



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
Joel W. Solomon United States Courthouse
900 Georgia Avenue
Chattanooga, Tennessee 37402

THE CONSTITUTION AND FEDERAL COURTS PROTECT MINORITY RIGHTS

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Immediately after the Framers in Philadelphia had drafted the Constitution, Benjamin Franklin is quoted as responding to the question, “Well, Doctor, what have we got, a republic or a monarchy?” with the answer, “A republic, if you can keep it.”

It is interesting that neither the questioner nor Franklin mentioned a democracy. We can surmise that neither of them thought a democracy was a realistic option. It is also worthy of note that the word “democracy” is not used in the Declaration of Independence or the Constitution, whereas the Constitution guarantees “a Republican Form of Government” to each state. U.S. Const. art. IV, § 4.

The very definition of democracy is that the people rule. To put it in starker terms, it means the majority rules. But a system where majority viewpoints would always prevail was not what the Framers sought to create. In fact, what the Framers had in mind was something very different from the simple majority-rule system. As Franklin said, the Framers created a republic.

A FEATURE, NOT A BUG.

We often refer to our form of government as a democratic republic. While we have some features of a democracy, we are far from a pure democracy. The primary difference between a pure democracy and the system established by the Constitution is the protection of minority rights. In a pure democracy, the majority always gets its way. If a person has an unpopular view about political, religious, social, or civil matters, that person will always be outvoted by the majority; the minority simply cannot count on any protections. Only those rights the majority deems appropriate will be respected or protected under the law.

The Constitution strives to strike a delicate balance between efficient decision making, naked majority rule, and honoring minority views. Just as pure majority rule would be unfair to the minority, giving the minority a veto over every action would prevent many things from ever being decided or done. This obviously would be unworkable. So, although the Constitution strives to take minority rights into account, the government must still be able to function even

when there is not unanimous consensus on an issue. The delicate balance between majority and minority rights is thus a feature of our governmental system, not a bug.

THE CONSTITUTION PROTECTS MINORITY VIEWPOINTS AND RIGHTS.

The Framers of the Constitution were very mindful of the majority-rule feature of a pure democracy and how this could lead to oppression of minority views and rights. Several provisions in the Constitution are designed to protect minority viewpoints and rights, of whatever nature. To minimize the power of majorities in large states, the Framers created an electoral college to select the president. Additionally, the Framers allocated two senators to each state, regardless of population size, to provide balance between the views of the more populous and less populous states.

The Bill of Rights provides protection for those espousing unpopular minority views by explicitly protecting the freedoms of speech, religion, and the press. Individuals espousing popular political, religious, social, or civil views would need no protection since their views would be in line with the majority. The Bill of Rights also provided protection for the minority of citizens who would be suspected of or charged with crimes through the Fourth, Fifth, and Sixth Amendments, including limitations on searches, the right to indictment by the Grand Jury, the right not to testify against oneself, the guaranty of due process of law in any prosecution, the right to counsel, and the right to a jury trial. The Fourteenth Amendment protects citizens from violations of due process of law and ensures equal protection under the law. In addition, the Thirteenth, Fifteenth, Nineteenth, and Twenty-Sixth Amendments were adopted to provide explicit protections to racial, gender, and age-based minorities. These amendments reinforce the Constitution's ability to secure a functioning republic while still protecting the rights of citizens when they find themselves in a minority segment of the population.

THE FEDERAL COURTS PROTECT MINORITY VIEWPOINTS AND RIGHTS.

Whether the views or rights involved are of a political, religious, or civil nature, the federal courts are frequently called upon to protect and vindicate those minority rights. This is one of the most important functions of the federal courts. Every year, the federal courts hear and decide cases involving the right to free speech brought by litigants alleging that their freedom of speech, generally unpopular speech, has been abridged. Every year, the federal courts decide cases with allegations that the litigants' rights to the free exercise of their religious beliefs have been infringed, or that they have been treated unequally because of race, religion, or gender. And every year, there are many cases filed by criminal defendants alleging violations of rights protected by the Constitution.

The Courts must decide these cases even in the face of popular sentiment against the litigants or the causes they espouse. Courts must be faithful to the law and the Constitution, not majority opinion or sentiment. This is the role of the courts within our particular democratic republic.

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