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Constitution Day is About the Rule of Law

Constitution Day has been set as September 17th.

The American Constitution has developed an aura of holiness which has taken on a life of its own. The tea party movement in the United States relies heavily upon the Constitution as its guiding principal. We hear politicians talk about it daily. Letters to the editor frequently decry the lack of adherence to constitutional principles. The current fight over the Obama administration's health care plan addresses the question as to whether the commerce clause in the Constitution permits health insurance to be mandated.

The Constitution does not stand alone. The Constitution was amended quickly by the first ten amendments to the sacred document. In fact, without the first ten amendments to the federal Constitution, the states would not have ratified the document.

The federalist papers which were arguments in favor of ratification of the Constitution, written by men like Alexander Hamilton espoused a broad, sweeping view of the role of the Federal Government. Ron Chernow's classic work on Alexander Hamilton points out that the first Secretary of the Treasury, who virtually invented American capitalism, thought the states would wither away. Others who joined Hamilton in writing the Federalist papers, became virulently anti federalist not too many years after the ratification of the Constitution. Part of that change of heart by Federalist authors was caused by a split with Jefferson's Republican Party, the heir to the modern Democratic Party fathered by Andrew Jackson. The Federalists eventually disintegrated when they were held responsible for suggesting secession from the union by New England states.

It is clear the Constitution was born not as a single, clear idea, but rather was an evolutionary document. The founders themselves changed their views as to the scope of the instrument and the role of the states. The Supreme Court of the United States began to interpret the Constitution starting with *Marbury v. Madison* and the Constitution along with its amendments began rolling down the track like a stoked up freight train.

Anyone who argues that the American Constitution is an unchangeable rock either does not know history or has no respect for it. The Constitution was a compromise between powerful southern states such as Virginia and small northern states like Rhode Island. The Congress, with its Senate, comprised of two representatives from each state not popularly elected at the time, was juxtaposed against the House which was based on population. The House would protect Virginia, and the Senate would protect Rhode Island.

Perhaps the biggest change in the Constitution involved the role of the states. The early federalists led by the venerable Washington, Hamilton and Adams wanted a strong federal government, a national bank, and states which recognize their subservient place in the new order. The anti federalists were in fear of the federal government and thought of it as a creature of the states.

The framers of the Constitution were very deliberate in choosing the words "we the people" rather than "we the states." Perhaps the most important aspect of the Bill of Rights, which breathed life into the Constitution and made its passage possible, was one amendment that no one argued about. The Seventh Amendment to the Federal Constitution guaranteed the right to trial by jury in any case known in common law. It is this Amendment which is perhaps most in jeopardy today. The "disappearing jury trial," as a New York University Law School Professor has called it, is endemic.

If you have a cell phone, computer, credit card, stock brokerage account, or deal with virtually any

other aspect of life, then you have signed a contract waiving your right to jury trial. If you do not have the right to jury trial, then who gets to decide your rights if you get into a dispute with one of these gigantic corporations? The answer is that corporations demand arbitration which they essentially control. It is flabbergasting that the American public can get excited about the commerce clause, which is so vague that even the founders could not agree what it meant, but yet have let their right to trial by jury slip away without a whimper of protest.

Why is it that people who extol the Constitution pay so little regard to the one amendment that all the founders agreed upon and considered absolutely crucial to the existence of the nation? John Kenneth Galbraith, in a great book on marketing, once observed that good salesmen and corporations actually create demand even where it does not exist. Advertising makes people think they need or want something that they do not. Who today does not think they need an iPhone? There are a few holdouts, and I am one of them, but even I am beginning to crumble.

The advertising campaign initiated by corporate America has been to render irrelevant the Seventh Amendment to the United States Constitution. Those who hate the Seventh Amendment know they could not amend it out of existence so they have used tricks, artifice, loopholes, and exceptions to get around the clear language of the Amendment. In addition, big business has sold the public on the view that too many people file lawsuits for no good purpose and the corporate fortresses which run our economic life are unable to withstand the assault. This view has developed great currency throughout our national debate.

As goes the Seventh Amendment, so goes the rest of our constitutional rights. If we cannot respect the clear language of the Seventh Amendment to right to trial by jury, why should we worry about the intricacies of the Tenth Amendment when it comes to states' rights? Why should we worry about the fact that the Fourteenth Amendment does not provide a clear indication of the right to life as opposed to the right of a woman to abort? If we cannot follow what is clear and indisputable, why should we look to the Constitution for guidance on any other issue?

These questions are too important to ignore. On this Constitution Day let us take back the Seventh Amendment to the Federal Constitution and demand the right to trial by jury rather than trial by an industry-owned legal system. There is no substitute for an independent judiciary on the federal and state levels. Our most fundamental rights are ultimately governed by courts of law. We cannot have a rule of law and we cannot expect honorable, law-abiding conduct by our citizens unless we respect the right to trial by jury.

Respect for the courts, our system of justice, and law and order generally are at an all-time low. We rant and rave about crime, we build more prisons, and we degrade those who bring actions for personal injuries. None of this is American. It is American to assure that justice is blind, that judges operate with integrity, and that lawyers have the right to represent people either as prosecutors or defense lawyers and as lawyers who bring claims for contract breaches, pension disputes, personal injuries, and all those other disputes which society must address.

The majesty and glory of our national institutions is and has always been the right to trial by jury. Our founders never disagreed on this notion even by one iota. When the formation of political parties became clear and the split developed between the Federalists and the anti Federalists, no one complained about the Seventh Amendment right to trial by jury. Perhaps the largest crisis this country ever faced was during the Adams Administration when the Alien Sedition Act was passed. This Act provided for people to be jailed, sometimes without the right to trial by jury, for statements they wrote or spoke. The country hated the Act and it was repealed. Clearly the Alien Sedition Act was the major reason why President Adams did not receive a second term of office as President of the United States.

Following the Constitution means adhering to that crucial document whether we like the citizens who

assert its protection or hate them. In fact, it may be more important to make sure that we follow the Constitution especially when we dislike the folks who remind us of the contents of the very tapestry which binds us together.

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