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Who Decides Constitutionality?

Posted by [Mike Maharrey](#) Before the Tennessee State Senate Judiciary Committee in support of SB0250 on February 27, 2013

Hello, my name is Michael Maharrey. I'm the national communications director for the Tenth Amendment Center. I'm honored to be here. As you know, in the opinion of Attorney Gen. Robert Cooper, SB 250 violates the supremacy clause of the Constitution. I've read the opinion, and his basic reasoning is solid.

Never-the-less, he came up with the wrong answer.

I'm sure you all remember working long quadratic equations in your high school algebra class. You know that you can work each step in precisely the right sequence, but if you insert $2 \times 2 = 6$ in the first step, you will come up with the wrong answer at the end. Why? Because you worked the entire problem operating on a false premise.

Cooper spends the bulk of his opinion correctly arguing that constitutional federal law trumps state law where it conflicts. Quite frankly, that was a waste of time. Nobody disputes that. The problem is that he incorrectly assumes that every federal act is a constitutional law and he builds his opinion on that fallacious premise.

Fact: Only laws made in pursuance of the Constitution are truly supreme.

All the founding fathers agreed – and I mean ALL of them – any federal act that violates the Constitution is no law at all. Alexander Hamilton summed it up in Federalist 78

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“Every act of a delegated authority contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the constitution, can be valid.”

Cooper apparently wants the People of Tennessee to believe the following federal acts mentioned in Section 5b are constitutional, and supreme.

- a Ban on firearms.
- tracking of ammunition
- federal taxes on firearm accessories

Where exactly does the Constitution delegate the federal government the power to regulate firearms? It doesn't. Some will argue that the federal government has some regulatory authority under the Commerce Clause. But, we have the Second Amendment, which puts further restrictions on the federal government. Note the most important phrase in the 2nd Amendment – “shall not be infringed.” Infringe means to interfere with. That doesn't leave any wiggle room.

Cooper mentions the possible unconstitutionality of such acts almost as an afterthought. He writes near the end of his opinion, “While the bills themselves declare that certain federal firearms regulations are unconstitutional...the responsibility for that determination rests with the judiciary, not a state legislature.”

The attorney general rests his argument on *Marbury v. Madison*.

But Cooper is misconstruing Marshall's ruling. The Chief Justice was merely asserting that the Court CAN in fact NULLIFY an act of Congress by ruling it unconstitutional. Nowhere does Marshall assert the Court has exclusive authority to rule on constitutionality. In fact, quite the opposite. Justice Marshall wrote:

The particular phraseology of the Constitution...confirms and strengthens the principle...that a law repugnant to the Constitution is void, and that courts, as well as other departments, are bound by that instrument.

The attorney general also cites *Cooper v. Aaron* to assert the supremacy of the federal judiciary and that its rulings cannot be challenged. That case rests on the same bastardized interpretation of *Marbury*.

Such a notion obliterates the constitutional system, making the Court the de facto sovereign. I shouldn't even have to point out the absurdity of the Court making itself supreme. It's like King Arthur claiming “supreme executive authority” because, in the words of Dennis in *Monty Python and the Holy Grail*, “some watery tart threw a sword at him.”

Ronald Reagan's Attorney General Edwin Meese said this:

The “*logic of Cooper v Aaron .. is at war with the Constitution... at war with the very meaning of the rule of law.*”

We need look only to the *Dred Scott* case, which denied even free blacks citizenship and went on to proclaim black people inferior, to see the inherent flaw in this idea of judicial supremacy. Do you really accept that *Dred Scott* was legitimately the law of the land – even for one minute? Abraham Lincoln sure didn't. In response to the ruling, he said:

“If the policy of government, upon vital questions affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court...the people will have ceased to be their own rulers, having, to that extent, practically resigned their government into the hands of that eminent tribunal.”

Fact: The Tennessee Attorney General tells us that only the federal court can determine constitutionality.

Fact: Ronald Reagan's attorney general, plus Abraham Lincoln, James Madison and Thomas Jefferson all disagree.

Jefferson said the states “are not united on the principle of unlimited submission to their general government.” And that the “government created by this compact (the Constitution) was not made the exclusive or final judge of the extent of the powers delegated to itself.”

Simply put, the people of the states delegated the federal government its power in the first place. As James Madison said



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"The States then being the parties to the constitutional compact, and in their sovereign capacity, it follows of necessity, that there can be no tribunal above their authority, to decide in the last resort, whether the compact made by them be violated; and consequently that as the parties to it, they must themselves decide in the last resort, such questions as may be of sufficient magnitude to require their interposition."

Michael Maharrey [[send him email](#)] is the Communications Director for the Tenth Amendment Center. He proudly resides in the original home of the Principles of '98 - Kentucky. See his blog archive [here](#) and his article archive [here](#). He also maintains the blog, [Tenther Gleanings](#).

Excerpts from the Tennessee General Assembly Bill Summary SB 0250 by *Beavers, Johnson, Campfield, Summerville. (HB 0248 by *Butt, Evans.)

<http://wapp.capitol.tn.gov/apps/billinfo/BillSummaryArchive.aspx?BillNumber=SB0250&ga=108>

Firearms and Ammunition - As introduced, expands and amends the Tennessee Firearms Freedom Act to address federal actions in this state. - Amends TCA Title 4, Chapter 54.

Bill Summary

This bill expands and revises the Tennessee Firearms Freedom Act (the Act), as described below.

This bill specifies that any federal action would be deemed an intentional violation of state sovereignty and would be unenforceable within the borders of the state if the federal action does or attempts to:

- (1) Infringe on, ban, regulate, or restrict state government, local government or civilian ownership, transfer, possession or manufacture of a firearm, a firearm accessory or ammunition in this state;
- (2) Require any state government, local government or civilian owned firearm, firearm accessory, or ammunition in this state to be registered or tracked in any manner; or
- (3) Impose federal taxes, fees or other charges on any state government, local government or civilian owned firearm, firearm accessory, or ammunition that are payable to any government entity.

This bill makes it a Class B felony for a person to knowingly enforce or attempt to enforce any federal action prohibited by the Act, as revised by this bill, relating to a state government, local government or civilian owned firearm, firearm accessory or ammunition.

Closer to Home Alaska Legislature 02-25-2013 House Journal 0368 www.legis.state.ak.us

CS FOR HOUSE BILL NO. 69 (JUD)

"An Act exempting certain firearms, firearm accessories, and ammunition in this state from federal regulation; declaring certain federal statutes, regulations, rules, and orders unconstitutional under the Constitution of the United States and unenforceable in this state; providing criminal penalties for federal officials who enforce or attempt to

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enforce a federal statute, regulation, rule, or order regulating certain firearms and firearm accessories in this state; and providing for an effective date."

There being no objection, it was so ordered.

Representative Pruitt moved and asked unanimous consent that CSHB 69(JUD) be considered engrossed, advanced to third reading, and placed on final passage. There being no objection, it was so ordered.

CSHB 69(JUD) was read the third time.

The question being: "Shall CSHB 69(JUD) pass the House?" The roll was taken with the following result:

CSHB 69(JUD)
Third Reading
Final Passage

YEAS: 31 NAYS: 5 EXCUSED: 4 ABSENT: 0

Yeas: Austerman, Chenault, Costello, Edgmon, Feige, Foster, Gattis, Hawker, Herron, Higgins, Holmes, Hughes, Isaacson, Johnson, Keller, LeDoux, Lynn, Millett, Munoz, Nageak, Olson, Pruitt, Reinbold, Saddler, Seaton, Stoltze, Tarr, Thompson, Tuck, P.Wilson, T.Wilson

Nays: Drummond, Gara, Gruenberg, Josephson, Kreiss-Tomkins

Excused: Guttenberg, Kawasaki, Kerttula, Neuman

And so, CSHB 69(JUD) passed the House.

Representative Pruitt moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

SENATE JOINT RESOLUTION NO. 9

Proposing amendments to the Constitution of the State of Alaska relating to state aid for education.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* **Section 1.** Article VII, sec. 1, Constitution of the State of Alaska, is amended to read:

Section 1. Public Education. The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. [NO MONEY SHALL BE PAID FROM PUBLIC FUNDS FOR THE DIRECT BENEFIT OF ANY RELIGIOUS OR OTHER PRIVATE EDUCATIONAL INSTITUTION.]

* **Sec. 2.** Article IX, sec. 6, Constitution of the State of Alaska, is amended to read:

Section 6. Public Purpose. No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose; **however, nothing in this section shall prevent payment from public funds for the direct educational benefit of students as provided by law.**

* **Sec. 3.** The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.



"No one can find a safe way out for himself if society is sweeping towards destruction. Therefore everyone, in his own interests, must thrust himself vigorously into the intellectual battle. None can stand aside with unconcern; the interests of everyone hang on the result." Ludwig Von Mises



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A Citizen's Letter to Assemblymembers Dukes, Howard, and Roberts

by Peter Chapman

Natalie, Michael, and Lance,

I want to let you each know that I appreciate the effort you each made in support of property owner rights during the assembly's discussion of our rezone application last Thursday. While our application may not have seemed very significant relative to many other issues the borough is facing you still took the time and effort to attempt to protect the rights of the property owner and rectify problematic components of the process. You each addressed several key issues with the current borough practices that our rezone application made apparent and I wanted to provide you with some feedback from the applicant's perspective.

Site Plan:

Natalie, you correctly identified the misconception of the borough planner that a site plan that is not referenced in special limitations is a binding document. Obtaining the opinion of the borough attorney on record that an unreferenced site plan is not binding was very valuable from my perspective. We were required to provide a site plan because the parcels are located within the Special Landscape Area overlay and, therefore, required approval from the Landscape Review Board. The only reason the Landscape Review Board wanted a site plan was to provide an accurate representation of the area of landscaping as it related to the use of the property and neighboring properties. Nothing was noted or discussed in the submission process that the site plan was binding for any purpose.

It was interesting to note, however, that the borough planner was speaking with me after the meeting and stated that they (the planning department) will need to make specific references to site plans in their special limitations in the future so that full compliance with the site plan would be required. It sounded like his goal was to make site plans an integral component of the special limitations that are regularly being placed on properties undergoing a rezone. Watch out for that in the future!

Special Limitations:

Lance, I appreciate your attempt to have unnecessary special limitations removed from the ordinance. While they do not interfere with our intended use of the property, their perpetual nature may cause issues for future owners. Your comments about not wanting to regulate businesses through zoning limitations was right on. Also, you correctly pointed out that the job of the assembly is not to just rubber stamp the submissions of the planning board, but rather to evaluate their merit and amend them if necessary.

Michael, your comment stating that we paid an application fee and were willing to do what we were told was very accurate. We were not told that special limitations were optional for the applicant to approve or agree with. To the contrary, the borough planner developed the special limitations and informed us of them but did not ask for our input or approval of them. We were given the impression that if we did not agree to what they presented that they would submit a negative recommendation to the planning board and that our rezone application would be denied at that stage. Their approach seemed to be to "do it our way, or else you won't be able to do it at all". So, obviously, since our intended use for the property was not adversely affected by the limitations they included, we did not challenge them. Your point was well made and accurate.

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Landscape Review Board:

This was not discussed during the meeting but I thought it may be beneficial for you to know. When I met with the Landscape Review Board to submit and discuss our landscape plan, none of the board members or the planner who was present were familiar with the Landscape Manual, which provides the criteria they are supposed to be making decisions by. I had to educate them as to which portions of the manual applied to our situation and how we proposed meeting those requirements. Had I not studied the manual to familiarize myself with the pertinent material, it seemed very likely that the recommendations and/or requirements coming from the Landscape Review Board would have been subjective and not in compliance with their manual. They were all nice folks and very easy to speak with, but I'm not sure how they make their decisions if they are not familiar with the contents of the manual that they are supposed to be implementing. The experience made me skeptical of the accuracy of recommendations and decisions that may be made by the board and others like it. Separately, but related to the Landscape Review Board, is the issue of enforcement. This seems to be one of many areas that the Borough has implemented regulations that it does not have the ability to enforce.

This rezone application has definitely been an educational experience for me. After seeing just a little of what you deal with I have a much greater appreciation for the work that you do. You have tough work ahead of you and I know that it probably seems at times that progress is very slow but I want to encourage you to keep it up! I appreciate your service to our community and the sacrifice of time that you made. Thank you for your commitment to making our borough a better place to live through limiting the expansion of borough government, regulation, programs, and unnecessary "services". Keep up the good work!

Peter Chapman



WHAT'S WRONG WITH SUSTAINABLE DEVELOPMENT?

How could something that sounds so good be bad? Who wouldn't want to be sustainable? Vibrant? Walkable? Bikeable? Green? These buzz words were designed to make you think that you're doing something good for the planet. This is the biggest public relations scam in the history of the world.

Sustainable Development was created and defined by the United Nations in 1987, and the action plan to implement it was signed onto in 1992 by US President Bush and 178 other nations. It was called Agenda 21, the Agenda for the 21st century. Considered unsustainable under this plan: middle class lifestyle, single family homes, private vehicles, meat-eating, air conditioning, appliances, dams, farming, you.

Clinton began to implement it in the US in 1993 by giving the American Planning Association a multi-million dollar grant to write a land use legislative blueprint for every municipality in the US. It is called *Growing Smart Legislative Guidebook with Model Statutes for Planning and the Management of Change*. This was completed in 2002 and is being used to train planners in every university, college and government planning office in the nation. *Growing Smart* is Smart Growth.

Growing Smart is in our planning department and its principles are in our city and county plan. Right now. Beside this, on the shelf, is *The Local Agenda 21 Planning Guide* put out by ICLEI and the United Nations. **Urban areas are being consolidated and rural areas are being emptied of people through restrictive land use policies, gasoline costs, vehicle miles traveled taxes, loss of rural road maintenance, closure of rural schools, closure of rural post offices, water well monitoring, smart meters, and regionalization pressures.** Smart Growth is not just the preferred building style for UN Agenda 21/Sustainable Development; it is the ideology. Moving people into centralized urban areas in high density housing creates the perfect opportunity for domestic surveillance. This ideology is being used as the justification to radically change every city in the United States and to impose regulations dictated by unelected regional boards and commissions. It is remaking government. This dramatic revolution in private property rights extends to every facet of our lives: education, energy, food, housing, transportation. We are being told that this is OUR PLAN but it is not. We object to this manipulation and refuse to be subjected to it. Educate yourself. Speak out. BE the Resistance.

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Teach Your Children Well

by Joseph Sobran

Because I write about politics, people are forever asking me the best way to teach children how our system of government works. I tell them that they can give their own children a basic civics course right in their own homes.

In my own experience as a father, I have discovered several simple devices that can illustrate to a child's mind the principles on which the modern state deals with its citizens. You may find them helpful, too.

For example, I used to play the simple card game WAR with my son. After a while, when he thoroughly understood that the higher ranking cards beat the lower ranking ones, I created a new game I called GOVERNMENT. In this game, I was Government, and I won every trick, regardless of who had the better card. My boy soon lost interest in my new game, but I like to think it taught him a valuable lesson for later in life.

When your child is a little older, you can teach him about our tax system in a way that is easy to grasp. Offer him, say, \$10 to mow the lawn. When he has mowed it and asks to be paid, withhold \$5 and explain that this is income tax. Give \$1 to his younger brother, and tell him that this is "fair." Also, explain that you need the other \$4 yourself to cover the administrative costs of dividing the money. When he cries, tell him he is being "selfish" and "greedy." Later in life he will thank you.

Make as many rules as possible. Leave the reasons for them obscure. Enforce them arbitrarily. Accuse your child of breaking rules you have never told him about. Keep him anxious that he may be violating commands you haven't yet issued. Instill in him the feeling that rules are utterly irrational. This will prepare him for living under democratic government.

When your child has matured sufficiently to understand how the judicial system works, set a bedtime for him and then send him to bed an hour early. When he tearfully accuses you of breaking the rules, explain that you made the rules and you can interpret them in any way that seems appropriate to you, according to changing conditions. This will prepare him for the Supreme Court's concept of the U.S. Constitution as a "living document."

Promise often to take him to the movies or the zoo, and then, at the appointed hour, recline in an easy chair with a newspaper and tell him you have changed your plans. When he screams, "But you promised!," explain to him that it was a campaign promise.

Every now and then, without warning, slap your child. Then explain that this is defense. Tell him that you must be vigilant at all times to stop any potential enemy before he gets big enough to hurt you. This, too, your child will appreciate, not right at that moment, maybe, but later in life.

At times your child will naturally express discontent with your methods. He may even give voice to a petulant wish that he lived with another family. To forestall and minimize this reaction, tell him how lucky he is to be with you the most loving and indulgent parent in the world, and recount lurid stories of the cruelties of other parents. This will make him loyal to you and, later, receptive to schoolroom claims that the America of the postmodern welfare state is still the best and freest country on Earth.

This brings me to the most important child-rearing technique of all: lying. Lie to your child constantly. Teach him that words mean nothing – or rather that the meanings of words are continually "evolving," and may be tomorrow the opposite of what they are today.

Some readers may object that this is a poor way to raise a child. A few may even call it child abuse. But that's the whole point: Child abuse is the best preparation for adult life under our form of GOVERNMENT.

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Joseph Sobran (1946–2010), conservative turned libertarian, was one of the most significant American writers of his time. See [his website](#) and [his intellectual journey](#).



The Economy, Ketchup and Precious Metals

By [Byron King](#) | 03/01/13

It's fair to say that the U.S. economy is showing an improved heartbeat, compared with recent quarters and years.

There's even the proverbial "big news" on Wall Street. Last month, for example, Warren Buffet's \$23 billion take-over play for the H.J Heinz Co., an iconic food brand.

Is the Buffet play, for Heinz, a harbinger of better days ahead for stock markets generally, versus the future fortunes of the world's flinty gold buyers? Even more optimistically, will this takeover play kick off the next nirvana for deal-makers?

Well, let's give Herr Buffet credit for his excellent sense of timing. He's a great picker of old-line companies with durable names, competitive advantages and predictable earnings. That's Buffet's gig, and he's very good at this game.

Still, let's take a clear look at what Buffet is buying. H.J Heinz is global, to be sure, but not really "international" in the way that, say Boeing or General Electric arc across the world. That is, Heinz is mostly a trans-national collection of local facilities.

The basic business model for Heinz is to own food-processing factories in dozens of countries. Heinz buys into local and regional brands, across a multitude of nations, ethnicities and cultures. Heinz then produces products derived from local agriculture, under tight hygienic standards, and emplaced into cans and bottles. In other words — and as the people who work at Heinz will be the first to tell you — it just doesn't pay to ship tomato-flavored water, in bottles and cans, all that far.

So Buffet buying Heinz is good news, in many respects, to deal-maker wannabes. Heck, any big deal is a good deal, as long as the bankers and lawyers get their fees.

Yet the Buffet-Heinz hook-up seems limited in scope. It reflects an evolving world economy at, literally, the grass-roots level. More and more people have more and more money to buy higher quality, branded food items from factories that are located not too far away. That's good, but it's not necessarily the signal for a new global boom.

How's That Global Economy?

Aside from the market for beans and ketchup, how's that global economy doing? I can't help but ponder some strange bits of information I keep seeing.

For example, last year the German central bank asked the U.S. Federal Reserve to arrange an audit of German gold on deposit in the U.S. The Fed people declined to permit that. Odd, right?

Then in January, the Germans asked for part of their gold hoard back from the Fed bank in New York. And despite the fact that there are plenty of armored cars around, and many daily air flights across the Atlantic Ocean, it'll take seven years for the Fed to make the gold transfer. Like I said, it's strange. Or, not to put too fine a point on it, where's the gold?

Here's something else. Consider Russia's Vladimir Putin, and his effort to acquire gold for the Russian central bank. Under Putin, Russia's central bank has added 570 metric tons of gold to its asset base over the past decade, a quarter more than runner-up China, according to data from the International Monetary Fund (IMF), as compiled by Bloomberg News. (*China's gold holdings are MUCH larger than they admit-to, I suspect, which is the subject of a major new trend I'm developing.*)

Just last year, in 2012, Putin made news when he stated that the U.S. is "endangering the global economy" by abusing its dollar monopoly. Perhaps it's bluster, but then Putin is putting money where his mouth is. Late last year, Putin instructed the Russian central bank not to "shy away" from buying gold, according to a press release from the Kremlin. "After all," said Putin, "they're called gold and currency reserves for a reason."

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Looking ahead, the Kremlin plans to keep on buying gold. According to Russia's first deputy Alexei Ulukayev, "The pace (of gold buying) will be determined by the market." He added, with characteristic Russian secretiveness, "Whether to speed that (buying) up or slow it down is a market decision, and I'm not going to discuss it."

Too Big to Sail

So could things change quickly in the precious metal markets? Could metal prices melt-up from the current levels? Yes, because human

psychology can change quickly.

As a rule, people act on what they know. Right now, a lot of people seem to think that the world economic system is working alright. Buffet bought Heinz, right? Sure, the world economy could be better. But generally, the evidence indicates that the world economic system does the job, day to day. At least, goes the thinking, the economy is not falling apart.

Yet consider the passengers on last month's ill-fated Carnival cruise ship that just pulled into Mobile harbor. Last week, everyone was looking forward to a nice, relaxing Caribbean vacation afloat. What could go wrong?

Then the ship had an engine failure. Within hours — certainly by the second day — people descended to pushing and shoving over stale onion sandwiches.

What do stale onion sandwiches have to do with the price of silver or gold? Well, do you usually eat stale onion sandwiches? Do you expect to eat stale onion sandwiches when you're on a luxury cruise ship, with storage lockers below-decks, filled with provisions?

When things go awry, however, the previous rules go away. Yes, the cruise ship had food in the hold, but nobody could use it. There was no power to run the kitchen, let alone to cook and serve meals. People descended a hurry, and gave the media a true spectacle.

What's the analogy? Well, perhaps some of these new cruise ships are just too big to sail, in the same way that many large banks are too big to fail — until they actually fail. Then we can all fight over the stale onion sandwiches.

Thanks for reading. Have a good weekend.

Byron King, Original article posted on [Daily Resource Hunter](#)

[Byron King](#)

Byron King is the managing editor of [Outstanding Investments](#) and [Energy & Scarcity Investor](#). He is a Harvard-trained geologist who has traveled to every U.S. state and territory and six of the seven continents. He has conducted site visits to mineral deposits in 26 countries and deep-water oil fields in five oceans. This provides him with a unique perspective on the myriad of investment opportunities in energy and mineral exploration. He has been interviewed by dozens of major print and broadcast media outlets including *The Financial Times*, *The Guardian*, *The Washington Post*, *MSN Money*, *MarketWatch*, *Fox Business News*, and *PBS Newshour*.

Read more: [The Economy, Ketchup And Precious Metals](#)

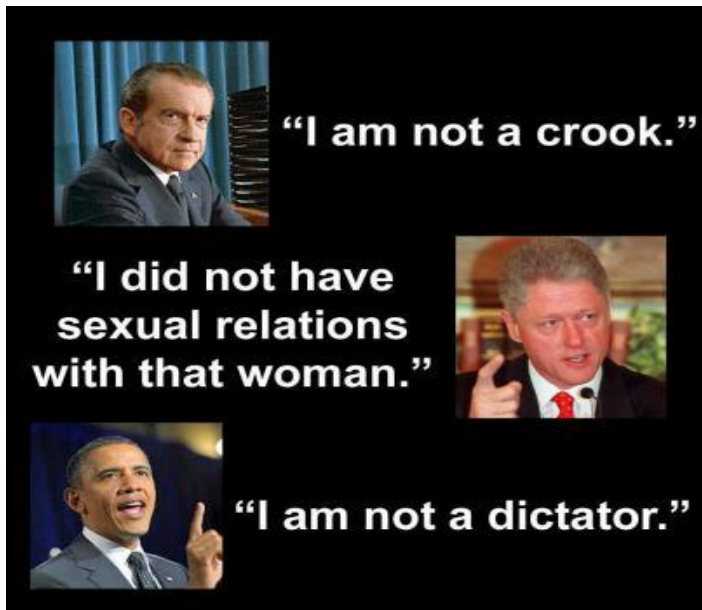
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A general dissolution of principles and manners will more surely overthrow the liberties of America than the whole force of the common enemy. While the people are virtuous they cannot be subdued; but when once they lose their virtue then will be ready to surrender their liberties to the first external or internal invader.

Samuel Adams, letter to James Warren, February 12, 1779



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Altrol 2295 A Van Horn Road
Alyeska Tire 3250 Peger Road
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The Woodway 1830 RJ Loop on College Rd. 35
Alaska Fun Center 1817 College Rd.
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