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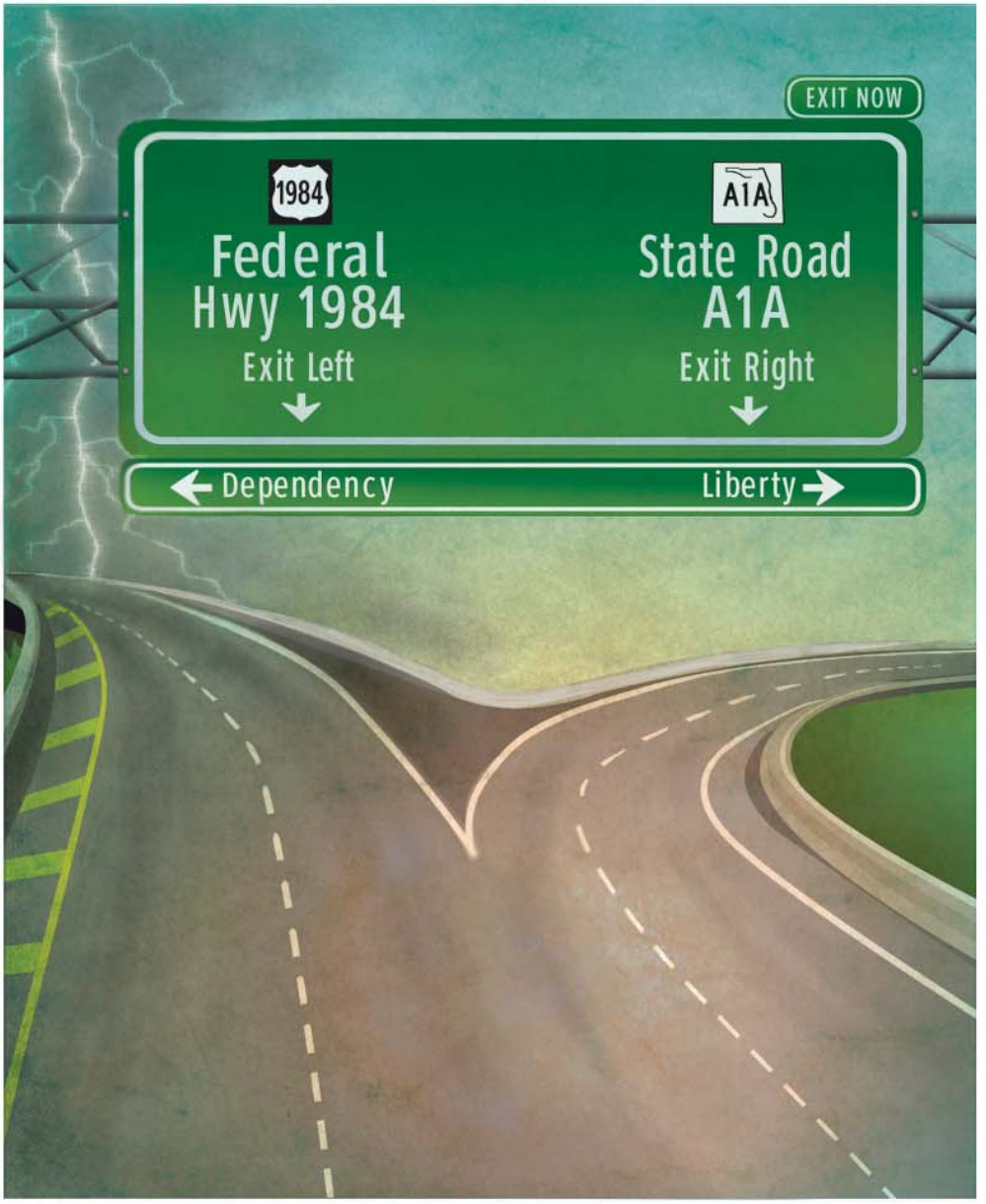

Will Americans Preserve Their Liberty?

THE JAMES MADISON INSTITUTE

Trusted Solutions for a Better Florida

Founded in 1987 by Dr. J. Stanley Marshall, The James Madison Institute is a non-partisan policy center dedicated to advancing the free-market principles of limited government, individual liberty, and personal responsibility.

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MESSAGE FROM THE PUBLISHER

FROM THE EDITOR'S DESK

ARTICLES

BOOK REVIEWS

The James Madison Institute is a Florida-based, nonpartisan, nonprofit research and educational organization dedicated to advancing such timeless ideals as economic freedom, limited government, federalism, traditional values, the rule of law, and individual liberty coupled with individual responsibility.

The opinions expressed in The Journal of The James Madison Institute *are those of the authors and do not necessarily reflect the views of The James Madison Institute, its staff, or its Board of Directors.*

MESSAGE FROM THE PUBLISHER

SPN: A NATIONWIDE COLLECTION OF STATE-BASED THINK TANKS

BY J. STANLEY MARSHALL

As a state-based think tank, The James Madison Institute (JMI) is not alone. Virtually every state now has at least one, and for those still lacking a state-based think tank, a nearby state usually has one that can deal with multi-state issues.


MARSHALL

How many you ask? The count is currently more than 100. That's too many for *Journal* readers to be given a description of the missions of all those organizations or even a list of their names and locations. What seems more doable, and we believe more useful, would be an account of what several of the most prominent are doing and a bit about their missions and their histories.

The Heartland Institute

We'll start with The Heartland Institute, which is headquartered in Chicago with an office in Washington, D.C. Founded in 1984, Heartland is one of the oldest organizations in the State Policy Network (SPN). It was one of the three I visited in the spring of 1987 as I contemplated starting a Florida think tank. Joe Bast, who was and still is President of Heartland, was very helpful and generous with his time in helping me understand the demands of founding and operating such an organization. We toured its Chicago office, and I met several staff members and left with a good feel for the demands of the job I was about to undertake.

Heartland identifies itself as "a national nonprofit research and education organization devoted to discovering, developing, and promoting free-market solutions to social and economic problems." President Bast is not shy about stating his views of Heartland's role in the group of free-market think tanks: "We change public policies at the

national, state, and local levels of government in the United States by contacting more elected officials, more often, than any other think tank." He also points out that Heartland promotes the best work of other think tanks and reports that their surveys show that their publications are read by nearly 80 percent of state-elected officials and 50 percent of local officials.

Heartland's officials have used the Institute's research to stop wasteful government spending, eliminate burdensome regulations, and empower individual consumers in the areas of health care and education. They emphasize that they are an "action tank" as well as a think tank and that their success is measured by their impact on the real world.

Heartland is recognized for its work in exposing the shoddy science and missing economics behind the global warming delusion. Their publications and international conferences are believed to have changed the debate and led to the defeat of "cap and trade." They have been a leader in advancing school choice, opposing implementation of Obamacare, and defeating efforts to tax and regulate the internet.

The Pacific Legal Foundation

The Pacific Legal Foundation (PLF) has made its mark by winning important legal precedents in state and federal courts. Because it often chooses cases where constitutional rights are at risk, PLF has made several appearances before the U.S. Supreme Court. It has won a number of cases, and has a record of success unmatched by any other public interest legal organization.

Let's look at a case that has attracted national attention. In 2006, Mike and Chantell Sackett of Priest Lake, Idaho bought a .63 acre parcel of land for $23,000. It was their intention to build a house on the land and in preparing the property, they hauled in several loads of gravel. At this point, the Environmental Protection Agency (EPA) decided the Sacketts' lot was a wetland and demanded that construction be halted and the gravel be removed. Doing so would have cost $27,000, more than the Sacketts paid for the lot. They were told by the EPA and the Ninth Circuit Court (that notoriously liberal court in San Francisco) that they could not get direct court review of EPA's claim and that they must obey a detailed compliance order or be hit with fines of up to $75,000 per day.

But a unanimous decision by the U.S. Supreme Court in March 2012 changed all that when it ruled that landowners have a right to direct meaningful review when EPA seizes control of land declaring such land to be wetlands. The judgment of the lower court has been reversed and the case is remanded.

Another interesting case was *Nollan v. California Coastal Commission* (1987). It was one of the most important property rights decisions the Supreme Court ever handed down. Nollan outlawed a particularly egregious form of "shakedown" by

land use regulators. This meant that government could not condition the granting of a building permit on the landowner's making a payment or surrendering property with no connection to the impact of the proposed building project.

In still another interesting case, regulators were stopped from demanding that an elderly, wheelchair-bound widow sell small development rights (in a nonexistent market) before being able to seek judicial relief for denial of her right to build a home; the case was *Suitum vs. Tahoe Regional Planning Agency* (1997). This was another case where PLF used its knowledge and experience in legal matters to champion the cause of justice for people who had very limited options for seeking justice.

In *Rapano vs. United States* (2006), the court's decision in this case was to narrow the scope of the federal Clean Water Act jurisdiction, so that landowners who are not close to navigable waters may not be subjected to federal micro managing of their property.

Elsewhere in this *Journal*, readers will find an article about the Pacific Legal Foundation's work, plus a separate article demonstrating the importance of the landmark ruling in the Sackett case.

The Foundation for Economic Freedom

The Foundation for Economic Education (FEE) is the most senior of the current think tanks, having been founded in 1946. In its recent letter to "Friends of FEE," a friend and supporter explained the importance of what the organization does: "What FEE truly offers are intellectual lifelines for people who are drowning in the contemporary educational system. The painful isolation of being surrounded by left-wing orthodoxy, the thirst for politically-incorrect educational material that just isn't available in many of our high schools and colleges...." These are some of the costs of trying to accept and accommodate America's present-day system of public education.

One of FEE's major activities is to conduct seminars for high school and college students. In 2011 FEE received 1,036 applications for its Summer Seminar Program and could accept only 456 participants. One of those students is a young woman from the University of Wisconsin–Madison who wrote the following about last summer's seminar: "I am leaving better informed of the importance of free markets and our economy. The ideas I was exposed to here have opened my eyes to how I will handle future situations throughout my life. I believe that FEE has aided me in understanding the urgency and importance of liberty in our society."

The seminars are, however, not the only way for FEE to teach the liberty-minded leaders of tomorrow. The organization produces content for the present-day media young people are familiar with. That means FEE has a presence on YouTube, Facebook, and Twitter. In June 2011, an

online You Tube portal was launched that presents new, attractive videos on a weekly basis. Topics range from the housing boom and bust to the war on drugs to money and inflation and something FEE calls "the Austrian theory of the business cycle".

Its most important publication is *The Freeman*, which is described as "the premier magazine of the freedom movement." Whether in print or online, *The Freeman* is said "... to offer the case for the free market against the so-called economic stimulus and to expose the fallacies of the prevalent statist proposals." The free online edition is said to attract hundreds of thousands of readers who engage in lively debates by posting comments, e-mailing articles to friends, and sharing articles through social networking sites.

The President of FEE is Lawrence W. Reed, who travels around the country extensively and speaks to groups large and small. The "Evening with FEE" speaker series will have events next year in New York and Atlanta. They also sponsor a writing competition for students with this year's topic being "Should the Federal Reserve be abolished? What monetary system should replace it?" Reed and FEE's official historian have produced a collection of essays titled *A Republic–If We Can Keep It*; these essays survey America's economic history from the founding fathers to the bailed-out bankers. This edition of *The Journal* includes a review of this informative book.

***"Reed and FEE's official historian have produced a collection of essays titled* A Republic – If We Can Keep It."**

The Mackinac Center

The Mackinac Center in Midland, Michigan was founded in 1987, the same year as JMI. It has been a very active organization and has attracted a good bit of attention from the other SPN members. Mackinac's Senior Legislative Analyst compiled a list of 25 top government reforms in Michigan to help the people in Michigan judge the performance of those who govern that state.

One such reform is a new law that bans automatic raises for teachers when the union contract expires without replacement. School district labor negotiators told those attending a Mackinac Center forum that this new law had already forced unions to settle contracts on terms more favorable to taxpayers.

Post-retirement health benefits for state employees have been reformed—they are now required to increase their contributions. It is claimed that this will save Michigan taxpayers billions of dollars in the coming years, but if these reforms could be applied to other school employees, the savings would be much greater, assuming Michigan's Legislature summons the will to challenge the state's largest government employee union, the Michigan

Education Association.

Mackinac stresses that local governments are more prudent and frugal when they must rely on their own local tax revenue rather than "free money" provided by the state. While some of that money is mandated by the constitution, the rest has been made contingent on certain "best practices." These practices include consolidating services, increasing transparency, and reforming the government employees' pensions and health benefits.

Mackinac's newsletter, *IMPACT*, leaves little doubt in the reader's mind about the Center's involvement in many of these important reforms. Mackinac deserves the respected place it occupies among SPN's most active members.

The Georgia Public Policy Foundation

The state of Georgia has undergone dramatic changes in public policy in the past two decades. The Georgia Public Policy Foundation, founded in 1991, reports that in that very year, Georgia passed the largest tax increase in its history. Charter schools did not exist.

Now, thanks in part to the Foundation's work in educating lawmakers and informing the public, Georgia has become a leader in school choice. Moreover, today the Foundation reports that its work in privatization is credited with prodding state government to turn to the private sector to cut costs and improve services. Georgia is now one of the leading states in privatization.

The Goldwater Institute

Barry Goldwater made some memorable contributions to public policy in his home state of Arizona and in the nation. The Goldwater Institute was founded in 1988 with the blessing of its namesake, Senator Barry Goldwater. George Will called it "America's most potent advocate of limited government".

Goldwater relates an interesting account of a woman whose battle with cancer inspired her to look for ways to lighten the burden of others battling cancer. This lady founded a home beauty organization to connect elderly, sick, and terminally ill patients with licensed practitioners who can cut hair, polish nails, or give massages in homes and assisted-living facilities. But the Arizona Board of Cosmetology began to harass her. She was required to open a physical salon, even though her clients had no interest in using it. The Institute's "crack litigation outfit"—that's what it was called by the *New York Times*—took on the case and is now defending this lady's constitutional rights to earn an honest living.

Then there's the case of Blake, a 10-year-old autistic boy, a visual learner who is said by his mother to have a photographic memory. When he entered kindergarten at his local public school, he tested above grade level. However, by the time he finished the fourth grade, he had fallen behind. His parents used their own money to pay for additional instruction for Blake. That helped,

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FROM THE EDITOR'S DESK

HOW THE ROAD TO SERFDOM STARTS WITH PATERNALISM

BY ROBERT F. SANCHEZ

Many a rebellious teenager has heard "The Speech." It goes something like this:
"As long as you live under my roof, and I'm paying the bills, you'll obey my rules."

It's a form of paternalism that's understandable and certainly has its place—within the family circle. Moreover, kids who can't accept this kind of deal can always make plans to move out when they think they can stand on their own two feet.

On the other hand, free people do not want to hear "The Speech" from Uncle Sam. After all, he's paying the bills with the money we send him—plus borrowed money that we and our kids and grandkids will have to repay. As for moving out (out of the country?) that's hardly a viable option for most folks.

"The most intrusive power grab yet is the federal government's takeover of health care."

Unfortunately, Americans are hearing "The Speech" more often nowadays as the federal government in Washington imposes new laws, rules, regulations, mandates, and edicts to govern the conduct of individual Americans and their local and state officials.

The most intrusive power grab yet is the federal government's takeover of health care. The Affordable Care Act (ACA) is bad enough. However, as Rep. Barney Frank and others among its supporters have candidly admitted, this 2,700-page law was deliberately designed to fail. Its real purpose is to serve as a way station en route to a Canadian-style single-payer system of socialized medicine.

So I had to chuckle when I heard former House Speaker Nancy Pelosi tout the ACA as a triumph

of "personal responsibility" that will force "free riders" to pay. This comment came from a politician who perceived a "war on women" when a Catholic university balked at including contraceptives in its health insurance plan. This led to a complaint and a congressional dog-and-pony show for Georgetown University law student Sandra Fluke. Her version of "personal responsibility" is to have other people pay for her contraceptives—even if doing so would violate the tenets of their faith. (For more on this issue, check out this *Journal*'s article by Jim Towey, President of Florida's Ave Maria University.)

As it happened, on the day in 2010 when the pass-it-now, read-it-later ACA took a major step forward in Ms. Pelosi's House of Representatives, I spent $480 of my own money to renew my gym membership—exercising (no pun intended) my personal responsibility to try to stay healthy.

On the way home from the gym that day, I had to stop briefly at a local store to pick up a few items. What did I see when I left the store? Clustered around the entrance were 10 or 12 grossly obese people smoking. I thought to myself, "Wow! If Obamacare passes, I'm going to be paying for the health care of people who make bad choices—not only these clueless clowns, but people who become ill after injecting illegal drugs, driving drunk, engaging in promiscuous sexual activity, or taking other kinds of foolish risks."

If "personal responsibility" were really the goal, individual Americans would remain free to make choices, good or bad—but at their own expense. When the federal government completes its takeover of health care—inevitable unless "Obamacare" is swiftly repealed—we can expect Uncle Sam to step in with "The Speech." We're already told, "Don't smoke. Use your seat belt or pay a fine. Wear a helmet if you ride a motorcycle—or a bicycle." Good advice all, but where will it stop? Coming soon: Eat your broccoli or pay a tax?

Government does have a role to play: in *public* health, not *personal* health. Public health entails curbing contagion and ensuring basic sanitation—clean air and water, waste disposal, and so on.

Conversely, matters of *personal* health—which involve some of the most intimate details of our lives—should be a matter of personal responsibility. Therefore, the government ought to have no role whatsoever in personal health—unless Americans want to be treated like dependent children and serve as a captive audience when a paternalistic Uncle Sam delivers "The Speech."

A Correction

Based on misinformation supplied by an elected official, the author of the article titled "Florida's Vehicle Insurance: 'A Circling Pool of Piranhas'" (Winter 2012 *Journal*, page 24) incorrectly attributed a quote to "senior analyst Scott Matiyow." In reality, the remark ("The no-fault system is not accomplishing its

purposes. Policyholders are paying higher premiums as the purchasing power of the benefit erodes.") was made by James Knudson, Senior Attorney of the Senate Committee on Banking and Insurance. A correction has also been posted in the electronic version of the Winter 2012 *Journal*, which is available on the Institute's website, www.jamesmadison.org.

Editor's Note:

The Journal welcomes readers' letters via e-mail or "snail mail." Complete contact information is listed inside the front cover of each issue.

THINK TANKS *(Continued from page 7)*

but the cost was prohibitive. Enter the Goldwater Institute. It crafted a law that allows parents of special needs children to spend their portion of state school funding on any education service that they need, whether that's private school tuition, a school where classes take place over the computer, or special tutoring help. The Goldwater people point out that this gives parents greater control over the education of their children while at the same time saving taxpayers' money.

Conclusion

These accounts of some of the interests and activities at six of our leading think tanks are presented to give Journal readers some idea of the importance of these organizations. The claim has been made that the net effect of the SPN family of think tanks is to influence in a significant way the evolution of public policy in the United States. That's a hopeful and optimistic claim, and some in the movement, such as those here at JMI, believe it's entirely realistic.

Worthy Words

"The Constitution is not an instrument for the government to restrain the people, it is an instrument for the people to restrain the government –lest it come to dominate our lives and interests."

–PATRICK HENRY

"Procrastination is opportunity's assassin."

–VICTOR KIAM

WILL WE STILL BE FREE?

BY DR. J. ROBERT McCLURE

Ordinarily I'm not a fan of the American Civil Liberties Union (ACLU). Very often its attorneys' interpretations of the U.S. Constitution stray far away from what we strict constructionists believe was the obvious intent of our nation's Founders.

In fairness, though, I'll give ACLU credit for two things. One is its consistent habit of sticking up for its core beliefs, even when those beliefs are unpopular with the general public and with some of its members and key allies. It's a challenge—staying true to a set of principles—that many organizations face.

As for the ACLU, its leaders recently caught a lot of flak from some of its most prominent members and donors when its lawyers took the side of free speech in the *Citizens United* case.

That's the recent U.S. Supreme Court decision that angered President Obama, other "progressives," and the Occupy Wall Street protesters. They've been denouncing the Court for permitting "a corporate takeover of our democracy."

What's the fuss really all about? In its majority opinion(s) in *Citizens United*, the Court ruled that the rights outlined in the First Amendment of the U.S. Constitution are guaranteed not only to individuals but that they also apply to groups of individuals.

This includes individuals who band together and incorporate, whether to engage in commerce or as organizations to advocate on

behalf of political causes or candidates—and to collect and spend money on behalf of those causes and candidates.

Citizens United so infuriated the political left that President Obama, during a State of the Union address to Congress, rudely scolded the justices who formed the Supreme Court majority in that case.

Worse, a group of 29 congressmen subsequently introduced a so-called "People's Rights Amendment" to overturn *Citizens United*. Fortunately, our nation's Founders wisely did not want the Bill of Rights to be casually tossed aside, so they provided an amendment process that requires an extraordinary majority in both houses of Congress and ratification in three-fourths of the states.

Therefore, we can at least be confident that the odds are stacked against this amendment's gaining the necessary votes for ratification. We can be less confident, however, that the U.S. Supreme Court's tenuous 5-4 semi-conservative majority will remain in tact.

Several of the older sitting justices are expected to retire within the next four years, if not sooner. The views of the President who will nominate the retiring justices' respective successors matter—a lot. So does the philosophical orientation of the U.S. Senate, which has the constitutional duty to "advise and consent" on judicial nominations.

Not that the current composition of Supreme Court guarantees that the constitutional principles as envisioned by our nation's founders will invariably prevail in our nation's highest court.

In fact, the Supreme Court has abridged some of our precious Constitutional rights in recent years, when maintaining a tenuous conservative majority has depended on the whims of "swing justices" such as Anthony Kennedy, the now-retired Sandra Day O'Connor, and—surprise!—Chief Justice John Roberts, who authored the majority opinion upholding the constitutionality of the Affordable Care Act.

"Fortunately, Kelo let the states set their own rules. In Florida, The James Madison Institute took the lead…"

One classic example of a wrongheaded decision expanding the government's power in ways dangerous to the Bill of Rights was the Supreme Court's ruling in *Kelo v. City of New London*.

It allowed a local government, the city of New London, Connecticut, to use its powers of eminent domain to take a piece of property from one private party and convey it to another private party—merely to boost its tax base. In Florida, the city of Riviera Beach, Florida, was trying to use the same tactics.

Fortunately, *Kelo* let the states set their own rules. In Florida, The James Madison Institute took the lead, publishing an influential study by Florida State University Law Professor J.B. Ruhl.

This JMI study showed how the *Kelo* ruling endangered everyone's property rights, which the U.S. Constitution's Fourth Amendment explicitly guarantees and which the U.S. Supreme Court majority cavalierly ignored.

Soon after the *Kelo* decision, then-House Speaker Allan Bense—who's now the chair of JMI's Board of Directors—led Florida's dual response to *Kelo*: a statute *plus* an amendment to the state Constitution forbidding this kind of abuse of the property rights. Florida voters overwhelmingly approved that amendment in November 2006.

As for the U.S. Supreme Court's ruling upholding portions of ACA, the litigation is far from over, as Ave Maria University President Jim Towey explains elsewhere in this *Journal*.

Indeed, federal regulations implementing the law—especially the rules requiring faith-based institutions to provide their employees with health insurance coverage for medical procedures contrary to their faith or else pay a fine—are an affront to religious liberty. That issue is likely to reach the U.S. Supreme Court as soon as next year.

Meanwhile, ACA's huge cost is a reminder of how the growth of government at all levels is undermining one of our precious freedoms: the right to keep and enjoy at least a reasonable share of the fruits of our labors.

Indeed, the downfall of the "evil empire" behind the Iron Curtain arguably occurred when the downtrodden masses—the very people who were supposed to benefit under Marxism—saw the fruits of their labor confiscated and redistributed to the Communist Party bosses who had the limos in Moscow and the fancy villas on the Black Sea.

Eventually, any East German peering across the Berlin Wall into West Germany could hardly help noticing the contrast between the free portion of their country and the enslaved portion. The same contrast is still evident across the 38th Parallel that divides the Korean peninsula.

Recent trends in the United States, however, are enough to cause deep concern about our nation's direction. From the seemingly inexorable growth of entitlements and the welfare state to the squandering of billions of taxpayers' dollars on dubious projects such as high-speed rail and "green" energy, from congressional earmarking for pork barrel projects to providing lavish perks and pensions for government employees, the growth of the public sector is sapping money and energy from the private sector that funds it. It's a reminder that, sooner or later, parasitic organisms destroy the health of their host.

Meanwhile, the *Kelo* and ACA rulings aren't the only troubling decisions from the Supreme Court—the very Court that Americans expect to safeguard our liberty and assert the vision of our nation's founders: a limited government based on individual liberty, self-reliance, personal responsibility, and federalism.

All of this brings me to the second thing I'll concede that I actually liked about the ACLU: its original

motto, "Eternal vigilance is the price of liberty." That bit of truth is attributed to the noted Boston orator, Wendell Phillips. The entire passage is worth noting—and obviously reflects James Madison's views on power:

> *"Eternal vigilance is the price of liberty; power is ever stealing from the many to the few. The hand entrusted with power becomes...the necessary enemy of the people. Only by continual oversight can the democrat in office be prevented from hardening into a despot; only by unremitting agitation can a people be kept sufficiently awake to principle not to let liberty be smothered in material prosperity."*

After 9/11, the ACLU replaced its original motto with a new one: "Because freedom can't protect itself." The inference: So you need the ACLU to protect your freedom. This sounds a bit like it was inspired more by Madison Avenue than James Madison.

Even so, it does make a valid point. In fact, our freedom is often under siege, whether from forces on the left or on the right and from threats both foreign and domestic—including America's growing culture of dependency on government.

Therefore, freedom needs allies on all fronts. Some of the most effective defenders of our liberty—in addition to JMI—are organizations that JMI works with when we share common ground on a particular issue.

For instance, the Pacific Legal Foundation fights nationwide on behalf of property rights. Its lawyers, representing an Idaho couple *pro bono*, recently won a huge legal victory: a 9-0 U.S. Supreme Court ruling in *Sackett v. the EPA*, a ruling discussed in detail elsewhere in this *Journal*.

When it comes to state-level matters as distinct from federal issues, every state now has at least one organization with a free-market agenda similar to JMI's. As JMI's founder Stan Marshall explains in his Publisher's Message, these state-based groups share their good ideas through a nationwide organization, the State Policy Network.

Yet the battle to preserve our liberty can't be left entirely to any or all of these groups, no matter how dedicated they may be. Individual Americans also have a vital role to play, as citizen activist Billie Tucker describes in her article in this *Journal*.

Therefore, to the question of whether we Americans will still dwell in the land of the free next year—and for many years thereafter—the answer is simple but also challenging: Because eternal vigilance truly is the price of liberty, freedom's survival is up to us.

And of course, this echoes the wisdom of James Madison's Constitutional Convention colleague, Benjamin Franklin. As the story goes, when a Philadelphia woman asked Franklin what kind of government the delegates had devised, he responded wryly "a republic, if you can keep it." ☙

Dr. J. Robert McClure is President/ CEO of The James Madison Institute.

A GLOBAL PERSPECTIVE ON ECONOMIC FREEDOM

BY DR. RANDALL G. HOLCOMBE

Freedom comes in many dimensions, and often is more closely identified with political freedom—civil liberties and democratic control of government—rather than economic freedom. Economic freedom means that people have the right to engage in productive activity, that people have a property right over what they produce, and that they are free to engage in an exchange of their property and their labor with others. While both economic and political freedom are important, it is useful to recognize that they are separate dimensions of freedom, because the prosperity that the developed world has enjoyed since the beginning of the Industrial Revolution has been the direct result of economic freedom.

Looking around the world, countries that have capitalist economies and rely primarily on markets to allocate resources are prosperous. Those that have used government control of the economy rather than market allocation have remained poor. The evidence on the merits of economic freedom is overwhelming. After World War II both Germany and Korea were divided into two nations, one with a primarily capitalist economy and the other that relied on government planning to run the economy. The divided countries had the same culture, the same language, the same backgrounds, but had different economic systems. The capitalist West Germany and South Korea prospered while the centrally planned East Germany and North

Korea lagged substantially.

Political freedom appears to have less impact on prosperity. Two of the fastest growing economies today are India and China. India has been democratic since its independence from Britain; China retains an authoritarian government with little citizen control and limited civil liberties for its citizens. The two countries, so politically dissimilar, both began their remarkable economic growth when they began shifting their socialist economies toward a free market allocation of resources. Political freedom is important, but economic freedom is what produces prosperity.

Measuring Economic Freedom

While a look around the world shows the benefits of economic freedom, casual observation does not offer a precise definition of what constitutes economic freedom, and it does not separate out the effects of economic freedom from political freedom. During the Cold War era, capitalist democracies were on one side, with socialist dictatorships on the other, which made it difficult to separate out the effects of economic freedom and political freedom. The Western capitalist democracies had both while the Eastern socialist dictatorships had neither. The India-China example gives some indication there is a difference, and there are a number of examples of capitalist countries with authoritarian governments that have prospered. Hong Kong has never been democratic, was first established as a British territory with a government overseen by a territorial governor appointed by Britain, and is now a part of China. Singapore has prospered with an authoritarian government and a capitalist economy. South Korea's remarkable growth began when it was a dictatorship. The concept of economic freedom does appear to be important in its own right.

To try to get a more precise measure of the concept of economic freedom, the Fraser Institute, based in Canada, has undertaken a project to measure economic freedom around the world. The project, now two decades old, is run under the direction of James Gwartney, an economics professor at Florida State University, and Robert Lawson, an economics professor at Southern Methodist University. They have designed an Economic Freedom of the World (EFW) index to measure economic freedom. The details can be found at www.freetheworld.com. The EFW index is composed of 42 individual variables that are aggregated into five general areas: (1) size of government; (2) legal structure and security of property rights; (3) access to sound money; (4) freedom to trade internationally, and (5) regulation of credit, labor, and business.

The idea behind the index is to measure economic freedom separately from political freedoms like civil liberties or democratic oversight of government. The components measure the degree to which people are free to engage in economic activ-

ity, to retain ownership over what they produce, and are free to engage in exchange with others.

Looking at the five areas, size of government is important because a government that taxes and spends more appropriates the wealth that individuals produce and spends it not only for purpopses that benefit everyone, but often on things that target benefits to specific people, such as business subsidies and income transfers to individuals. Big government compromises economic freedom by taking away from people some of what they have earned.

The second component may be the most crucial. Security of property rights is vitally important, because if people do not have secure property rights, their incentive to work to accumulate wealth is compromised. This component also includes rule of law, which means the legal structure is based on objective rules that treat everyone the same. If the legal system favors some people or groups over others, people's entrepreneurial instincts are channeled into trying to benefit from political favoritism, rather than being economically productive.

The third component recognizes the importance of sound money, and includes not only having a stable domestic currency but also the ability to maintain bank accounts in foreign currencies. Without sound money and stable prices, the ability to engage in economic exchange is severely compromised.

The fourth component, freedom to trade internationally, is obviously a part of economic freedom. Trade barriers protect domestic firms, making them less competitive, and they also reduce the opportunities for citizens to make foreign purchases.

"Security of property rights is vitally important because if people do not have secure property rights, their incentive to work to accumulate wealth is compromised."

The fifth component measures regulatory barriers that stand in the way of people who want to start businesses, or who want to engage in exchange that is limited or prohibited by government regulation. Labor regulations can stand in the way of people being able to find jobs, and regulatory barriers often make it very costly for people to start or maintain businesses. In countries where there are high regulatory barriers to starting businesses, much economic activity takes place in the "informal sector" or "underground economy." This work-around prevents those people in the informal sector from being protected by the legal system and limits their ability to obtain financing for their businesses, among other problems.

The EFW index aggregates these individual measures into a single number that measures the economic freedom of a country. An EFW index is computed for 141 separate coun-

tries, and for many of those countries the index goes back to 1975. This quantification of economic freedom allows researchers to see the effect of economic freedom, measured this way, in cross-country comparisons, and to see the effects of changes in economic freedom over time. Using the index, the effects of economic freedom can be separated from the effects of political freedom, and academic studies can provide more rigorous evidence on the effects of economic freedom than can be gleaned from the more casual observations that were made in this article's introductory section.

The Effects of Economic Freedom

The EFW index has been used in a large number of academic studies over the past two decades to measure the impact of economic freedom on many outcomes of an economic and non-economic nature. Consistent with the examples noted above, countries with higher measured economic freedom have higher per capita incomes, and countries that increase their measured economic freedom have higher rates of economic growth. In 2008 the countries in the bottom 25 percent of measured EFW had an average per capita income of $3,882 while those in the top 25 percent had an average per capita income of $31,480. The average annual economic growth rate of the 25 percent of the countries at the bottom of the EFW was 0.5 percent, whereas the top 25 percent had an average economic growth rate of 2.3 percent. People also report themselves to be happier in countries with more economic freedom, they are healthier, poverty is substantially lower, and life expectancy is greater. Life expectancy in the bottom 25 percent of countries is 57.7 years, and in the top 25 percent is 79.0 years. Economic freedom makes people's lives better in a number of different ways.

Hundreds of economic studies have been done using the EFW index to see the effects of economic freedom, and the positive results are replicated in study after study. While countries with more economic freedom do tend to have more political freedom, one of the advantages of doing rigorous statistical studies with data like this is that it is possible to separate out the effects of economic freedom from the effects of political freedom. Thus, we can conclude with confidence that regardless of people's political freedoms and civil liberties, a greater amount of economic freedom will improve their lives in many dimensions.

The Significance of Economic Freedom

After the collapse of the Berlin Wall in 1989, followed by the breakup of the Soviet Union in 1991, Western commentators, including political leaders in Western democracies, urged the newly transitioning countries to adopt democratic political institutions, but placed little emphasis on the market institutions that have produced the prosperity Western nations have enjoyed,

and that those transitioning nations were trying to emulate. Optimistic projections about those transitioning economies were often overestimates, and the countries that fared the best in the transition—countries like Lithuania and Estonia—were those that adopted not only democratic political institutions but also the institutions of economic freedom. They shrank their governments so that taxes and government spending were low, and regulatory barriers to economic activity were small. This is consistent with the observations made above regarding India and China. The movement toward a market economy is what has led them to income increases, and the political system is of secondary importance. One can use these examples to conjecture that this is the case, but the creation of the EFW index allows solid statistical evidence to show that it has been the change in economic institutions that has brought increasing prosperity, regardless of the political system. Political freedoms are important, but the quality of life in many dimensions is heavily dependent on economic freedoms.

Economic Freedom in the United States

We are justly concerned about our civil liberties and democratic freedoms, but often we appear willing to cast aside our economic freedoms by supporting bigger government—both a bigger spending and taxing government and a government that imposes more regulatory burdens on economic activity. The growing economic footprint of government reduces our economic freedom, and while freedom is valuable in its own right, the studies that have been done using the EFW index show that it also improves the quality of life in many dimensions. Reductions in economic freedom have been greatest at the federal level of government, where government expenditures have increased substantially, along with government regulatory burdens.

"…the United States ranks 10th in economic freedom. This is a substantial decline…"

Hong Kong and Singapore have consistently been the most economically free countries as measured by the EFW index. In the most recent ratings, New Zealand, Switzerland, and Australia are next, and the United States ranks 10th in economic freedom. This is a substantial decline for the United States, because in the EFW rankings going back to 1975, the United States was consistently in the top five through the end of the 20th century. Higher government expenditures, transfers, and regulatory barriers have reduced economic freedom in the United States, and indicate that the high economic growth rates the nation enjoyed through the 20th century will not be maintained as a result of the reduction in economic freedom.

Freedom is valuable as an end in itself. Economic freedom means

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PROVISIONS OF THE AFFORDABLE CARE ACT THREATEN RELIGIOUS LIBERTY

BY JIM TOWEY

The Supreme Court of the United States may have definitively ruled on the controversial Patient Protection and Affordable Care Act (ACA), but the high court has not ended the argument over the law's constitutionality. In fact, unless the administration of President Obama changes its implementation strategy, the Supreme Court may find itself next summer with another constitutional controversy to resolve.

In the highly-anticipated case involving a challenge by the state of Florida and others to so-called "Obamacare," the Supreme Court in June opined that the Constitution allows the Federal government the right to tax citizens and require them to purchase health insurance. This decision may have delighted the Obama administration, but the battle is far from over. The regulations now in place to implement ACA already face legal challenge because of the religious liberty threat they pose.

Ave Maria University and many faith-based institutions across America believe that the U.S. Department of Health and Human Services (HHS) is seeking to violate not only our Constitutional right to freely exercise our faith, but also well-established Federal law (The Religious Freedom Restoration Act of 1993) that protects faith-based institutions from unwarranted governmental interference. The new HHS regulations, however, require our employer health plan to offer all contraceptive services, including abortion-inducing drugs and sterilization, or risk a crippling fine. Ave Maria's current health insurance plan excludes such bene-

fits. Therefore, we filed a Federal lawsuit in the Middle District of Florida in February and are seeking declaratory and injunctive relief.

Of course, today the mandate only covers abortion-inducing drugs, but one can easily see how abortion procedures can be included under the same Orwellian treatment of the phrase "preventive care" contained in the Obamacare law, which seems to treat pregnancy as a disease to be prevented. And if the Free Exercise clause of the First Amendment can be steamrolled by a brazen administration, why not attack free speech, too, and regulate what religiously-affiliated groups may say about abortion, euthanasia or marriage?

"The fact is, the Federal government could have expanded contraceptive services without requiring religious groups to be complicit."

The fact is, the Federal government could have expanded contraceptive services without requiring religious groups to be complicit. There is a huge network of community health centers, public health clinics, Medicaid hospitals, and medical offices that could have made already-ubiquitous contraception even more available. But instead, the Obama administration chose to have faith-based groups who object on moral or religious grounds to knuckle under to almighty Caesar, and thus the legal fight.

Some argue that Ave Maria University's lawsuit was unnecessary because of a so-called "accommodation" by the Obama administration, which attempted to shift the cost of these services from the employer to the insurer by way of a Federal fiat to insurers to make contraceptive services available for free. This sleight-of-hand accounting trick by the government fooled no one. Ave Maria University pays 95 percent of the cost of the health plan we offer our employees (at a cost of $1.7 million this past year). It was absurd for the Federal government to suggest that these new pharmaceuticals or procedures would be free in the future when they aren't free now.

So it is clear that under the Federal mandate from HHS, Ave Maria University would be paying for these drugs and services if we complied with the law. Because our religious convictions as a faithful Catholic university prevent us from complying, we chose the path of non-compliance, and such a choice has consequences. The University is prepared to discontinue the health plan we currently provide and pay the $2,000 per employee, per year fine rather than comply with an unjust mandate that violates our right of conscience. That the new Supreme Court decision sees this fine as a "tax" and not a "penalty" is of little consolation when our comptroller is making out a check to the IRS for hundreds of thousands of dollars a year.

For more than two centuries America has respected the right of individuals to have faith or no faith, and the right of faith-based groups to be in the public square without having to sell their souls. My experience working in the White House in the faith-based office as its director taught me the beauty of the interplay between the First Amendment's words barring the establishment of an official religion and guaranteeing the free exercise of religion.

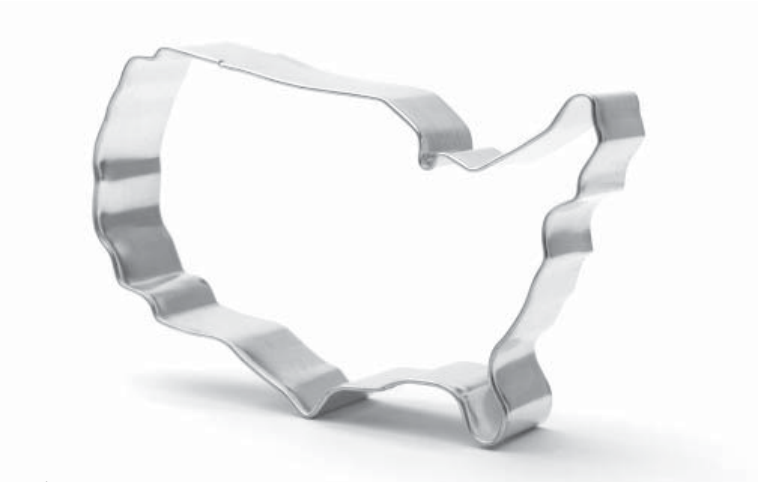
The Obama administration appears to have taken the cynical path of using its faith-based office to lead the current assault on religious liberty. The office, which according to a 2010 *Politico* article, organized an Oval Office conference call for multitudes of pastors to sell health care reform in the run up to the mid-term elections, has worked furiously to do damage control as opposition to the new regulations by the Catholic bishops and others has mounted. Even groups who supported Obamacare's passage, like the Catholic Health Association, are up in arms.

They are not alone. There are now 50 plaintiff groups that have filed 23 lawsuits in 14 states against the HHS regulations. Institutions as venerable as the University of Notre Dame (which, ironically, honored newly-elected President Obama) and as large as the Archdiocese of New York, are seeking judicial protection. It is not unlikely that conflicting judicial decisions on these lawsuits in the Federal Circuits, and the constitutional claims raised, could lead to the steps of the U.S. Supreme Court next summer, when the HHS regulations take full effect.

Is America ready for the high court's "Obamacare 2, The Sequel?" The Obama administration still has time to strike a sensible balance between its zeal to implement a new social policy and the rights of religiously-affiliated organizations such as Ave Maria. The *Chicago Tribune*'s editorial in response to President Obama's policy, titled "The bishops aren't alone," said, "Americans want government policy to protect religious liberty—the first freedom guaranteed by our Constitution's First Amendment." Ave Maria agrees, and until the Obama administration backs down from requiring us to pay to practice our faith, we will fight it with all of our rights under the law.

Those in the Obama administration who think the constitutional issues surrounding the ACA and its implementation are settled underestimate the breadth of support for religious liberty that exists in our country. Ave Maria University will press ahead with its lawsuit and fight for religious freedom.

Jim Towey is the President of Ave Maria University in Ave Maria, Florida. He has served as Assistant to the President of the United States as director of the White House Office of Faith-based and Community Initiatives. From 1993-1995 he was secretary of the Florida Department of Health and Rehabilitative Services.



LET'S CELEBRATE THE FREEDOM THAT LETS US BE 'WEIRD'

BY WILLIAM R. MATTOX, JR.

Several years ago, some bohemians who live in the capital city of Texas began distributing bumper stickers that read, "Keep Austin Weird." It was their way of calling for the preservation of local culture—for the protection of their community's unique and sometimes-peculiar identity against the cookie-cutter chain stores threatening the "McDonaldization" of their hometown.

Now, I do not consider myself a weirdo, although my teen-aged kids might have a different opinion. And I actually like some national chains. But I'm convinced that we need to take that Austin campaign and make it national: "Keep America Weird."

The impetus for my thinking, oddly enough, is a provision in President Obama's healthcare plan that seeks to deny devout Catholics the freedom to practice (or not practice) their faith's beliefs about birth control.

Lest there be any doubt, I am not a Catholic. I'll even confess to having occasionally mocked some Catholic beliefs. But earlier this year, I got a sprinkling—heck, it was more like a full immersion—into Catholic teaching about all things sexual. And while I didn't come away fully transformed, neither was I "weirded out" in the way I expected to be.

You see, I'm a part of a "skeptics book club" that meets every Wednesday morning to discuss different works. Over the last several years, our group has read, discussed, and debated everything from Christopher Hitchens' *God is Not Great* to Tim Keller's *The Reason for God*.

This spring, we read an English translation of Pope John Paul II's *Theology of the Body*. To say that this was a fascinating read would be a great understatement. And while I certainly didn't buy all that he had to say, I found myself often surprised—and very much challenged—by the Pope's teachings. In the end, I came away with a newfound respect for many Catholic ideas—including some, like chastity, which I never hope to practice myself.

Now, I mention all of this because I worry that Obama's health care plan is about to do to Catholics what those cookie-cutter national chains were threatening to do to the bohemians in Austin—rob them of their distinctive identity. Of their unique character. Of their freedom to be authentic.

Yes, I know that Obama's contraception mandate provides an exception for Catholic churches; but it offers no such relief to those running Catholic schools, hospitals, and charities who want to live out their faith (and follow the church's teachings) on more than just Sundays. In essence, the Obama Administration's message to these Catholics is akin to telling Austin's bohemians that they can dress like hipsters on the weekends so long as they behave like corporate shills Monday through Friday.

Look, I know some devout religious people sometimes do things that may seem peculiar to others. To cite a recent example, there is the minister—caught on tape—being fatally bitten by a poisonous snake he was handling as a demonstration of his faith. I also know that all of us, religious and non-religious alike, often struggle to live up to the high-minded ideals we claim to embrace. Indeed, I am reminded that after the "Keep Austin Weird" slogan got trademarked, a local satirist created an alternative web site, "Make Austin Normal," in which he playfully poked fun at the bohemians' commercialization of their anti-corporate slogan.

"…in promoting religious liberty we allow others to be true to their consciences in ways that we all want to be ourselves."

Still, I think we do ourselves—and our neighbors—a great favor when we allow room for distinctive religious practices such as eschewing contraception, practicing male circumcision, eating only kosher, and avoiding commercial activity on Sundays. Because in promoting religious liberty we allow others to be true to their consciences in ways that we all want to be ourselves. And in promoting religious liberty, we permit ourselves to be challenged by others—including those who have far better explanations for their curious beliefs than we ever imagined.

So, I hope the Obama Administration will rethink its "war on Catholics." And that the city of San Francisco will never again consider a proposed ban on male circumcision. And that no act of Congress will ever threaten to force Chick-Fil-A either to open on Sundays or face a "Supreme Court tax" (otherwise

known as a fine or a penalty).

For even though I could probably eat at Chick-Fil-A eight days a week if I could, my loyalty to this national chain was actually enhanced when I learned the noble explanation for its peculiar practice of closing on "the Lord's Day." As Chick-Fil-A executive Dan Cathy told an *ABC Nightline* reporter, "I don't want to ask people [employees] to do that what I am not willing to do myself." Wow. Where can we get more corporate executives like that?

Before closing, I need to make clear that I'm not a fan of all weirdness. I especially dislike weirdness for the sake of weirdness—and weirdness that masquerades as normalcy. For example, when you stop and think about it, the peculiar practice of tying health insurance to employment is even weirder than some of the religious practices that the Obama health plan condemns. I mean, nobody I know of gets his auto insurance—or homeowner's insurance—from his employer. So, why in the world does the federal government encourage employers to choose their employees' health care plans?

Caveats aside, when it comes to religious liberty, I'm a lot like the folks in Austin. Let's keep America weird. Sometimes religious beliefs and practices that seem foolish to the "wise" actually point to profound truths that we can discover—if we are willing to listen. And sometimes the real weirdos aren't the folks who faithfully follow the church—but the folks who put their hope in the state.

William Mattox is a resident fellow at The James Madison Institute.

GLOBAL *(Continued from page 19)*

that people are able to choose their occupation, the terms of their employment, and what they buy with their incomes, subject only to there being mutual agreement between buyers and sellers. Government does not stand in the way of mutually agreed-upon exchanges. It also means that people are secure in their property, and that they live under an objective set of laws so that enforcement is not at the discretion of those with political power. Most people recognize the benefits of economic freedom, but when problems arise they are quick to jump to the conclusion that the government should do something to address those problems. People argue that it is worth giving up some economic freedom in exchange for more government regulation, or more government taxing and spending.

The academic literature using the EFW index calls this conclusion into question. Nations that have given up economic freedom have lowered the standard of living of their citizens, they have slower rates of economic growth, and their quality of life in other dimensions is also lower. We need to protect our economic freedoms, not only because freedom is a desirable end in itself, but also because economic freedom brings with it improvements in people's lives in many different ways.

Dr. Randall G. Holcombe is DeVoe Moore Professor of Economics, Florida State University, and Senior Fellow, The James Madison Institute.

REFORM U.S. EDUCATION TO PROTECT FREEDOM AND NATIONAL SECURITY

BY DR. J. STANLEY MARSHALL

There is currently no shortage of writing on education reform. The subject is approached from many different vantage points, including concern for student achievement, improved teacher performance, better use of school facilities, greater parental involvement, and others. When my attention was called to a report issued by the Council on Foreign Relations (CFR) with the title, "U.S. Education Reform and National Security," I was obliged to obtain a copy of the report.

I became more intrigued when I learned that the task force that prepared the report for CFR was co-chaired by Joel I. Klein and Condoleezza Rice, two well known figures in American public life. Joel Klein is the former head of New York City public schools, and Condoleezza Rice is a former U.S. Secretary of State in the administration of President George W. Bush. Both of these distinguished Americans have taken leadership roles in a variety of public policy matters, but until now I have seen no occasion in which they have collaborated on an issue relating to education reform.

The report has attracted substantial public attention due in large part to the reputation of the task force's co-chairs. One might ask why the Council on Foreign Relations would turn its attention to school reform, given the number and variety of matters that must surely

be called to the Council's attention. The reason has been stated clearly in the Task Force Report: Re-vitalizing our education system is essential for the defense of the nation, and our failure to educate our young people is affecting our national security. We are reminded that more than 25 percent of students do not graduate from high school in four years. For African American and Hispanic students, the number is close to 40 percent. According to the results of a study by the Program for International Student Assessment, in 2009 U.S. students ranked fourth in reading, twenty-fifth in math, and seventeenth in science when measured against students in other industrialized countries. An increasing number of our young people are not qualified to join the military because they are physically unfit, have arrest records, or have an inadequate level of education.

So it is clear according to Klein and Rice, that the erosion of our core strength in education will undermine our country's ability to be an international leader. Their Task Force does not deny American's military might, but it maintains that military might is no longer sufficient to guarantee our national security. Their list of shortcomings in American education is disturbingly extensive and it includes the following:

- Seventy-five percent of U.S. citizens between the age of 17 and 24 cannot be accepted for military service.
- Thirty percent of high school graduates do not have sufficient knowledge of math, science and English to pass the Armed Services Vocational Aptitude Battery.
- The U.S. State Department along with our intelligence agencies face critical shortages of personnel with the foreign language skills to meet their needs.
- The shortages are especially acute in science and engineering. Only 4.5 percent of American college graduates hold degrees in engineering; in China more than half of graduates hold engineering degrees.
- Foreign students earn 57 percent of engineering doctorates in the U.S., 54 percent of computer science degrees, and 51 percent of physics doctoral degrees. Only a small minority of these students have obtained visas to remain in the U.S. after graduation, and fewer still are eligible for U.S. security clearance which they would need to work in defense security jobs.
- U.S. schools, say the two Task Force chairs, have stopped teaching civics and citizenship, leaving students without knowledge of their own national history, traditions and values. Many of our schools have failed to teach foreign languages which hampers our students in their relations with young people from other countries. In Canada, our nearby neighbor, 35 percent of the people speak more than one language, and in Europe, 56 percent do. This is believed to have a negative impact on U.S. government agencies and businesses in their efforts to hire people knowledgeable about other

countries or to do business in those countries.

- 42 percent of our high school graduates at two-year colleges must take remedial courses, and 39 percent at four-year colleges must take such courses to qualify as college-ready, according to a report by the highly regarded not-for-profit testing group ACT.

Most U.S. school districts grant tenure to teachers and principals after a few years with almost no attention to the quality of their work. Most of our teachers are taken from the bottom two-thirds of their college classes, whereas other countries with good schools (Finland, Hong Kong, Korea) take their teachers from the top one-third.

"Most U.S. school districts grant tenure to teachers and principals after a few years with almost no attention to the quality of their work."

Common Core Standards

State governors have come to recognize that high school graduates have not been well prepared for college, and they have joined together in an effort to create Common Core Standards, a set of standards in math and literacy. These have been adopted by all but a few states, and are scheduled to be rolled out in the 2014-2015 school year. The Common Core is not a prescribed curriculum, but rather a set of shared expectations to guide students in the classroom. The Task Force chairs wisely raise a question about how the states will implement these standards.

The Task Force Report makes it clear that the failure of our schools to prepare our students with essential skills and knowledge puts our physical security and national character at risk. In light of this, three central recommendations are advanced:

First, we must engage in education planning in subjects vital to national security. We should expand the Common Core State Standards, ensuring that students learn the knowledge they will need to safeguard our national security. Science, technology and foreign language are essential and of course the Report reminds us that the necessary resources must be supplied to guarantee successful implementation.

The second recommendation calls for structural changes to provide good students with good choices. Enhanced choice and competition will fuel the innovations that will ensure progress. We must provide options for students to attend schools that do a better job of meeting their needs.

The third recommendation calls for a "national security readiness audit" the purpose of which would be to hold schools accountable for results and to increase public awareness. This would require better measures of student learning and to judge the progress of the Common Core.

The Task Force Report concludes

that there really is hope for advancing reforms. It notes that public acknowledgement of the need for reform has become widespread. The Report also observes that leaders have become involved at all levels of education, from the classroom up to national leaders in Washington. Successful models of effective schools have been established in school districts across the country, suggesting ways to lift educational standards and performance for all students. And finally, that political support has strengthened in ways that could lead to real advances.

The Task Force observes that America has a real but time-limited opportunity to make the changes that would maintain our leadership in the world and our security at home; and it expresses the hope that consideration of our country's education failings will "mobilize new constituents, energize advocates, spur policymakers into action, and attract increased investments in reform efforts."

If Condoleezza Rice and Joel Klein are hopeful about the future of American education, the rest of us Americans should share in their hope.

Dr. J. Stanley Marshall began his long career in education in upstate New York as a classroom teacher of science. After obtaining his doctorate from Syracuse University, he came to Florida State University, where he subsequently served as head of FSU's prestigious science education program, as Dean of the College of Education, and as President of the university.

Worthy Words

"I consider the foundation of the Constitution as laid on this ground: That 'all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States, or to the people [10th amendment.].' To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition."

-- THOMAS JEFFERSON
(Letter to George Washington, 1791)

"As government regulations grow slowly, we become used to the harness. Habit is a powerful force, and we no longer feel as intensely as we once would have [the] constriction of our liberties that would have been utterly intolerable a mere half century ago."

– ROBERT BORK

ORGANIZED LABOR'S RAZOR EDGE: THE 'WORKER CENTER' IN FLORIDA

BY FRANKLIN COLEY

After years of declining membership and influence, particularly at the local level, the labor movement is being revitalized through alliances with a growing activist network and a new organizing entity known as the *worker center*.[1] By embracing this model, unions are regaining traction at a grassroots level while evading the regulations governing traditional union organizing.

As non-profit "training and education" organizations, worker centers operate outside of the parameters of the National Labor Relations Act (NLRA) and also enjoy mainstream support from groups unaware that behind the curtain these centers are being funded and guided by seasoned labor organizers. This arrangement allows unions easy access to activists, and potentially new members, while providing a relatively bulletproof apparatus from which to focus their attacks on non-unionized industries and companies.

Perhaps more importantly, the worker center relationship solves one of the labor movement's biggest challenges in recent years—connecting at a local, grassroots level with workers. Over the past few decades, unions became victims of their own success, growing into large, monolithic organizations that bore little resemblance to the independent, local labor unions that originally sprung up to protect worker rights.

As unions grew in power and size, they often lost touch with their local memberships and over time became less relevant with a changing workforce.

Compounding the issue has been a changing U.S. economy and an influx of undocumented immigrant workers who were ineligible for union membership. Ironically, the worker center model that unions now support arose to serve unauthorized workers and was initially shunned by labor organizers, who believed worker centers undermined their efforts.

Today, with the private sector union membership rate at its lowest level in a century, the labor movement sees the worker center as a preferred organizing and attack mechanism.[2] Reenergized, they are targeting non-unionized service sector industries, particularly Florida retailers and foodservice providers, with a vengeance.

This article will explore the dramatic shifts taking place and the outlook as labor organizers, standing shoulder to shoulder with Occupy Wall Street-styled activists, seek to reshape the structure of the American economic system.

Emergence of the Worker Center

The modern worker center emerged in the early 1990s, at a time when unauthorized immigrants were streaming into the country to meet needs within the U.S. economy. These community-based organizations served the needs of undocumented workers, who worked in the garment, agriculture, construction and hospitality sectors among others.[3]

Traditionally, labor unions have not represented unauthorized workers and, in fact, viewed them as a threat. Unions worried that undocumented workers undercut efforts to establish firm workforce standards—wage and hour, benefits and worker safety laws. From a practical standpoint, training as a journeyman requires submitting documentation of legal status to the U.S. Department of Labor (USDOL). Unauthorized workers lacked this documentation. When complaints of worker abuse arose, federally-funded legal centers were barred from assisting unauthorized workers, and these workers were afraid to approach federal, state, and local enforcement authorities. Worker centers began opening around the country to fill this void.[4]

In 1992, five worker centers were incorporated. By 2009, there were over 170 worker centers operating in the U.S., and many more are operating today.[5] While worker centers began organically as a local response to immigrants' needs, astute professional labor organizers quickly recognized the utility of the model as a potential way to reverse years of declining membership.

As I noted, by December 2011, private sector union membership had fallen to its lowest rate in over a century.[6] Among other factors, the continued transformation of the American economy from manu-

facturing to service-based made it increasingly difficult for unions to conduct successful organizing drives. Although the most recognizable international unions, the AFL-CIO, SEIU, UNITE HERE, etc., still maintain huge treasuries and command great influence in the political process, they operate largely through top-down organizing. By contrast, the independent labor union defined by a local, grassroots, bottom-up organizing approach, is almost extinct.

The large, well-funded unions now view worker center co-option and collaboration as their best opportunity to fill the local organizing void within the larger movement. Over the past decade they have begun aggressively funding and leveraging like-minded activists, integrating them through a network of community-based "social justice" organizations, e.g. worker centers.[7] While unions have struggled to recruit new members, they are enjoying success recruiting and organizing new activists through their worker center allies. Organized labor is utilizing this network for direct economic action campaigns and efforts to effect public policy change, bolstering its relevance and impact in recent years.[8]

To cite a recent example, unions are linked to the Occupy movement largely via their worker center allies. When labor unions witnessed the grassroots energy around the Occupy movement, they enthusiastically funded and supported the effort in an attempt to co-opt and organize the activists toward their political agenda.[9]

The worker center model combined with the power of instant communications that the Internet provides is rapidly changing the rules.[10] Taking advantage of the speed and broad reach of the digital age, leaders are able to efficiently conduct peer-to-peer organizing and quickly develop broad-based, issue-driven coalitions. Today, hundreds or thousands of passionate activists can be mobilized with a few mouse clicks. The cost to launch and maintain an organization is also much less than in years past, meaning that relatively small investments in these organizations from unions can yield immediate returns.

This is a sobering reality for industries that have long relied on a non-unionized workforce. Organizing an individual workplace traditionally has required a lengthy campaign by organizers, restricted by numerous National Labor Relations Board (NLRB) rules and followed by a secret ballot vote. In essence, labor organizers have found an entirely new way of recruiting and accessing supporters that circumvents the old rules while reestablishing the grassroots base that decades ago brought them to prominence. Thanks to the worker center model, the balance of power may be shifting back toward unions for the first time in many years.

Operational Advantages of Worker Centers

Many worker centers were founded by unions, hold the same stated

goals as unions, work conjunctively with unions and employ union tactics to attack employers and shape the public policy. But as 501(c)(3) tax-exempt non-profit organizations, worker centers hold many operational advantages over *labor organizations*.[11] In this section, we will explore how worker centers exploit their 501(c)(3) status and cite examples from worker centers operating in the state of Florida.

To business owners, one of the most unsettling aspects of the worker center approach is that unlike establishing a union in a workplace, worker centers do not have to win over an entire workforce through a secret ballot vote. A worker center can appear at a business owner's workplace tomorrow with a few vocal, dissatisfied workers and a minor labor violation (real or perceived) to initiate a lawsuit and protest campaign against an employer. One prominent worker center organizer, Saru Jayaraman, Director of the Restaurant Opportunities Center (ROC), refers to this approach as "minority unionism."[12]

Even more disturbing to business owners is that worker centers, such as ROC, select targets not based on employer misconduct, but rather on the company's public relations value. ROC selects high profile, brand conscious, non-union companies "to make an example of" and hope to create a "ripple effect."[13] They typically begin by waging a union-style campaign, a combination of litigation, protests, and public relations that can last for many years and is intended to inflict as much reputational, i.e. financial, damage as possible. Employers are eventually coerced into signing a contract to "commit to increases in wages and benefits, settle claims of discrimination and failure to pay minimum wage and overtime, and pledge job security, including a pledge not to discharge employees without notice to ROC."[14] These settlement agreements achieve union collective bargaining goals through contractual law while bypassing the National Labor Relations Act (NLRA) and putting other employers on notice.

For this reason, worker centers have been extremely effective in engaging in direct economic actions against employers, using "aggressive tactics such as pickets, strategies that the union may be legally blocked from employing."[15] Worker centers can attack employers with a sharper edge—its core operational tactics mirror the most controversial practices of the unions. As one worker center financier wisely asserted, "Labor needs the audacity of grassroots organizations."[16]

To provide a current example of this approach in practice, ROC chapters are suing and executing a national campaign against Orlando-based Darden Restaurants. This campaign has included weekly protests at The Capital Grille in Miami, as well as five other metropolitan areas around the country. ROC's tactics range from banging pots and pans and entering restaurants to disrupt service, to "jamming" phone lines.[17] ROC has

been issued restraining orders in the past for intimidating patrons at restaurants where it is conducting protests.[18]

Another operational advantage of worker centers is that they are funded through grants, not employee dues as unions are, and the workers for which centers are advocating may no longer even work at the company. The implication is that worker centers do not have to service workers' contracts or expend resources on arbitrating grievances, as unions must. In short, worker centers are not burdened by the necessity to seek any compromise or immediate outcome with their corporate targets. They can focus entirely on attacking a corporate brand solely for the public relations value for an indefinite period of time.

In the case of the Florida-based Coalition of Immokalee Workers (CIW) and its "penny for a pound" campaign, the coalition members worked on one end of the supply chain and attacked corporations on the other end. Through years of protests and direct economic actions, it has won concessions from Miami-based Burger King Corporation and has staged protests across the state of Florida against Lakeland-based Publix.

As tax-exempt 501(c)(3) organizations, the worker centers do not have to disclose their finances or political activity to the USDOL, the NLRB, or the Federal Elections Commission (FEC). The only substantive requirement is an annual submission to the Internal Revenue Service (IRS) for which there is no requirement to itemize donations or expenditures. Some 501(c)(3)s organizations lobby. Those that do must make additional disclosures and pay taxes on those activities under the insubstantial parts test or the 501(h) expenditure test.[19] Allowable resource devoted to lobbying is tiered, but in short, on the high end of the spectrum 501(c)(3) organizations can spend close to a quarter of their resources on lobbying activities, although there is no defined, firm standard as to what qualifies as lobbying.[20] Rarely, if ever, are enforcement actions undertaken by the IRS, which has subsequently created an environment where many of these organizations can operate without restraint.

From a more macro perspective, most worker centers actively engage in the political process. The Restaurant Opportunities Center, for example, has listed a former Organizing for America staff member as an "Electoral Consultant,"[21] and is spearheading paid leave legislation in Miami, as part of a larger national effort.[22] In the 2012 legislative session, Interfaith Workers Justice (IWJ) organized two lobbying efforts on the Wage Protection Act and on the Guaranteed Higher Minimum Wage Act in an attempt to influence the legislative process in Tallahassee.[23] When the minimum wage legislation was under consideration, Jobs with Justice (JWJ) organized protests at Outback Steakhouses, a holding of Tampa-based OSI Partners.[24] Similarly, IWJ targeted and protested Florida Retail Federa-

tion board members when the state Legislature examined the Wage Protection Act.[25] Efforts in Florida mirror national efforts as detailed in the April 2012 *New York Times* article, "A Campaign to Raise the Minimum Wage": "Ms. Kern's group [National Employment Law Project] along with other labor organizations like Interfaith Worker Justice, the Service Employees International Union, and Restaurant Opportunities Centers United are mobilizing to press Congress to take action."[26]

In addition to operating free of government agency oversight save the IRS, the 501(c)(3) designation allows worker centers, unlike unions, to masquerade as benign non-profits and cultivate mainstream support for their "social justice" campaigns, including but not limited to receiving taxpayer funding. Worker centers have proved adept at highlighting the service and education components of their organizations while downplaying the more aggressive tactics that characterize their actions against employers.

For example, worker centers have partnered with major universities across the state of Florida to legitimize their efforts. Florida International University's Research Institute on Social & Economic Policy Advisory Board includes: Jobs with Justice, Miami Workers Center, Coalition of Immokalee Workers, and Interfaith Worker Justice.[27] Florida International University lent its name to the Restaurant Opportunities Center Miami's *Behind the Kitchen Door* report, which was developed to attack the hospitality industry in Miami.[28] The University of Miami and Florida Coastal School of Law provide students to the same organization to assist with legal work, and a University of South Florida professor serves on ROC's advisory board.[29] The University of Miami also has a dedicated program to perform legal work for the Coalition of Immokalee Workers.[30]

Many of these organizations have also received substantial and continual funding from Catholic charities and the Unitarian Universalist Church.[31] Employers are often surprised to greet protesters that include clergy members.[32] This support gives worker centers not only operational capacity, but also an air of moral authority in their campaigns.

Most surprising to the public, many of these organizations receive taxpayer funds and work as outsourced enforcement and training arms for the USDOL. Between 2009 and 2011, both Interfaith Workers Justice and the Restaurant Opportunities Center received federal stimulus funds to conduct worker training.[33] The Restaurant Opportunities Center has received government funding for nearly a decade totaling over $2 million. U.S. Secretary of Labor Hilda Solis addressed a 2009 Interfaith Worker Justice summit, thanking the organization for its work and declaring, "There is a new sheriff in town," and in 2011, the Secretary signed an official "alliance agreement" with the Restaurant Opportunities Center.[34]

Major Worker Centers Operating in the State of Florida

- Interfaith Workers Justice
- Restaurant Opportunities Center
- Coalition of Immokalee Workers
- Food Chain Workers Alliance
- Unite for Dignity
- Jobs with Justice
- Miami Workers Center

The Future of Worker Centers

The emergence of the Occupy Wall Street movement, and even the Tea Party movement, demonstrates that organizing is moving away from traditional top-down mobilization efforts toward cross-organizing networks of distinct, issue-oriented activist groups that share a common goal. Recent changes in election law, including the further proliferation of political committees following the U.S. Supreme Court's Citizens United ruling, have opened the door for many different legal entities to engage in unprecedented political activity. The changing landscape will likely necessitate that the labor movement manage an increasingly complex patchwork of organizations, each utilized and levered to maximize its inherent advantages.

Within this larger paradigm shift, the worker center plays an important role for the organized labor movement. Leveraging the operational benefits they enjoy as non-profit organizations, worker centers have proven an effective corporate brand attack dog—they can move more nimbly and are not incentivized to seek compromise. Worker centers are also influencing both public opinion and policy public in meaningful ways. Presenting themselves as benign non-profits, many have successfully presented "social justice" arguments in a more favorable and acceptable light to the general public and elected officials, something that unions have not been able to effectively accomplish for some time.

Unless mainstream funding from churches, universities, foundations, and government agencies dries up, worker centers will continue to spread and gain influence. A shift in the political power balance, such as a more business-friendly White House, NLRB or Congress, could be devastating to the worker center model. If worker centers were classified by their behavioral actions as *labor organizations*, and as such were subject to reporting requirements as well as code of conduct guidelines established in the NLRA, their advantages would diminish, and the model could lose relevance.

Similarly, if the IRS were to tighten lobbying restrictions and reporting requirements on worker centers, their influence would decrease as well. However, considering that the Obama Administration requested more monies for "community organizations" in its 2012 and 2013 DOL budgets, and is actively funding and signing official federal "alliance[s]" with these organizations, it is doubtful that any meaningful changes will take place in the near term.[35] For the time being, labor leaders may have found a holy grail to reverse steadily declining membership numbers and broaden their appeal to the American public. If

you live in a major metropolitan area, expect to see a worker center active in your city soon.

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AMERICANS' PROPERTY RIGHTS... AND PROPERTY: GOING, GOING, GONE?

BY DAN PETERSON

Private property rights continue to be under assault across America. Perhaps more alarming is the potential disappearance of private property altogether. This major shift away from a fundamental tenet of our nation—the individual's right to own and use property—is due, in part, to a plan that has been at work in the United States for the past 20 years.

That plan is called Agenda 21,[1] meaning an agenda for the 21st century. Don't let this innocuous title deceive you; its success is dependent on the loss of private property ownership and control in favor of public ownership and control of land.

This plan—"a new global partnership for sustainable development"—was officially launched in 1992. But, its official policy on land was revealed at its predecessor conference, the United Nations (UN) Habitat 1 Conference, held in Vancouver, Canada in 1976, which laid the groundwork for the 1992 conference.

The first conference's report states in its preamble, *"Land...cannot be treated as an ordinary asset, controlled by individuals and subject to the pressures and inefficiencies of the market. Private land ownership* is also a principal instrument of accumulation and concentration of wealth and therefore *contributes to social injustice;* if unchecked, it may become a major obstacle in the planning

> and implementation of development schemes.... *Public control of land use is* therefore *indispensable* to its protection as an asset and the achievement of the long-term objectives of human settlement policies and strategies."[2] (Emphasis added.)

The implementation of this land policy became formalized at the 1992 UN Conference in Rio de Janeiro. Agenda 21, a 300-page blueprint setting the stage for the elimination of private property control (among other things) in favor of public or government control, was presented to and approved by the 172 government officials who took part, including President George H.W. Bush. This writer's complete reading of the plan and subsequent study produced some startling findings.

Sustainable Development

The end product of this global plan is to ensure "sustainable development," defined as "meeting today's needs without compromising future generations' ability to meet their own needs." Its comprehensiveness is outlined by the three E's of sustainability: Environment, Economy, and Equity (Social). According to the Agenda 21 Preamble, implementing sustainable development will require *"a substantial flow of new and additional resources to developing countries"*[1] leading to an eradication of poverty, hunger, ill health, and illiteracy.

The vision of implementing this in the United States is described by the "Wildlands Project.[3] According to the "Project," people will live in "human settlements" characterized by high density, "smart growth" urban living planned by organizations such as the American Planning Association.[4] It will feature multi-use "green" buildings that comply with LEED ratings standards developed and monitored by such organizations as the U.S. Green Building Council.[5] Mobility will be provided mainly by mass transit or "non-motorized modes of transport." Private property and single home dwellings will be minimal and highly controlled by government. Agenda 21 calls for "the encouragement of communally and collectively owned and managed land" and "appropriate forms of land tenure that provide security of tenure for all land-users."[6]

Surrounding these "human settlements" will be buffer zones. Use of land in these transitional areas will be moderate and restricted.

The rest of our nation will be "core" (wilderness) areas "where man is only a visitor." Corridors will connect core areas. It is planned that no more than 50 percent of the American landscape will have human presence, with most land being owned or completely controlled by government.

This result of this plan sounds eerily like a place where this writer spent 14 years of his adult life—Moscow, Russia. Can you imagine 16 million people in one city all living in shoddy, high-rise buildings with no single-family housing? Can you imagine the vast majority of those people moving about the city using one mass transit system, much of it

dilapidated due to over-crowding? Most travel between "human settlements" was done by train or plane due to insufficient highways and few places to purchase gasoline. When entering or exiting the city, everyone had to clear police outposts. In lieu of "green technology," resources were simply rationed, thereby contributing to "sustainability." The model of living experienced there was not pleasant and it certainly was not people friendly. Ironically, despite its backwardness, the communist theme of the country was "Forward."

The Climate Change Ruse

Agenda 21 moves "forward" using the threat of global warming to create a sense of urgency and, thereby, speeding its implementation. This plan calls for influencing public opinion through massive "green" public relations campaigns. It calls for setting up legal mechanisms and regulatory systems to write and pass "green" laws and ordinances and then, to monitor and enforce compliance with those regulations and laws. It calls for all personnel of public education, institutes, colleges, and universities, business and industry, government administrative personnel and elected officials to be "educated" and trained in this way of thinking to expedite its implementation.[7] (Note: Due to a lack of credible scientific evidence, global warming is now referred to as "climate change").

These plans should not be discounted as mere words. According to the United Nations Commission on Sustainable Development, "Reports submitted annually by Governments are the main basis for monitoring progress and identifying problems faced by countries. By mid-1996, some 100 governments had established national sustainable development councils or other coordinating bodies. More than 2,000 municipal and town governments had each formulated a local Agenda 21 of its own. Many countries were seeking legislative approval for sustainable development plans, and the level of Non-Government Organizations (NGOs) involvement remained high."[8]

Supporting this "re-orientation" of thinking and living is an elaborate network of systems including global governance via regional councils, global finance (World Bank), international trade (World Trade Organization), global jurisprudence (World Court), internationally mandated to standards (SEEA), and global systems of data, information,and technology. This is not a theoretical re-organization of the planet; these systems are constantly gathering information through "assessments" and operating daily. The Agenda 21 blueprint is staggering in its comprehensive, global approach. And it has been implemented slowly but, relentlessly in the United States for more than 20 years.

You might ask yourself, "How can it be something so massive has been at work in the U.S. and I know little to nothing about this?" There are four answers.

First, the plan was signed by President George H.W. Bush in 1992 but, it was never debated or ratified as a treaty by the U.S. Congress.

Second, the plan was implemented by President Bill Clinton in 1993 through executive order without the approval of Congress. Executive order 12852[9] established the President's Council on Sustainable Development and authorized it to implement Agenda 21 in the U.S. It included most cabinet members and a cross-section of other leaders.

Third, implementation in the U.S. has been done through a number of non-governmental organizations (NGOs)[10] and non-profits at the most local of levels. Notable of these is the International Council of Local Environmental Initiatives[11] (ICLEI—also known as Local Governments for Sustainability). With little to no fanfare or media attention, this NGO in particular and others (such as APA and USGBC) have initiated this strategy in thousands of local municipalities and counties, simultaneously influencing education, regulation, government, business, industry, law, etc. In the U.S. alone, ICLEI claims 550 member cities and counties (and 1,301 cities working for sustainability). Florida members include Tallahassee, Orlando, Key West, Alachua County, and Miami-Dade County, just to name a few. Globally it's more than 1,200.

"…when the end purpose is considered, their collective implementation erodes our freedoms and rights."

The fourth reason can be found in the language created and used to mask the real intent of Agenda 21. To enhance public appeal an entire set of specialized jargon has been developed to sound warm, harmless, and reasonable. The jargon includes expressions such as "new economy, social justice, quality of life, consensus, regionalism, public-private partnership, stakeholder, affordable housing" just to name a few. And, who could be against such things? Individually, they can have positive impact. But, when the end purpose is considered, their collective implementation erodes our freedoms and rights.

Consider the words of J. Gary Lawrence, advisor to President Clinton's Council on Sustainable Development as he explained how to elect public officials supporting Agenda 21: "Participating in a U.N. advocated planning process would very likely bring out many of the conspiracy-fixated groups and individuals in our society.... This segment of our society who fear 'one-world government' and a UN invasion of the United States through which our individual freedom would be stripped away would actively work to defeat any elected official who joined 'the conspiracy' by undertaking Local Agenda 21. *So we call our process something else, such as comprehensive planning, growth management or smart growth."*[12] (Emphasis added.)

Rio de Janeiro Revisited

In June this year, again in Brazil, the U.N. sponsored the Rio+20 United Nations Conference on Sustainable Development. Extending Agenda 21 through its new name, The Millennium Project, the conference called for "a fundamental shift in the way we think and act." The primary goals of the conference were to renew political commitment for sustainable development, defining a "green economy" and establish an institutional framework for sustainable development.

In the executive summary of a report, "Working Towards a Balanced and Inclusive Green Economy, A United Nations System-Wide Perspective," the U.N. Issue Management Group on Green Economy calls for transforming the global economy by requiring action at the local level (e.g., through land use planning), at the national level (e.g., through energy-use regulations), and at the international level (e.g., through technology diffusion—the spread of ideas and technology through members of a social systems or culture).[13]

Obama administration officials supported using public funds to enable this conference to be virtually participated-in via the internet. It is no secret the President favors the transition to a "green economy," having promoted the policy of cap and trade, by limiting our nation's ability to drill for our own fossil fuel resources, and approving billions of dollars to be given to "green" energy companies such as Solyndra, etc. In fact, looking through the prism of compliance with Agenda 21 and the Rio+20 agenda, many of the Obama Administration's policy decisions—even those which seem politically suicidal—begin to make sense and find some logical footing.

These disturbing policy trends in our nation reinforce and accelerate the transition underway from private to public ownership and control of land. In Florida, more than 40 percent is already owned or controlled by government.

Arthur Lee, an American patriot and colonist in 1775, said, "The right of property is the guardian of every other right, and to deprive people of this, is in fact to deprive them of their liberty." Is Agenda 21 the greatest threat to private property ownership, property rights, and liberty today? It could be. For years it has flown under the radar, and now urgently needs critical investigation, public exposure, and evaluation.

One thing is certain; it has already cost billions over the years and brought our nation under an enormous burden of regulation and restriction. Thomas Jefferson is credited with saying, "The price of freedom is eternal vigilance." The continuance of liberty and the American way of life demands such vigilance. Private property is key to maintaining American exceptionalism and prosperity. The erosion and elimination of private property rights only serves to weaken and reduce us to the status of "one of many."

Despite the lofty sounding ideals of those favoring communally owned

and managed property, history exposes repeatedly the fallacy of public ownership and management. Under appropriate regulation, private owners of land are nearly always better stewards than the government. Private ownership and management lead to a broader and more equitable prosperity, higher employment, less financial deficit, and greater efficiency. To abandon these foundations is to abandon America.

Dan Peterson is the Executive Director for the Coalition for Property Rights (CPR) and author of the training seminar, "The Effective Advocate." CPR is a movement of property rights advocates. The mission of CPR and its more than 3,000 members is to educate, advocate, and activate others to promote and protect private property rights. Founded in 2001, CPR is headquartered in Orlando.

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HELPING ORDINARY FLORIDIANS DEFEND THEIR PROPERTY RIGHTS

BY ALAN E. DESERIO

As noted by James Burling, Director of Litigation at Pacific Legal Foundation, "it is becoming increasingly difficult for individuals of ordinary or modest means to obtain legal services in cases where their rights in property and economic liberties are at stake. The cost of fighting an unjust government regulation can be enormous and difficult to justify when the value of the affected property may not match the cost of litigation." To help alleviate this problem, the Atlantic Center at the nonprofit Pacific Legal Foundation (PLF) provides free legal representation to Florida landowners whose constitutional right to use, develop, and enjoy their properties is violated by over-reaching land use agencies. Founded in 1973, PLF is the oldest and largest public-interest legal organization dedicated to protecting Americans' freedoms in courts across the country, including in Florida.

Because of its limited resources, the Atlantic Center must carefully select those cases that have the best hope of establishing strong property rights precedents that will protect *all* Floridians. Consequently, with few exceptions, the Atlantic Center can accept only those cases that are on appeal from a trial court decision. The Atlantic Center has had to turn away many otherwise promising property rights cases, because of the prohibitive cost of representation at the administrative stage and in the trial court.

This limitation on the number and kinds of cases that the Atlantic Center can participate in gave birth to a groundbreaking idea: the creation of a network of experienced

land use attorneys from some of Florida's most prestigious law firms, who can serve as *pro bono* counsel to landowners in promising property rights cases that are at the administrative or trial court level. Application of their expertise will help ensure that the aphorism "bad cases make bad law" has no place in cases in which they assist. Participating land use attorneys help to ensure that landowners whom the Atlantic Center cannot help nevertheless will be able to defend their rights. While the State Bar and most Florida law firms have numerous *pro bono* programs that allow attorneys to help needy individuals, none offers attorneys the opportunity to help ordinary citizens in the defense of their property rights and economic freedom. The Pro Bono Attorney Network addresses this need. Through the network, attorneys will be able to give back to their communities in the form of *pro bono* legal services in the defense of property rights and economic freedom.

It is important to note that the Pro Bono Attorney Network is designed to provide *pro bono* attorneys to landowners who otherwise are financially incapable of paying for attorneys to bring their cases to court. The Pro Bono Attorney Network will not compete with the private bar for clients. Again, only those landowners without the means to hire an attorney are eligible for representation by a Network attorney.

The Pro Bono Attorney Network operates through the Wade L. Hopping Institute for Private Property Rights at PLF, established in honor of the late Wade L. Hopping. A preeminent Florida attorney, Wade was a tireless advocate of property rights and the free enterprise system. He believed that the people of Florida would be served best by a government and judicial system that foster economic growth, individual liberty, and—most importantly—private property rights. Wade also served on PLF's Board of Trustees, and was its Chairman at the time of his passing.

The first case in which a Pro Bono Attorney Network attorney participated involved an all-too-typical scenario of governmental interference with the right to lawfully use private property. Like many Floridians, a young couple bought residential property with the intent of renting to vacationers seeking a home-like atmosphere for short-term periods of time, usually less than 30 days. Upon completing their due diligence, they bought property in the Town of Jupiter Inlet Colony, because it had no restrictions on the duration of rentals of property zoned for single-family residential use. Although they had obtained all necessary state and local permits, the Town began threatening the property owners, demanding that the short-term rentals be stopped. The Town issued notices to the property owners claiming they were violating local zoning ordinances, and notified the property owners that the continued rental of their property would result in fines of

$250 per day. The Town sued the couple, seeking a declaration from the court that the use of single-family residential property for rentals of short duration violated the Town's 2008 zoning code. PLF attorneys argued that the Town's 2008 zoning code contained no prohibition of short-term rentals, and that the short-term rental use of their property was *grand-fathered* in and permissible even with the Town's recent zoning changes. The trial judge agreed, ruling that there was nothing in the Town's 2008 zoning code or ordinances that prohibited the use of the residential property for short-term vacation rentals. He also ruled that the use of their residential property for short-term vacation rentals could continue under the Town's current zoning code and ordinances as a *grand-fathered* legally nonconforming use.

With the primary legal issue resolved, PLF referred the case, through the WHI Pro Bono Attorney Network, to a participating attorney to develop and pursue the question of damages suffered as a result of the Town's illegal attempt to restrict the use of the young couple's property. The case is now pending.

Recently the Pro Bono Attorney Network came to the rescue of a Florida homeowner being harassed by a local town code enforcement department. The Town of Long Boat Key, without any justification, demanded the owner open his home to an unconstitutional search for potential code violations. When he refused, the Town dragged the owner into court. The homeowner's pleas for help were answered by a local attorney serving as part of the Pro Bono Attorney Network. The Town's lawsuit was thrown out; the $35,000 in fines accrued during the dispute were reduced to a couple of hundred dollars, imposed for an unrelated code issue.

"The homeowner's pleas for help were answered by a local attorney serving as part of the Pro Bono Attorney Network."

Currently, the following attorneys and law firms have committed themselves to provide their time, passion, and legal expertise in defense of Florida property owners: Toby P. Brigham, P.A.; Amy Brigham Boulris of Gunster; Bradley Gould of Holland & Knight; David Smolker of Bricklemyer, Smolker & Bolves, P.A.; Hopping Green & Sams; Law Office of Brian P. Patchen, P.A.; Jeffrey Bercow of Bercow Radell & Fernandez; John C. Lukacs, P.A.; and James A. Helinger, P.A. PLF is hopeful that the list of participants willing to serve in the Pro Bono Attorney Network will grow to the point that no property owner will have to give in to the threat of irrational government demands affecting the right to use and enjoy private property.

Alan E. DeSerio is Managing Attorney of Pacific Legal Foundation's Atlantic Center in Stuart, Florida.

Sackett v. Environmental Protection Agency

COMPLIANCE ORDERS AND THE RIGHT OF JUDICIAL REVIEW

BY DAMIEN M. SCHIFF

EDITOR'S NOTE: This article provides details of an extremely important landmark case involving property rights and the right to have a day in court. **This case was argued on January 9, 2012, and the Court issued its unanimous decision on March 21, 2012.** The article here incorporates material from the author's article, "*Sackett v. EPA:* Compliance Orders and the Right of Judicial Review," which was prepared for the 2011-12 volume of the Cato Supreme Court Review. A version will also appear in Engage, The Journal of the Federalist Society Practice Groups.

Introduction

The United States Supreme Court's decision in *Sackett v. Environmental Protection Agency (EPA)* promises to be important for practitioners and the regulated public who must deal with the Clean Water Act,[1] a statute the scope of which "is notoriously unclear."[2] The decision may also have an impact on other federal statutes and administrative law generally. In this short essay, I set forth a synopsis of the case, the Court's opinions, and the decision's possible impacts.

Background Facts

In 2005, Mike and Chantell Sackett purchased a 0.63 acre lot within an existing residential subdivision in Priest Lake, Idaho. After having obtained all local building permits, the Sacketts' employees commenced work on the construction of a three-bedroom family home on the site. A few days into construction, with only a layer of gravel having been put down, agents from the Environmental Protection Agency (EPA) and the United States Army Corps of Engineers came onto the property

and verbally ordered the Sacketts' employees to stop work. The agents stated that the lot contained wetlands protected under the Clean Water Act.

Following the agents' visits, the Sacketts contacted their local Corps office which provided them an application for an after-the-fact wetlands fill permit. The Sacketts declined to submit the application, however, because it required them to concede that their property contains wetlands. The Sacketts then contacted EPA several times over the summer and fall of 2007 to request from EPA a written explanation of EPA's authority to stop the Sacketts' homebuilding. The only written response to these inquiries came in November 2007, when EPA issued the Sacketts a compliance order under the Clean Water Act. The Act authorizes EPA to issue a compliance order when EPA believes, "on the basis of any information available," that certain enumerated provisions of the Act have been violated.[3] The Sacketts' compliance order charged them with having violated the Clean Water Act by discharging rock and gravel into regulated wetlands without a permit. Following several amendments, the order required the Sacketts to remove all "fill" from the site, "restore" the property to its pre-disturbance vegetative condition with the original "wetlands" soils, and allow EPA agents access to the property and the Sacketts' business records to ensure compliance with the order. If the Sacketts did not immediately comply, the order threatened daily civil fines of up to $32,500, among other sanctions.[4]

A few months after having received the original order, the Sacketts requested an administrative hearing to demonstrate to EPA that their property contains no wetlands. EPA perfunctorily denied the request. The Sacketts thereupon filed a lawsuit in federal district court in Idaho, challenging the compliance order under the Administrative Procedure Act[5] and the Constitution's Due Process Clause. The Sacketts' complaint advanced three claims. The first, under the Administrative Procedure Act, asserted that the compliance order was arbitrary and capricious because EPA had no statutory jurisdiction over the Sacketts' property. The second claim asserted that the issuance of the compliance order without notice and a hearing violated the Due Process Clause. The third claim asserted that the standard for issuing a compliance order —"on the basis of any information available"[6]—was unconstitutionally vague.

The district court ultimately granted EPA's motion to dismiss, concluding that the compliance order is not the type of agency

"If the Sacketts did not immediately comply, the order threatened daily civil fines of up to $32,500, among other sanctions."

action subject to judicial review.[7] The Ninth Circuit on appeal affirmed.[8] The appellate court held, based on the Clean Water Act's structure and legislative history, that Congress did not intend compliance orders to be judicially reviewable.[9] The court also concluded that preclusion of judicial review does not impinge upon the Sacketts' due process rights, for two reasons. First, before EPA can assess any penalties against the Sacketts, the agency must first bring an action in court, at which point the Sacketts would be able to make their arguments about EPA's lack of authority over their homebuilding project.[10] Second, the Clean Water Act allows regulated parties like the Sacketts both to comply with the law and obtain judicial review, because the Act has a permitting provision. Thus, the Sacketts can apply for a wetlands fill permit, and if that permit is denied, the Sacketts can sue over the denial in court.[11]

The Sacketts then sought review in the Supreme Court on whether they may obtain judicial review of the compliance order under the Administrative Procedure Act. The Court granted review in June 2011, but rewrote the question presented in two parts. The first rewritten question presented asked whether the Sacketts may obtain "preenforcement" judicial review of the compliance order under the Administrative Procedure Act. The second asked whether, if such review were precluded, the Sacketts' due process rights would be violated.

The Decision

The Court issued its decision on March 21, 2012. Justice Scalia delivered the opinion for a unanimous Court. Justices Ginsburg and Alito wrote concurrences.

Justice Scalia

Justice Scalia's majority opinion begins with a brief recitation of the facts and law, while also noting that the decision does not address the merits of the Sacketts' challenge to the compliance order.[12] The opinion does, however, go over the Court's recent case law concerning the scope of EPA's and the Corps' authority under the Clean Water Act. It notes that in *Rapanos v. United States*[13]—the most recent case where the Court addressed this issue—the Chief Justice wrote a concurrence strongly suggesting to the agencies that they issue new regulations interpreting the scope of their Clean Water Act authority.[14] Several years have passed since Rapanos was decided, and no new regulations have been finalized. The impact of that failure to heed the Chief Justice's urging is well illustrated by the Sacketts' saga.

With this short introduction, Justice Scalia's majority opinion next moves on to addressing EPA's arguments as to why the Sacketts should not be able to challenge their compliance order under the Administrative Procedure Act. These arguments were, first, that the compliance order is not a "final agency action,"[15] second, that the Sacketts already have opportunities for meaningful judicial review under the Clean

Water Act,[16] and third, that Congress affirmatively precluded judicial review under the APA in enacting the Clean Water Act.[17]

Final Agency Action

With respect to finality, EPA argued that the compliance order was not the consummation of the agency's decision-making, because the order expressly invited the Sacketts to engage in informal discussions with the agency over the compliance order's terms. EPA also argued that the compliance order did not affect any legal rights or responsibilities, or produce legal consequences. In EPA's view, the compliance order merely restated the Sacketts' pre-existing legal obligations under the Clean Water Act. Although the Sacketts technically would be liable for fines for violating the compliance order, EPA contended that the amount that the Sacketts would eventually have to pay would be unlikely to differ from their liability directly under the statute. Finally, although conceding that the compliance order would make the after-the-fact permit process more difficult, EPA argued that the Corps still had discretion to review a permit application from the Sacketts.

Addressing EPA's finality arguments, Justice Scalia concluded that the Sacketts' compliance order "has all the hallmarks of [Administrative Procedure Act] finality that our opinions establish."[18] First, the order determines rights or obligations because it requires the Sacketts to "restore" their property and to give EPA access to their property and records. Second, the order produces legal effects: violation of the order exposes the Sacketts to double liability of $75,000 per day ($37,500 per day for violations of the statute, and $37,500 fines for violations of the order); and the order's issuance makes it materially harder for the Sacketts to obtain an after-the-fact permit from the Corps.[19] Third, the order marks the consummation of EPA's decision-making, a conclusion underscored by the fact that the Sacketts had requested an administrative hearing which EPA then denied them. Although the order indicates that EPA is open to informal discussion of the compliance order's terms, the Court nevertheless concluded that the "mere possibility that an agency might reconsider in light of 'informal discussion' and invited contentions of inaccuracy does not suffice to make an otherwise final agency action nonfinal."[20]

Adequate Existing Judicial Review

The Court next addressed EPA's contention that the Sacketts had other adequate opportunities for judicial review under the Clean Water Act. In response to EPA's argument that the agency can only seek fines after having brought a civil action, the Court observed that a civil action would be inadequate review because the Sacketts cannot force EPA to file such an action and because ignoring the compliance order subjects the Sacketts to immense daily civil penalties.[21]

EPA fared no better with its other "adequacy" contention—namely, the Sacketts can apply for a Clean Water Act permit and, if denied, may sue in federal court. The Court rejected that argument because the "remedy for denial of action that might be sought from one agency does not ordinarily provide an 'adequate' remedy for action already taken by another agency."[22]

Preclusion of Judicial Review

Moving on to EPA's final argument—the Clean Water Act precludes judicial review under the Administrative Procedure Act—the Court framed its "preclusion" discussion with the observation that the Administrative Procedure Act creates a presumption in favor of judicial review.[23] The Court then addressed EPA's contention that judicial review of compliance orders would undermine EPA's statutory choice to select between compliance orders and civil actions.[24] The Court rejected this argument because EPA's understanding of its enforcement powers impermissibly presumed that the only relevant difference between issuing a compliance order and bringing a civil action is that the latter subjects EPA's actions to judicial review. But there are other good reasons, the Court noted, for allowing EPA to issue compliance orders regardless of whether they can be judicially reviewed, such as the desire to encourage quick, voluntary compliance.[25]

EPA also contended that the compliance order was merely one step in the "deliberative process," and that the order was not self-executing in the sense that, to collect fines or to enforce the order, EPA must first resort to judicial process. Consistent with its finality analysis, the Court rejected EPA's characterization of the compliance order as just one step in the enforcement process. The Court noted that the Administrative Procedure Act provides for judicial review "of all final agency actions, not just those that impose a self-executing sanction."[26] The Court also observed that the Sacketts had been denied any administrative relief after the compliance order's issuance, and that the only real deliberation left to EPA was over whether to file a lawsuit, not over the order's terms.[27]

The Court also summarily rejected EPA's argument that preclusion of judicial review of compliance orders is implied by the Clean Water Act's express authorization of review for administrative penalty orders.[28] The Court reasoned that to credit such an implied preclusion would effectively reverse the presumption in favor of judicial review.[29]

After having distinguished a number of precedents on which EPA had relied, the Court then rejected what was perhaps EPA's strongest argument: allowing judicial review would hamper the agency's administration of the statute. Assuming the truth of the assertion, the Court still refused to accept the argument as a basis to infer preclusion, observing that "it will be true for all agency actions subjected to judicial review."

Yet, the "APA's presumption of judicial review is a repudiation of the principle that efficiency of regulation conquers all."[30] And in any event, the Court reminded EPA that compliance orders "will remain an effective means of securing prompt voluntary compliance in those many cases where there is no substantial basis to question their validity."[31]

The Concurrences

Justice Ginsburg concurred to note that she believed that the majority's decision only extended to jurisdictional challenges to compliance orders, and not challenges to an order's terms. Justice Alito concurred to emphasize both the injustice of not allowing landowners to have judicial review of compliance orders, and how that injustice still remains to some degree even with the Court's decision because of confusion over the Clean Water Act's scope.

As to the first point, Justice Alito observed that under the old regime, "if [land]owners want their day in court to show that their lot does not include covered wetlands, well, as a practical matter, that is just too bad." Justice Alito went on to point out that, in "a nation that values due process, not to mention private property, such treatment is unthinkable."

As to the second point, Justice Alito underscored that "[r]eal relief requires Congress to do what it should have done in the first place: provide a reasonably clear rule regarding the reach of the Clean Water Act." Justice Alito rejected the utility of EPA's informal guidance interpreting the scope of its regulations because the guidance advises that jurisdiction is ultimately a case-by-case determination. Although acknowledging that the Court's decision helps landowners to some extent, Justice Alito admonished that "only clarification of the reach of the Clean Water Act can rectify the underlying problem."

The Decision's Impact

The decision's clearest impact will be to make compliance orders like the Sacketts' judicially reviewable. It is important to note, however, that the Court's opinion states that the "compliance order in this case" (my emphasis) is reviewable under the Administrative Procedure Act.[32] It is thus conceivable that EPA will argue that the Court's decision does not make all compliance orders subject to judicial review, particularly if EPA changes its position on what an order's impacts are or if EPA institutes a formal post-issuance administrative process.

The decision also may determine the reviewability of other agency actions under the Clean Water Act. For example, prior to Sackett, one court of appeals had ruled that jurisdictional determinations issued by the Corps[33] are not final agency action, because they do not change the legal rights or responsibilities of their recipients.[34] The Sackett decision's discussion of the finality of a compliance order may bear on whether a jurisdictional determination is final. The decision may also

make some Corps cease and desist orders reviewable.[35] These orders can go beyond merely stopping ongoing work to prescribe remedial measures. The Court in Sackett relied in part on the remedial component of the compliance order to conclude that it was a final agency action. It is therefore plausible that the same conclusion can be made with respect at least to those Corps cease and desist orders that contain an analogous remedial component. Indeed, EPA itself recognized the significance of the remedial component of its orders. The agency amended the Sacketts' compliance order the day before moving to dismiss their action. The amendments removed many of the remedial portions of the order.[36] Presumably, EPA's amendments were an attempt to undercut the order's finality.

The decision's impact on the reviewability of agency actions under other statutes is also hard to judge. Perhaps the two most prominent federal laws containing compliance order provisions other than the Clean Water Act are the Clean Air Act[37] and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).[38] The Supreme Court has already held that Clean Air Act compliance orders are judicially reviewable under the Clean Air Act's own review provision.[39] And Congress has expressly precluded most "pre-enforcement" judicial review of CERCLA compliance orders.[40] That the Supreme Court in Sackett did not address the due process implications of precluding judicial review of compliance orders means that the constitutionality of CERCLA's preclusion remains to be decided.

"The decision's impact on the reviewability of agency actions under other statutes is also hard to judge."

Another area of agency practice that the decision may affect is the issuance of warning letters. For example, the United States Fish and Wildlife Service routinely resorts to "warning" letters to coerce compliance with the Endangered Species Act. The lower courts had, prior to Sackett, generally ruled that such letters are not judicially reviewable. If such letters could qualify as final agency action, then Sackett would be a strong defense against the expected agency charge that judicial review of such letters would hamstring agency enforcement.

Parting Thoughts

It is fair to expect that the Court's decision in Sackett will have a significant impact on EPA's manner of enforcing the Clean Water Act, in two ways. First, it is likely that EPA will issue fewer compliance orders and will instead resort to less formal communications, such as oral orders or warning letters, to encourage compliance. Second, when EPA does issue a compliance order, it will probably be preceded by significantly

more research and investigation than is currently the norm.

The fact that the Supreme Court took up the Sackett case and unanimously reversed what had been the rule adopted by every lower court to have addressed the issue[41] should give practitioners and the regulated public some pause. How can it be that so many courts got it wrong, and why did the Supreme Court let the error persist for so long? As to the first question, I think that most courts too readily accepted EPA's argument that judicial review would lead to environmental catastrophes because of hampered agency enforcement.[42] Also, it is probably true that many compliance order recipients are unsympathetic, and thus lower courts were less willing to do them any favors. As to the second question, I believe that the correct response is related to the prior answer: the Court was waiting for an attractive story and attractive clients to address the issue. With the Sacketts' case the Court got both.

The relatively sparse legal analysis and citation in Justice Scalia's opinion for the Court is surprising. The opinion contains none of the zingers that Scalia admirers have come to expect, although he did quip when reading the decision from the bench that "the Sacketts were surprised by the EPA's decision that their land contained 'waters of the United States,' since they had 'never seen a ship or other vessel cross their yard.'"[43] The absence of judicial bon mots and detailed analysis may be due to the fact that Justice Scalia wrote for a unanimous Court on a clear-cut issue of agency abuse which required no further explication. Even so, it is still surprising that the Court did not once cite, much less discuss, the most important decisions that both sides argued over strenuously in the briefing, such as *Ex parte Young*,[44] *Thunder Basin Coal Co. v. Reich*,[45] and *Alaska Department of Environmental Conservation v. EPA*/[46] Indeed, the Court did not even address the circuit split on which the Sacketts' cert petition was in part based.[47] To be sure, the Court has in the past avoided difficult questions concerning the Clean Water Act's constitutionality. But the Sackett decision is different because there the Court declined to discuss the important cases addressing the legal issues that the Court did in fact decide. Ultimately, though, the full impact of Sackett will depend on EPA's willingness to change or ameliorate its enforcement program and to adopt a more modest understanding of its statutory authority.

Endnotes

1 33 U.S.C. §1251, et seq.
2 *Sackett v. Environmental Protection Agency*, 2012 U.S. LEXIS 2320 (Mar. 21, 2012), slip op. at 1 (Alito, J., concurring).
3 33 U.S.C. §1319(a)(3).
4 By the time the Supreme Court decided the case, EPA had increased the penalty maximum to $37,500 per day. See 74 Fed. Reg. 626, 627 (Jan. 7, 2009).
5 5 U.S.C. §§701-706.
6 See 33 U.S.C. §1319(a)(3).
7 2008 U.S. Dist. LEXIS 60060 (Idaho Aug. 7, 2008).
8 622 F.3d 1139 (9th Cir. 2010).
9 See *id.* at 1142-44.
10 See *id.* at 1146-47.
11 See *id.* at 1146.
12 Slip op. at 2.
13 547 U.S. 715 (2006).

14 See *id.* at 757-58 (Roberts, C.J., concurring).
15 Cf. 5 U.S.C. §704 (authorizing judicial review of "final" agency action); *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (holding that an agency action is final if it is the consummation of the agency's decision-making and if it has legal effects).
16 Judicial review under the Administrative Procedure Act is limited to agency actions "for which there is no other adequate remedy in a court." 5 U.S.C. §704.
17 The Administrative Procedure Act's judicial review provisions apply except to the extent that "statutes preclude judicial review" or "agency action is committed to agency discretion by law." 5 U.S.C. §701(a)(1)-(2).
18 Slip op. at 5.
19 Slip op. at 5. In its merits briefing in the Supreme Court, EPA had conceded that the compliance order produces these effects. The Court assumed for the sake of argument that EPA was correct, without actually deciding whether EPA's interpretation of the Clean Water Act and the Corps' permitting regulations was correct. See *id.* at 5 nn.2-3.
20 Slip op. at 6.
21 Slip op. at 6.
22 Slip op. at 6.
23 Slip op. at 7.
24 The Clean Water Act directs EPA, whenever it determines that certain enumerated provisions of the Act have been violated, to "issue an order requiring...compl[iance] or [to] bring a civil action." 33 U.S.C. §1319(a)(3) (emphasis added).
25 Slip op. at 7.
26 Slip op. at 8.
27 Slip op. at 8.
28 Cf. 33 U.S.C. §1319(g).
29 Slip op. at 8.
30 Slip op. at 9.
31 Slip op. at 10.
32 See slip op. at 10.
33 See 33 C.F.R. §320.1(a)(6).
34 See *Fairbanks N. Star Borough v. U.S. Army Corps of Engineers*, 543 F.3d 586, 597 (9th Cir. 2008).
35 Cf. 33 C.F.R. §§326.3(d), 326.4(d)(3).
36 At oral argument, Justice Scalia castigated EPA for this litigation tactic. See Tr. at 34-35 ("I must say I was not edified by the fact that, when litigation was threatened or actually brought, the EPA modified its order: Oh, you don't have to plant trees.").
37 42 U.S.C. §7401, et seq.
38 42 U.S.C. §9601, et seq.
39 *See Alaska Department of Environmental Conservation (ADEC) v. EPA*, 540 U.S. 461, 483 (2004).
40 42 U.S.C. §9613(h).
41 See, e.g., *Laguna Gatuna, Inc. v. Browner*, 58 F.3d 564 (10th Cir. 1995), cert. denied, 516 U.S. 1071 (1996); S. *Ohio Coal Co. v. Office of Surface Mining, Reclamation & Enforcement*, 20 F.3d 1418 (6th Cir.), cert. denied, 513 U.S. 927 (1994); *S. Pines Assocs. v. United States*, 912 F.2d 713 (4th Cir. 1990); *Hoffman Group, Inc. v. EPA*, 902 F.2d 567 (7th Cir. 1990).
42 In that vein, it is also significant that very little of EPA's briefing was addressed to the importance of wetlands in general or EPA's need to issue unreviewable orders to administer the Clean Water Act effectively. Indeed, the only amicus brief filed in support of EPA focused mainly on peripheral factual disputes rather than making a pro-environment defense of EPA's position.
43 Robert Barnes & Juliet Eilperin, "Supreme Court allows Idaho couple to challenge EPA on wetlands ruling," Washington Post, available at Error! Main Document Only.www.washingtonpost.com/politics/supreme-court-allows-idaho-couple-to-challenge-epa-on-wetlands-ruling/2012/03/21/gIQAFgdsRS_story.html?wprss=rss_politics (last visited April 3, 2012).
44 209 U.S. 123 (1908).
45 510 U.S. 200 (1994).
46 540 U.S. 461 (2004).
47 In their cert petition, the Sacketts had contended that the Ninth Circuit's decision conflicted with the decision of the Eleventh Circuit in *Tennessee Valley Authority (TVA) v. Whitman*, 336 F.3d 1236 (11th Cir. 2003). In TVA, the Eleventh Circuit had held that Clean Air Act compliance orders were not judicially reviewable because they had no legal impact. They had no legal impact, the court reasoned, because their enforcement would violate the due process rights of their recipients. See id. at 1260. The court reached that result based on its view that the Clean Air Act does not authorize courts to review the jurisdictional sufficiency of such compliance orders. It was on this latter point that the Eleventh Circuit's decision conflicts with the Ninth Circuit's decision. See *Sackett*, 622 F.3d at 1144-46.

WHAT CAN ONE MAN DO ALONE?

INVOLVED CITIZENS SHOW THE WAY

BY BILLIE TUCKER

The Tea Party Movement began back in 2009 in a visual way. However, it really started in 2008 when President George W. Bush agreed to bail out the banks. That one thing was the catalyst for waking up millions of people to the condition of our country.

I remember watching President Bush make the announcement, and he looked timid and fearful. I could not shake his fear from my mind, and every day I would wake up well before the roosters did and research the facts for myself. What I discovered was a huge problem: Our country was in big trouble.

For me I felt called to help start a local tea party in my hometown. I was the co-founder, and we worked diligently to inform and educate others concerning our discoveries. My life was turned upside down and inside out as I poured myself into this movement along with others who were forming their groups across the country. This became our mission—our purpose—our civic duty as citizens of the greatest country in the free world.

Starting a tea party and building one to make a difference is not easy. We were attacked by the media and those on the left; we were called names that none of us could ever have imagined being called; and we felt threatened by our government for standing up for liberty.

The biggest gift of this entire movement is this: the awakening of individuals to their civic responsibility. We had taken our freedoms for

granted and then realized—if we were to continue to be free—we must protect them at all costs.

One man alone can do powerful things for the sake of liberty. I've met thousands of people in the past three years, and I've watched each of them look for a way to do something to help our country. I thought you might like to know some of their stories:

- Paula is a voracious reader. She rises in the wee hours of the morning and reads the news from across the globe. I'm not sure how she does it, but she is a fast reader. Once she completes her reading for the day, she sends out an email to her friends, with a couple of sentences about each article and a link to the whole article. I enjoy waking up and seeing Paula's email, "Here's the news." It keeps me from having to search across the worldwide web, and I trust that Paula will find the best news of the day. If time permits, I take each link and share it on Facebook so others can benefit from Paula's work.
- Debbie is a wife, mom, grandmother and a veteran. She loves to do research. When a topic shows up that needs attention, Debbie is on it. She has learned to dig deeply into the issues, and her military training has helped her sort out the good from the bad. In the mid-term elections of 2010, Debbie threw herself and her time into researching all the candidates. In a local city council race, she decided to help her favorite candidate by doing all she could to get him elected. She held signs almost every day on a specific sidewalk that got heavy traffic. She became "sidewalk smart" as the opposing candidate used dirty tricks to try to win. She watched him and his team pull up her candidate's signs and throw them away. She watched as they put their signs directly in front of her candidate's signs so the motorists would see only the opponent's sign. Debbie is a patriot and didn't like the dirty tricks, so she used a camera to catch the opposing candidate with his nasty tricks. She gathered proof and sent it to the other candidate, explaining that this would go viral if they kept it up. She put pressure on the other candidate to do the right thing, and she blogged about her experiences. What happened? Her candidate won, defeating his opponent—the sitting City Council President! Her perseverance, her research, and her activity in helping a candidate win was a first for Debbie.
- Jim was deeply concerned that his neighbors did not understand the significance of what was happening with our government gone wild! He decided to hold an old-fashioned soap box event in his driveway. He invited his neighbors to join him on a Saturday afternoon where he would serve chili and they could hear from local people who were involved in the politics of the day. He bought three flags and small poles to hang from their mailboxes and had a drawing

for the flags. He built a small stage with red, white and blue bunting attached to it. He picked up the flags and bunting at Walmart and spent a minor amount of money building his small soapbox stage. The neighbors watched this man decorate his driveway, build his stage, and bring out chili and plates of cookies. They had to come over to see what was up. Speakers informed them of local political issues and federal issues that would affect them. People asked questions, shared their concerns, and then asked, "What can we do?" Each person made a decision to share the information or hold an event just like Jim did.

- Sandy loves music and wanted to put together a musical group that sang patriotic songs. Her progress in starting the group began slowly, and it took a while for artists to catch on to her vision. She could see them singing in nursing homes, at local events in the city, or in churches and other places where patriotism could be saluted in music. She stayed the course, and now she has more than 30 people who meet weekly to rehearse. They are invited to sing for all types of events. Her group continues to gain in significance and numbers, and they "Let Freedom Sing" whenever and wherever they can.
- Speaking of music, Jordan Page took what he uncovered in his research and turned it into songs for liberty. His concern for America can be heard in the lyrics and soulful music that comes straight from his heart. "I'm only a stranger here. They say I can't change all the things I find strange....but what can one man do alone? I'm looking to find better nature in my fellow man. Where will you be when the order is given to censor your mind because free speech is forbidden? Arrogant men tear up our Constitution. The love of our country is our ammunition. I am not one man alone." Jordan's music inspires, enlightens and encourages me and others to do all I can.

So as you read this and think to yourself, "What can I do?" I'm not sure I have the answer. But you do. Somewhere deep down inside each of us, we are called to a purpose. If you sit quietly and listen to your inner self, it will tell you how to engage in this great Liberty movement.

You may think you are one man alone—but you have many friends out here doing their part. You are not one man alone. Millions more are fighting in their own special way and our founding fathers must be smiling at our efforts and cheering us on.

America is special, and without her, the entire world is lost. It's our obligation and duty to protect her. God bless America.

Jacksonville resident Billie Tucker founded that area's "tea party" organization. As a result of her success in mobilizing average citizens, she was invited to speak at the 2010 Heritage Foundation conference in Aventura, Florida.

HOW ONE CURIOUS FLORIDIAN BECAME A 'CITIZEN WATCHDOG'

BY KELLY BARBER

Jerry Couey has always been curious by nature. His tendency to question has had a huge impact on Santa Rosa County, where he has lived his whole life. While he earns a living by working for an offshore oil company, Couey values his work as a "citizen watchdog" just as much.

Couey's work to expose a local economic development agency, TEAM Santa Rosa, led to an investigative report that found Santa Rosa had violated the public records law and failed to hold open meetings. His involvement with a local television show "Santa Rosa Week" and his website "Santa Rosa Speaks" also helped him change laws in Santa Rosa County and Escambia County to prohibit the use of social networking sites and private email for public business.

"Guerilla news coverage" as Couey calls it, has been very effective in getting people's attention. He and his crew have filmed county commissioners yelling at citizens, denying their request for public meetings.

"Sometimes you just have to pick up the stick and swing it."

Couey thinks all journeys begin with budgets. He began digging in to budgets 1991.

"I was the only guy yelling about a $12-million budget. Now we have a $126-million budget and it has gotten so out of hand that I'm finally seeing people stand up and say, 'Wait a minute.'"

While he admits people have impugned his integrity and character, Couey says it is a citizen's obligation to take responsibility for ensuring their rights and freedoms.

"Sure, I have scars, but if you don't do anything, elected and appointed officials have a natural tendency to go over to the dark side."

Couey has an uncanny ability to show that politicians should not be granted special treatment. He says that most people would call the police if they saw a little old lady robbed.

"The problem in society today is "Most thieving comes from people wearing a coat and tie."

"While he admits people have impugned his integrity and character, Couey says it is a citizen's obligation to take responsibility for ensuring their rights and freedom."

Couey's latest project is to change Florida's "Government in the Sunshine Law" to ensure that citizens have the right to speak at all public meetings. Currently, citizens can be silenced or arrested for asking too many questions at a public meeting. Couey says he has been promised the Right to Speak Bill will pass in the 2013 legislative session. If it does not, Couey says that he and many others will rally and gather the signatures needed for a constitutional amendment.

"We won't give up, bottom line. When it comes to the government I pay for, I'm going to make sure they comply with being reasonable human beings."

Kelly Barber will be a senior this fall at the University of Florida. This summer she served as a James Madison Institute intern.

Worthy Words

"Perhaps the fact that we have seen millions voting themselves into complete dependence on a tyrant has made our generation understand that to choose one's government is not necessarily to secure freedom."

–F.A. HAYEK

"An expert is a man who has made all the mistakes which can be made in a very narrow field."

–NIELS BOHR

HOW MY GRANDFATHER LOST HIS COUNTRY

BY FRANCISCO GONZALEZ

This article is written in memory of my "abuelo," Francisco Crespo Gonzalez (1919-2009).

My grandfather left Cuba when he was 41 years old. He spent nearly half his life there before having to abandon his country to seek a safe haven in the United States. In the year 2000, as a history major at Florida Atlantic University, I was charged with doing an oral interview of an immigrant. I chose to interview my grandparents, Francisco and Marta Gonzalez.

When my grandfather passed away in 2009, I wrote a lengthy piece that I shared with my family, which put his entire life in the context of Cuban and world history based on these interviews. Today I am privileged to retell the "immigrant experience" of the story for the context of this *Journal*, and I hope it will also serve to be a lasting memory to a man who sacrificed so much for his family and future generations. Any quotes attributed below are from the interview I conducted in 2000.

My grandfather, Francisco Crespo Gonzalez, was born in the Pinar Del Rio region in western Cuba in October 1919. This is an area of Cuba known for its mountains, beaches, and tobacco. It is situated about 108 miles west of the capital city of Havana.

When Francisco Crespo turned 18 in 1937, he joined the Cuban Air Force. This also gave him the opportunity to travel all around Cuba. But he said, "Havana was the best part."

Francisco Crespo was coming of age in a time of much conflict in

both Cuba and the world—the Great Depression of the 1930s and World War II in the 1940s. It was more common then, than it is today, for a young man of his age to volunteer for military service. The prestige that serving in the Cuban military brought was possibly even greater than it was in most other places, as Cuba was a small island nation that had experienced much conflict during the previous half-century.

Francisco Crespo served as a photographer for the Air Force, for whom he took photos at air force events. During his time there, he met three Cuban Presidents Ramon Grau San Martin (1933-1934 and 1944-1948), Carlos Prio Socarras (1948-1952), and Fulgencio Batista (1940-1944 and 1952-1958). When these Presidents came to visit the Air Force, Francisco Crespo was responsible for taking their photos with other military officers. During the "Batista period" in Cuba—generally seen as the era from the time he led the military coup in 1933 until the last day that his second Presidency ended on Dec. 31, 1958—the military controlled much of the power in Cuba. So, even during the period when General Batista was not President, the military power he exerted influenced much of Cuba's political life. It was during this period that my grandfather served in the Cuban Air Force.

As Francisco and his wife, Marta, my grandmother, were becoming adults, Cuba had become a huge attraction for foreign tourists, particularly Americans. *The Tropicana* complex was the biggest tourist attraction, with a nightclub, gambling, dancing, music, and Las Vegas-style shows. "All the tourists went there," they said.

In Francisco Crespo's first marriage, he had one child, my father, Francisco Ismael Gonzalez. Unfortunately his first wife died at a young age. However, Francisco Crespo would not long remain without someone to love, and neither would his son. He later met Marta Gonzalez, and they were married in Havana.

Marta was from Havana, and before she met Francisco Crespo, she worked in a factory and packed rice and beans. (This must have been where she learned her secret recipe). When she married Francisco Crespo, she stopped working and became a housewife and bore another son, my uncle, Jose Gonzalez. As this young family was emerging, it would be only a few years later that Cuba would change forever, when Fidel Castro marched his troops into Havana on New Year's Day 1959.

Castro Gains Public Support

Castro had been fighting in the mountains of eastern Cuba since 1953, but his troops were finally winning the battles against the Cuban military. Batista, no longer in control of the island, nor the city of Havana, fled the country. Since that day more than 53 years ago, Castro and his regime have remained in power and turned Cuba into a communist nation and a totalitarian state.

My grandparents told me they

believed that about 70 percent of the Cuban people, particularly in Havana, were supportive of Castro when he first arrived in the capital, where many had grown weary of Batista's long rule. Castro's anti-capitalist, anti-U.S. rhetoric also seemed to be catching on with many in Cuba, as the Batista regime was seen as a "puppet" of the United States, and many U.S. corporations dominated business on the island. But because my grandfather knew a lot of military people, he "heard that Fidel was a communist."

Francisco Crespo and Marta said that "when Fidel first began campaigning," they "thought he'd be out within a year." But "when it became clear that he wasn't leaving," they decided to leave. By 1960, they said, they had "noticed a big change." Food was being rationed, properties and businesses were being seized, and there were a few incidents they personally experienced in Cuba that convinced them it was time to leave.

One incident involved my grandfather being taken away by Castro's military. For two days, he was missing. Marta, watching the two children, didn't know what to do. She was emotional, fearing that her husband had been imprisoned or killed, and might never return. The only reason she had these thoughts is that it had happened to others. When he returned home, he told Marta he had been taken in for questioning. They wanted to know where his loyalties were, especially considering he had been part of the military during the previous regime.

The next incident hit even closer to home, and my grandfather had the foresight to expect it. One evening, late at night, he took the family's passports and other important documents and hid them under a tile in the house. During that evening, his son, six-year-old Francisco, awoke and heard his father's commotion. My grandfather told the young boy to go back to sleep and not to mention what he saw. (What he had seen was his father putting something important underneath a tile in the floor).

On another evening some time later, Castro's military police came to my family's home and interrogated them. The government was seizing all guns, ammunition, and passports, claiming they were simply cracking down on those who might be disloyal to "The Revolution." My grandfather told the military officers he didn't have any of the items they were looking for. So, they smashed holes in the walls of his house to see if the family was hiding anything there. At one point, a military police officer pointed a loaded gun at my six-year-old father's face and asked him if he knew if his father was hiding anything. Young Francisco looked at his father, and then started crying and ran to him. The military officers departed with nothing, and the family was unharmed. However, this incident was the last straw for my grandparents. They knew that things were not going to get better anytime soon, and they prepared to leave the island.

At that time, in the spring of 1960, there was still a U.S. embassy on the island. They waited outside the embassy in a line that stretched for blocks to secure travel visas for the family. They couldn't all travel together, as the regime was suspicious that this wasn't just a vacation. And the travel documents took many months to be approved. Once they were approved, the family made arrangements. It was now August 1960. Marta would take the two children, Francisco and Jose, on a ferry boat that departed from Havana to Miami. The only thing in their hands were suitcases for their "vacation" in Miami. Fifty years later, Marta and the boys are still enjoying an extended trip in South Florida.

Francisco Crespo, on the other hand, had to go alone. He took a boat to the Yucatan peninsula of Mexico. Once there, he had to secure travel arrangements to the United States. From there, the Air Force veteran hopped on a plane to Miami. He had been separated from his wife and children for 15 days, when they finally reunited in Miami in September.

It had been a long 15 days for Marta. She was in a foreign country for the first time ever and was "nervous about the language and the new place...there were not very many Cubans here at the time." Francisco Crespo had traveled to Key West and Miami before. He and Marta had also had a "good perception of America," mostly because of the Americans they knew that regularly visited and lived in Cuba before 1959.

Leaving Everything Behind

In addition to being in the Air Force in Cuba, my grandfather also owned a photography studio. The studio was never taken away by the Castro regime while they were still in Cuba. At that time, if you owned only one business, you were allowed to keep it. If you owned more than one, you had to choose which one you wanted to keep. I suppose this was a redistribution of the wealth. After Francisco Crespo left Cuba, he later learned that his photography studio, which he had left behind, had been seized by the government. He had lived an upper middle class life in Cuba, but everything he owned except the clothes on his back and in his bags had to be left behind—including his country.

Now that they were in America, Francisco Crespo, at the age of 41, with a wife and two children (ages 7 and 4) had to start over. He had to leave the only country he ever knew and come to a new land where he didn't speak the language, and never would.

After two weeks in Miami in September 1960, my grandparents realized they were not going to be successful at finding employment. They were staying with some American friends they had known. The area where they had been reunited was only blocks away from Miami's historic Orange Bowl stadium. Little could they know at the time their son (my father) would one day spend many fun Saturdays watching football games in that stadium with his

own children, my two brothers and me. But in these trying days of 1960, there was little time to think about sports or leisure. Their livelihood was on the line.

Their American friends advised them that they might find jobs in New York City, a place that was another world away. Once in New York, Francisco and Marta both got jobs. Around the same time, they went to U.S. Immigration Services in New York City to apply for legal residency. When U.S. Immigration officials found out that Francisco Crespo and his family were supposed to only be in the United States on vacation, they wanted to send them back to Cuba.

"…the U.S. government had cordial relations with Castro. A* New York Times *article even popularized the young idealistic leader…"

At that time, the U.S. government had cordial relations with Castro. A *New York Times* article even popularized the young idealistic leader of the Cuban Revolution. While some top officials in the U.S. government may have been aware of the dangers posed by the Castro regime, this knowledge had not yet hit home for most Americans, including lowly government bureaucrats working for the U.S. Immigration and Naturalization Service (INS). It was, after all, more than a year before the Bay of Pigs operation and several years before the Cuban Missile Crisis.

Francisco Crespo and Marta pleaded with immigration officials not to send them back. "We told them Fidel was bad, that area was bad, and that Castro was a communist," said Francisco Crespo. After staying there all night long, immigration officials decided not to send them back. They did, however, recommend that they go through all legal proceedings and get the appropriate paperwork to come into the United States legally. In 1962, Francisco Crespo and his family left for Canada. They made all their paperwork official in Canada. They spent a day in Montreal, getting this paperwork done to become legal U.S. residents. Ten years later, Francisco Crespo and Marta would become U.S. citizens. Their children—my dad, Francisco, and my uncle, Jose—would not become citizens until they went through the process as adults later in their life.

In the meantime, to provide for his family, Francisco Crespo worked three jobs at a time for the next 10 years. Marta, who had left Cuba as a housewife, now needed to return to the workforce. Francisco Crespo worked seven days a week. His three jobs consisted of being a superintendent of a building in New York City, working in a photo lab, and working at a night club taking photos. My grandfather would work his day job, work his night job, and then come home late at night. At that time, my grandmother would then go out, often into the cold nights of New

York City, to clean office buildings in the middle of the night. She stayed home during the day to watch the children and to catch up on sleep that she did not get at night. She worked five nights each week. Francisco Crespo also worked his third job on the weekend.

The two were often passing ships in the night. They were each home for the children, but did not often get to spend as much time with each other. Once one came home, it was a cue for the other to leave for their next job. While they were in New York City, they did have time to have a daughter, as my aunt, Barbara Gonzalez, was brought into the world.

Was It Worth the Sacrifices?

During my interview of my grandparents, I was astounded about the sacrifices they made for their children. I was so amazed at this story that I actually questioned them about whether leaving an upper middle class life in Cuba to come to a foreign country, where they didn't know the language, where they had to work three times as hard for less economic gain, and where they had to brave the harsh winters that were non-existent in their native land, was worth it.

I will never forget the look on their faces when I asked this question. I think they asked my cousin Kelly, who translated much of this interview for me, if they had heard the question right. They looked at me in disbelief as they said, "Of course it was worth it." By coming to the United States, they "were free." And they still had things to give to their kids. Eventually they were able to buy a car, a house, and go on vacation. As their economic situation improved, they would take an annual road trip in their car down to Miami, where they dreamed of someday living. After 10 years in New York City, they eventually moved to Miami, where they later retired and where my grandfather found his final resting place in August 2009.

"Coming to the United states was worth the price and the sacrifice."

During the interview in 2000, my grandmother remarked that she "would have stayed [in Cuba] if Castro never would've taken over. It was better because it was their native country, their own language." She even remarked she would return to Cuba "for a vacation if Castro leaves and Cuba is free." But she would "not live there" again because after all the decades in the United States, her family is now here. Coming to the United States was worth the price and the sacrifice. If they had stayed in Cuba, they said, their sons Francisco and Jose would have "had to go fight" for Castro's regime and join Castro's military. Cuba was sending off many young men in its military to Angola and other places in Africa and Latin America to support other communist forces. According to my

grandparents, if they had stayed in Cuba, they may even have been taken to jail, where they could have died.

In the United States, they had something that couldn't be bought in Cuba—their freedom.

The Cuba they left behind was a Cuba that has been left behind in history. Before Castro took power, Francisco Crespo and Marta were middle class and "doing well." They had cars, televisions, and then Castro took over everything. They had always liked Americans, thought they were nice people. They had American friends who would visit Cuba often. After Castro's revolution, the American tourists stopped coming. Francisco Crespo and Marta were "not sure who stopped them or if they just stopped coming." Castro's supporters were happy that Americans weren't coming, but others were unhappy because they lost business and friendships.

The Havana that my grandparents left behind is a different Havana from today. At that time the Cuban dollar was equivalent to the U.S. dollar. Cuba was one of the more highly regarded countries, "very comparable to Florida and the United States," they said. Their memories include their favorite beach, Vadadera, which was two hours from Havana. The water was nice and clean, even the sand seemed perfect to them.

My grandfather spent the last 48 years of his long life in a foreign land, a land he adopted, not because it was his land or because he wanted to go to it, but because its doors were opened to him when he came running. In the interview in 2000, he recalled the good days in Cuba and the life-changing ones. He also recalled the hard decision he made at the age of 41, about taking a journey he wasn't certain about. Would they get caught? Would they survive? Would they make it in a foreign land?

Forty years after coming to the United States, my grandfather reflected that the sacrifice was worth it. First, there was nothing more important than freedom. Without that, we have nothing. Economic security is no substitute for individual liberty—he certainly passed this concept on to me, and I feel pride every day working for The James Madison Institute, knowing I am advancing the principles that brought my grandfather to these shores.

My grandfather thought their sacrifice was well worth it, not only for him and Marta, but for his children. My grandparents conveyed to me that when they left Cuba and took a leap of faith, something better lay outside Castro's Cuba, they thought of their children and their children's children.

Four decades later, here they were, sitting in their retirement home in Miami, Florida. In 1960, as they made important decisions and sacrifices, who could have imagined being retired in such a nice home in a Cuban American community in a free country? Their children were all successful in life, economi-

cally, physically, and with their own families. They and their children had worked their way back into the middle class, in a more affluent and free society than even existed in Cuba prior to 1959—and especially *after* 1959. Their eldest grandson, who was sitting across the table from them conducting this interview, was about to enter his senior year of college. Their other grandchildren were preparing to go to college. All had the freedom to choose what they might do with their lives. Was their sacrifice worth it? You bet it was, they reiterated.

Francisco Crespo was able to enjoy the last years of his life in the Cuban American community of Miami, surrounded by family, old friends from Cuba, and new friends in the *diaspora* community of Miami. He continued to smoke a pipe for many years, eventually kicking the habit when doctors told him he needed to. At some point he had to kick the memories of the tobacco-laced fields of Pinar Del Rio too. But perhaps the palm trees of Miami's Tropical Park comforted him as he and Marta enjoyed taking walks there.

Francisco Crespo never lost some of his military mannerisms. He still "saluted" his children and grandchildren when he saw them. Even as his health waned in his last two years of life, his "salute" was still present as family members walked in and out of his room, visiting him at his bedside. He and Marta had made a lifetime journey together from Havana to Miami to New York City and back to Miami. For 10 years in a foreign country, he supported her, working seven days a week, nearly all day long. She continued to support him with her delicious meals, even in his last days, right up until his last minute.

It has been said that "No greater love is there than this: that a man lay down his life for his friends." My grandfather took many risks and made many sacrifices and ultimately laid down the nourishments in his own life so that his children and their children could have live in a land of freedom and opportunity. While he lost his country, we dare not lose the one that rescued him.

Francisco Gonzalez is The James Madison Institute's Vice President for Advancement. He is a graduate of Florida Atlantic University and received his master's degree from the University of Maryland.

Worthy Words

"The public welfare demands that constitutional cases must be decided according to the terms of the Constitution itself, and not according to judges' views of fairness, reasonableness, or justice."

–U.S. SUPREME COURT JUSTICE HUGO L. BLACK

THE 20TH CENTURY'S GREATEST PRESIDENT WAS... CALVIN COOLIDGE?

BY WILLIAM MATTOX, JR.

Calvin Coolidge attends the dedication of Bok Tower Gardens in 1929.
Photo courtesy of State Archives of Florida, Florida Memory

Most presidential scholars rank U.S. Presidents based on their leadership qualities, political skills, and policy initiatives. But author Steven Hayward believes that instead of judging presidents by these measures, we really ought to evaluate them based on how well they "faithfully execute the Office of President of the United States." To borrow a phrase from the presidential oath of office, Hayward says presidents should be judged by how well they "preserve, protect and defend the Constitution of the United States." By this standard, some Presidents who usually rank very high actually fare rather low in Hayward's book. And others who often get overlooked come up smelling like roses. In fact, Hayward says that only one U.S. President who served in the 20th Century deserves an A+

grade for his "fidelity to the Constitution." And, interestingly, it's not TR or FDR or JFK. It's not Harry Truman—nor even Ronald Reagan. According to Hayward, the greatest U.S. president of the 20th Century was ... Calvin Coolidge.

"Silent Cal"

Now, it's hard not to like this very decent man of few words whom many liked to call "Silent Cal." Coolidge was, after all, the only president born on the Fourth of July. He was deeply devoted to his wife and children. And Coolidge had a dry, self-deprecating wit that endeared him to many ... even though he didn't say very much.

For example, once at a Washington dinner party, famous socialite Dorothy Parker announced as she was seated next to Silent Cal, "Mr. Coolidge, I've made a bet against a fellow who said it was impossible to get more than two words out of you." In a deadpan voice, Coolidge replied, "You lose."

On another occasion, not long after he had wed, Coolidge handed his wife, Grace, a large collection of his socks, all of which were full of holes. Grace, whose vivacious personality proved to be a perfect complement to Cal's, asked her husband, "Did you marry me to darn your socks?" Without cracking a smile, Calvin answered, "No ... but I find it mighty handy."

Among the chattering class in Washington, many didn't quite know what to make of Coolidge's demure disposition and self-effacing manner. Teddy Roosevelt's loquacious daughter, Alice Roosevelt Longworth, once said that Coolidge looked "as though he had been weaned on a pickle." And Dorothy Parker, upon learning that Coolidge had died, reportedly quipped, "How can they tell?"

"...Alice Roosevelt Longworth once said that Coolidge 'looked as though he had been weaned on a pickle.'"

Now, there was a deliberate seriousness to Coolidge's quiet manner. As he once noted, "The words of a President have an enormous weight—and ought not to be used indiscriminately."

But there was also an element of good-natured fun to Coolidge's "stiff" reputation ... which Coolidge himself consciously cultivated. For example, he once observed, "I think the American people want a solemn ass as a President—and I think I will go along with them."

Clearly, Coolidge didn't take himself too seriously. And he possessed a modesty and humility that stand in marked contrast to many of the self-important public officials who have held high office in our self-important times.

Indeed, fittingly, President Coolidge's time in office began not with a bang, but a whimper. On an August night in 1923, a messenger arrived well after dark at the Vermont family homestead of Vice

President Coolidge. Upon learning that President Harding had died earlier that day in California, Coolidge rose from his bed, got dressed, stopped to say a prayer, and then went downstairs to take the oath of office by the light of a kerosene lamp (since their family home had no electricity). When Coolidge's father, a notary public, had finished administering the presidential oath before the several witnesses assembled, Silent Cal did just what you might have expected him to do: He trudged back upstairs, crawled into bed, and went to sleep.

Several years later, Coolidge announced his decision to leave public office with a similar lack of ceremonial fanfare. He issued a simple statement that read: "I do not choose to run for President in 1928." Coolidge's announcement surprised many, since he enjoyed great popularity with the American people—and since his decision cleared the way for his GOP rival Herbert Hoover to be the 1928 Republican nominee. (Coolidge would say of Hoover, "For six years that man has given me unsolicited advice—all of it bad.")

Still, Coolidge felt that running for re-election, with the intention of extending his time in office to 10 years, would have been immodest. After all, no other president before him had ever served that long. In addition, Coolidge said, "The Presidential office takes a heavy toll of those who occupy it and those who are dear to them. While we should not refuse to spend and be spent in the service of our country, it is hazardous to attempt what ... is beyond our strength to accomplish."

A Stand-Patter

Not only was Coolidge well acquainted with his own personal limitations, but he also was very mindful of the limits of what government could accomplish for good. In a famous 1914 speech before the Massachusetts Senate, Coolidge warned his colleagues about misguided uses of government power, saying, "Don't expect to build up the weak by pulling down the strong." Moreover, Coolidge urged his Senate colleagues to resist the idea that the people they served would benefit from greater government activism. "Don't hurry to legislate," he told them, "even if it means you'll be derided as a "stand-patter."

Similarly, when it came to America's role in the world, Coolidge was wary of foreign entanglements. While he wasn't an isolationist, Coolidge viewed the Republicans' landslide victory in the 1920 election as a repudiation of Woodrow Wilson's grandiose plan to establish a League of Nations. So, once in office, President Coolidge resisted calls to join this body.

In addition to being economical with his words, Coolidge also proved to be very economical with his money—and with that of the taxpayers.

During his time as mayor of Northampton, Massachusetts, Coolidge somehow managed to cut taxes, increase teachers' sala-

ries, and retire some of the city's debts. While serving as Governor of Massachusetts, Coolidge signed into law a budget that cut $4 million in spending while keeping tax rates the same, thereby allowing the state to pay down some of its debt. And during his time as President of the United States, Coolidge initiated reductions in federal expenditures, cut federal income taxes on three different occasions, and helped generate enough economic growth to enable the federal government to retire one-quarter of its debt.

A Thrift Champion

Moreover, President Coolidge also proved to be one of the foremost champions of the "thrift movement" of the early 1900s. He often spoke during National Thrift Week rallies and events, promoting the "thrift ethic" of hard work, careful spending, saving for the future, and eliminating waste. Not surprisingly, this long-forgotten social movement—which the James Madison Institute is now helping to revive here in the state of Florida—reached the zenith of its popularity in the mid-1920s, when Coolidge was President.

In both his personal and public life, "Silent Cal" embodied the very virtues that the thrift movement sought to promote. And while Coolidge's years in office are often called the "Roaring Twenties," much of the secret to America's extraordinary economic success during this time period stemmed from the quiet cultivation of personal thrift habits like industry and frugality in the lives of ordinary citizens. We should remember that today.

Critics of President Coolidge like to argue that his disdain for federal regulation and his unabashed celebration of industry made him too pro-business. But such criticisms fail to take into consideration Coolidge's concern for helping ordinary Americans climb the economic ladder. For example, he is often derided for saying that "the chief business of the American people is business." Yet, interestingly, the context for this sound bite was a 1925 speech in Washington, D.C. before the American Society of Newspaper Editors in which President Coolidge exhorted the "mainstream media" of his day to stay in better touch with the profound concerns of average, everyday Americans striving to make a better life for themselves and their families.

"Moreover, President Coolidge also proved to be one of the foremost champions of the 'thrift movement' of the early 1900s."

Similarly, historian Robert Sobel believes that those who criticize Coolidge for being too "laissez-faire" fail to understand his fidelity to the constitutional principle of "federalism." Sobel notes that when Coolidge was Governor of Massachusetts, he supported a number of fair labor standards—like the reduction in the standard work week

from 54 hours to 48 hours—believing these measures to be within the proper purview of state governments. As president, however, Coolidge did not support the nationalization of these standards "because in the 1920s, such matters were considered the responsibilities of state and local governments."

Interestingly, this respect for the constitutional separation of federal and state powers led Coolidge to uphold certain laws with which he disagreed. For example, even though Coolidge opposed Prohibition, he vetoed a 1920 bill as Massachusetts Governor which sought to allow the sale of beer or wine containing no more than 2.75 percent alcohol in Massachusetts. Noting that the 18th Amendment was still the law of the land, Coolidge said in his veto message, "Opinions and instructions do not outmatch the Constitution. Against it, they are void."

Not only did Coolidge uphold laws with which he disagreed, but he also opposed measures which could have advanced his family's economic interests. For example, Coolidge opposed government farm subsidies (even though his family owned a Vermont farm). He said that agriculture must stand "on an independent business basis" just like any other sector of the economy.

In addition, Coolidge resisted attempts to advance the interests of public officials and government employees at the expense of everyday taxpayers. He once vetoed a Massachusetts bill that would have increased legislators' pay by

Calvin Coolidge accepts grapefruit from the Citrus Queen during a visit to Florida in 1929.
Photo courtesy of State Archives of Florida, Florida Memory

50 percent. And in a courageous move that won him much recognition and acclaim, Governor Coolidge ordered back to work a group of Boston police officers who had gone on strike in 1919, leaving the city unguarded. In a no-nonsense telegram to labor boss Samuel Gompers, Coolidge wrote, "There is no right to strike against the public safety by anyone, anywhere, any time."

Coolidge's decisive action against the police union is sometimes compared to President Reagan's bold action against striking air traffic controllers in the early 1980s. In another interesting parallel, President Coolidge's judicial appointment of Genevieve R. Cline to be the first woman to serve on a federal bench

foreshadowed President Reagan's appointment of Sandra Day O'Conner to be the first woman to serve on the U.S. Supreme Court.

Character Counts

All in all, Coolidge had a very impressive public record. And that isn't just the view of wistful 21st Century presidential scholars like Steven Hayward. For example, Alfred E. Smith, the 1928 Democratic nominee (whom Coolidge would have run against had he sought another term) said that President Coolidge distinguished himself as a man of great character who helped "restore the dignity and prestige of the Presidency ... in a time of extravagance and waste."

Moreover, Coolidge won the respect of other political opponents who took note of the fact that he avoided the politics of personal destruction in his campaigns for public office, preferring instead to deliver substantive campaign speeches focused on his philosophy of governing. (One might say that Coolidge had a keen appreciation for the ideals that animate the Rotary Club's four-point test.)

Coolidge not only brought greater decency to government, but greater transparency as well. Indeed, ironically, Silent Cal held more presidential press conferences than any U.S. president before or since. And he also made effective use of the then-new medium of radio during his years in the White House.

In addition to being highly accessible, Coolidge seemed to almost

Grace and Calvin Coolidge visit Big Tree in Seminole County in 1932.
Photo courtesy of State Archives of Florida, Florida Memory

relish the ceremonial aspects of his job. He frequently hosted various delegations to the White House, and he gained a reputation for being a good sport, permitting himself to be photographed wearing cowboy hats, Native American headdresses, and other festive adornments that suited special occasions.

In view of such antics, Walter Lippmann once noted that President Coolidge's political genius lay in his talent for effectively doing nothing. Lippman said Coolidge's "active inactivity suits the mood and certain of the needs of the country admirably. It suits all the business interests which want to be let alone.... And it suits all those who have become convinced that government in this country has become dangerously

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WHAT ABOUT A CULTURAL TEA PARTY?

BY THOMAS V. DiBACCO

Any which way you turn in politics these days, the elite, mostly liberal, base in the media and intellectual circles is critical of the Tea Party, that groundswell of average people who recognize the loss of freedom in their lives and want their views to be heard in terms of candidates and issues facing the country.

To be sure, this rift between a minority of critics and the public-at-large in terms of politics has punctuated American history as the Obama administration has distanced itself from unfavorable public opinion polls, high unemployment numbers, special congressional elections won by Republicans, and even dyed-in-the-wool Democrats like James Carville, whose criticism of the President's foundering has been well-publicized.

This rift has also affected our culture, with liberal critics praising or damning certain theatrical productions, books, and operas in contrast to entirely opposite views held by the public. To be sure, this tension between elites and masses in our cultural history is not new, but the victory of the masses was accomplished over time and deserves to be recognized and perpetuated in a democratic society.

For instance, early American religious elites railed against their congregations attending plays and reading secular books, but by the 19th Century, both cultural avenues widened. New York theaters provided accommodations for up to 4,000, with prices falling from a peak of $2 for the boxes to a mere 50 cents, gallery seats from a half dollar to 12.5 cents, no matter that the rabble-rousing in the latter sometimes

required policing. Even when Shakespeare was presented in theaters that mushroomed throughout the nation by the 1840s, other types of popular entertainment followed or were interspersed between acts. These even included acrobats and jugglers. In the words of Foster Rhea Dulles in *A History of Recreation: America Learns to Play* (1965), Americans "couldn't take their Shakespeare straight; they demanded a chaser."

Democracy vs. Elitism

The rise of traveling troupes, the dime novel, and vaudeville furthered the democratic bent of the nation's culture. News of great performances and books spread by word-of-mouth among average folk, and no critical authority with an elitist bent was required to make these cultural activities explicable. Even when the Metropolitan Opera House in New York City was opened in 1883 in the hope that rich Americans could flaunt their wealth in the lush boxes, the truth of the matter was that the orchestra and balconies were undersubscribed, necessitating lower prices and so-called uncultured customers. (My wife and I attended the Met last year in the back orchestra seats where a casually dressed family of four munched on fried chicken throughout the performance). Moreover, the democratization has forced the Met to produce certain popular operas every year to this day—no matter the highfalutin snobs who held their nose—operas appealed to the general public, such as Giacomo Puccini's highly lyrical *La Boheme*. And, even today, to offer balcony seats for as little as $25.

The development of the phonograph, the radio, and the movies in the early 20th Century forced elites in the publishing business not only to recognize these movements by providing critics to evaluate their quality, but also to hope that the price structure would be high enough to keep the general public from participating. But the hope was ill-founded, and all three media blossomed with fare appealing to the average family. Then came television and the paperback revolution in the 1950s, making the world and knowledge in general a part of American life on all income levels.

"To liberal critics, television was a wasteland that richly deserved obscurity."

To liberal critics, television was a wasteland that richly deserved obscurity; to the early Federal Communications Commission it was a haven for commercialization and, what was worse, violence and crime; to sociologists it was the major force that contributed to the breakdown of communication within families. But these admonitions were not strong enough in the eyes of the general public because TV's assets outweighed its liabilities. Opera, virtually unappreciated by millions of Americans, received a new lease

on life when NBC broadcast Gian-Carlo Menotti's *Amahl and the Night Visitors* on Christmas eve 1951; the *See It Now* series of Edward R. Murrow introduced viewers to the television documentary that could be at once informative and entertaining; every generation of youngsters could see *The Wizard of Oz*, beginning in 1956, and even old witches and wizards could look forward to its annual presentation; and the major events of each day in the nation and world could be summarized in 30 minutes at suppertime or bedtime.

Not surprisingly, as newspapers and TV flourished in the post-World War II period, reviewers of cultural matters became a regular part of the media. But not until recent decades has a demarcation line, reflecting the same hard and shrill lines that were developing in politics between liberals and conservatives, been so evident. Take the case of Gene Shalit, the film and book critic for NBC's *Today Show* for almost 40 years, beginning in 1973. Shalit's reviews weren't geared to cultural correctness, but were easygoing, good-natured, and entertaining (as were his puns, handlebar mustache, bow ties, glasses, and hairstyle), concentrating on the merits of the script and acting. Then in 2006 he panned *Brokeback Mountain*, the movie about two gay men, and enormous criticism ensued from liberals, no matter that Shalit's adult son, Peter, was gay and defended his dad. "He may have had an unpopular opinion that is important to the gay community," wrote Peter, "but he defamed no one, and he is not a homophobe." Shalit wrote an apology letter to the Gay and Lesbian Alliance Against Defamation (GLAAD) for some words he used in his review. In 2010 he retired from the show.

As a part-time New Yorker and avid theater, movie, museum, and opera fan, I've found an antidote over the years to the liberal media's assessment of cultural events. And voila, it's a derivative of a liberal invention, namely, Al Gore's development of the Internet (I'm kidding, of course, but it's still a great line). The Internet has done more to foster a wide range of assessments by and for average Americans of culture. Rather than relying on *The New York Times*' critics, I take to the Internet and punch in Google and its resultant myriad sites before I shell out a dime for a ticket. For example, my favorite log-in for Broadway shows is www.BroadwayBox.com, a free discount-ticket site where attendees of preview shows can give you the lowdown on their merit long before opening night.

Reading the reviews is immensely helpful because these critics tend to be people who, like most of us, expect what a free society is grounded on, namely, a fair assessment and the most bang for our cultural buck. And isn't that what a cultural Tea Party is all about? ❧

Historian Thomas V. DiBacco is professor emeritus at American University, Washington, D.C. and a resident of Palm Beach.

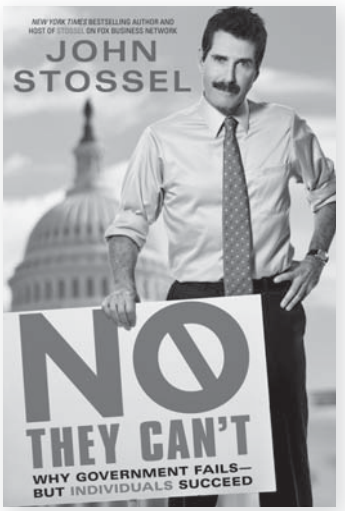
BOOK REVIEW

NO THEY CAN'T:
WHY GOVERNMENT FAILS – BUT INDIVIDUALS SUCCEED

By John Stossel

© 2012 Threshold Editions, New York, NY, 323 pages

REVIEWED BY JOHN Q. SEIBLER



John Stossel might tell you there is no special heaven reserved for libertarians. But if there were, his collected works would be there, titled simply: *The Manifesto*. His most recent book, *No They Can't*, would be a certain crowd pleaser. Titled as a clear antithesis to the refrain of Obama's frenzied mobs, it goes well beyond lifting the veil of "yes we can." It shines a light straight onto the many fallacies and misconceptions of the big government ideology behind it. *No They Can't* is a call to "be realistic about what government cannot do," and also about what we as individuals can do without it.

All the meat of the stuff Stossel serves up is 100 percent fact-fed non-partisan, grown right here in America, with all due accoutrements: the necessary admissions of bias or moments of deep-end libertarianism. These raise questions: "Really Mr. Stossel, you're putting this on my plate?" But then you bite in. And guess what, it's delicious. He even warns you when his ideological escargot is coming up and admits it's not for everyone. He just asks the reader to give it a taste.

Because Stossel is so committed to providing the facts with clarity and candor and without the spin, this book ought to please any political palate. It has all of Stossel's trademark crystalline common sense and easily-read vernacular that presents the complexities of political myths

and, well, busts them. The libertarian paradigm is consistent, with a noble simplicity supporting Stossel's wonderfully elucidating portrayal of complex market functions crippled by government interference that makes *No They Can't* a true must-read for anyone interested in free markets –regardless of political ideology.

Stossel shows the true effect endured by free market enterprise from government action, and the inevitable, sometimes irreparable damage it does. Government incentivizes the purchase of one product to the harm of other industries. It invests in enterprises until they fail—time and again. It creates "bubbles," dangerous spikes in the business cycle. Ultimately, private-sector jobs are lost, and government spending is increased. And those bubbles pop. The loss to the private sector is a real thing, not an intangible byproduct of crony-capitalist number fudging and haphazard spending. The truly alarming thing is that *everyone* is subject to these losses when it involves property rights and economic freedoms we take for granted.

Yet Stossel is prepared to admit that wanting, asking, even demanding action from the government is a very natural response to market turbulence. We want the flight attendant to smile at us, reassuringly, even if the oxygen masks are dangling overhead. So he points to the flaws in our fundamental misconceptions of the way the free-market and our government ought to work. We have been "programmed" by mass media and glitzy politicking to hold a certain set of beliefs, and this really is the format of the book: Stossel presents an "intuition" we have of what the government should do in some particular instance, running the whole gamut of public policy, and he explains what works best in a construct he calls "reality," currently in development by non-deluded minds in opposition to a liberal construct "not-reality." In doing so he walks us through a mass of false thought on federal capabilities and responsibilities popularized by media and politicians.

Exposing Myths

One by one he exposes these as dangerous myths, gently guiding the reader back to the simple, powerful, and prudent principles of capitalism we ought to be fighting to protect. Private property rights, freedom of contract, of voluntary associations safe from over regulation. These are but a few of the liberties under siege by the enormous obstacles our government has built into our lives.

Among those misconceptions: "Our community will prosper if the government builds us a football stadium," people would benefit if it provided health care, it should continue to educate our children. All of these myths are squashed with entertaining and enlightening details often derived from firsthand experience. This provides an extra layer of credibility to the material and fluidity to the story found within the parts of *No They Can't* that are auto-biographical. Stossel recalls his

own transformation from Ivy League liberal to "real world" libertarian as he discusses "what he learned from reality," used in juxtaposition with those faulty "intuitions" of ours.

The three decades of award winning journalism that brought Stossel from liberal caterpillar to libertarian butterfly are fascinating in their own right. The summation of what he learned in the cocoon: that government action in the economy is a rare necessity indeed, a death knell to free markets and free societies.

All advantages to government taking the reins for us espoused by the caterpillars—fairness, security, stability, protection for consumers and workers—are far better met by individuals left to compete for profit. Stossel puts up the blueprint for how individuals making infinite voluntary trade agreements provide all these more efficiently and with more accountability. When he holds it up next to the dilapidating architecture of big government, mass bureaucracy, and labor unions, the blueprint looks pretty good. How does it become a reality? Mr. Stossel reminds us of the simplest economic truths: The profit motive will save the economy if the government backs off. Corporations have a need to keep consumers, workers, and their families happy in order to survive. Microsoft, Apple, BP, any private company can die while government will survive, whether we like its products and services or not. Wrapped in this massive security blanket, government monopolies fester and can even endure laziness, incompetence, and all the red flags that would literally kill any business.

No They Can't "makes it perfectly clear why government action is the least desirable and least effective fantasy to hang onto." And why our most sacred of social enterprises must be let loose to the forces which propagate excellence in the private sphere. Heroin being made available at drug stores the way bourbon is at the corner store may not be a thing about which we claim, as Stossel goads, "we'll get over it." Yet it is one of the crucial lessons of this book that with every government action there rises a fresh mystery of what would have happened had it not acted.

If the motive for profit, competition for repeat business, and employee retention, societal pressures for accountability and ethical conduct—if these forces and not government mandate controlled the use and design of seatbelts, park construction, and management, education, the manufacture and sale of currently illegal drugs, then who knows how these goods and our use of them might be changed? No one does. But it may very well be time we found out. Stossel's must read book is a firm first step towards doing so. ☙

The reviewer, John Q. Seibler, is a recent graduate of Boston University. He served this summer as a student intern at The James Madison Institute.

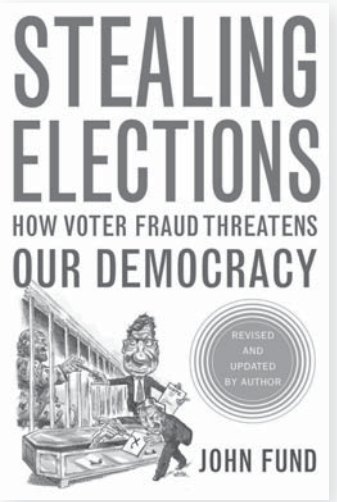
BOOK REVIEW

STEALING ELECTIONS:
HOW VOTER FRAUD THREATENS OUR DEMOCRACY

By John Fund

© 2004, 2008 Encounter Books, 241 pages

REVIEWED BY SCOTT K. SHOLL



With the 2012 election season underway, it's time for Florida once again to renew the debate regarding election fraud. Governor Rick Scott's noncitizen voting "purge" has turned up some illegal voters—and indications that there may be others. Meanwhile, the examination of the lists of registered voters, coupled with Florida's longstanding requirement that voters show a photo ID at the polls, has led to heated partisan wrangling, racial tension, and four lawsuits—including one from the U.S. Department of Justice. With a presidential election that promises to be one of the closest in history and an economy still undergoing a fragile recovery, a replay of Florida 2000 could be a systemic catastrophe. It's for this reason that I found myself reading John Fund's *Stealing Elections: How Voter Fraud Threatens Our Democracy*.

Fund's most fruitful work is his analysis of the philosophical differences in political parties concerning voting. According to the author, Democrats have a more idealistic and all-encompassing methodology. On Election Day, Democrats are more concerned with making sure everybody has the opportunity to cast a vote. Stringent rules and procedures take a backseat to encouraging voter turnout. Consequently, many Democrats are sensitive to anything or anyone that might deter someone from voting. Fund concludes that their current take on voting

can be traced back to the 1960s and the Civil Rights Movement, when idealism and egalitarianism were at their peak amongst the Baby Boomer generation.

Fund notes that Republicans are more concerned with order, procedure, and the laws detailed in the Constitution. These laws are intended to protect the sanctity of a citizen's vote. In their minds, clearly defined laws with respect to elections ensure that an individual's vote isn't diluted because of the fraudulent activities of others. According to Fund, Republicans are wary of relaxed and ambiguous voting laws that make it easy for voters to abuse the system.

He notes that Republicans believe that Democrats play the race card much too often whenever more stringent voting laws are proposed. Meanwhile, many Democrats believe that Republicans use the law to make it more difficult for some Democratic-leaning portions of the population to vote.

I agree with Fund that the absolutism of these views is wrong. However, both political parties have played into their opponents' preferred stereotypes at times—whether it consists of Republicans placing off-duty cops at polling stations or Democrats duplicating registration forms.

The real problem—Fund touches upon this—is that elected officials have politicized voting for their own self-interest and that of their party. Voting laws have now become wedge issues for Republicans and Democrats alike. The right to vote, in my opinion, is a moral issue that should rise above partisan mudslinging. However, campaign strategists have discovered that sensationalizing voting issues is, at times, a surefire way to produce a better-than-expected turnout. However, Fund concludes that the heated partisan divide creates, in an era defined by close races, such division that voter reform upon amicable terms is a difficult undertaking.

Fund traces America's modern partisan battle regarding voting to the 1984 election in Indiana's Eighth Congressional District or as the locals refer call it—the "Bloody Eighth" because of the historically close races it has produced. Both Democrat Frank McCloskey and Republican Rick McIntyre were declared the official victor at different times after the polls were closed, and the election was marred by multiple recounts. As a result, a Democratic controlled Congress gave the nod to McCloskey. As expected, this enraged Republicans and left Democrats on the defensive.

One of the most repugnant displays of voter suppression, described by Fund, occurred when the Republican National Committee targeted minority voters in Louisiana. It was discovered that an RNC official sent an email to one of the party's southern directors which stated, "I guess that this program will eliminate at least 60,000 to 80,000 folks from the rolls. If it's a close race, which I'm assuming it is, this could keep the black vote down

considerably."

As Fund notes, Republicans accuse the Democrats of crying racism much too often, but sadly, it's actions like this—especially in the Deep South—that open painful wounds and cause distrust amongst innocent citizens.

However, Fund points out, Democrats are just as guilty for taking advantage of underrepresented individuals. Milwaukee police noted that a liberal heiress flew to Wisconsin from New York City in the 2000 presidential election to offer cartons of cigarettes to homeless people if they cast a vote for Al Gore. The Police report stated, "The Milwaukee homeless vote has the potential to affect the outcome of a local election." The report continued, "This vote portability and the abject poverty that defines homelessness make these unfortunate individuals vulnerable to become the tools of voter fraud."

Despite Fund's thorough historical analysis and valid points, he negates his thoughtful points when he uses examples of voting fraud as an opportunity to level partisan attacks. For instance, he devotes numerous pages to the Clintons and an entire chapter on President Obama, but Fund only mentions former President Richard M. Nixon in passing. Fund is a noted conservative journalist, and he stresses in the beginning of this book that voter reform will take bipartisan cooperation. However, instances like these help to undermine the author's credibility.

Despite his occasional lapse into partisan mudslinging, however, Fund does manage to provide a balanced view on some issues, especially absentee ballots. According to Fund, absentee voting is extremely susceptible to voter fraud because secrecy can be easily compromised, and therefore manipulation is quite prevalent.

"The author does an admirable job of explaining how absentee ballots poison the civic importance of voting."

Fund provides a great example of absentee ballot voter fraud. Candidate Xavier Suarez in Miami's 1997 Mayoral election won due to the fraudulent use of "voter brokers." It was only after the *Miami Herald* uncovered the story that the ballots were disqualified in court and Joe Carollo, Suarez's opponent, was declared the official winner.

The author does an admirable job of explaining how absentee ballots poison the civic importance of voting. Instead of going to a central location and casting your vote alongside fellow citizens, voting can now be treated like a bill or pointless survey one might find in the mail.

Like Fund, I believe that voting is a right that should be taken seriously, and people should celebrate this right through civic engagement. I hate to sound like a broken record, but people have died for this very right. I understand that some situations require the use of absentee

balloting, but one's love of leisure should never be one of the reasons.

Fund recommends plenty of solutions to our current voting problems. However, his best idea involves placing emphasis on voting and civics in our schools. He makes the point that young individuals are very technologically astute and could assist voters who have trouble with computer based voter machines. In my opinion that's the very least we could do. For all of our technological savvy, my generation and younger live in a type of faux existentialism. Human understanding can never be fully realized on your couch or in front of your computer. I realize that I sound like Gramps, but social media are no replacement for civic responsibility.

Historically, when compared with other generations, mine and those of younger ones haven't had to sacrifice a lot for the sake of democracy—except for those brave individuals who have served in the military. Yet, we behave like a bunch of know-it-alls. Seriously, just take a look at the comment sections of online newspapers, blogs, newsmagazines...we're jerks. There's a sense of entitlement amongst myself and others that has placed civic responsibility on the back burner.

Fund provides a quote from Ronald Reagan's farewell address that I believe sums up our current situation best. "If we forget what we did, we won't know who we are," he said. "I am warning of an eradication of the American memory that could result, ultimately, in an erosion of the American spirit. Let's start with some basics: more attention to American history and a greater emphasis on civic ritual."

The issues with voting go deeper than machines, ballots, and fraud. The larger problem is a general apathy among the American people.

I would recommend reading John Fund's *Stealing Elections: How Voter Fraud Threatens Our Democracy* for anyone who wants to gain a better understanding of our electoral process and the problems with it. Democrat, Republican, Independent, Libertarian—this work is a succinct breakdown of the current dysfunction in our political system.

Scott K. Sholl is a political reporter for The James Madison Institute's on-line publication, Capitol Vanguard.

Worthy Words

"Opportunity is missed by most people because it is dressed in overalls and looks like work."

–THOMAS EDISON

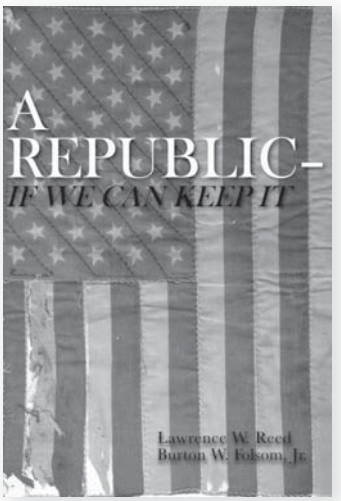
BOOK REVIEW

A REPUBLIC—IF WE CAN KEEP IT

By Lawrence W. Reed and Burton W. Folsom Jr.

© 2012 Foundation for Economic Education, 352 pages

REVIEWED BY AMAR ALI



Quietly leading the liberty movement for the past two decades, Larry Reed and Burt Folsom have been some of the greatest historians of the American Experiment and the triumphs of the free-market. Their latest venture comes precisely from those roots.

A journalist in his former career, Larry Reed writes a manifesto for limited government philosophy and economics much like a feature story in the newspaper. Burt Folsom complements these efforts with a strong and intricate look at American history from a lens not commonly portrayed.

The book is broken into nine sections, each with essays effectively arguing of the superiority of capitalism and enterprise over the follies of government sponsored central planning. The team works together to use historical case studies to introduce the reader not only to the philosophy of limited government, but also the economics behind it, a "curious task" as it was referred to by Nobel prize winning economist F.A. Hayek. Basic economic concepts such as inflation, fiat money, property rights are covered in a manner that most people not trained in the profession could easily understand.

But the book doesn't just limit its self to the myopic lens of the dismal science. Throughout the book there is a fascinating interplay of history, economics, entrepreneurship, politics, and sociology that this book beautifully weaves into a tapestry, showing a fair and factual portrayal of the American ethos throughout its existence.

The book cites many examples of

people doing the right thing and those who oppose them also feeling the same way, but it's able to discern and display the flawed logic of the latter and show us how government intervention can truly be the most harmful when we least expect it to be.

As an example, it digs into the untold costs of the Civil War and the follies of reconstruction and infrastructure spending such as on railroads, canals and roads. The book takes on the differences of the principles of charity and government redistribution of wealth.

Of all the amazing things featured, the one that stuck out the most was the chapter on John Jacob Astor. Generally lumped in together with the "Robber Barrons" (another myth methodically deconstructed in the book) of the Gilded Age, he simply was not. In fact, as an immigrant and self-made millionaire, he was anything but a Robber Barron. If anything, he epitomizes the American Dream and represents the success story all Americans, especially those who immigrate here from developing nations, see embodied in America and aspire to.

A brilliant book. Whether you are friend or foe to the perspective, this is a must-have book for anyone interested American history and the values of our founding fathers in the tumultuous time. The case against the government just received some much needed expert testimony. ☙

Amar Ali first came to work at The James Madison Institute as part of JMI's college student internship program. Currently he serves as the Institute's Research Associate, with special attention to JMI's new media initiatives.

COOLIDGE *(Continued from page 74)*

complicated and top-heavy...."

I don't know about you, but I sense that a growing number of Americans in our day "have become convinced that government in this country has become dangerously complicated and top heavy..." that it undermines the thrift ethic by fostering a culture of entitlement ... that it meddles too much in the lives of people ... that it favors the politically-privileged and well-connected ... and that it often fails miserably in its most basic and rudimentary tasks—like passing a simple budget in which annual expenditures do not exceed yearly revenues.

In view of this, I sense that a growing number of Americans are looking for public officials cut from the same cloth as Calvin Coolidge, who aspired to be nothing more—and nothing less—than a "solemn ass" who faithfully fulfilled his duty to "preserve, protect and defend the Constitution of the United States." ☙

William Mattox is a resident fellow at the James Madison Institute. This article is adapted from a President's Day speech Mattox gave to the Pensacola Rotary Club earlier this year.

Worthy Words

""The past few days ... I've thought a bit of the 'shining city upon a hill.' The phrase comes from John Winthrop, who wrote it to describe the America he imagined. ...I've spoken of the shining city all my political life, but I don't know if I ever quite communicated what I saw when I said it. But in my mind it was a tall, proud city built on rocks stronger than oceans, windswept, God-blessed, and teeming with people of all kinds living in harmony and peace; a city with free ports that hummed with commerce and creativity. And if there had to be city walls, the walls had doors, and the doors were open to anyone with the will and the heart to get here. That's how I saw it, and see it still."

–RONALD REAGAN (Farewell address, January 11, 1989)

"It constantly amazes me that defenders of the free market are expected to offer certainty and perfection while government has only to make promises and express good intentions. Many times, for instance, I've heard people say, 'A free market in education is a bad idea because some child somewhere might fall through the cracks,' even though in today's government schools, millions of children are falling through the cracks every day."

–LAWRENCE REED

"Sometimes it is said that man cannot be trusted with the government of himself. Can he then be trusted with the government of others? Or have we found angels, in the form of kings, to govern him? Let history answer this question."

–THOMAS JEFFERSON

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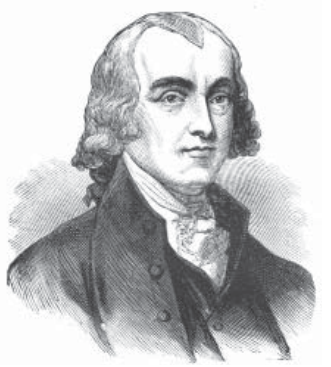

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