

Nonpartisan Originalism

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ACS Constitutional Law Scholars Forum
Friday, March 1, 2019
Dwayne O. Andreas School of Law, Barry University
Orlando, Florida

This presentation available at

www.clarkcunningham.org/NonpartisanOriginalism.html

How Liberals Learned To Love Scalia-Style Constitutional Originalism

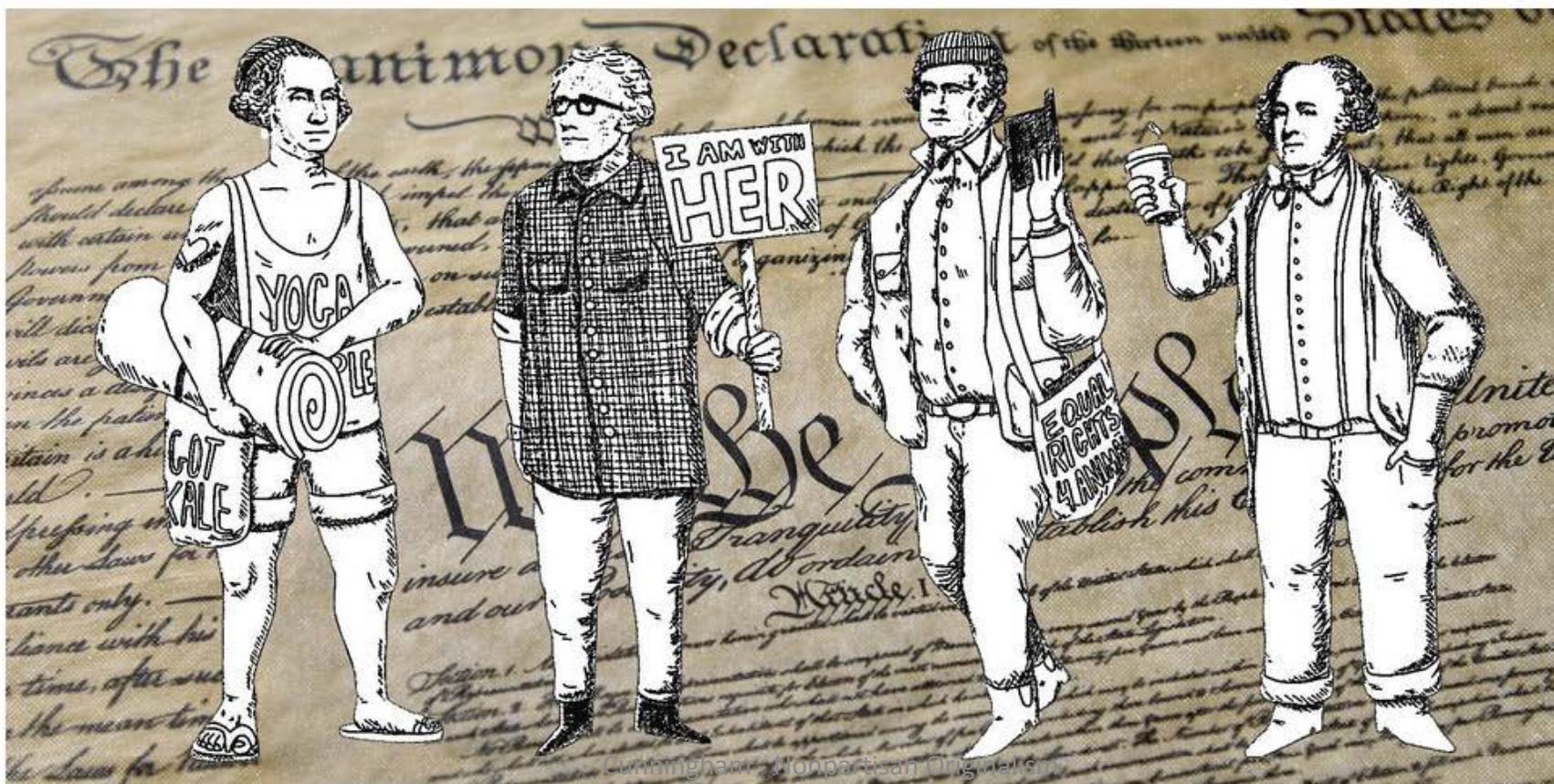
Progressives lean into the Constitution with the new conservative Supreme Court.

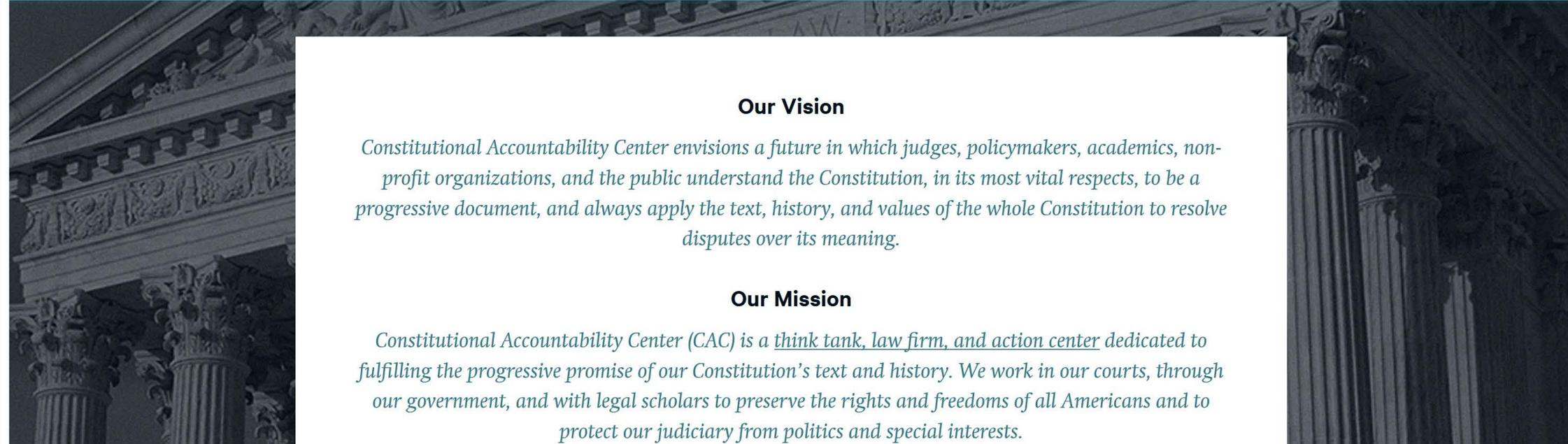
Huffington Post

By Paul Blumenthal

Feb 04, 2019

<https://www.huffingtonpost.com/entry/progressive-conservative-supreme-court-us-5c54b484e4b09293b2041533>





Our Vision

Constitutional Accountability Center envisions a future in which judges, policymakers, academics, non-profit organizations, and the public understand the Constitution, in its most vital respects, to be a progressive document, and always apply the text, history, and values of the whole Constitution to resolve disputes over its meaning.

Our Mission

Constitutional Accountability Center (CAC) is a think tank, law firm, and action center dedicated to fulfilling the progressive promise of our Constitution's text and history. We work in our courts, through our government, and with legal scholars to preserve the rights and freedoms of all Americans and to protect our judiciary from politics and special interests.

Key Facts

Leadership

Founded by Doug Kendall in June 2008. Elizabeth Wydra becomes President January 2016.

Amicus Briefs Filed

150+ total and 100+ in the U.S. Supreme Court. "On the side of the most amicus victories" in October 2015-16 Term, per Empirical SCOTUS.

Practitioners

Former clerks for five U.S. Circuit Courts of Appeal, including one former U.S. Supreme Court clerk.

Testimonial

"CAC's ability to persuade conservative judges at a time of extreme polarization on the Court is striking." – Jeff Rosen, National Constitution Center

Constitutional Accountability Center

Founded in 2008 by Doug Kendall

- Kendall argued that the debate over how judges should interpret the law was over
- Textualism had won
- It was time to join the fight over the meaning and interpretation of the Constitution

Justice Elena Kagan

- “I think we’re all textualists now in a way that just was not remotely true when Justice Scalia joined the bench.”

Brianne Gorod, chief counsel for CAC:

- “Our founding belief was that
- if progressives spent less time fighting about the method of interpreting the Constitution with conservatives,
- we could spend more time discussing what the Constitution actually means”
- “And that that’s a fight that progressives can win.”

From the CAC Home Page

Amicus Briefs Filed

150+ total and 100+ in the U.S. Supreme Court. "On the side of the most amicus victories" in October 2015-16 Term, per Empirical SCOTUS.

"CAC's ability to persuade conservative judges at a time of extreme polarization on the Court is striking." – Jeff Rosen, National Constitution Center

The Supreme Court Just Handed a Big, Unanimous Victory to Workers.

Wait, What?

<https://slate.com/news-and-politics/2019/01/gorsuch-arbitration-labor-new-prime-oliveira.html>

By Mark Joseph Stern

Jan 15, 2019

- “The Supreme Court handed a victory to American workers, ruling unanimously that independent contractors who work in transportation may not be forced into mandatory arbitration.
- The decision is a remarkable win for labor rights from a court that typically favors corporate interests over working people.
- It will allow hundreds of thousands of contractors to vindicate their rights in court, collectively, rather than in costly and unjust arbitration.
- Armed with old dictionaries and common sense, progressive attorneys scored the biggest blow against mandatory arbitration in years.”

NEW PRIME INC., v. OLIVEIRA

139 S.Ct. 532 (2019)(Gorsuch, J.)

- The decision marks the triumph of the *Gorsuch brief*—designed to nab the justice’s vote by fixating on the text of a statute and its meaning at the time of passage.
- Gorsuch appears to draw heavily from an *amicus* brief filed by the Constitutional Accountability Center
- The brief dwells on the dictionaries that Gorsuch cites and even dives into the etymology of the word *employment*, from its Latin roots to its evolution through French and Anglo-Norman usage in the Middle Ages.
- The Constitutional Accountability Center provided enough arcane evidence to satisfy Gorsuch that, in 1925, the word *employment* did not distinguish between employers and contractors.

FILED
JUL 25 2018
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 17-340

IN THE
Supreme Court of the United States

NEW PRIME, INC.,
Petitioner,
v.
DOMINIC OLIVEIRA,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the First Circuit

BRIEF *AMICUS CURIAE* OF
CONSTITUTIONAL ACCOUNTABILITY CENTER
IN SUPPORT OF RESPONDENT

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July 25, 2018

* Counsel of Record

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6

For instance, the first edition of *Webster's New International Dictionary*, which was the version of *Webster's* current between 1909 and 1934, defines "employment" simply as:

- Act of employing, or state of being employed.
- That which engages or occupies; that which consumes time or attention; occupation; office or post of business; service; as, agricultural *employments*; public *employment*.

Webster's New International Dictionary 718 (1st ed. 1930). Nothing in these definitions even invokes the concept of a master-servant legal relationship, typically defined by the employer's "power to direct the time, manner, and place of the services." *Black's Law Dictionary* 997 (8th ed. 2004). Much less does *Webster's* limit the word "employment" to that context, or signal any special focus on it. At its most specific, the *Webster's* definition of "employment" simply means "occupation," "office or post of business," and "service." *Id.* Illustrating this broad meaning, *Webster's* provides the following words as synonyms: "Work, business, vocation, calling, office, service, commission, trade, profession." *Id.*

The contemporaneous edition of the *Oxford English Dictionary* (its first edition) tells the same story.² It lists the following definitions of "employment":

- The action or process of employing; the state of being employed.

² The first edition of the *Oxford English Dictionary* was published in ten separate volumes issued between 1884 and 1928, as *A New English Dictionary on Historical Principles*. In 1933, these ten volumes were comprehensively reissued as a new set, under the dictionary's present title. See *History of the OED*, <https://public.oed.com/history/>.

- The service (of a person).
- That on which (one) is employed; business; occupation; a special errand or commission.
- A person's regular occupation or business; a trade or profession.

3 *A New English Dictionary on Historical Principles* 130 (1st ed. 1897).³ Again, even where these definitions relate specifically to business or vocation, they do not suggest any particular focus on the master-servant relationship, or on the other traits of what we would today call an employer-employee relationship. Instead, definitions such as “a special errand or commission” and a “person’s regulation occupation or business” plainly encompass agreements between independent contractors and those making use of their services.

Legal dictionaries from the era are no different. The 1910 edition of *Black’s Law Dictionary* indicates that “employment” includes “an engagement or rendering services for another.” *Black’s Law Dictionary* 422 (2d ed. 1910), but narrows the definition no further. To the contrary, it cautions against limiting the word even to that broad meaning: “This word does not necessarily import an engagement or rendering services for another. A person may as well be ‘employed’ about his own business as in the transaction of the same for a principal.” *Id.* The same text was included in the next edition, accompanied by a new definition: “The act of hiring, implying a request and a contract for compensation.” *Black’s Law Dictionary* 658 (3d ed.

³ The dictionary provides three other definitions marked as “obsolete”: “The use or purpose to which a thing is devoted,” “An official position in the public service; a ‘place,’” and “Implement.” 3 *A New English Dictionary on Historical Principles* 130 (1st ed. 1897).

1933) (citation omitted). Nothing here even hints that “employment” requires a master-servant relationship or excludes independent contractors.

The 1914 edition of *Bouvier’s Law Dictionary* contains no entry for “employment” but defines “employed” as “[t]he act of doing a thing, and the being under contract or orders to do it.” 1 *Bouvier’s Law Dictionary* 1035 (1914 ed.). Its 1926 edition, under a different editor and publisher, includes an entry for “employment” broadly stating that “employment, profession or trade” means some business, employment, profession or trade in which one is engaged.” *Id.* at 354 (1926 ed.); see *id.* (also noting that “employment” can encompass time spent on an employer’s premises although not actually engaged in work).

The *Cyclopedic Law Dictionary*, published in 1912, similarly defines “employment” as “[a] business or vocation,” and “[t]he service of another.” *The Cyclopedic Law Dictionary* 314 (1st ed. 1912). Its next edition, published in 1922, expands upon this definition only by adding “calling; office; service; commission[.] trade; profession” and “the act of employing, in another sense, the state of being employed.” *Id.* at 350 (2d ed. 1922). That entry is unchanged in the 1940 edition. *Id.* at 381 (3d ed. 1940).

In sum, the dictionaries in circulation when Congress enacted the FAA did not limit the word “employment” to conditions involving a common-law master-servant relationship. Cf. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 419, 422 (2012) (identifying the current editions of *Webster’s*, the *Oxford English Dictionary*, *Black’s Law Dictionary*, *Bouvier’s Law Dictionary*, and *The Cyclopedic Dictionary of Law* as among “the most useful and authoritative” dictionaries for establishing the meanings of words in the first half of the twentieth

century). Nor did these dictionaries suggest that the master-servant relationship had any particular significance to the word’s meaning at all. That concept is entirely absent.

Notably, therefore, this is *not* a situation in which dictionaries from the period contain multiple definitions of the word, one supporting New Prime’s position and one supporting Respondent Oliveira’s position. Cf. *MCI Telecomms. Corp.*, 512 U.S. at 227 (“Most cases of verbal ambiguity in statutes involve . . . a selection between accepted alternative meanings shown as such by many dictionaries.”). Were that the case, New Prime might argue that its preferred definition—even if the less common of the two—was the one that Congress intended in the FAA’s exemption provision. See *Sandifer*, 571 U.S. at 231-32 (relying on “the broader statutory context” to choose between “two common meanings” that a term was given in dictionaries from when the legislation was adopted). But here there is no competition between rival definitions. The one offered by New Prime is nowhere to be found.

This Court has rejected the arguments of parties who “cite dictionary definitions contained in, or derived from, a single source.” *MCI Telecomms. Corp.*, 512 U.S. at 225. All the more forcefully, therefore, it should reject the arguments of a party who cannot cite *any* contemporaneous dictionary for its claimed definition of a statutory term. Cf. *Natl R.R. Passenger Corp. v. Bos. & Me. Corp.*, 503 U.S. 407, 418 (1992) (“The existence of alternative dictionary definitions of the word . . . indicates that the statute is open to interpretation.”). New Prime cannot show that any dictionary from when the FAA was enacted contained the anachronistic definition of “employment” that it advocates. To be sure, “a statute may make a departure from the natural and popular acceptance of language.”

Sandifer, 571 U.S. at 228 (quotation marks omitted), but “text or context” must provide strong evidence of such a departure before this Court will give a word “anything other than [its] ordinary meaning.” *Id.* And the clearer it is that the relevant dictionaries defined a term a certain way, the higher the burden on any party who advocates reading that term differently.

C. To appreciate why “employment” did not have the meaning in 1925 that New Prime claims, it helps to understand where the root word “employ” came from and how its meaning, and those of its derivatives, had developed up to that point.

The word “employment,” first used in the fifteenth century, was created by adding a suffix to the verb “employ.” See “Employment,” *Oxford English Dictionary* (3d ed. 2014). That verb had been borrowed in the Middle Ages from the French and Anglo-Norman word “imploier,” which meant “to use or apply (for a purpose), to put to work,” “to engage (someone) in an occupation,” and “to occupy (time) with an activity.” “Employ,” *Oxford English Dictionary* (3d ed. 2014). And this word, in turn, had its origin in the classical Latin word “implicare,” meaning “to enfold” and “to involve.” *Id.* (noting the connection between this word and the verb “to implicate”).

Consistent with these roots, in English the verb “employ” originally meant simply to utilize something for a purpose. This traditional, general meaning was reflected in the first three definitions of “employ” listed by *Webster’s* in the early twentieth century:

- To . . . involve.
- To make use of, as an instrument, means, or material; to apply; use; as, to employ the pen in writing, bricks in building, words and phrases in speaking.

- To occupy; busy; devote; concern; as, to employ time in study; to employ one’s energies to advantage.

Webster’s New International Dictionary 718 (1st ed. 1930). The first three definitions in the *Oxford English Dictionary* were similar:

- To apply (a thing) to some definite purpose; to use as a means or instrument[.]
- To apply, devote (effort, thought, etc.) to an object.
- To make use of (time, opportunities). . . . In mod[ern] use also . . . to fill with business[.]

3 *A New English Dictionary* 129-30 (1st ed. 1897); see *id.* (noting that “[t]he senses of this word . . . are derived from the late [Latin] sense of *implicare* to bend or direct upon something”).

To “employ” later came to signify, more specifically, the concept of occupying a *person’s* time or effort. And that sense of the word was well suited to describe the act of engaging another person to perform tasks in exchange for payment. Thus, the *Oxford English Dictionary’s* first edition reported that “employ” also meant:

- To find work or occupation for (a person, his bodily or mental powers)[.]
- To use the services of (a person) in a professional capacity, or in the transaction of some special business; to have or maintain (persons) in one’s service.

Id. at 130. *Webster’s* captured this meaning in similar terms:

- To make use of the services of; to have or keep at work; to give employment to; to intrust with

some duty or behest; as, to employ a hundred workmen; to employ an envoy; often, in the passive, to have employment; to be at work; as, he has been employed for some time.

Webster’s New International Dictionary 718 (1st ed. 1930).

Significantly, even these newer and more refined definitions were not limited to contexts in which a master-servant legal relationship existed. Instead, they squarely embraced the hiring of a person who qualified as an independent contractor: someone engaged to perform a particular task, compensated for the successful completion of that task, and free to direct the details of the task’s completion. Each definition, for instance, would fit the hiring of an attorney just as well as a factory worker or domestic servant.

The 1910 and 1933 editions of *Black’s Law Dictionary* likewise defined “employ” in broad terms. This definition reflects both the word’s traditional, generic meaning—utilizing a person’s efforts for a purpose—and the more precise concept of paying someone for his or her labor:

- To engage in one’s service; to use as an agent or substitute in transacting business; to commission and intrust with the management of one’s affairs; and, when used in respect to a servant or hired laborer, the term is equivalent to hiring, which implies a request and a contract for compensation, and has but this one meaning when used in the ordinary affairs and business of life.

Black’s Law Dictionary 421 (2d ed. 1910); *id.* at 657 (3d ed. 1933). While this definition makes a specific reference to the hiring of servants, it is not limited to that context. Rather, it describes the use of the word “in

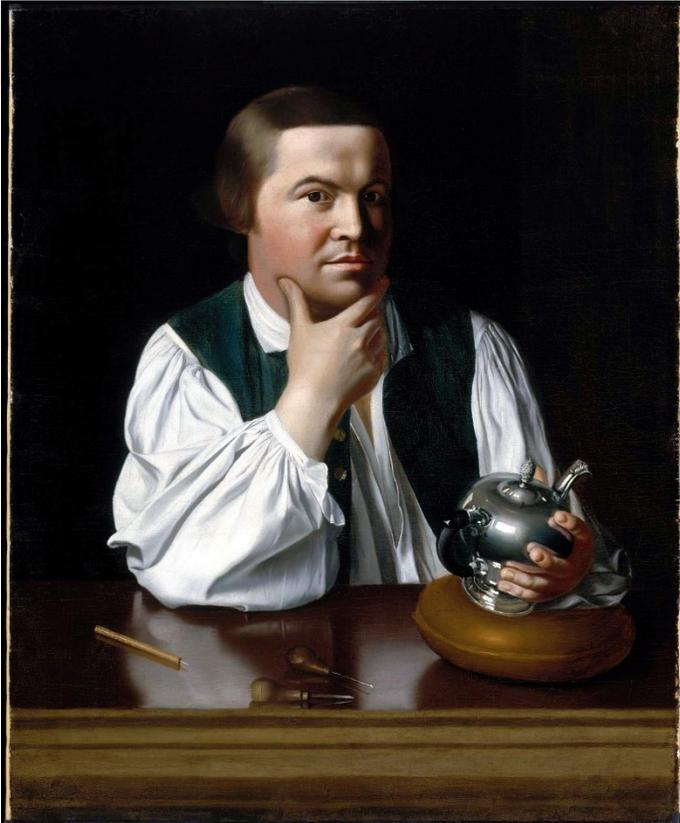
Constitutional Accountability Center envisions a future in which judges, policymakers, academics, non-profit organizations, and the public understand the Constitution, in its most vital respects, to be a progressive document, and always apply the text, history, and values of the whole Constitution to resolve disputes over its meaning.

We the People of the United States,
in Order to
secure the Blessings of Liberty
to ourselves
and our Posterity,
do ordain and establish this Constitution
for the United States of America.

Paul Revere



Liberty Bowl (1768)





Magna
Charta

Bill of
Rights

No. 45.

Wilkes & Liberty

General all
War rants

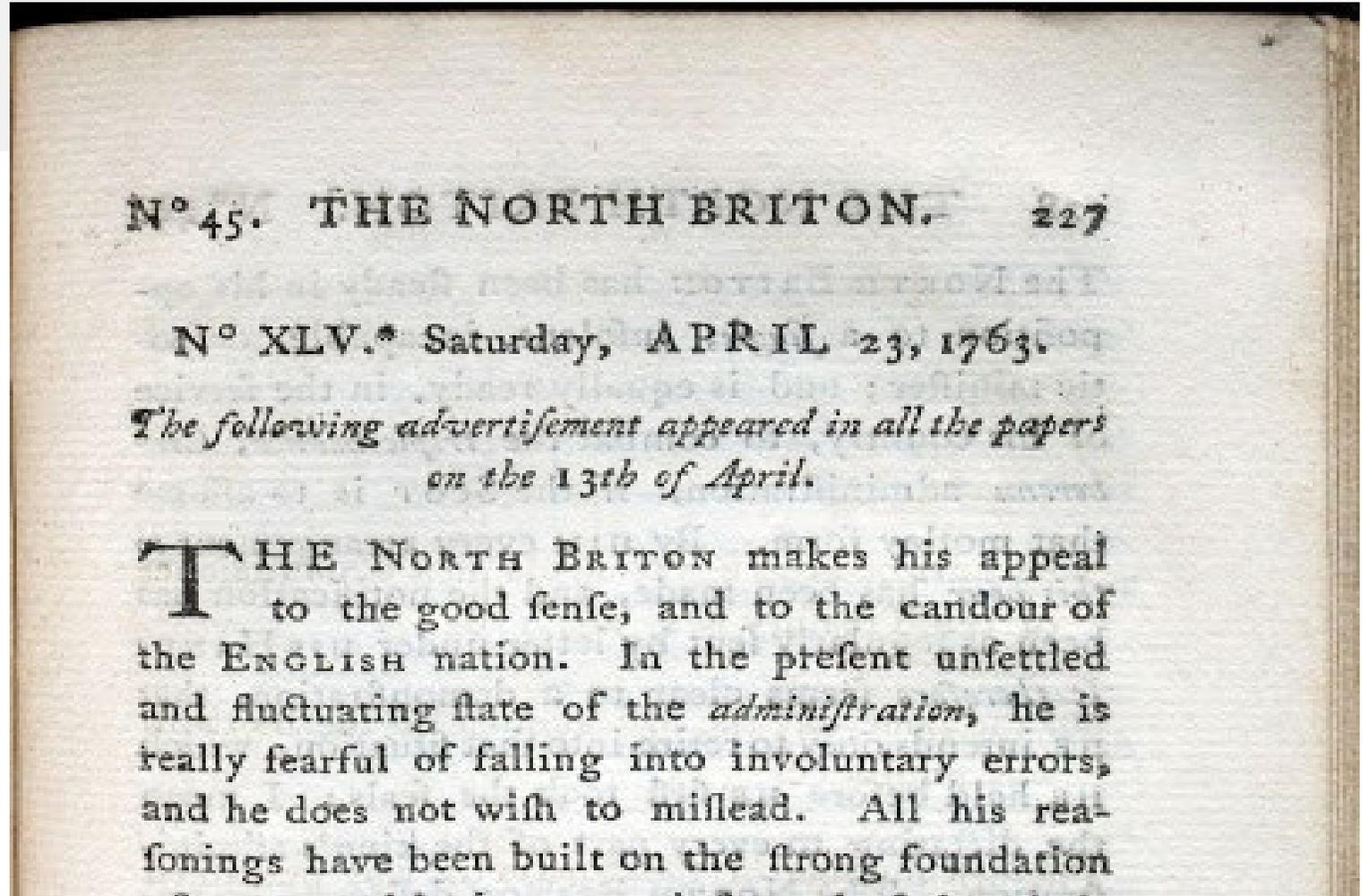
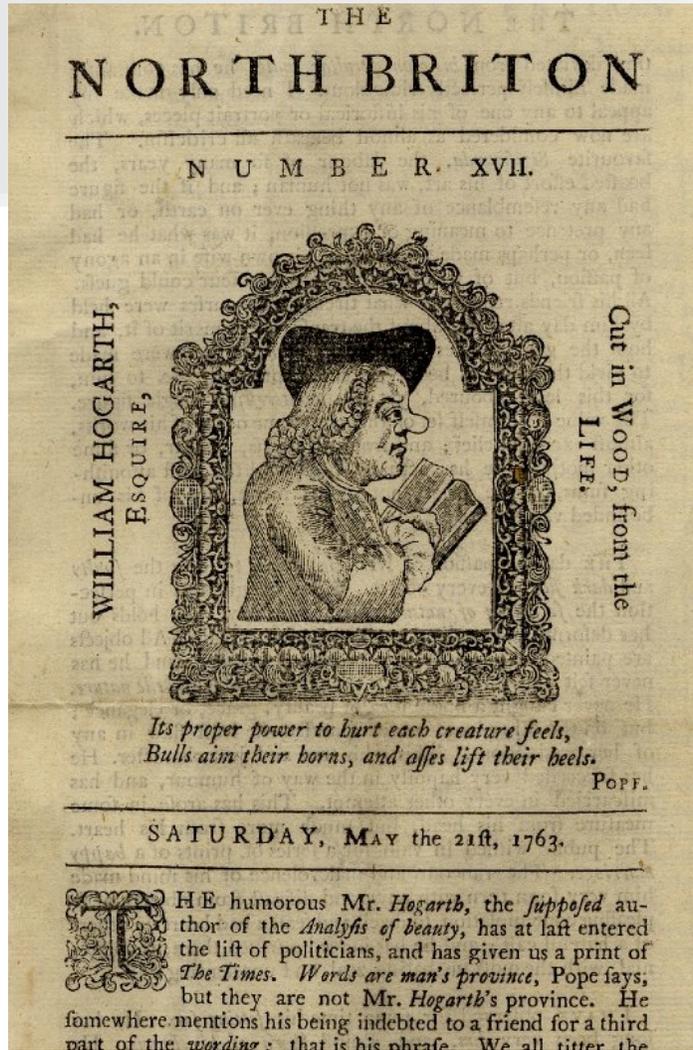
General all
War rants

Fourth Amendment

- “The right of the people to be secure in their ... *papers* ...
- against unreasonable searches and seizures
- shall not be violated”

England

April 23, 1763



Lord Halifax, Secretary of State: Warrant



- make strict and diligent search for the authors, printers and publishers of a seditious and treasonable paper
- entitled the North Briton, Number 45

Lord Halifax Warrant



- and any of them having found
- apprehend and seize
- together with their papers

Wilkes' Attorney

- This case extended far beyond Mr. Wilkes personally
- It touched the liberty of every subject of this country
- Of all offences that of a seizure of papers was the least capable of reparation

Wilkes' Attorney

- And for the promulgation of our most private concerns, affairs of the most secret personal nature, no reparation could be made
- The law never admits of a general search warrant
- Even in the Inquisition itself, they never delegate an infinite power to search

Fourth Amendment

- “no Warrants shall issue,
- but upon probable cause, supported by Oath or affirmation,
- and particularly describing the place to be searched,
- and the persons or things to be seized.”

Chief Justice Pratt (later Lord Camden)



- was a point of the greatest consequence I have ever met with in my whole practice
- “such a power
- is totally subversive of liberty”

UNITED STATES DISTRICT COURT

for the
Southern District of New York

13 MAG 28 14

In the Matter of the Search of)
(Briefly describe the property to be searched)
or identify the person by name and address))

Case No.

The PREMISES known and described as the email account)
[REDACTED]@MSN.COM, which is controlled by Microsoft Corporation)
)

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the WESTERN District of WASHINGTON
(Identify the person or describe the property to be searched and give its location):

The PREMISES known and described as the email account [REDACTED]@MSN.COM, which is controlled by Microsoft Corporation (see attachments).

The person or property to be searched, described above, is believed to conceal (identify the person or describe the property to be seized):
See attachments.

To the extent that the information described in Attachment A for MSN, [REDACTED], is within the possession, custody, or control of MSN [REDACTED], then MSN [REDACTED] is required to disclose the following information to the Government for each account or identifier listed in Attachment A [REDACTED] (the "TARGET ACCOUNT") for the period of inception of the account to the present:

- a. The contents of all e-mails stored in the account, including copies of e-mails sent from the account;

A variety of techniques may be employed to search the seized e-mails for evidence of the specified crimes, including but not limited to keyword searches for various names and terms including the TARGET SUBJECTS, and other search names and terms; and email-by-email review.

THE YALE LAW JOURNAL FORUM

OCTOBER 26, 2016

Apple and the American Revolution: Remembering
Why We Have the Fourth Amendment

Clark D. Cunningham

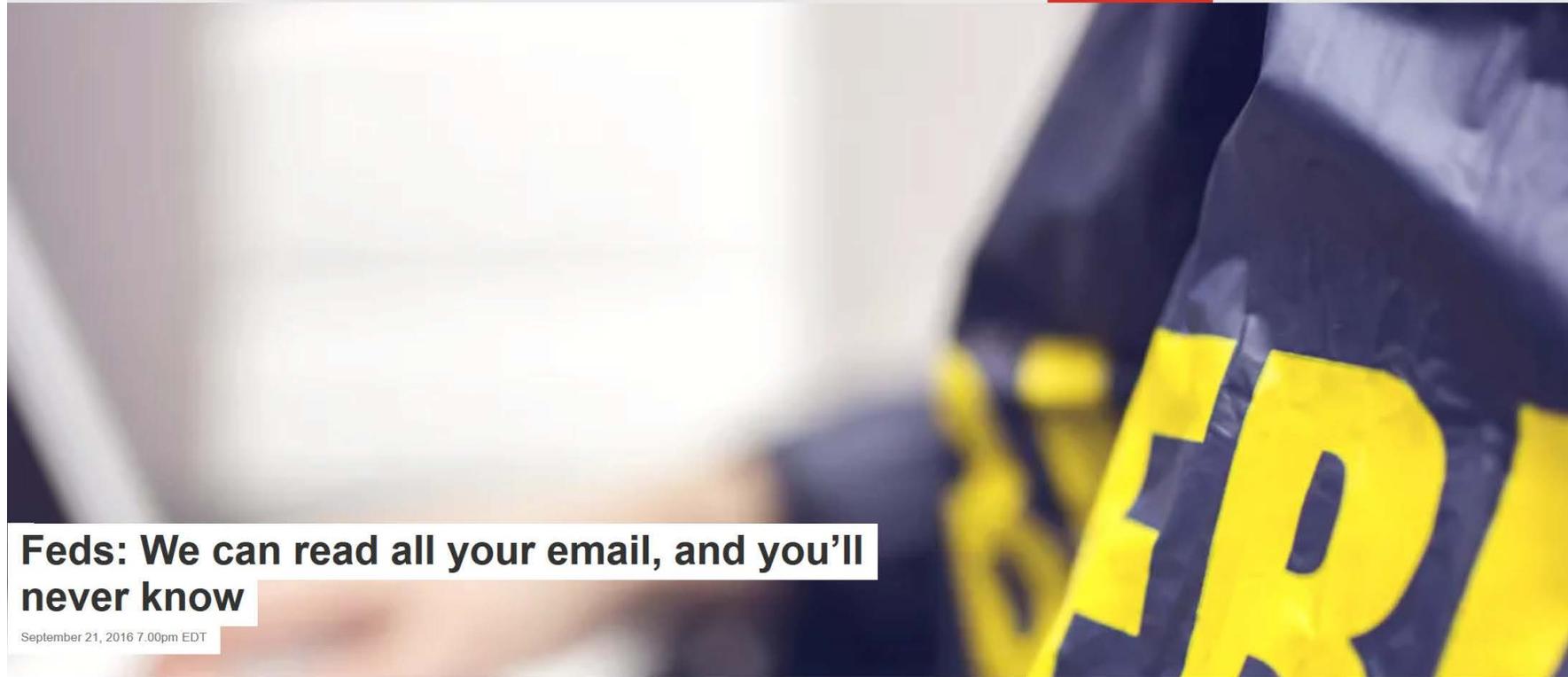
On February 16, 2016, the U.S. Department of Justice (DOJ) obtained an unprecedented court order in the San Bernardino shooting case that would have forced Apple to design and deliver to the DOJ software capable of destroying the encryption and passcode protections built into the iPhone.¹ The DOJ asserted that this order was simply the extension of a warrant obtained by the Federal Bureau of Investigation (FBI) to search the shooter's iPhone, which had been locked with a standard passcode.

THE CONVERSATION

Academic rigor, journalistic flair

Search analysis, research, academics...

Arts + Culture Economy + Business Education Environment + Energy Ethics + Religion Health + Medicine Politics + Society **Science + Technology**



Feds: We can read all your email, and you'll never know

September 21, 2016 7:00pm EDT

The feds say they can secretly read all your email. FBI agent with computer via shutterstock.com

- Email
- Twitter
- Facebook
- LinkedIn
- Print

134
461

Fear of hackers reading private emails in cloud-based systems like Microsoft Outlook, Gmail or Yahoo has recently sent [regular people and public officials scrambling](#) to delete entire accounts full of messages dating back years. What we don't expect is our own government to hack our email – but it's happening. Federal court cases [going on right now](#) are revealing that federal officials can read all your email without your knowledge.

Author



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 W. Lee Burge Chair in Law & Ethics; Director,
 National Institute for Teaching Ethics &
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Blumenthal v Trump (D.DC)

Case 1:17-cv-01154 Document 1 Filed 06/14/17 Page 1 of 54

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

Senator RICHARD BLUMENTHAL)
706 Hart Senate Office Building)
Washington, D.C. 20510,)
)
Representative JOHN CONYERS, JR.)
2426 Rayburn House Office Building)
Washington, D.C. 20515,)
)
Senator RICHARD J. DURBIN)
711 Hart Senate Office Building)
Washington, D.C. 20510,)
)
Senator PATTY MURRAY)
154 Russell Senate Office Building)
Washington, D.C. 20510,)
)
Senator ELIZABETH WARREN)
317 Hart Senate Office Building)
Washington, D.C. 20510,)
)
Senator AMY KLOBUCHAR)
302 Hart Senate Office Building)
Washington, D.C. 20510,)
)
Senator BERNARD SANDERS)
332 Dirksen Senate Office Building)
Washington, D.C. 20510,)
)
Senator PATRICK LEAHY)
437 Russell Senate Office Building)
Washington, D.C. 20510,)
)

Civil Action No.





Cunningham – Nonpartisan Originalism

Article I, Section 9

- ... no Person holding any Office of Profit or Trust ... shall,
- without the Consent of the Congress,
- accept of any present, Emolument, Office, or Title,
- of any kind whatever,
- from any King, Prince, or foreign State

The DISTRICT OF COLUMBIA
and The State of Maryland, Plaintiffs,
v.

Donald J. TRUMP, individually and in his official
capacity as President of the United States,
Defendant.

Civil No. PJM 17-1596
United States District Court
D. Maryland

President's position

- when the Constitution was ratified “emolument” had two distinct meanings:
- a “narrow” sense limited to “profit arising from an office or employ”
- a “broad” sense meaning “benefit, advantage or profit”
- emolument in the Constitution only referred to the narrow meaning

In The
United States Court of Appeals
For The Fourth Circuit

**In Re: DONALD J. TRUMP, President of the
United States of America, in his official capacity and
in his individual capacity,**

Petitioner.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
AT GREENBELT**

**BRIEF OF *AMICI CURIAE*
PROFESSOR CLARK D. CUNNINGHAM AND
PROFESSOR JESSE EGBERT
ON BEHALF OF NEITHER PARTY**

Corpus of Founding Era American English (COFEA)

95,133 texts

138,892,619 words

Search Now

The Corpus of Founding Era American English covers the time period starting with the reign of King George III, and ending with the death of George Washington (1760-1799). COFEA contains documents from ordinary people of the day, the Founders, and legal sources, including letters, diaries, newspapers, non-fiction books, fiction, sermons, speeches, debates, legal cases, and other legal materials. Three sources have provided the majority of texts, the National Archive Founders Online; William S. Hein & Co., HeinOnline; Text Creation Partnership (TCP) Evans Bibliography (University of Michigan).

Search results

- 69 uses of *emolument* in coordinated noun phrases in which the term appeared at the end of a list, preceded by “other”
- Approximately one out of every 40 cases of *emolument* occurs in this structure
- On average, nouns in *COFEA* appear in this structure in only one out of 1250 cases

Nouns preceding *other emolument(s)* in coordinated noun phrases will be types of *emolument* but will not exhaust meaning of *emolument*

Cats, dogs, and other animals
*Cats, birds, and other dogs

Examples

- having Receiv'd a wound ... which has renderd him uncapable of doing duty with his Regiment ever since— and being much Embarrass'd by not having receiv'd any pay, Cloathing or other Emoluments granted to the Officers of your State, Since July 1779 (Leonard Cooper to Virginia Delegates 1781)

Examples

- the memorial of William Finnie ... praying that the donation of lands and other emoluments appertaining to the rank of a Colonel in the line of the late continental army may be extended to him (Continental Congress 1785)
- Rivers and lakes are useful for navigation or for fishing, or for other emoluments arising from their possession (Summary of the Law of Nations 1795)

Nouns preceding *other emolument(s)* in coordinated NPs

Bounties	Lands	Privileges
Clothing	Liberty	Rank
Command	Offices	Rations
Commissions	Pay	Subsistence
Commutation	Gratuity	Sum
Contracts	Pensions	Tithes
Fees	Perquisites	Toll
Forage	Places	



[Scientific Methods for Analyzing Original Meaning: Corpus Linguistics and the Emoluments Clauses](#)

[Table of Contents](#)

[On-line appendix](#)

The research described in this paper was submitted to the U.S. Court of Appeals for the 4th Circuit on January 29, 2019, as a friend of the court (amicus) brief in support of neither party, in the case of In Re Trump, Case No. 18-2486 [appeal from District of Columbia v Trump, 315 F.Supp.3d 875 (D.Md. 2018)]. The case is scheduled for oral argument on March 19, 2019. [Download amicus brief as pdf.](#)

clarkcunningham.org/JP/Emolument/ScientificMethodsTOC.html

Table of Contents

Introduction
History of the Emoluments Clauses
The Trump Presidency
Introduction to Corpus Linguistics Methods
Analysis One: emolument with a pre-modifying adjective or post-modifying prepositional phrase
Analysis Two: coordinated phrases
Analysis Three: emolument with receive or accept

Appendix to Working Paper

[Chart listing 24 examples of “profit” and/or “emolument”](#)
[Chart listing all 69 cases of “other emolument”](#)
[Chart of all 137 cases of “emolument” with “receive”](#)
[Chart of all 12 cases of “emolument” with “accept”](#)
[Chart of all 11 cases of unmodified “emolument” with receive/accept](#)

Original Texts:
 Example 1: [Alexander Hamilton to John Davidson](#), 13 April 1793, 14 THE PAPERS OF ALEXANDER HAMILTON (Harold C. Syrett 1969), available at <https://founders.archives.gov/documents/Hamilton/01-14-02-0208>
 Example 2: [Appendix to the History of Congress, 8 Annals of Cong. 1569-1570 \(1798-1799\)](#)
 Example 3: [Appendix to the History of the Fifth Congress, 9 Annals of Cong. 3914 \(1798-1799\)](#)
 Example 4: [Form of Commission to Deputy Attorney Generals](#)(1779) 3 THE PAPERS OF THOMAS JEFFERSON 21 (Julian P. Boyd ed. 1951), available at <https://founders.archives.gov/documents/Jefferson/01-03-02-0025>
 Example 5: [Reply to Vindex Patriae on American Representation in Parliament](#), THE GAZETTEER (Jan 29, 1776), 13 THE PAPERS OF BENJAMIN FRANKLIN 63-66 (Leonard W. Labaree ed. 1969), available at <https://founders.archives.gov/documents/Franklin/01-13-02-0022>
 Example 6: [To George Washington from William Mumford](#), 9 May 1789, May 9th, 1789, 2 THE PAPERS OF GEORGE WASHINGTON 240-242 (Dorothy Twohig ed.1987), available at <https://founders.archives.gov/documents/Washington/05-02-02-0179>
 Example 7: [20 JOURNALS OF THE CONTINENTAL CONGRESS 766 \(1781\)](#)
 Example 8: [9 JOURNALS OF THE CONTINENTAL CONGRESS 986-987 \(1777\)](#)
 Example 9: [15 JOURNALS OF THE CONTINENTAL CONGRESS 1307 \(1779\)](#)
 Example 10: [Leonard Cooper to Virginia Delegates](#), 22 June 1781, 3 THE PAPERS OF JAMES MADISON 166-167 (William T. Hutchinson & William M. E. Rachal eds. 1963), available at <https://founders.archives.gov/documents/Madison/01-03-02-0085>
 Example 11: [To Thomas Jefferson from George Mason](#), 6 March 1791, 5 THE PAPERS OF THOMAS JEFFERSON 78-80 (Julian P. Boyd ed. 1953), available at <https://founders.archives.gov/documents/Jefferson/01-03-02-0102>

Cunningham - Nonpartisan Originalism

A big Trump case hinges on the definition of 'emoluments.' **A new study has bad news for him.** Washington Post

<https://www.washingtonpost.com/politics/2019/01/29/big-trump-case-hinges-definition-emoluments-new-study-has-bad-news-him/>

D.C. and Maryland are suing President Trump for violating a little-known constitutional provision called "the emoluments clause."



By [Aaron Blake](#)

January 29 at 2:58 PM

President Trump is dealing with special counsel Robert S. Mueller III's investigation, a new Democratic House majority and a series of controversies. Lurking behind it all is a slow-moving legal case trying to establish whether Trump is violating the Constitution by accepting foreign money at his hotel.

A new study suggests he might be.

Seminar on Judicial Power
Georgia State University College of Law

Spring Semester 2018

Web Site Address: www.clarkcunningham.org/JP/index.htm

GSU Law Students Present Research: April 11, 2018

[Big Data Meets the Constitution in New Originalism Project:](#)

Georgia appellate judges evaluate cutting-edge inquiries into what the Constitution's framers meant from Georgia State University law students.

Meredith Hobbs, Daily Report, May 1, 2018

"This is revolutionary," said Georgia Appeals Court Chief Judge Stephen Dillard. "It's like Westlaw for originalism."

- [Students Present New Insights on Original Meaning of Constitution to Judges using "Big Data" of Corpus Linguistics](#)

GSU College of Law News, May 21, 2018

- **"I thought the students were all exceptionally well prepared, the writing was very strong, the research was very strong, and it's grappling with some of the most difficult questions that courts have to deal with today."**

Justice Nels Peterson, Supreme Court of Georgia

Isaac Godfrey 8th Amendment

“Excessive bail shall not be required ...”



Pearson Cunningham & William Lasker

Congress shall make no law . . . abridging . . .
the right of the people . . . to petition the
Government for a redress of grievances ”



Eleanor Miller & Heather Obelgoner



Article II:

The executive power shall be vested in a President of the United States of America.

Article I:

All legislative powers herein granted shall be vested in a Congress of the United States

Article III:

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish

Don't Be Cruel: A Corpus Analysis of the Cruel and Unusual Punishments Clause

Aaron Smothers and Cecelia Howard



*Excessive bail shall not be required, nor excessive fines imposed, **nor cruel and unusual punishments inflicted.***

Seminar on Judicial Power Spring 2019

- Article 3: case or controversy
- 4th Amendment “papers and effects”
- 5th Amendment commas v semicolons
- 7th Amendment: “right of trial by jury shall be preserved”
- 10th Amendment: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

This presentation available at
[http://www.clarkcunningham.org/
NonpartisanOriginalism.html](http://www.clarkcunningham.org/NonpartisanOriginalism.html)