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SEPTEMBER 15, 2005 01:39 PM | POSTED BY JOHN | QUESTIONS & COMMENTS 3

Unconstitutional Constitution Day

by Kent Greenfield, Professor of Law and Thomas Carney Scholar at Boston College

Law schools, high schools, universities, and other educational institutions across the country will be commemorating Constitution Day in the coming days. In doing so, we celebrate the anniversary of the longest-enduring national Constitution in the world. At Boston College Law School, where I teach, the Dean announced that the commemoration will include a panel discussion among distinguished scholars. An internet search reveals that schools elsewhere are celebrating with parades, library displays, and debates. If the Day works as designed, students of all ages and stripes will come away educated about the document and inspired by its brilliant, prescient design.

I should love Constitution Day. I teach the Constitution, I read about it (for fun), I have been known to write long-winded, esoteric law journal articles about it. I recently made a special trip to the Constitution Center in Philadelphia. I capitalize words such as "Constitution" and the "Framing." And of course I am a proud member of the American *Constitution* Society.

But Constitution Day is unconstitutional.

Whether laudable or not, these celebrations are not voluntary. They are a result of a recent Congressional mandate, imposed on any school receiving federal funds. Such compulsion to teach a certain thing is a violation of the First Amendment, which protects all of us from being compelled to speak by the government.

These are not just the paranoid ramblings of an ivory tower denizen. The mandate to celebrate Constitution Day underscores a disturbing trend in Congress's willingness to violate the First Amendment in order to score political points.

The right to be free of government-compelled speech – even speech that is worthwhile and beneficial – has been a "fixed star in our constitutional constellation" for over sixty years. That quote comes from Justice Robert Jackson, writing for the Supreme Court striking down a law expelling students who refused to recite the Pledge of Allegiance. Even though the country was in the middle of World War II at the time, the Court recognized that patriotism must be voluntary to be meaningful. Jackson did not mince words: "Those who begin coercive elimination of dissent soon find themselves exterminating dissenters."

The same is true now. Though we are at war, if we have to mandate patriotism or respect for the constitution, then we have already lost.

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This truth is ignored by our government, which is increasingly compelling patriotic homage. The No Child Left Behind Act forces public and private high schools to hand over the names, addresses, and phone numbers of teenagers, so that military recruiters can target them with mailings, emails, and phone calls. Another law, the so-called Solomon Amendment, compels universities to use their own resources to assist military recruiters in reaching students, even when the military's discrimination against homosexuals would normally trigger universities' general policies of not assisting discriminatory employers.

In fact, the constitutional issues underlying these laws are so pressing that the Supreme Court will soon hear a case challenging the Solomon Amendment on First Amendment grounds.

The government's defense of the Solomon Amendment is the same as it would be to the mandatory Constitution Day: there is no violation of the constitution when rights are given up as a condition of government benefits.

Pause and consider the breadth of such a justification. The government is everywhere, and every one of us depends on government benefits of some kind or another, from social security benefits to farm subsidies. When the government restricts the use of funds within a specific program, that is one thing. But it goes too far when, as a condition of a government benefit, the government forces us to waive our constitutional rights generally. Otherwise, residents of government-subsidized housing could be forced to open their doors to policemen without search warrants. Medicare recipients could be compelled to give up their right to bear arms. Veterans using federal student loans to complete a degree could be made to forego any anti-war protesting while in school.

Government funding should be used to achieve important public policy goals, not as a mechanism to buy up the constitutional prerogatives of the nation's citizens.

If a celebration of Constitution Day can be constitutionally mandated as a condition of federal funds, then so could Right to Life Day, No Nukes Day, or Tom DeLay Day. Indeed, as a constitutional matter, there is not much to distinguish government-mandated celebrations of the Constitution from government-mandated celebrations of George Bush's foreign policy.

The Constitution should indeed be celebrated, honored, even revered. But our Constitution is great enough that we can celebrate it without the government telling us we must.



WRITTEN BY: [JONI MOODY](#)
ON SEPTEMBER 29, 2005 09:25 AM

1. Does it matter with respect to the argument above that the law carries absolutely no enforcement provisions? I think it does. 2. Constitution Day's "requirements" must be distinguished from school district laws at issue in *Barnette*, which criminalized failure to salute the flag. 3. As to the argument related to the attachment of Article I powers to 1st Amendment rights, this area of the law is so murky that it seems overdrawn to allege bad faith or narrow political interests by Congress, let alone the executive branch. 4. Indeed, the only involvement of the executive branch occurred

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when the President signed the budget (nb: Consitution Day was added at the last hour to a comprehensive budget bill). 5. Finally, Constitution Day was proposed and endorsed by Senator Robert Byrd, D-WV.



WRITTEN BY: [PAUL KOCHIS](#)
ON OCTOBER 19, 2005 01:42 PM

The level of illiteracy by US citizens concerning the rights, responsibilities and opportunities afforded under our Constitution is staggering. Citizens who are ignorant of these rights, responsibilities and opportunities are, in fact, deprived of "life, liberty and the pursuit of happiness" if they are not afforded the resources to learn about this Constitution. The Byrd Amendment seeks to insure that at least some of the public (i.e. federal employees and our youth in school) are given the resources to learn. How does the opportunity to learn "abridge" free speach?



WRITTEN BY: [A ALEXANDER STELLA](#)
ON DECEMBER 13, 2005 09:07 PM

Likely enough, guys,

you'd like to know how come you've received this missive. Well, here's it all started. I revised the Pledge of Allegiance, titling the revision "Pledge for Constitutional Allegiance". I was so proud of my revision that I sought a way to call the attention of prestigious academics such as yourself to this new pledge.

Through GOOGLE, I found the e.mail addresses of about 200 law professors, who had participated in the federally mandated Constitution Day. It would be a gross exaggeration to call the response "tepid".

When I groused about such indifference, I was advised to try a different tack. I was assured that the overwhelming majority of law professors are trying to make sense of the Supreme Court's recent decision on eminent domain. Maybe, the average law professor or history professor might welcome an opinion by a layman, who tries to understand the way this country works.

Just so happens that on my blog, there's a piece that draws out a bone-rattling implication of that decision, which I believe makes hash of the Fifth Amendment.

To get to it, all you need do is click on the below mauve U.R.L.

toodles

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.he who is known as sefton

<http://hewhoisknownassefton.blogspot.com/2005/12/supremes-godless-commies.html>

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