

Restoring the Rule of Law
Remarks by Al Gore
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Congressman Barr and I have disagreed many times over the years, but we have joined together today with thousands of our fellow citizens—Democrats and Republicans alike—to express our shared concern that America’s Constitution is in grave danger.

In spite of our differences over ideology and politics, we are in strong agreement that the American values we hold most dear have been placed at serious risk by the unprecedented claims of the Administration to a truly breathtaking expansion of executive power.

As we begin this new year, the Executive Branch of our government has been caught eavesdropping on huge numbers of American citizens and has brazenly declared that it has the unilateral right to continue without regard to the established law enacted by Congress to prevent such abuses.

It is imperative that respect for the rule of law be restored.

So, many of us have come here to Constitution Hall to sound an alarm and call upon our fellow citizens to put aside partisan differences and join with us in demanding that our Constitution be defended and preserved.

It is appropriate that we make this appeal on the day our nation has set aside to honor the life and legacy of Dr. Martin Luther King, Jr., who challenged America to breathe new life into our oldest values by extending its promise to all our people.

On this particular Martin Luther King Day, it is especially important to recall that for the last several years of his life, Dr. King was illegally wiretapped—one of hundreds of thousands of Americans whose private communications were intercepted by the U.S. government during this period.

The FBI privately called King the “most dangerous and effective negro leader in the country” and vowed to “take him off his pedestal.” The government even attempted to destroy his marriage and blackmail him into committing suicide.

This campaign continued until Dr. King’s murder. The discovery that the FBI conducted a long-running and extensive campaign of secret electronic surveillance designed to infiltrate the inner workings of the Southern Christian Leadership Conference, and to learn the most intimate details of Dr. King’s life, helped to convince Congress to enact restrictions on wiretapping.

The result was the Foreign Intelligence and Surveillance Act (FISA), which was enacted expressly to ensure that foreign intelligence surveillance would be presented to an impartial judge to verify that there is a sufficient cause for the surveillance. I voted for

that law during my first term in Congress and for almost thirty years the system has proven a workable and valued means of according a level of protection for private citizens, while permitting foreign surveillance to continue.

Yet, just one month ago, Americans awoke to the shocking news that in spite of this long settled law, the Executive Branch has been secretly spying on large numbers of Americans for the last four years and eavesdropping on “large volumes of telephone calls, e-mail messages, and other Internet traffic inside the United States.” *The New York Times* reported that the President decided to launch this massive eavesdropping program “without search warrants or any new laws that would permit such domestic intelligence collection.”

During the period when this eavesdropping was still secret, the President went out of his way to reassure the American people on more than one occasion that, of course, judicial permission is required for any government spying on American citizens and that, of course, these constitutional safeguards were still in place.

But surprisingly, the President’s soothing statements turned out to be false. Moreover, as soon as this massive domestic spying program was uncovered by the press, the President not only confirmed that the story was true, but also declared that he has no intention of bringing these wholesale invasions of privacy to an end.

At present, we still have much to learn about the NSA’s domestic surveillance. What we do know about this pervasive wiretapping virtually compels the conclusion that the President of the United States has been breaking the law repeatedly and persistently.

A president who breaks the law is a threat to the very structure of our government. Our Founding Fathers were adamant that they had established a government of laws and not men. Indeed, they recognized that the structure of government they had enshrined in our Constitution – our system of checks and balances – was designed with a central purpose of ensuring that it would govern through the rule of law. As John Adams said: “The executive shall never exercise the legislative and judicial powers, or either of them, to the end that it may be a government of laws and not of men.”

An executive who arrogates to himself the power to ignore the legitimate legislative directives of the Congress or to act free of the check of the judiciary becomes the central threat that the Founders sought to nullify in the Constitution – an all-powerful executive too reminiscent of the King from whom they had broken free. In the words of James Madison, “the accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.”

Thomas Paine, whose pamphlet, “On Common Sense” ignited the American Revolution, succinctly described America’s alternative. Here, he said, we intended to make certain that “the law is king.”

Vigilant adherence to the rule of law strengthens our democracy and strengthens America. It ensures that those who govern us operate within our constitutional structure, which means that our democratic institutions play their indispensable role in shaping policy and determining the direction of our nation. It means that the people of this nation ultimately determine its course and not executive officials operating in secret without constraint.

The rule of law makes us stronger by ensuring that decisions will be tested, studied, reviewed and examined through the processes of government that are designed to improve policy. And the knowledge that they will be reviewed prevents over-reaching and checks the accretion of power.

A commitment to openness, truthfulness and accountability also helps our country avoid many serious mistakes. Recently, for example, we learned from recently classified declassified documents that the Gulf of Tonkin Resolution, which authorized the tragic Vietnam war, was actually based on false information. We now know that the decision by Congress to authorize the Iraq War, 38 years later, was also based on false information. America would have been better off knowing the truth and avoiding both of these colossal mistakes in our history. Following the rule of law makes us safer, not more vulnerable.

The President and I agree on one thing. The threat from terrorism is all too real. There is simply no question that we continue to face new challenges in the wake of the attack on September 11th and that we must be ever-vigilant in protecting our citizens from harm.

Where we disagree is that we have to break the law or sacrifice our system of government to protect Americans from terrorism. In fact, doing so makes us weaker and more vulnerable.

Once violated, the rule of law is in danger. Unless stopped, lawlessness grows. The greater the power of the executive grows, the more difficult it becomes for the other branches to perform their constitutional roles. As the executive acts outside its constitutionally prescribed role and is able to control access to information that would expose its actions, it becomes increasingly difficult for the other branches to police it. Once that ability is lost, democracy itself is threatened and we become a government of men and not laws.

The President's men have minced words about America's laws. The Attorney General openly conceded that the "kind of surveillance" we now know they have been conducting requires a court order unless authorized by statute. The Foreign Intelligence Surveillance Act self-evidently does not authorize what the NSA has been doing, and no one inside or outside the Administration claims that it does. Incredibly, the Administration claims instead that the surveillance was *implicitly* authorized when Congress voted to use force against those who attacked us on September 11th.

This argument just does not hold any water. Without getting into the legal intricacies, it faces a number of embarrassing facts. First, another admission by the Attorney General: he concedes that the Administration knew that the NSA project was prohibited by existing law and that they consulted with some members of Congress about changing the statute. Gonzalez says that they were told this probably would not be possible. So how can they now argue that the Authorization for the Use of Military Force somehow implicitly authorized it all along? Second, when the Authorization was being debated, the Administration did in fact seek to have language inserted in it that would have authorized them to use military force domestically – and the Congress did not agree. Senator Ted Stevens and Representative Jim McGovern, among others, made statements during the Authorization debate clearly restating that that Authorization did not operate domestically.

When President Bush failed to convince Congress to give him all the power he wanted when they passed the AUMF, he secretly assumed that power anyway, as if congressional authorization was a useless bother. But as Justice Frankfurter once wrote: “To find authority so explicitly withheld is not merely to disregard in a particular instance the clear will of Congress. It is to disrespect the whole legislative process and the constitutional division of authority between President and Congress.”

This is precisely the “disrespect” for the law that the Supreme Court struck down in the steel seizure case.

It is this same disrespect for America’s Constitution which has now brought our republic to the brink of a dangerous breach in the fabric of the Constitution. And the disrespect embodied in these apparent mass violations of the law is part of a larger pattern of seeming indifference to the Constitution that is deeply troubling to millions of Americans in both political parties.

For example, the President has also declared that he has a heretofore unrecognized inherent power to seize and imprison any American citizen that he alone determines to be a threat to our nation, and that, notwithstanding his American citizenship, the person imprisoned has no right to talk with a lawyer—even to argue that the President or his appointees have made a mistake and imprisoned the wrong person.

The President claims that he can imprison American citizens indefinitely for the rest of their lives without an arrest warrant, without notifying them about what charges have been filed against them, and without informing their families that they have been imprisoned.

At the same time, the Executive Branch has claimed a previously unrecognized authority to mistreat prisoners in its custody in ways that plainly constitute torture in a pattern that has now been documented in U.S. facilities located in several countries around the world.

Over 100 of these captives have reportedly died while being tortured by Executive Branch interrogators and many more have been broken and humiliated. In the notorious

Abu Ghraib prison, investigators who documented the pattern of torture estimated that more than 90 percent of the victims were innocent of any charges.

This shameful exercise of power overturns a set of principles that our nation has observed since General Washington first enunciated them during our Revolutionary War and has been observed by every president since then – until now. These practices violate the Geneva Conventions and the International Convention Against Torture, not to mention our own laws against torture.

The President has also claimed that he has the authority to kidnap individuals in foreign countries and deliver them for imprisonment and interrogation on our behalf by autocratic regimes in nations that are infamous for the cruelty of their techniques for torture.

Some of our traditional allies have been shocked by these new practices on the part of our nation. The British Ambassador to Uzbekistan – one of those nations with the worst reputations for torture in its prisons – registered a complaint to his home office about the senselessness and cruelty of the new U.S. practice: “This material is useless – we are selling our souls for dross. It is in fact positively harmful.”

Can it be true that any president really has such powers under our Constitution? If the answer is “yes” then under the theory by which these acts are committed, are there any acts that can on their face be prohibited? If the President has the inherent authority to eavesdrop, imprison citizens on his own declaration, kidnap and torture, then what can’t he do?

The Dean of Yale Law School, Harold Koh, said after analyzing the Executive Branch’s claims of these previously unrecognized powers: “If the President has commander-in-chief power to commit torture, he has the power to commit genocide, to sanction slavery, to promote apartheid, to license summary execution.”

The fact that our normal safeguards have thus far failed to contain this unprecedented expansion of executive power is deeply troubling. This failure is due in part to the fact that the Executive Branch has followed a determined strategy of obfuscating, delaying, withholding information, appearing to yield but then refusing to do so and dissembling in order to frustrate the efforts of the legislative and judicial branches to restore our constitutional balance.

For example, after appearing to support legislation sponsored by John McCain to stop the continuation of torture, the President declared in the act of signing the bill that he reserved the right not to comply with it.

Similarly, the Executive Branch claimed that it could unilaterally imprison American citizens without giving them access to review by any tribunal. The Supreme Court disagreed, but the President engaged in legal maneuvers designed to prevent the Court from providing meaningful content to the rights of its citizens.

A conservative jurist on the Fourth Circuit Court of Appeals wrote that the Executive Branch's handling of one such case seemed to involve the sudden abandonment of principle "at substantial cost to the government's credibility before the courts."

As a result of its unprecedented claim of new unilateral power, the Executive Branch has now put our constitutional design at grave risk. The stakes for America's representative democracy are far higher than has been generally recognized.

These claims must be rejected and a healthy balance of power restored to our Republic. Otherwise, the fundamental nature of our democracy may well undergo a radical transformation.

For more than two centuries, America's freedoms have been preserved in part by our founders' wise decision to separate the aggregate power of our government into three co-equal branches, each of which serves to check and balance the power of the other two.

On more than a few occasions, the dynamic interaction among all three branches has resulted in collisions and temporary impasses that create what are invariably labeled "constitutional crises." These crises have often been dangerous and uncertain times for our Republic. But in each such case so far, we have found a resolution of the crisis by renewing our common agreement to live under the rule of law.

The principle alternative to democracy throughout history has been the consolidation of virtually all state power in the hands of a single strongman or small group who together exercise that power without the informed consent of the governed.

It was in revolt against just such a regime, after all, that America was founded. When Lincoln declared at the time of our greatest crisis that the ultimate question being decided in the Civil War was "whether that nation, or any nation so conceived, and so dedicated, can long endure," he was not only saving our union but also was recognizing the fact that democracies are rare in history. And when they fail, as did Athens and the Roman Republic upon whose designs our founders drew heavily, what emerges in their place is another strongman regime.

There have of course been other periods of American history when the Executive Branch claimed new powers that were later seen as excessive and mistaken. Our second president, John Adams, passed the infamous Alien and Sedition Acts and sought to silence and imprison critics and political opponents.

When his successor, Thomas Jefferson, eliminated the abuses he said:
"[The essential principles of our Government] form the bright constellation which has gone before us and guided our steps through an age of revolution and reformation... [S]hould we wander from them in moments of error or of alarm, let us hasten to retrace our steps and to regain the road which alone leads to peace, liberty and safety."

Our greatest President, Abraham Lincoln, suspended habeas corpus during the Civil War. Some of the worst abuses prior to those of the current administration were committed by President Wilson during and after WWI with the notorious Red Scare and Palmer Raids. The internment of Japanese Americans during WWII marked a low point for the respect of individual rights at the hands of the executive. And, during the Vietnam War, the notorious COINTELPRO program was part and parcel of the abuses experienced by Dr. King and thousands of others.

But in each of these cases, when the conflict and turmoil subsided, the country recovered its equilibrium and absorbed the lessons learned in a recurring cycle of excess and regret.

There are reasons for concern this time around that conditions may be changing and that the cycle may not repeat itself. For one thing, we have for decades been witnessing the slow and steady accumulation of presidential power. In a global environment of nuclear weapons and cold war tensions, Congress and the American people accepted ever enlarging spheres of presidential initiative to conduct intelligence and counter intelligence activities and to allocate our military forces on the global stage. When military force has been used as an instrument of foreign policy or in response to humanitarian demands, it has almost always been as the result of presidential initiative and leadership. As Justice Frankfurter wrote in the Steel Seizure Case, "The accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority."

A second reason to believe we may be experiencing something new is that we are told by the Administration that the war footing upon which he has tried to place the country is going to "last for the rest of our lives." So we are told that the conditions of national threat that have been used by other Presidents to justify arrogations of power will persist in near perpetuity.

Third, we need to be aware of the advances in eavesdropping and surveillance technologies with their capacity to sweep up and analyze enormous quantities of information and to mine it for intelligence. This adds significant vulnerability to the privacy and freedom of enormous numbers of innocent people at the same time as the potential power of those technologies. These technologies have the potential for shifting the balance of power between the apparatus of the state and the freedom of the individual in ways both subtle and profound.

Don't misunderstand me: the threat of additional terror strikes is all too real and their concerted efforts to acquire weapons of mass destruction does create a real imperative to exercise the powers of the Executive Branch with swiftness and agility. Moreover, there is in fact an inherent power that is conferred by the Constitution to the President to take unilateral action to protect the nation from a sudden and immediate threat, but it is simply not possible to precisely define in legalistic terms exactly when that power is appropriate and when it is not.

But the existence of that inherent power cannot be used to justify a gross and excessive power grab lasting for years that produces a serious imbalance in the relationship between the executive and the other two branches of government.

There is a final reason to worry that we may be experiencing something more than just another cycle of overreach and regret. This Administration has come to power in the thrall of a legal theory that aims to convince us that this excessive concentration of presidential authority is exactly what our Constitution intended.

This legal theory, which its proponents call the theory of the unitary executive but which is more accurately described as the unilateral executive, threatens to expand the president's powers until the contours of the constitution that the Framers actually gave us become obliterated beyond all recognition. Under this theory, the President's authority when acting as Commander-in-Chief or when making foreign policy cannot be reviewed by the judiciary or checked by Congress. President Bush has pushed the implications of this idea to its maximum by continually stressing his role as Commander-in-Chief, invoking it as frequently as he can, conflating it with his other roles, domestic and foreign. When added to the idea that we have entered a perpetual state of war, the implications of this theory stretch quite literally as far into the future as we can imagine.

This effort to rework America's carefully balanced constitutional design into a lopsided structure dominated by an all powerful Executive Branch with a subservient Congress and judiciary is—ironically—accompanied by an effort by the same administration to rework America's foreign policy from one that is based primarily on U.S. moral authority into one that is based on a misguided and self-defeating effort to establish dominance in the world.

The common denominator seems to be based on an instinct to intimidate and control.

This same pattern has characterized the effort to silence dissenting views within the Executive Branch, to censor information that may be inconsistent with its stated ideological goals, and to demand conformity from all Executive Branch employees.

For example, CIA analysts who strongly disagreed with the White House assertion that Osama bin Laden was linked to Saddam Hussein found themselves under pressure at work and became fearful of losing promotions and salary increases.

Ironically, that is exactly what happened to FBI officials in the 1960s who disagreed with J. Edgar Hoover's view that Dr. King was closely connected to Communists. The head of the FBI's domestic intelligence division said that his effort to tell the truth about King's innocence of the charge resulted in he and his colleagues becoming isolated and pressured. "It was evident that we had to change our ways or we would all be out on the street.... The men and I discussed how to get out of trouble. To be in trouble with Mr. Hoover was a serious matter. These men were trying to buy homes, mortgages on homes, children in school. They lived in fear of getting transferred, losing money on their

homes, as they usually did. ... so they wanted another memorandum written to get us out of the trouble that we were in.”

The Constitution’s framers understood this dilemma as well, as Alexander Hamilton put it, “a power over a man’s support is a power over his will.” (Federalist No. 73)

Soon, there was no more difference of opinion within the FBI. The false accusation became the unanimous view. In exactly the same way, George Tenet’s CIA eventually joined in endorsing a manifestly false view that there was a linkage between al Qaeda and the government of Iraq.

In the words of George Orwell: “We are all capable of believing things which we know to be untrue, and then, when we are finally proved wrong, impudently twisting the facts so as to show that we were right. Intellectually, it is possible to carry on this process for an indefinite time: the only check on it is that sooner or later a false belief bumps up against solid reality, usually on a battlefield.”

Whenever power is unchecked and unaccountable it almost inevitably leads to mistakes and abuses. In the absence of rigorous accountability, incompetence flourishes. Dishonesty is encouraged and rewarded.

Last week, for example, Vice President Cheney attempted to defend the Administration’s eavesdropping on American citizens by saying that if it had conducted this program prior to 9/11, they would have found out the names of some of the hijackers.

Tragically, he apparently still doesn’t know that the Administration did in fact have the names of at least 2 of the hijackers well before 9/11 and had available to them information that could have easily led to the identification of most of the other hijackers. And yet, because of incompetence in the handling of this information, it was never used to protect the American people.

It is often the case that an Executive Branch beguiled by the pursuit of unchecked power responds to its own mistakes by reflexively proposing that it be given still more power. Often, the request itself it used to mask accountability for mistakes in the use of power it already has.

Moreover, if the pattern of practice begun by this Administration is not challenged, it may well become a permanent part of the American system. Many conservatives have pointed out that granting unchecked power to this President means that the next President will have unchecked power as well. And the next President may be someone whose values and belief you do not trust. And this is why Republicans as well as Democrats should be concerned with what this President has done. If this President’s attempt to dramatically expand executive power goes unquestioned, our Constitutional design of checks and balances will be lost. And the next President or some future President will be able, in the name of national security, to restrict our liberties in a way the framers never would have thought possible.

The same instinct to expand its power and to establish dominance characterizes the relationship between this Administration and the courts and the Congress.

In a properly functioning system, the Judicial Branch would serve as the constitutional umpire to ensure that the branches of government observed their proper spheres of authority, observed civil liberties and adhered to the rule of law. Unfortunately, the unilateral executive has tried hard to thwart the ability of the judiciary to call balls and strikes by keeping controversies out of its hands – notably those challenging its ability to detain individuals without legal process -- by appointing judges who will be deferential to its exercise of power and by its support of assaults on the independence of the third branch.

The President's decision to ignore FISA was a direct assault on the power of the judges who sit on that court. Congress established the FISA court precisely to be a check on executive power to wiretap. Yet, to ensure that the court could not function as a check on executive power, the President simply did not take matters to it and did not let the court know that it was being bypassed.

The President's judicial appointments are clearly designed to ensure that the courts will not serve as an effective check on executive power. As we have all learned, Judge Alito is a longtime supporter of a powerful executive – a supporter of the so-called unitary executive, which is more properly called the unilateral executive. Whether you support his confirmation or not – and I do not – we must all agree that he will not vote as an effective check on the expansion of executive power. Likewise, Chief Justice Roberts has made plain his deference to the expansion of executive power through his support of judicial deference to executive agency rulemaking.

And the Administration has supported the assault on judicial independence that has been conducted largely in Congress. That assault includes a threat by the Republican majority in the Senate to permanently change the rules to eliminate the right of the minority to engage in extended debate of the President's judicial nominees. The assault has extended to legislative efforts to curtail the jurisdiction of courts in matters ranging from habeas corpus to the pledge of allegiance. In short, the Administration has demonstrated its contempt for the judicial role and sought to evade judicial review of its actions at every turn.

But the most serious damage has been done to the legislative branch. The sharp decline of congressional power and autonomy in recent years has been almost as shocking as the efforts by the Executive Branch to attain a massive expansion of its power.

I was elected to Congress in 1976 and served eight years in the house, 8 years in the Senate and presided over the Senate for 8 years as Vice President. As a young man, I saw the Congress first hand as the son of a Senator. My father was elected to Congress in 1938, 10 years before I was born, and left the Senate in 1971.

The Congress we have today is unrecognizable compared to the one in which my father served. There are many distinguished Senators and Congressmen serving today. I am honored that some of them are here in this hall. But the legislative branch of government under its current leadership now operates as if it is entirely subservient to the Executive Branch.

Moreover, too many Members of the House and Senate now feel compelled to spend a majority of their time not in thoughtful debate of the issues, but raising money to purchase 30 second TV commercials.

There have now been two or three generations of congressmen who don't really know what an oversight hearing is. In the 70's and 80's, the oversight hearings in which my colleagues and I participated held the feet of the Executive Branch to the fire – no matter which party was in power. Yet oversight is almost unknown in the Congress today.

The role of authorization committees has declined into insignificance. The 13 annual appropriation bills are hardly ever actually passed anymore. Everything is lumped into a single giant measure that is not even available for Members of Congress to read before they vote on it.

Members of the minority party are now routinely excluded from conference committees, and amendments are routinely not allowed during floor consideration of legislation.

In the United States Senate, which used to pride itself on being the “greatest deliberative body in the world,” meaningful debate is now a rarity. Even on the eve of the fateful vote to authorize the invasion of Iraq, Senator Robert Byrd famously asked: “Why is this chamber empty?”

In the House of Representatives, the number who face a genuinely competitive election contest every two years is typically less than a dozen out of 435.

And too many incumbents have come to believe that the key to continued access to the money for re-election is to stay on the good side of those who have the money to give; and, in the case of the majority party, the whole process is largely controlled by the incumbent president and his political organization.

So the willingness of Congress to challenge the Administration is further limited when the same party controls both Congress and the Executive Branch.

The Executive Branch, time and again, has co-opted Congress' role, and often Congress has been a willing accomplice in the surrender of its own power.

Look for example at the Congressional role in “overseeing” this massive four year eavesdropping campaign that on its face seemed so clearly to violate the Bill of Rights. The President says he informed Congress, but what he really means is that he talked with the chairman and ranking member of the House and Senate intelligence committees and

the top leaders of the House and Senate. This small group, in turn, claimed that they were not given the full facts, though at least one of the intelligence committee leaders handwrote a letter of concern to VP Cheney and placed a copy in his own safe.

Though I sympathize with the awkward position in which these men and women were placed, I cannot disagree with the Liberty Coalition when it says that Democrats as well as Republicans in the Congress must share the blame for not taking action to protest and seek to prevent what they consider a grossly unconstitutional program.

Moreover, in the Congress as a whole—both House and Senate—the enhanced role of money in the re-election process, coupled with the sharply diminished role for reasoned deliberation and debate, has produced an atmosphere conducive to pervasive institutionalized corruption.

The Abramoff scandal is but the tip of a giant iceberg that threatens the integrity of the entire legislative branch of government.

It is the pitiful state of our legislative branch which primarily explains the failure of our vaunted checks and balances to prevent the dangerous overreach by our Executive Branch which now threatens a radical transformation of the American system.

I call upon Democratic and Republican members of Congress today to uphold your oath of office and defend the Constitution. Stop going along to get along. Start acting like the independent and co-equal branch of government you're supposed to be.

But there is yet another Constitutional player whose pulse must be taken and whose role must be examined in order to understand the dangerous imbalance that has emerged with the efforts by the Executive Branch to dominate our constitutional system.

We the people are—collectively—still the key to the survival of America's democracy. We—as Lincoln put it, “[e]ven we here”—must examine our own role as citizens in allowing and not preventing the shocking decay and degradation of our democracy.

Thomas Jefferson said: “An informed citizenry is the only true repository of the public will.”

The revolutionary departure on which the idea of America was based was the audacious belief that people can govern themselves and responsibly exercise the ultimate authority in self-government. This insight proceeded inevitably from the bedrock principle articulated by the Enlightenment philosopher John Locke: “All just power is derived from the consent of the governed.”

The intricate and carefully balanced constitutional system that is now in such danger was created with the full and widespread participation of the population as a whole. The Federalist Papers were, back in the day, widely-read newspaper essays, and they

represented only one of twenty-four series of essays that crowded the vibrant marketplace of ideas in which farmers and shopkeepers recapitulated the debates that played out so fruitfully in Philadelphia.

Indeed, when the Convention had done its best, it was the people – in their various States – that refused to confirm the result until, at their insistence, the Bill of Rights was made integral to the document sent forward for ratification.

And it is “We the people” who must now find once again the ability we once had to play an integral role in saving our Constitution.

And here there is cause for both concern and great hope. The age of printed pamphlets and political essays has long since been replaced by television – a distracting and absorbing medium which sees determined to entertain and sell more than it informs and educates.

Lincoln’s memorable call during the Civil War is applicable in a new way to our dilemma today: “We must disenthral ourselves, and then we shall save our country.”

Forty years have passed since the majority of Americans adopted television as their principal source of information. Its dominance has become so extensive that virtually all significant political communication now takes place within the confines of flickering 30-second television advertisements.

And the political economy supported by these short but expensive television ads is as different from the vibrant politics of America’s first century as those politics were different from the feudalism which thrived on the ignorance of the masses of people in the Dark Ages.

The constricted role of ideas in the American political system today has encouraged efforts by the Executive Branch to control the flow of information as a means of controlling the outcome of important decisions that still lie in the hands of the people.

The Administration vigorously asserts its power to maintain the secrecy of its operations. After all, the other branches can’t check an abuse of power if they don’t know it is happening.

For example, when the Administration was attempting to persuade Congress to enact the Medicare prescription drug benefit, many in the House and Senate raised concerns about the cost and design of the program. But, rather than engaging in open debate on the basis of factual data, the Administration withheld facts and prevented the Congress from hearing testimony that it sought from the principal administration expert who had compiled information showing in advance of the vote that indeed the true cost estimates were far higher than the numbers given to Congress by the President.

Deprived of that information, and believing the false numbers given to it instead, the Congress approved the program. Tragically, the entire initiative is now collapsing- all over the country- with the Administration making an appeal just this weekend to major insurance companies to volunteer to bail it out.

To take another example, scientific warnings about the catastrophic consequences of unchecked global warming were censored by a political appointee in the White House who had no scientific training. And today one of the leading scientific experts on global warming in NASA has been ordered not to talk to members of the press and to keep a careful log of everyone he meets with so that the Executive Branch can monitor and control his discussions of global warming.

One of the other ways the Administration has tried to control the flow of information is by consistently resorting to the language and politics of fear in order to short-circuit the debate and drive its agenda forward without regard to the evidence or the public interest. As President Eisenhower said, “Any who act as if freedom’s defenses are to be found in suppression and suspicion and fear confess a doctrine that is alien to America.”

Fear drives out reason. Fear suppresses the politics of discourse and opens the door to the politics of destruction. Justice Brandeis once wrote: “Men feared witches and burnt women.”

The founders of our country faced dire threats. If they failed in their endeavors, they would have been hung as traitors. The very existence of our country was at risk.

Yet, in the teeth of those dangers, they insisted on establishing the Bill of Rights.

Is our Congress today in more danger than were their predecessors when the British army was marching on the Capitol? Is the world more dangerous than when we faced an ideological enemy with tens of thousands of missiles poised to be launched against us and annihilate our country at a moment’s notice? Is America in more danger now than when we faced worldwide fascism on the march—when our fathers fought and won two World Wars simultaneously?

It is simply an insult to those who came before us and sacrificed so much on our behalf to imply that we have more to be fearful of than they. Yet they faithfully protected our freedoms and now it is up to us to do the same.

We have a duty as Americans to defend our citizens’ right not only to life but also to liberty and the pursuit of happiness. It is therefore vital in our current circumstances that immediate steps be taken to safeguard our Constitution against the present danger posed by the intrusive overreaching on the part of the Executive Branch and the President’s apparent belief that he need not live under the rule of law.

I endorse the words of Bob Barr, when he said, “The President has dared the American people to do something about it. For the sake of the Constitution, I hope they will.”

A special counsel should immediately be appointed by the Attorney General to remedy the obvious conflict of interest that prevents him from investigating what many believe are serious violations of law by the President. We have had a fresh demonstration of how an independent investigation by a special counsel with integrity can rebuild confidence in our system of justice. Patrick Fitzgerald has, by all accounts, shown neither fear nor favor in pursuing allegations that the Executive Branch has violated other laws.

Republican as well as Democratic members of Congress should support the bipartisan call of the Liberty Coalition for the appointment of a special counsel to pursue the criminal issues raised by warrantless wiretapping of Americans by the President.

Second, new whistleblower protections should immediately be established for members of the Executive Branch who report evidence of wrongdoing—especially where it involves the abuse of Executive Branch authority in the sensitive areas of national security.

Third, both Houses of Congress should hold comprehensive—and not just superficial—hearings into these serious allegations of criminal behavior on the part of the President. And, they should follow the evidence wherever it leads.

Fourth, the extensive new powers requested by the Executive Branch in its proposal to extend and enlarge the Patriot Act should, under no circumstances be granted, unless and until there are adequate and enforceable safeguards to protect the Constitution and the rights of the American people against the kinds of abuses that have so recently been revealed.

Fifth, any telecommunications company that has provided the government with access to private information concerning the communications of Americans without a proper warrant should immediately cease and desist their complicity in this apparently illegal invasion of the privacy of American citizens.

Freedom of communication is an essential prerequisite for the restoration of the health of our democracy.

It is particularly important that the freedom of the Internet be protected against either the encroachment of government or the efforts at control by large media conglomerates. The future of our democracy depends on it.

I mentioned that along with cause for concern, there is reason for hope. As I stand here today, I am filled with optimism that America is on the eve of a golden age in which the vitality of our democracy will be re-established and will flourish more vibrantly than ever. Indeed I can feel it in this hall.

As Dr. King once said, “Perhaps a new spirit is rising among us. If it is, let us trace its movements and pray that our own inner being may be sensitive to its guidance, for we are deeply in need of a new way beyond the darkness that seems so close around us.”