ISSUE BRIEF

"Information to Action"

Topic: Guarantee Clause

Title: *WHAT IS THE "GUARANTEE CLAUSE" ALL ABOUT?* by Joshua Charles

Many haven't heard of the Constitution's "Guarantee Clause," but they should. It's found in Article 4, Section 4, and reads as follows:

> The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

In short: every state is guaranteed a republican form of government—small "r," not the modern political party.

What did the Founders consider a "republican" form of government? In short, and at a minimum, an elective one, with three branches (executive, legislative, and judicial). Any form of government that approached a monarchy, or was hereditary in any way, could have been stymied by the federal government because of this clause. Recall that the Constitution itself forbids any titles of nobility for federal office holders, not only from the federal government itself, but from any foreign state. Such a title would mean certain persons could be granted privileges and rights which could then be transmitted across generations through their family line—a very common practice in Europe up to that time. This is what informed the Founders' understanding of "monarchical" government—a government whose holders of power were beyond the power of the people to remove.

Why were the Founders concerned about maintaining a particular form of government at the state level? Because they knew that if certain anti-republican political principles took over in one state, they could easily take over and spread to others.

James Madison, in *Federalist No. 43*, observed the following:

"In a confederacy founded on republican principles, and composed of republican members, the superintending government ought clearly to possess authority to defend the system against aristocratic or monarchical innovations".

James Wilson, a Founder whose support for the Constitution was key to its ratification, made clear in his 1791 *Lectures on Law* that the Guarantee Clause did not mean uniformity of laws, but rather of form:

"It is sufficient that the fundamental principles of their laws and constitutions be consistent and congenial; and that some general rights and privileges should be diffused indiscriminately among them".

Likewise, Justice Joseph Story, one of the great Constitutional scholars of the 19th century, wrote the following about this clause in his 1833 *Commentaries on the Constitution*:

"[Without such a clause] Usurpation might raise its standard, and trample upon the liberties of the people, while the national government could legally do nothing more, than behold the encroachments with indignation and regret. A successful faction might erect a tyranny on the ruins of order and law; while no succor could be constitutionally afforded by the Union to the friends and supporters of the government".

It is often believed that the intentions which informed the Guarantee Clause are—in 2022—archaic and no longer necessary; merely vestigial organs on an already outdated piece of parchment.

But perhaps we should consider the Founders' warnings about hereditary titles for *natural* persons and their incompatibility with a republican form of government and ponder how they may apply to *artificial* persons—namely, corporations and other financial interests. We may not have Kings, Queens, and Nobles anymore. But have our modern corporations taken over essentially the same role, and ensured the transmission of their influence over time through the power of money, and politicians whose votes they can secure over long periods in public office? If so, is it possible that they have begun to play the 21st century equivalent of hereditary power, untouchable by the people, and beyond the power of being removed from power?

I believe such a parallel exists, and such questions should be asked.