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## Cato chairman speaks tonight at BSU on Supreme Court subverting the Constitution

By Mitch Coffman  
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Dr. Robert Levy, chairman of the Cato Institute, will speak Monday evening at Boise State University in the Jordan Ballroom in the student union building. The presentation, part of the Brandt Foundation Lectures, begins at 7 and is free to the public. His topic is “How the Supreme Court has Subverted the Constitution.” The event is sponsored by the John H. and Orah I. Brandt Foundation and the Boise State University College of Business & Economics.

The Cato Institute, based in Washington, D.C., is a public policy research organization — a think tank — dedicated to the principles of individual liberty, limited government, free markets and peace. Its scholars and analysts conduct independent, nonpartisan research on a wide range of policy issues.

Levy joined Cato as senior fellow in constitutional studies in 1997 after 25 years in business. He also sits on boards of the Institute for Justice, the Federalist Society, and the George Mason University School of Law. Levy received his Ph.D. in business from the American University and his J.D. degree from the George Mason University School of Law.

**IdahoReporter (IR):** *The Libertarian philosophy seems appealing. Why do you think you think it hasn't caught on more?*

**Levy:** Folks around the country are fed up. So, restoring respect for the Constitution is a key element of the Libertarian program. As far as it is not catching on more, I think it's catching on quite well. Just take a look at poll numbers for folks who, if they're not Libertarian, are advocating Libertarian viewpoints. People like Ron Paul and Herman Cain. And if you look at the growth of the Tea Party, which has as its central concern a new respect for the Constitution, I think that you're seeing in those events Libertarianism achieving ever greater prominence.

**IR:** *What are your thoughts on the Tea Party and the influence it has had?*

**Levy:** I think the Tea Party is the best thing to come along in decades. It has had two major influences. Those are, first, a respect for the Constitution. That's evident by having

read the Constitution on the floor of the House of Representatives for the first time in a couple of hundred years. Second, the requirement that every piece of legislation coming out of the Congress now has to cite its constitutional source. Now it's true that courts may overlook that and that this may be more symbolic than real, but I think it's a salutary development to have the Congress forced to identify where it thinks its authority is when it passes federal legislation. So this kind of respect for the Constitution, I think, is the first positive contribution from the Tea Party. The second (contribution) is a focus on limited government. A focus on enumerated powers and the extent of the federal government. The federal government has now immersed itself into virtually every aspect of our daily lives. So that kind of emphasis on limited government is a breath of fresh air. Now that's not to say there aren't some extreme elements of the Tea Party. But there are extreme elements on the left too. Hell, there are extreme elements in both the Democratic and Republican parties too.

**IR:** *Do you think the left is demonizing the Tea Party because they actually fear them, or just as an attack against their opposition?*

**Levy:** I think the left sees the Tea Party in two lights. First, concern that the Tea Party has achieved prominence that has seemed to resonate with the American people. The second is that the left sees it as a possible opportunity and that is to paint the Tea Party as a bunch of lunatics to cement the left's relationship with independent voters who, after all, are going to control the outcome of the election. If the Tea Party can be construed as out of the mainstream, the left attracts independents. So, there's a combination, both fear and perceived opportunity.

**IR:** *What is your thought on rule-making being done by unelected bureaucrats?*

**Levy:** The first sentence in the Constitution, after the preamble, says all legislative powers are vetted in Congress. It doesn't say that administrative agencies have any lawmaking ability whatsoever, they don't. We now have Congress delegating its lawmaking power to some 320 alphabet agencies in Washington, D.C. That's an unhealthy development because these agencies are run by unelected bureaucrats and they're not responsive to the concern's purpose. If you want some idea, some sense of scope of the problem, it's huge. The code of federal regulations, which is the document that compiles all of the regulations coming out of the administrative agencies, is more than 200 known volumes. That's six times as large as the U.S. Code, which contains all laws passed by Congress. And the agencies that are engaged in this lawmaking process, in my view the unconstitutional lawmaking process, control quite a large section of American life. I mean, the EPA is going to subject the American industry to the equivalent of Keota tiger. The global warming standard, even though Congress has rejected that. ... And when the federal government controls how we citizens have to conform our activities, those laws ought to be coming from a legislative body. Not from an independent body or, even worse, from the executive branch. Here too, the Tea Party has made a major contribution.

**IR:** *If Obama gets to appoint another Supreme Court judge, what will the influence be?*

**Levy:** If it's one of the four conservatives, or the swing vote, Kennedy, if Obama gets elected, these guys are going to be pushing 80. There certainly is a chance Obama, if he is re-elected, would get to fill one of the conservative seats or the swing seat. That would have a dramatic impact on the Supreme Court. If it's simply liberal for liberal then we won't see much change. None of that is to say Obama doesn't have a major opportunity to influence the courts. Because the Supreme Court isn't the only court. Bush and Clinton, both of whom served two terms, made 300 appointments in federal courts. Each of them, 300 appointments. To put that in perspective, the Supreme Court hears about 75 cases a year. The appellate courts, next tier down, considers thousands of cases a year. So we're talking, you know, maybe 3,000. So we're talking about 2,925 out of 3,000 cases where the appellate court gets the final word. It makes a lot of difference who serves on the appellate courts. And Obama has had, and will continue to have, a real opportunity to affect the appellate judges.

**IR:** *This past legislative session in Idaho there was a bill proposed to allow the carrying of concealed weapons on college campuses. What are your feelings on gun control and do you feel it's a good idea to have guns on campuses?*

**Levy:** The gun battle has been a three-phase battle. Phase one was to determine what the Second Amendment means. We now know the answer to that thanks to the *Heller* case. The Second Amendment secures the individual right to keep and bear arms. The second phase was to find out where the Second Amendment applied and we resolved that in the recent *McDonald* case in Chicago. We now know the Second Amendment applies not just to federal jurisdictions like Washington, D.C, but to states like Idaho as well. The third phase is to find out what the scope of the right is. Nobody who's rational believes that simply because we have a right to keep and bear arms, means that 7 year-olds can have automatic weapons in front of the White House where the president is making a speech. That's sheer folly. So, we have to have some guidelines as to what's permissible. And that's what is going to be fleshed out probably over the next decade and it's in process now. And this question about carrying on school campuses is part of that battle. My own view is, there's been no demonstration that allowing guns on campuses poses further risks on campuses. The burden is on government to make that case. Because the Second Amendment secures a Constitution of individual rights, it's the burden of the federal government to demonstrate when it wants to compromise that right, that there's a compelling reason to do so, and that what it proposes to do is going to be effective. And I don't think government has made that burden. And until government does, I don't see any reason why we should not have guns carried on campus. It's not up to folks who want to carry guns to demonstrate that they need them, it's up to the folks that want to stop people from carrying guns to demonstrate that that's necessary for public safety. They haven't made that demonstration.