



Written by [Warren Mass](#) on September 17, 2015

In Second Debate, 2016 GOP Presidential Candidates Reveal Their Takes on the Constitution

The 11 candidates for the 2016 Republican nomination who are currently leading in the polls gathered at the Air Force One Pavilion of the Ronald Reagan Presidential Library in Simi Valley, California, on September 16. They were there to take part in the second debate of the 2016 election campaign, an event hosted this time by CNN.

The candidates were spread across a stage strategically placed in front of Ronald Reagan's presidential plane — sure to evoke the memory of our most popular Republican president in recent decades.

Several candidates made political capital of this Reaganesque setting, including Senator Marco Rubio (R-Fla.) who, while introducing himself stated: "I'm honored to be here at the Reagan Library, at a place that honors the legacy of a man who inspired not just my interest in public service, but also our love for country."

Wisconsin Governor Scott Walker said, "Ronald Reagan knew how to go big, and go bold. He understood the essence of moving this country forward, and that's what I did when I took on the status quo in my state, and the Washington based special interest."

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Ohio Governor John Kasich recalled: By the way, I think I actually flew on this plane with Ronald Reagan when I was a congressman, and his goals, and mine... are pretty much the same. Lift Americans, unify, give hope, grow America, and restore it is to that great, shining city on a hill."

While some others tried to position themselves as the new Reagan, Senator Rand Paul (R-Ky.) who led off the introductions, got right to a matter of substance:

Good evening, everyone. I'm an eye surgeon from Bowling Green, Kentucky. My wife, Kelly, and I have been married for nearly 25 years, and I spend my days defending the Constitution and the Bill of Rights.

I think there's nothing more important than understanding that the Constitution restrains government, not the people.

Considering that when the president takes office he must take an oath to preserve, protect, and defend the Constitution of the United States, the Constitution was mentioned just a few times during the three-hour debate.

Former governor Huckabee noted, in discussing the Supreme Court's June 26 decision in *Obergefell v. Hodges*, which struck down state laws affirming marriage as being only between one man and one woman:





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The Supreme Court in a very, very divided decision decided out of thin air that they were just going to redefine marriage. It's a decision that the other justices in dissent said they didn't have and there wasn't a constitutional shred of capacity for them to do it.

I thought that everybody here passed ninth-grade civics. The courts cannot legislate. That's what Roberts said. But heck, it's what we learned in civics.

The courts can't make a law. They can interpret one. They can review one. They can't implement it. They can't force it.

But here's what happened: Because the courts just decided that something was going to be and people relinquished it and the other two branches of government sat by silently — I thought we had three branches of government, they were all equal to each other, we have separation of powers, and we have checks and balances.

If the court can just make a decision and we just all surrender to it, we have what Jefferson said was judicial tyranny.

During another discussion about the best strategy for Congress to defund Planned Parenthood, Walker said:

But I think the bigger issue here is we should be able to do this nationally, and this is precisely why so many Republicans are upset with Washington. They see the House and they see the Senate and they say why can't we pass this. Why can't we defund Planned [Parenthood] — put it in a spending bill.

Forget about the 60-vote rule, there's no reason — and the Constitution doesn't call for 60 votes. Pass it with 51 votes, put it on the desk of the president.

During a debate about "birthright citizenship" — a premise currently used by the federal government to grant automatic citizenship to babies born in the United States to parents who are illegal aliens, former Hewlett-Packard CEO Carly Fiorina asserted that such citizenship is required by the 14th Amendment:

The truth is, you can't just wave your hands and say "the 14th Amendment is gonna go away." It will take an extremely arduous vote in Congress, followed by two-thirds of the states, and if that doesn't work to amend the Constitution, then it is a long, arduous process in court.

Business magnate Donald Trump disagreed with Fiorina and said:

I believe that a reading of the 14th Amendment allows you to have an interpretation where [birthright citizenship] is not legal and where it can't be done. I've seen both sides, but some of the greatest scholars agree with me, without having to go through Congress.

When moderator Jake Tapper asked Paul to come into the discussion, the Kentucky senator said:

Well, I hate to say it, but Donald Trump has a bit of a point here.

The case that was decided around 1900 was, people had a green card, were here legally, and they said that their children were citizens. There's never been a direct Supreme Court case on people who were here illegally, whether or not their kids are citizens.

So it hasn't really been completely adjudicated. The 14th Amendment says that "those who are here and under the jurisdiction." The original author of the ... 14th Amendment said on the Senate floor that this was applying to slaves, and did not specifically apply to others.



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Paul's reference to "the original author of the ... 14th Amendment" referred to Michigan Senator Jacob Howard, who introduced the language of the citizenship clause to the amendment on the floor of the Senate and contended that it should be interpreted in the same way as the requirement of the 1866 Civil Rights Act, which afforded citizenship to "all persons born in the United States and not subject to any foreign power."

During the debate on Howard's amendment in the Senate, which was recorded in the *Congressional Globe* (a predecessor to the *Congressional Record*) for May 30, 1865, Howard said:

This amendment which I have offered is simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States.

This will not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States, but will include every other class of persons. It settles the great question of citizenship and removes all doubt as to what person are or are not citizens of the United States.

[Emphasis added.]

The text of the final amendment included the additional phrase, "or naturalized," but was ratified with the language, "and subject to the jurisdiction thereof," which limited its grant of citizenship as Howard had explained.

It is not surprising that a committed constitutionalist such as Paul (who has the benefit of having a constitutionalist former U.S. representative as a father) would know more about the history of the 14th Amendment than Fiorina. But it is somewhat surprising that Trump, who has never shown any signs of being an expert on anything except putting together real estate deals, has picked up even the cursory knowledge of the constitutional amendment that he displayed on this issue.

The Constitution also became a topic for discussion when moderator Dana Bash asked former Florida Governor Jeb Bush about Senator Ted Cruz's (R-Texas) criticism of Bush's brother, President George W. Bush, for appointing Chief Justice John Roberts to the Supreme Court.

Bush replied that he was surprised Cruz would say that since he was a strong supporter of Roberts at the time of his nomination. He also said, "We need to make sure that we have justices that, with a proven experienced record of respect for upholding the Constitution."

When Bash asked Bush if Roberts met that criteria, the former senator replied, "Roberts has made some really good decisions," but that "he did not have a proven, extensive record," at the time of his nomination, saying it was not "politically expedient" to present such a candidate at the time.

When Bash asked Cruz for his take on Bush's assessment, the Texan responded that Roberts was an "amazingly talented lawyer, but, yes, it was a mistake when he was appointed to the Supreme Court."

Cruz proceeded to criticize not only Bush's brother for his nomination of Roberts but also Bush's father, President George H.W. Bush, for his nomination of David Souter to the High Court, saying:

Number one, in 1990, in one room was David Souter, and in another room was Edith Jones, the rock-ribbed conservative on the fifth circuit court of appeals. George Herbert Walker Bush appointed David Souter.

And then in 2005, in one room was John Roberts, in another room was my former boss, Mike Luttig,



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the rock-ribbed conservative on the Fourth Circuit Court of Appeals....

George W. Bush appointed John Roberts, and let me give you the consequences of that.

If, instead, the President[s] Bush had appointed Edith Jones, and Mike Luttig, which is who I would have appointed, Obamacare would have been struck down three years ago, and the marriage laws of all 50 states would be on the books. These matter, and I fought to defend the constitution my whole life.

When Tapper asked Huckabee if he had would have a litmus test for nominating candidates to the Supreme Court, the former governor replied:

You better believe I will, because I'm tired of liberals always having a litmus test and conservatives are supposed to pretend we don't....

I'd ask do you think that the unborn child is a human being or is it just a blob of tissue? I'd want to know the answer to that. I'd want to know do you believe in the First Amendment, do you believe that religious liberty is the fundamental liberty around which all the other freedoms of this country are based? And I'd want to know do you really believe in the Second Amendment, do you believe that we have an individual right to bear arms to protect ourselves and our family and to protect our country? And do you believe in the Fifth and the 14th Amendment? Do you believe that a person, before they're deprived of life and liberty, should in fact have due process and equal protection under the law? Because if you do, you're going to do more than defund Planned Parenthood.

Huckabee also defended the constitutionalist interpretation of the 10th Amendment, which has become a major issues among constitutional conservatives in recent years. He said:

I'd make darn sure that we absolutely believe the 10th Amendment... that if it's not reserved in the Constitution, then the 10th Amendment says it's left to the states. But somebody forgot to send a memo to Washington.

Moderator Hugh Hewitt reminded the candidates that the following day (September 17) was Constitution Day and asked them to state their views on the Second Amendment, which defends the right of citizens to keep and bear arms. Knowing that this is a hot-button issue among most conservative and Republican voters, the candidates defended that right, though some, such as Bush, favored some restrictions, such as not allowing the mentally ill to possess firearms. Bush did say that he was not in favor of restricting the mentally ill from possessing firearms without a hearing.

As the debate continued, Paul cited the Constitution in a very important area, in determining when the nation should go to war. Paul stated:

I'm someone who believes in peace through strength, and I would try to lead the country in that way knowing that our goal is peace, and that war is the last resort, not the first resort. And, that when we go to war, we go to war in a constitutional way, which means that we have to vote on it, that war is initiated by Congress, not by the president, that we go to war electively. That when we go to war, we don't fight with one arm tied behind our back, we fight all out to win, but then we come home.

Paul's statement is, of course, completely in line with the Constitution, which, in Article II, Section 8, give Congress the power to declare war. This section has been disregarded for over 65 years. The last time Congress declared war was in 1942 (against Bulgaria, Hungary, and Romania).

Since then, the United States has participated in war many times, including conflicts in Korea, Vietnam,



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Bosnia, Kosovo, the Persian Gulf, Afghanistan, and Iraq — all without a congressional declaration of war.

A message posted on the website of the U.S. Senate plainly states:

Official Declarations of War by Congress

The Constitution grants Congress the sole power to declare war. Congress has declared war on 11 occasions, including its first declaration of war with Great Britain in 1812. Congress approved its last formal declaration of war during World War II. Since that time it has agreed to resolutions authorizing the use of military force and continues to shape U.S. military policy through appropriations and oversight.

If CNN's moderators had been really sharp, they would have asked each of the candidates if they agreed with Paul's statement: "when we go to war, we go to war in a constitutional way."

One of the last references to the Constitution during the debate was from Cruz, who said:

You want to know what I'll do as president? It is real simple. We'll kill the terrorists, we'll repeal Obamacare, and we will defend the Constitution, every single word of it.

And that should be the most important issue in any presidential campaign — whether or not each candidate, if elected president, will fulfill his oath to preserve, protect, and defend the Constitution of the United States.



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