

DEATH OF THE AMERICAN CONSTITUTION

On the internet, right next to the text of the US Constitution, Seventh Amendment is an ad for a donation to the "Revolution of Ron Paul". The ad is called "Money Bomb" and urges people to give money to the only man who supports the United States Constitution. The Seventh Amendment to the United States Constitution states in its entirety as follows:

In Suits, a common law, with a value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Not only is the right to trial by jury inviolate but even the right to review a jury verdict is limited. The language of the Second Amendment is stated in similar unequivocal terms:

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

The debate on the Second Amendment has been whether the right to "keep and bear arms" only pertains to the militia or whether it is an individual right. The Supreme Court of the United States, by interpretation and history, has decided that the Second Amendment does not apply only to a militia but does convey individual rights.

There is no such ambiguity in the Seventh Amendment right to trial by jury.

While the Second Amendment, the right to own and use guns, has been strengthened, the right to trial by jury has all but disappeared. The numbers are stunning. Jury trials in both federal and state court have plummeted to record lows. People no longer resort to the court system to solve their problems. The only area of the law where filings are increasing concern family law disputes. People who have children and then get divorced simply cannot get along. Those cases are not subject to jury trial.

One of the major causes for the extinguishment of the jury trial in America is arbitration. Take a look at your credit card. Credit cards outlaw the right to trial by

jury and require an industry run arbitration. An arbitrator is a sole individual who makes a decision, without a jury, as to whether the credit card company has violated the law. These arbitrators are unelected, they are not subject to any nomination process, and they typically are affiliated with the industry which has effectively created its own court system.

Congress passed the Credit Repair Organizations Act which was intended to prevent misleading representations lenders that a credit card could be used to rebuild poor credit. The Act also outlawed credit card company assessment of multiple fees upon the opening of accounts, which greatly reduced the advertised credit limit. The law has a very specific provision permitting a right to sue a credit repair organization that violates the law. Further, a consumer cannot waive the protection provided by the Act. The purpose of this provision was to prevent credit card companies from using tiny unreadable words to do away with the Seventh Amendment right to trial by jury.

Enter one of the most conservative members of the Supreme Court, Justice Antonin Scalia. In *CompuCredit Corp. vs. Greenwood*, 132 S.Ct. 665 (2012) a majority of the United States Supreme Court swept away the right to trial by jury together with the explicit language of the statute. This breathtaking judicial activism found that because CROA “is silent on whether claims under the Act can proceed an arbitrable forum, the Federal Arbitration Act requires the arbitration agreement to be enforced according to its terms.” In other words, since arbitration is permitted by federal law, the Court found that Congress was not strong enough in trying to preserve the right to trial by jury in this CROA. There was not even a discussion of the right to sue inherent in the Seventh Amendment.

So important was the Seventh Amendment to this nation that the Founding Fathers in the Federalist papers promised a Bill of Rights if the states agreed to ratify the Constitution. That promise was a handshake deal. In return for the states’ agreement to join the United States of America, there would be not an illusory Bill of Rights but a real Bill of Rights enforced by the courts. CompuCredit Corp. is another nail in the coffin of our constitutional liberties.

Justice Sotomayor and Justice Kagen concurred in the judgment. Those two justices found the case to be “close.” The majority opinion recognized the increasing use of “arbitration clauses in consumer contracts generally, and in financial services contracts in particular.” It is those agreements which have been a major factor in destroying our constitutional protections.

Justice Ginsburg dissented. The Justice wisely stated:

The Court today holds that credit repair organizations can escape suit by providing in their take-it-or-leave-it contracts that arbitration will serve as the parties' sole dispute-resolution mechanism.

Justice Ginsburg noted that the language may be comprehensible to one trained to "think like a lawyer" but is meaningless to people that use credit cards generally. All the Justices agreed that the right to trial by jury turned on what Congress meant when it created a non-waiverable "right to sue." Unfortunately none of the judges discussed the reach of the Seventh Amendment and whether Congress can abrogate it either by not being clear enough in legislation or by passing the Federal Arbitration Act. Where is the Tea Party when we need it? Lots of folks talk about the Constitution but unfortunately they pick and choose.

We are currently faced with a hue and cry as to whether the First Amendment freedom of religion is violated when a big hospital that takes public funds is forced to provide family planning. It is strenuously argued that such a mandate infringes the right of religious hospitals to oppose birth control. Yet, there is virtually no public awareness of the fact that the Seventh Amendment exists more in words than in reality by decisions like *CompuCredit Corp.* which eliminates our right to trial by jury in favor of industry arbitration.

Hopefully public education and the current debate about the values which guide us as a nation will reinvigorate the entire United States Constitution, including the Bill of Rights, and will help restore the Seventh Amendment right to trial by jury to the glorious position which it traditionally held in our shimmering constitutional constellation.

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