

# Daily Press

## Thinking It Through: Claremont Institute panels cite COVID, election law as threats to Constitution

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Seven top legal minds on the 233rd anniversary of the signing of the U.S. Constitution last week raised serious questions about the constitutionality of the COVID-19 lockdowns and widespread election fraud.

Held by the Claremont Institute just a day before the passing of Supreme Court Justice Ruth Bader Ginsberg, the two groups of discussions took place before a virtual audience of 160.

Moderator Ryan Williams, President of Claremont Institute, set the tone for the COVID-19 panel by describing the episode as a “burgeoning, semi-permanent emergency” imposed by state governors.

Prof. John Eastman, Director of the Institute's Center for Constitutional Jurisprudence, noted that all legal challenges to state orders have failed, adding that the authority to take emergency actions is solidly established in state law. But he contended that: “perpetual rule by executive dictate” needed to be “weighed and balanced” with regard to “consequences and harms,” such as suicides and economic loss, not to mention limits on First Amendment freedoms.

Prof. John Yoo of UC Berkeley, followed by raising the question of when it is time to end the shutdowns. And who decides? While the federal government has not dictated the shutdowns or mask mandates, numerous states have gone very far. Yoo contended that the measures have outlived their usefulness and that courts should be supervising this. Also, state legislatures could impose restrictions as well.

Ilya Shapiro of the Cato Institute pressed the matter further by suggesting that judicial challenges be made not only to specific actions but to the broad precedents that have legitimized them. Erroneous constitutional doctrines are not above re-examination. Acknowledging that federal authority is limited, he noted that President Trump has been attacked both for “being a dictator and for not being a dictator.” While California’s governor has “complete authority,” Shapiro stressed the need to fix the day the health problems are over.

Prof. Tom West of Hillsdale College stressed the relevance of natural rights for the situation, maintaining that that huge “forest” is being missed for the many “trees” of controversy that dominate the landscape. That is, not just certain rights and privileges are being curtailed but the political philosophy — “the laws of nature and of nature’s God” — that supports the American

founding, is in danger. While people are not being shot or jailed, “they are under house arrest.” He deplored the “uglification of America” and “virtue signaling” caused by mask wearing, and could see “no prospect of [their] ending.”

Professor Eastman introduced the panel on Election Law and Election Fraud by maintaining that there is in fact “systematic voter fraud,” most recently in North Carolina and New Mexico, not to mention many years of it in Chicago. The 2000 presidential election was dominated at its close by reports of hanging and dimpled chads in Florida. Fortunately, the Electoral College decentralizes elections, leaving disputes in the hands of the states.

Underscoring the reality of the fraud problem, Tim Canova, a Florida law professor, gave a detailed account of his two primary campaign challenges to Rep. Debbie Wasserman Schultz, chairman of the Democratic National Committee, in the state’s 23rd district. My limited space here cannot do justice to his account that revealed evidence of broad support among the Democratic Party voters for his candidacy in both 2016 and 2018, but in which early results massively flipped, ballots were destroyed, challenges were ignored and voting machines were hacked. He noted that voting machines have been banned in European democracies. The experience has left Prof. Canova “jaded” and convinced of the superiority of hand-marked ballots.

Hans von Spakovsky, legal fellow of the Heritage Foundation, painted out that Florida has a long history of election fraud. In 1997 the Miami mayor’s race was marred by 5,000 fraudulent absentee ballots, with 60 persons prosecuted. Despite this and other cases, he said, few measures have been taken to check fraud. The Foundation’s database contains 1,300 proven cases and 144,000 potential cases of fraud. In close contests, only a few violations can make a big difference. Although polling shows that most people favor voter ID laws, Democrats strongly oppose them.

Tara Ross, former editor of the Texas Review of Law and Politics, provided what she called a “more cheerful” presentation in support of the Electoral College’s structuring of presidential elections into 51 jurisdictions, which makes it hard to steal presidential elections. She was highly critical of the National Popular Vote Initiative, a compact among states determined to award all of their electoral votes to the national popular vote winner, which she predicted would force a “race to the bottom” to influence the outcome.