

# Widener University Delaware Law School

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From the Selected Works of Alan E Garfield

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## All American Citizens Fall Under ‘We the People,’ But Who Is Really Included?

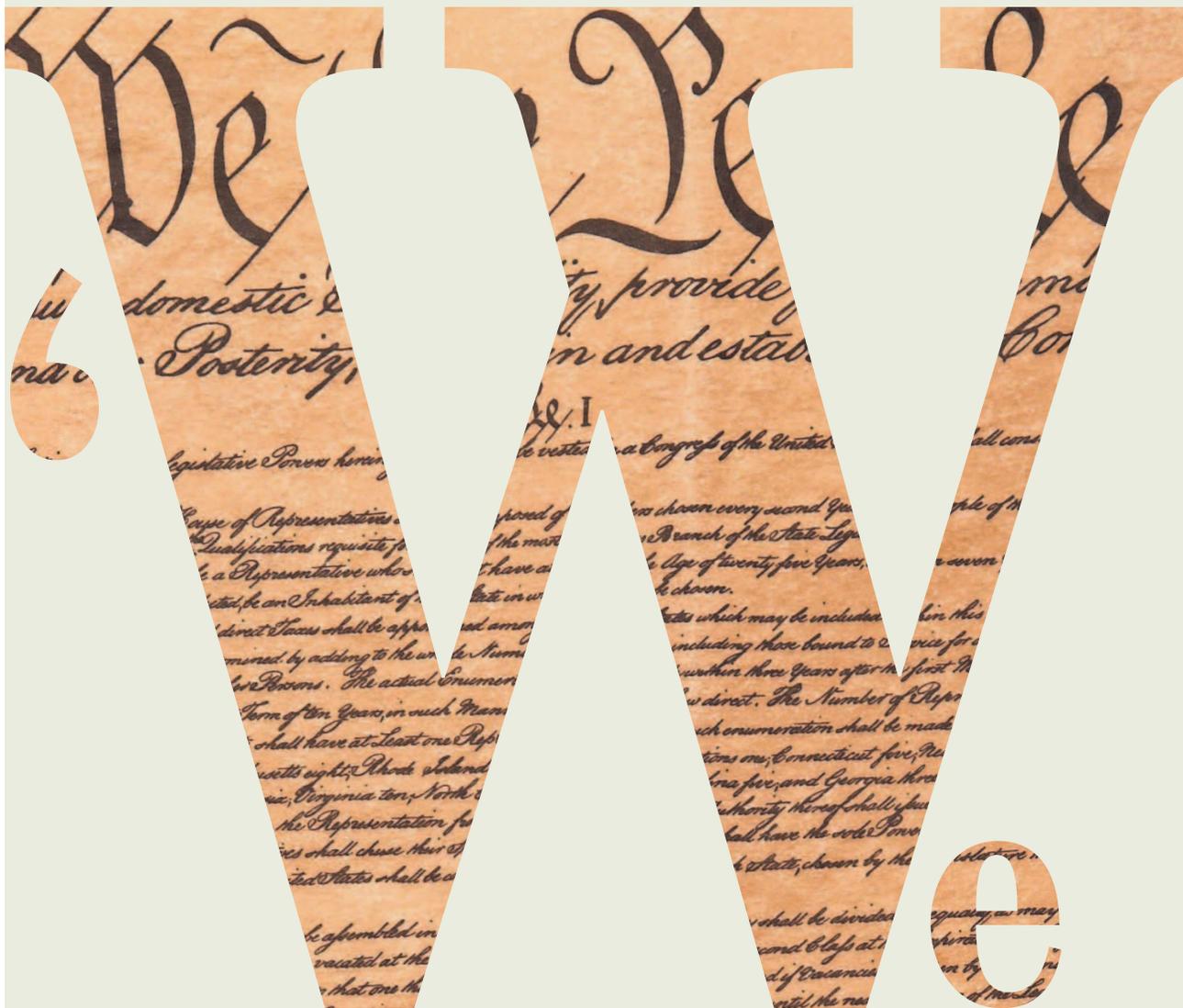
Alan E Garfield



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CONSTITUTION DAY SERIES

# Does



## the people' matter anymore?

Editor's Note: On Sept. 17, the country will celebrate Constitution Day. The following is part of a series The News Journal has put together with commentary that looks at the Constitution's most popular words, "We The People." Topics pertaining to African Americans, Muslims, birthright citizenship, same-sex marriage and the one-person, one-vote case will be explored.

All American citizens fall under 'We the People,' but who is really included?



DELAWARE VOICE ALAN GARFIELD

Who are "We the People"? Surely it includes all American citizens. But does it include legal immigrants who have lived here for decades? Does it include felons who have lost their right to vote? What about those living here illegally or their children who were born in the United States?

These are not academic questions. They make a difference. This fall, the Supreme Court will consider who counts when drawing district lines for electing state legislators. The Court long ago said these districts must be relatively equal so that one person's vote is not worth less than another's.

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For the African American community to feel included in the 'we,' more needs to happen



CARRON J. PHILLIPS

There has always been a difference between what someone or something says, and what it actually means.

It's the classic example of abiding by the letter of the law, or the spirit of it.

The first three words of the Preamble of the Constitution have always been the most popular. The ones that Americans love to use. But is it really as inclusive as it sounds?

"We the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide

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DANA STEWART/ANNETT ILLUSTRATION/THINKSTOCK

# Citizens

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The principle, the Court said, is "one person, one vote."

Yet the Court has never been clear about which people count under this rule. Do you count only voters, which would exclude children, disenfranchised felons and undocumented immigrants? Or do you count everyone?

Most states have counted everyone. But a Texas case claims that one person, one vote means equality of voters, not people. This might ensure voter equality, but it would also shift power from urban areas, which have more children, immigrants and ex-felons, to rural areas, which would benefit Republicans over Democrats. Is this a more principled way of applying the one person, one vote rule? Or is it, as election law expert Richard Hasen put it, a "Republican power grab"?

And what should we do with those undocumented immigrant babies? The Constitution provides for birthright citizenship: that all persons born in the United States are citizens. So it's hard to claim that these babies are not Americans. But, as Donald Trump has reminded us, the popular debate over birthright citizenship persists. Here, too, Texas has been actively stirring the pot. The state was recently sued for making it exceedingly difficult for undocumented mothers to obtain birth certificates for their children.

Even if we know who belongs to "We the People," the concept remains elusive unless members of the community are committed to a common endeavor. Creating a "more perfect Union" is an empty dream without popular support.

Failing to integrate societal members also comes with risks. Witness the many European countries fretting over alienation in their poorly-integrated Muslim communities. These nations worry that citizens who have grown up in their countries still feel like unwanted intruders. Similar concerns have been raised in our country about the dangers of "homegrown" terrorists.

Creating a cohesive community can even be challenging for groups who have long been members of "We the People." We have just marked the Civil War's sesquicentennial, yet our society continues to struggle with deep-seated racism. The Charleston massacre, the relentless stream of videotaped white officers shooting black men, and the Confederate flag controversy all attest to this regrettable truth.

For this year's Constitution Day Program, we have asked authors to reflect on these and other issues touching on the concept of "We the People." Professor Muqtadar Khan of the University of Delaware will provide the perspective of a Muslim member of "We the People." Journalist Carron J. Phillips of The News Journal will offer the perspective of an African American. Bilingual marketer and journalist Patricia Rivera will reflect on the wisdom of birthright citizenship; and Lisa Goodman, the President of Equality Delaware, will describe the impact of the Supreme Court's same-sex marriage decision on gay and lesbian members of "We the People." Finally, Rod Smolla, the new dean of Delaware Law School, will share his thoughts on the one person, one vote case.

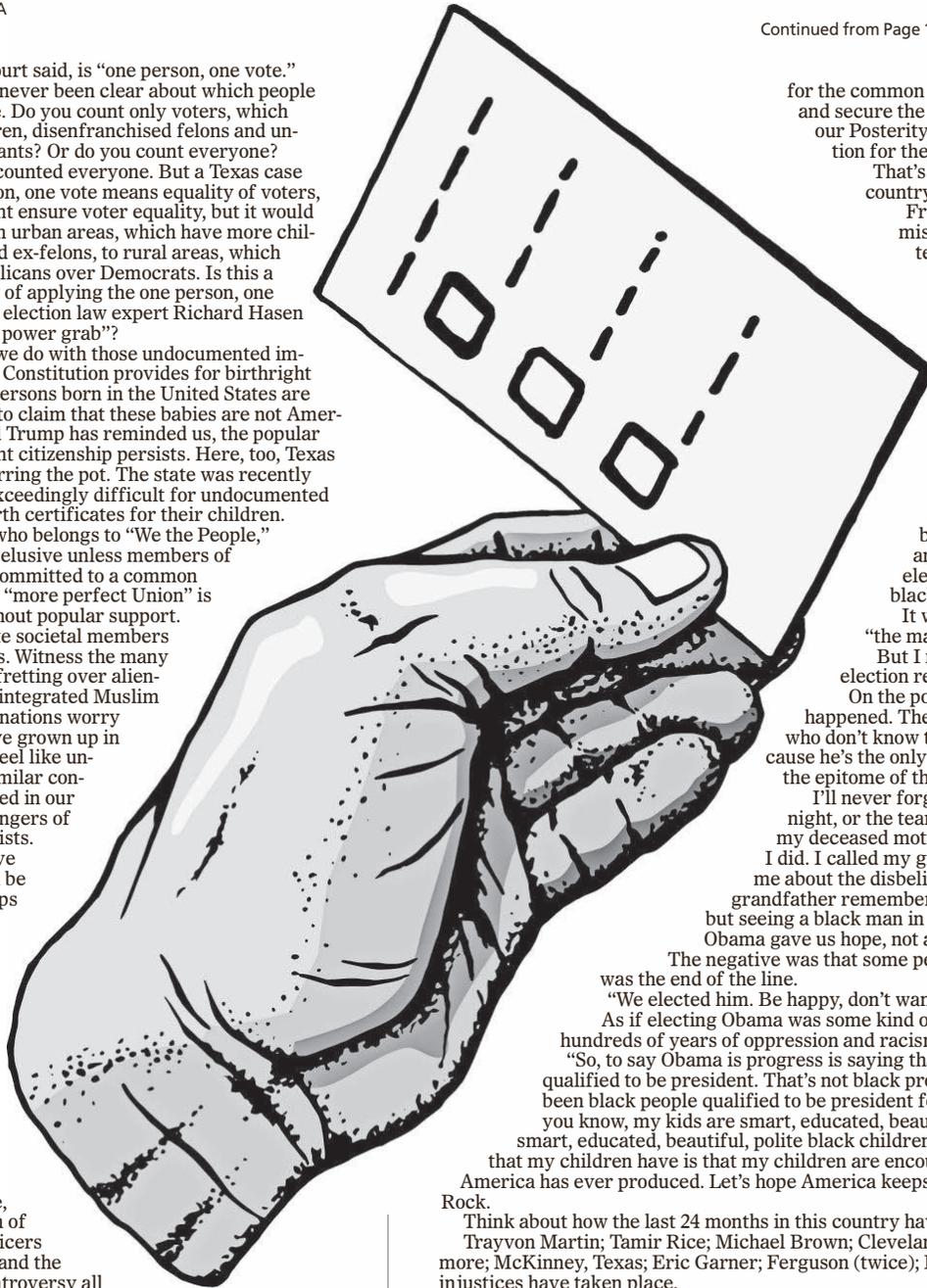
These essays will help us think about what it means to be a member of "We the People." Perhaps they will also remind us of how lucky we are to be included in this privileged group.

*Alan Garfield is a professor at Delaware Law School.*

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I did. I called my gra  
me about the disbelief  
grandfather remembers ;  
but seeing a black man in th  
Obama gave us hope, not a c  
The negative was that some peop

was the end of the line.  
"We elected him. Be happy, don't want f  
As if electing Obama was some kind of f  
hundreds of years of oppression and racism.  
"So, to say Obama is progress is saying that  
qualified to be president. That's not black progr  
been black people qualified to be president for  
you know, my kids are smart, educated, beautif  
smart, educated, beautiful, polite black children fo  
that my children have is that my children are encoun  
America has ever produced. Let's hope America keeps p  
Rock.

Think about how the last 24 months in this country have  
Trayvon Martin; Tamir Rice; Michael Brown; Cleveland;  
more; McKinney, Texas; Eric Garner; Ferguson (twice); La  
injustices have taken place.

So excuse "us" if we don't feel like the "we."  
Because we're not mad, we're pissed off. But here's the 1  
allowed to feel it. Feeling emotional isn't illegal or wrong, b  
uously told to get over it, to turn the other cheek and to be t  
problematic.

No other race on Earth has gone through what we have, ;  
instance, most people don't realize African Americans have  
enslaved. But when the conversation about slavery is broug  
has passed for us to be over it.

That doesn't work, especially when we didn't sign up for  
tic.

But that doesn't mean that things can't change, and have  
I love this country, and couldn't see myself living anywh  
a blind eye to all of our issues in the name of patriotism.

For us to feel like the "we," more needs to happen. Raci  
an uncomfortable conversation. Black people have to discu  
ful, and white people have to sometimes look at themselves  
realities.

The conversation about race is a necessary evil in this c  
Not for us, but for our future.

Because maybe then, the word "we" will actually live up  
*Carron J. Phillips is the Engagement Editor at Delaware*