ARIZONA HAS A NEW DEMOCRATIC SENATE CANDIDATE!

Well, okay, Richard Carmona has been formally announced for the race since early November of 2011, but with yesterday's dropout by the only other major Democratic contender, former state Democratic Party Chair Don Bivens, the field is effectively cleared for Carmona.

Bivens was gracious and indicated clearly he is getting out for party unity:

> "The continuing head-to-head competition of our Democratic primary is draining resources that we will need as a Party to win the U.S. Senate race in November," he wrote in a statement. "While I am confident we would win this primary, the cost and impact on the Party I've spent my life fighting for could diminish our chance to achieve the ultimate goal: winning in November."
>
> Bivens had a stellar third quarter in fundraising, but momentum quickly shifted to former Surgeon General Richard Carmona when he entered the race in November. Carmona had the backing of much of the national Democratic establishment.
>
> In a joint statement with Democratic Senatorial Campaign Committee Chairwoman

> Patty Murray (Wash.), Senate Majority Leader Harry Reid (D-Nev.) wrote that he was “heartened that Don has decided to focus his time and energy” on President Barack Obama’s re-election and on Carmona’s campaign.

This is actually fairly exciting news here in the desert, as the party, both in state and nationally, can coalesce around Carmona and focus on the necessary effort to insure very conservative Republican Congressman Jeff Flake, the certain nominee for the GOP, does not win. The race is for the seat of the retiring Jon Kyl and, for the first time since Dennis DeConcini left, the Dems have a serious chance of gaining a Senator in Arizona. A goal not only critical to us in Arizona, but in the national efforts to retain the all important Majority status in the Senate.

Why is Carmona, the man and candidate, so exciting? Well, because he has a legitimate shot at winning, that’s why. And who is Richard Carmona? Here is his campaign biography:

> Born to a poor Hispanic family in New York City, Dr. Richard Carmona experienced homelessness, hunger and bleak prospects for a future education and economic opportunity. The child of parents who emigrated to the United States and struggled with alcoholism and substance abuse, Rich learned tough early lessons about economic disparities and social injustice – an experience he has never forgotten, and one that has given him an understanding of how culture, health, education and economic status shape our country.
>
> Like his siblings and many of his friends, Rich dropped out of high school. With few skills and little education, he enlisted in the Army and went to Vietnam. Military service gave him discipline and a drive to succeed

that he still carries today. In order to apply for Special Forces and become a combat medic, he earned his high school equivalency degree. Rich left the Army a combat-decorated veteran, with two Bronze Stars, two Purple Hearts, a combat medical badge and numerous other decorations to mark his service.

When he returned home from Vietnam, Rich became the first member of his family to earn a college degree. Through open enrollment reserved for returning veterans, he attended Bronx Community College and earned an Associate of Arts degree. Later he went to the University of California, San Francisco, where he earned a bachelors of science degree. Two years later, Rich completed his medical degree – receiving the prestigious gold-headed cane as the school's top graduate.

Trained in general and vascular surgery, Dr. Carmona also completed a National Institutes of Health-sponsored fellowship in trauma, burns, and critical care. A Fellow of the American College of Surgeons, Dr. Carmona was recruited jointly by the Tucson Medical Center and the University of Arizona to start and direct Southern Arizona's first regional trauma care system. He, his wife Diana and their four children, relocated to Tucson.

Dr. Carmona would later become chairman of the State of Arizona Southern Regional Emergency Medical System, a professor of surgery, public health and family and community medicine at the University of Arizona, and the Pima County Sheriff's Department surgeon.

While continuing his medical career, Rich's call to service lead him to the Pima County Sheriff's Department in which he has served for more than 25

> years as a deputy sheriff, detective, department surgeon and SWAT Team Leader. In 1992, he rappelled from a helicopter to rescue a paramedic stranded on a mountainside when their medevac helicopter crashed during a snow storm, inspiring a made-for-TV movie. In the course of his service, Rich received the National Top Cop Award and was named the National SWAT Officer of the Year.
>
> In 2002, Carmona was nominated by the president and unanimously confirmed by the United States Senate to become the 17th Surgeon General of the United States. As Surgeon General, Carmona focused on prevention, health disparities and emergency preparedness to protect the nation against epidemics and bio-terrorism. He also issued a groundbreaking report on the dangers of second-hand smoke.
>
> While very successful as Surgeon General, he unfortunately also experienced the divisive politics that continue to plague Washington today – where the desire to score political points has become more important than solving problems, creating jobs or providing for those in need. That experience guides his current mission to become Arizona's next senator and change how Washington works.
>
> In 2007, Dr. Carmona testified before Congress that political appointees had put partisan politics ahead of science – especially when it came to the public's health – in hopes that shining a light on how the administration operated could bring change. He testified: "The job of surgeon general is to be the doctor of the nation, not the doctor of a political party."

Now THAT, folks, is a history and experience set

to kill for in a political candidate for major office. Handsome fellow, and extremely charismatic and personable, too.

Now, I will say this much, Carmona is not, and will not be, a true liberal progressive overall, that is simply not his makeup. I do not yet know Richard personally, but have friends that have both known him since he first came to Arizona decades ago, as well as friends that studied medicine under him, and all advise he is a real deal independent thinker who is overall Democratic in base ideology, but pretty moderate.

Now, the good news: Carmona is *very* good on the critical health issues currently roiling the nation's politics, including on women's issues that are so under fire recently:

> Throughout my time as U.S. Surgeon General, I remained steadfast in my belief that every woman should have access to comprehensive health care, including retaining access to reproductive health care options and FDA-approved prescription contraceptives.
>
> As a medical doctor, I know that a woman's access and choice of reproductive health care options is an intensely personal decision left best decided by a woman and her physician. I also believe it is important to reduce the number of unwanted pregnancies in the United States through supporting medically-accurate, comprehensive sex education for our kids, taking steps to prevent teen pregnancy and providing access to pre-natal care for all women.

Carmona is dogged in his desire to protect Social Security and Medicare, as well as providing appropriate care, that has to date been shockingly lacking, for veterans. Carmona is also strong on the need for immigration

reform (trust me, this is absolutely critical here on the border).

A fuller statement on Richard's priorities can be found here. All in all, it is a great policy set.

One of the things not listed in Carmona's priorities, and that I am most interested in, is his in depth stance on environmental issues. How we steward our national resources and deal with global warming will be of critical importance. This is geometrically more true in a state of open land, rich natural resources and fragile Sonoran riparian habitats like we have in Arizona. I will be seeking clarification in this regard from Mr. Carmona immediately, and will report appropriately. In fact, I am going to make sure he gets this blog post and a formal request for response.

Here is why this race is SOOOOOO important: Once elected to the Senate from Arizona, people tend to stay there forever. Jeff Flake, the certain GOP nominee, is personally a very nice guy; he is, however, a catastrophe from a policy standpoint. If Jeff Flake is allowed to win this seat, he will never leave unless he gets placed on a national ticket that wins the White House. The tide is turning Blue in Arizona, and we simply cannot tolerate another entrenched right wing extremist.

Richard Carmona has the goods to beat Flake and give both Arizona and national Democrats a strong and, compared to the lobbied up norm for national politicians, genuine voice. As Marcy is doing with Trevor Thomas in Michigan, I will be writing about Carmona and our local race here in Arizona from time to time.

I hope you will join me in supporting Richard Carmona for US Senator for Arizona. Here is where you can get involved, here is where you can donate!

DAVID GREGORY & NBC GIVE JOHN MCCAIN BLOWJOB; SCREW AMERICANS

Saturday evening, the New York Times put up an important editorial, The Banks Win Again, on its website regarding the financial crisis, an editorial piece that would be key in their Sunday Morning Edition Opinion Section:

> Last week was a big one for the banks. On Monday, the foreclosure settlement between the big banks and federal and state officials was filed in federal court, and it is now awaiting a judge's all-but-certain approval. On Tuesday, the Federal Reserve announced the much-anticipated results of the latest round of bank stress tests.
>
> How did the banks do on both? Pretty well, thank you — and better than homeowners and American taxpayers.
>
> That is not only unfair, given banks' huge culpability in the mortgage bubble and financial meltdown. It also means that homeowners and the economy still

> need more relief, and that the banks, without more meaningful punishment, will not be deterred from the next round of misbehavior.

The nation is on the cusp on having the government, both federal and states, sign off on arguably the biggest financial fraud on the American public in history, and doing so in a way that massively rewards the offending financial institutions and refuses serious investigation, much less prosecution, of any participants perpetrating the conduct. This pattern of craven conduct cratered not just the US economy, but most of the world economy.

In the face of all this, David Gregory and MTP had on the Sunday morning show one of the most senior Senators in the United States Senate, John McCain, who serves as a key member of both the Governmental Affairs and Health, Education, Labor and Pensions Committees, both of which are integrally affected by, and concerned with, the financial collapse and the financial fraud, churning and undercapitalization that directly caused it.

Oh, and this oh so worthy Meet The Press guest, a man such a fixture and well known to the MTP crew that he has been an honored guest 64 (*sixty four*!) times – the Right Honorable Senator John Sidney McCain III – just so happens to have been one of the key players in the only recent analogous situation to the current financial collapse, the Savings & Loan Crisis scandal of the late 80s and early 90s. McCain, who unethically conspired with one of the key men convicted of substantive crimes (criminal charges are curiously NOT being sought currently) in the Savings & Loan Crisis, Charlie Keating. McCain nearly lost his political career over it. John Sidney McCain III, who was so tight with the living epitome of the destructive Savings & Loan Crisis, Charlie Keating, that he frequented Charlie's Bahama Keys mansion (traveling on Charlie's private jets) and donned pineapple hats with his best buddy for booze

filled Bahama birthday bashes. Booyah!

The same John Sidney McCain III who resurrected his Savings & Loan Crisis cratered career on supposedly getting corrupt money out of government and insuring that another mass financial fraud could not gut the country's economy. The same McCain who bellowed about the corrupting influence of the moneychangers and their crooked cash. You would think the esteemed David Gregory would want to do his country a service and explore this topic that has most affected every American's life over the last five years and that still roils and depresses the US economy and leads to debilitating unemployment and underemployment rates.

You would think David Gregory, NBC and the venerated and esteemed Meet The Press would want to discuss how the government's perfidy in refusing competent investigation and prosecution has resulted in heinous offenders like Bank of America being bigger than ever and ready to crater the economy again, as lamented by the spot on Matt Taibbi recently:

> It's been four years since the government, in the name of preventing a depression, saved this megabank from ruin by pumping $45 billion of taxpayer money into its arm. Since then, the Obama administration has looked the other way as the bank committed an astonishing variety of crimes – some elaborate and brilliant in their conception, some so crude that they'd be beneath your average street thug. Bank of America has systematically ripped off almost everyone with whom it has a significant business relationship, cheating investors, insurers, depositors, homeowners, shareholders, pensioners and taxpayers. It brought tens of thousands of Americans to foreclosure court using bogus, "robo-signed" evidence – a type of mass perjury that it helped pioneer. It

> hawked worthless mortgages to dozens of unions and state pension funds, draining them of hundreds of millions in value. And when it wasn't ripping off workers and pensioners, it was helping to push insurance giants like AMBAC into bankruptcy by fraudulently inducing them to spend hundreds of millions insuring those same worthless mortgages.
>
> But despite being the very definition of an unaccountable corporate villain, Bank of America is now bigger and more dangerous than ever. It controls more than 12 percent of America's bank deposits (skirting a federal law designed to prohibit any firm from controlling more than 10 percent), as well as 17 percent of all American home mortgages. By looking the other way and rewarding the bank's bad behavior with a massive government bailout, we actually allowed a huge financial company to not just grow so big that its collapse would imperil the whole economy, but to get away with any and all crimes it might commit. Too Big to Fail is one thing; it's also far too corrupt to survive.

You would think the NBC braintrust would want to talk about the most important issue on the burner over the last few years – and still today – financial fraud and government complicity and regulatory failure. And who better to discuss it with than a founding member of the Keating Five? But, of course, you would be wrong. No, NBC and their dancing stooge David Gregory instead engaged in a longwinded gossip fest on the inane and intellectually ignorant current GOP Primary horserace. Because that is what Dancin Dave, Meet The Press and NBC are now, cheap political gossip mongers who make Access Hollywood look like serious reportage.

Maybe we should cut Dancing David Gregory some slack tough, his mind was undoubtedly preoccupied with his upcoming admission into the

Chevy Chase Club, the “historic social club that has catered to Washington’s wealthiest for over a century”.

[And, if you are wondering, yes that picture of John Sidney McCain III in the asinine pineapple hat is quite real and was taken at his special birthday party he jetted down to Charlie Keating’s Bahama Keys mansion and estate for with Keating and other sundry revelers. Okay, I *did* let TWolf add some colorization….]

THE FALSE REPORT OF BANNED BOOKS IN TUCSON: THE TEMPEST IN THE ARIZONA TEAPOT

Last Friday afternoon, author Jeff Biggers published an article at Salon entitled *Who’s Afraid of “The Tempest”?* The cognitive lede, and framing for the article as a whole, is contained in the first sentence:

> As part of the state-mandated termination of its ethnic studies program, the Tucson Unified School District released an initial list of books to be banned from its schools today.

Biggers goes on to report and discuss on a litany of books and textbooks – even

Shakespeare's *The Tempest* – that were removed from Tucson Unified School District (TUSD) classrooms:

> Other banned books include "Pedagogy of the Oppressed" by famed Brazilian educator Paolo Freire and "Occupied America: A History of Chicanos" by Rodolfo Acuña, two books often singled out by Arizona state superintendent of public instruction John Huppenthal, who campaigned in 2010 on the promise to "stop la raza(sic).

It is a rather stunning, and alarming, report fashioned by Mr. Biggers and, little wonder, it swept like fire across the progressive internet, and social media like Twitter and Facebook over the King Holiday weekend. Biggers' Salon article served as the basis for reportage of the banning of books, including Shakespeare's *The Tempest*, in a plethora of media sources from such internet venues as AlterNet, to mainstream media like The Tucson Citizen, New York Daily News, and The Wall Street Journal.

There is only one problem with this story. It is categorically and materially false. No books have been banned in Tucson by the TUSD, much less Shakespeare's classic, *The Tempest*.

Sensing that Biggers' story did not sound correct, nor comport with my understanding of the law in this subject area here in Arizona, I was able to make contact with officials at TUSD over the Martin Luther King extended holiday weekend and spoke with an official on Monday, even though the school system was officially closed. It is an understatement to say they were dismayed and concerned; it is "disingenuous to say 'banned'" said Cara Rene, Communications Director for the TUSD.

Indeed, upon returning to their offices Tuesday, the TUSD put out, through Ms. Rene, an official News Release stating:

> Tucson Unified School District has not banned any books as has been widely and incorrectly reported.
>
> Seven books that were used as supporting materials for curriculum in Mexcian American Studies classes have been moved to the district storage facility because the classes have been suspended as per the ruling by Arizona Superintendent for Public Instruction John Huppenthal. Superintendent Huppenthal upheld an Office of Adminstriation Hearings' ruling that the classes were in violation of state law ARS 15-112.
>
> The books are:
> Critical Race Theory by Richard Delgado
> 500 Years of Chicano History in Pictures edited by Elizabeth Martinez
> Message to AZTLAN by Rodolfo Corky Gonzales
> Chicano! The History of the Mexican Civil Rights Movement by Arturo Rosales
> Occupied America: A History of Chicanos by Rodolfo Acuna
> Pedagogy of the Oppressed by Paulo Freire
> Rethinking Columbus: The Next 500 Years by Bill Bigelow
>
> NONE of the above books have been banned by TUSD. Each book has been boxed and stored as part of the process of suspending the classes. The books listed above were cited in the ruling that found the classes out of compliance with state law.
>
> Every one of the books listed above is still available to students through several school libraries. Many of the schools where Mexican American Studies classes were taught have the books available in their libraries. Also, all students throughout the district may reserve the books through the library system.

> Other books have also been falsely reported as being banned by TUSD. It has been incorrectly reported that William Shakespeare's "The Tempest" is not allowed for instruction. Teachers may continue to use materials in their classrooms as appropriate for the course curriculum. "The Tempest" and other books approved for curriculum are still viable options for instructors.

Oh, my, that is fundamentally and materially different than what Mr. Biggers both stated, and inferred, isn't it? It was excessive and inflammatory hyperbole, and that is not a good thing as it paints the TUSD, and the Arizona school and educational system in a false, and prejudicially negative, light. I know many teachers and administrators in the Phoenix area, and they were outraged. "Banning of books" is an extremely negative concept both emotionally and legally; it is an extremely serious allegation, and *not* one to be made lightly or inaccurately.

There are a LOT of very good people in the State of Arizona, and the bad that is going on here (and there IS plenty of bad too) should be painted large and loud for what it is, but not in brush strokes so big and hyperbolic as to give a false picture of the story and state. I dislike the existence and effect of HB 2281, the law that has created this controversy over ethnic studies, every bit as much as Mr. Biggers honestly seems to; but do not want that to be used as a whipping post to make Arizona an ogre in ways it truly does not deserve. And that was the effect of his January 13, 2012 article in Salon.

You would probably think this particular story, and my report on it, ends here for now. It does not and, for once, that is a very positive thing. Over the King Holiday weekend, in addition to contacting the TUSD, I also contacted Salon regarding my concerns. They were, under the circumstances, both cordial and professional. Early this afternoon a notice of

correction was placed at the bottom of the original story, and a new report by Jeff Biggers, far more accurately portraying the facts on the ground in Tucson, was published by Salon. Salon, and its editors, are to be commended and applauded for their willingness to listen and act responsibly.

Which brings us to the bigger picture. Demagoguery and hyperbole are something that all of us do who write on emotional hot button issues; which are about the only kind of issues we do here at Emptywheel. I have noticed the same phenomenon in the progressive blogosphere and media acutely prevalent on torture, Bradley Manning, Occupy Wall Street and, just recently, the NDAA. Emotion and illustration are good; facts and truth are better.

THE CHALLENGE TO RICHARD CORDRAY NOT BEING DISCUSSED

The internets are alive with the sound of excitement over the appointment today by President Obama of Richard Cordray to be Director of the Consumer Finance Protection Bureau (CFPB). And, as Brian Buetler correctly points out, by doing it today, the first day of the new legislative session, Obama (assuming he gets re-elected) has provided Cordray with the longest term possible to serve as a recess appointee:

> By acting today, with session two of this Congress technically under way, Obama has given Cordray the rest of this session and the full next session of the Senate to run the bureau. Cordray could potentially serve through the end of 2013.

> The Congressional Research Service outlined this in a recent report (PDF) — and the White House and Senate leaders of both parties confirm the analysis.
>
> If Obama loses in 2012, that could shorten Cordray's tenure — and of course Cordray can leave early if he wants to. But this move makes it much more likely that the CFPB will truly take root.

Most of the banter so far has been on the viability of Obama's move to recess appoint in this manner. I have looked at this issue for years, going back to early in the Dawn Johnsen imbroglio, and find no reason to believe this was not a proper exercise of Presidential power and prerogative.

The long and short of it is, there is no restriction on timing of recess appointments by a President pursuant to Article II, Section 2 of the Constitution. Both the "10 day rule", which got narrowed to the "3 day rule" were practices and, at best were based on non-binding dicta from an early 90s DOJ memo; they are not now, nor have they ever been, binding law or rule. Legally, they are vapor. The issue was actually litigated in the 2004 11th Circuit case of *Evans v. Stephens*.

> And when the President is acting under the color of express authority of the United States Constitution, we start with a presumption that his acts are constitutional.2 See United States v. Allocco, 305 F.2d 704, 713 (2d Cir. 1962) (Recess Appointments Clause case); see also U.S. v. Nixon, 94 S.Ct. 3090, 3105 (1974) (observing "In the performance of assigned constitutional duties each branch of the Government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the others.").
> …….

> The Constitution, on its face, does not establish a minimum time that an authorized break in the Senate must last to give legal force to the President's appointment power under the Recess Appointments Clause. And we do not set the limit today.

And there you have it. There is no minimum time. Also, somewhat significant, is that Evans was decided by the full 11th Circuit, not a three judge panel, and SCOTUS considered a full cert application, and denied it, leaving the 11th Circuit decision standing as good law and citable precedent.

Oh, and if you wonder if SCOTUS has a real hard on for Presidential recess appointments, the answer would appear to be no. During the oral argument in *New Process Steel v. NLRB* last year, Chief Justice Roberts scoldingly asked Deputy Solicitor General Neal Katyal "And the recess appointment power doesn't work why?" I am not sure the blustering Republicans like McConnell and Boehner will find quite as receptive an ear from the Roberts Court as they think.

Well, as Beutler notes, things should be all rosy and good to go for Cordray and CFPB, right? Not so fast, there is another issue not receiving any attention by the chattering classes.

The CFPB was promulgated by a pretty bizarre act – The Dodd Frank Act – bizarre, specifically, in how it structures and empowers the CFPB in its various duties. Notably, several of the key powers flow not necessarily through the agency, but through the "confirmed director" of CFPB. If there is no director, the bureau is run in the interim by the Treasury Secretary. Yep, good 'ole Turbo Tax Timmeh Geithner. Specifically, Section 1066 provides:

> The Secretary is authorized to perform the functions of the Bureau under this subtitle until the **Director of the**

> **Bureau is confirmed by the Senate** in accordance with section 1011. (emphasis added)

So, in all this meantime, and despite the White House trying to put the patina on that Liz Warren was running the CFPB, it has actually been Geithner. And the problem with this has been (remember I said the enabling language was bizarre??) that not all of the full powers of the CFPB vest, nor can they be exercised, until there is a director.

A director "confirmed by the Senate" according to the literal wording of the Dodd Frank Act.

If I were speculating on legal challenges to Cordray, rather than focusing solely on Obama's ability to so appoint him (which, again, I think stands up), I might be more concerned about the issue of whether Cordray has full powers to lead and operate CFPB because he is not "confirmed by the Senate". That should be a stupid argument you would think, but the words "confirmed by the Senate" in the enabling act make it at least a very cognizable question.

Normally a confirmed appointee and a recess appointee have the same legal authority and powers but, to my knowledge, there is no other situation in which substantive power for an agency flows only through its specific "confirmed" director. If I were going to attack Cordray, I would certainly not restrict it to the propriety of Obama's recess appointment, I would also attack his scope of authority since he was not "confirmed". I would like to think such a challenge fails, but Congress sure left a potential hidden boobytrap here.

A NOTE ABOUT OWS AND PRE-TRIAL DIVERSION IN LOS ANGELES

I have seen a lot of garment rending on Twitter and in discussion forums I participate in about the Los Angeles Times report that a pre-trial diversion option is being offered to some Occupy Wall Street-Los Angeles protesters:

> Many Occupy L.A. protesters arrested during demonstrations in recent months are being offered a unique chance to avoid court trials: pay $355 to a private company for a lesson in free speech.
>
> Los Angeles Chief Deputy City Atty. William Carter said the city won't press charges against protesters who complete the educational program offered by American Justice Associates.
>
> He said the program, which may include lectures by attorneys and retired judges, is being offered to people with no other criminal history and who were arrested on low-level misdemeanor offenses, such as failure to disperse.

"Tin eared!" "Propaganda!" "Re-Education!" "Stupid!" "Tone-deaf!" "By a private corporation??" "Seriously, LA, this is the worst ever!" "Unbelievable!"

Those are a smattering of the responses I saw, and all are from people I know and respect greatly. And they are all wrong to take such umbrage at this report. Here is why.

Pre-trial diversion of criminal misdemeanor charges is an extremely common tool in municipal and other misdemeanor courts (and in some felon courts on the lowest grade offenses such as

marijuana possession). It is, from a policy perspective, considered a win-win for both sides; the state and taxpayers avoid the cost of processing the defendant through the court system, and the defendant avoids having a conviction on their record (often avoid even having a formal charge lodged). But whether or not to offer pre-trial diversion lies entirely within the prosecutorial discretion of the state's attorney. It is an option that can be offered, but certainly is not mandatory.

Just as pre-trial diversion is a voluntary option that does not have to be offered in the first place, the decision on whether to accept the offer is entirely up to the individual facing the charge. There is no punishment whatsoever for declining – none – they will stand in the EXACT same position vis a vis the state as if they had not been offered pre-trial diversion at all, i.e. there will be a municipal offense that has either been charged, or is pending charge, with a one year statute of limitation running.

There has been a hue and cry that – gasp! – the program will be administered by – gasp! – a private company. Well, they always are. I have never seen a diversion program with an educational component that was not farmed out to a private or non-profit outside entity. That is simply how it is done; cities and individual courts are not structured and funded to have classrooms, instructors and curriculum for these matters. And, being as it is a discretionary option to resolve outside of the criminal process (most are contractual, not court compelled) it just does not make fiscal or judicial sense to have it run by the court or state.

As to the content suggested for this particular diversion program offer, it is precisely what you would expect to be offered under the circumstances. Pre-trial diversion at the misdemeanor level almost always involves a perfunctory remedial/instructive class in the

subject of the offense. This is the case with defensive driving class to get out of a ticket, it is the case with anger management for assault and domestic violence, it is the case for shoplifting and solicitation programs as well. For the OccupyLA cases, it is hard to imagine a more appropriate subject than a free speech centered program, as that lies at the heart of why the individuals face the prospect of criminal process in the first place.

So, in sum, the offer of pre-trial diversion is but an extra option offered people that are facing the criminal justice system. It did not have to be offered, that it is should be considered positive not negative if the individuals are going to be facing the criminal system anyway. Whether or not one feels these individuals should be charged in the first place is a different discussion; since they do face the system, having an extra option should be cheered not jeered.

Lastly, a word about the “Free Speech” rights that are at issue here. The long and short of it is free speech has never been completely free nor absolute. Living in the west, and being still a little bit of a night person, I have seen a lot of the television reports and internet live stream coverage of the raids on various OWS camps including, notably, the infamous ones in Oakland and Los Angeles. I constantly saw protesters screaming about their First Amendment rights being trampled on. I have also seen a lot of very bright people I know repeating this mantra on Twitter, in discussion forums and in published articles. At least as to the actions that have been about the OWS tent encampments on public property, they have been wrong.

I support the intent and message OWS set out to propel into the public consciousness completely and with every fiber of my being. There is no more critical message right now than the burgeoning income inequality, financial suffering and human loss being caused by the

rapacious elements in the global financial sector epitomized by Wall Street. That said, the simple fact of the matter is that there are, and long have been, time place and manner restrictions on free speech and that is what is at play here.

So, let's look for a moment about what the real state of the law is regarding the tent encampments that OWS keeps screaming are protected by the First Amendment, because the simple truth is they most certainly are not if there are appropriate local laws and/or regulations prohibiting overnight sleeping and camping, as there have been in most all of these cases. These are called "time, place and manner restrictions" (TPM), and they are long engrained into the very heart of American First Amendment law.

The complete history of TPM restrictions is to long too go into in a blog post, but perhaps the key case for modern general TPM law is *Cox v. New Hampshire,* 312 U.S. 561 (1941) where the court stated:

> Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of

> some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinions. As regulation of the use of the streets for parades and processions is a traditional exercise of control by local government, the question in a particular case is whether that control is exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions immemorially associated with resort to public places.
> ….
> If a municipality has authority to control the use of its public streets for parades or processions, as it undoubtedly has, it cannot be denied authority to give consideration, without unfair discrimination, to time, place and manner in relation to the other proper uses of the streets. We find it impossible to say that the limited authority conferred by the licensing provisions of the statute in question as thus construed by the state court contravened any constitutional right.(citations omitted)

Time, place and manner restrictions thus having been ratified by the Supreme Court into modern law in *Cox*, the issue then becomes how this applies to the issue of tents in the OWS encampment paradigm. Well, it turns out the Supreme Court has an app for that too. SCOTUS, in the directly on point case of *Clark v. Community for Creative Nonviolence*, 468 U.S. 288 (1984), addressed the free speech issues surrounding tent encampments on public property:

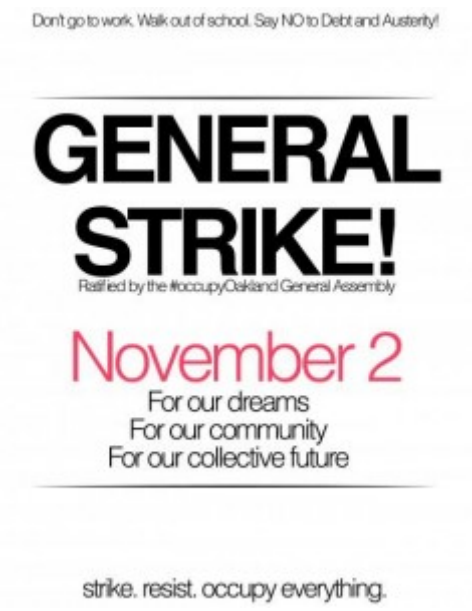
> We need not differ with the view of the Court of Appeals that overnight sleeping in connection with the demonstration is expressive conduct protected to some extent by the First Amendment. We assume for present purposes, but do not decide, that such is the case, cf. United States v. O'Brien, 391 U.S. 367, 376 (1968), but this assumption only begins the inquiry. Expression, whether oral or written or symbolized by conduct, is subject to reasonable time, place, or manner restrictions.
> ….
> Symbolic expression of this kind may be forbidden or regulated if the conduct itself may constitutionally be regulated, if the regulation is narrowly drawn to further a substantial governmental interest, and if the interest is unrelated to the suppression of free speech. United States v. O'Brien, supra.
>
> Petitioners submit, as they did in the Court of Appeals, that the regulation forbidding sleeping is defensible either as a time, place, or manner restriction or as a regulation of symbolic conduct. We agree with that assessment.
> ….
> The requirement that the regulation be content-neutral is clearly satisfied. The courts below accepted that view, and it is not disputed here that the prohibition on camping, and on sleeping specifically, is content-neutral, and is not being applied because of disagreement with the message presented

There is a lot of discussion in *Clark* that is spot on point with the OWS situation. Suffice it to say, it has proven to be decisive in nearly every state and federal court challenge brought by OWS, and so long as there is some statutory or regulatory basis for camping and/or sleeping

prohibition at a given locale, it will continue to so be decisive against the tent encampments of OWS. And, as demonstrated by, among others, Federal Judge Cameron Currie in South Carolina yesterday, this logic will stand even for regulations and laws passed *after* the encampments started, so long as the proscriptions are content neutral.

In conclusion, the OWS protesters, well meaning as they may be, are flat wrong when they scream that their First Amendment rights are being trampled upon when cities and governments no longer tolerate the long term residence on public property. Similarly, there is nothing wrong whatsoever about a jurisdiction offering an appropriate pre-trial diversion program to folks that have been arrested in these dismantling raids.

A RANCID FORECLOSURE FRAUD SETTLEMENT TRIAL BALLOON, HERBERT OBAMAVILLES, WHAT DIGBY SAID & THE IMPORT OF THE OCCUPY MOVEMENT



I do not usually just post simply to repeat what another somewhat similarly situated blogger has said. But late this afternoon/early this evening, I was struck by two things almost simultaneously. Right as I read Gretchen Morgenson's latest article in the NYT on the latest and most refined parameters of the foreclosure fraud settlement, I also saw a post by Digby. The intersection of the two was crushing, but probably oh so true.

First, the latest Foreclosure Fraud Settlement trial balloon being floated by the "State Attorney Generals". There have been several such trial balloons floated on this before; all sunk like lead weights. This is absolutely a similar sack of shit; from Morgenson at the NYT:

> Cutting to the chase: if you thought this was the deal that would hold banks accountable for filing phony documents in courts, foreclosing without showing they had the legal right to do so and generally running roughshod over anyone who opposed them, you are likely to be disappointed.
>
> This may not qualify as a shock. Accountability has been mostly A.W.O.L. in the aftermath of the 2008 financial crisis. A handful of state attorneys general became so troubled by the direction this deal was taking that they dropped out of the talks. Officials from Delaware, New York, Massachusetts and Nevada feared that the settlement would

> preclude further investigations, and would wind up being a gift to the banks.
>
> It looks as if they were right to worry. As things stand, the settlement, said to total about $25 billion, would cost banks very little in actual cash — $3.5 billion to $5 billion. A dozen or so financial companies would contribute that money.
>
> The rest — an estimated $20 billion — would consist of credits to banks that agree to reduce a predetermined dollar amount of principal owed on mortgages that they own or service for private investors. How many credits would accrue to a bank is unclear, but the amount would be based on a formula agreed to by the negotiators. A bank that writes down a second lien, for example, would receive a different amount from one that writes down a first lien.
>
> Sure, $5 billion in cash isn't nada. But government officials have held out this deal as the penalty for years of what they saw as unlawful foreclosure practices. A few billion spread among a dozen or so institutions wouldn't seem a heavy burden, especially when considering the harm that was done.
>
> The banks contend that they have seen no evidence that they evicted homeowners who were paying their mortgages. Then again, state and federal officials conducted few, if any, in-depth investigations before sitting down to cut a deal.
>
> Shaun Donovan, secretary of Housing and Urban Development, said the settlement, which is still being worked out, would hold banks accountable. "We continue to make progress toward the key goals of the settlement, which are to establish strong protections for homeowners in the

> way their loans are serviced across every type of loan and to ensure real relief for homeowners, including the most substantial principal writedown that has occurred throughout this crisis."

Read the full piece, there is much more there.

Yes, this is certainly just a trial balloon, and just the latest one at that. But it is infuriating, because it is the same old sell out crap repackaged and trying to be shoved down the public's throat yet again. And who wants to sell this shit sandwich the most? Barack Obama and his band of Masters of the Universe, that's who. It is also, of course, the fervent desire of Wall Street and their bought and paid for pols like Chuck Schumer.

Which is exactly why elected state Attorney General politicians (Hi Tom Miller), who are also generally on the political make, are so focused on getting a craven deal done, no matter how badly it screws the public and economy. If anybody has ever had any doubt as to why California AG Kamala Harris has been so slow, and so weak, in the matter this is exactly why. Harris is a political climber, and her fortunes and fame ride with the 1% and the politicians like Obama and Schumer that they control like circus monkeys.

Which brings me back to what Digby said. Digby, playing a notably tin-eared editorial by the Los Angeles Times off of a scathing comment on the American elite by Frank Rich, said:

> That the LA Times is clutching its pearls over fig trees and grass while nearly 3,000 people have been arrested at Occupations all over the country world says just about everything you need to know about disconnect between elites and everybody else.

Yeah, that about sums it up. Do go read the full

description of the “Hoovervilles” and what they really comprised, because it is far too close to home with the current time and place we occupy. By the same token, it is hard for many in the comfortably ensconsed traditional middle class to see just how heinous the situation is, and how necessary the “Occupy” movement may really be.

Trust me. I know, I am one of the uncomfortable. My natural predilections are within the system and rules. That, however, is no longer perhaps enough. Many of you reading this post may not be on Twitter, and thus may not have seen it; but I have in the last couple of days straightened out more than one pundit on the, and sometimes unfortunately so, real protection reach of the 1st Amendment. It is far less a prophylactic protection than most, and certainly the vocal proponents of the Occupy Movement, think.

Without belaboring the minutiae, the clear law of the land for over 70 years, ever since the Supreme Court handed down its decision in *Cox v. New Hampshire*, is:

> Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend.
> …..
> If a municipality has authority to control the use of its public streets for parades or processions, as it undoubtedly has, it cannot be denied authority to give consideration, without unfair discrimination, to time, place and manner in relation to the other

> proper uses of the streets. We find it impossible to say that the limited authority conferred by the licensing provisions of the statute in question as thus construed by the state court contravened any constitutional right.

There is a long line of cases that ultimately extend the ability of cities and municipalities right to reasonably regulate time and place of free speech expression, so long as said regulation is content neutral, to public parks and all other sorts of publicly controlled spaces.

But those are “the rules”. When the politicians and corporate masters no longer are willing to play by the rules, how much longer can the “99%” afford to honor them? When the so called leaders will not abide by the norms and constricts of law, why should the average man still be held to the same?

Again, I fully admit just how much I struggle with saying the above. I really do; it is uncomfortable and discomfiting. I could go on, but my own thoughts pale in comparison with those similarly situated who have experienced first hand what the import and truth of the Occupy movement is.

I ask, indeed implore, you read this long, but telling, account from The Awl by Lili Loofbourow entitled *“The Livestream Ended: How I Got Off My Computer And Onto The Street At Occupy Oakland”*. There is literally too much to excerpt, and it would take away from the critically important slow progression the writer lays out for you, the reader.

So, while “the rules” may militate otherwise, and while “our Constitutional rights” go nowhere near as far as the psyched up Occupiers cry, there is something raw and necessary about the “Occupy” movement. It is necessary because the rules and “adults in the room” have sold their souls, and our lives, down the river of greed.

If not “the 99%”, then who? If not now, then when? It is time.

THE NAME OF NYPD BRUTALITY: ANTHONY BOLOGNA

[youtube]moD2JnGTToA[/youtube]

The ~~Lieutenant~~ Deputy Inspector who pepper-sprayed a kettled, defenseless woman has been identified as Anthony Bologna. He was IDed, in part, by a lawyer representing one of the people Bologna improperly arrested during the 2004 RNC.

> The Guardian has learned that the officer, named by activists as deputy inspector Anthony Bologna, stands accused of false arrest and civil rights violations in a claim brought by a protester involved in the 2004 demonstrations at the Republican national convention.
>
> [snip]
>
> Alan Levine, a civil rights lawyer representing Post A Posr, a protester at the 2004 event, told the Guardian that he filed an action against Bologna and another officer, Tulio Camejo, in 2007. The case, filed at the New York Southern District Court, is expected to be heard next year.
>
> [snip]
>
> The lawyer said Posr was arrested on 31 August 2004, after he approached the driver of a Volkswagen festooned with anti-abortion slogans.
>
> [snip]
>
> Levine said: “Police contend that Posr hit the man with a rolled-up newspaper. He said

> he was just talking to the guy. Bologna ordered another officer, Camejo, to arrest Posr."
>
> Posr was charged with two counts of disorderly conduct and one count of second degree harassment, and held until September 2. On November 8, all charges against him were dropped.
>
> Levine said that, in a departure from normal police procedure, his client was held in a special detention facility, at Pier 57, where he and others arrested were held until the protests were over.

It sounds like this guy is using his badge to legally and physically abuse people whose politics he disagrees with—someone politically debating choice in 2004 and a woman opposing MOTU power this weekend.

I don't expect Ray Kelly to do anything about such an abusive officer on his staff (in any case, the union would presumably defend Bologna if Kelly tried to fire him). But so long as he remains on the force, we have a name and a face to personify the NYPD's brutality: Anthony Bologna.

Update: Bologna's rank fixed. One of the women who got partly sprayed by him apparently incorrectly used that rank. h/t Cynthia Kouril.

THE GLOBAL CRISIS OF SOME INSTITUTIONAL LEGITIMACY

Felix Salmon has a worthwhile (but, IMO, partly mistaken) post on what he deems "the global crisis of institutional legitimacy." I think he's right to see this as a significant challenge to our current political economy.

Public's Negative Views of Institutions Not Limited to Government

Effect on way things are going in the country …	Positive %	Negative %	Other/ DK %
Banks & financial inst.	22	69	10=100
Congress	24	65	12=100
Federal government	25	65	9=100
Large corporations	25	64	12=100
National news media	31	57	12=100
Federal agencies & depts.	31	54	16=100
Entertainment industry	33	51	16=100
Labor unions	32	49	18=100
Obama administration	45	45	10=100
Colleges & universities	61	26	13=100
Churches & religious orgs.	63	22	15=100
Small businesses	71	19	10=100
Technology companies	68	18	14=100

Pew Research Center March 11-21 Q18a-n. Figures may not add to 100% because of rounding.

> While watching another Arab government get toppled on Sunday evening – this time that of Muammar Gaddafi, in Libya – I was also reading George Magnus's excellent note for UBS, entitled "The Convulsions of Political Economy"; you can find it *chez* Zero Hedge.
>
> Convulsions is right – not only in the Arab world, of course, but also in Europe and the US. And the result is arguably the most uncertain outlook, in terms of the global political economy, since World War II ended and the era of the welfare state began.
>
> As Magnus says:
>
> > It seems that we are having sometimes esoteric tiffs between Keynesians and Austrians about if and how governments should sustain jobs and growth. But, deep down, we are having a much more significant debate as we are being forced to redefine what we think about the rights and obligations of citizens and the State.
>
> Most fundamentally, what I'm seeing as I look around the world is a massive decrease

> of trust in the institutions of government.

But I think Salmon makes two mistakes. First, he maintains an unwarranted distinction between the Arab Spring and the UK riots.

> Where those institutions are oppressive and totalitarian, the ability of popular uprisings to bring them down is a joyous and welcome sight. But on the other side of the coin, when I look at rioters in England, I see a huge middle finger being waved at basic norms of lawfulness and civilized society, and an enthusiastic embrace of "going on the rob" as some kind of hugely enjoyable participation sport. The glue holding society together is dissolving, whether it's made of fear or whether it's made of enlightened self-interest.

From the perspective of the underclass in our society, it has been some time since "enlightened self-interest" counseled compliance. And from most perspectives, it's clear that the elites, not the underclass, were the first to wave a huge middle finger at basic norms of lawfulness.

A more problematic error, though, is Salmon's claim that corporations have retained their legitimacy.

> Looked at against this backdrop, the recent volatility in the stock market, not to mention the downgrade of the US from triple-A status, makes perfect sense. Global corporations are actually weirdly absent from the list of institutions in which the public has lost its trust, but the way in which they've quietly grown their earnings back above pre-crisis levels has definitely not been ratified by broad-based economic recovery, and therefore feels rather unsustainable.

As a recent Pew poll shows, Americans are just as disgusted with banks and other large corporations as they are with their government.

> While anti-government sentiment has its own ideological and partisan basis, the public also expresses discontent with many of the country's other major institutions. Just 25% say the federal government has a positive effect on the way things are going in the country and about as many (24%) say the same about Congress. Yet the ratings are just as low for the impact of large corporations (25% positive) and banks and other financial institutions (22%). And the marks are only slightly more positive for the national news media (31%) labor unions (32%) and the entertainment industry (33%).
>
> Notably, those who say they are frustrated or angry with the federal government are highly critical of a number of other institutions as well. For example, fewer than one-in-five of those who say they are frustrated (18%) or angry (16%) with the federal government say that banks and other financial institutions have a positive effect on the way things are going in the country.

But there **are** institutions that Americans still trust: colleges, churches, small businesses, and tech companies.

Distinguishing between those institutions (government and big corporations) people distrust and those (churches, small businesses, and tech companies) they do is important for several reasons. First, because it prevents us from assuming (as big corporations might like us to) that Americans will be content with corporatist solutions. People may or may not like the the post office, but there's no reason to believe they like FedEx, Comcast, AT&T, or Verizon any more, particularly the latter three, which all score very badly in customer satisfaction. (Update: as joberly points out, Pew found that the postal service was by one measure the most popular government agency, with 83% of respondents saying they had a favorable view of the postal service.)

Such polling also suggests where Americans might turn during this convulsion. Barring Apple buying out the federal government, it seems likely Americans, at least, will turn to local institutions: to their church, their neighborhood, their local businesses.

That's got some inherent dangers—particularly if people decide they want to change my governance with their church. But it also provides a nugget of possible stability amid the convulsion, one that might have salutary benefits for our environment and economy.

Apple aside, it's the big institutions that have lost their institutional legitimacy. But we're not entirely without institutions with which to rebuild.

THE UNSTATED CONSTITUTIONAL PROBLEMS WITH OBAMA "USING THE 14TH"

As about everyone knows by now, the great debate is still ongoing on the issue of the debt ceiling. The frustration of those on the left with the intransigence of the Republican Tea Party, coupled with the neutered Democratic Congress, has led many to call for President Obama to immediately "invoke the 14th". The common rallying cry is that legal

scholars (usually Jack Balkin is cited), Paul Krugman and various members of Congress have said it is the way to go. But neither Krugman nor the criers in Congress are lawyers, or to the extent they are have no Constitutional background. And Balkin's discussion is relentlessly misrepresented as to what he really has said. "Using the 14th" is a bad meme and here is why.

The Founders, in creating and nurturing our system of governance by and through the Constitution provided separate and distinct branches of government, the Legislative, Executive and Judicial and, further, provided for intentional, established and delineated checks and balances so that power was balanced and not able to be usurped by any one branch tyrannically against the interest of the citizenry. It is summarized by James Madison in Federalist 51 thusly:

> First. In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments.
> ….
> We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other – that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State.

which must be read in conjunction with Madison in Federalist 47:

> The accumulation of all powers, legislative, executive, and judiciary,

> in the same hands, whether of one, a few, or many, and whether hereditary, selfappointed, or elective, may justly be pronounced the very definition of tyranny.

This is the essence of the separation of powers and checks and balances thereon that is the very root foundation of our American governance. It may be an abstract thing, but it is very real and critical significance. And it is exactly what is at stake when people blithely clamor to "Use the 14th!".

Specifically, one of the most fundamental powers given by the Founders to the Article I branch, Congress, was the "power of the purse". That was accomplished via Article I, Section 8, which provides:

> The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States…
>
> and
>
> To borrow money on the credit of the United States;

The call to "Use the 14th" is a demand that the President, the embodiment of the Article II Executive Branch, usurp the assigned power of the Article I Congress in relation to "borrow money on the credit of the United States". This power is what lays behind the debt ceiling law to begin with, and why it is presumptively Constitutional. It is Congress' power, not the President's, and "invoking the 14th" means usurping that power. Due to "case and controversy" and "standing" limitations, which would require another treatise to discuss fully, there is literally likely no party that could effectively challenge such a usurpation of power by the Executive Branch and an irretrievable standard set for the future. The fundamental

separation and balance of powers between the branches will be altered with a significant shift of power to the Executive Branch.

This is not something to be done lightly or if there is any possible alternative available. Indeed, the only instance in which it could be rationally considered would be if all alternatives were exhausted. That does NOT mean because the GOPTeaers are being mean and selfish. It does NOT mean because you are worried about some etherial interest rate or stock market fluctuation that may, or may not, substantially occur. It does NOT mean because your party's President and Congressional leadership are terminally lame. That, folks, is just not good enough to carve into the heart of Constitutional Separation of Powers. Sorry.

And for those that are thinking about throwing "experts" such as Jack Balkin in the face of what I have argued, go read them, notably Jack himself, who said before invoking the 14th, first the President would have to prioritize what was paid by existent resources, those that could be liberated and revenues that did still come in:

> …certainly payments for future services – would not count and would have to be sacrificed. This might include, for example, Social Security payments.
> ….
> Assume, however, that even a prolonged government shutdown does not move Congress to act. Eventually paying only interest and vested obligations will prove unsustainable – first because tax revenues will decrease as the economy sours, and second, because holders of government debt will conclude that a government that cannot act in a crisis is not trustworthy.
>
> If the president reasonably believes that the public debt will be put in question for either reason, Section 4 comes into play once again. His

> predicament is caused by the combination of statutes that authorize and limit what he can do: He must pay appropriated monies, but he may not print new currency and he may not float new debt. If this combination of contradictory commands would cause him to violate Section 4, then he has a constitutional duty to treat at least one of the laws as unconstitutional as applied to the current circumstances.

So, contrary to those shouting and clamoring for Obama to "Use the 14th", it is fraught with peril for long term government stability and function, and is not appropriate to consider until much further down the rabbit hole. It is NOT a quick fix panacea to the fact we, as citizens, have negligently, recklessly and wantonly elected blithering corrupt idiots to represent us. There is no such thing as a free lunch; and the "14th option" is not what you think it is.

As a parting thought for consideration, remember when invasion of privacy and civil liberties by the Executive Branch was just a "necessary and temporary response to emergency" to 9/11? Have you gotten any of your privacies and civil liberties back? Well have ya?

UPDATE: Joberly added this in comments, and a quick perusal of legislative intent materials and the limited case interpretation seems to indicate it is spot on:

> Thanks to Bmaz for his post and for his Comments # 3 and # 34. I'm no lawyer, just a history teacher who has taught Civil War & Reconstruction for some time. This is not the time and place for a history essay on the context of Section 4 ("validity of the public debt" clause) of the 14th amendment; instead, let me just point to the so-far-ignored Section 5 of the amendment: "The Congress shall have power to enforce, by

> appropriate legislation, the provisions of this article." None of the first dozen amendments to the Constitution had anything like this clause; for the most part, the first dozen limited Congress in what it could enact (think "Congress shall make no law…"). The 13th Amendment, passed by Congress in March 1865 was the first to affirm that Congress had the power to enforce a constitutional right. The 14th amendment repeated that. In short, Section 5 put Congress specifically in charge of making sure of the "validity of the public debt," and definitely not the president. That was no accident. The Congress that passed the 14th Amendment had zero confidence in the president (Andrew Johnson) in carrying out congressional policy. The last thing they wanted over the winter of 1865-66 was to give Pres. Johnson any more power that he could abuse. But abuse he did and the next House, elected in 1866, impeached him. I'm with Bmaz on this one.

[Note: I actually did this post at the request of our good friend Howie Klein at his blog Down With Tyranny and it is cross posted there as well]

E. COLI EFMS

Chris Savage (Eclectablog) continues to track what the Emergency Financial Managers have been doing around Michigan. In new developments, the EFM for Pontiac MI, Michael Stampfler, broke the Police Dispatcher's union contract, dissolved the Planning Commission, fired the water and wastewater department, and outsourced the latter function to a private company, United Water

Services.

Now, Pontiac has had compliance problems with its wastewater treatment since 2009. Which is why Stampfler's chosen replacement for Pontiac's wastewater department is troublesome. As Savage points out, United Water was indicted in December for tampering with E Coli testing in Gary, IN.

> **Because United Water was indicted by the U.S. Department of Justice last December for violating the Clean Water Act.**
>
> > United Water Services Inc., the former contract operator of the Gary Sanitary District wastewater treatment works in Gary, Ind., and two of its employees, were charged today with conspiracy and felony violations of the Clean Water Act in a 26-count indictment returned by a federal grand jury, the Justice Department announced today.
> >
> > United Water Services Inc., and employees Dwain L. Bowie, and Gregory A. Ciaccio, have been charged with manipulating daily wastewater sampling methods by turning up disinfectant treatment levels shortly before sampling, then turning them down shortly after sampling.
> >
> > ~SNIP~
> >
> > According to the indictment, the defendants conspired to tamper with *E. coli* monitoring methods by turning up levels of disinfectant dosing prior to E. coli sampling. The indictment states that the defendants would avoid taking E. coli samples until disinfectants had reached elevated levels, which in turn were expected to lead to reduced *E. coli* levels. Immediately after sampling, the indictment

> alleges, the defendants turned down disinfectant levels, thus reducing the amount of treatment chemicals they used.

That would be a neat way to save money on wastewater treatment, huh? To hire a company allegedly willing to tamper with water quality readings to appear to have fixed water treatment problems.

Of course, the cost of infecting a city with E Coli might end up being a bigger problem.