

University of Minnesota Law School Scholarship Repository

Constitutional Commentary

1994

Were the Framers of the Constitution P_c?

James E. Pfander

Follow this and additional works at: <https://scholarship.law.umn.edu/concomm>



Part of the [Law Commons](#)

Recommended Citation

Pfander, James E., "Were the Framers of the Constitution P_c?" (1994). *Constitutional Commentary*. 448.
<https://scholarship.law.umn.edu/concomm/448>

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Constitutional Commentary collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.

WERE THE FRAMERS OF THE CONSTITUTION PC?

PC has enjoyed an interesting career in the past few years. By popular accounts, pc (political correctness) began perhaps ten years ago as a way one member of the left might criticize a comrade whose views on a certain subject lapsed from the true faith. The admonition—that’s not pc—might greet any number of sins: wearing furs, eating meat, failing to recycle, telling off-color jokes, driving a foreign car, using paper diapers, or (perish the thought) chewing tobacco.

In the past few years, pc has undergone something of a transformation. Now we think of the term as a shorthand description for a pernicious form of liberal groupthink that threatens to undermine academic and First Amendment freedoms. Critics now deride virtually everything with which they disagree as evidence of the insidious influence of pc. Oddly, popular culture treats pc as a problem uniquely afflicting the left. No one would think of describing the NRA’s opposition to banning cop-killer bullets or assault weapons as Second Amendment pc. Some writers have recognized this disparity—including Professor Stephen Carter, whose book *Reflections of an Affirmative Action Baby* acknowledges the existence of pc on both sides of divisive issues of policy.

Left out of the debate, insofar as I’ve seen, has been any consideration of the origins of the term. Without claiming to have performed exhaustive research, I have located one citation that not only casts doubts on the assumption that pc emerged in the last decade but also suggests an affirmative answer to the question posed in the title of this piece. Apparently, the Framers of the Constitution were very much pc. The citation appears in the 1793 opinion of James Wilson in *Chisholm v. Georgia*.¹

Wilson’s opinion concludes, along with those of three other Justices and over Justice Iredell’s lone dissent, that the Constitution authorizes the federal courts to assert jurisdiction over an individual’s suit against a state. The Court thus rejected the claim that Georgia’s status as a sovereign state barred the federal

1. 2 U.S. (2 Dall.) 419 (1793).

courts from adjudicating the claim. Much of Wilson's lengthy opinion focused on the nature of state sovereignty and the extent of any sovereign immunity from suit. Later, Wilson sought to show that, at least in America, ultimate sovereignty resided in the people themselves. Thus, when the people established a constitutional government with explicit limits on the powers of the states, they trumped state sovereign immunity to the extent necessary to give effect to the constitutional plan.

Wilson's reference to pc appears in the course of this discussion of sovereignty in America. In attempting to debunk the notion of retained state immunity, Wilson noted the mistakes that creep into everyday language. "Is a toast asked? 'The *United States*,' instead of the 'People of the *United States*,' is the toast given. This is not *politically correct*."² While Wilson's opinion elsewhere reads like something from the 18th century, his perfectly idiomatic usage of the term pc comes through quite clearly. Because ultimate sovereignty resides in them, Wilson tells us, we should toast the people, not the states, united or otherwise. A toast offered to the United States is not pc.³

Here we have all the elements of current usage and, in particular, the invocation of pc in an effort to shape public opinion on a divisive issue of the day. I leave it to others to decide whether the citation damns Wilson, the Federalists, the Constitution, or the popular mythology of pc. It was, of course, opposition by the states to *Chisholm* that led to the ratification of the Eleventh Amendment.⁴ I am unaware, however, of any claim that the amendment was necessary to root out the pernicious influence of pc.

*James E. Pfander**

2. *Id.* at 462 (emphasis in original).

3. My colleague, Wayne LaFave, informed me after taking a look at a draft of this note that the term does not reappear in a Supreme Court opinion until the 1980s.

4. See John E. Nowak, *The Scope of Congressional Power to Create Causes of Action Against State Governments and the History of the Eleventh and Fourteenth Amendments*, 75 Colum. L. Rev. 1413, 1433-41 (1975).

* Professor of Law, University of Illinois at Urbana-Champaign.