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Happy Constitution Day, America

By Robert F. Sanchez

The U.S. Constitution is old, but Constitution Day is new. September 17th will mark its first official observance. Last December, President Bush signed into law the bill designating Sept. 17 as a day to celebrate the world's oldest surviving written charter of government.

This nation reveres its founding documents – the Declaration of Independence as well as the Constitution. Indeed, the federal government has gone to great lengths to protect them. They're housed in Philadelphia's Independence Hall. Archivists have taken extraordinary steps to prevent time from taking a toll on them.

Moreover, the documents are guarded by an elaborate security system. Moviegoers caught a glimpse of it in the 2004 action film *National Treasure*, which featured a preposterous plot to steal the Declaration of Independence to recover a treasure map.

Unfortunately, however, the Constitution's fundamental principles – limited government, individual liberty, separation of powers, federalism, and the rule of law – have not been as well protected as the physical document itself.

In fact, the Founders' original intent to establish a sustainable free republic governed by elected officials and based on the rule of law has been substantially

compromised by the rulings of activist judges.

That's why the timely confirmation of Judge John Roberts to succeed William Rehnquist as Chief Justice of the United States is essential. It's also why President Bush ought to nominate as a successor to Justice Sandra Day O'Connor a person who will faithfully uphold the principles outlined so well in the Constitution's text.

The confirmation of two new justices who are faithful to the Constitution could pave the way for the Supreme Court to correct some of its worst errors and excesses. In recent years, the Court too often strayed by basing decisions on factors such as evolving public opinion or the standards of social behavior reflected in other nation's laws and customs.

It's not that the original Constitution and its various amendments never need interpretation. When the Founders finally approved the draft of the basic document on Sept. 17, 1787, nobody rushed to the nearest phone to spread the word. Communication swifter than transportation awaited the telegraph and, later, the telephone.

Because the framers of the Constitution knew nothing about telephones, they couldn't possibly craft an article about the practice of wiretapping phones. There's nothing in the Constitution's text that even mentions telephones.

Nonetheless, there's no problem. Recognizing the need to codify the limits of government power, the Founders wisely added the 10 Constitutional amendments we know as our Bill of Rights.

The Fourth Amendment begins, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..."

To extend the Fourth Amendment's protection against government snooping to persons engaged in telephone conversations or, now, to persons exchanging e-mails is therefore not an act of blatant judicial activism; it's merely the common-sense application of an enduring principle to a new situation created by the progress of technology.

Unfortunately, not all judicial leaps of logic nowadays are as soundly rooted in a valid extension of a principle found in the Constitution's text. Instead, some opinions seem plucked from various ethereal notions such as other nations' laws and customs.

That seemed to be the basis, for instance, of the U.S. Supreme Court's recent discovery – 213 years after the ratification of the Bill of Rights -- that allowing the execution of persons who committed heinous capital crimes while they were minors is now deemed "cruel and unusual punishment." Why? Because evolving world opinion says so.

Because of court rulings, children attending public schools must accept strict limitations of their First Amendment right to the free exercise of their religious beliefs. Meanwhile, Muslim inmates in California prisons – site of a recently discovered plot to detonate car bombs and instigate other acts of domestic terrorism around Los Angeles – may demand Islamic clerics, reading materials, special diets, and various exceptions to the prison's general

rules on issues such as headgear, beards, and haircuts – all at taxpayers' expense.

Two recent court rulings are especially blatant examples of judicial activism. In Massachusetts, it was judges rather than elected legislators who held that the traditional definition of marriage as the union of a man and a woman was unconstitutional.

In the other, a 5-4 majority of the U.S. Supreme Court ruled in *Kelo v. City of New London* that local governments may use their eminent domain authority to seize private property and convey it to other private entities in the name of economic development.

Not only is this *not* a logical extension of a principle articulated in the Constitution's text, but it's a plain violation of property rights explicitly articulated in the Constitution's text.

It's a reminder that although the surviving copies of the Constitution and Declaration of Independence are indeed well-guarded national treasures, the fundamental principles enunciated within them are too often ignored – even by our judges. That's something to ponder this Saturday when the nation celebrates Constitution Day.

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