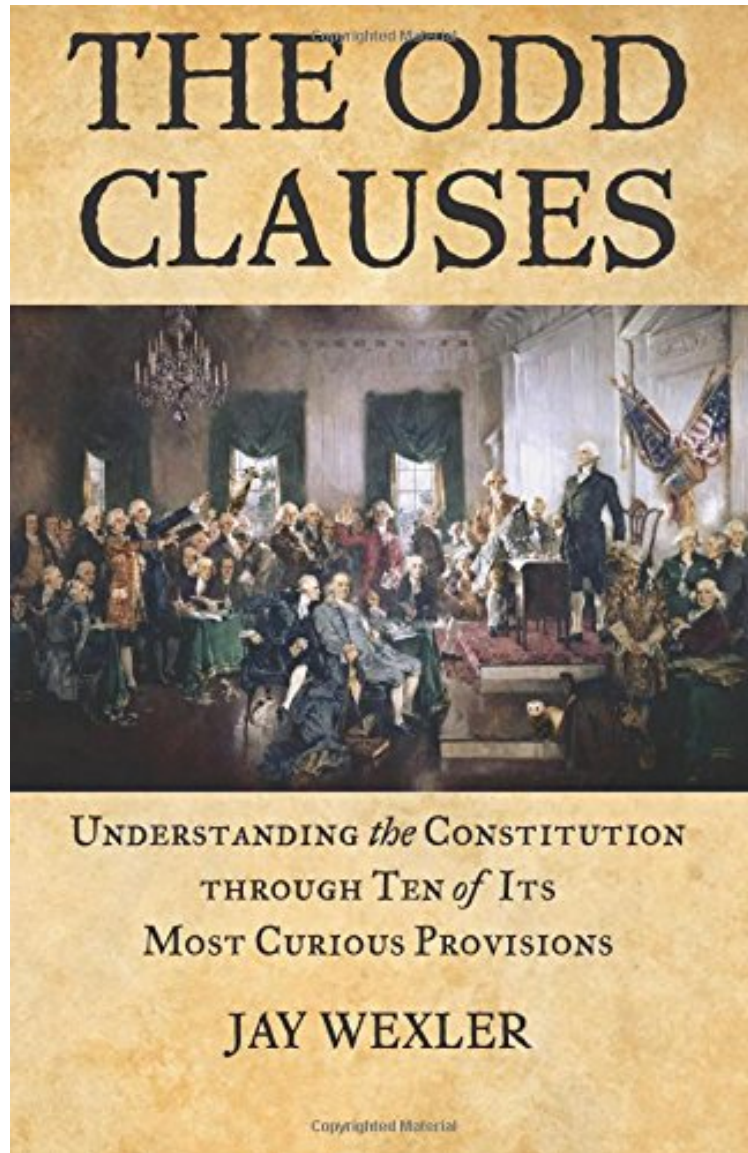


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The Odd Clauses: Understanding the Constitution through Ten of Its Most Curious Provisions

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#496796 in Books Jay Wexler 2012-09-04 2012-09-04 Original language: English PDF # 1 8.46 x .49 x 5.551, .70 #File Name: 0807000892240 pages The Odd Clauses Understanding the Constitution through Ten of Its Most Curious Provisions | File size: 50.Mb

Jay Wexler : The Odd Clauses: Understanding the Constitution through Ten of Its Most Curious Provisions before purchasing it in order to gauge whether or not it would be worth my time, and all praised The Odd Clauses: Understanding the Constitution through Ten of Its Most Curious Provisions:

0 of 0 people found the following review helpful. Great topic. Very readable. Needs editing. By Reader On the plus side, this unusual book serves a valuable purpose in that it offers several examples of how a number of often overlooked clauses in the Constitution inform the debates over how we should interpret other clauses. I'm aware of no other books on this topic, and Mr. Wexler has been kind enough to write one that's highly readable and accessible for lay audiences. On the minus side, Mr. Wexler inserts a great many unnecessary politically partisan asides, which will undoubtedly turn away conservative readers, for no good reason. In addition, he sometimes takes much longer than necessary to get to his point. In the chapter on weights and measures, for instance, he takes two full pages to show us how much he knows about the space program when all he needed to do was write a paragraph explaining how the US lost an expensive space probe because a NASA contractor sent the probe some data in English units of measurement instead of metric. If that were the only example, I wouldn't mention it. I'd happily give this book 5 stars if it went to a second edition after getting a good scrubbing by a non-partisan editor with a taste for concision.

0 of 0 people found the following review helpful. Educational By Customer As a high school teacher, I am always looking for engaging ways to educate my students about the Constitution. This book, even with its unique focus, conveys a large amount of information that I would consider essential to understanding perhaps the most important document we have. The humor (besides the imagined dialogue) keep your attention and you'll rarely find yourself reading information you're already familiar with. Think 'Lies My Teacher Told Me' if it was about the Constitution and actually told you new information.

2 of 2 people found the following review helpful. Provocative and fun to read but sometimes dwells on the inconsequential. By Israel Ramirez Its uneven. The treatment of the Incompatibility Clause, for example, shows how seemingly unrelated parts of the constitution form a cohesive whole with a consistent philosophy of government. The treatment of the weights and measures clause, on the other hand, is mainly a diatribe against the US system of inches, pounds, etc. As other reviewers noted, the author likes to make fun of conservatives. To be fair, he occasionally makes fun of the liberal members of the supreme court as well. Many of his jokes are funny. What is more to the point, is that the author spends more time than he should cracking jokes. This a short work and the humor which pads it means that the real meat in this book is brief. On the whole, I learned a fair amount from this book.

An innovative, insightful, often humorous look at the Constitutions lesser-known clauses, offering a fresh perspective on the documents relevance today For a variety of reasons, many of the Constitutions more obscure passages never make it to any court and therefore never make headlines or even law school classrooms, which teach from judicial decisions. In this captivating and witty book, Jay Wexler draws on his extensive professional and educational backgrounds in constitutional law to demonstrate how these odd clauses have incredible relevance to our lives, our governments structure, and the integrity of our democracy.

I love this book. It is, believe it or not, an utterly entertaining constitutional law book. I am blown away by Wexler's comedic skills and his ability to make the usually dry subject matter so funny and readable. Gary Gulman, Finalist, Last Comic Standing and Guest, Late Night With David Letterman and The Tonight Show In Holy Hullabaloo's, Jay Wexler took us along on what he called a "road trip" to some of the most important places connected to the First Amendment's religion clauses. This time, in The Odd Clauses, Wexler exits off the highway to take us on a tour of some back roads of constitutional law: places scholars and the public seldom visit like the Bill of Attainder Clause or the Third Amendment (which prohibits quartering of troops in private houses during peacetime, in case you didn't know.) The result is magical: you'll have so much fun reading about these unsung constitutional provisions that you won't realize until the trip is over how much you've learned. Pamela S. Karlan, Kenneth and Harle Montgomery Professor of Public Interest Law The book provides a fresh vantage point from which to consider the Constitution. Choice Magazine Professor Wexler dispenses his expertise on the Constitution with a light touch, imparting many lasting insights and a few belly laughs along the way. What a delight to discover that our founding document is not only brilliant, but brilliantly weird. Ben H. Winters, author of Sense and Sensibility and Sea Monsters A know-it-all's treasure trove, a cabinet of constitutional curiosities, The Odd Clauses touches down on NASA, Ellis Island, even Saturday Night Live. Jay Wexler is brilliantly snarky, erudite and comedic. Julianna Baggott, author of Girl Talk and Pure The maniacs who run the modern American political process seem determined to reduce our Constitution to a electoral fetish object. Thank God, then, that we have Jay Wexler, whose wise and funny treatise reminds us that the Constitution is, like the men who drafted it, brilliant but imperfect. I learned more reading this book than in my entire college career. This isn't saying much given my college career, I realize. But I now plan to attend law school. It's that good. Steve Almond, author of Candyfreak and God Bless America From the Hardcover edition. About the Author Jay Wexler teaches at the Boston University School of Law. He previously clerked for Supreme Court Justice Ruth Bader Ginsburg and then served as a lawyer in the Department of Justices Office of Legal Counsel. Wexlers writing has appeared in Boston magazine, Spy, and McSweeneys Internet Tendency, among other publications. His first book was Holy Hullabaloo's: A Road Trip to the Battlegrounds of the Church-State Wars. From the Hardcover edition. Excerpt. Reprinted by permission. All rights reserved. chapter 6 The Twenty-first Amendment: Federalism "The transportation or importation into any State, Territory, or possession of the United States for delivery

or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." Amendment XXI, Section 2

This may come as a surprise, but in the late 1960s, the problem of bottomless dancing in California bars and nightclubs had spiraled out of control. Or at least that was the opinion of the states Department of Alcoholic Beverage Control, which became so worried about the menace that it held a series of public hearings to figure out the extent of the peril and what to do about it. The testimony at these hearings revealed, in the words of one federal court, a sordid story, primarily relating to sexual contact between dancers and customers. Apparently, bottomless-dancing clubs were not nearly as wholesome as one might imagine. According to a different court: Customers were found engaging in oral copulation with women entertainers; customers engaged in public masturbation; and customers placed rolled currency either directly into the vagina of a female entertainer, or on the bar in order that she might pick it up herself. The State of California, in other words, had turned into a Bangkok red-light district. Of course, the state had already made it illegal for customers and dancers to engage in public sexual acts, but apparently those laws had not done the trick (so to speak). The agency in charge of licensing the sale of alcoholic beverages within the state therefore decided to do something about the bottomless dancing itself. It passed a series of regulations prohibiting a variety of lewd practices in any establishment selling liquor. Specifically, no club holding a liquor license could allow any person to perform acts of or simulating sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation . . . [or] the touching, caressing or fondling on the breast, buttocks, anus, or genitals. The state figured that banning these activities in bars would pretty much end them altogether; what guy, after all, is going to pay money to watch a woman simulate caressing her buttocks if he can't enjoy a beer at the same time? The problem, however, was that Californias regulations seemed clearly to violate the First Amendment. Fifteen or so years earlier, the Supreme Court had held that the government may not ban arguably profane speech or expression that does not rise to the level of obscenity, with the term obscenity being very specifically defined as material that, when taken as a whole, appeals to a prurient interest in sex and patently offends community standards relating to sex, while completely lacking any social importance. Nothing in the regulations limited their application only to obscene instances of bestiality or flagellation. Accordingly, when a group of dancers and license holders sued to have the regulations invalidated, the three-judge lower federal court that heard the case held that the regulations were unconstitutional. The Supreme Court, however, reversed. The Court agreed that the regulations on their face would proscribe some forms of visual presentation that would not be found obscene under its prior cases. So why uphold the regulations? The answer appeared to rest in the language of Section 2 of the Twenty-first Amendment, which was ratified in 1933 to repeal the era of Prohibition that had been ushered in fourteen years earlier by the Eighteenth Amendment. According to the Court, Section 2 of the Twenty-first Amendment acted like a thumb on the scale of state power, giving states the authority to regulate alcohol in ways that would otherwise violate the Constitution. As the Court put it: [T]he broad sweep of the Twenty-first Amendment has been recognized as conferring something more than the normal state authority over public health, welfare, and morals. . . . Given the added presumption in favor of the validity of the state regulation in this area that the Twenty-first Amendment requires, we cannot hold that the regulations on their face violate the Federal Constitution. That seems like a strange result, doesn't it? How could the amendment that ended Prohibition be used by the Court to uphold a restriction on the sale of alcohol? Well, that depends on what the Twenty-first Amendment was all about. Was it about making alcohol legal, or was it about taking power over alcohol away from the federal government and returning it to the states, where it had always resided prior to 1919? Perhaps the most difficult issue facing the framers of the Constitution was how to balance the powers of the new federal government with the powers of the states to work out, in other words, the problem of federalism. Between the end of the Revolutionary War and the ratification of the Constitution, the newly independent states had been operating under the Articles of Confederation, a document that created a very limited federal government and left most powers to the states. This regime worked poorly, particularly because the states competed with each other for economic supremacy, taxing each others goods and otherwise refusing to trade freely among themselves. The federal government, lacking executive and judicial power and possessing only a weak legislature, couldn't do anything to preserve interstate harmony. When the Constitutional Convention met in 1787, it was clear that the federal government needed to be given more power, but a lot of disagreement remained between the so-called federalists and anti-federalists about exactly how much. In many ways, the Constitution represents a compromise between these two camps. Most importantly, although the Constitution creates a substantial, three-branch national government, it confers upon that government only a series of specific, limited powers; everything else is left to the states. As discussed in chapter 2, Congress may only exercise those powers enumerated by the Constitution; the founding document does not give Congress any sort of general police power to regulate purely local activities. Likewise, as discussed in chapter 4, the jurisdiction of the federal judiciary is limited to cases involving federal law and cases involving plaintiffs and defendants from different states. Run-of-the-mill controversies about real property, contract terms, criminal law, and negligently dropping a brick on someones foot generally cannot be heard by the federal courts. In addition, two key amendments to the Constitution specifically protect the states. The Eleventh Amendment, ratified in 1795, says: The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State. The amendment was motivated by a famous early Supreme Court case

called *Chisholm v. Georgia*, which held that a citizen of South Carolina could sue the State of Georgia to recover debts from the Revolutionary War. The states kind of freaked out about the idea that people could sue them for the mountains of debt they had incurred during the war, and they acted promptly to enact the Eleventh Amendment. Even though the language of the amendment clearly does not bar citizens from suing their own state and clearly applies only to federal courts, the Supreme Court has priggishly extended the amendment to all citizens and all courts. As a result, states are immune from a lot of lawsuits that they shouldn't be, like suits brought against them by their own citizens to enforce federal employment or environmental laws, even if these suits are brought in state court.