Stemming the Tide of Statism: Congressmen at Cato

The Cato Institute recently held two separate luncheons at which members of Congress spoke out about government overreach. According to a secret court order leaked this spring, the National Security Agency (NSA) has been collecting the phone records of millions of Americans, collecting a vast catalog of credit-card transactions, and spying on email communications with the knowledge of large Internet providers. At Cato University in July, Rep. Justin Amash (R-MI) discussed the amendment he cosponsored, which failed narrowly, but which would have defunded the NSA’s unwarranted use of mass surveillance. At a conference marking the third anniversary of the Wall Street Reform and Consumer Protection Act of 2010, which was intended to “promote the financial stability of the United States by improving accountability and transparency,” Rep. Scott Garrett (R-NJ) addressed the growing concerns surrounding Dodd-Frank. Since its implementation, Dodd-Frank has turned out to be more costly, lengthy, and complex than anticipated.

Rep. Justin Amash: The debate last week on the House floor was my proudest moment as a member of Congress. We, the American people, finally got a chance to see a real debate on the House floor, a real amendment that split parties, that didn’t go along party lines, where people had to cast a vote on principle and decide which side of a very simple question they wanted to be on.

Do you think the government should have the authority to collect the phone records of every American in the United States without any suspicion at all? That simple question was put in front of everyone, and it made for a fantastic debate. I can tell you that I was so proud of how many colleagues stepped forward and stood up for the Fourth Amendment. We had 205 members vote “Yes” on my amendment, and that’s really a remarkable thing.

We had 94 Republicans, which is where I hoped it would be. I was talking to many of these fellows and, and I felt we could get to about 100 Republicans. The Democratic side fell a little bit short because the White House put a lot of pressure on them.

I’m very cynical about politics, very cynical about government. One of the reasons I ran for office is that I don’t like politicians. I wanted to get in there and mix it up with them.

So I don’t think that highly of what goes on in the political process, generally speaking, but for once I was proud. And I’m confident that will carry over into further cases. We have the momentum now.

I had colleagues telling me that I was right. That they were going to stand up for the Fourth Amendment and do what’s right for the American people. It was an amazing experience.

One of the great things about the process was getting Jim Sensenbrenner on board with this amendment. He was adamant that we had to stop the way this program was operating—the way it was interpreted by the FISA courts to operate—and he’s one of the chief authors of the Patriot Act. So, when you get one of the chief authors of the Patriot Act coming on board and giving a floor speech, I think that was a very pivotal moment in the process.

The Republican Party is changing. This is not the Republican Party of 5 or 10 years ago. I think part of the reason that the establishment’s arguments ring so hollow—why those arguments don’t carry any weight—is because the American people are different than they were 10 years ago. They have different views on these issues—and I think a lot of the politicians who have been in D.C. for a long time are not that connected with their communities anymore. They need to be.

They are not aware that public opinion has shifted on these issues. All you have to do is go back to your district and hear what your constituents are saying. I was at a parade in Michigan just this last week after we’d had this amendment vote, and I was nearly moved to tears by the crowd’s reception. The reaction from people back home in support of what I was doing was overwhelming. It didn’t matter if they were Republican or Democrat, or anywhere in between. It was an amazing reaction and I was really moved by it.
If these politicians spent a little more time in their districts holding town halls, going to events, and holding meetings, they would find that the American people are behind a more libertarian Republican party. They want to see a Republican party that believes consistently in limited government, economic freedom, and individual liberty.

I really think that’s where the Republican Party is headed. If you look at the votes on my amendment, a majority of those who have been in Congress for five years or less voted in favor of it. If you look at the people who have been here for more than five years, we lost almost 2 to 1 on the Republican side. You can see the difference there.

This is a changing party. As the chairman of the House Liberty Caucus, I’ve watched as a very small group has grown into a couple dozen members. I think it will continue to grow, especially after last week’s events. And I’m starting to get Democrats who approach me and say that they’re interested in our meetings.

Let’s find common ground. Politics doesn’t have to be so partisan. Republicans and Democrats can work together on many of these issues, particularly when it comes to the area of civil liberties. It’s important that we find allies on the other side of the aisle. That’s what I did with my amendment, and that’s certainly what I plan to do going forward.

I’ve been a huge supporter of the Cato Institute for many years—long before I was in public office—so it’s really an honor to be here. This is an organization that has done wonderful things on behalf of the cause of liberty. I think it’s critically important that members of Congress have the insights and the knowledge that the Cato Institute provides. We now have a base that is going to be receptive to these kinds of ideas, which is something we never had in years past.

REP. SCOTT GARRETT: I voted against Dodd-Frank, not only because it failed to address one of the most central causes of the financial crisis, but also because it is fundamentally unconstitutional. As some of you may know, there is a lawsuit now challenging the constitutionality of the law that’s gotten surprisingly little attention. I’d like to talk about that case today.

One of the philosophical foundations of our Constitution is the protection of individual rights and individual liberty through limited government. As a result, our Constitution establishes a government that is supposed to be based on restraint. It does so by enumerating a few, specifically defined powers—authorities which our Congress continuously violates—and dividing those responsibilities into three different branches, thereby establishing checks and balances.

Rather than establishing a regulatory regime that is consistent with these principles, Dodd-Frank is the great exception to the Constitution. The law creates two separate agencies that are granted essentially unlimited power to define and regulate nearly every conceivable financial transaction in the country. Worse yet, they are accountable to no one.

The two agencies, of course, are the Consumer Financial Protection Bureau (CFPB) and the Financial Stability Oversight Council (FSOC). Put together, they are basically the judge, the jury, and the executioner of the economy.

The CFPB could not have gotten off the ground without the unconstitutional, recess appointment of its director, Richard Cordray. Last week, by holding the long-standing rules of the Senate hostage, Harry Reid (D-NV) forced Senate Republicans to approve Cordray’s nomination. The president’s actions on this illegitimate recess appointment effectively erased from the Constitution the advice and consent laws surrounding appointments. This imperils the legislative checks and balances that the Founders placed in the Constitution in order to avoid tyranny. What we are seeing with the CFPB is effectively unlimited power.

The CFPB’s mission is to prevent practices that it is empowered to define as “unfair, deceptive, or abusive.” It has acquired this directive of law with an unlimited grant of authority and absolutely no checks whatsoever on that power. According to James Madison, Congress’s “most complete and effectual weapon” is the power of the purse. Because it is funded through the Federal Reserve, the CFPB is insulated from congressional oversight despite its hugely negative impact on almost every facet of American business.

Furthermore, the CFPB’s director is exempt from the executive branch as well. That director is appointed by the president for a five-year term, but after the term ends, he can stay on indefinitely if no successor is ever confirmed. He can only be removed under strict, limited circumstances—and not for disagreements over policy.

Judicial review is also limited because a special deference is given to the CFPB’s legal interpretations as well. In short, all three branches of government are basically removed from establishing oversight of the agency. Senate approval of its director was the last and only check Congress had over this unaccountable agency. With its broad authorities, with its vast amount of funding, and with its singularity of leadership, the CFPB is unlike any other regulator we have known. This should frighten all of us.

The second agency is FSOC, which is supposed to serve as a systemic regulator.
When Dodd-Frank was initially making its way through committee, the proponents of the law were repeatedly asked what exactly a systemic regulator is. Not one of them could answer this.

So what is FSOC charged with doing? It is tasked with eliminating expectations that any American firm is “too big to fail” and preventing all future bank bailouts. Yet with this mandate, the power of FSOC cannot be overstated. It has the power to promulgate its own rules and regulations, as well as the authority to determine which nonbank financial institutions would be subject to seizure. With all this power, the agency is a cabinet-level position chaired by someone that the president gets to appoint. There’s no bigger indicator of the politicization of this entire process.

FSOC is also empowered with the ability to control the activities of any financial institution with simply a two-thirds vote of its membership. Considering the weight that this agency has been given, you might be sitting there saying isn’t this unconstitutional? You’re not alone.

In fact, the drafters of the bill specifically said that the courts are not authorized to review and rule on whether or not FSOC has correctly interpreted the provisions of Dodd-Frank. They have, in other words, pushed the courts out from being able to determine any element of constitutionality of this law. Looking back at the 225 years of our country’s history, who knew it was that easy to push the Constitution aside? All you had to do was pass a bill like Dodd-Frank, which tells the courts that they have no authority in this area.

Under Title II of Dodd-Frank, the government can decide if a financial company is in danger of default. If they were to default, they can also determine whether that would constitute a systemic risk. Before they couldn’t even define what a systemic risk was. Now they are purporting to define it to such an extent that the condition of one single financial institution will be enough to determine its risk to the overall economy.

To quote James Madison once more, a law is bad not only when it’s unconstitutional, but also when it is “so voluminous that it cannot be read; so incoherent that it cannot be understood.” Many of these provisions I’ve described were added at the tail end of the process of pushing the bill through. Any way you slice this law, it is a violation of our rights and of our liberties. For that reason, I hope that three years from now, we will not be having a similar event marking the sixth anniversary of Dodd-Frank.

**Restoring the Gold Standard**

At a Cato Book Forum in June, Lewis E. Lehrman, a member of President Ronald Reagan’s U.S. Gold Commission, and coauthor of the iconic commission minority report, *The Case for Gold* (available as a free ebook from Cato), made a rare public appearance in the Institute’s F.A. Hayek Auditorium to debut his latest book, *Money, Gold, and History*. “This is an unparalleled era of financial disorder,” he said, advocating a modern restoration of the classical gold standard. Lehrman’s speech came on the heels of two important policy analyses from the Cato Institute.

In “Recent Arguments against the Gold Standard” (Policy Analysis no. 728), Lawrence H. White, a professor of economics at George Mason University and an adjunct scholar at the Institute, examines the historical evidence to come to an informed judgment about whether gold- or fiat-based systems display fewer flaws. “I find that the most automatic and least managed kind of gold-based system—a gold standard with free banking—can be expected to outperform a gold standard with central banking and to outperform the kind of fiat monetary systems that currently prevail,” he concludes.

In “The Rise and Fall of the Gold Standard in the United States” (Policy Analysis no. 729), George Selgin, a professor of economics in the Terry College of Business at the University of Georgia and a Cato senior fellow, argues that a functioning—if not formally acknowledged—gold standard was in effect for nearly a quarter of the full span of U.S. history. He notes that there is a tendency to treat U.S. monetary history as divided between a gold-standard past and a fiat-dollar present. “In truth,” Selgin writes, “the legal meaning of a ‘standard’ U.S. dollar has been contested, often hotly, throughout U.S. history.”