

Manhattan Free Press

Vol. 19 Number 3

An Award Winning Weekly Newspaper

Thursday, July 1, 2010

Pool Open Sunday?



It is almost done but Manhattan City Manager Ron Fehr told the Free Press Wednesday afternoon that the new City Pool will open Sunday if everything goes right, if not it will be Monday. Above workers are putting in concrete with to pool slide in the background.

Thunder Over Manhattan And Fireworks Around Area

Get ready for thunder, lots of thunder.

Thunder over Manhattan will start at 5:00 p.m. at CiCo Park and will continue until the lights go out.

The Municipal Band will play. There will be a performance by American Idol Jessica Furney and there will be lots of things for the kids. Little Apple Amusement Train Rides, Old fire engine rides, snow cones, funnel cakes, hot dogs, pizza, cotton candy... you get the idea.

And in Pot County:

It's time to start making plans for Independence Day. If you're looking for a place to celebrate, choose Pottawatomie County!

With celebrations beginning June 26 and running through July 10, there's ample opportunity to enjoy fireworks, parades and great food!

Havensville Havensville Independence Day Celebration SATURDAY, JUNE 26, 2010

Load up your family, friends and neighbors and come and enjoy an afternoon full of small town fun in Havensville. Lets celebrate the

Freedom we have.

4:00 — Parade The Parade starts at the North end of town at the Community Center. All attendees are welcome. Line up will be from 3:00 PM to 3:30 PM ALL ENTRIES ARE WELCOME. For information call 785-948-3355.

Immediately following the parade — Bike Rodeo There will be a bike rodeo held in the North-East corner of the city park on the tennis court. Bring your bikes to show your skills. Learn to safely complete obstacles including maneuvering cones, stopping, and using hand signals. Prizes will be awarded to all age groups. This event is sponsored by the Shining Star 4-H club.

5:00 — BBQ Supper Held in the Community Center at the North end of town.

5:30 — Music on the Lawn Bring your lawn chairs and enjoy entertainment on the front lawn of the Community Center. Limited seating will be provided.

5:30 — Ice Cream Social Held at the ball field in the concession stand.

6:30 — Games Games Games

**For all ages 0-100, Come and enjoy

stick horse races, 3-legged sack races and water balloon tosses. There is no charge for these games and you are guaranteed to have fun.** Held on the ball field at the Community Center.

7:30 — 10 cent Kids Carnival **Immediately following the race games** Held on the ball field at the Community Center. There will be numerous games for the young and old to play.

Dusk — Gigantic Firework Display.

Onaga July 3, 2010 Onaga Independence Car Show

Check in 11:00 to 1:00, trophies at 4:30

The Onaga Fair Grounds We are being honored by the presence of more than 40 soldiers from Fort Riley and their families.

Along with The Onaga Chamber, they will be passing out yellow ribbons and flags to show your support for our troops

Dinner served by the Onaga High School weightlifters from 5:30 - 8:30 (free will donation)

Games for the kids @ 6:00 - prizes donated by Blue Valley Communications

ice cream social @ 6:00

Karaoke 7:00 - 9:00

Dance 9:00 -12:00

Music and Karaoke by Pott. Co Music Machine

St. Marys

As American as: hot dogs, baseball and apple pie!

And the tradition continues at Riverside Park in St. Marys

July 3: 6 p.m. - BBQ Pork Dinner - \$6.50 adults, \$3.50 children. Dessert will be sold by the St. Marys Literary Club.

7 p.m. - Live Entertainment

July 4:

5:30 p.m. - Board Race Registration

6:00 p.m. - Boat Race Begins

7-8:30 p.m. - Free kids games

7:30 p.m. - DJ starts

8:00 - 8:30 - Kansas State University Parachute Team Jump

8:15 - Free hot dogs

9:00 - Kids scavenger hunt

9:00 - Fireworks

For more information, please visit: www.saintmarys.com.

Wamego

Wamego's July 4th fireworks display is a long-standing tradition.

Trained & licensed community pyrotechnic volunteers donate time & energy to plan, order, & shoot the show. This 12 to 15 member group, referred to as the Pyro Crew, routinely volunteers more than 500 hours of personal time to prepare for the annual display. The show consists of more than 25,000 shells & delivers 30 minutes of sky-saturating, heart-pounding action. The show brings loyal visitors from near and far into the community each year to witness the spectacle that has become uniquely Wamego. Major funding for the show comes from a host of grassroots business & individual sponsors. The financial generosity of the community allows this fireworks display to maintain its high-quality standards & remain the crown jewel of Wamego's annual Independence Day Celebration.

July 4, 2010

Activities Include:

Carnival: Ottawa Amusements

Rides, June 30th - July 4th, west side of Wamego City Park, Wristband Nights Wednesday through Saturday!

Wamego Fire Department Auxiliary Dunk Tank: All week during the Carnival in Wamego City Park. Come dunk your favorite coach, city official, local celebrity, or co-worker!

Colgate Country Showdown: July 3rd, Lincoln Street Station & Barleycorn's Downtown Deli, Sponsored by Hot Country B104.7 FM, Final rounds of the country's largest country music talent contest!

36TH Annual Walter P. Chrysler Car Show: July 4th, 9:00am-3:30pm, Wamego City Park, more than 100 classic and show cars! Awards at 3:30pm.

Remote Control Car Races: July 4th, 10:30am, Wamego City Park tennis courts, all ages!

24TH Annual Kaw Valley Antique Tractor and Engine Show: July 4th, 9:00am, Locust and 4th Streets, Antique gasoline engine exhibits welcome!

Praise in the Park: July 4th, Wamego City Park Train Depot, coffee & donuts served at 10:00am, service begins at 10:30am followed by music by Cloverton!

Wamego Historical Society Ice Cream Social: July 4th, 10:00am - 6:00pm, Wamego Historical Prairie Village in City Park. Ice cream churned in five gallon buckets by antique, John Deere, water-cooled engine!

Fire United Methodist Church Pork Sandwich & Homemade Pie Dinner: July 4th, 11:00am - 8:00pm, Patriotic Concerts at 11:00am and 4:00pm. First United Methodist Church at 6th and Lincoln Ave!

Pottawatomie County Republicans Free Watermelon Feed: July 4th, 2:00-4:00pm, Wamego City Park Shelter House!

Wamego Community Band Concert: 2:00pm, Wamego City Park Bandstand! 139TH

Annual Wamego Independence Day Parade: July 4th, 6:00pm, Downtown Lincoln Avenue from 8th to 4th streets. One of the longest running Independence Day Parades in Kansas. WILD

Women of the Frontier: July 4th, 8:00pm, Ball diamonds at Oak and 6th Streets.

KSU Athletic Department Honored

The Kansas State Athletic Communication and Fan Experience and Sales departments recently received honors from their national organizations for excellence in 2009-10.

The Fan Experience and Sales department earned four awards, including three first-place honors, for their work during the 2009-10 athletics season from the National Association of Collegiate Marketing Administrators (NACMA). The department took home top honors in the single-day attendance promotion category for their "Family Reunion" concept for the return of head coach Bill Snyder for the Sept. 5 football game versus Massachusetts, while it also took top prize for best student promotion for its "Jacob Pullen Beard Night" for the Jan. 18 men's basketball game against Texas. In addition,

the department earned first place for its 2009 football season ticket radio commercial, "Where Hometown Heroes Become Legends," and third place for its Fort Riley Day newspaper advertisement.

Joni Smoller, the director of Fan Experience and Sales, along with assistants Gavin Hargrave, Drew Claassen and Nate Warren, accepted the awards during NACMA's 19th Annual Convention, June 22-25 in Anaheim, Calif.

"Our staff has been terrific this year and I am proud of their continued hard work and commitment to our student-athletes, coaches and the best fan experience in the Big 12," said Athletics Director John Currie. "K-State continues to set a national standard for excellence and these honors are certainly a reflection of the caliber of staff we have in place."

The Fan Experience and Sales department also was instrumental in helping K-State earn a women's basketball grant from the NCAA to help increase awareness, exposure and attendance for the upcoming 2010-11 season. The school was one of 12 nationally, along with two conferences, to receive the grant.

The Athletic Communications department also received accolades from the College Sports Information Directors of America (CoSIDA) for their outstanding publication work in 2009-10. The department earned "Best in Nation" distinction for the men's and women's basketball posters and the women's equestrian media guide, while the media guides for women's basketball (fourth), men's basketball (seventh) and women's rowing (ninth) were all judged among the Top 10 nationally.

Obituaries

Fred Yapp

Fred E. Yapp, 85, Manhattan, KS, passed away Thursday, June 17, 2010, at the Good Shepherd Hospice House, Manhattan.

He was born March 8, 1925, at Jewell, KS, the only child born to Otis Eugene Yapp and Mariam Louise Kleiner Yapp and the only grandchild of August and Eldereka Shoreman Kleiner. He grew up in Jewell where he attended the local schools and was a 1943 graduate of the Jewell High School.

He was a veteran of World War II, stationed in Florida where he served as an Aviation Electrician Mate with the U.S. Navy.

He was united in marriage to Thelda I. Menhusen on August 15, 1948, at Jewell. She preceded him in death on July 21, 2007

Frank Miller, Jr

Frank Miller, Jr., 90, Manhattan, KS passed away Thursday, June 17, 2010 in the Kansas Soldiers' Home, Ft. Dodge, KS.

He was born April 3, 1920 at Milford, KS, the son of Frank Miller, Sr. and Vesta E. Wilson Miller. He grew up on the family farm, near Milford, where he attended the local schools and was a 1937 graduate of the Milford High School. He later received his B.S. degree in Biology and Genetics and a M.S. degree in Entomology from Kansas State University.

While at K-State, Mr. Miller participated in the ROTC program and upon graduation in 1941 entered the U. S. Army as a Second Lieutenant. He served in the European Theatre, dur-

ing World War II, and was the recipient of a Purple Heart with Oak Leaf Cluster and a Silver Star with Oak Leaf Cluster. He was honorably discharged as a Captain in 1946.

He was united in marriage to Winifred "Winnie" Jean Bayer on September 22, 1941 at Manhattan. She preceded him in death on July 30, 2006.

Mr. Miller was a farmer and rancher near Manhattan for many years and was a member of the First Congregational Church and had served on the Riley County Farm Bureau Executive Board. He had just recently moved to Ft. Dodge.

In addition to his wife, Mr. Miller was preceded in death by his parents; a brother, Ernest Miller; and a sister, Edith Miller.

Survivors include two sons, Frank Miller III, and his wife, Linda, Dodge

City, KS and Mason E. Miller, and his wife, Christine, Manhattan; three grandchildren, Chipper L. Miller, Wendy R. Allison and Scott C. Miller; two step grandchildren, Alan Thieme and Michelle Henry; and three great grandchildren, Kirsten Allison, Katlyn Allison and Trevor Allison; and three step great grandchildren.

Funeral services were held at 10:30 a.m., Tuesday, June 22, 2010 in the Irvin-Parkview Funeral Home, Manhattan with the Rev. Kevin Larson officiating. Burial followed in the Sunrise Cemetery, Manhattan.

The family of Mr. Miller will receive friends from 7 until 8:00 p.m., Monday at the funeral home.

Memorial contributions can be made to the American Diabetes Association and left in care of the funeral home. Online condolences can be sent to www.irvinparkview.com.

also of their home; his parents, Doug and Cindy Nihart, of Wamego, KS; one sister, April Bayless and her husband Scott, of Wamego; two grandparents, LaVone Nihart, of Wamego, Ray Seematter, of Manhattan, KS; his father in-law and mother in-law, Glenn and Beverly Herrman of Winchester, KS; his sister in-law, Kimberly Squire and husband Troy, of Eudora, KS; one niece, Lacy Bayless and two nephews, Jon Squire and Logan Bayless.

Funeral services for Luke will be held at 11:00 a.m. Thursday, July 1, 2010 at the Stewart Funeral Home of Wamego. He will lie in-state beginning at 2:00 p.m. Wednesday at the funeral home, where the family will greet friends during a visitation from 7:00 p.m. until 9:00 p.m. Burial will follow in Admantha Cemetery, south of Westmoreland. Memorials are suggested to the Nihart Children Education Fund, and may be left in care of the Stewart Funeral Home, P.O.

He was a member of the First Lutheran Church, Manhattan and a lifetime member of the Lee Pierson V.F.W. Post No. 1786.

In addition to his wife, Raymond was preceded in death by his parents;

member of the Rockwood Rotary Club. Other memberships include the Elks Club in Meyersdale, PA, the Masonic Lodge in Somerset, PA and 50 year member of the American Legion in Rockwood, PA.

He was united in marriage to his wife, the former Jeanne Barth, on October 11, 1947 in Ruffsedale, Pennsylvania. She survives of the home. He is also survived by one daughter: Carol Forbes Klopfenstein of Manhattan, KS, one brother: Robert I. Forbes of State College, PA, three grandchildren and four great grandchildren.

Mr. Forbes was cremated. The family is planning on private memorial services.

On-line condolences may be left for the family through the funeral home website located at www.ymlfuneralhome.com

The Yorgensen-Meloan-Londeen Funeral Home, 1616 Poyntz Avenue, Manhattan, Kansas is handling the arrangements.

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Luke D. Nihart

WAMEGO- Luke D. Nihart, 32, of rural St. George, Kansas, and a Law Enforcement Officer with the Kansas Department of Wildlife and Parks, died early Saturday, June 26, 2010 at Mercy Regional Health Center of Manhattan from injuries sustained from an accident while working at the Country Stampede.

Luke was born on August 11, 1977, the son of Robert Douglas and Cindy (Seematter) Nihart. He graduated from Wamego High School in the class if 1995, then attended Cloud County Community College for two years prior to attending Kansas State University and graduating in 2000 with a B.S. from the College of Agriculture and also the Kansas Law Enforcement Training Center in December of 2000. After graduation, he began his career working for the

Raymond Linn

Raymond A. Linn, 90, Manhattan, KS passed away Saturday, June 26, 2010 in the Stoneybrook Retirement Center, Manhattan.

He was born May 27, 1920 on the family farm near Enterprise, KS, one of eight children born to Aaron Linn and Hilda Wilmena Marcuson Linn. Because of the hard times during the 1920's and the death of his father when Raymond was 1 and 1/2 years old, Raymond and two of his sisters lived at the Mariadahl Orphanage, at Olsburg, KS from 1926 until the entire family moved to Oberlin, KS in 1935. Raymond continued his education and was a 1938 graduate of the Decatur, KS High School.

He was a veteran of the U.S. Army, serving as a Signal Corpsman in the European Theatre. He was honorably

William J. Forbes

WILLIAM J. FORBES

William J. Forbes, age 92, of Manhattan, Kansas, died Tuesday, June 22, 2010, at the Mercy Regional Health Center in Manhattan.

He was born on November 30, 1917, in Mt. Pleasant, Pennsylvania, the son of Adam Watson and Ethel (Everett) Forbes.

Mr. Forbes lived most of his lifetime in Pennsylvania where he earned his B.S. degree in Agriculture Education from Penn State and his M.S. degree in Education Administration from the University of Pittsburgh.

During World War II, he served with the U.S. Army until his honorable discharge in 1946.

Following the war he became the editor of the Somerset County Leader newspaper in Rockwood, Pennsylvania. He also taught Vocational Agriculture at the Rockwood High School where he later became the principal.

An avid Penn State supporter, he was a member of the Penn State Alumni Association. Following his retirement, he and his wife Jeanne moved to State College, Pennsylvania where they were longtime Penn State football season ticket holders. In 1998 they moved to Manhattan, Kansas to be near their daughter.

Mr. Forbes was an FFA Advisor and was the last surviving charter



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Holeman Gives Legal Report

Continued From Last Week

The project is nearly complete as of July 17, 2009. I have drafted the necessary affidavit for presentation to the City of Manhattan, which, when the project is complete, will activate the City's duty to pay their 1/2 share of the project. Leon and Johnette will meet in order to make certain the correct invoices are available for attachment to that document. Leon advised the Budget and Planning Committee at its September 22, 2009, meeting almost all invoices are "in". I advised Rich Vargo I will transmit to him for his use when those final invoices arrive the "certification" document necessary under the terms of the contract—the format of which he has long ago approved. I sent that to Rich and Johnette September 23, 2009. The "certification document" was provided to the City of Manhattan. Manhattan thereafter asked for clarification of some of the amounts going into our total construction cost. Staff provided that clarification to the City, and their new deadline to tell us whether or not their questions have been answered, is December 18, 2009. December 18, 2009, the City of Manhattan advised us by letter from Dale Houdeshell they have accepted our submitted costs for design and construction—that our final figure is now the "approved project cost," within the language of our interlocal agreement. One-half of that \$1million-plus figure is what the city will now reimburse Riley County within 30 calendar days of December 18th. Riley County received the City's 1/2 payment of the project cost during the week of February 1, 2010. June 10, 2010, the BOCC approved the required transfer document setting title of the project over to the City of Manhattan.

Water Service to the Area. The process outlined above will be generally followed for city water service. However, the County will need to resolve the question of possible overlap of the service area of Wabaunsee RWD No. 2 and the Konza Water Benefit District. The RWD asserts its service area extends to the east line of Highway 177. The Konza WBD has for some time been servicing part of this area. The County may at some point want to survey the overlap area to obtain a legal description of the overlay area and then petition the Wabaunsee RWD for removal of the overlap area from the RWD service area.

This project is being conceived as a three-step process: 1) cross the river with pipe for sewer and water; 2) provide sewer service to the Konza Sewer Benefit District II and businesses and others along Highway 177; and 3) if desired by the residents, provide water to the Konza Water District. Mike Butler has developed plans and cost estimates for this project. The County Counselor is working with counsel for the RWD #2 to determine and resolve possible conflicts regarding the area to be served.

Status: County staff is working on an initiative whereby residents in the water district will be asked to join in petitioning to have their land released from the Rural Water District territory. Counsel met with Leon on 3-7-05. Leon says the engineering study shows the Konza Water Benefit District and RWD overlap. Counsel discussed with counsel for RWD the week of 3-14-05 and confirmed that counsel for RWD agrees there is overlap. RWD does not want to solicit landowners under the applicable statute. To determine County's next step, Counsel is reviewing the applicable statutes. The initial meeting of a county/citizen working group on the issue took place in the early afternoon of 7-20-05. Leon's staff is preparing a map showing the overlay area, so a determination can be made as to which entity is serving properties within the overlap. Craig Cox is drafting a resolution to present to the RWD for alteration of its boundaries. Craig reported to the BOCC on the status of this matter on 1-25, 2007; he expected some significant progress can be made on the matter during the next 30 days. Craig has forwarded material to the attorney for the RWD. Craig is discussing this matter with the attorney for the RWD. The City of Manhattan is conducting a "service analysis" to evaluate costs to the city; and city and KDHE representatives discussed the water issue with the BOCC on 12-3-07. Engineering staff of the City and County are discussed various alternative options for city assistance, and they were presented at the April, 2008 City/County meeting. After consulting with the BOCC, County staff will begin working with City staff on a "water" agreement once the sewer agreement is executed by both governing bodies. I have contacted Dale Houdeshell, City Engineer, and begun the process of setting up our next joint staff meeting. The initial joint staff meeting has been held April 22, 2009. Engineering staff of the two entities are jointly reviewing technical requirements. The most recent meeting of the joint staffs was held May 27, 2009. I volunteered to prepare a draft agreement for consideration by our county working group beginning June 4, 2009. Before we transmit that document to the City, we will forward it for comment by the newly elected Konza Water District Advisory Board. I have estimated the timeline for completion of that to be June 18, 2009. I had to revise my deadline for providing this draft to our working group to July 2, 2009. The working group has received my draft and our final meeting on the agreement took place July 20, 2009. The agreement was put in



Clancy Holeman

final draft form shortly thereafter, and Leon transmitted it to the Advisory Board, for their 10 days of review. Thereafter, it will be provided by our working group to City staff for their review and the scheduling of our initial joint staff meeting to work on finalizing the agreement. Leon and I met with Kelly Briggs, representative of the Konza Water Advisory Board late in the week of August 3, 2009. He relayed only a couple of minor requested changes, which I made to the draft document. I have transmitted to City staff during the week of August 10, 2009 Riley County staff's final draft version of the "Water" agreement and invited Dale Houdeshell to schedule a meeting between the joint staffs, so we can get this agreement in place. I checked back with Dale Houdeshell September 27, 2009, about his reschedule of a meeting of our two staff. He responded by email September 28 he would check with staff on his side and get back to me. I have checked back with Dale Houdeshell several times since the prior date to get this project off dead center. Most recently, the week of December 14, 2009, Dale indicated he was checking with Bill Frost about any changes Bill wanted to the draft (the one they've had in hand since August); Dale doesn't expect the two staffs will get back together until after January 1, 2010. I have provided Dale with multiple dates on which County staff is available to meet with City staff on this project. County and City staff met February 8, 2010. Significant revisions to the agreement were proposed by county staff, so city staff is reworking (having accepted those revisions "conceptually") the agreement for joint review at an unspecified future date—we will continue to push to get this completed. Very late in the week of March 1, 2010, city staff provided us a revised version of the draft. Our County working group will meet to review that document March 11, 2010. We have decided to provide the draft to the Konza Water District's advisory board for their review and comment, after we determine what form the two staffs can agree upon. We had our scheduled joint staff meeting on March 25, 2010. The City staff will be making additional revisions for our review—which are intended to promote the overall goal of turning over control of that Konza "corridor" area, over time and as it develops, to the City of Manhattan. March 13, 2010, county staff reviewed the revised version of the agreement sent back to us by City staff. I have several changes to make to the agreement, which were proposed by the group. That revised document was presented to the County staff during the week of April 26, 2010. Our working group has confirmed I have accurately included its changes, and forwarded the document to the City staff for review May 3, 2010. During the week of June 7, with Leon's return from surgery, our working group reviewed the document, proposed changes, and I transmitted it to the City for review. We believe we are close to finalizing its terms.

OTHER PENDING MATTERS. (A sampling of additional pending issues not yet before the BOCC, or which may not qualify as "BOCC" projects, but are legal /legislative matters requiring time)

Meetings Other Projects

February 17, 2010 - Julie Winter, Public Works, has asked for assistance drafting an addendum to an existing construction contract-including a requirement the contractor provides a "builder's risk" policy.

March 24, 2010 - Johnette provided me a series of "P-Card" amendatory agreements which may have to be approved by the BOCC March 29, 2010. I made significant alterations to these documents and had two separate meetings with Rich and Johnette to confirm we 3 were on the same page with regard to changes which needed to be made by Commerce. We were. My revised documents were transmitted back to Commerce by Johnette during the week of April 5, 2010. We will reconvene to discuss the Commerce response (provided us during the week of May 10, 2010) to our revised documents May 20, 2010. We did not need to meet on May 20, 2010, because we discussed the matter informally and Johnette will relay our position on the agreement to Commerce on or shortly after May 20, 2010.

April 19, 2010 - After meeting of cell phone policy committee discussing implementation of newly BOCC-approved policy, I emailed let-

ter to US Cellular advising our position on our ability to terminate existing contract (before its October, 2010 end date) without exposure to \$13,500 penalty for "early termination." Pursuant to BOCC's prior executive session direction, I advised US Cellular my letter was not termination of existing arrangement, only request for confirmation they agreed with our analysis. The company's deadline to respond to my emailed letter is close of business, April 30, 2010. During the week of May 3, I followed up several times with the company to obtain contact with their counsel—I expect to speak with their lawyer sometime Friday, May 7, if not before. I spoke with the lawyer for U.S. Cellular during the week of May 10, 2010; and provided her the same documents for review I'd originally provided Hedstrom, because the lawyer still had not yet seen them. The lawyer indicated May 11, 2010 she'd talk with her client and get back to me ASAP. I spoke with the attorney during the week of May 21, 2010, and she is out of the office on vacation—we agreed to discuss the matter May 24, 2010, with a view toward resolving the issue.

This matter was successfully resolved during the week of May 31, 2010, in a phone conversation with the U.C. Cellular lawyer. They have agreed to drop any claim for the \$13,500 penalty, and we will work toward wrapping up the contract with our final day of service (coinciding with implementation of the new cell phone policy the following day) July 8, 2010. We are finalizing the settlement document—It has been approved as to form by U.S. Cellular's counsel and, once it is executed by U.S. Cellular and returned to us, I will present it for BOCC signature. At that point this matter will be concluded and removed from this list. U.S. Cellular has emailed me the executed version of the settlement document and has advised the originals are in the mail to this office.

May 5, 2010 - Robert Nall provides me for review a proposed contract for a company wanting to review our telephone bills for a fee. He does not need the contract back for at least two weeks.

Legislation

HB 2238: KAC sent a "legislative alert" 2-17-10 on this bill, which KAC described as limiting counties' ability to retain contract payments from contractors until a project is completed. On that basis, KAC requested member counties to contact their house members and ask for a "no" vote, because the bill was scheduled to hit the floor for debate the same day. I emailed our house delegation, forwarding them KAC's description, and encouraged them to vote "no" on the bill.

SB 368-This is the "4th time DUI offender" bill. The BOCC requested language be added to the bill making the Secretary of Corrections responsible for medical expenses of those offenders in treatment programs selected by the Secretary of Corrections. I emailed that requested change to our entire delegation, requesting their assistance. I specifically requested floor amendment in the Senate, since the bill is out of committee. This bill is set for hearing during the week of March 1, but it was not amended on the floor.

SB 346-This is the bill allowing those sentenced to the custody of the Secretary of Corrections to finish their sentence in county jails if 10 days or less remain on their sentences. The BOCC requested language be added to the bill making the Secretary of Corrections responsible for medical expenses incurred while the inmate is in the custody of the Secretary. I requested floor amendment in the Senate, since the bill is out of committee. 2-17-10 Sen. Reitz and I had a telephone conversation about possibly getting this language added to the bill. Senator Reitz was able to obtain amendment on the floor, incorporating our language. Commissioner Kearns and I were present and testified during the Committee's hearing on this bill March 8, 2010. It became apparent the committee would not leave our language in the bill; but the fact the bill was amended gave us the opportunity to explain to the committee (and to Secretary Werholtz, who was present) why we added the language. Secretary Werholtz agreed he would make a decision on whether or not to discharge an inmate with 10 days or less on their sentence within the 4 days currently allowed him. We made it as clear to the committee as possible that our issue with the bill is we have to know immediately if an inmate's prison sentence is cancelled by the Secretary.

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Redistribution of Wealth

Most people are familiar with the story of when candidate Barack Obama ran into Joe the Plumber. This was the first time Obama's philosophy of "spreading the wealth around" gained nationwide attention. Many, but not as many people are familiar with a CPR interview of Obama in 2001 when he elaborated on the subject. This was the interview when he said the US Constitution was a charter of negative rights. It stated what the government could not do to you. He faulted the Founders for not building into the Constitution what the government needed to do on your behalf. Obama considered it a shortcoming of the Founders that they did not delve into the area of redistribution.

Constitutionally and historically this is incorrect. The Constitution was an outgrowth of the Declaration of Independence. One can not really understand or appreciate the Constitution without the Declaration. The Constitution was put into place to protect our life, liberty, and pursuit of happiness. Liberty without property rights is impossible. Property is gained from the fruits of one's labor. To deprive one of the fruits of their labor is to infringe on their liberty.

Yes it is true that the Constitution allows for taxation that is needed to run the government. However, taxation with regard to direct taxes was to be apportioned among the states according to population. This was changed by the 16th Amendment which imposed the income tax. This evil and immoral amendment, that directly contradicts the original Constitution, should be repealed. This amendment codified into law the inequitable situation of one member of society having to contribute more than another to our social compact with the Federal Government. While this unfortunate situation codified into law an unjust way to collect taxes, the true meaning of the Constitution with regard to only allowing the government to do what an individual can lawfully or justly do, still remains.

In essence, the taxes paid to the government are a contractual payment for services. Another part of the contract is not to break the law. If one breaks the law, one is penalized which may include losing one's rights in one form or another. That law is, according to the Constitution, the same for the government as it is for the individual. The government should not be able to do anything an individual can not legally do.

An individual is allowed to protect themselves. The federal government is allowed to provide for the common defense just as state and local governments provide for police services. Taxation for such services is lawful. An individual, of course, can donate to charity or help his neighbors of his own free will. However, it is against the law and unjust for him to take from another without their permission and give that property to someone whom they deem as needy. The government not having any resources of its' own and only possessing what it takes from citizens in the form of taxation can not therefore justly use tax dollars to help the needy or any other perverse general scheme of redistribution of income.

President Grover Cleveland put it eloquently when he vetoed legislation for just such a purpose. This was back when we had President's that understood and revered the Constitution. He stated:

"I can find no warrant for such an appropriation in the Constitution, and I do not believe that the power and duty of the General Government



John Matta

ought to be extended to the relief of individual suffering which is in no manner properly related to the public service or benefit. A prevalent tendency to disregard the limited mission of this power and duty should, I think, be steadfastly resisted, to the end that the lesson should be constantly enforced that though the people support the Government, the Government should not support the people.

"The friendliness and charity of our countrymen can always be relied upon to relieve their fellow-citizens in misfortune. This has been repeatedly and quite lately demonstrated. Federal aid in such cases encourages the expectation of paternal care on the part of the Government and weakens the sturdiness of our national character, while it prevents the indulgence among our people of that kindly sentiment and conduct which strengthens the bonds of a common brotherhood."

Some might respond that we are a democracy and if the will of the people is that we should redistribute wealth then so be it. Such thinking is exactly why the founders deplored democracy as a form of government and instead set up in the Constitution a Constitutional Republic. Theft is theft. Stealing is still stealing even if congress passes a law saying it is okay.

This brings us to historically how Obama's analysis is flawed. The Founders did delve into the areas of redistribution or what they called leveling. Having studied the great civilizations and political philosophers of the past and taking into account the aspects of human nature they rejected such an idea. The Founders considered such an idea not only unjust but also something that simply would not work. They believed that such a scheme would corrupt the federal government and the people. As John Adams stated:

"The Utopian schemes of leveling [re-distribution of the wealth] and a community of goods [central ownership of the means of production and distribution], are as visionary and impractical as those which vest all property in the Crown. [These ideas] are arbitrary, despotic, and, in our government, unconstitutional."

See Matta page 8

"Conscience of Kansas"

Burning Drudge, burning Weigel: A fiery view from the Washington Post
By: Paul A. Ibbetson

The forced resignation of David Weigel by the Washington Post will probably be forgotten by tomorrow, nothing more than a little blip on the radar of those submersed in the world of the Washington Post. Weigel's online communications were nabbed and made public to expose the writer as a liberal who thinks Matt Drudge should set himself on fire and that conservatives are inherently doing evil. If you are a conservative you might shake your head, grit your teeth, or even laugh at some of Weigel's private meanderings about the opposition. What you would not be surprised. The Washington Post wants you to think that they are awe-struck and amazed, as if their writer were suddenly part of an E-True Hollywood story in which never-before-seen hidden details are suddenly being illuminated. Please.

Howard Klutz reported in the Washington Post that their Executive Editor Marcus Brauchli said, "We can't have any tolerance for the perception that people are conflicted or bring a bias to their work. . . . There's abundant room on our website for a wide range of viewpoints, and we should be transparent about everybody's viewpoint." This is a vague statement at best, more than a little silly at worst. The fact of the matter is that all writers, even the freest of thinkers, bring at least some bias to the table and editors know this. In fact, beyond their ability to creatively communicate with the public, writers, bloggers, you name it, are sought for their general political leanings. This is where things may have gone south for Weigel. It appears the Washington Post got caught with a "political lefty" writing as a "political righty." Who placed David Weigel writing the column titled "Right Now - Inside the conservative movement and Republican Party" That's right, the Washington Post.

So who is at fault here? If you say it's the Rush-Limbaugh-hating, Tea-Party-hating, Matt-Drudge-wanna-see-ya-burn liberal Weigel, you're wrong. The fault lies directly with the Washington Post for failing to screen the people they hire, or worse, for purposely deceiving the public. If you want to critique a liberal for his or her wacky statements, that's fine, we can make a day of it, but don't think its transparency of viewpoint that the Washington Post is protecting; it's their gluteus maximus. Bloggers are not insidious double agents, or at least never effective ones, and Weigel is no exception. To think so gives the Washington Post political cover they have not earned. In fact, I think they have earned the need for some additional scrutiny.

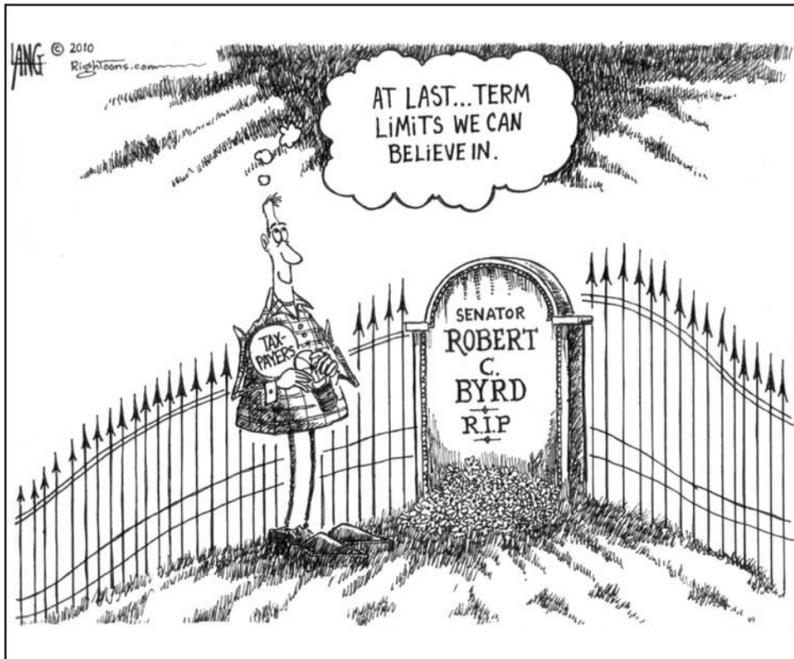
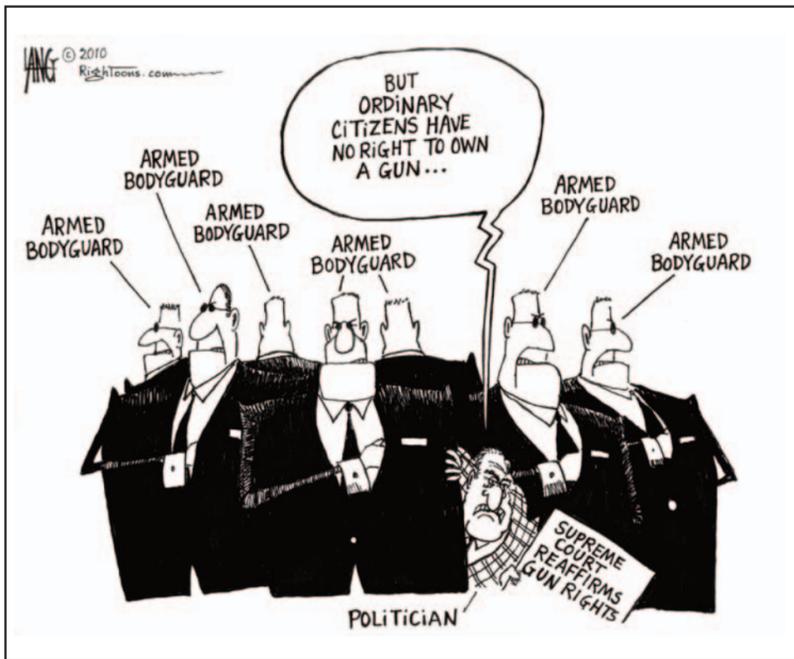
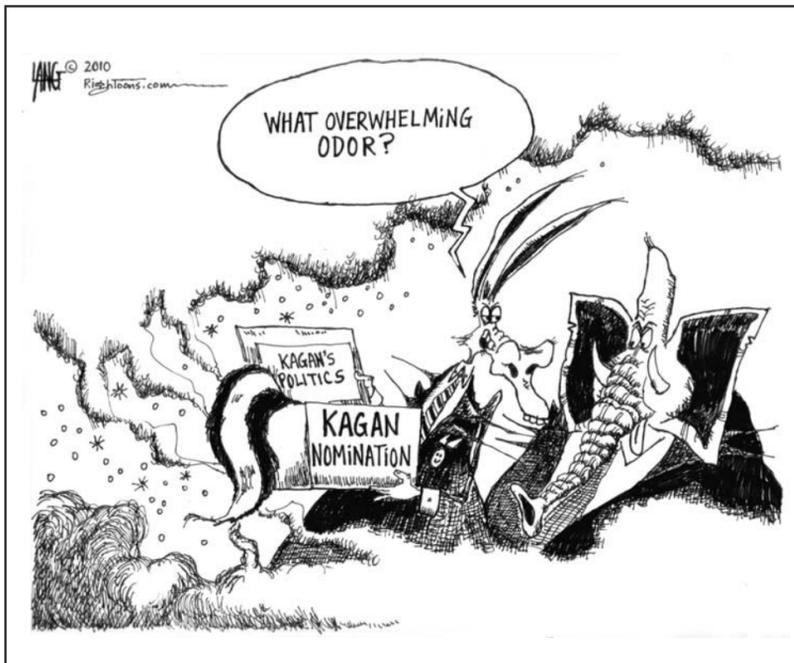
So, in the aftermath of the private e-mails made public, David Weigel's career at the Washington Post will be burned away, and for



Paul A. Ibbetson

what, being a closet liberal? Howard Kurtz of the Washington Post reports that in 2006 Weigel referred to gay marriage opposers as "anti-gay marriage bigots" on his Twitter page. Think we might be dealing with a liberal here? This was obviously not a red flag to the Washington Post. Brauchli blamed it on the budget and said, "We don't have the resources or ability to do Supreme Court justice-type investigations into people's backgrounds. We will have to be more careful in the future." Does that explanation fly with you? I think it is not a far cry to assume that the Washington Post was more than comfortable with their writing arrangement with Weigel until their employee's point of view became overtly known to the public. Then it was transparency time. A time for purity and as the witch hunters say, nothing purifies like fire, or a good firing. Hopefully when the smoke clears there will be some interest left in finding accountability for the Washington Post.

Paul A. Ibbetson is a former Chief of Police of Cherryvale, Kansas, and member of the Montgomery County Drug Task Force. Paul received his Bachelor's and Master's degrees in Criminal Justice at Wichita State University, and is currently completing his Ph.D. in Sociology at Kansas State University. Paul is the author of the books "Living Under The Patriot Act: Educating A Society" and "Feeding Lions: Sharing The Conservative Philosophy In A Politically Hostile World." Paul is also the radio host of the Kansas Broadcasting Association's 2008, 2009 and 2010 Entertainment Program of the Year, Conscience of Kansas airing on KSDB Manhattan 91.9 FM, www.ibbetsonusa.com. For interviews or questions, please contact him at: ibbetson91.9@gmail.com



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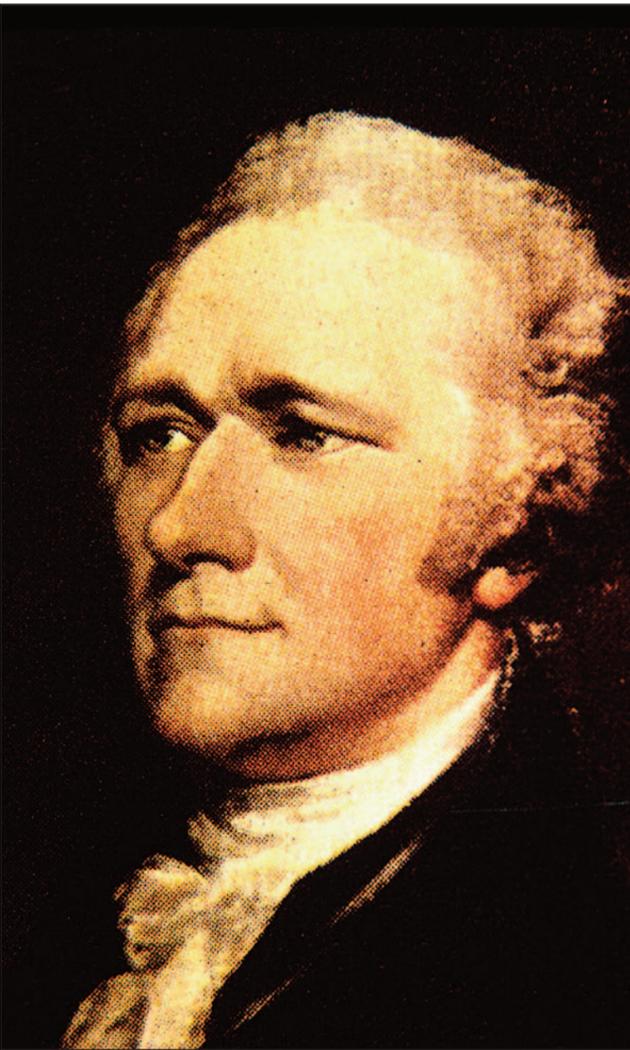
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- Thomas Jefferson, 1787

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Alexander Hamilton

The Federalist Papers

**The Federalist No. 8
The Consequences of
Hostilities Between the States
New York Packet
Tuesday, November 20, 1787
[Alexander Hamilton]
To the People of the State of
New York:**

ASSUMING it therefore as an established truth that the several States, in case of disunion, or such combinations of them as might happen to be formed out of the wreck of the general Confederacy, would be subject to those vicissitudes of peace and war, of friendship and enmity, with each other, which have fallen to the lot of all neighboring nations not united under one government, let us enter into a concise detail of some of the consequences that would attend such a situation.

War between the States, in the first period of their separate existence, would be accompanied with much greater distresses than it commonly is in those countries where regular military establishments have long obtained. The disciplined armies always kept on foot on the continent of Europe, though they bear a malignant aspect to liberty and economy, have, notwithstanding, been productive of the signal advantage of rendering sudden conquests impracticable, and of preventing that rapid desolation which used to mark the progress of war prior to

their introduction. The art of fortification has contributed to the same ends. The nations of Europe are encircled with chains of fortified places, which mutually obstruct invasion. Campaigns are wasted in reducing two or three frontier garrisons, to gain admittance into an enemy's country. Similar impediments occur at every step, to exhaust the strength and delay the progress of an invader. Formerly, an invading army would penetrate into the heart of a neighboring country almost as soon as intelligence of its approach could be received; but now a comparatively small force of disciplined troops, acting on the defensive, with the aid of posts, is able to impede, and finally to frustrate, the enterprises of one much more considerable. The history of war, in that quarter of the globe, is no longer a history of nations subdued and empires overturned, but of towns taken and retaken; of battles that decide nothing; of retreats more beneficial than victories; of much effort and little acquisition.

In this country the scene would be altogether reversed. The jealousy of military establishments would postpone them as long as possible. The want of fortifications, leaving the frontiers of one state open to another, would facilitate inroads. The populous States would, with little difficulty, overrun their less populous neighbors.

Conquests would be as easy to be made as difficult to be retained. War, therefore, would be desultory and predatory. PLUNDER and devastation ever march in the train of irregulars. The calamities of individuals would make the principal figure in the events which would characterize our military exploits.

This picture is not too highly wrought; though, I confess, it would not long remain a just one. Safety from external danger is the most powerful director of national conduct. Even the ardent love of liberty will, after a time, give way to its dictates. The violent destruction of life and property incident to war, the continual effort and alarm attendant on a state of continual danger, will compel nations the most attached to liberty to resort for repose and security to institutions which have a tendency to destroy their civil and political rights. To be more safe, they at length become willing to run the risk of being less free.

The institutions chiefly alluded to are STANDING ARMIES and the correspondent appendages of military establishments. Standing armies, it is said, are not provided against in the new Constitution; and it is therefore inferred that they may exist under it. Their existence, however, from the very terms of the proposition, is, at most, problematical and uncertain. But standing armies, it may be replied, must inevitably result from a dissolution of the Confederacy. Frequent war and constant apprehension, which require a state of as constant preparation, will infallibly produce them. The weaker States or confederacies would first have recourse to them, to put themselves upon an equality with their more potent neighbors. They would endeavor to supply the inferiority of population and resources by a more regular and effective system of defense, by disciplined troops, and by fortifications. They would, at the same time, be necessitated to strengthen the executive arm of government, in doing which their constitutions would acquire a progressive direction toward monarchy. It is of the nature of war to increase the executive at the expense of the legislative authority.

The expedients which have been mentioned would soon give the States or confederacies that made use of them a superiority over their neighbors. Small states, or states of less natural strength, under vigorous governments, and with the assistance of disciplined armies, have often triumphed over large states, or states of greater natural strength, which have been destitute of these advantages. Neither the pride nor the safety of the more important States or confederacies would permit them long to submit to this mortifying and adventitious superiority. They would quickly resort to means similar to those by which it had been effected, to reinstate themselves in their lost pre-eminence. Thus, we should, in a little time, see established in every part of this country the same engines of despotism which have been the scourge of the Old World. This, at least, would be the natural course of things; and our reasonings will be the more likely to be

just, in proportion as they are accommodated to this standard.

These are not vague inferences drawn from supposed or speculative defects in a Constitution, the whole power of which is lodged in the hands of a people, or their representatives and delegates, but they are solid conclusions, drawn from the natural and necessary progress of human affairs.

It may, perhaps, be asked, by way of objection to this, why did not standing armies spring up out of the contentions which so often distracted the ancient republics of Greece? Different answers, equally satisfactory, may be given to this question. The industrious habits of the people of the present day, absorbed in the pursuits of gain, and devoted to the improvements of agriculture and commerce, are incompatible with the condition of a nation of soldiers, which was the true condition of the people of those republics. The means of revenue, which have been so greatly multiplied by the increase of gold and silver and of the arts of industry, and the science of finance, which is the offspring of modern times, concurring with the habits of nations, have produced an entire revolution in the system of war, and have rendered disciplined armies, distinct from the body of the citizens, the inseparable companions of frequent hostility.

There is a wide difference, also, between military establishments in a country seldom exposed by its situation to internal invasions, and in one which is often subject to them, and always apprehensive of them. The rulers of the former can have a good pretext, if they are even so inclined, to keep on foot armies so numerous as must of necessity be maintained in the latter. These armies being, in the first case, rarely, if at all, called into activity for interior defense, the people are in no danger of being broken to military subordination. The laws are not accustomed to relaxations, in favor of military exigencies; the civil state remains in full vigor, neither corrupted, nor confounded with the principles or propensities of the other state. The smallness of the army renders the natural strength of the community an overmatch for it; and the citizens, not habituated to look up to the military power for protection, or to submit to its oppressions, neither love nor fear the soldiery; they view them with a spirit of jealous acquiescence in a necessary evil, and stand ready to resist a power which they suppose may be exerted to the prejudice of their rights.

The army under such circumstances may usefully aid the magistrate to suppress a small faction, or an occasional mob, or insurrection; but it will be unable to enforce encroachments against the united efforts of the great body of the people.

In a country in the predicament last described, the contrary of all this happens. The perpetual menaces of danger oblige the government to be always prepared to repel it; its armies must be numerous enough for instant defense. The continual necessity for their services enhances the importance of the soldier, and proportionably degrades the condition of the citizen. The military state becomes elevated above the civil. The inhabitants of territories, often the theatre of war, are unavoidably subjected to frequent infringements on their rights, which serve

to weaken their sense of those rights; and by degrees the people are brought to consider the soldiery not only as their protectors, but as their superiors. The transition from this disposition to that of considering them masters, is neither remote nor difficult; but it is very difficult to prevail upon a people under such impressions, to make a bold or effectual resistance to usurpations supported by the military power.

The kingdom of Great Britain falls within the first description. An insular situation, and a powerful marine, guarding it in a great measure against the possibility of foreign invasion, supersede the necessity of a numerous army within the kingdom. A sufficient force to make head against a sudden descent, till the militia could have time to rally and embody, is all that has been deemed requisite. No motive of national policy has demanded, nor would public opinion have tolerated, a larger number of troops upon its domestic establishment. There has been, for a long time past, little room for the operation of the other causes, which have been enumerated as the consequences of internal war. This peculiar felicity of situation has, in a great degree, contributed to preserve the liberty which that country to this day enjoys, in spite of the prevalent venality and corruption. If, on the contrary, Britain had been situated on the continent, and had been compelled, as she would have been, by that situation, to make her military establishments at home coextensive with those of the other great powers of Europe, she, like them, would in all probability be, at this day, a victim to the absolute power of a single man. It is possible, though not easy, that the people of that island may be enslaved from other causes; but it cannot be by the prowess of an army so inconsiderable as that which has been usually kept up within the kingdom.

If we are wise enough to preserve the Union we may for ages enjoy an advantage similar to that of an insulated situation. Europe is at a great distance from us. Her colonies in our vicinity will be likely to continue too much disproportioned in strength to be able to give us any dangerous annoyance. Extensive military establishments cannot, in this position, be necessary to our security. But if we should be disunited, and the integral parts should either remain separated, or, which is most probable, should be thrown together into two or three confederacies, we should be, in a short course of time, in the predicament of the continental powers of Europe -- our liberties would be a prey to the means of defending ourselves against the ambition and jealousy of each other.

This is an idea not superficial or futile, but solid and weighty. It deserves the most serious and mature consideration of every prudent and honest man of whatever party. If such men will make a firm and solemn pause, and meditate dispassionately on the importance of this interesting idea; if they will contemplate it in all its attitudes, and trace it to all its consequences, they will not hesitate to part with trivial objections to a Constitution, the rejection of which would in all probability put a final period to the Union. The airy phantoms that flit before the distempered imaginations of some of its adversaries would quickly give place to the more substantial forms of dangers, real, certain, and formidable.

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Financial Reform In Congress: A Disorderly Failure

By David C. John
and James Gattuso
The Heritage Foundation

After weeks of negotiations, a congressional conference committee has finally come to an agreement on a financial regulation bill. Weighing in at close to 2,000 pages, the legislation represents the largest expansion of Washington's role in the financial industry since the Great Depression. Final votes are expected in the House and Senate next week.

The goal of the legislation is clear: to minimize the chances that another financial crisis—and subsequent bailouts—will occur. The objective is a good one. Unfortunately, the massive bill on the whole would hurt consumers and the economy, and rather than decrease the chances of another crisis or bailout, it would make them more likely to occur.

Failing Financial Firms

The lack of a broadly accepted process for closing down large financial institutions helped lead to the massive bailouts of 2008 and 2009, as regulators feared the economic consequences of “disorderly” failures. The legislation adopted by the House and Senate addresses this problem by creating an “orderly liquidation” process by which regulators are empowered to seize financial institutions that they believe are in danger of failing and liquidate them.

The House version of the bill provided for a \$150 billion “orderly liquidation fund” to facilitate this process. Pre-funded by fees on large institutions, this account would be used in part to pay creditors of failing institutions, shielding them from full losses. This was, in effect, a pre-funded mechanism for future bailouts.

To its credit, the conference committee took out this provision, replacing it with language from the Senate bill requiring that the costs of liquidation be paid for with the assets of the closed institution and limiting creditors to receiving what they would have received in bankruptcy.

However, the liquidation process is still problematic. Federal regulators are granted broad powers to seize private firms they feel are in danger of default, and these powers are subject to insufficient judicial review. Such governmental discretion to seize private property is constitutionally troubling.

There is, of course, an alternative mechanism for closing institutions: bankruptcy. For most industries, the bankruptcy laws have long provided a way for failing firms to reorganize or liquidate under established rules of law and with independent, non-political supervision by courts. There is no reason that (with perhaps a few modifications to take into account the special characteristics of large financial firms) it cannot work here as well.

Systemic Risk

The legislation establishes a new 10-member Financial Stability Oversight Council composed of regulators that would be responsible for monitoring and addressing system-wide risks to the financial system. Among other things, the council would recommend that the Federal Reserve establish stricter capital, leverage, and other rules for large, complex financial firms. This council would also have almost unlimited powers to draft financial firms into the

regulatory system and even force them to sell off or close pieces of themselves.

Unfortunately, it is extremely difficult to detect systemic risk before a crisis has occurred, and the council would serve mainly as a group to blame for failing at an almost impossible task. On the other hand, its huge powers are much more likely to destabilize the financial system by stifling innovative products while failing to detect dangers posed by existing ones.

Bureau of Consumer Financial Protection

The bill also creates a new Bureau of Consumer Financial Protection with broad powers to regulate the financial products and services that can be offered to consumers. The intended purpose is to protect consumers from unfair, deceptive, and “abusive” practices, but the effect would be to reduce available choices, even in cases where a consumer fully understands and accepts the costs and risks. For many consumers, this would make credit more expensive and harder to get.

The new agency would nominally be part of the Federal Reserve System, but it would have extraordinary autonomy. This autonomy would impede the efforts of existing regulators to ensure the safety and soundness of financial firms, as rules imposed by the new agency would conflict with that goal.

The Volcker Rule

The final version includes a form of the “Volcker rule,” which would largely prohibit any bank or other institution with FDIC-insured deposits from undertaking proprietary trading—that is, trading for the banks’ own behalf rather than for the benefit of a client—or from owning or sponsoring hedge funds or private equity funds. This rule would allow regulators to micromanage financial institutions but would do nothing to reduce systemic risk.

The conference committee did reject the near-total ban on such investments, allowing banks to take minor stakes in hedge funds and private equity funds. However, the new rules still present problems. For instance, the difference between legitimate and traditional activities and those the Volcker rule seeks to ban would be difficult, if not impossible, to determine. Attempting to do so would require an intrusive, expensive regulatory compliance system that by its nature would micromanage day-to-day activities.

Derivatives

One of the most complex sections deals with the regulation of derivatives, a financial instrument that one party to the transaction can use to reduce risk while the other assumes that risk in return for a potential gain. These instruments can substantially reduce the risk of financial transactions.

The legislation comprehensively regulates most derivatives, traders, and issuers. Dealers would be subject to new capital, reporting, and margin standards and would have to trade routine derivatives on exchanges. As with the Volcker rule, the conference stopped short of the Senate’s complete ban on bank investments in derivatives, but the new regime will still increase the cost of derivatives and limit their benefits.

Debit Card Fees

The bill would also eliminate part of the fees paid by retailers to credit card companies for the use of debit cards. The part that is being eliminated goes to the financial institution that issues the card, and the loss of this income may cause certain issuers to either drop their cards or limit their availability. This fee applies only to large banks, with fees going to smaller financial institutions, state governments that use debit cards to pay certain types of benefits, and certain other card issuers still being allowed.

Capital Standards

A good portion of the conference agreement would set new size- and risk-based capital standards for financial institutions. Capital, composed of retained earnings and shareholder equity, is the first line of defense when a financial institution runs into trouble, as it can absorb losses.

Unfortunately, the bill limits its impact by prohibiting larger holding companies from using one popular form of existing capital, trust-preferred securities (a financial instrument having characteristics of both equity and debt), as Tier 1 capital. This will force larger banks to replace existing capital when they should be building additional capital.

Fannie Mae and Freddie Mac

Despite much rhetoric about ending bailouts, the bill does nothing to address Fannie Mae and Freddie Mac, two of the largest recipients of federal bailout money. These two government-sponsored enterprises, now in federal receivership, helped fuel the housing bubble. When it popped, taxpayers found themselves on the hook for some \$150 billion in bailout money.

The failure to address their future is a serious error and shows just how hollow are claims that this agreement will prevent future crises.

Devil in the Details

The above is by no means a comprehensive list of problematic provisions in this massive bill. There are many others, including major legislative moves to extend Washington’s control of compensation, revise federal deposit insurance, regulate credit reporting agencies, and alter corporate governance rules.

In addition, the bill includes small but significant changes hidden in other sections that have not yet surfaced. As in any bill of this size, these “hidden” provisions of all kinds will inevitably come to light in the coming weeks—after the scheduled final vote.

Making Things Worse

This legislation is the wrong approach to fixing the financial industry. Rather than end the “too big to fail” mindset, it reinforces it. Rather than end bailouts, it ignores the ongoing bailout of Fannie Mae and Freddie Mac. Rather than make the financial system safer, it reduces firms’ ability to handle risk. And rather than help consumers, it raises their costs, reduces their choices, and hinders the capital formation necessary to make them more prosperous. Congress should consider these problems carefully before rushing into final passage next week.

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The Supreme Court's Gun Showdown

By Randy Barnett
Georgetown University

There is a remarkable academic consensus that the original meaning of the 14th Amendment protected an individual right to keep and bear arms against interference by state governments. Yesterday's Supreme Court decision in *McDonald v. Chicago* affirmed that this is indeed the case. It is, therefore, a great victory for enforcing the original meaning of the Constitution. Thankfully for the rights of Americans, the Chicago gun ban at issue will soon be consigned to the dust bin of history.

Since the Supreme Court acknowledged in *D.C. v. Heller* (2008) that the Second Amendment protects an individual right to arms, it was expected that it would eventually enforce that right against state interference. The big debate among observers was how the court would do so.

Would it use the 14th Amendment's Privileges or Immunities Clause that says: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States"? Or would it use the Amendment's Due Process Clause that says: "nor shall any state deprive any person of life, liberty, or property, without due process of law"?

The Privileges or Immunities Clause has been virtually a dead letter since 1873, when the court in *The Slaughter-House Cases* limited its scope to rights of a purely national scope, such as the right to access a foreign embassy or to be protected when traveling on the high seas. It was a preposterous interpretation — these were hardly the rights congressional Republicans in the aftermath of the Civil War were most concerned to protect in the wake of the terrible abuses of free blacks and white unionists by Southern states.

In oral argument last March, several conservative justices expressed skepticism that the scope of the Privileges or Immunities Clause could be sufficiently limited to avoid judicial abuses. This was a strong signal that the court would "incorporate" the right to keep and bear arms against state interference via the 14th Amendment's Due Process Clause — the way it protects most other rights enumerated in the Bill of Rights. And yesterday this was exactly what four justices chose to do.

But this too should be a headline of *McDonald*: Only a plurality of the Court relied on the Due Process Clause. The deciding vote was cast by Justice Clarence Thomas, whose concurring opinion rested solely on the Privileges

or Immunities Clause. While agreeing "with the Court that the Second Amendment is fully applicable to the States," he did so "because the right to keep and bear arms is guaranteed by the Fourteenth Amendment as a privilege of American citizenship."

Furthermore, nothing in the plurality opinion by Justice Samuel Alito cast any doubt on Justice Thomas's analysis. Instead, in three terse sentences, Justice Alito simply "decline[d]" to revisit *Slaughter-House* or even address the original meaning of the Privileges or Immunities Clause.

Justice Thomas's analysis summarizes and reflects a consensus of legal scholarship that the Privileges or Immunities Clause does protect at least the rights enumerated in the Bill of Rights against state interference. Because his interpretation of the clause was necessary to reach the outcome in *McDonald v. Chicago*, it is now very much alive. Put another way, there is no longer a majority of the court willing to use the Due Process Clause in a case in which the Privileges or Immunities Clause is the right clause on which to rest its decision.

To appreciate how significant this is, recall the famous 1978 case of *Regents of the University of California v. Bakke* in which the court struck down the affirmative

action program that excluded Alan Bakke from the University of California medical school. In that case, while a majority of five justices found the program unconstitutional, only a plurality of four justices concluded that all race-based admissions policies were unconstitutional. Justice Powell thought that some affirmative action admissions programs could be constitutional if they were needed to provide "diversity" in the classroom.

Based on Justice Powell's lone opinion, "diversity" became the watchword by which affirmative action programs in education were justified in lower courts. It took 25 years for a majority of the court to finally adopt Powell's "diversity" rationale in the 2003 case of *Grutter v. Bollinger*. But adopted it was.

Unlike Bakke, lower courts will not have to follow Justice Thomas's reasoning as they did Justice Powell, whose theory provided the swing vote to decide whether an affirmative action program survived or failed. Nevertheless, the fact that there was only a plurality for using the Due Process Clause means that the original meaning of the Privileges or Immunities Clause is now a part of constitutional law. Justice Thomas's uncontradicted analysis will enter into the casebooks from which all law students and future justices study the 14th Amendment.

In addition to the Bill of Rights, the privileges or immunities of citizens clearly included fundamental rights protected by the Civil Rights Act of 1866: "to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full

and equal benefit of all laws and proceedings for the security of person and property...." After all, it was President Andrew Johnson's veto of this act as unconstitutional that helped motivate passage of the 14th Amendment.

To the conservative fear that the full scope of the Privileges or Immunities Clause was uncertain, Justice Thomas countered that the only "question presented in this case is ... whether, and to what extent, a particular clause in the Constitution protects the particular right at issue here." With this narrower focus, Justice Thomas presented an extensive and detailed analysis of the original meaning of the Clause in the belief that "this case presents an opportunity to reexamine, and begin the process of restoring, the meaning of the Fourteenth Amendment agreed upon by those who ratified it." While conceding that "interpreting the Privileges or Immunities Clause may produce hard questions," Justice Thomas countered that "they will have the advantage of being questions the Constitution asks us to answer."

By declining to take issue with Justice Thomas's impressive 56-page originalist analysis, the other justices in effect conceded what legal scholars have for some time maintained — that the court's cramped reading of the clause in 1873 was inconsistent with its original meaning. Yesterday the lost Privileges or Immunities Clause was suddenly found. And some day it may be fully restored to its proper place as the means by which fundamental individual rights are protected under the Constitution against abuses by states.

Randy E. Barnett is a professor of constitutional law at Georgetown University and the author of *Restoring the Lost Constitution: The Presumption of Liberty* (Princeton, 2005).

Letter To The Editor

To our valuable customers,

What would happen if the federal government decided that city roads, bridges, and infrastructure should be better-constructed and more efficient than the roads in rural America? What about if policymakers determined that urban consumers should be able to get where they are going and get what they need faster than rural consumers? A new government plan intends to make that true of our nation's information superhighway—the Internet. And while it's not the highway we drive

on, rural consumers should still be very concerned.

The Federal Communications Commission (FCC) has crafted a plan to make broadband Internet access universally available. Reliable, high-speed broadband has become the essential service of today, like electricity and telephone service were decades ago. Broadband can improve the lives of all consumers and is especially important for those of us living in rural America. The Internet enables farmers to monitor weather patterns and ranchers to buy and sell livestock in markets far from home. It also gives small businesses the opportunity to reach customers nationwide, offers local students the chance to take classes online, and allows doctors to remotely diagnose patients and even offer remote emergency care. The FCC's plan will make rural

Americans second class citizens in the new broadband world, because it establishes a speed goal for rural areas that is twenty-five times slower than for urban areas. Shouldn't rural communities have access to the same broadband services as our larger towns and cities?

Years ago, Congress established a universal service policy for telephone service. It required that those living in rural areas have access to communications services at prices that are affordable

and reasonably comparable to those available in urban areas. Rather than support this same universal service philosophy for broadband, the FCC's plan offers faster, better service to some Americans while guaranteeing lesser service to others.

Don't let the FCC keep our rural community on the slow side of the broadband digital divide. Urge your congressional representatives to support regulatory action that ensures equal access to broadband for all Americans.

If you live in Pottawatomie County, contact Congresswoman Lynn Jenkins at 202-225-6601 or visit <http://lynnjenkins.house.gov>. Wabaunsee County residents should call Congressman Jerry

Moran at 202-225-2715 or visit <http://www.jerrymoran.house.gov>. Also contact Senators Sam Brownback at 202-224-6521 or

visit <http://brownback.senate.gov> and Pat Roberts at 202-224-4774 or visit <http://roberts.senate.gov>. Phone calls and emails are the quickest ways to contact your elected officials.

You can also contact the FCC at 888-225-5322 or fccinfo@fcc.gov to voice your opinion about the future of broadband.

If you'd like to learn more about this issue, contact WTC at 785-456-1000 or 785-437-3168.

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And They Rocked

By Sandy Roche

As the sun set on yet another glorious day, May 2nd of 2010, the walls of the Wamego Family Worship center soaked in the sweet melodies of local talent Caleb Nelsen and the traveling band of "The ineloquent".

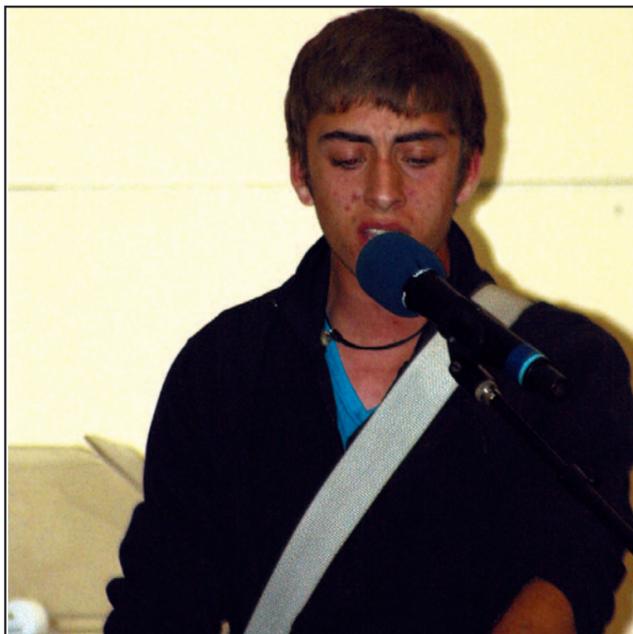
Caleb started his fine arts singing career at the Wamego Family Worship Center. In April of 2009, Caleb and his band 'Ashes to Ashes' made district and they subsequently qualified for nationals in August of 2009 at Orlando, Florida. This year Caleb wrote and composed a song called 'Set Me Free' which went to district in April and then qualified for nationals to take place in

Detroit, Michigan in August. He was honored to qualify in two categories, guitar solo and song writing.

Caleb reported that he "wanted to try and reach people with the modern message of this song," and thanks all the people of this community who have supported him in that effort. He is the son of Kimberly Nelsen (Umscheid), and grandson of Keith & Mary Umscheid of Westmoreland, Ks.

"The ineloquent" band followed; they are in the process of putting out a new record in a few weeks with the music they have been playing on this tour which started April 9 and continues till May 26th. This particular tour

is called 'Voice of the Voiceless'. The 'ineloquent band', which originates out of Boulder, Co., started as a full time band 2 1/2 years ago and wows their audiences with the magic of their words and music. Band members include co-leaders Daniel and Georgina Eakins and Pablo Kalderson. His wife Bethanie exhibits her talents as the powerpoint projectionist. This is the second time that they have been here and it can only be said that they get better every time they are. Plans are that they will be back in 2011 so watch for the pending announcement of their next scheduled performance here, it will be so worth the time to see them.'



Caleb Nelsen

Dallas Johnson Receives Honors

The American Statistical Association is honoring a Kansas State University professor emeritus of statistics for his work.

Dallas Johnson will receive the W.J. Dixon Award for Excellence in Statistical Consulting at the association's Joint Statistics Meetings in early August in Vancouver, British Columbia. Johnson is only the second recipient of the annual award, which was first awarded in 2009.

Johnson, who retired from K-State in 2006, had a long and distinguished career as a faculty member and consultant. He served 31 years in the department of statistics.

"He was always very busy and was constantly sought after because of his vast knowledge of a wide variety of statistical areas and his ability to bring his consultees up to speed so that they had

their own understanding of their results," said John Boyer, professor and former head of the K-State department of statistics. "He was truly outstanding in these one-on-one settings, whether he was working with another statistician, a faculty colleague in another area, or students just beginning to grasp the statistical methodologies appropriate to the work they were doing."

Johnson also worked with his K-State colleague and friend George Milliken on their "messy data" series of books. The first of these, "Analysis of Messy Data, Volume I: Designed Experiments," was published in 1984 and earned both men national reputations. The pair revised the book in 2004.

The book spawned an assortment of short courses, workshops, traveling courses and seminars that strongly influenced a whole

generation of statisticians, students, subject matter researchers and statistical consultants, Boyer said. The book describes not only methods of analysis, but also provides strong guidance on how and when to apply those methods, gives advice about diagnostic tools, and exhibits code for software that will accomplish the necessary tasks.

Johnson then co-authored two more books in the messy data series, one on analysis of covariance and another on nonreplicated experiments. In 1998 he authored a successful text on multivariate analysis, "Applied Multivariate Methods for Data Analysts."

Boyer said Johnson's talents have not been confined to K-State. He has done consultation work for the federal government, including for the Environmental Protection Agency as a member of its Human Studies Review Board. He has advised a number of researchers on methodologies for conducting their experiments and has helped guide the agency on oversight of sponsored research.

Johnson, who was raised in Central City, Neb., earned a bachelor's from Kearney State College in Nebraska, a master's from Western Michigan University and a doctorate in statistics from Colorado State University.

His many honors include being named a Fellow of the American Statistical Association, which also presented him with the Founders' Award, the highest honor given for service to the organization. In addition, he served as the first editor of the association's Journal of Agricultural, Biological, and Environmental Statistics.

NBAF Has Hopes

William "Bill" White, director of the Foreign Animal Disease Diagnostic Laboratory at the Plum Island Animal Disease Center, New York, said he hopes one of the outcomes from the National Bio- and Agro-defense Facility at Kansas State University will be to perfect pen-side tests that would allow medical professionals to determine if farm animals are susceptible to foot-and-mouth disease.

"We want to continue to develop and validate new diagnostic tests that will allow us to maintain a cutting-edge profile," White said at Monday's kick-off for the U.S. Department of Homeland Security Center of Excellence for Emerging and Zoonotic Animal Diseases, or CEEZAD, at K-State.

The meeting included presentations by top experts in zoonotic diseases from around the world, including White and K-State's Juergen Richt, Regents Distinguished Professor in K-State's College of Veterinary Medicine and a Kansas Bioscience Authority Eminent Scholar.

The Department of Homeland Security is replacing the Plum Island facility with the National Bio- and Agro-defense Facility, or NBAF, at K-State.

At the Foreign Animal Disease Diagnostic Laboratory, White leads a team of nearly 50 employees at the only facility in the United States allowed to work with the foot-and-mouth disease virus. His team diagnoses foreign animal diseases both domestically and internationally. The facility's collaborations include working with medical officials in the Philippines on the Ebola-Reston virus; the Porcine teschovirus and new disease outbreaks in Haiti; lumpy skin disease in Afghanistan and Pakistan; as well as partnerships with Nigeria, Saudi Arabia, Iraq, Dominican Republic, Congo and Mongolia. White also has worked on bioforensics with the FBI.

Videos of presentations from the meeting will be available online at <http://www.vet.k-state.edu/CE/2010/ei.htm>.

Matta from page 4

The false ideas regarding redistribution of wealth and democracy have brought us to 40MM people on food stamps and nearly 50% of the people not paying any federal income tax. Such a situation can not sustain itself. Those who have grown dependent on the dole are now slaves to it. The producers in society have become the slaves of those on the dole. Why should they continue to produce? As the Supreme Court stated before the 1936 Butler Case which distorted the "general welfare" clause to allow for such redistribution schemes:

"No man would become a member of a community in which he could not enjoy the fruits of his honest labor and industry. The preservation of property, then, is a primary object of the social compact.... The legislature, therefore, had no authority to make an act divesting one citizen of his freehold, and vesting it in another, without a just compensation. It is inconsistent with

the principles of reason, justice and moral rectitude; it is incompatible with the comfort, peace and happiness of mankind; it is contrary to the principles of social alliance in every free government; and lastly, IT IS CONTRARY TO THE LETTER AND SPIRIT OF THE CONSTITUTION."

Here is one final note for those interested in the Founders view on whether the needy should be helped. The answer is yes. The Founders view and their order of responsibility was very simple. The individual is responsible, but the individual having failed, then the family, and then the church, and then other charities. If all these fail then the city and then county should step in. Finally the state government should provide aid but only in dire circumstances such as a natural disaster. The Founders were clear on the concluding point. Under no circumstances was the federal government to get involved.



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