Written by **Jack Kenny** on September 17, 2012

The "Living Document," Buried Alive

People have been debating for a long time about whether or to what extent the Constitution of the United States reflects a biblical view of liberty and morality. But our nation's charter and the Sacred Scriptures have at least this much in common: Far more speak well of them than bother to read them. "Once again," a *Washington Times* editorial suggested on last year's Constitution Day, "the Declaration of Independence and the Constitution could be brought down from the shelves and dusted off. Once again, Americans may need to refresh their minds with the words and ideals of these documents and the words of those who made the ideals real."

A full twelve months have gone by since then, so perhaps another year's worth of dust has accumulated on those copies of the Declaration and the Constitution sitting on all those shelves. But the editorial writer may have been overly optimistic. It may take more than a dust cloth to uncover either document. It may take archaeological tools to unearth them and resurrect the principles of liberty that inspired them. The rights of life and liberty are endangered to the extent that we delude ourselves into thinking we have the right to pursue happiness at other people's expense without their consent. And the Constitution has become the "living document," beloved of those who would make it a political Rorschach test, allowing politicians and judges to see whatever they want to see in it at any given time. It may still be living but it has been buried alive by a cynical deceit and sophistry that make the "Newspeak" of George Orwell's *1984* seem almost candid by comparison.

Take for starters the "right" to abortion, proclaimed and celebrated once again in this year's Democratic platform. It is a "constitutional right" invented by lawyers and judges and nowhere mentioned nor even hinted at in the Constitution. Its "discovery" was made by learned judges in the "penumbras" formed by "emanations" from other rights that *are* stipulated in that hallowed document. But the Democrats take it a step further and declare a woman's "right" to "a safe and legal abortion, regardless of ability to pay." In other words, she has a right to have her abortion funded by the nation's taxpayers, including the rather large number who have strong moral objections to it and who regard the deliberate, planned killing of an infant in the womb as morally indistinguishable from murder. The Democrats are "pro-choice" regarding a woman's "reproductive rights," but not for those who would choose not to contribute their dollars to support the killing of pre-born children. Even assuming women do have, as the justices ruled in *Roe v. Wade*, a constitutional right to abortion, where in the emanating penumbras is the "right' to have it paid for by others?

And where in the Constitution do we find a power for the federal government to compel individuals to purchase health insurance or require businesses and non-profit organizations to provide health insurance for their employees, let alone dictate the terms of the policies? Under what authority does Congress empower the secretary of Health and Human Services to mandate coverage for contraception,

sterilization and abortion-inducing drugs? How did our nation ever fall into such moral and political confusion that much of the nation — and, indeed, the federal government — takes seriously the argument of a 30-year-old law student that the Catholic university she attends should be required by law to provide contraceptive coverage in its health insurance? The student, Sandra Fluke of Georgetown Law School, was, of course, greeted with enthusiastic applause when she spoke at this year's Democratic National Convention.

Those who oppose that idea are accused of conspiring to deny women their "reproductive rights" by those who would deny others their moral or religious right to refrain from supporting or providing such services. Woven through the entire Democratic platform, which claims a federal responsibility for everything from comprehensive health care coverage to education from pre-kindergarten through graduate school, is the persistent confusion of rights with entitlements. Having a right to something is not an entitlement to have others provide it for you, regardless of their wishes in the matter. Such thinking leads to the empowerment of some by the servitude of others. Once upon a time that was called oppression or tyranny. Now it's considered "progressive."

So is the plank on campaign finance "reform," which calls for overturning, by constitutional amendment if necessary, the Supreme Court's decision in the *Citizens United* case and restoring in full the provision of the McCain-Feingold law. The Democrats would like the government to once again tell us how much citizens and corporations may spend to say what we want to say about candidates and parties and when and where we may say it. In a race between campaign finance "reform" and the First Amendment, the first Amendment finishes a distant second — in both major parties.

Republicans aspire to be slightly more conservative than their Democratic foes. They still speak of being opposed to "big government," but they really don't want to make government smaller — just a bit more efficient. Republicans provide a useful service in reminding us from time to time just how bloated and redundant federal bureaucracies and programs are. "Nine federal agencies currently run 47 retraining programs at a total cost of $18 billion annually with dismal results," the Republican platform tells us on the subject of job training. But do they propose eliminating all or even most of those programs? Not really. Do they question where the federal government gets the constitutional authority to be running *any* job training programs? Not for a second.

"We propose consolidation of those programs into State block grants so that training can be coordinated with local schools and employers," the platform says. Republicans love block grants because it makes them look like champions of states' rights by taking money from us for federal programs, which they then turn over to the states to run. Perhaps then the results will be less "dismal." But why send the money to the "feds" in the first place?

At the GOP convention in Tampa, Ohio Gov. John Kasich wagged an accusing finger at those who would "take more money out of the pockets of the American people and send it to — of all places — Washington, D.C."So why is it a good idea to take dollars out of our wallets and send them to Washington, D.C., in order to get them back, minus the carrying charge, in block grants? Or do we just continue borrowing the money, so the block grants can make their contributions to our $16 trillion — and growing — national debt?

But the Republicans are devoted to our federal Constitution — cross their hearts and hope to die they are. Large chunks of it are quoted in their platform, which, Speaker of House John Boehner tells us, nobody reads. The Tenth Amendment is honored in the platform almost as much as it is ignored in the Congress. "The powers not delegated to the United States by the Constitution, nor denied by it to the

States, are reserved to the States respectively, or to the people." Most of the programs Republicans and Democrats authorize and fund every year grant powers to the federal government not delegated by the Constitution — unless we are to believe that the power to regulate interstate commerce covers everything from job training to pre-school programs (Those pre-schoolers will be working at jobs engaged in interstate commerce before you know it!) Republicans also look with high regard upon the Fourth Amendment's guarantee of freedom from unreasonable search and seizure, as we may read in the party's platform.

"All security measures and police actions should be viewed through the lens of the Fourth Amendment; for if we trade liberty for security, we shall have neither."

One might never guess, when reading that, how many Republicans voted for the National Defense Authorization Act of 2012, which authorizes detention without trial for anyone, including a U.S. citizen, arrested either abroad or here in the "homeland," for having "substantially supported al-Qaeda, the Taliban or associated forces that are engaged in hostilities against the United States or its coalition partners…." Said detention may last "until the end of hostilities," which could very well be until the end of the world. The Act was passed by the same House of Representatives whose members took turns reading the Constitution aloud in the House chamber when the current legislative session began in January 2011. The NDAA was approved by an overall vote of 283 to 136, with House Democrats evenly split, 93-93. It was Republicans who provided the bill's margin of victory, with a lopsided vote of 190-43. In the Senate, the measure won overwhelming support form both sides of the aisle in a 93-7 vote. Only seven members of the United States Senate voted against a bill authorizing indefinite imprisonment without trial. Opposing it were three Republicans (Rand Paul of Kentucky, Tom Coburn of Oklahoma and Mike Lee of Utah), three Democrats (Tom Harkin of Iowa and Jeff Merkley and Ron Wyden, both of Oregon) and one Independent (Bernie Sanders of Vermont.).

President Obama signed the bill and his Republican opponent has said he would have signed it as well, since the activities at issue, if committed by a U.S. citizen, would constitute treason. But Mitt Romney, who is, like Obama, a graduate of Harvard Law School, should know that the Constitution guarantees the right of trial to persons accused of treason:

> *No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.* — Article 3, Section 3

But concerns about trials and due process may seem quaint in a day when the President of the United States claims the right to order targeted killings of people, including American citizens, even if they are nowhere near a field of battle and have never taken up arms against the United States or its coalition allies. And Attorney General Eric Holder has said that persons summarily executed by executive order have not been denied the Fifth Amendment guarantee that no one shall be "deprived of life, liberty, or property, without due process of law."

"'Due process' and 'judicial process' are not one and the same, particularly when it comes to national security," Holder said in a speech at Northwestern University in March. "The Constitution guarantees due process, not judicial process." Apparently if the President reviews the case against someone before sending a drone to dispatch him, that's "due process."

It should not be surprising that in a culture that has discarded its respect for life, a loss of liberty will soon follow. Our nation has been sowing a culture of death and servility. We are just beginning to reap the whirlwind.