Proposed Constitutional Amendment

"Scalia Amendment"

In this government of the people, by the people, for the people, the United States Supreme Court shall be without the power to abridge, alter or amend the legislative power granted exclusively to Congress pursuant to Article I Section 1 of the United States Constitution.

The constitutionality of any federal law passed by the Congress shall be determined by the peoples' representatives in the Congress themselves, subject only to the veto power of the President. A law so passed and signed by the President is then a valid constitutional law, there being no power under the Constitution given to the United States Supreme Court or lesser courts to "interpret" that law so as to amend, alter or abridge the law. Any authority of the United States Supreme Court or lesser courts to interpret the constitutionality of a law, federal or state, is hereby canceled.

As an unelected politically appointed body*, the United States Supreme Court and lesser federal courts are not empowered to revise state or federal laws.

The United States Supreme Court and lesser federal courts shall also be without power to abridge, alter or amend the authority of the states to govern their citizens pursuant to the power to do so conferred by the Ninth (9th) and Tenth (10th) Amendments to the Constitution.

When a state law conflicts with a federal law of the same nature, the federal law shall govern.

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* **The late Justice Antonin Scalia opined: "Today's decree says that my Ruler, and the Ruler of 320 million Americans coast-to-coast, is a majority of the nine lawyers on the Supreme Court. The opinion in these cases is the furthest extension in fact— and the furthest extension one can even imagine—of the Court's claimed power to create "liberties" that the Constitution and its Amendments neglect to mention. This practice of constitutional revision by an unelected committee of nine, always accompanied (as it is today) by extravagant praise of liberty, robs the People of the most important liberty they asserted in the Declaration of Independence and won in the Revolution of 1776: the freedom to govern themselves." *Obergefell v. Hodges*, 576 U.S. ___ (2015).**

For copies of this amendment go to NAAPC.org and click on icon "Scalia Amendment" to download or share.

Bishop Hoadly

Restoring the vision of our Forefathers

Thomas Jefferson

"WHOEVER HATH AN ABSOLUTE AUTHORITY TO *INTERPRET* ANY WRITTEN OR SPOKEN LAWS, IT IS HE WHO IS TRULY THE LAWGIVER, TO ALL INTENTS AND PURPOSES, AND NOT THE PERSON WHO FIRST SPOKE OR WROTE THEM."

— Bishop Hoadly's sermon preached before the king, March 31, 1717

In 1803, Chief Judge John Marshall of the U.S. Supreme Court **contrived** for his court the **power** to **"interpret"** the Constitution in the case of *Marbury v. Madison.* Some may ask "How did John Marshall have a right to do this if what he did was nowhere provided for in the Constitution?" Others ask, "How did he get to be a judge in the first place if he was a high school drop out and never attended college?" (It may be said in Marshall's favor that he did not quit school because of a poor intellect but because he was needed to help raise his 14 younger brothers and sisters on the family farm.) At the age of 25, he studied law briefly at the College of William & Mary, which in those days did not require a high school or college diploma in order to take a few law courses. He was admitted to the Virginia bar as a lawyer. Pulling himself up by his own bootstraps, he lobbied for and received the powerful position of a Supreme Court appointment. Some would say he embodies the admonition of Alexander Pope: "A little learning is a dangerous thing. Drink deep or taste not the Pyerian spring."

Following the 1803 *Marbury v. Madison* decision, which John Marshall authored, **THOMAS JEFFERSON,** then President of the United States, stated: **"It is a very dangerous doctrine to consider the judges as the ultimate arbiters of all constitutional questions. It is one which would place us under the despotism of an OLIGARCHY."**

PRESIDENT JEFFERSON saw where this unconstitutionally usurped power would lead when he stated: **"The Constitution . . . is a mere thing of wax in the hands of the judiciary which they may twist and shape into any form they please. It has long been my opinion, and I have never shrunk from its expression . . . that the germ of dissolution of our federal government is in the constitution of the federal Judiciary; working like gravity by night and by day, gaining a little today and a little tomorrow and advancing its noiseless step like a thief, over the field of jurisdiction, until all shall be usurped."**

PRESIDENT ABRAHAM LINCOLN added his wisdom at the time of his first inaugural address: **"If the policy of the government upon vital questions is to be irrevocably fixed by decisions of the supreme court . . . the PEOPLE will have ceased to be their own rulers . . ."** Lincoln knew the Constitution, and as a lawyer himself he knew the importance placed by the framers of the Constitution on **SELF government;** not **'COURT government'.**

The preeminent constitutional law scholar **PROFESSOR JOHN W. BRABNER-SMITH** (founder of the International School of Law in Washington, DC, now the George Mason University Law School) summed up the differences between the **court's own** system of **judicial interpretation** versus the original system put in place by the framers of the Constitution as follows:

"**THE SYSTEM OF JUDICIAL INTERPRETATION** of the Constitution as the basis for determining our individual rights **has**, among others, the **following fatally flawed characteristics**:

1. The debate among the Justices as to the approach to be used in interpreting the Constitution will continue – leaving our nation with the uncertainty, conflicting opinions and decisions based upon the personal values of the individual judges.

2. Since there is no provision for the recognition of any "truth" or of any "principle" there can be no recognition of such a thing as "inalienable rights" in individuals.

3. Since there are no "truths" or "principles" to be recognized then there is no basis for classifying anything as "right" or "wrong" – everything becomes relative.

4. If by the term "ethics" we mean the establishment of a principle that is permanent then this system will not permit the establishment of an "ethic" but everything will fall under the general category of "situational ethics" where there is no right and no wrong but everything depends upon the facts of the situation.

Abraham Lincoln

5. This system will ultimately lead to tyranny of one form or the other, that is, the tyranny of "majority rule" or the tyranny of certain person or persons – the ultimate elimination of individual rights. . . . **Professor John W. Brabner-Smith**

Professor Brabner-Smith then contrasted the court's own system above with that intended by our forefathers as follows:

The **SYSTEM ENVISIONED BY OUR FOREFATHERS** has, among others, the following characteristics:

1. All power not expressly given to governmental representatives, and this includes the judiciary as well as the elected representatives, is retained by the people.

2. The "truths" that man is created, that there is a Creator, and that all men are endowed by their Creator with individual inalienable rights are recognized as the foundation of our government and can be taught in the public school as such.

3. The existence of a Creator who possesses the power to endow individuals with inalienable rights is acknowledged as a "presupposition" or as "self-evident truth" and <u>not</u> as a religious belief or a religious matter.

4. Powers are retained by the people as distinguished from all powers being vested in the government.

5. The "rights" vested in the individual cannot be taken away by amendments to the Constitution or by statutes or by the court.

6. The government can recognize or establish certain moral principles – recognize that certain actions are "right" and others are "wrong" – without becoming involved, as a nation, with any religion or religious belief.

7. The approach of the government will be to determine the proper restriction, limitation or suspension of the exercise of a right rather than approach the questions by an interpretation of some provision in the Constitution to see if such right exits." . . . **Professor John W. Brabner-Smith (founder of the International School of Law in Washington, DC, now the George Mason University Law School)**

John Wesley Brabner-Smith

THE SYSTEM ENVISIONED BY OUR FOREFATHERS DID NOT CONTEMPLATE "JUDICIAL LEGISLATION," The Supreme Court and lesser courts are not intended to be legislative bodies. **This proposed constitutional amendment embodies the wisdom of Thomas Jefferson and would divest the judiciary of 'interpretative power' over the Constitution, ending its ill-gained power to LEGISLATE, thereby restoring the vision and original intent of our forefathers.**

In plain language at the very beginning of the Constitution, Article I, Section 1, we find these words:

"ALL LEGISLATIVE POWERS herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives." Article I, Section 1, United States Constitution

The Supreme Court's own web page states in pertinent part: **"Few other courts in the world have the same** *AUTHORITY* **of constitutional** *INTERPRETATION* **and none have exercised it for as long or with as much influence."** (They, of course, are referring to authority which Thomas Jefferson pointedly stated was never intended for the court. It was nowhere provided for in the Constitution.) The court, in speaking of its own self-assumed authority, not only declares that few other courts in the world have this same authority but that "none have exercised it for as long or with as much influence." Yes, they are correct. They have exercised quite a bit of "influence" over the lives of preborn children, and all of us as adults. If Thomas Jefferson were living, he would pronounce the court to be our modern-day "KING GEORGE III" from whom we need to declare our independence.

It is time to call a halt!

The only remedy is a Constitutional Amendment. The Constitution provides for amendments thereto as follows:

Article V

"The Congress, whenever two thirds of both houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress…"

Jefferson was vociferous and adamant in castigating his distant cousin, John Marshall, for taking it upon himself to seize power to "interpret" the Constitution. Such authority was not to be found in the Constitution itself. Judge Marshall simply pulled it out of thin air. Successive generations of the Supreme Court have built upon this power that Marshall invented to the point where it has snowballed and we find ourselves 'ruled by the Court' – the "oligarchy" that Jefferson foresaw.

Lincoln's words are worth repeating: "If the policy of the government upon vital questions is to be irrevocably fixed by decisions of the supreme court… the **PEOPLE** will have ceased to be their own rulers…."

The **PEOPLE**, through their elected representatives, make the laws. It is the people, through their elected representatives, who should have the sole authority to interpret their laws if such an interpretation is indeed needed. Our Constitution presently has 27 Amendments. Were this proposed Amendment to be embraced by the people and passed, it would be the 28th Amendment. For purposes of circulating it for consideration, we've taken the liberty of temporarily naming it the "Scalia Amendment."