Citizen's Courier

DOES 9TH AMENDMENT SUPPORT ABORTION?

THE ABORTED 9TH AMENDMENT

How activist judges have played both sides of federalism

By Ellis Washington

"[The Ninth Amendment] *specifically roots the Constitution in a natural rights tradition that says we are born with more rights than any constitution could ever list or specify.*" – Brian Doherty, "Radicals for Capitalism" (2007)

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. These are the 21 simple yet transcendent words of the Ninth Amendment. This country would not exist as we know it if the Bill of Rights and in particular the crucial Ninth and Tenth Amendments weren't also included to protect federalism – states' sovereign rights over federal socialist tyranny.

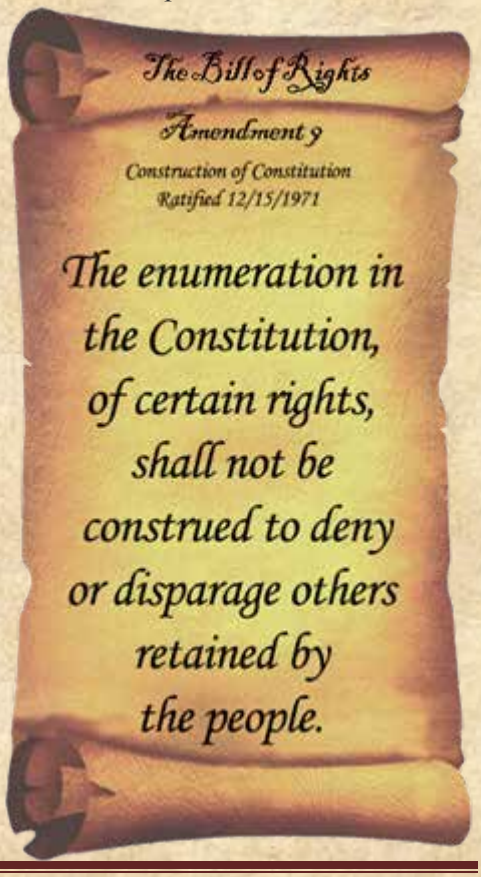
The Bill of Rights, or the first 10 amendments to the Constitution, was modeled after the Ten Commandments of the Bible and considered by the constitutional framers to be Natural Law – in other words unalienable, God-given, enumerated, natural rights given to all citizens by God and thus rights that could never be lawfully taken away by any tribunal or man's law.

In America's early history, there were constant arguments between the Federalists and Anti-Federalists regarding the need for a bill of rights. In Federalist No. 84, Alexander Hamilton argued that a bill of rights was redundant, because it was unnecessary to place limits on the power of government to do things it was not authorized by the Constitution to do. It would be impossible, Hamilton argued, to list all the rights "retained by the people." Protecting some rights but not others exemplified the Latin maxim "*expressio unius est exclusio alterius*" would suggest that Americans had surrendered certain rights to their government when, in Hamilton's view, the Constitution did nothing of the sort.

On the contrary, Anti-Federalists like Samuel Adams, Patrick Henry and Thomas Jefferson embraced a much deeper belief in the need for a bill of rights and the Ninth Amendment, which was intended to vitiate the aforementioned Latin maxim. The enumeration of certain rights and liberties in the Constitution, according to the Anti-Federalists, should not be understood to deny others that exist as a condition of citizenship in a free society. Even Madison, a Federalist and author of the Bill of Rights, insisted that the Ninth and Tenth Amendments be included in the original Bill of Rights to emphasize the framers' fundamental Natural Law ideals.

It is significant when discussing the history of the Bill of Rights to realize the Supreme Court held in Barron v. Baltimore (1833) that originally the Ninth Amendment was enforceable by the federal courts only against the federal government, and not against the states.

Because the Supreme Court has been cautious in giving such general language any substantive definition, it has never presented a clear and



definitive interpretation of the Ninth Amendment. The amendment has been cited in such decisions as Griswold v. Connecticut (1965) (legalizing birth control for married couples) and Richmond Newspapers v. Virginia (1980) (court trial must be open to the public and press) together with other constitutional amendments to strengthen the case on behalf of an asserted constitutional right. The problems in constructing a specific meaning for the Ninth Amendment are demonstrative that both supporters and opponents of legal abortion have cited this amendment to defend the verity of their individual positions.

The Ninth Amendment simply restates the Natural Law idea that rights not specifically enumerated in the Bill of Rights exist and are retained by the people. It was added to ease the concerns of Anti-Federalists such as George Mason, Samuel Adams, John Hancock, James Wilson, Richard Henry Lee, Patrick Henry and Thomas Jefferson, who feared that the enumeration of so many rights and liberties in the first eight amendments to the Constitution would result in the denial of rights that were not enumerated.

As mentioned, up until 1965 the Ninth Amendment was rarely mentioned by the Supreme Court. In that year, however, it was used for the first time by the Court as a positive affirmation of a particular liberty – marital privacy. Although privacy is not mentioned in the Constitution, it was, according to the Court, one of those fundamental freedoms the drafters of the Bill of Rights implied as retained.

Leftist jurists like Justice Arthur Goldberg (joined by Chief Justice Earl Warren and Justice William Brennan) have asserted that the Ninth Amendment is relevant to interpretation of the 14th Amendment as demonstrative in a concurring opinion in the case of Griswold v. Connecticut (1965). Here is an excerpt from that infamous opinion:

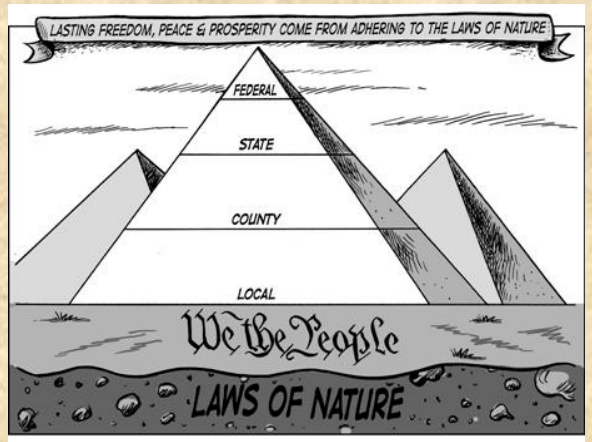
… [T]he Ninth Amendment, in indicating that not all such liberties are specifically mentioned in the first eight amendments, is surely relevant in showing the existence of other fundamental personal rights, now protected from state, as well as federal, infringement. In sum, the Ninth Amendment simply lends strong support to the view that the "liberty" protected by the Fifth and Fourteenth Amendments from infringement by the Federal Government or the States is not restricted to rights specifically mentioned in the first eight amendments. Cf. United Public Workers v. Mitchell, 330 U.S. 75, 94-95.

Since 1965, the Court has ruled in favor of a host of fundamental liberties guaranteed by the Ninth Amendment, often in combination with other specific guarantees including the right to have an abortion.

The title of my column has a double meaning – on the one hand, the Ninth Amendment was ignored by generations of leftist law scholars, progressive politicians and activist judges; on the other hand, those judges concocted out of whole cloth and "found" a new right to privacy to legalize birth control in Griswold v. Connecticut and a hidden constitutional "right" in the "penumbras" and "shadows" that have for over 175 years eluded all of the constitutional framers, as well as subsequent constitutional scholars and legal experts, leading directly to legalization of abortion in Roe v. Wade (1973) just eight years later and in the legalization of homosexual sodomy in the Lawrence v. Texas (2005) case.

Tragically, on the 40th anniversary of Roe v. Wade, America's collective, premeditated genocide has reached over 56 million deaths of innocent babies – all in the name of the Ninth Amendment, which the constitutional framers originally intended to secure not death, but life, liberty and the pursuit of happiness.

Source: http://www.wnd.com/2013/02/the-aborted-9th-amendment/



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Was a Bill of Rights Necessary?

By Walter Williams

As we celebrate the Fourth of July, let's ask the question: Did the Framers make a mistake by amending the Constitution with the Bill of Rights? Would Americans have more liberty today had there not been a Bill of Rights?

You say: "Williams, what's wrong with you? America without the Bill of Rights is unthinkable!" Let's look at it.

After the 1787 Constitutional Convention, there were intense ratification debates about the proposed Constitution. Both James Madison and Alexander Hamilton expressed grave reservations about Thomas Jefferson's, George Mason's and others' insistence that the Constitution be amended by the Bill of Rights. It wasn't because they had little concern with liberty guarantees. Quite to the contrary, they were concerned about the loss of liberties.

Alexander Hamilton expressed his concerns in Federalist Paper No. 84, "(B)ills of rights … are not only unnecessary in the proposed Constitution, but would even be dangerous." Hamilton asks, "For why declare that things shall not be done (by Congress) which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given (to Congress) by which restrictions may be imposed?"

Hamilton's argument was that Congress can only do what the Constitution specifically gives it authority to do. Powers not granted belong to the people and the states. Another way of putting Hamilton's concern: Why have an amendment prohibiting Congress from infringing on our right to play hopscotch when the Constitution gives Congress no authority to infringe upon our hopscotch rights in the first place?

Hamilton added that a Bill of Rights would "contain various exceptions to powers not granted; and, on this very account, would afford a colorable pretext to claim more (powers) than were granted. … (It) would furnish, to men disposed to usurp, a plausible pretense for claiming that power."

Going back to our hopscotch example, those who would usurp our God-given liberties might enact a law banning our playing hide-and-seek. They'd justify their actions by claiming that nowhere in the Constitution is there a guaranteed right to play hide-and-seek. They'd say, "Hopscotch yes, but hide-and-seek, no."

To mollify Hamilton's fears about how a Bill of Rights might be used as a pretext to infringe on human rights, the Framers added the Ninth Amendment. The Ninth Amendment reads: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

Boiled down to its basics, the Ninth

Amendment says it's impossible to list all of our God-given or natural rights. Just because a right is not listed doesn't mean it can be infringed upon or disparaged by the U.S. Congress. Applying the Ninth Amendment to our example: Just because playing hopscotch is listed and hide-and-seek is not doesn't mean that we don't have a right to play hide-and-seek.

How do courts see the Ninth Amendment today? It's more than a safe bet to say that courts, as well as lawyers, treat the Ninth Amendment

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with the deepest of contempt. In fact, I believe that if any appellant's lawyer argued Ninth Amendment protections on behalf of his client, he would be thrown out of court, if not disbarred. That's what the Ninth Amendment has come to mean today.

I believe we all have a right to privacy, but how do you think a Ninth Amendment argument claiming privacy rights would fly with information-gathering agencies like the Internal Revenue Service? Try to assert your rights to privacy in dealing with the IRS and other government agencies, and I'll send you cigarettes and candy while you're in jail.

Source: http://www.wnd.com/2000/06/7562/

The Ninth Amendment

By Don Shrader

The Ninth Amendment is probably the least known of the first ten adopted Amendments. As a matter of fact, because of its seemingly ambiguous language and intent, it was never used in Federal court for the first 170 years to influence a major decision and was seldom even referenced. As further elucidated in the accompanying articles by Ellis Washington and Walter Williams, that all changed in dramatic fashion beginning in 1965. Following the "Griswold Decision," the most liberal Supreme Court to that time eventually misappropriated it to override the absolute unalienable right given to us by our Creator and acknowledged by the Declaration of Independence and explicitly protected by the Constitution – the right to Life! Thus, a liberal Federal judge recently overturned a Texas state antiabortion law claiming the law violated a woman's constitutional right to privacy and thereby her constitutional right to choose life or death for her unborn infant based, as was Roe v. Wade, on the Ninth Amendment. There is no doubt this horrific interpretation was never the intent of our founding fathers, and I believe they would have never passed it if they had in any way foreseen such a dreadful abuse of not only the Constitution but life itself.

The online Legal-Dictionary had this to say about the Ninth Amendment:

The Ninth Amendment to the U.S. Constitution is somewhat of an enigma. It provides that the naming of certain rights in the Constitution does not take away from the people rights that are not named. Yet neither the language nor the history of the Ninth Amendment offers any hints as to the nature of the rights it was designed to protect.

Ratified in 1791, the Ninth Amendment is an outgrowth of a disagreement between the Federalists and the Anti-Federalists over the importance of attaching a Bill of Rights to the Constitution (as further expounded upon in the accompanying articles by Washington and Williams).

The Federalists contended that a Bill of Rights was unnecessary because in their view the federal government possessed only limited powers that were expressly delegated to it by the Constitution. They believed that all powers not constitutionally delegated to the federal government were inherently reserved to the people and the states. Nowhere in the Constitution, the Federalists pointed out, is the federal government given the power to trample on individual liberties. The Federalists feared that if the Constitution were to include a Bill of Rights that protected certain liberties from government encroachment, an inference would be drawn that the federal government could exercise an implied power to regulate such liberties.

Anti-Federalists and others who supported a Bill of Rights attempted to mollify the Federalists' concerns with three counterarguments. First, the Anti-Federalists underscored the fact that the Constitution guarantees certain liberties even without a Bill of Rights. For example, Article I of the

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Constitution prohibits Congress from suspending the writ of Habeas Corpus and from passing bills of attainder and Ex Post Facto Laws. If these liberties could be enumerated without endangering other unenumerated liberties, Anti-Federalists reasoned, additional liberties, such as freedom of the press and religion, could be safeguarded in a Bill of Rights. Second, while acknowledging that it would be impossible to enumerate every human liberty imaginable, supporters of a Bill of Rights maintained that this obstacle should not impede the Framers from establishing constitutional protection for certain essential liberties. Thomas Jefferson, responding to Madison's claim that no Bill of Rights could ever be exhaustive, commented that "[h]alf a loaf is better than no bread. If we cannot secure all of our rights, let us secure what we can."

Third, Anti-Federalists argued that if there was a genuine risk that naming certain liberties would imperil others, then an additional constitutional amendment should be drafted to offer protection for all liberties not mentioned in the Bill of Rights. Such an amendment, the Anti-Federalists argued, would protect those liberties that might fall through the cracks of written constitutional provisions. This idea became the Ninth Amendment.

Unlike every other provision contained in the Bill of Rights, the Ninth Amendment had no predecessor in English Law. It stemmed solely from the genius of those who framed and ratified the Constitution. Ironically, Madison, who opposed a Bill of Rights in 1787, was the chief architect of the Ninth Amendment during the First Congress in 1789.

While I am not a constitutional lawyer and scholar like Bill Clinton or our current President, I do believe that our Constitution was not intended for constitutional scholars alone but for everyday folk like us. It seems to me that there is a natural link between the 9th and 10th Amendment (to be covered next month). Both addressed those rights and privileges not specifically given to the Federal Government by the Constitution, i.e. enumerated therein, which were thereby unequivocally reserved first to the people (Article 9) and then to the states (Article 10).

There is no doubt in my mind that the current absolute misuse of the "Commerce Clause" by the Congresses along with the overreaching regulations on states, businesses, and individuals by such out-of-control federal agencies from the IRS to the EPA ,among many others, is a clear violation of the purpose and intent of the Ninth Amendment.

As further noted by the online Legal-Dictionary:

After *Griswold (*in 1965), federal courts were flooded with novel claims based on unenumerated rights. Almost without exception, these novel Ninth Amendment claims were rejected.

For example, the Ninth Circuit Court of Appeals found no Ninth Amendment right to resist the draft (*United States v. Uhl*, 436 F.2d 773 [1970]). The Sixth Circuit Court ruled that there is no Ninth Amendment right to possess an unregistered submachine gun (*United States v. Warin*, 530 F.2d 103 [1976]). The Fourth Circuit Court held that the Ninth Amendment does not guarantee the right to produce, distribute, or experiment with mind-altering drugs such as marijuana (*United States v. Fry*, 787 F.2d 903 [1986]). The Eighth Circuit Court denied a claim asserting that the Ninth Amendment guaranteed Americans the right to a radiation-free environment (*Concerned Citizens of Nebraska v. U.S. Nuclear Regulatory Commission*, 970 F.2d 421 [1992]).

Although the above examples may have failed to gain traction in the courts, I have no doubt the Gay Rights movement has, is, and will, make

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effective use of this Amendment to further their cause the same as did the pro-abortion movement.

While the examples noted above, "after Griswold," might have been stretching the point, and the pro-abortion and pro-gay movements continue to misappropriate this Amendment to blatantly advance their repulsive movements, there is no doubt that we (like the states) have lost our individual unalienable rights and liberties that were intended to be protected by the Constitution and the Bill of Rights, including and especially the Ninth Amendment. Our protected rights have been hijacked by an overreaching and menacing Federal bureaucracy that our founding fathers counseled us time and again to guard against while unequivocally warning us to be ever vigilant regarding such usurpations of our liberties and freedoms. We have failed them and there is no better example of this than our allowing the misappropriation of the 9th Amendment in Roe v. Wade while not insisting it be invoked appropriately to protect the many unalienable individual rights granted to us by a loving Creator and initially protected by our wise forefathers who gave us our founding documents, and who were no doubt given special wisdom for the task by our Creator. It seems that in this case, the Federalists may have ultimately been right in their assumptions concerning the further enumeration of our rights.

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Response to Governor Kasich's 2014 State of State Address

By Don Shrader

First, I will state that nothing in Governor Kasich's State of the State talk was a surprise, with maybe the exception of the Courage Medals to the three women. While I disdain these kind of opportunistic public exhibitions, whether at the state level or during a President's State of the Union message, I understand that this is part of today's politics.

With respect to the Governor's State of the State address last night, I agree with much of what Charlie Earl wrote, particularly with respect to the Governor's "end run" to enact Medicaid Expansion and his "Jobs Ohio" program. With respect to Jobs Ohio, a recent family experience with a couple of my daughters attempting to initiate a home-based business in Ohio made them ready to move to another state, and ultimately caused them to set aside that business (at least for the time being) even though it was initially growing and had a prospect for future expansion to give others an opportunity to participate and earn additional income.

I also agree with Mr. Earl's assessment that, "our elected representatives choose to play along with an over-reaching and ineffective federal monster rather than resist its unconstitutional and anti-individual liberty measures that restrict our freedom to grow and prosper. Ohio's representatives and our state constitutional officers were elected to serve the citizens of our state, not to enable and advance a huge expansion of the federal government."

While not addressed in his State of the State talk, I would remind voters that Mr. Kasich was all too eager to sign SB 193 in the dead of night, a bill drafted

at the last hour and passed using the "emergency" clause to get it through the Legislature in a timely fashion to impact the 2014 election. That bill was designed to eliminate third parties from the ballot and thereby dissolve and disable Mr. Earl's opportunity to run for Governor as a third party candidate. SB 193 was affectionately labeled the "John Kasich Assured Reelection Bill" as it would have taken Mr. Earl out of the campaign, thus "robbing" Kasich of his margin of victory and thereby allowing Mr. Fitzgerald the opportunity to defeat Kasich. Whether or not Mr. Earl would pull only voters from Mr. Kasich or equally take voters from both major parties as well as encourage independents who would not otherwise vote for either major party candidate is argumentative at best at this point. While a federal judge issued an injunction against SB 193 for 2014, subsequently upheld by an Appeals Court, it is still up in the air whether or not the courts will strike it down permanently before the 2016 elections and beyond.

As to what was addressed by Governor Kasich in his State of the State talk, I applaud Mr. Kasich and his administration for what tax reductions they have initiated and the recreation of a positive balance in the state financial condition. However, what concerns me is that the bulk of the Governor's speech was all about what he and his administration were going to do for everyone in the state during his next four years. It was the essence of big government akin to what the current President is doing in Washington. To me, it looked like Obama-lite. I have said the same thing in the past about Kasich's school funding initiative which was essentially designed to take from the rich schools and give to the poor ones, an income redistribution plan that should make our current President proud except for scope and size. But I guess income redistribution is appropriate, even from a Republican, if it is for the children of the state. And now, according to last night's talk, the Governor intends to do even more for our education system. What we will not do is invoke the idea of personal responsibility, allow them to fail, and suffer the consequences thereby. And when they do ultimately fail, we blame the system, particularly the school system and the educators for their failure, not the individual.

Certainly it is popular with many to hear all that the Government is going to do for them, to protect them from ruin, to provide for their every need, to take from those who can afford it and give to those in need. As the old saying goes, "He who buys votes with his own money is considered a crook, but he who buys them with other people's money is considered a great politician." Certainly I was dismayed to hear all that the Governor and his administration was going to do for us in the coming years. Remember the rather infamous quotation, "A government big enough to give you everything you want is big enough to take away everything you have."

Ohio has the potential to once again

be a great place to live and work. But to realize that potential, the people of Ohio need to be set free from the burdens of centralized government and centralized control over every aspect of their lives as it is today. Rather than hearing all that he and his big-government administration are going to do for us to ensure our success, I would much prefer the Governor re-invoke the Declaration of Independence for our state, "That we hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness." It is not our Governments' duty to ensure our happiness; it is their duty to ensure that we have equal opportunities in Liberty to pursue and construct our own happiness, being allowed to keep the proceeds of our ingenuity and appropriate endeavors, respecting one another as brothers in all we do. Freedom to pursue our dreams unencumbered by the burdensome constraints of a centralized government that wants to give us everything is what can regenerate our economic engines and thereby provide the people of Ohio with renewed prosperity and happiness and make us one the best states in the nation in which to live and work.

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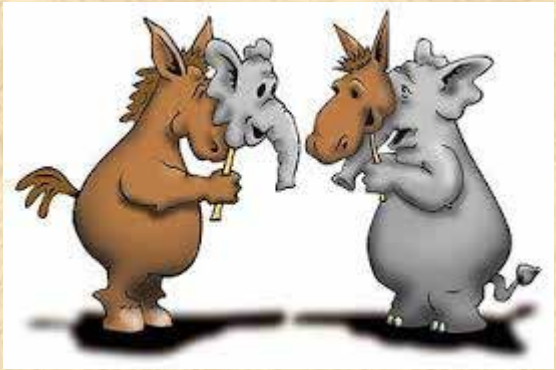
The Duopoly Mindset

By Don Shrader

We as a "third party" do have a tremendous education hill to climb. As much as we might like to say that we are not a third party but "the new second party," the fact is that by both statute in the state legislatures and the voters' mindsets, we are a "third party," along with the Libertarians, Green Party, and the like. The voting public and politicians have bought into a false mantra that voting for a third party candidate is the essence of "splitting" the vote between the only two "real choices," thus allowing the "worst" of the two major party candidates to win. This ploy flies in both directions - "conservative" and "liberal." Al Gore lost because Jerry Brown stole the ultra-left vote, much less Ross Perot causing Bill Clinton to be elected. Of course, that was the mantra used to convince voters against voting for Goode or Johnson in the 2012 election - it would pull votes from Romney; it is also the reason that the "TEA Party Republicans" like Michelle Bachmann, Rand Paul, Ted Cruz, et. al. (plus supposedly conservative talk show hosts like Herman Cain) ultimately fell in line and supported Mitt Romney rather than having the guts to say, "No, I will not support this candidate!!!"

The voting public, sold a bill of goods by the duopoly – the Republicans and Democrats (or as I like to call them the "Republocrats and Demicans" because it is hard to tell them apart these days) – fails to understand that the best form of government would be derived by having choices in voting that most closely aligns with one's political and other life choices (i.e. one's world view it is now called), such that one does not choose the "lesser of the two evils between the two duopoly candidates" but his vote becomes a positive statement supporting his personal philosophies. Yes, sometimes that may cause the "worst" candidate to win an election. How did that other side of the argument work out in the last election!? The worst candidate (arguably) won the Presidential election, while all those "TEA Party conservatives" got nothing in terms of



political positions within the Party or the political arena (Congress, Legislatures, etc.). Worst, they gave up a golden opportunity to stand for principle over politics but in the end they all caved and became of none effect.

Unfortunately, because of this false philosophy implying that all elections are only about two candidates, the general voting public has fallen into the trap, set by the duopoly, of only being willing to support one of two major party candidates. We must get the attention of the voting public and educate them to embrace the real truth and that is that choice is as valuable to good government as it is to the marketplace for goods and services. According to most people's political way of thinking, the way to insure we would have the best cars on the road would be to consolidate all car companies into two major competing car companies, each with a single car line as dictated by the company executives and officials, with both companies operating through laws passed by the owners of the two major car companies. Of course, if this were to ever come to pass, we would have terrible cars that would operate poorly and be maintenance nightmares, and be anything but what we really wanted in our own personal automobile while the company executives would live lives of luxury. Why can't we see this is what has happened in politics by allowing our political choices to be constrained by law to basically only two choices controlled by those in charge of each party!

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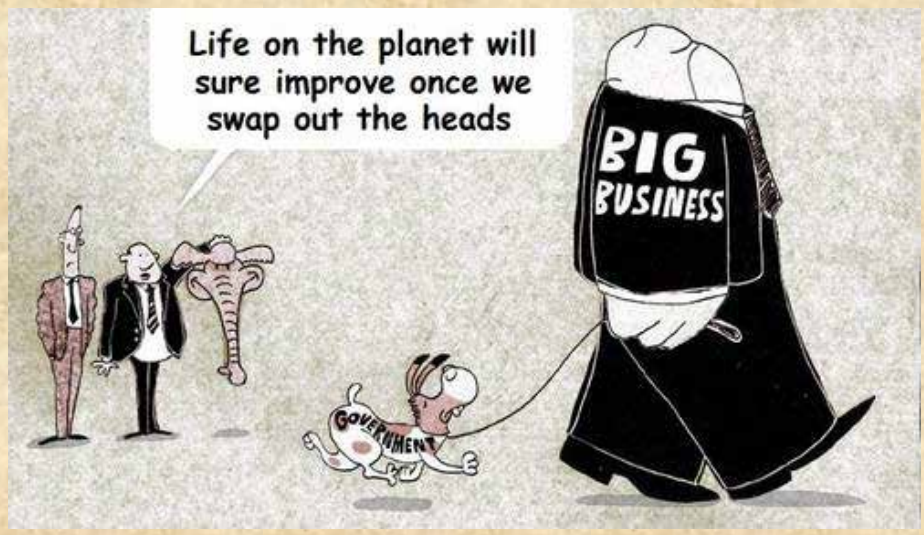

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Letters to the Editor must address current issues of constitutionality at both state and federal levels.

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Letters will be subject to approval and proofing for grammar and punctuation.

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Looking forward to your submissions!