

ENQUIRY

A publication of the
Alexander Hamilton Institute
Undergraduate Fellows

VOL. III No. 19 | CLINTON, NY. MONDAY, FEBRUARY 22, 2016

Free thought and discourse

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Apple Appeals to the Public on Privacy

MIKE ADAMO AND DEAN BALL
EDITOR-IN-CHIEF CLASS OF 2014

As of Sunday, Apple is still resisting the government order that it provide the FBI with a way of bypassing security on terrorist Syed Farook's iPhone. *Wall Street Journal* columnist Holman W. Jenkins, Jr. predicts the government will win out in the end, but it seems that Apple has scored the moral victory.

Before resorting to hysterics, it's important to understand just what Apple is and is not doing. Like any company or individual, Apple complies with warrants and similar legal means of obtaining information. The company clearly and publicly documents the number and nature of government information requests it receives annually—something it's by no means legally obliged to do.

Apple's bold stance, however controversial and however counterintuitive, shows that they are willing to bet the company over their users' privacy and security.

But a warrant can only compel a company to release information that it has in its possession. In recent years, and particularly after the Edward Snowden debacle, Apple has made a deliberate and—for a company as secretive as it is—surprisingly public effort to limit the amount of user information it possesses. Messages sent using its iMessage platform, for example, are encrypted in such a way that they are inaccessible even to Apple itself. Without the user's passcode, lawmakers and thieves and Apple employees alike are unable to access large amounts of important data.

Tim Cook's letter to Apple customers on February 16 earned mostly positive reviews in the media. Arch-blowhard Donald Trump is calling for a boycott, but most Americans value their digital privacy and aren't inclined to view Apple as a terrorist sympathizer.

The federal government, meanwhile, made itself look petty and ridiculous. On Friday the Justice Department pouted over Apple's refusal to comply with the government's demands, calling it a

"marketing strategy."

Critics on both sides of the battle over Apple's iPhone encryption have accused the company of staking its position on commercial interests. *The Washington Post* points out that the statement Apple CEO Tim Cook released was "after all ... not a legal brief. It was titled 'A Letter to our Customers.'"

Apple stands to gain a great deal for its well-manicured brand image if the majority of iPhone users and onlookers support its stand against the government. But if Apple's decision to resist the government's request for a security bypass is a commercial one, it's also, in a way, a democratic one. And it's not without risk.

Legal ambiguities abound in anti-terrorism cases, and Apple understands that public support can sway the outcome in one direction or another. The will of the public, more so than the law, influences the extent of the government's ability to get individuals and corporations to

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Scalia's Death Leaves Gap in the Court

By RYAN GLENN
STAFF WRITER

With the death of Justice Antonin Scalia on February 13, we lost an intellectual giant. Scalia (1936-2016) passed away in Texas of natural causes. Appointed by President Reagan in 1986, he served on the Supreme Court for 30 years.

A constitutional originalist and textualist, Scalia based his legal decisions on historical interpretations of law. He opposed the notion of a "living" Constitution, instead understanding the document as it is explicitly written. Scalia executed his job faithfully and passionately, consistently defending the individual rights he believed the Constitution was meant to protect.


Scalia recognized that the Supreme Court should be a non-political body that judges strictly according to the Constitution's text and enumerated powers. Scalia strongly believed in states' rights, local government, and limited federal jurisdiction. His career on the Supreme Court is a testament to the historical significance and responsibilities of the court.


Many people disagree with the outcomes of Scalia's decisions, but still respectfully acknowledge his contribution to law and


This Week's News in 140 Characters

EDITORIAL REPORT


 **Stephen Miller** @redsteeze · Feb 20
The nations President is just sitting out the state funeral of its longest current serving Supreme Court Justice. Sit on that for a second.
294 retweets, 211 likes


 **Paul Ryan** @SpeakerRyan · Feb 16
The #SupremeCourt is not an extension of the White House. Congress, as an equal branch, has every right NOT to confirm someone.
656 retweets, 813 likes

 **Donald J. Trump** @realDonaldTrump · 16 Oct 2012
The Coca Cola company is not happy with me--that's okay, I'll still keep drinking that garbage.
2.2K retweets, 2.6K likes

 **Popehat** @Popehat · Feb 20
What does Trump do for an encore now that he's slammed the Pope? Seriously. Go after Lincoln? Anti-semitic jokes about Einstein?
31 retweets, 56 likes

 **Jordan Buckley** @JordanETID · Feb 18
If the FBI needs to get into someone's iPhone without permission they should just call U2 and ask how they did it
12K retweets, 13K likes

 **Ross Douthat** @DouthatNYT · Feb 15
Anyone saying Senate Rs would be wise to accept a "moderate" SC pick should acquaint themselves w/history of "conservative" appointments.
50 retweets, 76 likes

 **David Burge** @Iowahawkblog · Feb 15
Screw "Presidents Day", it's Washington & Lincoln's Birthday and 80% of the rest of them can get bent
203 retweets, 301 likes

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SCALIA'S DEATH LEAVES GAP IN THE COURT cont.

remarkable service to his country. President Obama paid his respects, characterizing Scalia as a "brilliant legal mind with an energetic style, incisive wit, and colorful opinions."

Scalia executed his job faithfully and passionately, consistently defending the individual rights he believed the Constitution was meant to protect.

But just hours after Scalia's passing, politicization of a potential nominee began. Some progressives claim "it is time" for a person of such-and-such identity group to sit on the Supreme Court. This identity-driven proposition (tokenism, perhaps?) would needlessly and unfairly eliminate qualified candidates from a position where identity should be irrelevant.

President Obama can either nominate a Scalia replacement or

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GOP Debate Highlights

By ALEX KLOSNER
STAFF WRITER

If the 2016 campaign season has been crude and demoralizing, it at least makes for good reality TV. The recent CBS Republican debate in South Carolina provided the candidates with a crucial opportunity to win voters in the South Carolina primary. Syndicated columnist Charles Krauthammer described the 9th debate as a "thermonuclear war," referring to the abundance of personal attacks and the overall contentious tone.

The debate began with a moment of silence for the late Justice Scalia. Marco Rubio praised Scalia as one of the greatest Supreme Court justices in American history, and all candidates argued that Obama should refrain from nominating a replacement until the American people elect a new president.

Soon after, a discussion of foreign policy threw the debate

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cooperate in terror investigations.

Apple isn't pulling a shallow publicity stunt. Its disagreement with the government is a substantive one over privacy rights. Though the White House insists that the FBI is only asking for a tool to bypass the security on Farook's phone alone, many others have pointed out that such a tool could easily be adapted to use on other phones. Apple argues that creating a security bypass even in this one case could jeopardize all iPhone users' security in the long run.

"The U.S. government has asked us for something we simply do not have," Cook writes, "and something we consider too dangerous to create. They have asked us to build a backdoor to the iPhone."

Apple argues that to do so would set a dangerous precedent, signaling to law enforcement officials across the country and the world that iPhone user data is up for grabs. Perhaps more importantly, they argue that the special version of iOS could well end up in the hands of hackers, who could use it for any number of nefarious ends.

A point they don't make explicitly—perhaps because of their need to remain on good terms with the governments of countries such as China—is that an iPhone "backdoor" (a more generalized form of what the FBI is requesting in the San Bernardino case) would be a boon for oppressive states across the world. An average person can easily draw a distinction between a terrorism case and that of a Chinese dissident. The Chinese government is less likely to draw such a distinction.

Still, it's hard to imagine Apple would take this stand if Americans overwhelmingly supported the FBI's efforts. But is it a bad thing that one of the world's largest companies is responsive to the democratic opinion of its customers, who come from almost every conceivable background in the U.S.? In one way, Apple is protecting its commercial interest, but in another it's letting a lot of Americans vote with their dollars.

Apple's bold stance, however controversial and however counterintuitive, shows that they are willing to bet the company over their users' privacy and security. Even the *New York Times*, rarely a friend of large corporations, has full-throatedly endorsed the company's decision. It seems that corporate free speech has a place in society, after all.

For those who value privacy, liberty, and limited government, Apple's actions are a reassuring sign that capitalism, even at its highest levels, can produce principled institutions that, at least sometimes, protect civil liberties more ardently than government can.

wait and let the next president make a nomination. The Senate has the constitutional obligation to confirm or deny the nominee. Since the court still functions with fewer than nine members, the Senate has no obligation to immediately fill the seat.

During President George W. Bush's tenure, Democrats filibustered ten judicial nominations, setting the dangerous precedent of rejecting nominees who had majority support in the Senate.

Nominee Samuel Alito gained enough bipartisan support to overwhelm the Democrats' minority filibuster attempt. Even in Reagan's presidency, Democrats opposed Robert Bork's constitutional originalism on a political basis, denying his nomination.

If Obama nominates another judicial activist to the Supreme Court, the Senate should deny the nominee. Republican Senator Mitch McConnell's proposal to ignore Obama's potential nominees reflects low expectations.

The addition of a judicial activist would give the liberal wing of the court a 5-4 majority (with Sotomayor, Kagan, Breyer, and Ginsburg). Liberal justices have a record of expanding or inventing constitutional law to promote their political positions, bypassing the legislative and executive branches. A conservative Senate should, therefore, wait for a president willing to nominate an originalist to the Supreme Court.

In Scalia's words, constitutional activism and revisionism "robs people of the most important liberty... the freedom to govern themselves." The idea that a five-person majority on an unelected court should engage in judicial legislation based on always-changing interpretations of the law is anti-democratic.

Progressives would like the Supreme Court to act as another political body that exerts its will on American society and law, regardless of legal precedent. Their ends are justified, regardless of what legal "jiggery-pokery" is necessary. The dangers posed by such a legally malleable court should be self-evident.

The loss of Justice Scalia will profoundly affect the Supreme Court. We must not forget, as John Adams wrote, that our government is "of laws and not of men," meaning, in Scalia's words, that "we are governed by the terms of our laws, not by the unenacted will of our lawmakers."

rhetoric into chaos. Trump criticized President George W. Bush's initiation of the Iraq War and attacked Jeb Bush

by arguing that the former president did not keep America safe. "The World Trade Center came down under your brother's reign," Trump said. "Remember that."

Jeb fired back, "While Donald Trump was building a reality TV show, my brother was building a security apparatus to keep us safe."

Rubio joined Jeb in attacking Trump. "I thank God all the time that it was George W. Bush in the White House on 9/11 and not Al Gore," Rubio said, to cheers from the audience. "The World Trade Center came down because Bill Clinton didn't kill Osama bin Laden when he had the chance to kill him."

When the moderators shifted the conversation towards immigration, the debate soon devolved into meaningless jargon. Jeb advocated for stronger border control, a path to legal status, and a solution to the problem of people who overstay their visas. Jeb argued that Americans "should show a little more respect for the fact that they're struggling" and added, "they're not all rapists as you-know-who said."

Last week's South Carolina debate indicates that the hostile rhetoric and personal attacks between the top contenders will intensify.

Trump then accused him of being the weakest candidate by far on the issue of illegal immigration. He criticized Jeb for saying that illegal immigrants are not ill-intentioned, but "come out of an act of love."

Jeb said that it was weak for Donald Trump to disparage women, Hispanics, and the disabled, and to assert that Senator John McCain is not a war hero because he was captured. Trump argued that Jeb has no right

to criticize his language since he once supposedly threatened to "take his pants off and moon everybody."

In the previous New Hampshire debate, many criticized Rubio for his robotic performance after he made the same canned statement several times. After a rough debate performance in New Hampshire, he recovered with a strong performance in South Carolina. Rubio appeared more natural, and successfully articulated his vision for America in the 21st century.

On immigration, Ted Cruz accused Rubio of going on Univision and telling everyone in Spanish that he would not rescind President Obama's executive orders on amnesty.

"First of all," Rubio responded, "I don't know how he knows what I said on Univision because he doesn't speak Spanish."

A CBS poll conducted after the debate showed that Rubio emerged victorious with 32 percent of respondents indicating that Rubio won. However, Eliana Johnson of *National Review* argued that "Rubio's solid performance was overshadowed by Trump's antics."

Last week, Rubio received an important endorsement from South Carolina Governor Nikki Haley. After the South Carolina and Nevada primaries, the race will likely narrow down to the top three or four candidates. Ben Carson's campaign has long expired and he will presumably drop out within the next few days.

After embarrassing losses in both Iowa and New Hampshire, Jeb's campaign was on life support. The suspension of his campaign after South Carolina surprised no one. Last week's South Carolina debate indicates that the hostile rhetoric and personal attacks between the top contenders will intensify in the coming weeks.

vol. III

ENQUIRY

issue 19

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