will be my purpose to ask Congress for appropriate legislation to approve them." That precise requirement was included in the U.N. Participation Act of 1945, which Truman signed without expressing any constitutional or policy objections.

Yet five years later, he committed U.S. troops to Korea solely on the basis of Security Council resolutions without ever

seeking or obtaining congressional approval. That unconstitutional precedent was followed by President Bill Clinton in Haiti and Bosnia, and by President Obama in Libya. When Clinton could not obtain U.N. authority for military action in Kosovo, he reached out to NATO allies for support.

Treaties may not shift the Article I authority of Congress to outside bodies, whether the U.N. or NATO. Thus, from 1950 forward, presidents have engaged in unconstitutional wars.

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The Media and the President

The Constitution on the campaign trail in 2016



By Julie Silverbrook

The United States Constitution establishes the framework for American government and reflects the fundamental principles and values of the nation. It is, therefore, no surprise that it is often a central part of the discussion during presidential election years. The 2016 election has been no exception. There is, perhaps, no clearer indicator of just how important the Constitution is to this election cycle than the fact that shortly following an emotional speech by Gold Star parent Khizr Khan at the Democratic National Convention, “Pocket Constitution” surged to the No. 2 best-seller slot on Amazon.com, second only to the new Harry Potter book.

Several constitutional topics have come to the fore during this election year — I will cover in turn how the major candidates view each of these topics. They include: the United States Supreme Court, executive power, the Second Amendment, the press and religion clauses of the First Amendment, and the 14th Amendment.

The United States Supreme Court

With the sudden death of U.S. Supreme Court Justice Antonin Scalia in February 2016, the Supreme Court became a central concern in the 2016 presidential election. President Barack Obama nominated Judge Merrick Garland, United States Court of Appeals for the D.C. Circuit, to fill the vacancy left by Justice Scalia’s passing.

Senate Republicans vowed to block any nomination made until after the presidential election — setting up a constitutional confrontation between

President Obama and the Senate on Supreme Court nominations. Article II, Section 2 of the United States Constitution states that the president “shall nominate, and by and with the advice and consent of the Senate, shall appoint ... judges of the Supreme Court.”

On the question of President Obama’s nomination of Merrick Garland, the two major party presidential candidates have taken the side of their respective parties in the Senate. Donald Trump, the Republican nominee, has said he is “pretty much in line with what the Republicans are saying.” Hillary Clinton, on the other hand, believes “it’s up to members of the Senate to meet their own, and perform the Constitutional duty they swore to undertake. ... This Senate has almost a full year to consider and confirm Judge Garland. It should begin that work immediately by giving Judge Garland a full and fair hearing, followed by a vote.”

The two candidates also differ dramatically on the type of justice they would nominate to the Supreme Court. With Donald Trump saying “We want smart, conservative, and we want people that are truly in love with the Constitution.” And, Hillary Clinton, in contrast, stating she would appoint justices that would “protect the constitutional principles of liberty and equality for all, regardless of race, gender, sexual orientation or political viewpoint; make sure the scales of justice aren’t tipped away from individuals toward corporations and special interests; and protect citizens’ right to vote, rather than billionaires’ right to buy elections.”

Executive Power

Throughout his eight years in office, President Obama used significant acts of executive power. He intervened in Libya, refused to defend the Defense of Marriage Act (DOMA) before the Supreme Court, enacted new immigration policy by choosing not to enforce immigration laws against certain groups (arguing he has discretion in how laws are enforced), promulgated new climate regulation, made recess appointments (the Supreme Court ruled these were invalid in *NLRB v. Noel Canning*), and took actions related to National Security Agency surveillance, among other things. His

executive actions on immigration, in particular, have become a hot button issue in the 2016 presidential contest.

Donald Trump has stated that he “will immediately terminate President Obama’s illegal executive order on immigration.” He has also lamented what he views as the president’s over-reliance on executive action, claiming that “[t]he problem with executive authority for the president, it’s really bad news for this reason. Since he’s given up on working with Congress, he thinks he can impose anything he wants. He’s not a king. He’s a president. An executive order should be used frankly in consolidation and with consulting with the leadership in the — in the Congress.”

Hillary Clinton, on the other hand, has said that she is “going to back and support what President Obama has done to protect DREAMers and their families, to use executive action to prevent deportation.” She further stated that, “I have said that if we cannot get comprehensive immigration reform as we need, and as we should, with a real path to citizenship that will actually grow our economy — then I will go as far as I can, even beyond President Obama, to make sure law-abiding, decent, hard-working people in this country are not ripped away from their families.”

Clinton points to congressional inaction and obstruction and robust presidential authority as reasons for presidents to engage in executive action on their own. And while she has acknowledged that the system is designed to sometimes go slowly and deliberately, there must be compromise and the government must produce results. She has said, “Our system is set up to make it difficult. Checks and balances. Separation of powers. Our Founders knew if we were going to survive as the great democracy that they were creating, we had to have a system that kept the passions at bay. We had to have people who were willing to roll up their sleeves and compromise. We couldn’t have ideologues who were just hurling their rhetoric back and forth. We had to actually produce results. That hasn’t changed since George Washington.”

The Second Amendment

A number of high-profile shootings

in the last several years have made the Second Amendment a central talking point for both major political parties. Donald Trump’s views are in line with those of most Republicans. He believes “The Second Amendment is a bed-rock, natural right of the individual to defend self, family and property. It is a ridiculous notion to ever repeal it ... The Second Amendment is [a] right, not a privilege. The small minority of anti-everything activists may be vocal, but we have facts — and the Constitution — on our side.”

Hillary Clinton, on the other hand, thinks the Supreme Court was wrong in *District of Columbia v. Heller* (2008), which held that the Second Amendment protects an individual’s right to possess a firearm for traditionally lawful purposes, such as self-defense within the home. She has said, “We’ve got to say to the gun lobby, you know what, there is a constitutional right for people to own guns, but there’s also a constitutional right to life, liberty and the pursuit of happiness that enables us to have a safe country, where we are able to protect our children and others from this senseless gun violence.”

First Amendment – Religious Liberty

There are two central issues related to religious liberty that have been raised during the 2016 election. The first is related to Donald Trump’s proposed ban on Muslim immigrants to the United States, and the second involves state-based Religious Freedom Restoration Acts, several of which were proposed and/or passed into law after the Supreme Court’s decision on marriage equality. These laws, modeled after a 1993 federal statute, say that states cannot “substantially burden a person’s exercise of religion” unless it is furthering a “compelling government interest” and acting in the least restrictive way possible.

• Muslim Immigration Ban

Donald Trump has called for a ban on immigration from “areas of the world where there is a proven history of terrorism against the United States, Europe or our allies.” He had earlier in the election called for an outright

» see **SILVERBROOK** | C17

ban on all Muslim immigrants, which provoked backlash not only amongst Democrats, but also from those in his own party. He has largely stood by his calls for barring many Muslim immigrants from entering the United States, and has maintained that it is about terrorism and not religion. His running mate, Indiana Gov. Mike Pence, prior to his selection as Trump's vice presidential candidate, described the ban as "offensive" and "unconstitutional."

Hillary Clinton feels that Trump's call for a ban on Muslim immigrants violates core American principles. She has said, "It goes against everything we stand for as a nation founded on religious liberty." She also feels that Trump's rhetoric has "turned Americans against Americans, which is exactly what ISIS wants."

• State Religious Freedom Restoration Acts (RFRAs)

While Donald Trump's running mate Mike Pence has been at the center of the controversy over state Religious Freedom Restoration Acts, after dealing with the fallout from his signing and then scaling back of Indiana's RFRA late last year, Donald Trump himself has been largely silent on the topic.

By contrast, other GOP candidates during the primary election were vocal in their support for the Indian RFRA. Ted Cruz, for example, said, "I want to commend Gov. Mike Pence for his support of religious freedom, especially in the face of fierce opposition. There was a time, not too long ago, when defending religious liberty enjoyed strong bipartisan support. Alas, today we are facing a concerted assault on the First Amendment, on the right of every American to seek out and worship God, according to the dictates of his or her conscience. Gov. Pence is holding the line to protect religious liberty in the Hoosier State. Indiana is giving voice to millions of courageous conservatives across this country who are deeply concerned about the ongoing attacks upon our personal liberties. I'm proud to stand with Mike, and I urge Americans to do the same."

Hillary Clinton, on the other hand, has stated that these laws go "beyond protecting religion, [and] would permit unfair discrimination against #LGBT Americans."

First Amendment – Freedom of Speech and Press

Donald Trump has unnerved those both within and outside his political party by supporting a broadening of libel laws against the press and proposing censorship on the Internet. He has said as to libel laws: "One of the things

I'm going to do if I win, and I hope we do, and we're certainly leading, is I'm going to open up our libel laws so when they write purposely negative and horrible and false articles, we can sue them and win lots of money. We're going to open up those libel laws so that when The New York Times writes a hit piece, which is a total disgrace, or when The Washington Post, which

Clinton has said, for example, "We're going to have to have more support from our friends in the technology world to deny online space ... Just as we have to destroy their would-be caliphate, we have to deny them online space ... You're going to hear all of the usual complaints — you know, 'freedom of speech,' etc.," she said. "But if we truly are in a war against

stated that he believes that birthright citizenship is not mandated by the Constitution, stating "If you read and if you look, and if you go to the real scholars, like different people that I can give you, they will tell you. Somebody comes over and they have a baby on our border and it happens to be on this side of the border, we're not mandated to take care of that baby. You do not



Donald Trump has unnerved those both within and outside his political party by supporting a broadening of libel laws against the press and proposing censorship on the Internet.

is there for other reasons, writes a hit piece, we can sue them and win money instead of having no chance of winning because they're totally protected."

And regarding censorship on the Internet he has said "We're losing a lot of people because of the internet. We have to see Bill Gates and a lot of different people that really understand what's happening. We have to talk to them about, maybe in certain cases, closing that internet up in some ways. Somebody will say, 'Oh freedom of speech, freedom of speech.' These are foolish people."

Donald Trump's remarks were made in response to concerns regarding ISIS. This is an area in which there is some overlap between Trump and Clinton.

terrorism and we are truly looking for ways to shut off their funding, shut off the flow of foreign fighters, then we've got to shut off their means of communicating."

Clinton has also called for a reversal of the Supreme Court's decision in Citizens United — a position that some believe will curtail campaign speech, while others applaud it as common-sense campaign finance reform. She has vowed to "appoint Supreme Court justices who recognize that Citizens United is bad for America. And if necessary, I'll fight for a constitutional amendment that overturns it."

Fourteenth Amendment

Section 1 of the 14th Amendment reads, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside." Historically, this has been read as conferring citizenship to all persons born in the United States. This election cycle, Republican candidates, including Donald Trump, called for an end to birthright citizenship, claiming that "[t]his remains the biggest magnet for illegal immigration." He has also

have to change the Constitution."

In response to Trump's views on birthright citizenship, Hillary Clinton has said "It's hard to imagine being more out of touch or out of date. But all the over-the-top rhetoric does throw the choice in this election into stark relief."

As we enter the final leg of the 2016 presidential election, the Constitution will continue to be a central feature of the debate between Donald Trump and Hillary Clinton. To learn more about the history of the constitutional issues the candidates will debate in the weeks ahead, check out www.ConSource.org.

Julie Silverbrook is the executive director of The Constitutional Sources Project (ConSource.org), a nonprofit organization devoted to increasing understanding, facilitating research, and encouraging discussion of the U.S. Constitution by connecting individuals with the documentary history of its creation, ratification, and amendment. Julie holds a J.D. from William & Mary Law School. In 2015, she and venture capitalist Chuck Stetson founded the National Constitutional Literacy Campaign.



By David Keene

THE WASHINGTON TIMES

The success of the American Republic is directly traceable to the wisdom and work of the 55 men who gathered in Philadelphia in 1787 to draft a constitution designed not so much to empower government, but to limit that power. Forrest McDonald, perhaps the most influential of historians on the intellectual origins of the Constitution, claimed it could not have been written by any other 55 men at any other time in history. At fewer than 8,000 words, it's a short document when compared to the fundamental documents of other nations and it has, in spite of its critics, stood up remarkably well since its adoption in 1789.

Various nations have written and adopted more than 900 constitutions since 1789. India's is perhaps the longest at something like 146,000 words, and most

Preserving the 'genius' of the Constitution

don't hold up very well. The average life of a constitution is around 19 years, which in itself makes ours unique.

New nations craving freedom have often looked to the work of those 55 Americans for guidance, but few have looked as closely as the men and women who gathered in the newly free Estonia in 1991 to write a new constitution for their country.

I attended the final of 30 sessions of the Constitutional Assembly in early 1992. The delegates ranged from a concert pianist to a plumber, and they were working from a draft prepared by a fellow by the name of Juri Adams, a name as close to our own John Adams as one could wish.

Juri Adams was an intellectual who years before had been demoted and sent by the Communist regime to serve as night watchman at a chicken farm. He told me that his understanding of the American founding and its importance to his country was a gift from the Communists because "the night watchman at a chicken farm has a lot of time to read and study."

But Adams wasn't the only attendee at the Estonian Assembly familiar with the American founding. During the debates, speaker after speaker cited the comments of Adams and others, and evinced a familiarity with the details of the debates and compromises struck in Philadelphia so many years before that made an American proud and underscored the importance of what went on there.

The men who drafted our Constitution had no illusions about those in power. They had, after all, lived under the absolute power of a hereditary monarch and fought a revolution to regain the rights they believed were theirs. They weren't about to trust their futures to another monarch, whether ordained by God or elected by the people. They ascribed to Lord Acton's observation that "All power tends to corrupt; absolute power corrupts absolutely," and were convinced that if they could prevent future officials of the new republic from acquiring such power, they might be able to create a free state. It is this belief that led to the constitutional separation and division of powers between the executive and legislative branches of the new government and, prior to its ratification, to the adoption of a Bill of Rights that enumerated things the new government could not do in pursuing the goals set out for it in the Constitution itself.

The compromises that led to the adoption of the Constitution were controversial at the time they were struck. Those involving slavery are the most discussed today, but just as serious were those involving the nature and power of the new nation's chief executive and the balance between the power of the new national government and the states calling it into being. The Bill of Rights was added as a condition of ratification by those who believed it essential that certain fundamental rights be enumerated as

sacrosanct. The debates over ratification were contentious, but once ratified, the Constitution established the framework that allowed the new nation to grow and prosper as the freest nation in history.

It's been amended since, of course, as those who drafted it expected it would be. They also knew, one suspects, that it would be attacked by those who found it cumbersome. Residents from the beginning have tended to seek more power, and intellectuals with a desire to remake society have chafed at the constraints the Founders placed on those who would do so. Woodrow Wilson, who favored a much stronger executive and a parliamentary system, was the first president to openly attack it, and since then many have tried to rewrite it through reinterpretation of the Founders' words.

A member of Congress said a few years ago that the Constitution only means what the Supreme Court says it means, but as the high court itself has acknowledged, it also means what the Founders meant it to mean.

As long as we, those we elect and the judges charged with its interpretation appreciate the genius of the Constitution, we will be able to preserve and enjoy the freedoms they worked so hard to guarantee.

David Keene is Opinion editor at *The Washington Times*.



By Janine Turner
and Andrew Langer

Once in a blue moon, Hollywood portrays our American government accurately. The ABC educational series, "Schoolhouse Rock!" a staple memory from the children of the 1970s, showed American kids just how the nation was founded — and with catchy cartoons like the "Three Ring Circus" of government and "I'm Just a Bill," a generation of young people got a decent glimpse into how our government was supposed to operate.

Is the media responsible for the too-powerful presidency?

Otherwise, there is a vast wasteland, generally focusing on the presidency (and the president).

But does the focus of Hollywood (and the media, more generally) contribute to the expansion of federal executive branch power? I think it's a case that can be made.

The presidency is relatively easy to understand, and makes a convenient and simple target — something relished by both those telling fictional stories in Hollywood and those purporting to tell true stories in the news media.

Daniel Day-Lewis, Harrison Ford and Michael Douglas cut dashing and heroic presidents in "Lincoln," "Air Force One" and "The American President," respectively. But even the much-celebrated Frank Capra classic, "Mr. Smith Goes to Washington," was set against the backdrop of the passage of an obscure piece of legislation called a "deficiency bill."

The news media is no help, either.



Loath to delve deeply into boring pieces of legislation, there is a near-constant demand for executive branch solutions to public problems — and a championing of the concept of the president acting unilaterally when Congress refuses to do so.

In fact, it is this last point that might be the most dangerous, since it assumes

a default position that Congress refusing to take action on a particular problem is evidence that Congress is somehow failing to do its job — and that the president must act — which pushes a narrative onto the American people that this is the way things ought to be.

Worse, it creates the situation in which Congress passes massive pieces of legislation — bills with so many pages that members of the House of Representatives don't understand them, the senators don't understand them, the Supreme Court justices don't understand them, the media cannot explain them, and, therefore, we (the people) cannot possibly understand them.

Compounding this is the problem that the American people are woefully ignorant of the Constitution and how to defend their rights.

The American education system,

» see **TURNER** | C19

How social media gives public opinion wings



By Shoshana Weissmann

Social media has provided a newer, more direct forum in which politicians talk to people. However, social media's biggest impact on politics arguably has less to do with politicians talking, and more to do with them listening.

Presidents and presidential candidates have long reached people through national television, rallies and the like. But until recently, talking to politicians meant writing a letter one could only pray would reach its intended audience, attending a rally in hopes of grabbing a moment of the candidate's time, or being quoted in a news article that the candidate might see.

Even if one's words reached the candidate, neither he nor the candidate would know if he was alone in his beliefs.

Similarly, if a presidential candidate wanted to know how the public viewed him, his campaign would need to hire pollsters, and try to glean how people

felt about him while meeting them on the campaign trail or reading articles quoting the average Joe.

While these methods are still valuable, social media has chipped away at pollsters' monopoly on public opinion data and the wall between the people and politicians.

When a presidential candidate tweets, his staff can immediately watch the responses roll in from thousands of people all over America. If a majority of responses from people belonging to one group — whether that group be women, people who are pro-choice, people who live in Arizona, etc. — share certain commonalities, one can learn how that group feels about the candidate's stance on an issue or the candidate overall. These qualitative data are often imperfect, but help build a more thorough understanding, especially when they supplement pollsters' findings.

Never before has so much immediate feedback from so many different people been possible.

Social media also provides a venue for quantitative data. When a candidate posts on Facebook, for example, the campaign can see people's reactions and try to ascertain the reasons for them. If people liked what Mitt Romney's team posted about immigration, many would share the post. If they wanted to learn more about President Obama's view of the economy, they would click the link. If they're not taking any actions on a post, there may also be a reason. Experts are able to dive far deeper into this and other data, and learn what people are thinking about the candidate.

This isn't just valuable for candidates and campaigns, but for the people in whose opinions they are interested.

Instant feedback increases the potential of both the candidate's

responsiveness and accountability to the public. Because candidates are able to watch public opinion shift quickly, one would think they would simply adjust their stances in accordance with those changes and flip-flop on issues. Fortunately, the internet is searchable and, when candidates flip-flop on issues, their old stance is readily available after a quick Google search. That means it's easier than ever for candidates to be receptive to the sentiments of Americans, while harder for them to get away with changing their stances for political gain.

This instant feedback also allows candidates to understand the potential impact of their policies. For example, when President Obama posts on Facebook about a new plan, people provide frequent and often quite vociferous feedback. If someone realizes that a policy would have unintended consequences, he'll comment. While the comments section is best known for vitriolic debates, it also provides a setting for increased participation by the people in government. Comments, tweets, and other postings can gain traction if they resonate, and then will likely come before the campaign's or president's eyes.

If a policy has the potential to violate constitutional liberties, the astute man on the street can make it known and spread the word on social media in an instant. If people agree with the sentiment, it can be shared and reach an exponentially increasing audience.

Not long ago, a politician would hope to have a little birdy inform him of the public climate. Now anyone can be heard with a tweet.

Shoshana Weissmann is web producer for The Weekly Standard.



TURNER

From page C18

strangled by progressives, has turned the Constitution's precepts on their heads. Ask most people where their rights come from and they'll tell you that rights come from government, when any true scholar of the Constitution will tell you that rights come from God (or nature) and that government exists solely to protect and preserve individual rights.

This is where the media ought to be stepping in and explaining. But instead, in 2016, the media would rather "dumb it down" for the American people, and give the presidency a pass. Media mirrors the limited understanding of the people, reinforcing ignorance in such a dangerous way as to be ultimately destructive of the Republic. Those who tune in to

the media's explanation of politics and policy are armed only with the worst kind of "vapid knowledge," unable to guard themselves or their freedoms from the predations of the power-hungry.

Much in the same way that those who fail to understand history are doomed to repeat it, those who fail to understand the nature of our Constitution are doomed to lose the guarantees contained therein. In bolstering the idea that the president can and should act unilaterally, the media protects the migration of massive amounts of power to the federal executive branch, arguably one of the greatest threats to individual rights today!

Couple this ignorance with the media's propensity for trying to distill issues into sound bites and bumper sticker slogans, and you're left with a society unable to take charge of its own destiny.

One cannot reconcile liberty with

anti-liberty, and if one does not recognize that every time government grows, individual rights are diminished, then as government grows by leaps and bounds, the people will be unable to stop it — and their freedom will be lost.

Which leaves us where we are today, with a massive federal executive branch, virtually impossible to control, and a media, having enormous responsibility in its creation, doing virtually nothing to exercise independent scrutiny of the goings-on in the federal executive branch.

The American people don't know when the president is exceeding his power because the American people no longer understand the Constitution.

In 1992, in a Supreme Court case called *New York v. United States*, Justice O'Connor had this to say: The Constitution "protects us from our own best intentions: It divides power among sovereigns

and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day... federalism secures to citizens the liberties that derive from the diffusion of sovereign power."

By not recognizing this precept, and calling those in power out on it, the media does the American people a paramount disservice. The media needs to be championing the dilution of federal power, instead of cheerleading for the concentration of it.

Janine Turner is an actress, author, and founder and co-chair of *Constituting America*. Andrew Langer is the president of the *Institute for Liberty* and is a resident scholar at *Constituting America*.

The Expansion of Presidential Authority

The ever-expanding power of the presidency



By Tim Donner

With the 2016 presidential race upon us now in full force, America is reaffirming its longstanding fascination with these quadrennial elections.

In this age of social media, the prolific amount of ink and html spilled on the election makes the presidency seem more powerful than ever. And there is good reason for that belief: Successive generations of Americans have allowed it to happen.

There has not been a president in memory of either party that escaped the accusation of expanding his power beyond the limits of the Constitution.

At the same time, the Congress has been most often accused of creating a

president can also propose treaties and nominate judges, subject to the advice and consent of the Senate.

That's it. Those are the only powers granted to the president. But you would hardly know it by studying the modern presidency, and the massive and ever-expanding size of the executive branch of the federal government.

It is crucial to remember how wary the founding generation was of a strong executive. After all, they had just fought and won a revolution against a strong man they thought a tyrant, King George III of England. And most colonists were bound and determined not to allow a similarly powerful president here. That opposition to concentrated power is well reflected in the checks and balances that define our constitutional republic.

The Founders had a profound understanding of human nature — immutable, unchangeable as it is — and knew it would lead to presidents attempting to concentrate more and more power in one person — the president — despite such executive authority being antithetical to the very purpose of “We the People.”

That is why the Framers granted such narrow and clearly delineated powers to the executive branch in the Constitution, but in the fullness of time, those powers have expanded, bit by bit.

Presidents have often grasped more power when there's a national crisis, reasoning that it is far easier for the nation

programs might ultimately pass constitutional muster. President Lyndon Johnson continued this dramatic expansion of federal power with his championing of “Great Society” programs.

During deep recessions, Presidents Richard Nixon and Jimmy Carter established government controls on wages and prices, and started massive new agencies regulating occupational safety, energy and the environment, thus exerting federal control over entire sectors of the private economy.

After the Sept. 11 terror attacks, President George W. Bush established the Homeland Security Agency with broad powers that have consistently tested constitutional limits. He also promoted a prescription-drug entitlement to Medicare, and significantly increased federal involvement in education, despite its being historically a local or state issue.

But it is not always a crisis that results in expanded executive power: Sometimes it is just the president's belief that the public will accept it. A recent example is President Obama's executive actions promising the nonenforcement of certain immigration laws.

But there is also the undeniable effect of the bully pulpit controlled by the president. When a president declares, as this president has for example, that health care insurance is a right, and presidential candidates propose to expand nearly universal education rights forward from elementary and secondary education to the college level, citizens ungrounded in the explicit constitutional limits of executive power become increasingly compliant to the repeated assertion of these newly pronounced rights — which are not delineated in the Constitution. This has had a cumulative effect on the electorate and its view of the presidency.

You may approve of the expansion of the powers of the presidency, or you may not. But one point is beyond debate: The office has become far more powerful than ever envisioned by the founding generation, or enshrined in our Constitution.

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Presidents have often grasped more power when there's a national crisis, reasoning that it is far easier for the nation to follow a single, strong leader than 535 individual members of Congress. American history is replete with examples.

power vacuum by failing to sufficiently exert its constitutional powers as the “people's house” — that branch of the federal government designed to be closest to the people.

It is a vacuum which many a president has eagerly filled.

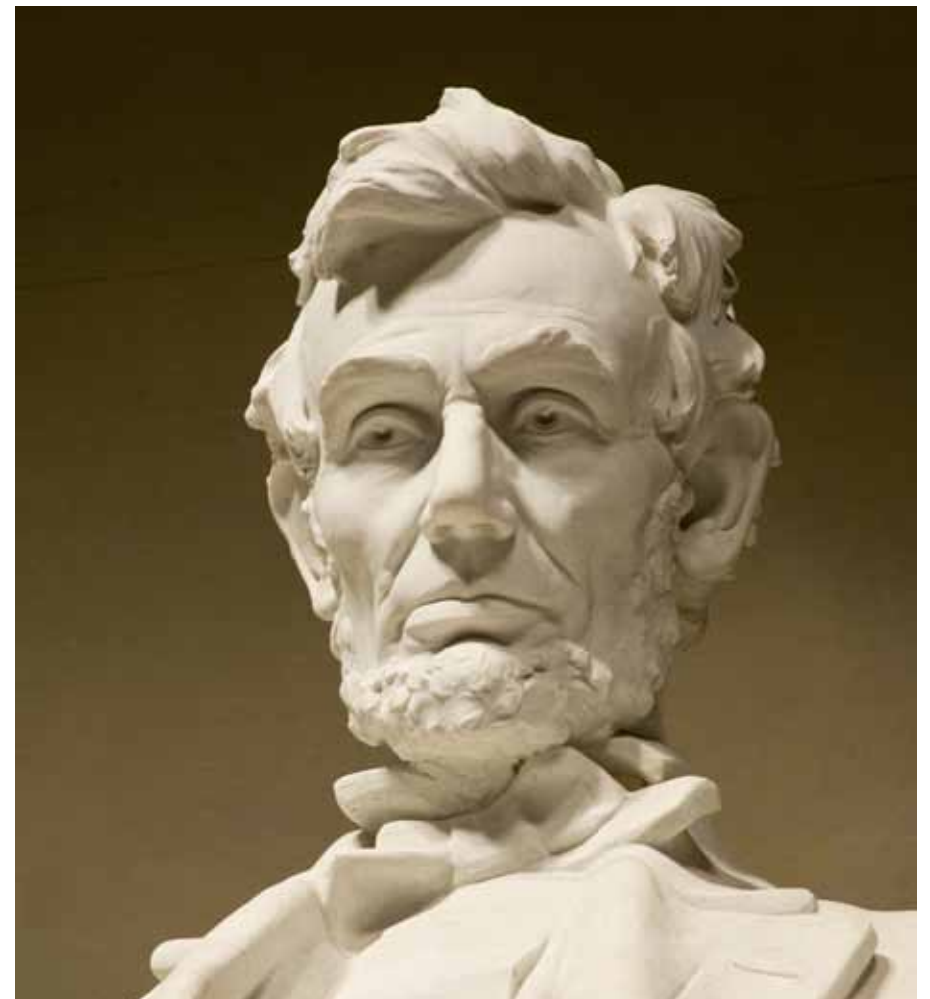
In Article II, the Constitution explicitly grants the president far fewer powers than most people believe.

A president is constitutionally authorized to sign or veto legislation, command the armed forces, ask for the written opinion of his cabinet, convene or adjourn Congress, grant reprieves and pardons, and receive ambassadors. The

to follow a single, strong leader than 535 individual members of Congress. American history is replete with examples.

During the Civil War, President Abraham Lincoln induced the Congress to pass legislation allowing him to suspend *habeas corpus*, the explicit constitutional right to challenge unlawful imprisonment.

During the Great Depression, President Franklin D. Roosevelt was able to expand the executive branch far beyond its previous domestic footprint, advancing expansive “New Deal” programs, and attempting — unsuccessfully — to pack the Supreme Court, so that many of his



Unteaching Professor Obama's constitutional lessons



By Josh Blackman

President Obama's illegal executive actions concerning the Affordable Care Act, education and immigration have inflicted irreparable damage to the rule of law. But his disregard of the Constitution has an even more troubling implication for today's youth.

A generation ago, ABC-TV's animated "Schoolhouse Rock!" taught children that the law is changed when the legislature and president agree.

Today, Professor Obama teaches a different lesson: When Congress refuses to enact my agenda, I will use my pen and phone to bypass them.

As today's students become tomorrow's leaders, the role of civic education becomes all the more critical to ensure that the checks and balances continue to prevail over the pen and phone.

In June 2014, after the House of Representatives announced it would not vote on comprehensive immigration reform — the so-called "Gang of Eight" bill — President Obama declared that he would act anyway.

"I take executive action only when we have a serious problem, a serious issue, and Congress chooses to do nothing," he said. The president promised to "fix as much of our immigration system as I can on my own, without Congress."

Five months later, after the midterm election, the president announced his executive action on immigration known as DAPA ("Deferred Action for Parents of Citizens and Lawful Permanent Residents"). The policy would have halted the deportations of 4 million unlawfully present aliens and provided them with work authorization.

These were the exact people

the Gang of Eight bill would have benefited. The president's action was a naked effort to work around a Congress that did not agree with his agenda.

Texas and two dozen other states challenged DAPA in court. In early 2015, a federal judge ruled that the policy was illegal and put it on hold.

The federal government appealed the case to the Supreme Court, but due to the tragic passing of Justice Antonin Scalia, the short-handed bench divided 4-4. Currently, the case is still pending, and will likely be resolved based on which president appoints the ninth Supreme Court justice.

When the president takes actions such as DAPA, we should think not only of how it impacts the rule of law in the abstract, but also what lesson it teaches today's youth.

The Obama approach to governance was crystalized in a Saturday Night Live parody of the "Schoolhouse Rock!" classic, titled "How a

bill does not become a law."

A character dressed as a bill stands on the steps of Capitol Hill and explains to a young boy how he would become a law. "Well, first I go to the House and they vote on me. But then I need from the Senate a majority. And if I pass the legislative test, then I wind up on the president's desk."

President Obama appears and shoves the bill down the steps. The boy shouts, "President Obama, what's the big idea? That bill was trying to become a law." The smirking president tells the boy, "There's actually an even easier way to get things done around here, and it's called an executive order."

Another character, dressed as an executive order, appears. "I'm an executive order," he sings, "and I pretty much just happen." The boy asks, "Don't you have to go through Congress at some point?" The executive order, cigarette in hand, dismisses the boy. "Oh, that's adorable, you still think that's how government works."

The bill, gasping for air, climbs back up the steps and sings, "We look at the midterm elections, and people clearly don't want this" executive order. "We're going to take you to court, and we're going to shut down Congress."

Mr. Obama shoves the bill down the steps one last time.

The president, himself a former constitutional law lecturer, should be far more careful when he brazenly teaches students across the country that the separation of powers can be ignored when the ends justify the means. Long after DAPA is gone, this tragic lesson will linger in the hearts and minds of our citizenry, and our republic will be worse off for it.

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Josh Blackman is a constitutional law professor at the Houston College of Law and author of "Unraveled: Obamacare, Religious Liberty, and Executive Power." He is also president of the Harlan Institute (<http://harlaninstitute.org/>).

The president, himself a former constitutional law lecturer, should be far more careful when he brazenly teaches students across the country that the separation of powers can be ignored when the ends justify the means. Long after DAPA is gone, this tragic lesson will linger in the hearts and minds of our citizenry, and our Republic will be worse off for it.



Calvin Coolidge and the 'two minds' of the American presidency



By Dr. Jason W. Stevens

It is a great misfortune that Calvin Coolidge consistently ranks as one of the worst presidents in American history.

There are many reasons for this reputation, but Coolidge's relative obscurity seems to be chief among them. People simply aren't interested or well acquainted with the man who supposedly had so little to say during his time as president. We Americans prefer our presidents to be loud and boisterous, as clearly evidenced by the rise of Donald Trump.

But it wasn't always this way.

"Silent Cal" Coolidge — possibly America's most underrated president — actually had a lot to say, especially about the institution of the presidency under the Constitution.

Coolidge, who took over the presidency following the unexpected death of Warren G. Harding in 1923, and later won re-election in his own right in 1924, described the office of president most clearly in his book, "The Autobiography of Calvin Coolidge."

In perhaps the best example of presidential memoirs, with the probable exception of Ulysses S. Grant's, Coolidge emphasized what he called the "two minds" of the American presidency. Coolidge argued that these two minds are absolutely necessary for responsible executive leadership and are part of the essential makeup of what goes into a good president.

The first mind is "the mind of the country," or public opinion.

Long before Nate Silver, or even George Gallup, it was Calvin Coolidge who successfully tapped directly into the public mind. And more impressively, he did it without the help of regular opinion polls.

The president, Coolidge believed,

must make himself familiar with the people's wants, passions and interests, which is to say, he must seek to understand the people as they understand themselves.

The American people, Coolidge doggedly believed, are largely intent upon ruling themselves, content to look after their own personal affairs without relying too much on outside support. They do not look to the president, or government more generally, for aid and comfort. They prefer to be left alone to solve their own problems and for government to stay out of the way, except in cases where the public well-being may require it.

At the same time, they are willing to contribute and sacrifice mightily for the public welfare, possessed by a certain patriotic pride in the goodness and justice of their country.

They have a desire to see that the right things are done well, that the country remains happy and prosperous, and they are more than willing to pay to place the United States in the lead.

But understanding the mind of the country does not mean the president is free to give the people whatever they want or to command them without their consent. If these things were true, then nothing would distinguish him from the sordid populists or petty tyrants of the world. And because public opinion is always changing and changeable, the president must be mindful to keep at least one finger on the pulse of the nation, sometimes leading it, at other times being led by it.

The first mind, therefore, must be checked by something else, and that's how we come to discover the second

mind, what Coolidge called "the political mind."

The political mind includes intimate knowledge of the Constitution and the first principles of republican government under law, especially the separation of powers and federalism.

While the day-to-day operations of government may oftentimes appear dirty and less than glamorous, they are nonetheless ultimately responsible for much of mankind's happiness or misery. "To live under the American Constitution," Coolidge said, "is the greatest political privilege that was ever accorded to the human race."

As the purpose of the first mind is to understand the people as they understand themselves, the purpose of the second mind is to understand the American founders as they understood themselves — i.e., to "think the thoughts which they thought," as Coolidge put it.

For the promotion of good and just government, the president must combine both minds in one office. He must be at once a man of the people and a student of the founding; he must belong to the present and to the past. In other words, the president must be in touch with what Thomas Jefferson had called in 1825 "the American mind," attaching public opinion to first principles. The American mind is what emerges when the mind of the country meets the political mind, when the people think the thoughts of the founders.

That, according to Coolidge, is what will make for a good president.

Coolidge was immensely popular in his own time, winning 17 out of 19 electoral contests in his lifetime. If he had chosen to run again in 1928, he surely would have had no problem securing re-election. And although Coolidge seems to be undergoing a political revival of sorts in recent decades, he still remains mostly unknown by average Americans today.

But lucky for us, "Silent Cal" Coolidge still speaks through his many writings. We need only be mindful and avail ourselves of their lessons.

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Jason W. Stevens, Ph.D., is a visiting assistant professor of political science at Ashland University, home of the Ashbrook Center and its educational programs on constitutional self-government. Dr. Stevens teaches political thought and history concerning the founding of America, the presidency and political parties and conventions.





Upholding the right ‘to be let alone’



By Scott Michelman

When the Supreme Court ruled in 1928 that the government did not violate the Fourth Amendment to the Constitution by wiretapping a person's telephone calls, legendary Justice Louis Brandeis wrote a prescient dissent taking a more expansive view. Justice Brandeis argued that the Constitution protects Americans “in their beliefs, their thoughts, their emotions and their sensations” and “conferred, as against the government, the right to be let alone — the most comprehensive of rights and the right most valued by civilized men.”

Fortunately, Justice Brandeis' view of the Fourth Amendment ultimately prevailed in the Supreme Court.

Today, that provision's protection against “unreasonable searches and seizures” provides a vital check on

executive power to spy on us without a warrant. From bugging civil rights activists in the 1960s to examining individuals' internet activity under the USA Patriot Act, the executive branch has repeatedly tried to extend the

Amendment's privacy protection does not, however, tie the government's hands in investigating violations of the law or fighting terrorism. The Fourth Amendment generally requires that when the government seeks to invade

In our data-driven society, the next frontiers of privacy will be about our information. Can the government use your cell phone signal as a homing device to track your movements? Compile your prescription records into a database that it can search at will to learn about your medical conditions? Use drones equipped with sophisticated cameras to see inside your home?

boundaries of its power and shrink our perimeter of privacy.

Courts have rightly pushed back. For instance, in the late 1960s, when the attorney general authorized electronic surveillance of members of the White Panther party without judicial approval, based on the government's fear that they would attempt to “subvert the existing structure of the Government,” the Supreme Court unanimously rejected the government's claim to a vague and unconstrained power to eavesdrop in the name of national security.

More recently, courts have rejected the government's claims that it may, without a warrant, collect in bulk under the USA Patriot Act the telephone numbers that Americans call, or monitor an individual's movements by using a device that intercepts the person's mobile phone signals to obtain location information.

Robust enforcement of the Fourth

a person's privacy, it must obtain a warrant that is issued by a neutral magistrate (like a judge), directed at particular items and places, and based on a good reason. In plain terms, what the Fourth Amendment prevents is an investigating officer deciding, on his own, to engage in a fishing expedition, based on a hunch. Fourth Amendment requirements thus interpose a neutral referee between law enforcement and individuals, to prevent officers from acting on prejudices or in a scatter-shot manner. If the government satisfies these requirements — which it very often does — then its search is constitutional. (The Fourth Amendment also has a handful of practical exceptions, such as one for emergency circumstances.)

What the requirements of the Fourth Amendment obstruct is not the use of surveillance, but its abuse. As the Supreme Court has explained, “Fourth Amendment freedoms cannot

properly be guaranteed if domestic security surveillances may be conducted solely within the discretion of the Executive Branch” because “unreviewed executive discretion may yield too readily to pressures to obtain incriminating evidence and overlook potential invasions of privacy and protected speech.”

In our data-driven society, the next frontiers of privacy will be about our information. Can the government use your cell phone signal as a homing device to track your movements? Compile your prescription records into a database that it can search at will to learn about your medical conditions? Use drones equipped with sophisticated cameras to see inside your home?

All that stands in the way of such invasions is our willingness to stand up for our rights by demanding that our elected officials respect the Fourth Amendment and by advocating for the appointment of judges who will faithfully apply it when law enforcement does not.

So on this Constitution Day, among the provisions we should most fervently celebrate is the Fourth Amendment, which provides a check on executive authority to learn the most intimate details about our lives and thus safeguards that “most comprehensive of rights” — “the right to be let alone.”

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