

Who Can Determine If A “Law” Is Unconstitutional?

For over a hundred years attorneys, judges and many others have been professing that only courts, and ultimately the U.S. Supreme Court, can determine what is unconstitutional. Today, many legislators often say: We don’t need to determine if a Bill is unconstitutional because after it becomes a law, eventually someone will challenge it in court and the courts will do their duty to judge the law.

To support their position, those that claim that only the courts can determine what is unconstitutional generally point to the U.S. Supreme Court case opinion in MARBURY v. MADISON, 5 U.S. 137 (1803). However, this is not the correct conclusion drawn from the opinion written by Chief Justice Marshall in this case. At the very end of his opinion, Chief Justice John Marshall states:

“Why does a judge swear to discharge his duties agreeably to the Constitution of the United States, if that constitution forms no rule for his government? if it is closed upon him and cannot be inspected by him?

If such be the real state of things, this is worse than solemn mockery. To prescribe or to take this oath becomes equally a crime.

It is also not entirely unworthy of observation that, in declaring what shall be the Supreme law of the land, the Constitution itself is first mentioned, and not the laws of the United States generally, but those only which shall be made in pursuance of the Constitution, have that rank.

Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written Constitutions, that a law repugnant to the Constitution is void, and that courts, as well as other departments, are bound by that instrument.”

Chief Justice Marshall was correctly saying that, like everyone in government, those in the judicial branch, because of their “oath of office”, have a required constitutional duty to examine and determine if their actions are constitutional or unconstitutional. To not so discharge their duties “**is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime.**”

We also must remember that it is settled law that **an unconstitutional “law” is not law.**

“The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void, and ineffective for any purpose; since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it.

No one is bound to obey an unconstitutional law and no courts are bound to enforce it.”

[16 Am. Jur. 2d, Section 177; later 2d, Section 256]

In Pennsylvania, the required constitutional “oath of office”, found in Article VI, Section 3, states:

"I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that I will discharge the duties of my office with fidelity."

Before anyone in government does anything, he or she must, as a matter of law, ask, at a minimum: 1) **Is it moral?** (Because all of our laws are to conform with God’s Laws) and 2) **Is it constitutional?** If the answer to either of these two fundamental/primary questions is NO, the action must not be taken!

So before a Legislator decides to act, for example: introduce a Bill and/or vote on a Bill, he or she must first answer “YES” to these two primary questions in order to comply with their “oath of office”.

The Governor must likewise answer “YES” to these two primary questions before he or she signs a Bill into law, or does anything else in his or her official capacity. Remember, the Governor’s primary

duty **“is to see that the laws are faithfully executed.”** (Article IV, Section 1 of the Constitution of Pennsylvania)

It is the constitutional duty of each judge or justice in the courts to make sure that they, and all others in the judicial branch, always strictly follow their constitutional “oath of office”. When a case is placed before the court, the judge(s) or justice(s) must first determine if they have constitutional authority (jurisdiction) to hear the case. If they have this authority, then they are also required to hear and determine the case strictly according to the original intent of the law, the appropriate Constitution and then statutes, codes, regulations, etc. which are themselves constitutional. To do otherwise would, as Chief Justice Marshall said in MARBURY v. MADISON, “be solemn mockery and ... equally a crime.”

Finally, the people/the Citizens, individually and collectively, have the ultimate power and authority to determine if a “law” is unconstitutional, because the people are the sovereigns in America.

Yes, the people are the sovereigns in each State of the Union and in the United States of America. This is confirmed, at a minimum, by the Declaration of Independence, the Constitution of Pennsylvania, and by many United States Supreme Court decisions. For example, consider:

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. **That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,**”
[Declaration of Independence]

“All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all time an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper.”
[Article I, Section 2 of the Constitution of Pennsylvania]

“In the United States, sovereignty resides in the people, who act through the organs established by the Constitution. Chisholm v. Georgia, 2 Dall. 419, 471; Penhallow v. Doane’s Administrators, 3 Dall, 54, 93; McCulloch v. Maryland, 4 Weat. 316, 404,405; Yick Wo v. Hopkins, 118 U.S. 356, 370.

The Congress as the instrumentality of sovereignty is endowed with certain powers to be exerted on behalf of the people in the manner and with the effect the Constitution ordains. The Congress can not invoke the sovereign power of the people to override their will as thus declared.”

[PERRY v. UNITED STATES, 294 US 331, 353, (1934)]

Therefore, the clear and unavoidable correct answer to the question - **“Who can determine if a “Law” is unconstitutional?”** is: each and everyone in government, who must do so before they act. This is a required solemn, constitutional duty according to their “oath of office” or the oath of their superior(s).

However, ultimately each individual Citizen has the sovereign power, duty and responsibility, always being responsible for their decision(s) and action(s), to determine what is unconstitutional. Some may say this will result in “total chaos and anarchy”. No! It will once again result in freedom and liberty. Those in government must constantly be held accountable for their actions and/or lack of lawful actions.

It is now time for Pennsylvania to send clear and emphatic messages to those in Washington DC by nullifying “ObamaCare”, Real ID, NDAA and all other unconstitutional U.S. government “laws”.

The very survival of our republics, economy, freedom and liberty depends on these required actions.