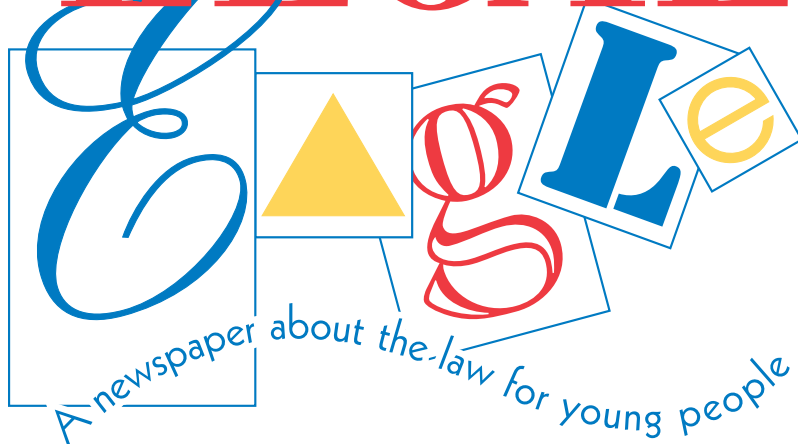


# THE LEGAL



WINTER 2017

## Civics Education— Ignorance Is Not Bliss

by Cheryl Baisden

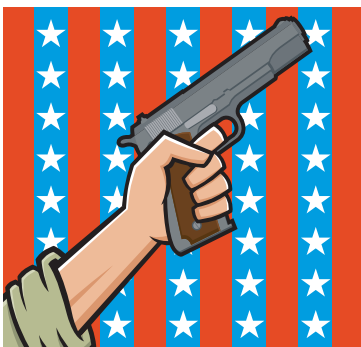
The 2016 presidential election will likely go down in history as one of the nation's most contentious political races. Not since 1828, when John Adams supporters called Andrew Jackson's wife fat, has there been so much mud slinging—on both sides. Once the polls closed and the votes were tallied, however, Donald Trump and his opponent, Hillary Clinton, appeared, at least in public, to set aside their differences and accept the will of the voters. While Clinton won the popular vote with

**CONTINUED ON PAGE 6**



## Reasonable Gun Control and the Right to Bear Arms

by Jodi L. Miller



There are few issues more dividing in America than guns. The heated debate pits gun advocates, who fear the weakening of their Second Amendment right to bear arms, against gun control advocates, who seek common sense gun control measures to address gun violence, which accounts for nearly 33,000 deaths each year.

According to the Congressional Research Service, as of 2009,

**CONTINUED ON PAGE 4**

## Clean Water Crisis—What's on Tap

by Phyllis Raybin Emert

Most of us take for granted that the tap water flowing from our faucet is okay to drink. That's not the case everywhere in America.



According to the Environmental Protection Agency (EPA), more than 40 states (including New Jersey) have reported drinking water with higher than acceptable levels of lead. "There is no safe level of lead in a child's blood," the EPA has stated. In some cities like Flint, Michigan, the crisis increased to a level in which it was no longer safe to drink tap water.

### Lead is everywhere

Lead is a naturally occurring metal found everywhere on earth and is often used in products such as house paint, pottery, pipes, gasoline and batteries. An everyday source of lead poisoning can be drinking contaminated water.

The Clean Water Act (CWA), first enacted in 1948 then expanded in 1972, created standards for regulating pollution in U.S. waters. In 1974, the Safe Drinking Water Act (SDWA) was passed by Congress to regulate and protect the drinking water supply. The law, revised in 1986 and 1996, sets national health standards of contaminants that occur in nature or are man-made.

### What happened in Flint?

In 2012-2013, city officials in Flint, where more than 40 percent of the

**CONTINUED ON PAGE 4**



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Jodi L. Miller  
EDITOR

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# Apple vs. FBI— Personal Security vs. Public Safety

by Robin Foster

As struggles to balance privacy and public safety in a digital world become more complicated, a case dealing with encryption emerged in early 2016 that pitted software giant Apple Inc. against the Federal Bureau of Investigation.

The case involved the San Bernadino terrorist attack, where a husband and wife killed 14 people and injured 22 before being killed themselves by law enforcement. In the following months, the FBI worked with Apple to gather data from the husband's iPhone. Apple cooperated initially, handing over data from the iPhone that was backed up on the iCloud. The case ran into trouble when the FBI couldn't gain access to the phone because of beefed up Apple encryption put in place in 2014. It seemed the phone locked after the tenth wrong passcode was entered.

The FBI then asked Apple to create new software that could break the security feature on the device, allowing for unlimited attempts at entering the passcode (there are only 10,000 possibilities with a four-digit code) to gain access to the phone and whatever data it may hold. Apple refused, stating: "The U.S. government has asked us for something we simply do not have, and something we consider too dangerous to create."

In February 2016, the Department of Justice filed suit against Apple, citing the All Writs Act to compel them to create this "backdoor" software. The All Writs Act, which dates back to 1789, authorizes federal courts to issue "all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." That is, federal courts can compel people or businesses not involved with a case to assist the government in its investigation. According to national numbers from the American Civil Liberties Union, since 2008 law

enforcement has invoked the All Writs Act in at least 76 cases.

You may find it strange that a nearly 230-year-old law is being cited in a technology case, but in a website forum, Benjamin Wittes, a Brookings Institution scholar and editor of the Lawfare blog, which is devoted to national security issues, disagreed.

"The fact that the law is old is not important. The Constitution is older and we seem to still apply that," Wittes said. "The question is whether the [All Writs Act] applies to a certain situation or not, not whether it's old."

#### One phone, one time

Apple CEO Tim Cook responded to the government's demands by issuing "A Message to Our Customers" outlining why the tech company opposed the government's order. In the statement, Cook said, "The government suggests this tool could only be used once, on one phone. But that's simply not true. Once created, the technique could be used over and over again, on any number of devices. In the physical world, it would be the equivalent of a master key, capable of opening hundreds of millions of locks—from restaurants and banks to stores and homes. No reasonable person would find that acceptable."

Apple argued its customers expect tech companies to do all they can to protect user privacy and personal information. "We fear this demand would undermine the very freedoms and liberty our government is meant to protect."

For its part, the FBI simply wanted access to data stored on the phone to determine whether the killers acted alone and what, if any, ties to terrorist organizations they may have had. The FBI stated it would use this backdoor tool only in this one particular case, on

this one particular device. But, some did not buy that assertion.

“Creating this hacking tool doesn’t just weaken the security of one iPhone,” Oregon Senator Ron Wyden wrote in an opinion piece, “it threatens millions of phones, including yours...If the FBI can force Apple to build a key, you can be sure authoritarian regimes like China and Russia will turn around and force Apple to hand it over to them. They will use that key to oppress their own people and steal U.S. trade secrets.”

### Slippery slope

In an interview with *Time* magazine, Cook made Apple’s case for protecting personal freedoms and liberty: “When I think of civil liberties, I think of the founding principles of this country. The freedoms that are in the First Amendment, but also the fundamental right to privacy. If this All Writs Act can be used to force us to do something that would make millions of people vulnerable, then you can begin to ask yourself, if that can happen, what else can happen? In the next Senate you might say, ‘Well maybe it should be a surveillance OS. Maybe law enforcement would like the ability to turn on the camera on your MAC.’”

That brings us to the slippery slope argument. With this “backdoor” software, the government would potentially have the ability to capture data from any iPhone and could potentially break into anyone’s device to access private data.

Jeffrey Neu, an attorney who specializes in technology issues, says this argument boils down to an issue of precedent: “If the tool is/ was used in this instance, it makes the justification for use of the tool in other cases much easier, because: (1) they have proven the tool exists and that it does the job and (2) it

can be provided by Apple to the FBI with relative ease.” In fact, Neu explains, “the slippery-slope argument is already at play, as the FBI has provided its assistance to other prosecutors around the country in ‘cracking’ iPhones after it was able to crack the iPhone on its own without Apple’s assistance.”

### Public safety

At a congressional hearing on the case last spring, FBI Director James Comey admitted during testimony that the ruling in this case would have implications beyond this one particular iPhone. Comey said the court’s decision “will guide how judges look at similar requests.” The FBI Director explained, “Law enforcement... really does save people’s lives, rescue kids, rescue neighborhoods from terrorists. And we do that a whole lot through court orders that are search warrants. And we do it a whole lot through search warrants of mobile devices.” Comey accused Apple of creating “warrant-proof spaces in American life,” by creating encryption software that cannot be broken.

In an opinion piece published by the Brookings Institution, Niam Yaraghi, a fellow in Brookings’ Center for Technology Innovation, compared encryption to a locked door. “Although we have the right to lock our front doors and keep our home private, under certain laws and conditions, other authorized entities can break this lock and intrude on our privacy,” Yaraghi wrote. “As long as the officials have a justification, they should be able to break any physical or digital lock. Encryption methods that do not allow government to access digital content are a potential

security threat in the same way that unbreakable locks would be.”

### The outcome

Reactions to the fight between Apple and the FBI were mixed with some obvious companies, including Facebook, Google and Twitter coming out in support of Apple’s refusal to help the FBI hack into the iPhone. Ironically, Microsoft founder Bill Gates came out on the side of the FBI, while former National Security Agency Director Michael Hayden sided with Apple.

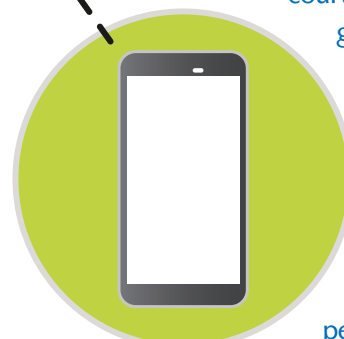
“It is no different than [the question of] should anybody ever have been able to tell the phone company to get information, should anybody be able to get at bank records,” Gates said in press reports.

“[The FBI] would like a back door available to American law enforcement in all devices globally. And, frankly, I think on balance that actually harms American safety and security,” Hayden said.

No clear winner emerged from this case, which the DOJ dropped after an anonymous third-party came forward and offered to break the security feature on the iPhone in question. The anonymous party was successful, allowing the FBI to access the data. Neither the DOJ nor the FBI have said how, exactly, the iPhone was unlocked. They also haven’t said whether they will use this tool in other cases, putting off the larger issues of constitutionality and legal authority for another day.

A national commission has been proposed to look into the issue of accessing encrypted data while at the same time protecting user privacy, but Neu sees a hotly contested debate going forward.

“The software/digital world is a global environment that I think any government will struggle to control and will be continuously subject to the cat and mouse game,” he said.



## Reasonable Gun Control CONTINUED FROM PAGE 1

there were 310 million firearms in the United States—114 million handguns, 86 million shotguns and 110 million rifles. Gun Violence Archive (GVA), an independent and not-for-profit corporation that provides public access to accurate information related to gun violence, claims there is a mass shooting somewhere in the U.S. five out of every six days. GVA defines a mass shooting as four or more people shot in one incident (not including the shooter). Most of these shootings don't make the national news.

### Suing for gun control

One mass shooting that did capture the headlines is the 2012 shooting at Sandy Hook Elementary School in Newtown, Conn. In that incident, Adam Lanza used his mother's Bushmaster AR-15 and in five minutes fired 154 bullets, killing 26 people—six educators and 20 first-graders.

According to an article in *The Week*, the AR-15 was originally developed for the military in the 1950s—AR stands for “ArmaLite rifle.” ArmaLite is the company that developed the gun. Today, more than 280 manufacturers produce versions of the semi-automatic weapon.

In January 2015, nine victims' families and one survivor of the Newtown shooting sued the gun's manufacturer, Remington Outdoor Co., claiming it had liability for marketing a gun to the public that was made for military use. The lawsuit also named Camfour Holding LLP, the gun's distributor and Riverview Gun Sales Inc., the gun shop where Lanza's mother purchased the gun.

A superior court judge dismissed the case in October 2016. Judge Barbara Bellis sided with Remington, writing that the lawsuit “falls squarely within the broad immunity” provided under the Protection of Lawful Commerce in Arms Act (PLCAA). A federal law passed in 2005, PLCAA

blocked liability suits against gun makers and sellers, meaning that they cannot be held liable if someone uses their weapons in a criminal act.

In her 54-page opinion, Judge Bellis wrote, “Although PLCAA provides a narrow exception under which **plaintiffs** may maintain an action for negligent entrustment of a firearm, the allegations in the present case do not fit within the common-law **tort** of negligent entrustment under well-established Connecticut law, nor do they come within PLCAA's definition of negligent entrustment.”

Linda E. Fisher, a professor at Seton Hall School of Law who has defended local gun control ordinances, explains that negligent entrustment means “leaving something dangerous, such as a gun, with someone else who you know is likely to use it unreasonably or dangerously.”

The plaintiffs in the case argue that the AR-15 should never have been sold in the civilian marketplace and **appealed** the superior court decision in Appellate Court, requesting that the Connecticut Supreme Court hear the case. In December 2016, the Supreme Court in Connecticut agreed to hear the appeal.

### Legislative attempts

After the tragedy in Newtown, a number of gun control measures were proposed in the U.S. Congress. Despite public opinion, which favors some form of gun control, no measures were passed. According to a Gallup poll, 55 percent of Americans think gun laws should be stricter. In addition, an Associated Press/GfK poll revealed that 55 percent of Americans believe restrictions on gun ownership is not an infringement on the right to bear arms and 57 percent favor a nationwide ban on assault weapons, while 73 percent favor universal background checks.



**CONTINUED ON PAGE 5**

## Clean Water Crisis CONTINUED FROM PAGE 1

population lives in poverty, decided it could save more than \$200 million over 25 years if they switched their water supply from the Detroit Water and Sewerage Department to the Karegnondi Water Authority. The service from Detroit ended in April 2014 but until Flint's pipeline to Karegnondi became operational, city

officials decided to temporarily switch to the Flint River as its main source of water, which it had used in the 1960s. The city assured the residents that the river water was tested and met drinking water standards.

Almost immediately, residents complained about “smelly discolored” water. When Michigan's Department of Environmental Quality (MDEQ)

detected bacteria in the water, the city increased chlorine levels in the water; however, government officials still maintained that the water was safe to drink. By early 2015, independent test labs were reporting that the water was “leaching lead off water pipes before flowing into households across the city of 100,000...[and] a local pediatrician

**CONTINUED ON PAGE 7**



In June 2016, after the horrible massacre at a nightclub in Orlando where 40 people were killed, Congress was at it again. Four gun control measures were proposed—two by Republicans and two by Democrats. Again, nothing was passed.

On a state level, gun control measures were voted on via ballot initiatives in four states (California, Maine, Nevada and Washington) this past November. California voted yes on Proposition 63, which mandates background checks for ammunition purchases, bans large-capacity magazines and requires law enforcement to confiscate weapons of newly convicted felons. In Washington, voters approved a measure giving judges the power to seize weapons from people deemed a threat to public safety or their family. In Nevada, voters narrowly (by 50.45 percent) approved expanding background checks for private gun sales. An initiative similar to the one in Nevada was defeated in Maine.

“The Supreme Court has said that ‘reasonable gun control measures’ can be upheld consistently with the right to bear arms,” says Professor Fisher.

Reasonable measures, she contends, could include mandatory background checks for all gun purchases and restrictions on sales over the Internet and at gun shows, which avoid these measures. “In addition, prohibiting sales to those with violent histories seems reasonable,” Professor Fisher says, “but the National Rifle Association continues to dominate the politics of these issues.”

### **Concealed or out in the open**

According to the Law Center to Prevent Gun Violence, every state and the District of Columbia allow for the carrying of a concealed weapon in some form. New Jersey (and eight other states) is what is termed a “may issue” state, which means that the granting authority (in New Jersey that is local officials or the State Police) has wide authority to deny a concealed carry permit. Other states have what are known as “shall issue” laws, which come with varying degrees of discretion in issuing permits—some have limited discretion and some have none. The Law Center points out that nearly every state has some restriction on where concealed firearms may be carried. Generally, concealed weapons are not allowed in bars, schools, hospitals and sporting events, although some states are attempting to weaken those laws. For instance, Texas recently passed a law allowing handguns on state college campuses, and other states would like to see guns allowed in bars and churches.

There is also what is known as “open carry,” which refers to the practice of “openly carrying a firearm in public.” Only three states (California, Florida and Illinois) prohibit open carrying any type of firearm, according to the

Law Center to Prevent Gun Violence. Thirteen other states, including New Jersey, require permits to open carry.

To promote open carry laws, the National Rifle Association, the largest and most powerful gun lobby, has promoted slogans such as, “An armed society is a polite society” and has encouraged the notion that “the only thing that stops a bad guy with a gun is a good guy with a gun.” But what happens when you can’t tell who the “good guys” are?

For instance, Texas passed an open carry law in early 2016. When gunfire rang out at a protest in Dallas this past summer and five police officers were killed, law enforcement couldn’t tell who was a threat because of so many people who showed up openly carrying rifles.

In describing the scene to CNN, Dallas Police Chief David O. Brown said, “Someone is shooting at you from a perched position, and people are running with AR-15s and camo gear and gas masks and bulletproof vests, they are suspects, until we eliminate that.”

After the shooting, Dallas Mayor Mike Rawlings told *The New York Times* he would support some type of restriction on open carry. “There should be some way to say I shouldn’t be bringing my shotgun to a Mavericks game or to a protest because something crazy could happen,” Rawlings said. “I just want to come back to common sense.”

Professor Fisher finds the concept of open carry scary. “How many of us want to live in a world where bar patrons can openly carry guns around when they’re drinking, or at colleges and universities, for instance? Even concealed carry in venues like these scares me.”

### **Everyday gun violence**

The truth is most gun violence does not come in the form of mass shootings. Those incidents just garner the most outrage and grab the headlines until the next incident. According to the Brady Campaign to Prevent Gun Violence, on average, more than 111,000 people per year in the United States are shot in everyday incidents of gun violence, including murders, assaults, suicides and suicide attempts, unintentional shootings, etc.

In a column for *The Nation*, Gary Younge, a British journalist and broadcaster, wrote, “The fact remains that the more likely you are to have a gun in the house, the more likely you are to be shot dead. Every other developed country has the same problems as the United States, to a greater or lesser degree: segregation, inequality, racism, and citizens with mental health problems. The one thing they don’t have is a huge arsenal of guns to throw on that tinder.”

two million more votes (and counting), Trump won the Electoral College and the presidency.

From protests in the streets, scattered violence and threats throughout the country, and barbs traded across social media, it seems the public is not as willing to forgive and forget the political rhetoric that incited them.

In a November 14 press conference, President Barack Obama appealed to Trump, as president-elect, “to send some signals of unity” to various groups, including minorities and women, “that were concerned about the tenor of the campaign.” He urged that Trump, once in office, respect the “norms that are vital to a functioning democracy,” including “civility and tolerance and a commitment to reason and facts and analysis.”

President Obama was encouraging President-Elect Trump to fulfill his civic duty. It’s essential for leaders in a democracy to “understand how political institutions work, and what the role is of each of the three branches of the national government,” explains James Grossman, executive director of the American Historical Association in Washington, D.C. Additionally, “civics implies civility, an acceptance of the legitimate participation of all citizens on an equal basis.”

One way to ensure an understanding of civics is through the school system, which is what Horace Mann, the 19th century politician and educational reformer, considered the “Father of the Common School Movement,” had in mind when he proposed universal public education. The authors of the *Stanford Encyclopedia of Philosophy* write that Mann’s goal was “to ensure that all children could flourish in America’s democratic system....To create good citizens and good persons required little beyond teaching the basic mechanics of government and imbuing students with loyalty to America and her democratic ideals.”

According to a 2009 study from the Campaign for the Civic Mission of Schools, “students who experience high quality civic learning are more tolerant of others, more willing to listen to differing points of view and take greater responsibility for their actions and to improve their communities.”

### Lack of knowledge

To be able to make educated decisions and hold intelligent discussions about political and social issues, it’s essential to understand how the government operates and have a sense of historical events, according to Grossman. Even before the latest presidential race began there was evidence that Americans’ fundamental grasp of civics was lacking. A 2016

survey, conducted by the Annenberg Public Policy Center of the University of Pennsylvania, determined that only 26 percent of American adults could correctly name the three branches of the government, and only 31 percent could name even one branch.

The survey also showed limited understanding of other basic tenets of the U.S. democratic process. For instance, the survey indicated that almost a third of American citizens think a U.S. Supreme Court decision can be **appealed** (it can’t) and one in four Americans believe that a 5 to 4 decision in the U.S. Supreme Court is sent to Congress to be resolved (it isn’t). In addition, a 2015

American Council of Trustees and Alumni poll revealed that 10 percent of college graduates believed that Judge Judy, also known as Judge Judy, served on the U.S. Supreme Court.

“Those unfamiliar with our three branches of government can’t understand the importance of checks and balances and an independent judiciary,”

Annenberg’s Director Kathleen

Hall Jamieson told *The Morning Call*. “Lack of basic civics knowledge is worrisome and an argument for an increased focus on civics education in the schools.”

### Change in focus

At one time, civics was an identifiable part of most school curriculum, but that began to change in 2001, with the passage of the No Child Left Behind Act, which focused more attention on math, reading and the sciences and less on subjects like history and civics.

The tide began to turn again in 2015, when, as part of a national movement, Arizona became the first of 14 states so far to pass legislation requiring students pass a civics test in order to graduate from high school. The Arizona law requires students correctly answer 60 questions out of 100 from the U.S. Immigration and Naturalization test that applicants for citizenship must pass. The first class required to pass the test under the law is the class of 2017.

Arizona’s law is the most demanding to date, with the remaining 13 civics test states only requiring students pass a test of 10 questions randomly selected from the 100 federal questions. Although the testing in these states is minimal, supporters view the laws as a step in the right direction based on a clear need. Oregon’s law, for example, was introduced after a state lawmaker saw average citizens being interviewed on TV about basic civics facts. When a woman around 30 years of age named George Washington as the president in office during World War I, he decided to draft civics testing legislation for his state.



EXECUTIVE



JUDICIAL



LEGISLATIVE

In an opinion piece for *U.S. News*, Robert Pondiscio, a fellow at the Thomas B. Fordham Institute, a conservative education think tank, wrote, “No one should believe that if every child in the land could name the authors of the Federalist Papers or a single accomplishment of Susan B. Anthony or Martin Luther King Jr. that we will have solved the civic education crisis in America. We won’t. But insisting our children pick up at least a minimal level of shared knowledge of civics and history is a good place to start. And not too much to ask.”

Opponents of the idea generally argue it subjects students to more examinations in a curriculum already laden with testing requirements, and that the testing requirement simply encourages students to memorize material rather than absorb it for later use.

In commentary for *Education Week*, Joseph Kahne, a professor at Mills College in Oakland, CA, wrote, “We need young citizens who are committed to helping make their communities better and who can assess policy proposals, not merely youths who know how many voting members of the U.S. House of Representatives there are. Democracy thrives when citizens think critically and deeply about civic and political issues, when they consider the needs and priorities of others, and when they engage in informed action—not when they memorize a few facts. Let’s make high-quality civic learning a priority. Let’s not take the easy way out and pass laws in more than a dozen states that turn civic education into a game of Trivial Pursuit.”

### What the future may hold

To date, the state of New Jersey has made no effort to pass testing legislation, although like all states it requires

some form of civics education for students. Seeking action on a local level, in February 2015, Hillsborough High School junior Brandon Tubby unsuccessfully lobbied his local school board to include a mandatory civics course in the social studies curriculum. “We have to prepare our students who are the next generation of voters. We are not taught anything to make us better citizens,” he told the board.

The Civics Education Initiative, a national effort by the nonprofit Joe Foss Institute, responsible for helping to pass the Arizona law, has its sights set on having civics testing legislation in all 50 states by September 17, 2017, the 230th anniversary of the U.S. Constitution.

“The better educated our citizens are, the better equipped they will be to preserve the system of government we have,” retired Supreme Court Justice Sandra Day O’Connor told the Florida Bar Journal. Justice O’Connor is the founder of the civics education organization iCivics, which engages students in meaningful civic learning. “Knowledge about our government is not handed down through the gene pool. Every generation has to learn it, and we have some work to do. We have neglected civic education for the past several decades and the results are predictably dismal.”

Case in point: While interest in the 2016 presidential campaign was at an all-time high, with a record number of people watching the three presidential debates and political messages dominating social media, voter participation in the election was low. According to the U.S. Elections Project, 100 million eligible voters did not cast a ballot, the lowest turnout since 1996. 🗳️

## Clean Water Crisis CONTINUED FROM PAGE 4

showed an increase in Flint children with elevated levels of lead.” The level of trihalomethanes (TTHMs), “disinfection byproducts that occur when chlorine interacts with organic matter in the water,” violated the SDWA.

By the end of 2015, the mayor of Flint declared a state of emergency over the elevated levels of lead, and its effect on the children in the city. Lead never goes away once ingested or inhaled into the body. According to the World Health Organization, high blood lead levels can cause behavior and learning problems, slowed growth, hearing problems, anemia

and lower IQ in children. A report by the Flint Water Advisory Task Force about the water crisis in Flint concluded, “primary responsibility rests with the Michigan Department of Environmental Quality.”



### Is there a constitutional right to safe drinking water?

While the United Nations General Assembly recognized a “human right to water” in 2010, attorney Steven Miano, who heads the environmental practice at the Philadelphia law firm of Hangley Aronchick Segal Pudlin & Schiller, says the right to clean water or a clean environment is not mentioned in the U.S. Constitution.

“Some would argue that **statutory** law...provides a legal basis to argue for clean water, but the fact of the matter is that the U.S. Constitution does not provide such a right,” says

CONTINUED ON PAGE 8



Miano, who is an adjunct professor at Rutgers School of Law—Camden and a past chair of the American Bar Association Section of Environment, Energy and Resources. “That being said, there are a handful of states... that have added provisions to state constitutions to provide for a clean and healthy environment and those provisions have been used, on a state basis, to argue for such a right.”

There are six states (Rhode Island, Pennsylvania, Massachusetts, Hawaii, Illinois and Montana) that have added amendments to their constitutions to provide an environmental bill of rights to citizens. A proposed amendment to New Jersey’s constitution guaranteeing rights to a “clean and healthy environment” failed to pass in 1998. Miano notes that it is a combination of the federal EPA, the states and local officials who are responsible for maintaining the safety of our drinking water.

According to Miano, under the SDWA, the federal government has a primary role in setting and enforcing levels for safe drinking water. In addition, maximum containment levels (or MCLs) are set under the SDWA.

### Multiple lawsuits filed

In the spring of 2016, Attorney General Bill Schuette charged two people at the MDEQ and Flint’s water quality supervisor with misconduct, neglect of duty and conspiracy to tamper with evidence. They were also charged with violating Michigan’s Safe Drinking Water Act. In June, Schuette’s office announced a lawsuit against two companies charging them with negligence and public nuisance, and one with fraud. In late July, more charges were filed against an additional six state employees.

According to Reuters News Service, a number of Flint families filed lawsuits alleging negligence and

misconduct against private companies and government employees. The lawsuits covered 50 children suffering from lead poisoning. In addition, several class action suits were filed, seeking “damage on behalf of a proposed class of ‘tens of thousands’ of Flint residents and property owners.”

The investigation over Flint continues and all lawsuits are pending at this time. One suit, brought by residents, two advocacy groups, as well as the American Civil Liberties Union of Michigan, did bring Flint residents temporary relief. The lawsuit demands the replacement of lead service pipes, but also in the meantime asked for home water delivery for Flint residents who found transportation an issue in getting to water distribution centers. In November 2016, a federal judge ordered city and state officials to deliver four cases of bottled water per week to Flint’s residents.

### All about infrastructure

“In my opinion,” Miano says, “the legal framework is not the central issue. The availability of funds to study and, if necessary, fix or replace old water systems in large cities is the crucial issue. Without significant funding, exposure to lead will continue in many cities. It is an overwhelming task that must be undertaken.”

Miano also notes, “New Jersey has its fair share of water contamination cases” and they not only involve lead contaminants, but “volatile organic compounds (VOCs)...which are widely used by industry [and] can lead to exposures through what is called vapor intrusion.” Miano explains that vapor intrusion occurs when VOCs in groundwater percolate up through the soil, invading homes and other buildings through cracks and other openings in the foundation.

“Our water infrastructure is fraying. Pipes are old and treatment

facilities often outdated,” Joan B. Rose, an endowed chair in water research at Michigan State University, wrote in a *Time* opinion piece. “We worry about roads because we can see the rot, the decay, the risk. We can’t see our pipes, however, and we may think that our water is fine unless it comes out of the tap brown or orange. But that’s not always the case.”

While Flint was an extreme example of lead poisoning from drinking water, Erik Olson, director of the health and environment program at the Natural Resources Defense Council, told *The Hill* it is a nationwide problem because much of the country’s water infrastructure is “now 100 years old or more.”

Congress passed the Water Resources Development Act in October 2016, which allocated \$170 million to cities like Flint to upgrade their water equipment and pipes. According to EPA estimates, the cost to rebuild or fix U.S. water infrastructure will be about \$384 billion.



**appealed**—when a decision from a lower court is reviewed by a higher court.

**plaintiff** — person or persons bringing a civil lawsuit against another person or entity.

**regime**— a government, especially an authoritarian one.

**statutory**—based on legislative enactment.

**tort**—a civil wrong or injury for which the injured party is entitled to compensation.

**writ**—a written order issued by a court commanding some action.