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Common Core Controversy: Is U.S. Constitution a ‘Living Document’?

By Paul Lagarde
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A classroom resource provided by a group founded by three lead writers of the Common Core State Standards teaches 8th graders as fact that the U.S. Constitution is a "living document" and that the nation's founders only considered white males with property as persons under the law.

But leading constitutional scholars challenge both assertions.

Student Achievement Partners' sample lesson for Linda R. Monk's *Words We Live By: Your Annotated Guide to the Constitution* is listed as a suggested reading for 8th graders in the official Common Core Standards.

It instructs teachers to have students "investigate an area of debate where the interpretation of an Amendment or amending the Constitution is central to the argument and then debate it in class" in order to "reinforce the concept that the U.S. Constitution is a living document."

Although this recommended lesson plan assumes as an objective fact that the Constitution is a "living document", many legal scholars - including Antonin Scalia, the Supreme Court's longest-serving justice - think otherwise. They argue that the Constitution should be interpreted as it was originally written, according to the founders' intentions.

At a constitutional symposium hosted by the State Bar of Georgia in March, Scalia defended this originalist interpretation in a speech titled "Interpreting the Constitution: A View from the High Court."

"The Constitution is not a living organism," he stated. "It's a legal document, and it says what it says and doesn't say what it doesn't say."

Roger Pilon, director of the Cato Institute's Center for Constitutional Studies, told CNSNews.com that it is erroneous for schools to solely categorize the Constitution as a "living document."

“The notion of a ‘living document’ is freighted with political controversy. It’s an idea that is invoked by those, usually on the Left, who see the Constitution essentially as an empty vessel to be filled by transient majorities,” Pilon said.

Pilon did state that there are some instances in which the Constitution could be rightly considered a living document, pointing out that the meaning of “cruel and unusual punishment” has changed over time.

“But in far more cases the terms are fairly fixed, even if the judicial interpretations and applications of them may be either correct or mistaken,” Pilon said. “‘Separate but equal’ was always wrong, for example, even if the Court said otherwise in 1896, a decision it corrected in 1954. That correction didn’t make the Constitution a ‘living document.’ It was simply the righting of an erroneous interpretation.”

Brittany Corona, a researcher in domestic policy studies at the Heritage Foundation, told CNSNews.com that “there are legal constitutional precedents that will arise to clarify constitutional principles. That’s a very different thing than to say the nature of the document itself is evolving.”

“For American students to be surrounded by rights language and introduced to this concept of a living, evolving document is very dangerous because there’s not a sense of permanency, as far as the foundations upon which our government was created,” she said.

“This is an open door to start pushing back on other things that should be understood with some permanency, such as your right to protect your own life, per the Second Amendment of the Constitution.”

“This is a scary thing,” Corona added. “When you’re looking at the context of the content matter of the Common Core national standards... you’re looking at a complete distortion of civic education as we know it in America.”

“If you don’t have an enlightened citizenry, those who will jealously defend these natural rights that are alike to all men equally, and the Founders understood this, then you’re not going to have a self-governing republic. And the fact that American students per Common Core are going to have a convoluted understanding of the very foundations that make self-government possible, that’s terrifying for the future of America.”

The proposed lesson plan also states that “teachers should look for a logical explanation of the evolution of who has been considered a ‘person’ in the eyes of America over time....noting that at the nation’s founding the creators of the constitution would not ‘have in mind the majority of America’s citizens’ and primarily saw persons as white males with property.”

Pilon told CNSNews.com that it is incorrect to teach students that those who could not vote under the original Constitution were not legally considered persons.

“Women were considered persons even though they didn’t have the right to vote,” he said. “One of the privileges of citizenship is the right to vote, but then you have to define it. Seventeen-year-olds don’t have the right to vote, for example. They’re still persons.”

According to its website, Student Achievement Partners is not officially affiliated with the Common Core, though many states provide links to its resources on their Department of Education websites.

One such state, Tennessee, provides a disclaimer on its website saying that the presence of a link is for informational purposes only and does not constitute an endorsement.

When CNSNews.com asked Ashley Ball, the deputy director of communications for the Tennessee Dept. of Education, if the department’s placement of a link to Student Achievement Partners on its official website signaled to teachers that it had checked and approved these materials for use in Tennessee schools, she declined to comment.

CNSNews.com also asked Student Achievement Partners for a comment, but they declined as well.