that will promote and implement a policy of forced abortions on their own citizens?

Or will it be the United States of America? Will it be the country that has promoted the middle-class, the country that does stand for freedom? We have many warts, but we do promote democracy. There are disagreements on how we go about it, but this is a democratically elected body here of human beings, of American citizens who make human mistakes. But this is a lot better, and this country is best to lead the world in the 21st century, not a Communist regime who has no concern for the human rights of other citizens.

That is what is at stake here in this whole debate. We could talk about currency manipulation and trade and funding and all these different political issues, but the bottom line with this whole situation is who is going to lead the world in the 21st century? If you want it to be the United States of America, we better use this window of opportunity to play tough with the Chinese; to tell them to fix their currency manipulation, or face the consequences.

This body needs to provide the President with the tools that he needs to be tough with the Chinese and force them to fix this issue, and then we come back home and we fix and fund and implement education reform and funding for education and funding for health for young children and young students all over the country, and let us get ready to go to battle in the 21st century with healthy, educated kids who have an opportunity at schools all over the country, with access to the arts and speech and debate and drama and music and foreign languages.

We can do it, but we have got to make it a priority and we have got to make it a goal. And this all starts, Mr. Speaker, with making sure the Chinese, if they want to participate in the global economy, they do it in a fair way. They agreed to play fair, and now they are cheating.

This body is primed to act, and we are going to act. It is going to start with facing down the currency manipulation problem and not allowing the Chinese to cheat to the tune of 40 cents on the dollar.

CONSTITUTIONAL GUIDELINES FOR SUPREME COURT DECISIONS

The SPEAKER pro tempore (Mr. JINDAL). Under the Speaker's announced policy of January 4, 2005, the gentleman from Texas (Mr. POE) is recognized for 60 minutes.

Mr. POE. Mr. Speaker, ''I solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and I will faithfully discharge the duties of the office of which I am about to enter, so help me God.''

Mr. Speaker, this is the judicial oath that justices of the United States Supreme Court take to uphold America's Constitution, the sacred manuscript our Nation was established upon, the foundation of who we are.

Yet, Mr. Speaker, some of the same justices who preside over the highest court in our land are systematically unraveling the threads of the very Constitution they vowed to protect. In what amounts to a most disturbing development, the United States Supreme Court continues to flirt with the temptations of foreign court decisions and the lure of opinions of international organizations. They do this in the interpretation of our American Constitution.

Mr. Speaker, this trend is terribly troubling. Has the Supreme Court lost its way?

As a former Texas judge for over 22 years, having heard 25,000 criminal cases, I took the same oath as our Supreme Court justices, to uphold the United States Constitution. Never once did I make a decision based upon the way they do things in other countries. My oath was to our Constitution, not to the Constitution of the member countries of the European Union, such as France. America should not confer with the decisions of any of the hundreds of foreign powers on our planet. As Anthony Scalia, our justice on the Supreme Court has said, ''those decisions are irrelevant in the United States.''

In 1776, amidst a revolution, our forefathers signed the Declaration of Independence which stated brazenly and boldly the 13 colonies desire to dissolve political bonds with England. In this document, Mr. Speaker, Thomas Jefferson penned among the list of grievances against King George the following statement: He said of King George, ''He has combined with others to subject us to a jurisdiction foreign to our Constitution and unacknowledged by our laws.''

Mr. Speaker, 10,000 to 14,000 patriots over the course of 8 years in the American War of Independence spilled their blood or died to secure liberty for us and safeguard our constitutional rights.

□ 2200

The purpose was to sever ties with England forever. Then, in 1812, the British invaded the United States again. The British still wanted America to be subject to the King and their ways. They burned this very city, including our Capitol. President Madison and his wife, Dolly, fled Washington, D.C. in the damp darkness of the dreadful night to escape the invaders. The British were determined to retake this free Nation of America and this very soil on which I stand today. Americans defeated the British a second time to make them understand that we will not do things the English way.

Now, justices in this land of America, across the street from this very Capitol, use British court decisions and European thought in interpreting our Constitution. What the British could not accomplish by force, our Supreme Court has surrendered to them voluntarily. Has the Supreme Court handed over our sovereign Constitution to other nations? Mr. Speaker, has the Supreme Court lost its way?

The Constitution is the basis for who we are, what we believe, and what our values are. My colleagues will notice, Mr. Speaker, the oath our judges take is to the Constitution; not to the government, not to the President. It is to the Constitution. That is because the Constitution is the supreme authority of the land. It is our identity. It is our path to justice for all Americans.

The Framers of the Constitution made clear their vision for the Federal judiciary. Named in Article III behind both of the other branches of government, the Founders intended a court system with a narrow scope and restricted authority. As Alexander Hamilton explained in one of the Federalist Papers, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution, because it will be the least in its capacity to annoy or injure them. He states that the judicial branch is, beyond comparison, the weakest of the three departments of power.

Mr. Hamilton continued in his Federalist Papers, the executive dispenses the honors, holds the sword of the community. The legislature commands the purchases, prescribes the rules by which the duties and the rights of every citizen are regulated. The judiciary, on the contrary, has no influence over either the sword or the purchases, no discretion, either of the strength or the wealth of the society, and can take no active resolution whatsoever. It may truly be said to have neither force nor will, but just judgment.

Mr. Hamilton was wrong. History now reveals that the Supreme Court has become the most powerful of all the branches of government, although it was intended to be the weakest. And the people of this country cannot hold them accountable for their actions. Nonetheless, Mr. Speaker, an alarming number of judges deem the Constitution a bendable document, more like a catalog of suggestions rather than the rule of law; a set of elastic principles which, at the end of the day, can be easily interchanged with the judge's own personal policy and emotional agenda. As one author on the topic of our judges has put it, they see their role limited only by the boundaries of their imaginations.

And in the case of consulting foreign statutes to determine rulings here in the United States, a majority of our nine Supreme Court Justices even encourage it. Justice Sandra Day O'Connor, for example, has said that although international law and the law of other nations are rarely binding on decisions in the United States and its

courts, conclusions reached by other countries and by the international community should, at times, constitute persuasive authority in American courts.

Well, Mr. Speaker, if they are rarely binding, who decides when they are binding? Is this arbitrary justice? My question is, when do foreign court decisions matter, and when do they not matter? Do our judges pick and choose foreign decisions that they like and ignore those they personally do not like? Do they pick and choose to get a desired result?

Mr. Speaker, this is constitutional chaos. In one of her books where she shares her reflections on being a Supreme Court Justice, she goes on to say that she believes American judges and lawyers can benefit from broadening their horizons. I know from my experience, she says, at the Supreme Court that we often have much to learn from other jurisdictions. We Supreme Court Justices will find ourselves looking more frequently to decisions of constitutional courts, especially common law courts that have struggled with the same constitutional questions that we have. International law is no longer a specialty; it is vital if judges are to faithfully discharge their duties.

Mr. Speaker, all judges, all lawyers in the United States take oaths to faithfully discharge their duties to the United States Constitution. None of us took an oath to faithfully discharge international law and the duty to international law. Has the Supreme Court, Mr. Speaker, lost its way?

Another judge on our Supreme Court, Justice Ginsberg, also subscribes to the importance of international jurisprudence on the Court. She thinks the premise is wrong that you only look to your friends. She has asked why, if judges are free to consult commentary, restatements, treaties, writings of law professors, law students and law reviews, they should not analyze an opinion from, get this, the Supreme Court of Canada, the Constitutional Court of South Africa, the German Constitutional Court, or the European Court of Human Rights. In her view, the United States judiciary will be poor if we do not both share our experience with and learn from legal systems with values and a commitment to democracy similar to our own.

On a C–SPAN broadcast last month, another Justice, sympathetic to the use of international law and foreign court decisions, indicated that the Supreme Court is faced with more and more cases in which the laws of other countries apply. Where there is disagreement is how to use the law of other nations where we have some of those very open-ended interpretations of the word ''liberty,'' and interpretations of the phrase ''cruel and unusual punishment.'' This Justice believes it is appropriate in some instances to look to how other foreign courts may have decided similar issues. I ask, Mr. Speaker, what difference does it make how they do things in lands far, far away?

In 2002, Justice Paul Stevens in Thompson v. Oklahoma raised global norms regarding a particular type of punishment in his opinions. He states the conclusion that it would offend civilized standards of decency to execute a person who was less than 16 years of age at the time of his or her offense is consistent with the views that have been expressed by respected professional organizations, by other nations that share Anglo-American heritage, by leading members of the Western European Community, the American Bar Association, the American Law Institute, who have all formally expressed opposition to the death penalty for juveniles.

Although the death penalty has not been entirely abolished, he says, in the United Kingdom or New Zealand, in neither of these countries may a juvenile be executed. The death penalty has been abolished in West Germany, France, Portugal, the Netherlands, and all Scandinavian countries, and is available only for exceptional crimes such as treason in Canada, Italy, Spain, and Switzerland. He concludes by saying, juvenile executions are also prohibited in the Soviet Union.

Mr. Speaker, regardless of how we feel about the execution of juveniles, the question, Mr. Speaker, is not what they do in the Soviet Union, but what does the United States Constitution say about this issue. Has the Supreme Court, once again, lost its way?

The same year, in Atkins v. Virginia, the Court once again looked to foreign courts; and while only 13 years earlier our Supreme Court decided that decisions of foreign courts were not to enter into the determination of sentencing in the United States, the Supreme Court did the judicial flip-flop. Justice Stevens concluded in this case that there is a national consensus in reaching his opinion. Does this mean the end justifies the means?

In the footnotes explaining his decision, the Justices indicated they looked to briefs filed by religious groups, psychologists, polling data, and a brief offered by the European Union, a brief that was used eventually as blanket consensus, the voice of the global community at large. Well, what about the Constitution? Why not use the Constitution as our guide and only guide in making decisions by the Supreme Court?

But, Mr. Speaker, perhaps the most egregious perpetrator of citing foreign court opinions is Justice Kennedy. Mr. Kennedy continues to write decisions hardly based on the Constitution, but on international law. Which law is he beholden to? Is the Constitution not sufficient for him? In 2003, in a high-profile case involving my home State of Texas, the case of Lawrence v. Texas, Justice Kennedy referred to international standards in the Court's consideration of Texas laws. Revealing the Court's reliance on the views of a wider civilization, the majority opinion was inspired by previous rulings of the European Court of Human Rights. Well, who put the European Court of Human Rights in charge of us?

This year, in March, Roper v. Simmons, writing for a 5–4 majority, Supreme Court Justice Kennedy wrote, we have established the propriety and affirmed the necessity of referring to the evolving standards of decency that mark the progress of a maturing society to determine what punishments are so disproportionate as to be cruel and unusual. In making this decision, the majority judges looked to foreign lands to interpret what cruel and unusual means in our Constitution. In dissenting, Justice Scalia, Chief Justice William Rehnquist, and Justice Thomas, on the other hand, said they do not believe that approval of other nations and people should buttress our commitment to American principles any more than disapproval by other nations and people should weaken that commitment.

Mr. Speaker, I realize the Constitution is an old document, well over 200 years; but this idea of ''evolving standards of decency'' is simply ridiculous. Values are timeless. American values are timeless. American standards are timeless, and they are in the Constitution.

The list of decisions against our Constitution, Mr. Speaker, is a deep cavern of vile destruction. Other verdicts handed down by the Supreme Court include citations of legal opinions from foreign courts in Jamaica, India, and the ultimate beacon of justice, Zimbabwe. Mr. Speaker, has the Supreme Court lost its way?

Let me give my colleagues an analogy. If, as a judge, I had a thief, a shoplifter appear before me who had stolen many times before and I ordered that his hand be chopped off in the public square, I suspect his attorney would object, saying, this violates the constitutional provision of cruel and unusual punishment in the eighth amendment. While the attorney would be correct based upon our Constitution, my response could well be, well, Mr. Lawyer, they chop hands off in other countries for this type of crime, so since other countries do it and they find it logical, I will accept these foreign courts in making my decisions.

Mr. Speaker, in Texas, I would have been removed from the bench for such nonsense. So why do we tolerate our Supreme Court using this same rationale going to foreign courts in their decisionmaking?

Mr. Speaker, these controversial decisions that have emerged from our Supreme Court have prompted a growing contingent of former judges in this body to join me in signing a letter to the Senate Committee on the Judiciary. I, along with my fellow gentlemen from Texas, (Mr. CARTER) (Mr. HALL) (Mr. GOHMERT), as well as the gentleman from Tennessee (Mr. DUNCAN) and the gentleman from Alabama (Mr.

ADERHOLT), all former judges in their respective States, have urged our Senate colleagues to consider a nominee's allegiance to the United States Constitution and the sovereignty of the United States when imparting their advice and consent role in the Presidential appointment process in our Senate.

When any court in the United States, Mr. Speaker, begins to permit foreign sentiments to ooze into its rulings and opinions, it dangerously weakens our sovereignty. These irresponsible allowances erode our unique political identity and the sound traditions upon which American law is established. From the mere founding of our country, our laws and courts have respected and honored the sovereignty of the United States and the supremacy of our Constitution.

My colleagues will notice, Mr. Speaker, I am not discussing or criticizing the results of the Supreme Court decisions and their holdings.

□ 2215

I have been careful not to comment on the results of these numerous cases where the Supreme Court reaches out to foreign courts to make their decision. While somewhat relevant, since these decisions are the law of the land, the complaint is the process and method by which the Supreme Court makes decisions. The use of foreign courts, emotions, personal opinions, result-oriented decisions, personal agendas, feelings and the opinions of focus groups is, as Justice Scalia says, totally irrelevant. The only thing that matters is the Constitution.

Unfortunately, we now seem to have some jurists in our Supreme Court who have lost their way, their balance. They have forsaken the process founded by our forefathers. They are disregarding boundaries etched into the foundation of our Constitution.

Justice Scalia may be one of the last strongholds we have against judicial tyranny in today's Supreme Court. He understands the importance in honoring the original meaning of the constitution, that it is the supreme law of the land. He rightly maintains that foreign pronouncements are totally irrelevant when it comes to our courts and our Supreme Court in making their decisions.

Mr. Speaker, this is not a partisan issue. It is an issue of who will stand with the Constitution and who will stand with foreign courts.

I urge my colleagues in both chambers to support measures that aim to curb the way our Supreme Court makes its decisions, that they should be responsible to the Constitution of the United States.

As Thomas Jefferson, author of the Declaration of Independence, warned in an August 18, 1821, letter to a friend, Charles Hammond, a lawyer who argued before the Supreme Court, he says, that is Mr. Jefferson: The germ of dissolution of our Federal Government is in the Federal judiciary, working like gravity by night and day, gaining a little today, a little tomorrow, advancing its noiseless step like a thief over the field of jurisdiction until all shall be usurped.

Mr. Jefferson was a prophet of what has become judicial anarchy. Some northeastern legal scholars, intellectual elites that sit in cigar-filled rooms agree with the ultimate decisions of the Supreme Court justices, justices that use these foreign laws, because they like the results.

But I warn these folks, the Supreme Court may not always make decisions you agree with, and they may betray you by ignoring the Constitution and citing foreign laws that create a different result than you wish. Then you will cry: Return to the Constitution; return to our sacred scripture. When your cries are made to our courts, you may too find no one is listening.

As guardians of the Constitution, Mr. Speaker, as champions of the separation of power, as accountants of the system of checks and balances, as the stewards of this legislative branch, we must implore our judiciary, our Supreme Court justices to reject the seduction of comparable side glances as they interpret the laws of this land.

I ask the Supreme Court to come back home, home to the Constitution and reject the lustful temptation of foreign countries and their laws.

I yield to the gentleman from Iowa (Mr. KING) such time as he must desire to speak on this very issue.

Mr. KING of Iowa. Mr. Speaker, I thank the gentleman from Texas (Mr. POE), the judge, for the opportunity to say a few words about the future of this country, the history of this country and our beloved Constitution, and appreciate this opportunity to be here on this floor tonight.

As I watched the development here and the transition of history, and I am 55 years into this life, a little over a half a century, and I was raised with a deep and abiding love and respect for our Constitution and for the rule of law, the fact that a law existed meant that the judgment of the people had spoken. And according to the strong directive of my father, I was to then adhere to that law and adhere to that Constitution. And if I did not like the language that was there and the intent of the Constitution or the law, it was my job to step forward as a citizen of the United States and seek to change it; not to ignore it, not to amend it in a fashion that did not have the will of the people in support of it.

And so, today, Mr. Speaker, we have gone to this point where I look back upon this transition, this transition that has taken place over the 55 years of my life and the 45 or so years that I have paid attention to what is going on in the United States of America, and I have watched a dramatic transition take place within the judicial branch of government.

And I want to acknowledge at the beginning of this discussion, the gentleman from Texas (Mr. POE) will know this, that I had the privilege to sit down and have lunch with a group of Supreme Court justices today, and I very much appreciate them and the other justices that joined them. It was a very, very good gesture on their part to reach out and open up a dialogue and give us an opportunity to speak about and discuss the disagreements that we have between the legislative branch and the judicial branch of government.

It is a natural tension that exists between these three branches of government, and this legislative branch of government, which clearly has its duties to write the laws; the executive branch of government which has its duties to execute those laws, enforce those laws; and the judicial branch of government whose job it is to interpret the laws, interpret the Constitution. It is a natural tension that exists, and it will go on as long as this is a great country. And it is a great country.

And I want to compliment the justices of the Supreme Court for being part of this effort to open the dialogue and give us an opportunity to discuss our differences. And I look forward to those opportunities to continue to sit down and have those discussions, and I will take advantage of that.

But I have to say here tonight that I have watched a transition over the last 55 years or so of my lifetime. And I would go back to a case that would be about 1963, Murray v. Curlett, and that was the case when Madeline Murray O'Hare became the most hated woman in America, and she successfully went to the United States Supreme Court and removed prayer from the public schools.

That, Mr. Speaker, I believe started us down the path, down the path of bowing to the judicial branch of government, maybe the last time that the American public really questioned and challenged the decisions that were made over across the street in the Supreme Court building.

This country has accepted those decisions because they believe that they do not understand the Constitution well enough to second guess a judge, and they do not understand the letter or the congressional intent of the law well enough to second guess a judge's decision to overturn the clear directive and intent of Congress. That has happened time after time after time.

And we have seen justice after justice reach out into foreign law, reach into foreign law to find a conclusion that suits their intent and their belief of how this country ought to be shaped and how it ought to be formed. Murray v. Curlett, prayer out of the public, schools started us down a slippery slope, a fast and slippery slide down into an abyss which I do not know how we swim out of it.

And I asked this question, and I have asked it of the Chief Justice directly, and that is, in case after case after case, we have seen decisions made by

which we cannot recognize the Constitution any longer. One of those cases would be the affirmative action cases that were before the Supreme Court I believe it was a year ago last April 19. And in those cases, I sat and listened to that. I went to hear profound constitutional arguments. And where would you go in the world to hear profound constitutional arguments except in the chambers of the United States Supreme Court? There is no higher calling and no higher standard for constitutional arguments.

And yet as I listened that day, I heard one, one constitutional argument, actually relatively profound. The case had to do with affirmative action. Chief Justice Scalia asked the question of the Michigan attorneys: If we rule against you and it results in one minority in your school, 100 percent minorities in your school or no minorities in your school, what possible constitutional difference can that make?

Now, the answer was long. But it was not clear. The question is clear to me. He directed that question directly back to the Constitution, which is where the entire oral argument should have focused. And yet it happens less and less as I hear these arguments before the Supreme Court because there is an entire industry that has been built up on trying to analyze the particular personal viewpoints of each of the justices. There is quite a history there to analyze, and quite an industry that has been built up around that.

But the arguments that go to the Constitution itself are ever diminished year by year, case by case, to the point where I believe that the courts have, because of stare decisis, because of the belief that once a decision is made, they should honor that decision of the previous court, not overturn the decision of the previous court. I could name you exceptions.

Stare decisis says that the Supreme Court is painting themselves into a legal corner. And on the other side of that room is the doorway back to the Constitution. But unless that paint dries, they cannot get back out the door. And as long as they respect stare decisis, this respect for a decision that is made by the previous decision of the court, the paint never dries, and they are trapped further and further into a corner that prohibits them from going back to the Constitution.

And so if you cannot get back to the Constitution, on what do you base your decisions? Well, foreign law. Foreign law is a nice and convenient decision that can be made. I have a list of some of these here, Mr. Speaker, and it is quite an interesting list. Justice Breyer, in his dissent, and I always give credit for dissent, Knight v. Florida 1999, A growing number of courts outside the United States courts that accept or assume the lawfulness of the death penalty have held that lengthy delay in administering a lawful death penalty renders ultimate execution inhuman, degrading or unusually cruel.

Sounds a lot like some of the language in our Constitution. But how could a lengthy delay in administering a death penalty change the ultimate result of that?

If locking someone up in prison for an extended period of time is cruel and inhuman, then would we not have to then release everyone that is in our prisons?

And in the case of Pratt v. Attorney General of Jamaica, for example, the privy council considered whether Jamaica lawfully could execute two prisoners held for 14 years after sentencing. The council noted that Jamaican law authorized the death penalty, and the United Nations Committee on Human Rights has written that capital punishment is not, per se, unlawful under the human rights covenant; Jamaican law, the United Nation's Committee on Human Rights.

And then the Supreme Court of India has held that an appellate court which itself has authority to sentence must take account of delay when deciding whether to impose the death penalty. This cited by the Supreme Court of the United States, Jamaican law, European, United Nations Committee on Human Rights, Indian law, the Supreme Court of Zimbabwe, and I quote, the Supreme Court of Zimbabwe, after surveying holdings of many foreign courts concluded that delays of 5 and 6 years were inordinate and constituted torture or inhumane or degrading punishment or other such treatment. Reference to the Zimbabwe law.

This proclivity for citing foreign law, when there is a clear directive to adhere to the Constitution and we have nothing else that directs us as Members of Congress as Members, of the executive branch who are sworn in or as Members of the United States Supreme Court, we take the same oath to the Constitution of the United States. And this Constitution is written and drafted and ratified by the people of this country. We shall never have another.

There is not another circumstance in history that could be reconstructed by anyone in this Chamber, by anyone in this city or anyone in this country that I know that could go back and say, well, if we lost this Constitution, we would just construct another one. We would find a way to get together in the blue zones and in the red zones of America, and we would draft up a Constitution that was living and breathing, and it would be a document that better fit the day of our age, and it would be something that would protect the interests of the minority against the tyranny of the majority, or the rights of the minority against the will of the majority. By the way, what protects the constitutional rights of the majority against the whims of the court?

And so, today, we have gone in my lifetime from a belief that this foundational document of the Constitution, which I carry in my pocket every single day, this Constitution that I believe is our covenant with our Founding Fathers, our guarantee of rights and our guarantee of freedom, that clearly spells out the responsibilities of each branch of government.

And, by the way, you can read this document through and through and through again. There is nothing in there that says separate but equal branches of government. It clearly lays out the responsibilities of each branch of government and, when read, gives the Congress the responsibility to be the final decision-maker on the courts themselves.

And so, Mr. Speaker, I propose that we, as a Congress, have an obligation, an obligation to defend this Constitution, an obligation to speak our minds when we disagree with the decisions of the court, but make a logical and a rational and a constitutional argument for our side, and call upon the Chief Justice and the Supreme Court to adhere to this Constitution, to adhere to their oath of office, to adhere to the laws of this land and to reject the directive that they might think they get when they travel to other lands, that intercedes with other ideas, other concepts, other cultures.

We separated ourselves from Great Britain for a good reason 200 and some years ago, and it was because we did not want to be Western Europe, and we did not want to be Jamaica, and we did not want to be Zimbabwe. We want to be a nation of free people, free people governed by a Constitution that a free people have ratified, not governed by foreign law.

And what is predictable about this foreign law? How can a citizen of this country aspire to move forward and invest capital and invest time and effort and build this future and be a good citizen of the United States of America when they do not know when a decision might come down from the Supreme Court that says, oops, there was a law over here in Zimbabwe; maybe there was a law in Ghana. Maybe there was a law in Costa Rica. Maybe there was a law in Russia, Israel, Belarus, anywhere.

□ 2230

How can we have predictability in our Constitution and our law if the courts can cite whatever, as the judge from Texas said, whatever might suit their whim of the moment?

So I believe we have to adhere back to this Constitution because we have migrated from its meaning. And even though the courts found in Murray v. Curlett that there was this separation of the church and State that was created there, took prayer out of the public schools. And by the way, I do not believe the Constitution calls for that for a minute. Once that decision was made and the letter of the Constitution and the intent of the Founding Fathers was ignored and we began to migrate away from the Constitution itself, we started down that slippery slope.

So is this Constitution what our Founding Fathers believed it should

be? Did the Framers draft this Constitution to protect the rights of the minority against the will of the majority, protect the rights of humanity against all forces whatsoever? They believed that this constitutional framework was for the gentleman and for me and for everyone in this country. But it has changed. And there are a number of people, in fact, I believe a growing number of people, that believe this Constitution no longer means what it says; that it is a living, breathing document, that nine Justices, a majority of nine Justices, five of them unaccountable to the people, should direct this society and this civilization.

But it is the vision of our Founding Fathers that those elected by the people should direct this examination and that the Judges should be ruling upon the letter and the intent of the Constitution, the letter and the intent of the law. And that is as far as it goes.

If this Constitution does not mean what it says, then what purpose does it have? It is either a living, breathing document that is flexible and can be malleable and can be shaped by any Justice that happens to have the good fortune to be appointed to the bench, or those words written on this document in my jacket are sacred and they are meant to be amended only by the people then whose description is in the Constitution itself.

It is a living, breathing document or we are originalists that believe in the original intent of this Constitution. If it is changed, if it is not, what it says, it means, then what does, Mr. Speaker, protect the rights of the minority against the will of the majority? What protects all of our rights as citizens? What preserves this great country if it can be shaped by the whim of the Judges?

This Constitution is either what I believe it is, and that is not a living, breathing document, but a document that is fixed for all time unless we amend it. And if it is not that, then the courts have turned it into an artifact of history, just a transitional document to get us from 1789 until today, where we could turn over the future of this country to the people in the robes that make those decisions. And if we do that, then we might as well board this place up and hand it over to the courts for their staff because there will not be any function for this legislature any longer.

I thank the gentleman for yielding to me. I appreciate the gentleman's contribution to this cause.

Mr. POE. Mr. Speaker, I want to thank the gentleman from Iowa (Mr. KING) for his dedication to the Constitution, to making sure that the Members of this body are committed to that and reminding the Supreme Court that they have an obligation to that Constitution.

Mr. Speaker, I yield to the gentleman from Texas (Mr. GOHMERT), a former judge, a former appellate judge from east Texas. The east Texas folks kind of think maybe a little differently than the Supreme Court does on using foreign law to make decisions that are binding on the rest of us. I yield to the gentleman from Texas (Mr. GOHMERT).

Mr. GOHMERT. Mr. Speaker, I thank the gentleman from Texas (Mr. POE), the former judge from Houston.

I thank the gentleman from Iowa (Mr. KING). I thought those were very profound comments.

Mr. Speaker, I heard the gentleman from Texas (Mr. POE) mention something earlier and this was also touched on by the gentleman from Iowa (Mr. KING), but regarding the beginning of this Nation and how we had separated ourselves from Europe, particularly in the War For Independence that began with the 1776 Declaration of Independence and how we won that war and we separated ourselves. And then of course the Articles of Confederation did not work, and then 1789 we did have this wonderful Constitution.

I had also heard the gentleman say we won yet again, the battle with the British in the War of 1812. As the gentleman mentioned, here where we are standing and actually back in Statuary Hall as it is now, that was the old House Chamber and the British came up and they burned it, and actually the middle part burned. It was wooden. And the gentleman mentioned that we had defeated them. We ran them out after they burned much of Washington. I would like to expand on that.

I had thought, an old history major like me, I thought our American forces rallied and drove the British out in 1814 after they burned much of the town. But apparently the American forces were in such disarray they were in no situation where they could have allied and defeated the British at that time. We had some help at that point.

It turns out the night they set what is now Statuary Hall and the old Senate Chamber on fire, there was a big rain storm that came that put out the fire that kept the fire from completely destroying the building which left enough that they could work from afterward.

It was not American troops the next day and after that drove the British troops out. But as it turns out there was an incredible wind storm that arose. And it was of such force and such magnitude, it is given credit for killing 30 British troops. It knocked British cannons off their mounts. It created a great deal of confusion. It played a part in the accidental explosion of the British gunpowder statutes. It created such chaos the British fled on their own because of those acts of nature.

Well, as you know, insurance companies would call those acts of God, and I would tend to agree with them. Those were acts of God. I would like to think the Americans rallied. They could not do it. There was a higher power involved. But when we look at this issue, the gentleman took the oath to the Constitution. I took an oath to support and defend the Constitution. I took that same oath when I went into the United States Army. I spent 4 years on active duty.

It is worth noting in a letter to Abigail Adams dated September 11, 1804, Thomas Jefferson was very concerned after the decision in Marbury v. Madison; he cautioned that judicial review would lead to a form of despotism. Judicial review is not a power explicitly granted in the U.S. Constitution. But in Marbury v. Madison, the court inferred this power based on the fact that Constitution is the supreme law of the land. But judges should always remember that the Constitution itself is the supreme law of this land and that each judge should never forget their oath to uphold the supreme law of the land and not be citing the law from other jurisdictions, from other lands that have nothing to do with our Constitution.

I tell you that Justice Scalia is an amazing intellect. In the Roper v. Simmons case, I do not take issue here with the outcome of the case, but for our purposes I would like to take issue and I think it is critical we take issue with the methodology in arriving at their opinion. And Justice Scalia did that in his dissent on behalf of himself and Chief Justice Rehnquist and also Justice Thomas.

He said this, this is just an excerpt, ''In urging approval of a Constitution that gave life tenured judges the power to nullify laws enacted by the people's representative, Alexander Hamilton assured the citizens of New York that there was little risk in this since 'the judiciary has neither force nor will but merely judgment.' ''

That is from the Federalist No. 78, page 465.

Hamilton had in mind a traditional judiciary ''bound down by strict rules and precedents which served to define and point their duty in every particular case that comes before them.''

Bound down indeed, says Scalia. What a mockery today's opinion makes of Hamilton's expectation, announcing the Court's conclusion that the meaning of our Constitution has changed over the past 15 years. Not, mind you, that this Court's decision 15 years ago was wrong, but that the Constitution has changed.

The Court reaches this implausible result by purporting to revert not to the original meaning of either amendment, but to ''the evolved standards of decency'' of our national society.

It then finds, and this is Scalia still talking, it then finds on a flimsiest of grounds that a national consensus which could not be perceived in our people's laws barely 15 years ago now solidly exists. Worst still, the Court says in so many words that what our people's laws say about the issue does not in the last analysis matter. This is Scalia still quoting:

''In the end our own judgment will be brought to bear on the question of acceptability of the death penalty under the eighth amendment.''

Now, the Court has thus proclaimed itself the sole arbiter of our Nation's moral standards, and in the course of discharging that awesome responsibility, purports to take guidance from the views of foreign courts and legislatures. Because I do not believe that the meaning of our eighth amendment, any more than the meaning of other provisions of our Constitution should be determined by the subjective views of five members of this Court and like-minded foreigners, I dissent.

This is Justice Scalia.

Similarly, in Roper, Justice O'Connor called on the Court to substitute basically its own moral judgment for ''the judgment of the nations' legislatures.''

The majority, however, persists in imposing its will on the States and backs its decision up by citing the mandates of foreign legislatures.

The usurpation of the voice of the people began roughly with New York v. Lochner, and the word Lochnerization has since been used to describe cases in which the judiciary overrides the democratic law-making authority and imposes its own morality, or in some cases lack of morality, on the people.

Lochner was a 1905 case that has since been overruled; but in this case, the Supreme Court told the New York legislature it could not regulate certain items.

So this usurpation continued with Roe v. Wade and again most recently in Lawrence v. Texas.

Now, as the gentleman from Iowa (Mr. KING) had mentioned, there was a very nice lunch today. And the Supreme Court was very gracious in reaching out and having members of the Committee on the Judiciary. There were Senators. There were some of us from the House Committee on the Judiciary. There was a few staff members. And we heard from Justice Stevens, Justice O'Connor, Justice Breyer, Justice Kennedy and Justice Souter.

I would say those are very, very hard-working, well-meaning Justices. But good intentions are not enough. We know from history itself when we think about the words ''this means peace in our time,'' Chamberlain had the best of intentions. He meant well. He thought he was doing what was best for the world, and what he was doing was giving homage and helping a tyrant like Hitler. And so good intentions simply are not enough.

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That oath must be upheld. So that is why I do take issue with the rationale in these cases. These are fine judges, but they have gone astray when they venture out beyond their oath and neglect that from which they have sworn to uphold.

If I might, one of the most frustrating things in this body has been the way people can play fast and loose with what is real, absolute truth. The Constitution is truth. The Constitution does not change. It should not just go flittering here and there, depending on the whims of the Court.

Just like I heard prior to us coming in, the prior presentation about Social Security, and I could not help but note when there was talk of, well, in 2017 these old Republicans, they are talking about it is going bankrupt, and that is just all a facade of sorts, basically paraphrasing. Then the words were said, but it is actually in 2017 when there is more cash going out than comes in. We fall back on these trillions of dollars that are in cash bonds that will continue to earn interest. Cash sounds like there is cash there. There is nothing there. There are IOUs. There are Federal IOUs, and to say they will continue to draw interest, they stick more IOUs in there and say there is your interest. That is just so disingenuous. It is so misleading, and even though I really believe those people saying those things have the best of intentions, they are doing great harm to the Nation by misleading.

In the same way, the Court has the best of intentions. They mean well. They think they are doing this great service. They go to the different seminars and they speak in different places, and they hear these different things from other people who maybe look down on our laws for this or our laws for that. That has nothing to do with our Constitution.

I really appreciate the gentleman from Texas (Mr. POE) yielding to me to say some of these things that are so overwhelming in my heart and soul, as I look to the days ahead. I know they trouble my colleague greatly and I know that both of us came from the same school, if you are going to legislate, by golly, take off the robe, come off the bench, run for the legislature and if, God willing, you get elected, then you can come legislate. I agreed with you on that. We did the same thing. We are here, and hopefully America will help bring the justices back to reality, and the reality is they took an oath to support and defend the Constitution.

So I appreciate that time, and let me just say, there has been a lot of misleading information saying that some people, by their comments, they are doing great harm and inciting violence. I tell you what, as a judge I know you were tough and I was, too. Anybody that threatens, attempts to use force, attempts to use violence of any kind, they need to go to prison when it comes to our courts.

That is why we are pushing the bill to make the sentences even tougher for anybody that is involved in that, but by golly, our Constitution promised us that First Amendment right to freedom of speech. Neither the Supreme Court nor anybody else should restrict what the Constitution and the Bill of Rights has granted to us. God willing, they will not and America will not let them do it in a nonviolent way.

I thank the gentleman for yielding.

Mr. POE. Mr. Speaker, I want to thank the gentleman from Texas (Mr. GOHMERT) for his kind words and for his insight into this important issue.

Mr. Speaker, as most Americans go about being concerned about jobs, Social Security, the environment, health care, crime, outsourcing, all of those things are important. Many of those issues will eventually end up in our courts. Some of those cases will find their way to the Supreme Court, and while this issue is somewhat complex, it is not that difficult to understand.

The Constitution is the Bible for our democracy. Words mean something, Mr. Speaker, and the words of the Constitution are words that we must live by, that we must stand by and that we must defend.

I hope that most Americans, regardless of who they are, what their political beliefs are, understand that our Constitution came about because of sacrifices of Americans, many of whom we will never know the names of, that fought first in the War of Independence and numerous wars after that, because we are a unique land, Mr. Speaker. We are a unique people, Mr. Speaker, and the pinnacle of our uniqueness is the Constitution of the United States.

Every public official in this country, school board members, police officers, city councilmen, firefighters, members of the State legislatures, judges throughout our entire Nation and Members of this body took an oath to uphold and defend the Constitution of the United States. That is who our oath and our allegiance is made to, and all we are asking, Mr. Speaker, is that the Supreme Court come back home, follow their oath, be beholden to the United States Constitution and not to foreign countries.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. LARSON of Connecticut (at the request of Ms. PELOSI) for today and the balance of the week on account of a family medical emergency.

Ms. MILLENDER-MCDONALD (at the request of Ms. PELOSI) for today and May 11 on account of a death in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Ms. WOOLSEY) to revise and extend their remarks and include extraneous material:)

Mrs. MCCARTHY, for 5 minutes, today.

Mr. PALLONE, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

Mr. BROWN of Ohio, for 5 minutes, today.

Ms. WOOLSEY, for 5 minutes, today.

Mr. CUMMINGS, for 5 minutes, today.

Mr. BLUMENAUER, for 5 minutes, today.

Mr. EMANUEL, for 5 minutes, today.

(The following Members (at the request of Ms. ROS-LEHTINEN) to revise