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## Gene Healy: The Constitution needs more than lip service from the House GOP

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In last week's post-Tucson rush to judgment, liberals blamed Jared Loughner's shooting spree on a "climate of hate" stoked by everything from Sarah Palin's Facebook page to John Boehner's tears. On Monday, Rep. James Clyburn, D-S.C., even implicated the House GOP's decision to open the new session by reading the Constitution aloud.

Things have calmed down recently, thanks in part to President Obama's sensible speech Wednesday. So I hope even Clyburn won't think I'm trying to send coded messages to psychopaths if I address the Constitution's role in the 112th Congress. After all, it's an important issue.

House Republicans say they want to restore our national charter: Rep. Scott Garrett, R-N.J., has founded a Constitution Caucus, while Rep. Michele Bachmann, R-Minn., is organizing seminars led by Justice Scalia. And on Jan. 5, the GOP passed changes to the House rules. First item? No bill can be introduced without a statement citing "as specifically as practicable" Congress' constitutional powers to enact it.

The old scroll's getting a lot of respect lately from Boehner's GOP. That's great, but don't jump for joy just yet. It'll take more than symbolic gestures to restore constitutional government to these United States.

Requiring Congress to cite specific authority won't work if Congress follows the old pattern of treating the Commerce clause as a bottomless font of federal power.

In 1995's *U.S. v. Lopez*, for example, for the first time since the New Deal, the Supreme Court struck down a federal law for exceeding the Commerce power -- in part because when Congress passed the Gun Free School Zones Act, it couldn't be bothered to cite that catchall clause -- or anything else.

Easily fixed: in 1996, Congress reenacted the law, requiring that all prosecutions involve guns that traveled in interstate commerce. That covers virtually all guns, but it ignores the 10th Amendment, which holds that "the powers not delegated to the United States by the Constitution ... are reserved to the states." As Hamilton affirmed in the *Federalist*, that means "the ordinary administration of criminal justice" belongs to the states.

Boehner's new rule changes little, because since 1997, the House rules have already required a constitutional citation for every bill that leaves committee. Obamacare leaped that speed bump with a perfunctory reference to -- surprise! -- the Commerce clause.

The "radical" class of 1994 had its own 100-member-strong Constitutional Caucus. Founded by Rep. J.D. Hayworth, R-Ariz., it aimed to "restore limited constitutional government."

Not long after its founding, the "Constitutional Caucus" voted en masse for the Church Arson Prevention Act, passed unanimously in response to media-driven hysteria over a supposed "epidemic" of Southern church-burnings. That "epidemic" turned out to be a hoax. Even if it hadn't, I'm reliably informed that torching churches is pretty much illegal in all 50 states.

In a sad development, 2007 found ex-congressman Hayworth picking up extra bucks as an infomercial pitchman for "free money" government grants. Sen. John McCain, R-Ariz., had a lot of fun with that footage when Hayworth tried to ride the Tea Party wave to a Senate seat last year.

Two weeks ago, NBC's Brian Williams asked Speaker Boehner: "name a program right now that we could do without." Boehner's response? "I don't think I have one off the top of my head."

If Boehner can't imagine any unnecessary, unconstitutional federal programs, why on earth does he think it's important to insist that his colleagues review the Constitution before they legislate?

It's nice that the House GOP thinks the Constitution's "cool" again. But if history's any guide, they'll need some outside pressure to make this more than a passing phase.

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