THE PATRIOT POST
VOICE OF ESSENTIAL LIBERTY

FRIDAY DIGEST
FRIDAY, JUNE 28, 2013

BACK TO THE FUTURE ON DISCRIMINATION

> "Equal laws protecting equal rights; the best guarantee of loyalty and love of country." -- James Madison

Still fighting discrimination like it's 1955

The past week was a busy one for the Supreme Court. On Monday, in the area of so-called affirmative action, the Court issued its opinion in Fisher v. University of Texas at Austin, a discrimination case, and, on Tuesday, it issued its opinion in Shelby County v. Holder, which, in effect, negated Section 3 of the Voting Rights Act of 1965.

These cases seem to continue the Supremes' movement away from the Civil Rights Era view of the necessity of race-based preferential treatment. Some background:

Fisher is the latest in a line of discrimination cases that started with the Regents of the University of California v. Bakke in 1978. In Bakke, the Supreme Court ruled as unconstitutional the practice of the University of California (Davis) setting aside seats for minorities to be filled by using different admissions processes in the name of classroom "diversity."

In 2003, the Supreme Court muddied the issue in Grutter v. Bollinger, a 5-4 decision upholding the affirmative action admissions policy of the University of Michigan Law School. Writing for the majority, Justice Sandra Day O'Connor held the Law School had a compelling interest in promoting class "diversity." Therefore, a race-conscious admissions process that favored "underrepresented minority groups" but also took into account other factors evaluated for every individual applicant did not amount to an unconstitutional quota system under Bakke -- at least for 25 years.

While observers hoped that Fisher would clarify some of Grutter's vagueness, it did not.

In Fisher, the plaintiff, a white woman denied admission to UT (Austin), contended that the school's practice of accepting the top 10 percent of each Texas high school's graduating class, regardless of their race, violated the Equal Protection Clause of the Fourteenth Amendment. Some 81 percent of the incoming class was admitted under this procedure. Fisher, with a grade point average of 3.59 and in the top 12 percent of her class, was not. Admission criteria for the remainder of candidates for the incoming class included their talents, leadership qualities, family circumstances and race.

The Supreme Court punted on the main issue. A 7-1 majority (Justice Elena Kagan recusing) voided the appellate court's ruling in favor of UT and remanded the case, holding that the lower court hadn't applied the Grutter and Bakke standard of "strict scrutiny" to the admissions program.

Justice Clarence Thomas, the sole dissenter, wrote that he would have overturned Grutter and thus the whole convoluted legal structure of racial preferences as a violation of the Equal Protection Clause of the Fourteenth Amendment.

There was a more definitive resolution in the Shelby case. Two provisions of the Voting Rights Act (VRA) were in play -- the preclearance requirements of Section 5 and the pre-existing coverage formula in Section 4(b). The part of the VRA that the Supreme Court declared unconstitutional by a 5-4 vote was the

coverage formula, which hasn't changed since the inception of the Act. As John Fund at National Review put it, "Section 4 of the Voting Rights Act forced states that had poor minority registration or turnout numbers in the 1960s to remain in a permanent penalty box."

Chief Justice John Roberts, writing for the majority, said, "Congress -- if it is to divide the states -- must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions. It cannot rely simply on the past."

It is the coverage formula that triggers the preclearance provisions of Section 5. "Covered jurisdictions" must convince the Justice Department or a three judge panel of the United States District Court for the District of Columbia to "preclear" attempts to change "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting."

Section 5 was left intact. Nevertheless, the Court's four Leftists dissented, with Justice Ruth Bader Ginsburg complaining that the Court is essentially saying the VRA has been so successful that it should be ended. But if there's some reason why the law is still necessary -- say the fact that blacks in Mississippi vote at a higher rate than whites, while the state with the lowest black voter turnout compared to whites is Massachusetts -- Congress could enact a law replacing Section 4 and bringing the preclearance criteria up to date.

More important, regarding the contention that the Supremes nullified the VRA, The Wall Street Journal's James Taranto points to a 2010 Yale Law Journal article that states, "Commonly called the bail-in mechanism or the pocket trigger, [S]ection 3 authorizes federal courts to place states and political subdivisions that have violated the Fourteenth or Fifteenth Amendments under preclearance..."

Taranto goes on to state, "Preclearance under Section 3 does not suffer from the constitutional infirmity that doomed Section 4. It requires a contemporary factual finding of discrimination, either a decision by a judge or an acknowledgment by the defendant jurisdiction."

This isn't the last we will hear of "affirmative action," but suffice it to say, the rulings represent a (small) step *forward* in voting rights and equality under the law, not "turning back the clock" as Leftists bemoan.

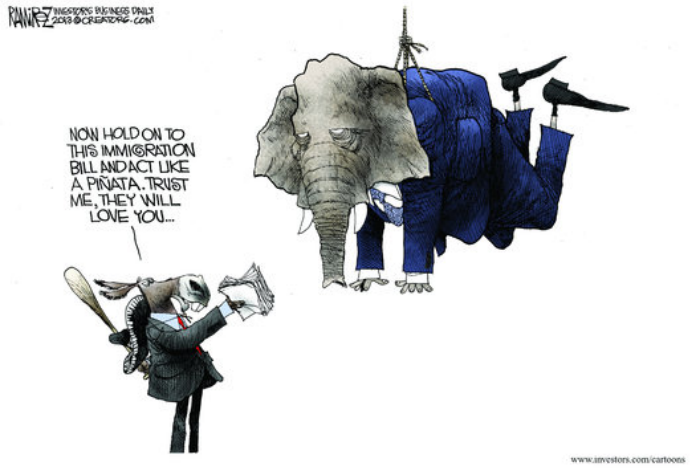
Government and Politics

Immigration Front: Security Amendment Moves Ahead

The Senate, by a vote of 68-32 on Thursday, passed the Gang of Eight immigration bill (S. 744), complete with the new border security amendment drafted by Sens. Bob Corker (R-TN) and John Hoeven (R-ND). The amendment managed to accomplish the impossible: bring together Democrats who don't want border enforcement and 14 Republicans who wouldn't support the final bill without it. In the end, of course, the amendment -- and the bill -- was really only half a loaf.

The legislation doesn't contain any trigger provisions for illegal aliens to begin the citizenship process, but it does double the number of Border Patrol agents as a show of security. It adds $46 billion in surveillance and electronic security enhancements, and it requires 700 miles of border fencing. Of course, Congress ordered 700 miles of fencing seven years ago, and that never happened, so there's little reason to trust that it will really be finished this time. Naturally, the bill is stuffed with pork, too. The House is set to take up its own reform package soon; Speaker John Boehner (R-OH) says he won't bring the Senate version up for a vote.

In other immigration news, it was discovered that in 2011 the IRS sent 23,994 tax refunds totaling $46 million to "unauthorized" alien workers using the same address in Atlanta. The agency also assigned 6,411 taxpayer ID numbers to illegals using a single address in Morganton, North Carolina, a town with a population of 16,000 according to the 2010 census. Evidently, IRS agents were too busy worrying about Tea Partiers to bother with verifying legal status.



Hope 'n' Change: IRS Scandal Broadens

New IRS chief Danny Werfel revealed this week that -- surprise -- the agency's targeting of political groups went on longer than previously stated. Investigators originally claimed that the persecution of conservative groups ended in May 2012, but in fact it continued even after the scandal broke a few weeks ago. Werfel told Congress that he has called for an immediate end to the practice although he insists that there wasn't a pattern of intentional wrongdoing. That, however, is actually *more* troubling than if the IRS received marching orders from the White House because it indicates that the agency took it upon itself to placate the party in power in Washington (by sheer chance the Democrats). If that's true, then the federal government is *fundamentally* corrupt, not just run by a few corrupt politicians.

Congress finally received lists of trigger words that IRS agents used to target non-profit applications for further scrutiny, and most of the identifiers track back to a variety of conservative causes. In an attempt to take the heat off the agency and the Obama administration, congressional Democrats contend that "progressive" groups were also targeted. The Treasury Department Inspector General made clear, however, that his investigation revealed that only six leftist groups were probed while at least 292 Tea Party groups were given "special" attention.

The American Enterprise Institute makes the case that the IRS targeting and harassment of Tea Party groups swung the 2012 election in Democrats' favor. Researchers compared voter turnout in 2010 and 2012 using data from a variety of government and media sources and surmised that the neutralization of many Tea Party groups by the IRS in the 2012 election cycle led to a suppression of conservative voter turnout. According to the report, had the Tea Party groups' effect been similar in 2012 to that of the "shellacking" they dealt Obama and Democrats in the 2010 midterm elections, "they would have brought the Republican Party as many as 5 - 8.5 million votes compared to Obama's victory margin of 5 million."

Don't Give Up -- We Sure Won't

The last six months have provided us their share of discouraging news, but we can't let that keep us down. We *must* persevere in the fight for Liberty. We at *The Patriot Post* pledge to do so and ask you to stand with us today/.

We have all enjoyed the fruits of prosperity that our forefathers purchased at great sacrifice, many with their lives. With the current unprecedented assault upon Liberty, each and every one of us is called to make our own great sacrifices. Future generations deserve no less, and we ask for your support in this great struggle.

Please take a moment to make a secure online donation to our 2013 Independence Day Campaign. If you prefer to support us by mail, please send your check with our printable donor form to the address on the form.

We have just **6 days** to raise the remaining **$200,918** for our campaign.

Thank you!
Nate Jackson
Managing Editor

From the 'Non Compos Mentis' File

"Next week, when we celebrate Independence Day we'll also be observing health independence. ... It captures the spirit of our Founders." --House Minority Leader Nancy Pelosi (D-CA), who clearly needs remedial history, once again touting ObamaCare

Second Amendment: Despicable Trickery

"[The Newtown families] thought they were coming down here [to Washington, DC,] to argue for a ban on high-capacity magazines and universal background checks, and we told them [after they were already on the plane] that they were coming to argue to avert a filibuster and allow us to debate. And that was really heartbreaking and deflating for some of them. But they rose to the occasion, and it was wonderful to see them at the end of the trip feeling like they had made a difference." --Sen. Chris Murphy (D-CT), admitting that the families who lost children in Newtown were mere political pawns in the Democrats' obsessive gambit to trample gun rights

Around the Nation: Nullification Efforts Gain Steam

Missouri became the latest state to take on the power of the federal government by crafting legislation that would make it illegal for federal agents to enforce federal gun laws within the state's borders. The Republican-drafted bill has yet to be signed by Democrat Gov. Jay Nixon, but this attempt at nullification is growing across the country. At least nine other states have enacted gun laws to protect their citizens and their firearms makers from federal overreach.

This refreshing trend goes beyond guns. A number of states passed or proposed legislation that in effect negates federal laws for a variety of reasons. Some 20 states now have medical marijuana laws that run counter to federal statutes criminalizing distribution and possession. Twenty states also enacted measures challenging the authority of ObamaCare within their borders. Federal law trumps state law, but the feds don't always win out. For instance, Barack Obama refuses to challenge medical marijuana laws in the courts, and refusal by many states to implement the 2005 Real ID Act effectively brought that program to an end. States are increasingly willing to keep the rapidly expanding federal government in check.

Security

Snowden Charged With Espionage

"I'm not going to be scrambling jets to get a 29-year-old hacker." So said Barack Obama in response to reports that NSA leaker Edward Snowden departed Hong Kong for Russia on his way to perhaps Cuba, Ecuador, Venezuela or Iceland. And yet the Obama administration is also charging the former NSA contractor with espionage for leaking to a British paper details of the NSA's sweeping phone record and email collection programs. The contradictions abound when Obama claims we're no longer fighting the War on Terror while the NSA program is considered critical to fighting it; Snowden is nothing more than a "29-year-old hacker," but intelligence sources claim terrorists are already changing behavior in response to his leaks.

In 2008, Barack Obama promised that his brand of "Hope 'n' Change" would "restore America's standing in the world." But, in fact, Obama himself has so undermined U.S. national security and world standing that Hong Kong allowed Snowden to stay there despite a mutual extradition agreement. Then he was allowed to leave due to an alleged paperwork technicality. Russia simply scoffed at the idea of granting Obama's extradition request, and we can only hope that nation isn't reaping the benefit of the information Snowden pilfered. So much for that "reset" button that Obama and then-Secretary of State Hillary Clinton touted.

Finally, two other points about Snowden. First, he admits to taking the job with NSA contractor Booz Allen Hamilton *in order to* gain access to the secrets he leaked and says he still has more information. Second, a comment he left some years ago on the tech site Ars Technica reveals his former disdain for leakers: "Those people should be shot in the balls." Apparently, he no longer feels that way.

Warfront With Jihadistan: Syrian Confusion

When Barack Obama announced plans to provide military aid to the Syrian "rebels," the primary question revolved around what type of weapons we'd be sending Bashar al-Assad's enemies. The concern all along has been that sending heavy weaponry will benefit al-Qa'ida and other terrorist groups in the short term, in essence providing dangerous arms to the jihadis we're supposed to be fighting. On the other hand, what are we accomplishing by providing light weapons to a rebel group fighting a heavily armed Assad regime? In short, Obama's "evolving" position on Syria has left the U.S. between a rock and a hard place. A fair assumption might be that the commander in chief didn't have a plan.

However, new revelations this week seem to indicate that Obama *did* have a plan -- albeit a bad one. The White House has been reluctant to provide heavy weapons such as anti-aircraft machinery, making this Los Angeles Times report that much more peculiar: "CIA operatives and U.S. special operations troops have been secretly training Syrian rebels with anti-tank and anti-aircraft weapons since late last year." So, the Times suggests, Obama knows that heavy weapons *will* arrive one way or another. It's another example of Obama's inability to lead. Allahpundit of HotAir observes: "If the White House thinks it's too risky to send anti-aircraft missiles to the Syrian rebels, then why offer to train them in how to use them? If they're reliable enough to be trained in it, why not send them anti-aircraft missiles ourselves? This reeks of Obama subordinating his military strategy to political considerations -- we won't give them big guns, because then he's responsible if someone uses one to take down a jet, but we'll show them secretly how to shoot to prove that we're on the rebels' side." So we're left with the dilemma of a half-hearted attempt to control a messy situation and a president who can't stand to get his hands dirty.

Economy

Big Downward Revision to GDP

Better to ask forgiveness than permission, as the saying goes. A similar maxim can be applied to economic numbers -- better to issue good ones and revise them downward later (when fewer people are paying attention) than to get it right the first time. Reuters reports that first quarter "[g]ross domestic product expanded at a 1.8 percent annual rate, the Commerce Department said in its final estimate on Wednesday. Output was previously reported to have risen at a 2.4 percent pace after a 0.4 percent stall speed in the fourth quarter." The main driver in the revision was consumer spending, which accounts for two-thirds of GDP and was far lower at 2.6 percent than the initially reported 3.6 percent.

After a period of modest growth, the economy stalled over the last six months. A rare bright spot is housing, but as soon as the Federal Reserve announced the coming end of its easy money policies, mortgage rates began going up, which will slow that growth. Unemployment remains high, as does government spending and debt. In other words, the Obama "recovery" looks strikingly similar to a never-ending recession, and for that we can thank the Obama "stimulus."

Regulatory Commissars: The War on Jobs

Deeming congressional approval for his grand schemes beneath his dignity, Barack Obama made combating global warming the ironic prelude to his carbon-belching weeklong trip to Africa. The most egregious portion of this philosophy wasn't uttered by the Lyin' King, however. White House adviser Daniel Schrag revealed the true intentions of this renewed climate change push: "The one thing the president

really needs to do now is begin the process of shutting down the conventional coal plants. Politically, the White House is hesitant to say they're having a war on coal. On the other hand, a war on coal is exactly what's needed."

Indeed, sweeping regulations to be written by the EPA and finalized by mid-2015 will probably do just that. Yet the EPA is the same agency that refuses to have its study on hydraulic fracturing peer-reviewed due to its faulty data.

It's also clear that Obama's inaction on the Keystone XL pipeline was simply a tactic to broaden the definition of "environmental impact" so he could plausibly kill the pipeline, despite the fact that the State Department already decided it would not have significant environmental impact. But that decision was made prior to Obama's latest change in calculating the "social cost of carbon."

Yet the coal regulations could affect real wallets by increasing natural gas prices up to 42 percent by 2030, according to research by the Heritage Foundation. Well before then, new coal restrictions could cost the livelihoods of thousands in that industry, dramatically changing states like West Virginia and Kentucky that presently have a high proportion of coal workers. The real war will be fought in those state capitals as they figure out how to make do with much less -- all thanks to the pseudo-religion of global climate change.

This Week's 'Braying Jackass' Awards

"We know that the costs of [climate change] can be measured in lost lives and lost livelihoods. ... Those that are already feeling the effects of climate change don't have time to deny it. ... We don't have time for a meeting of the Flat Earth Society. Sticking your head in the sand might make you feel safer, but it's not going to protect you from the coming storm." -- Barack Obama disparaging people who dare to think the science behind man-made global warming -- and even more so the Leftist-prescribed Big Government solutions -- warrants skepticism

"The total amount of man-made global warming pollution surrounding the planet and the atmosphere today now traps enough extra energy every 24 hours to equal the energy release by 400,000 Hiroshima atomic bombs going off every single day." --Al Gore, pulling numbers out of his own Southern Hemisphere

Passing Judgment Without the Facts

Recently, the Obama Equal Employment Opportunity Commission took two companies to court citing their "unfair" use of criminal background checks to screen workers. Targeted in the lawsuit were BMW and Dollar General. While at first glance it may make sense for BMW to use criminal background checks, the case of Dollar General is an interesting one because the rapidly expanding discount chain announced last month it would hire 10,000 new employees for stores in 40 states.

The EEOC complaint alleges that the post-hire check discriminates against blacks based on what they call a "statistically significant" difference in the number of workers dismissed after failing the check -- 7 percent of white applicants are dropped, compared to 10 percent of non-whites. Supporters of the EEOC suit say the fact that 37 percent of those currently incarcerated come from a racial group composing 13 percent of the population is no reason to check the criminal history of an applicant.

But Georgetown University research suggests that not conducting the check does more harm than good to minority applicants. Without the assurance of knowing any applicant's criminal history, study author Henry Holzer wrote, "employers use race, gaps in employment history, and other perceived correlates of criminal activity to assess the likelihood of an applicant's previous felony convictions and factor such assessments into the hiring decision." This is especially damaging in the case of Dollar General, which seeks many of its workers with entry-level skills, thus suiting many poor blacks. Not allowing employers to verify that applicants aren't criminals perpetuates the damaging stereotype that minorities are unemployable. The Democratic Party's economic enslavement of blacks over the last 50 years is beyond

tragic, and yet blacks keep coming back to the plantation.

Culture

Judicial Benchmarks: The Supreme Court on Marriage

After waiting for years for the Supreme Court to hand down a decision on same-sex marriage, two came in one day. Both involved the fate of laws that define marriage as between one man and one woman, and both illustrate the Court's disregard for the legislative process and the voters themselves.

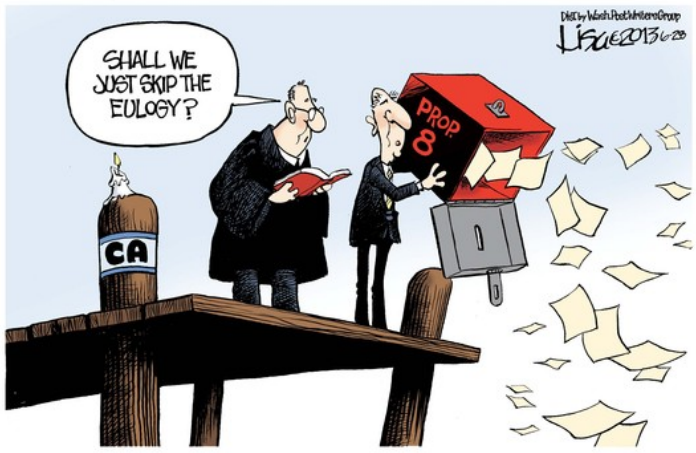
The Court struck down Section 2 of the Defense of Marriage Act, the federal law that defines marriage as between one man and one woman. The 5-4 majority, led by Justice Anthony Kennedy, found that the law relegated same-sex couples to "second tier" status, "demeans" them and violates their rights. DOMA, passed in 1996 by an overwhelming bipartisan majority of Congress and signed into law by Bill Clinton, had already been thrown under the bus by Barack Obama, who instructed Attorney General Eric Holder not to defend the law in court, leaving the job to Congress. Striking down the law now means that marriage is no longer defined for federal purposes, but it does *not* mean the Court suddenly discovered a constitutional right to same-sex marriage, or that states with laws against same-sex marriage must change.

In another 5-4 decision, SCOTUS struck down California's Prop 8, that state's marriage definition law, based on procedural, rather than substantive, grounds. The majority, led this time by Chief Justice John Roberts, decided that the group pushing for Prop 8 did not have the standing to sue. This case, however, shouldn't have even reached the Court. Although approved by voters, the measure remained vulnerable to attack due to Democrat Gov. Jerry Brown's refusal to defend it. Using the Obama method, Brown used the path of least resistance to achieve the Leftist agenda.

These decisions mean essentially one thing: If conservatives want to strengthen marriage, they shouldn't rely on legislatures and courts, but rather they must do it locally, in their own homes and communities. While some might feel that the institution was dealt a colossal blow this week, it's really just one more step in the cultural degradation of the past 50 years. One only has to look at the divorce rate to see evidence of that.

Beyond that, how is it that such a minuscule but vocal constituency has been able to successfully challenge the timeless order of marriage and family, the third pillar of Liberty?

Though only 3.4 percent of Americans self-identify as "gay, lesbian, bisexual or transgendered," the pernicious advancement of the homosexual agenda is very well funded, coordinated and executed. Consequently, almost half of adult Americans believe that 20-25 percent of Americans are LGBT, according to the Centers for Disease Control. According to the Gallup Organization, women, youth and those with lower incomes and education, believe the numbers are much higher than they actually are. Part of the misconception might be the inordinately high percentage of LGBT members who enjoy highly favorable profiles in the entertainment industry, the media, and among legislators in Washington, DC.



Quote of the Week

"[T]o defend traditional marriage is not to condemn, demean, or humiliate those who would prefer other arrangements, any more than to defend the Constitution of the United States is to condemn,

demean, or humiliate other constitutions. To hurl such accusations so casually demeans this institution. In the majority's judgment, any resistance to its holding is beyond the pale of reasoned disagreement. To question its high-handed invalidation of a presumptively valid statute is to act (the majority is sure) with the purpose to 'disparage,' 'injure,' 'degrade,' 'demean,' and 'humiliate' our fellow human beings, our fellow citizens, who are homosexual. All that, simply for supporting an Act that did no more than codify an aspect of marriage that had been unquestioned in our society for most of its existence -- indeed, had been unquestioned in virtually all societies for virtually all of human history." --Justice Antonin Scalia in his dissent

Village Academic Curriculum: Forced Acceptance

Young children generally shouldn't cross the street unsupervised. Yet this week a Colorado Court ruled that a first-grade boy has sufficient wherewithal to use the girls' restroom at his elementary school. The "transgender" student, who has a male anatomy but at six whopping years of age "identifies" as female, had previously been instructed to use the boys' bathroom, the gender-neutral bathroom, or the nurse's bathroom. The school predicted that as he grows, "at least some parents and students are likely to become uncomfortable with his continued use of the girls' restroom." The Colorado Civil Rights Division discounted this legitimate concern, however, stating the ban "creates an environment that is objectively and subjectively hostile, intimidating or offensive." Unfortunately, letting this first-grade narcissist-in-training and his enabling parents run the show will create an equally offensive atmosphere for the young girls now forced to share a bathroom with a boy.

Meanwhile, the American Academy of Pediatrics (AAP) announced its latest campaign: fight heterosexism and homophobia. In its new policy statement, AAP notes, "Sexual-minority youth should not be considered abnormal." While pediatricians across the board agree (as do we) that patients should be treated respectfully and compassionately regardless of sexual orientation, many disagree with normalizing same-sex attractions. The reality is that homosexual behavior carries inherent health risks, and if doctors are going to get in trouble for advising patients about their health, then it's gone too far, indeed.

And Last...

Just in time for Independence Day, New York City Mayor Michael Bloomberg has a plan for stopping any potential terrorist attacks: He's going to take away sparklers from children. According to Joseph Garba, Bloomberg's state legislative director, "A recent attempt to harm innocent lives provides a frightening example of how legally purchased ... fireworks can cause dramatic harm and even kill." He was referring to Faisal Shahzad, the jihadi who failed in 2010 to bomb Times Square. Sparklers do not contain gunpowder. But New Yorkers can at least rest assured that no Islamofascist drinking a Big Gulp and waving sparklers will in any way cause problems. Big Mike has your back.

Semper Vigilo, Fortis, Paratus et Fidelis!
Nate Jackson for *The Patriot Post* Editorial Team