



"To Preserve the Nation"

A weekly e-mail message from the Constitution Party of Utah to those who love liberty and wish to preserve it.

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Please forward this e-mail to all who you feel would benefit from the message

Prior to the American Revolutionary War, concerned patriots throughout the American Colonies organized "Committees of Correspondence" to assure that vital information about their liberty, and the political state of affairs was widely distributed, so all who cared could stay informed.

This series of weekly e-mail messages is intended to perform a similar modern-day function. Each week, a brief message regarding a current modern issue of liberty will be sent. The intention of these communications is to foster an understanding of how modern challenges that face the United States may be addressed using the wisdom and "original intent" of those who founded this nation. The words of this nation's founders in regards to the current challenges will be the core message of each e-mail. Hopefully, this effort will foster a return to the foundation principles upon which this nation was established so it may again enjoy the fullness of liberty and proper government that was created under the inspiration of God.

Week Twelve Message – September 27th, 2006

Courts

The United States Constitution defines the scope and purpose of the judicial system it created. As with all other aspects of the government that the founders of this Nation framed, there were "checks and balances" established to assure that the court system did not usurp power and destroy the liberty of the Nation.

Article I, Section 8, clause 9 states:

"Congress shall have power... To constitute Tribunals inferior to the supreme Court;..."

Article III of the Constitution creates "one supreme Court," and reiterates that Congress has the authority to create lower courts, saying:

"...such inferior Courts as the Congress may from time to time ordain and establish."
(Article III, Section I, clause 1)

In recent modern times, the Executive Branch has ignored the constitutional stipulation that only Congress may create courts or "tribunals" and has claimed to establish courts for various purposes. No authority is granted within the Constitution for such action, and Congress is remiss if it fails to aggressively act within its constitutional prerogative to preempt such usurpation.

Article III of the Constitution defines the scope and power of the United States Supreme Court, noting specific cases in which the Court has "original jurisdiction." Within the scope specifically defined within the Constitution, the Supreme Court can not be denied authority to act. However, the authors of the United States Constitution placed "checks and balances" within the Constitution on the Court. Certainly Article III, Section 2 Clause 2 of the United States Constitution defines a "check and balance" which was created to prevent the court system from usurping power. It states specifically:

"In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

Regardless of opinions to the contrary, the United States Constitution actually states: "...with such Exceptions, and under such Regulations as the Congress shall make." We often speak of the "checks and balances" that were so wisely written into the document to prevent power from being consolidated into tyranny, but almost no one recognizes this "check", which may be exercised to balance against a usurping court.

And, of course, as previously noted, the Constitution delegates to the Congress authority over the existence of all federal courts inferior to the Supreme Court (see Article I Section 8 clause 9 and Article III Section 1). While Article III Section 2 of the United States Constitution delegates specific authority for Supreme Court involvement in certain specified instances, it seems certain that, in cases not specifically enumerated within the Constitution, the United States Congress has the authority by simple majority vote in both the House and Senate to rein in the rogue court system that currently exists. By exercising this rarely used authority, the United States Congress could remove specific cases from the purview of the federal court system if the federal court system began to usurp authority in those cases.

An example of how this could be accomplished is found in the 1868 *Exparte McCardle* case, which was taken to the Supreme Court by an individual seeking relief from an onerous act of Congress (but which act Congress had, under authority of Article III Section 2 clause 2, prohibited from being reviewed by the Supreme Court). Following is the relevant excerpt from the declaration the Supreme Court made when McCardle sought to bring the case to them for redress:

"We are not at liberty to inquire into the motives of the legislature. We can only examine into its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of this court is given by express words.... It is quite clear, therefore, that this court cannot proceed to pronounce judgment in this case, for it has no longer jurisdiction

of the appeal; and judicial duty is not less fitly performed by declining ungranted jurisdiction than in exercising firmly that which the Constitution and the laws confer."

The irony is that this unanimous 1868 Supreme Court decision is a good decision upholding a perfectly repellent act of Congress.

While this approach has been rarely used, and some would deny that the authority of Congress to act in such a manner is granted within the Constitution, it is there for all to read, and only awaits a courageous Congress to act upon it.

And in spite of contrary opinions, not only has Article III, Section 2, Clause 2 been successfully applied in the past by the United States Congress, it may easily be applied today if Congress could be brought to exercise it by the outcry of an informed electorate. Following is a generically worded resolution that could be used as a template to suggest how such an act may be worded in the required instances.

Possible Wording of Congressional Act That Would Remove Cases From the Jurisdiction of Federal Courts:

"The appellate jurisdiction of the Supreme Court and the jurisdictions of the inferior federal courts shall not extend to hearing or determining the power of a state to *(Insert the issue or subject which is to be prevented from being reviewed by the federal court system—such as same-sex marriage, abortion, flag burning, educational issues, etc., etc.)*. Such jurisdictions shall not extend to hearing nor determining the refusal of any state to give full faith and credit to any act regarding *(Insert issue or subject)* under the law of any other state."

This approach applies the U.S. Constitution "in the tradition of the Founding Fathers." It recognizes and applies the Congressional authority over the courts as allowed and found in Article I Section 8 Clause 9, Article III Section 2 Clause 2, and Article IV Section 1.

No "Full Faith and Credit" complaints could be taken to the federal courts, and the power to encroach into these matters would be kept out of the hands of the federal government. Each State would be responsible within their own realm before God for their actions.

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For information on the Constitution Party of Utah, and to learn of candidates who are associated with the Constitution Party of Utah, or to learn how you may assist in the effort to restore the foundation principles upon which the United States was established, please see our web site: www.cputah.org .

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