The Republican Club of Sun City
N E W S L E T T E R

September 2018 **Everett Schmidt, Editor** **Sun City Texas**
(Website: rcsctx.com)
(Topics, this newsletter: The U.S. Constitution, America's First Experiment With Socialism)

REPUBLICAN CANDIDATES FOR VARIOUS JUDICIAL POSITIONS TO ADDRESS CLUB SEPTEMBER 6

The following candidates for judicial positions on the Texas Supreme Court and the Third Court of Appeals will address the club during its dinner meeting scheduled for **Thursday, September 6 in the ballroom of the Social Center in Sun City** ["i" by a name designates incumbent]**:**

Texas Supreme Court
Jeff Brown (I)
Texas Third Court of Appeals
Cynthia Bourland (I) – Place 2
Scott Field (I) – Place 3
David Puryear (I) – Place 5
Michael Toth – Place 6
Other judicial candidates in the audience during the meeting will be recognized and given opportunity to make a brief statement.

The panel is expected to explain the Texas judicial system and particularly the jurisdictions assigned to the Supreme Court, the Court of Criminal Appeals and the Third Court of Appeals. In addition, participants will comment on the present political alignment of the members of those courts and how the present challenge by Democrats could affect the political division in those courts, how a successful effort by Democrats could affect court rulings and related matters.

All of the state's appeals courts are important, but the Third Court of Appeals is uniquely important, primarily because, being headquartered in Austin where the state government is also located, it will hear cases (on appeal) having their genesis in issues stemming from acts of the legislature and actions of state agencies. A proper judicial philosophy on the part of the members of that court is therefore extremely important.

Current membership of the various courts is revealed on the club's website, rcsctx.co

INFORMATION ABOUT THE MEETING OF SEPTEMBER 6

BEGINNING TIMES: Doors Open – 5:45 pm; Social Period – 6:00 pm; Dinner – 6:30 pm; Program – 7:00 pm
MENU: Smoked brisket/sausage, potato salad, ranch style beans, bread/pickle/onion/jalapeno/bbq sauce, unsweetened tea/water. Option: grilled chicken salad.
COST: Dinner fee is $18 per person. Checks made out to "The Republican Club of Sun City" should be mailed to: **The Republican Club of Sun City, 1530 Sun City Blvd., Suite 120, PMB 227, Georgetown, TX 78633,** or left in a special drop box located on the front porch of the home of club treasurer Gene Edwards at 202 Duck Creek Lane. For information, contact Gene at 520-990-1159 or geneedwards@earthlink.net The deadline for payment or reservations is Friday, August 31.

Attendees are reminded of the request made by the Executive Committee that advanced payments for the dinner be submitted by the payment deadline so that the proper amount of food can be ordered, and that attendees who have made reservations in advance make payments prior to the meeting, when possible, so that a "bogging down" of the line at the ballroom entrance can be avoided.

VISITORS ARE WELCOME! Non-members may attend a maximum of two meetings per year – as attendees for the dinner or as observers for the program – without having to pay membership dues.

CONGRESSMAN CARTER TO ADDRESS CLUB ON SUNDAY, OCT. 14
(Meeting will be held in the Cowan Creek Amenity Center)

Congressman John Carter, who represents the 31st Congressional District, will address the club during its meeting **scheduled for Sunday, October 14 in the Cowan Creek Amenity Center.** The meeting is scheduled for that facility because the ballroom was not available.

Dinner will not be served; however, a social period will be held beginning at 6:00 PM when appetizers, wine and soda will be served. Details will be provided in the October newsletter.

OTHER CLUB NEWS

Process to Elect Next Year's Officers Begins. According to Article VIII of the club bylaws, the club president is to appoint a Nominating Committee of 3-5 members by September 1; this committee shall submit names of nominees for officer positions at the club's October meeting; and the election of officers will take place during the club's November meeting.

Club president Cathy Cody has appointed the following individuals as members of the Nominating Committee:

Linda McDaniel, Chairman
Carolyn Killebrew
Pam Olson
Cathy Cody

Any club members willing to be considered as an officer or wishing to recommend someone as an officer should contact Linda at LKWM@aol.com (preferred) or 512-869-5685, or contact another member of the committee.

The Headquarters of the Williamson County Republican Party is located at 716 Rock Street, Georgetown, TX 78626, about one block from the town square. The telephone number there is 512-863-8481; the website is WilliamsonCountyGOP.org

Currently, the office hours are: M & T, 10:00 am – 1:00 pm; Wednesdays, noon – 4:00 pm; 1st & 3rd Thursdays, 10:00 am – 4:00 PM; 2nd & 4th Thursdays, 10:00 am – 7:00 pm; Fridays, 10:00 am-2:00 pm.

Statistics. Brian Olson, VP for membership, reports 2018 membership is 377, with 94 new members.

Gene Edwards, club treasurer, reports 162 attended the Aug, 23 dinner, plus 30 attended as observers.

SEPTEMBER 17, 1787: WHEN THE U. S. CONSTITUTION WAS SIGNED

An Event Which Should Be Commemorated

Foreword. The U. S. Constitution, having been signed by delegates to a Constitutional Convention on September 17, 1787, will become 231 years old this coming September 17. While it is a highly respected document, its anniversary will, unfortunately, go virtually unnoticed, if past history is an indicator.

There is unfortunate symbolism in that non-recognition, that being said because the greatness of the document seems not to be sufficiently understood or appreciated by the general public, or explained in educational institutions – a situation possibly explaining to a great extent the drift of much of the nation to the left, the growing number of instances of lawlessness, corruption and violence, the overreaching of the judicial branch and other problems causing many citizens to fear for the future of the country. And members of Congress and members of the judicial branch, in a growing number of instances, seem to be making their oaths of office pledging to defend the Constitution but a perfunctory, pointless ritual.

Yet today, when a great many citizens, out of fear for the future of the country, cry for help, almost invariably, they will say the solution for the nation's woes is to “FOLLOW THE CONSTITUTION!” But before the Constitution can be followed it must first be understood, revered, and be given some historical context. This report is to help fill that need.

BEN FRANKLIN'S POIGNANT REFLECTIONS

(Written upon the adoption of the U. S. Constitution)

The fact that the Constitutional Convention took place some 231 years ago tends to mitigate our understanding of the human drama which must have existed then as the consequential events of those days unfolded.

Fortunately, Benjamin Franklin, who was 81 at the time and ailing, left for posterity a letter he read to the convention at the time of the final vote. The letter reveals some internal torment he had about the wisdom of some of the provisions of the Constitution. His touching comments, excerpted below in italics, reveal a humility which could well serve all of us.

I confess that there are several parts of the Constitution which I do not at present approve, but I am not sure I shall never approve them: For having lived long, I have experienced many instances of being obliged by better information, or fuller consideration, to change opinions even on important subjects, which I once thought right, but found otherwise. It is therefore that the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to judgment of others . . .

For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinions, their local interests, and their selfish views. From such an assembly can a perfect production be expected?

If therefore astonishes me, Sir, to find this system approaching so near t perfection as it does; and I think

it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded like those of the Builder of Babel; and that our States are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats. Thus I consent, Sir, to this Constitution because I expect no better, and because I am not sure, that it is not the best.

James Madison, recognized as the father of the Constitution, upon noting that so many difficulties had been surmounted with such unanimity, observed: "It is impossible for a man of pious reflection not to perceive in it a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical states of the revolution."

OPPOSITION TO THE U. S. CONSTITUTION SURFACES

Foreword. While many citizens look to the Constitution to save the nation, the Constitution, as originally conceptualized, has been, starting more than a century ago, been strongly resisted. Following are some illustrations of that resistance.

The Law School Culture. Author Vaughn Shatzer reports that Christopher Langdell, who became Dean of the Harvard Law School in 1870, believed in Darwin's theory of evolution – which was fairly new at that time – and also believed that as man evolved, his laws must also evolve. Consequently, he established the case law study method – which meant that the study of Blackstone's *Commentaries* and the study of original documents would no longer be at the heart of the study of law. The result was a loss of a perspective of law consistent with a strict construction of the Constitution; what remained was a perspective consistent with the humanist "worldview." Shatzer also reports that the introduction of the case law method caused such an uproar among other law professors that they all resigned - only to be replaced by faculty members supportive of the case law method.

Author David Noebel summarized the pedagogical change as follows: "Langdell, of course, was the key personality behind the evolutionary interpretation of the law. He . . . proceeded to move Harvard from its Christian foundation to law based on the theory of evolution . . . Langdell encouraged his students to abandon Blackstone's *Commentaries* . . .primarily because he could not accept Blackstone's non-evolutionary interpretation of the law."

Can Morality be Attained Without Religion? The nation struggles today largely because of conflicting Supreme Court rulings over the question as to whether there can be morality without religion; however, that matter was clearly addressed by the nation's first president.

George Washington, in his "farewell address," made his views on this matter clearly known when he said: "Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports." He also said, " . . .reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle."

Perhaps surprisingly, some individuals of *non-Christian* faith have been supportive of Christian religion in public, as Stephen Presser, Professor of Legal History, noted:

> **Felix Frankfurter, a Supreme Court Justice, noted that as a Jew he belonged to one of the most persecuted minorities in history . . .Still, he proceeded to make clear that he believed that where a majority of citizens wished to inculcate values of patriotism and religion in their public schools through exercises such as flag salute and/or Bible reading, it was permissible. The implementation of the will of such majorities, Frankfurter explained, was constitutionally protected and, it would appear, was laudable as an effort toward the requisite of cultivating virtue in the citizenry.**

Presser, also a Jew, then offers the following justification of Frankfurter's position:

> **It is time to realize that not every school prayer carries with it the threat of religious persecution. If, as the framers believed, it is impossible to inculcate morality without religion, and if the paramount problem facing many public school students today is an almost total absence of meaningful moral guidance, perhaps our current rejection of religion in the public sphere has gone too far. The plague of teenage pregnancies among unwed mothers, and the results of that plague - dysfunctional families, unsupervised youth, the temptations of the life of the street, drug use, violent crime, and death itself – are plainly moral and not economic problems. They demand moral solutions, and moral solutions, the Federalists tried to teach us, will not come without attention to religion.**

Darwinism, a "Living" Constitution, and the Presidency. President Woodrow Wilson may have been the first president to promote the concept of a "living" Constitution. He believed that the evolutionary process espoused by Charles Darwin in regard to biology should also be in effect with respect to Constitutional matters. Author Marvin Olasky reports that Wilson, when he ran for president, suggested that the candidates were not Taft, Roosevelt and himself, but Isaac Newton and Charles Darwin. Olasky explained that Wilson declared, "some people had the 'Newtonian' view that government should have an unchanging constitutional foundation, somewhat like "the law of gravitation." He argued that government "falls under the theory of organic life. . . Living

political constitutions must be Darwinian in structure and in practice. Society is a living organism and must obey the laws of life."

A Welfare State Instigated by Congress. There appears to be general agreement among most informed citizens that the federal government's debt and the unfunded mandates (Social Security, Medicare Medicaid) spawned by the federal government are out of control and constitute an endangerment to the nation. Yet, while states can promulgate welfare programs, there is no Constitutional provision providing for the federal government to do so. Nevertheless, some members of Congress assert the federal government has such authority, primarily citing the "general welfare" clause in the Constitution, a citation rejected by both James Madison and Thomas Jefferson.

THE FOUNDERS INTENT: THE DECLARATION IS TO BE INCORPORATED IN THE CONSTITUTION

Evidence. There is clear evidence that the signers of the Constitution in 1878 intended for the Declaration signed in 1776 (more than 10 years earlier) to be incorporated in the Constitution. Author Matthew Spalding notes the unusual method by which, in its text, the Constitution shows two dates in Article VII where signatures are located: one shows the "Seventeenth Day of September in the year of our Lord 1787" and the other shows "the *independence of the United States of America the Twelfth."* Spalding then explains: "The language here is neither insignificant nor unintentional: these dates serve to place the document in the context of the religious traditions of Western civilization and, at the same time, to link it to the regime principles proclaimed in the Declaration, the Constitution having been written in the twelfth year after July 1776."

George Will notes the Declaration is the nation's first law, citing the fact that it appears on Page 1 of the U. S. Statutes and at the beginning of the U. S. Code. Hence the Declaration sets the framework for reading the Constitution not as being about democracy, but about natural rights defining the limits of even a democratic government at the national level.

The Resistance of the Left. British writer G. K. Chesterton stated, "America is the only nation that is founded on creed [religious belief]. Columnist Bill Federer [tentatively scheduled to speak to the club in January] explains why the left resists the creed. The secular establishment's rejection of our Judeo-Christian roots makes a genuine debate about Americanism nearly impossible. No wonder the Declaration is ignored. Not counting the Bible, there is no more threatening historic document to the socialist left than this one that declares us a nation under God, specifically a Creator God who gave us our rights in the first place. Then he makes this startling observation seldom, if ever, found in books about the Declaration: Leftist fear the Declaration because it is unchangeable!

Reaction of a Supreme Court Justice. Despite this evidence, not everyone, including at least one Supreme Court Justice, will agree that the two documents cannot be separated. But it is essential to know that the Declaration indicates certain of our rights come from a Creator (not politicians) and that there exists beyond the laws of man, a natural, pre-existing law which cannot be removed by man.

This concept can be exceedingly important in regard to certain matters as, for example, a right to defend oneself. Can a law passed by politicians take that right from us, as some politicians are want to do?

That particular issue was discussed by Sen. Tom Coburn (R.-OK) and Elena Kagan at the time she was a nominee for a Supreme Court position. A revealing transcript of their dialogue follows:

> **COBURN: Do you believe it is a fundamental, pre-existing rigght to have an arm to defend yourself?**
> **KAGAN: Senator Coburn, I very much appreciate how deeply important the right to bear arms is to millions of Americans. And I accept *Heller*, which made clear that the Second Amendment conferred that right upon individuals, and not simply collectively.**
> **COBURN: I'm asking you, Elena Kagan, do you personally believe there is a fundamental right in this area? Do you agree with Blackstone [in] the natural right of resistance and self-preservation, the right of having and using arms for self-preservation and defense? He didn't say that was a constitutional right. He said that's a natural right. And what I'm asking is, do you agree with that?**
> **KAGAN: Senator Coburn, to be honest with you. I don't have a view of what are natural rights, independent of the Constitution. And my job as a justice will be to enforce and defend the Constitution and the laws of the United States.**
> **COBURN: So you wouldn't embrace that the Declaration of Independence says, that we have certain God-given, inalienable rights that aren't given in the Constitution that are ours alone, and that a government doesn't give those to us?**
> **KAGAN: Senator Coburn, I believe that the Constitution is an extraordinary document, and I'm not saying I do not believe that there are rights pre-existing the Constitution and the laws. But my job ... is to enforce the Constitution and the laws.**
> **COBURN: Well, I understand that. I'm not talking about as a justice. I'm talking about Elena Kagan. What do you believe? Are there inalienable rights for us? Do you believe that?**
> **KAGAN: Senator Coburn, I think that the question of what I believe as to what people's rights are outside the Constitution and the laws, that you should not want me to act in any way on the basis of such a belief.**
> **COBURN: I would want you to always act on the basis of the belief of what our Declaration . . . says.**
> **KAGAN: I think you should want me to act on the basis of law. And that is what I have upheld to do, if I'm fortunate enough to be confirmed, is to act on the basis of law, which is the Constitution and the statutes of the United States.**

It should be noted there was no acknowledgment of natural rights. And in regard to another matter, it should be noted that Justice Kagan, after being confirmed, along with Justice Ginsburg performed sex-marriages

shortly before the Supreme Court heard the famous same-sex marriage case referred to as *Obergefell*. They declined to recuse themselves even though their actions appear to be biased in violation of Title 28,
Section 455 of the U. S. Code which states, "any justice, judge or magistrate judge of the U. S. shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

JUSTICE SCALIA, THE U. S. CONSTITUTION, AND RECENT SUPREME COURT RULINGS

Foreword. Probably the legal authority whose views are most respected, most sought and most considered are those of the late Justice Antonin Scalia. Consequently, the views of that Justice as expressed in judicial opinions, forums and elsewhere are presented.

Composition of the Court. Justice Scalia, in his dissent on the *Obergefell* case, one of his last cases he considered, offered some comment about the composition of the court – from whence the members came, the law schools they attended and their religious affiliation – and whether the composition was representative of a broad section of the country or was not so represented. He was highly critical of the then-existing arrangement, noting there was not a single evangelical Christian or protestant on the court, the court then consisting of 3 Jews and 6 Catholics. {With the appointment of Neil Gorsuch to the court, its composition may have changed, this being said because, reportedly, he was raised Catholic but now attends an Episcopal church.] He also noted the members came from the same geographical area and attended the same law schools.

Scalia contends the composition of the court would not be relevant if the court functioned as judges, instead of as legislators as has frequently been the case. Following are some of the comments about that situation as they appear in his dissent in the *Obergefell* case:

> **This Court, which consists of only nine men and women, all of them successful lawyers who studied at Harvard or Yale Law School. Four of the nine are natives of New York City. Eight of them grew up in east-and west-coast States. Only one hails from the vast expanse in-between. Not a single South-westerner or even, to tell truth, a genuine Westerner. Not a single evangelical Christian (a group that comprises about one quarter of Americans), or even Protestant of any denomination. The strikingly unrepresentative character of the body voting on today's social upheaval would be irrelevant if they were functioning as judges. But of course Justices in today's majority are not voting on that basis (as judges). And to allow the policy question of same-sex marriage to be considered and resolved by a select, patrician, highly unrepresentative panel of nine is to violate a principle even more fundamental than no taxation without representation: no social transformation without representation.**

Courts, in dealing with abortion, voting rights, religious liberty and the like frequently must deal with terms like "compelling interest" and "substantial burden," terms which are highly judgmental and which could be affected by the religious and family background of a judge.

A "Living Constitution" v. Legislative Intent. An alternative to the concept of a "living Constitution" is the view of Scalia on "Legislative Intent," explained by Amy Gutman, who wrote the preface to Scalia's book and who explains Scalia's view as follows:

> **A government of laws, not of men, means that the *unexpressed* intent of legislators must not bind citizens. Laws mean what they actually say, not what legislators intended them to say but did not write into the law's text for anyone (and everyone so moved) to read. This is the essence of the philosophy of law that Justice Scalia develops here in more detail. The philosophy is called "textualism" or "originalism," since it is the *original* meaning of the text – applied to present circumstances – that should govern judicial interpretation of statutes and the Constitution.**

The Bowers v. Hardwick Case. Scalia notes that the Supreme Court, in the Bowers v. Harwick case of 1986, a case involving the issue of sodomy, cited a criterion of long standing by which the Supreme Court could approve state laws, including those dealing with moral issues: The court was able to concur with state laws on the basis that they were presumed to be correct (leaving the other side to prove otherwise), as long as there was a "rational basis" for state laws. This meant the people had a role in establishing standards (including moral ones) for their respective states.

The Lawrence v. Texas Case. The Court, however, in the *Lawrence v. Texas* case of 2003, reversed itself on its holding in *Bowers,* and spawned a new precedent. Now a "liberty interest" should be controlling, and what constitutes a "liberty interest" should – unbelievably – be left up to the individual. The basis of that holding was the following passage written by Justice Kennedy who said, "At the heart of liberty is the right to define one's own concept of existence, or meaning, of the universe, and of the mystery of human life." Justice Scalia, with typical derision, referred to that confusing passage as the "sweet-mystery-of-life"passage. He also said:

> **The Texas statute undeniably seeks to further the belief of its citizens that certain forms of sexual behavior are "immoral and unacceptable," . . .the same interest furthered by criminal laws against fornication, bigamy, adultery, adult incest, bestiality, and obscenity. *Bowers* held that this was a legitimate state interest. The court today reaches the opposite conclusion.**
>
> **If, as the Court asserts, the promotion of majoritarian sexual morality is not even a legitimate state interest, none of the above-mentioned laws can survive a "rational-basis" review. [12 years later, the court declared same-sex marriage a constitutional right.]**

The Obergefell v. Hodges Case. In his dissent in *Obergefell*, Scalia argued that under the Constitution, as correctly understood, the people could decide through their state governments to approve or not approve same-sex marriage. But the court has usurped that power and more. Said Scalia:

> **Today's decree says that my Ruler, and the Ruler of 320 million Americans is a majority of the nine lawyers on the Supreme Court. This practice of constitutional revision by an unelected committee of nine robs the People of the most important liberty they asserted in the Declaration and won in 1776: the freedom to govern themselves.**

According to Michael Paulsen, law professor, "All four dissents of the *Obergefell* case go beyond refuting the majority opinion; they condemn it as illegitimate. The Court is not just wrong, but has become a renegade institution that needs to be reined in by democratic forces outside itself. The dissenters appear to go so far as to urge political and public resistance to the majority's decision."

Scalia's Public Pronouncements on Religion:

> **Let me make clear that I am not saying that every good American must believe in God. What I am saying, however, is that it is contrary to our founding principles to insist that government be hostile to religion. Or even to insist, as my court, alas, has done, that government cannot favor religion over nonreligion. It is not a matter of believing that God exists, though personally I believe that. It is a matter of believing, as our founders did, that belief in God is very conducive to a successful republic.**

Scalia's Pronouncement on Law Schools:

> **Most students at elite law schools have never read *The Federalist* papers. It is truly appalling that they should have reached graduate school without having been exposed to that important element of their national patrimony, the work that best explains the reasons and objectives of the Constitution.**

Scalia's Comments One Month Before His Death:

> **To tell you the truth there is no place for [requiring neutrality regarding religion] in our constitutional tradition. Where did that [neutrality] come from? To be sure, you can't favor one denomination over another but you can't favor religion of non-religion [a rhetorical question]?**
>
> **We ought to be no less persuaded that the propitious smiles of heaven can never be expected on a nation that disregards the eternal rules of order and right which heaven itself has ordained.**

Comments From the Left on Scalia:

The following comments about Scalia by leftist columnist John Young appearing in the February 18, 2017 issue of the *Austin American-Statesman* is instructive because it reveals that many leftists are unable or unwilling to differentiate the form of government our founders gave to us, a Constitutional Republic, from a democracy – which the left can control. Following are his comments:

> **Whatever else can be said about Scalia, without question he was one of the most politically driven justices in history. If you shared his politics, that was fine with you. If you are black or brown, not so much.**
>
> **The problem with the rhetoric of justices like Scalia and Rehnquist is that they backed efforts to make democracy less representative of society.**
>
> **Democracy?They fought to keep this democracy a tool of the privileged and already empowered. And isn't that what the founders intended?**

EPILOG

Justice Douglas describes, in essence, the distinguishing trait of our form of government:

> **The institutions of our society are founded on the belief that there is an authority higher than the authority of the State; that there is a moral law which the State is powerless to alter; that the individual possesses rights conferred by a Creator, which government must respect.**

World author Janie Cheaney notes how today's court has failed:

> **The Supreme Court has become the highest authority, the last word. All three branches of government were created under the assumption of a higher law, given by God. God's law instructed individual conscience, which the courts were intended to protect. Without the notion of a higher law, something has to fill the gap. By assuming the power of the last word, the Supreme Court has become the conscience of the nation.**

AMERICA'S FIRST EXPERIMENT WITH SOCIALISM

In 1620, one hundred two passengers, known as Pilgrims, left England on the ship "Mayflower" for the New World under a contract with their backers which said, in part: "That all persons as are of this colony have their meat, drink, apparel, and all provisions out of the *common stock and goods . . ."* In addition, all the land cleared and structures they built belonged to the community.

The arrangement proved hugely unsuccessful. William Bradford, Governor of the colony, after a trial period, wrote that a change was needed, that the arrangement "was found to breed much confusion and discontent and retard much employment that would have been to their benefit and comfort."

By 1625, the colonists, after their unfortunate experience, decided to put an end to this "common course." In place of the original arrangement, every family was assigned its own plot of land and permitted to market its own crops and products. Bradford on the result: "This had very good success, for it made all hands very industrious, so that much more corn was planted than otherwise would have been by any means the Governor or any other could use . . . "