

The Republican Club of Sun City NEWSLETTER

October 2011

Everett Schmidt, Editor

Sun City Texas

CONSERVATIVE TALK SHOW HOST TO ADDRESS CLUB

Lynn Woolley, an unabashedly conservative talk show host, author, and columnist for the *Dallas Morning News*, the *Waco Tribune-Herald*, *NewsMax* and other media outlets will address the club during its dinner meeting scheduled for Saturday, October 15 in the ballroom of the Social Center in Sun City.

Always well-informed on breaking news developments, he will offer thoughtful comments about those current affairs of special interest to club members.

Woolley can be heard daily, M – F, over radio station KTEM, 1400 AM in the radio dial, from 8:00 AM to 11:00 AM.

The Social Hour, Dinner and Program. A social period will begin at 6:00 PM. The dinner will begin at 6:30 PM and will be followed by the program. The dinner will be catered by **Nemec Catering** which will serve roast beef, buttered white potatoes, steamed broccoli with grated cheese garnish, baby carrots glazed with brown sugar, and condiments.

Cost. Cost is \$16 per person. Checks made out to **The Republican Club of Sun City** should be mailed to **The Republican Club of Sun City, Bernie Miller, Treasurer, 1530 Sun City Blvd., Suite 120, Box 227, Georgetown, TX 78633** by no later than Friday, October 7. Bernie has also set up a special collection box on his front porch at 265 Trail of the Flowers for those club members wishing to hand deliver payments. For information about reservations, contact Bernie at 868-9125 or bimiller1@verizon.net. VISITORS ARE WELCOME!

WIDELY PUBLISHED AUTHOR TO ADDRESS CLUB IN NOVEMBER

The club is fortunate to have as its speaker at the November 17 dinner meeting a writer, Mario Layola, whose news articles and op-ed pieces have appeared and continue to appear in major conservative news publications, including *The Wall Street Journal*, *The Weekly Standard*, *National Review*, and others.

In addition, he has appeared on the The Glenn Beck Show, CNN International, BBC Television, Radio America, and other programs.

OTHER CLUB NEWS

The Nominating Committee, consistent with the requirements of the bylaws, will submit its recommended slate of officers for the 2012 year during the October meeting. Voting for next year's officers will take place during the November meeting when nominations from the floor may also be submitted.

Brenda Leisey, club second vice president, reports 2011 club membership stands at 280.

SUPREME COURT EXPECTED TO RULE ON OBAMACARE Justice Kagen May Have to Recuse Herself

Foreword. The question of the constitutionality of the ObamaCare law has been working its way through various federal district and appeals courts in recent months. There has been a great variance in the holdings of those courts, and a similar variance is expected among the members of the Supreme Court when that case finally reaches that level, as it must. And there are complicating factors beginning to surface at the Supreme Court: One is the possible need for Justice Kagen to recuse herself, and another is the potential that a recusal could result in an opinion based on a 4 – 4 tie vote.

This report is to provide some information about the divided appeals court opinions and the possibility of

a Kagen recusal.

Conflicting Appeals Court Opinions. The opinions of the 4th, 6th and 11th circuit courts over the constitutionality of the ObamaCare law are about as varied as can be imagined. Note the following summary:

- The Fourth Circuit Court of Appeals (Richmond) said that the state of Virginia, which brought forth a lawsuit, has no standing to challenge ObamaCare's individual mandate. It also said that the lawsuit brought forth by Liberty University can't challenge that law until before the mandate goes into effect in 2014. The court relied to a great extent on Article 111 of the Constitution which confers on federal courts the power to resolve only "cases" and "controversies" stemming from a demonstrated "injury" to a plaintiff. The issue now is still theoretical and is premature for adjudication.
- The Sixth Circuit (Cincinnati) ruled that requiring every American to have health insurance is a valid means to reach Congress' goal of lowering health costs for everyone else. It rejected claims that the law falls outside of Congress' power because it regulated economic "inactivity," the act of not buying insurance, rather the "activity."
- The Eleventh Circuit (Atlanta) ruled that the federal government exceeded its authority with respect to the individual mandate provision, but declined to void the entire law.
- The D. C. Circuit has not, as of this date, rendered a decision; however, according to press reports, one conservative judge said, in effect, that the challengers faced a high hurdle because of the precedent of the *Wickard v. Filburn* ruling which allowed the government to regulate the wheat a farmer grew for personal use on his farm. Another judge expressed concern that the challenge was premature, as did the Sixth Circuit.

Dates of the Supreme Court's Hearing and Decision. Columnist Jess Bravin, writing in *The Wall Street Journal*, contends the Supreme Court will decide by January when the ruling on ObamaCare will be issued. "What isn't certain is whether a high court decision would come before the end of its 2011-12 term next June. If the Justices agree by January to hear an appeal, arguments likely would occur in March or April, with a decision before July. Under normal practice, any case accepted after January gets kicked into the next term."

Bravin's contention is given credence by the recent report that the Obama Justice Department called upon the Supreme Court to specifically review the decision of the Eleventh Circuit Appeals Court, which is the only appeals court to say Congress exceeded its authority with respect to the individual mandate.

The date of the Supreme Court ruling can have tremendous impact on the November 2012 elections.

A Recusal of Justice Kagen. Columnist Terry Jeffrey points out that U. S. Code Title 28, Section 455 determines when Supreme Court Justices must recuse themselves. He explains that, "There are basically two prongs to the law: one says if the person's impartiality can be reasonably questioned, then the Justice must recuse from the case. The second prong of the law is that if ever while in previous government service they expressed an opinion about the merits of a case, then they must recuse."

There appears to be question about Kagen's violation of the second prong. According to *Judicial Watch*, "Kagen helped coordinate the Obama Administration's defense of ObamaCare when she served as Solicitor General." According to CNS News, "The House Judiciary Committee is launching an inquiry into whether Kagen is required by law to recuse herself and whether her answers to questions posed by the Senate Judiciary Committee were accurate."

A Tied Vote on the Supreme Court. A recusal on the part of Justice Kagen would result in an eight-member court and the possibility of a tie vote; however, a tied vote is not without precedent. The *New York Times* reports that after Justice Abe Fortas resigned amid controversy over his finances in 1969, his seat was vacant for more than a year before the Senate finally confirmed Justice Harry Blackmun to replace him. Nearly 20 cases had to be re-argued the next year. More recently, Justice Scalia recused himself from the Pledge of Allegiance cases.

Reportedly, the Supreme Court could select a particular circuit court case for review or it could combine two or more cases for adjudication. The *New York Times* states that "a 4 to 4 deadlock leaves the lower court's decision in the case intact and binding on the *immediate parties* without setting a national precedent, essentially as though the Supreme Court had not agreed to review the case at all." But this may not be the conclusion of the ObamaCare case.

All eyes will soon be on the Supreme Court.

EFFORTS UNDERWAY TO ABOLISH OR MODIFY ELECTORAL COLLEGE

The Present Plan. The Constitution states that electors – not the people – from each state are to choose the President, and it is up to the state legislatures to determine how those electors are selected. Nearly all states now give all of their electoral votes to the presidential candidate who wins the *popular vote* in the state, no matter how small the margin. The number of electoral votes a given state has is determined by the number of its Congressional districts, plus 2 for its Senators.

The Founders and Framers specifically designed a system to thwart an election of a president by a popular, a system they would equate with “mob rule” and with a violation of the rights of smaller, less populated states.

It should be noted that the present plan, it may be recalled, resulted in presidential candidate Al Gore, in 2000, winning the nation's popular vote by half a percentage point, but losing his race in the Electoral College.

In her own inimitable way, columnist Ann Coulter summarizes the present system as follows: “Under the Constitution that has led to the greatest individual liberty, prosperity and security known to mankind, Americans have no constitutional right to vote for President.”

Despite the American success, efforts continue to neuter, abolish or modify the Electoral College. Some of those efforts are described below.

The Compact: A Plan to Provide for a National Popular Vote. Given the latitude states have in determining their electors – and, presumably, in adding strings to their selection – several states have already formed a “compact,” the effect of which is to neuter the Electoral College system in favor of a national popular vote. Columnist Ralph Hallow describes the plan:

California recently became the 11th and largest state to adopt the plan, under which states in the compact pledge to give all their electoral votes to the candidate who wins the national popular vote, regardless of how residents in their state voted.

Leading Republican party officials, including Republican Governor's Association Chairman (and presidential candidate) Rick Perry, House Speaker Boehner, and Senate Minority Leader Mitch McConnell are opposing this plan.

A Modification of State Plans. Most states, including Texas, have a plan in which the winner of the statewide popular vote gets all the electoral votes. Currently, only Nebraska and Maine award their electoral votes by congressional districts.

But now, a bigger state, Pennsylvania, is, thanks to efforts of recently empowered Republicans, considering a plan to award electoral votes in accordance with the vote in each congressional district. According to columnist Katharine Seelye, if their plan were in place in 2012, Obama, instead of winning all 20 of that state's electoral votes, could, even if he wins the popular vote, end up with just 8 electoral votes, while the Republican nominee receives 12.

The Vision of the Founders and Framers. Political pundits may argue that it would be undemocratic to deny the presidency to the man who received the most votes, nationwide, as was the experience of Al Gore in 2000.

But Rep. Ron Paul, while holding some political views often viewed as controversial, is nevertheless highly respected for his devotion to and compliance with the Constitution. He offers this rebuttal to these pundits:

This argument is hostile to the Constitution, however, which expressly established the United States as a constitutionally limited republic and not a direct democracy. The Founding Fathers sought to protect certain fundamental freedoms, such as freedom of speech, against the changing whims of popular opinion. Similarly, they created the electoral college to guard against majority tyranny in federal elections. The president was to be elected by the 50 states rather than the American people directly, to ensure that less populated states had a voice in national elections. This is why they blended electoral college votes between U. S. House seats, which are based on population, and U. S. Senate seats, which are accorded equally to each state. The goal was to balance the inherent tension between majority will and majority tyranny. Those who wish to abolish the electoral college because it's not purely democratic should also argue that less populated states like Rhode Island or Wyoming don't deserve two senators.

Sadly, we have forgotten that states created the federal government, not the other way around.

CENSUS DATA SHOW NEW “MINORITY MAJORITY”

The *Austin American-Statesman*, in a recent issue, reported on recently-released census data which suggests a possibly reshaping of government in the future. Following are some excerpts from that report:

- For the first time, more than half of the children under age 2 in the U. S. are minority members.
- Preliminary census estimates also show the share of African American households headed by women – mostly single mothers – now exceeds African American households with married couples, reflecting the trend of declining U. S. marriages overall.
- Demographers say the numbers provide the clearest confirmation yet of a changing social order, one in which racial and ethnic minorities will become the U. S. majority by midcentury.
- Texas is among 12 states with non-Hispanic white populations below 50 percent among children under age 5. That's up from six states and the District of Columbia in 2000.
- In April, a Brookings Institution analysis of decennial census data found that white children, a majority in the Austin-Round Rock-San Marcos metropolitan area in 2000, had become the minority by 2010.
- “Without the minority increases, you would have had one of the largest *decreases* in the number of children since the 1930s,” says a former director of the Census Bureau.
- Whites make up the vast majority of older Americans – 80 percent of seniors 65 and older and roughly 73 percent of people ages 45-74.

NOTES ON THE PASSING SCENE

(Some random observations on this crazy world in which we live)

The Term “ObamaCare.” Many people claim that the shorthand term we use for the Patient Protection and Affordable Care Act – ObamaCare - is derogatory. The President was asked about the term “ObamaCare” this week during his Midwest bus tour.

He basically said he doesn't have a problem with it. “Let me tell you, I have no problem with folks saying 'Obama cares.' I do care. If the other side wants to be the folks who don't care, that's fine with me.”

(Source: Galen Institute)

Past Republican Support for National Health Care. *NewsMax* reports that not only did Mitt Romney advocate a form of mandated health care (specifically for his state), so too did other prominent Republicans at various stages of their political lives:

- In the early years, President Richard Nixon favored such a mandate.
- In the 1990s, Senate Majority Leader Bob Dole and House Speaker Newt Gingrich supported such a mandate.
- The Heritage Foundation, one of the top conservative think tanks, embraced a mandate.
- Republican Sen. Jim DeMint, chairman of the Senate Steering Committee and favorite of the tea party movement said, “Well, that's something I think we should do for the whole country.”
- In announcing his run for governor of Minnesota, Republican presidential candidate Tim Pawlenty said in May 2006, “We'll be looking, like we do in automobile insurance, to require people who have the resources and the means to have [health] insurance.”

Texas Politics and the Results of the Perry, Dewhurst Races. *Austin American-Statesman* columnist Jason Embry succinctly describes the results of a victory by Perry and/or Dewhurst on the vacancies which may ensue:

If Perry wins and Dewhurst loses, Dewhurst would become governor until January 2014. If that happens,

or if Dewhurst wins but Perry loses, the 31 members of the Texas Senate would choose someone from among their own ranks to serve as lieutenant governor for the two years left on Dewhurst's term.

If Perry and Dewhurst both win, it gets a little more complicated, but the Senate would choose both the governor and lieutenant governor for the next two years

Embry reports that, in view of the likelihood that one of those two candidates will be successful, some Republicans state Senators are advocating that they meet in caucus soon to settle on a candidate and then support them. It's the same way House Republicans chose this year to re-elect Rep. Joe Strauss as Speaker. The effort would be to avoid what happened in 2000 "when then-Gov. George W. Bush got a Washington job and then-Lt. Gov. Perry became governor. A coalition of Democrats and Republicans elected moderate GOP Sen. Bill Ratliff to act as lieutenant governor..."

PolitiFact Verifies Cornyn Report on Taxes. The *Austin American-Statesman* has a daily feature called "PolitiFact" in which ostensible "facts" uttered by politicians are either verified or disputed. In a recent issue "PolitiFact" verified the startling statistic of which all citizens should be aware concerning the percentage of American households who paid no income tax in 2009. This is Sen. Cornyn's statement:

...the fact is that according to the Committee on Joint Taxation, 51 percent – that is, a majority of American households – paid no income tax in 2009...Actually, to show how out of whack things have gotten, 30 percent of American households actually made money from the tax system by way of refundable tax credits – the Earned Income Tax Credit, among others.

"PolitiFact" then, on its own, made these points: (1) Just 49 percent of Americans owed anything to the government, and (2) How did we get to the point where most Americans don't pay federal income taxes? The main reason is that the U. S. employs the tax system not just to collect funds, but to distribute them as well.

THE WISDOM OF THOMAS JEFFERSON

Following are some quotations of Thomas Jefferson. Although uttered more than 200 years ago, events since then verify that he was, indeed, a very wise and insightful man, making a major contribution to American government.

"When we get piled upon one another in large cities, as in Europe, we shall become as corrupt as Europe"

"The democracy will cease to exist when you take away from those who are willing to work and give it to those who would not"

"It is incumbent on every generation to pay its own debts as it goes to a principle which if acted on, would save one-half the wars of the world"

"I predict future happiness for Americans if they can prevent the government from wasting the labors of the people under the pretense of taking care of them"

"My reading of history convinces me that most of bad government results from too much government"

"The strongest reason for the people to retain the right to keep and bear arms is, as a last resort, to protect themselves against tyranny in government"

