

# The Oath Of Office: The Check On Usurpations By Congress, The Executive Branch, & Federal Judges.

## The Oath of Office & Nullification.

By Publius Huldah.

Rush Limbaugh recently <sup>1</sup> castigated our putative president for announcing that his regime would not enforce the Defense of Marriage Act. Rush said:

“...He’s ordering his Justice Department not to defend a federal law. Nobody has said the law is unconstitutional other than Obama and Holder, and they don’t have the power to do that ... For a president to ignore a federal law ... for him to act as legislature and court ...is hugely troubling ...”

Newt Gingrich commented to the same effect to **Newsmax on Feb. 25, 2011**; and added that “it’s a violation of his [Obama's] constitutional oath” and “could lead to a constitutional crisis”.

**Not so**, Rush & Newt! Actually, it is a President’s *sworn duty* to refuse to enforce any unconstitutional “law” made by Congress. And contrary to the misinformation with which we are constantly bombarded, judges are **not** vested with exclusive authority to declare Acts of Congress unconstitutional.

The Truth is that a President, the States, local governments, and individual citizens, together with the courts, **all** have the **Right & Duty** to overrule – to spurn & cast out – unconstitutional laws made by Congress. For it is a fundamental [though long suppressed] Principle of our Founding that an unconstitutional “law” is no “law” at all – it is a “mere usurpation, and deserves to be treated as such”.

Our Framers placed “Oaths of Office” in the Constitution. When honored, these Oaths function as “checks” on the powers of the federal government and protect us from usurpations. **Each Branch of the federal government has “the check of the Oath” on the other two branches.**

The States, whose officials also take the Oath of Office, have the same check on all three branches of the federal government.

And WE THE PEOPLE, the “original fountain of all legitimate authority” (**Federalist No. 22**, last para), have the Right to overrule violations of the Constitution by elected & appointed officials.

## Ignorance of Our Founding Principles

**WE THE PEOPLE forgot our Founding Principles.** Conservative lawyers, politicians, judges, “intellectuals”, and radio & TV pundits don’t know them. The lawyers uncritically accepted what they were told in law school, and the non-lawyers accept what other people say. **No one learns *The Constitution* – no one thinks independently** – like Dufflepuds, they chant the prevailing dogma. As a result, our Country spirals downward at an ever quickening pace.

But if *you* read on, *you* will learn seven of our Founding Principles:

### **1. Who Really Is The Boss? WE THE PEOPLE? Or the Federal Government?**

WE THE PEOPLE **created** the federal government when we ordained & established the Constitution for the United States of America. WE **created** the three branches of the federal government and itemized the powers WE granted to each branch. <sup>2</sup>Neither the Legislative, nor the Executive, nor the Judicial Branch may **lawfully** do ANYTHING unless WE authorized it in the Constitution. WE are the Creators; those in the federal government, be they Senators, Representatives, federal judges, Presidents or other officials, are merely our “creatures”. When they disobey the Constitution, **WE** are to take action. In **Federalist No. 33** (5th para), Alexander Hamilton says:

“If the federal government should overpass the just bounds of its authority and make a tyrannical use of its powers, **the people, whose creature it is, must appeal to the standard they have formed [the Constitution], and take such measures to redress the injury done to the Constitution as the exigency may suggest and prudence justify.**” [emphasis added]

***Did you get that? Read it again.***

### **2. Congress’ Powers are Enumerated**

In the Constitution, WE authorized Congress to make laws **only** on those objects WE listed in the Constitution. Those few objects on which WE authorized Congress to make laws applicable throughout our Country are itemized at **Art. I, Sec. 8, clauses 1-16** (and in a few Amendments). **Here** is an explanation of Congress’ Enumerated Powers.

### **3. When is a “Law” Not a Law?**

When it’s a usurpation! I.e., when Congress makes any “law” which the Constitution does not authorize it to make. Our Framers understood that civil governments seek to expand their powers; but when **our**

federal government does so, its acts are **VOID**. In **Federalist No. 33** (last para), Hamilton says a law made by Congress which is not authorized by the Constitution,

“...would not be the supreme law of the land, but a usurpation of power not granted by the Constitution...” [boldface mine]

In **Federalist No. 78** (10th para), Hamilton says:

“...every act of a delegated authority, contrary to...the commission under which it is exercised, **is void. No legislative act ... contrary to the Constitution, can be valid. To deny this, would be to affirm...that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.**” [emphasis mine]

Do you see? If Congress makes a law which is not authorized by the Constitution, then it is no “law” at all. It is a “mere usurpation” – it is “**void**” and “**not valid**”.

#### 4. What is the “Rule of Law”?

Article VI, clause 2, says the Constitution, and the Laws & **Treaties authorized by the Constitution**, are the “supreme Law of the Land”. The **Rule of Law** prevails when the civil authorities obey The Constitution. **Webster’s 1828 Dictionary** says for “Constitution”:

“...In free states, *the constitution is paramount to the statutes or laws enacted by the legislature, limiting and controlling its power*; and in the United States, the legislature is created, and its powers designated, by the constitution.”

If any Branch fails to obey the “supreme Law”, then, in order to preserve the Rule of Law, the other Branches, or failing that, the States or THE PEOPLE, **must overrule them**.

#### 5. What Does the Oath of Office Actually Say?

Article II, Sec. 1, last clause, sets forth the President’s Oath of Office:

“I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend **the Constitution** of the United States.”

Article VI, clause 3, provides that all other representatives, officers & judges (federal and state) are bound to support **the Constitution**.

## 6. The Check Provided by the Oath of Office

The Key is this: One's Oath is pledged to **The CONSTITUTION** - the Oath is NOT to go along with Congress, or to obey the Executive Branch, or submit to federal judges.

### The President's "Check" on Congress and Federal Courts:

Say Congress makes a "law" which says Jews must wear a yellow star on their arm; Christians, a white cross; & that it's a felony if they fail to wear the armbands. Imagine you are President. You vetoed the bill; but Congress overrode your veto. Are you going to enforce that "law"?

Look at your Oath of Office. Does your Oath require you to obey Congress <sup>3</sup> unless & until five people on the supreme Court say you don't have to? And even if those five side with Congress, will you allow U.S. Attorneys to prosecute Christians & Jews who don't wear the arm bands?

Or will you look at your Oath of Office which recites that your Sworn Duty is to "preserve, protect and defend **the Constitution** of the United States". **The Constitution** – not whatever law a majority of people in Congress pass & five people on the supreme Court approve. If you are faithful, you will review Art. I, Sec. 8, clauses 1-16, and you will ask, "**Where is Congress authorized to make a law which requires Christians & Jews to wear armbands?**" You will see that The Constitution does not authorize Congress to make the law, and you will see that the supreme Court's opinion upholding it is unconstitutional. You will denounce the pretended law & judges' opinion as "mere usurpations", and you will instruct the Attorney General & U.S. Attorneys NOT to prosecute violations of that pretended "law". <sup>4</sup>

### Four Checks on Federal Judges:

We were told in law school that the supreme Court is the ultimate authority on the Constitution, and when they [or rather, a majority of five] speak, we must all scurry to obey. **Rubbish!**

The Oath of Office (Art. VI, last clause) does require judges to strike down "laws" made by Congress which are unconstitutional. Hamilton recognizes in **Federalist No. 78** (9th para, et seq.) that judges have the power to strike down unconstitutional "laws".

But **this** is the only "check" law students hear about! Since they *don't know* about The Federalist Papers & (thanks to progressive education) *can't think*, they graduate law school believing that the only "check" is that of federal judges to declare laws made by Congress unconstitutional ("judicial review"). They believe that *no one* has a check on the supreme Court – that **their** word is final.

**Not so!** Federal judges are not gods. They are morally & intellectually *fallible* people who (as our Framers saw) can cause dreadful harm to our Country when they connive with another Branch.

Thus, they are subject to “the check of the Oath” for *their* usurpations – checks imposed by Congress, the Executive Branch, the States, and THE PEOPLE:

(a) **Congress must** impeach & remove federal judges who usurp power – they serve during “good Behaviour” only (Art. III, Sec.1). Hamilton discusses impeachment of usurping judges in **Federalist No. 81**, 8th para. <sup>5</sup> So yes! **Congress** may review the propriety of judges’ opinions!

(b) **The President must** refuse to go along with unconstitutional opinions. Hamilton saw that federal judges might become “**embarked in a conspiracy with the legislature**” (**Federalist No.16**, next to last para). So the President is bound by Oath to reject unconstitutional “laws” even when approved by the supreme Court. And Hamilton understood that it might be appropriate for a President to refuse to enforce a federal court opinion. He says in **Federalist No. 78** (6th para):

“...The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. **The judiciary ... has no influence over ... the sword or the purse; no direction ... of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.**” [caps are Hamilton's, other emphasis mine]

Do you see?

(c) **The States must nullify** unconstitutional opinions. <sup>6</sup> State officers & judges are bound by Oath to support the Constitution (Art. VI, last clause). So they too are Honor bound to refuse to comply with unconstitutional federal court opinions, as well as unconstitutional federal laws, executive orders, & **pretended treaties** which affect them & their Citizens.

## **7. The People Have The Ultimate Power & Responsibility to Enforce The Constitution**

For too long, we have shirked our Responsibility to enforce The Constitution – we let the supreme Court be in charge.

Look at what they have done with the power we relinquished to them: They approved Congress’ massive &

grotesquely unconstitutional expansions of federal control over our lives [e.g., their "**interstate commerce clause**" & "**general welfare clause**" jurisprudence]; they **outlawed the Faith of Our Fathers** & used **the 14th Amendment** to bring about a radical redefinition of “Liberty” *as freedom from moral restraints*; and they connived with Congress in turning the once proud American People into parasites who clamor to live at other peoples’ expense. They usurped *Our* status as the “pure, original fountain of all legitimate authority”, and claim for themselves the power to “**make policy**” for our **Country!**

### **Our Framers Understood That Judges Could Be Dangerous – But Couldn’t Get Away With It Unless WE Concurred.**

Hamilton says “an illegal usurpation of authority”, to be successful, “would require not merely a factious majority in the legislature, but **the concurrence of the courts of justice and of the body of the people.**” Because **judges may be “embarked in a conspiracy with the legislature”**, Hamilton expected **the People to be “enlightened enough to distinguish between a legal exercise and an illegal usurpation of authority.”** (**Federalist No.16**, next to last para).

“...liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments...” ( **Federalist No. 78**, 7th para).

James Madison says in **Federalist No. 44** (last para before 2.):

“...**the success of the usurpation** [by Congress] **will depend on the executive and judiciary departments**, which are to expound and give effect to the legislative acts; and in the last resort a remedy must be obtained from the people, who can, by the election of more faithful representatives, annul the acts of the usurpers.” [boldface added]

So! It is up to The People, who are “*the natural guardians of the Constitution*” (**Federalist No.16**, next to last para), to take **whatever action is necessary** when their representatives in the federal government concur with the usurpations of another Branch – and thereby violate their Oaths to preserve The Constitution.

How do we become “enlightened enough” to do this?

Read The Declaration of Independence & The Constitution – read them often. The more you read, the more you will come to see that The Constitution gives effect to the Principles of the Declaration. Outline The Federalist Papers. Get **Mary Webster’s edition in modern English** for yourself and the young

people in your Family. Consult **Webster's 1828 Dictionary** for definitions. Be careful whom you trust – most conservative lawyers have minds like blank sheets of paper which got imprinted in law school; and the conservative commentators regurgitate what the indoctrinated lawyers tell them! Study so that *you* can speak like **this wonderful woman** who challenged Rep. Pete Stark on obamacare.

Stop wasting your time on bizarre theories about the Uniform Commercial Code (UCC) , “emergency powers”, “corporations”, gold fringe on flags & admiralty jurisdiction, and other such silly stuff. It may be tempting to place the blame on others who are in a secret cabal to take away your rights via nefarious schemes such as the UCC, “corporate government” , or adding gold fringes to flags; but the Truth is that *you*, along with everyone else, haven't bothered to do the Work to learn our Founding Documents & Principles.

Lose your pride in your own knowingness about The Constitution: What you think you know, just ain't so; and the misinformation in your head blinds you to Truth. When you just repeat the stuff you hear, you add to the problem. Millions of Americans heard Rush & Newt and were misled by the misinformation those two spread. And for Heaven's Sake, don't advocate ratification of Amendments to the Constitution until you *fully* understand the existing Constitution! [And if you fully understood it, the only amendments you would want are those repealing some of the previous amendments.]

Stop thinking like a slave – we have become a Country of “permission seekers”. For every issue, we want to file a lawsuit in federal court. Why? ***Because we don't want to take Responsibility*** for dealing with the issue ourselves. Spend a few hours studying the Declaration & Constitution and ***you will know*** the Constitution doesn't give Congress authority to force you into a government controlled “health care” system. ***You will know*** it doesn't give the Executive Branch authority to control CO<sup>2</sup> emissions. ***You will know*** it doesn't give the Executive Branch & Congress authority to force us into pernicious UN treaties such as the Declaration on the Rights of the Child & to implement [as they are doing *right now*] the UN's Agenda 21 “sustainable development” scheme. Many federal judges are our enemies – they are the last people you should ask for permission to have constitutional government. ***WE need to “man up” and take responsibility.***

As Madison advises, defeat elected federal & State officials who have betrayed us; and replace them with faithful servants who will annul the acts of the usurpers.

Learn your State's recall statutes – recall faithless elected officers. Learn your State's impeachment procedures – demand impeachment of faithless State judges and officers. Demand impeachment of faithless federal officials and judges. Demand that each house of Congress expel members who usurp

power (Art. I, Sec. 5, clause 2). *Expel* the loons in the House!

Learn about **Nullification by States** and restore Jury Nullification in criminal cases.<sup>7</sup>

Learn about **Federalism**. Urge repeal of the 17th Amendment to help restore “federalism”.

Learn from the heroic Rev. Dr. Martin Luther King, who practiced non-violent civil disobedience of unjust State “laws” which enforced segregation. Withdraw **your** concurrence to usurpations.

### Endnotes:

<sup>1</sup> Rush’s show of Feb 24, 2011. When Rush speaks on the Constitution, beware! But when he speaks on other matters, he can be brilliant. And *Gingrich*, who is supposed to be an intellectual & an expert, showed he is **profoundly ignorant** of our Founding Principles.

<sup>2</sup> Art. I creates the Legislative Branch & enumerates its powers. Art. II creates the Executive Branch & enumerates its powers. Art. III creates the Judicial Branch & enumerates its powers.

<sup>3</sup> You may object, “But Art. II, Sec. 3 says the President “shall take Care that the Laws be faithfully executed!” And I would remind you that an unconstitutional “law” is no law at all – it is “a mere usurpation and deserves to be treated as such” – it is “**VOID**” & “**not valid**”.

<sup>4</sup> In **Federalist No. 66**, 2nd para, and **Federalist No. 77**, last para, Hamilton points out that Congress may impeach & remove the President for “encroachments” on the powers of the Legislative Branch. So if Congress objects to your ignoring their pretended law, they may impeach & remove you.

<sup>5</sup> Hamilton says in **Federalist No. 78** (7th para up from bottom) that judges may not

“...substitute their own pleasure to the constitutional intentions of the legislature ... The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would ... be the substitution of their pleasure to that of the legislative body...” [caps are Hamilton's]

When federal judges substitute *their* pleasure for that of Congress [when Congress' acts are constitutional] Congress is honor bound to impeach & remove them for their usurpation. And everyone else is honor bound to spit on the judges’ unconstitutional opinion. **Yes!** It takes he-men & she-women to enforce The Rule of Law! Man up, People!



<sup>6</sup> The supreme Court issues unconstitutional opinions all the time. Look at how they perverted **the 14th Amendment** and **the 1st Amendment!** In these (& other) cases, they substitute *their* pleasures for the Will of The States and The People.

<sup>7</sup> Webster's 1828 Dictionary has the following entry under "jury":

“...Petty juries, consisting usually of twelve men, attend courts to try matters of fact in civil causes, and **to decide both the law and the fact in criminal prosecutions ...**” [emphasis added]

Would you convict someone for the “crimes” of failing to buy health insurance or failing to wear the armbands? THAT is the essential purpose of Jury Nullification in criminal cases. Get your Legislatures to restore it and insist that it be applied in federal criminal trials conducted in your State. PH

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