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## Book Review (reviewing Louis Fisher's Congress: Protecting Individual Rights)

Adeen Postar

*University of Baltimore School of Law*, [apostar@ubalt.edu](mailto:apostar@ubalt.edu)

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**Fisher, Louis. *Congress: Protecting Individual Rights. Law-  
rence; University Press of Kansas, 2016. 190 pp. Hardcover.  
ISBN-13: 978-0700622115 \$29.95 Also available as an E-book.***

Fisher is currently the Scholar in Residence at the Constitution Project, and is well known for his many years as Senior Specialist on Separation of Powers at the Congressional Research Service and as Specialist in Constitutional Law at the Law Library of Congress. He has extensive experience testifying before Congress on topics that include Congress and the constitution, war powers, executive power and privilege, and several aspects of the federal budget and its processes. He has written numerous books on these topics, including (to name only a few) *The President and Congress: Power and Policy* (1972); *Defending Congress and the Constitution* (2011); *Constitutional Conflicts between Congress and the President* (6<sup>th</sup> ed., 2014) and *Political Dynamics of Constitutional Law* (5<sup>th</sup> ed., 2011). He is without a doubt a renowned scholar on constitutional law.

In *Congress: Protecting Individual Rights* Dr. Fisher has written a history analyzing how the Congress, the Supreme Court and the President have acted, or failed to act, to protect the rights of individuals. This relatively brief book is divided into chapters that highlight the various areas where the protection of individual rights have been at issue throughout U.S. history. Chapters include the Rights of Blacks (Chapter 3), The Rights of Women (Chapter 4), The Rights of Children (Chapter 5), Protecting Religious Liberty (Chapter 6) and The Rights of Native Americans (Chapter 6). Each chapter traces the history of some of the most significant issues in our nation's past, using brief explanations of significant Supreme Court cases and instances where the exercise of Presidential power failed to protect individuals and highlighting when Congress exercised or attempted to exercise its political will to protect those rights.

Dr. Fisher argues that Congress has a long but unrecognized history of protecting these rights, especially in response to holdings in Supreme Court decisions. He highlights legislation such as the Lilly Ledbetter Fair Pay Act<sup>1</sup>, when Congress passed legislation overturning a 5-4 Supreme Court decision<sup>2</sup> that found that Ledbetter had not filed her claim within the allowed statutory period. Congress reset the statute of limitations for filing an equal pay suit to

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<sup>1</sup> Lilly Ledbetter Fair Pay Act, Pub. L. No. 111-2, 123 Stat. 5 (2009) (codified at 42 U.S.C. § 2000e-5(e)(3) (2012)).

<sup>2</sup> Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618 (2007).

each paycheck, directly in contravention of the Supreme Court decision, which had held that the statute began tolling at the first instance of a discriminatory wage decision, not on its discovery. He also describes Congress's long battle to regulate child labor that culminated in the 1938 passage of the Fair Labor Standards Act. In another example of Congressional power to protect individual rights, Fisher details Congress's efforts to protect religious liberty by passing legislation that allowed members of the armed forces to wear clothing that satisfied the tenets of their religious belief(s)<sup>3</sup> in response to the Supreme Court's holding in *Goldman v. Weinberger*, 474 U.S. 503 (1986) that denied a Jewish Air Force officer the right to wear a yarmulke when in uniform in a holding saying that members of the military do not enjoy the same religious rights protections as civilians do.<sup>4</sup>

In the area of the exercise of executive power by the President, Fisher decries how many political science and legal scholars argue that only executive power can respond to a crisis quickly and correctly. Particularly in the areas of national security and the exercise of war powers, Fisher provides a long list of examples of how different Presidents acted with little regard to the rights of individuals and sometimes with a total disregard for the facts.<sup>5</sup> Congress, Fisher infers, must be consulted in these areas and has the ability to make reasoned, timely and politically savvy contributions to national security actions and policies.

Dr. Fisher provides several suggestions for remedying Congress's recent inability to act to protect individual rights. First, he suggests that the case method of teaching in both law school and political science degree programs is inadequate to the task and does not allow for explaining congressional authority in this area. He also argues that Congress is not working enough hours in session and that they should convert to a 3 week work session with one week in their home districts to give them enough time to consider complicated and significant legislation. He also notes that the CRS, Congress's own non-partisan research agency has been mismanaged through the hiring and use of non-expert specialists who are not able to brief Congress to the fullest extent possible. He argues this inadequate staffing makes Congress "unable to serve the Nation".<sup>6</sup> Fisher makes a similar argument that Congress contributes to its own dysfunction when it reduces its operating budget. This

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<sup>3</sup>National Defense Authorization Act (NDAA), codified at 10 U.S.C. § 774 (2016).

<sup>4</sup> Congress: Protecting Individual Rights at 135.

<sup>5</sup> Id at 5.

<sup>6</sup> Id. at 165.

reduces the size of committee staff, resulting in an over-reliance on outside organizations who seek to influence legislation to their own ends.<sup>7</sup> He also argues that the gerrymandering of Congressional districts has impaired Congressional powers by insulating and protecting incumbents, making representatives less responsive to the needs and interests of minorities.<sup>8</sup> In the area of campaign finance, where the Supreme Court's opinion in *Citizens United*<sup>9</sup> put a halt to Congressional limits on spending, Fisher argues that the Court made its decision without "deference to ...elected branch judgments and analysis."<sup>10</sup>

This book is written for those who are familiar with Supreme Court decisions, Presidential actions and those who have a deep grasp of the history and legislative processes of Congress. In particular, the description of Supreme Court cases, while well written and very interesting reading, are quite brief. Those readers who do not have a legal background focusing on the intricacy of Supreme Court history will have difficulty understanding the significance and meaning of the holdings of the cases. But this book is intended to persuade us that a strong and informed Congress has acted and can continue to act as the guardian of individual rights, when it has the political will to do so.

Adeen Postar  
Director, Law Library  
University of Baltimore School of Law  
Baltimore, MD

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<sup>7</sup> *Id.* at 166.

<sup>8</sup> *Id.* at 167.

<sup>9</sup> *Citizens United v. Federal Election Comm'n*, 558 U.S. 310 (2010).

<sup>10</sup> *Fisher* at 173.