Written by **Joe Wolverton, II, J.D.** on November 9, 2010

17th Amendment Mudslinging

The vigorous and timely advocacy of the enforcement of the 10th Amendment has been well chronicled in the pages of The New American and elsewhere. There are, in fact, organizations devoted exclusively to that task. While no constitutionalist worthy of the distinction can doubt the vital nature of that mission, there is another amendment whose prominence in recent headlines must concern those dedicated to the advancing of constitutional principles of freedom and good government: the 17th Amendment. That amendment required the direct election of U.S. senators by the people, thereby eliminating the election of U.S. senators by state legislatures.

"U.S. Senate candidate Joe Miller's support for repealing 17th Amendment draws criticism" is the title of an article published Wednesday in the *Fairbanks* (Alaska) *Daily News-Miner*. Joseph Wayne "Joe" Miller is an attorney and is seeking election to the seat in the Senate occupied for over seven years by the woman he defeated in this year's Republican primary, Lisa Murkowski. (Two days after the November 2 election, it was still unclear who won.)

Miller, a native of Kansas, moved to the "Last Frontier" after graduating from Yale Law School to accept an associate attorney position in Anchorage. He has since practiced in Alaska and served in various local and state judicial appointments.

Responding to a question posed by an attendee at a town hall meeting in Fairbanks, Miller denounced Washington, D.C., as a place where members of Congress are "treated like royalty." He recommended the imposition of term limits and the repeal of the 17th Amendment as treatments for the aristocratic fever that has afflicted so many in our nation's capital.

Predictably, Miller's comments have siphoned ounces of ink from the pens of pundits and pontificators. The usual coterie of *soi-disant* defenders of the people has begun its vilification of Miller via the broadcast mockery of his beliefs. For example:

From the *Seattle Post-Intelligencer*: "Tea Party candidate boils over."

From CNN: "Political Theater: Telling Tales about the 17th Amendment."

The mainstream media is not alone in its renouncement of Joe Miller's (apparently) controversial statement. Miller's opponent in the campaign for senator from Alaska is Democrat Scott McAdams. McAdams is quoted in the *Daily News-Miner* as accusing Miller of trying to "deny Alaskans their constitutional rights." He told the paper, "This is just one more example of how Joe [Miller] wants to repeal the 20th Century and hurt Alaska. Alaskans embrace their power to elect their candidates — Joe should know that — that's the American — and the Alaskan way."

While such a reaction from one's political foe is perfunctory, the vituperative response from Senator

Lisa Murkowsi smacks of sour grapes and is ill-suited to one of her station. “We have [seen] Joe Miller take some extraordinary positions in this campaign,” Murkowski told the Fairbanks paper, “but I never imagined he would support disenfranchising himself and every other Alaskan. Joe is no longer content with simply taking away federal support for Alaskan families, now he wants to take away their right to select our United States senators.”

It is noteworthy to remind readers that despite her electoral defeat in the primary, Murkowski refused to go gently into that good night of private life, and initiated a write-in campaign to retain her seat.

This effort and the tenor of her remarks regarding Miller’s alleged zeal for the disenfranchisement of every Alaskan is ironical in light of the fact that Murkowski’s career in the Senate did not begin after a popular election, the method she so fervently defends. In fact, Murkowski became a senator after her father, Frank Murkowski, then governor of Alaska, appointed her to the office in 2002.

There are other, more prominent elected representatives who have proposed the repeal of the 17th Amendment and a re-enfranchisement of the state legislatures.

On April 28, 2004, Georgia Senator Zell Miller stood in the well of the Senate and introduced Senate Joint Resolution 35, a bill to repeal the 17th Amendment to the Constitution. Senator Miller’s remarks accompanying the introduction of the bill are worthy of restatement:

> The 17th amendment was the death of the careful balance between State and Federal Government. As designed by that brilliant and very practical group of Founding Fathers, the two governments would be in competition with each other and neither could abuse or threaten the other. The election of Senators by the State legislatures was the linchpin that guaranteed the interests of the States would be protected.

Today state governments have to stand in line because they are just another one of the many special interests that try to sget enators to listen to them, and they are at an extreme disadvantage because they have no PAC.

You know what the great historian Edward Gibbons said of the decline of the Roman Empire. I quote: ‘‘The fine theory of a republic insensibly vanished.’’

That is exactly what happened in 1913 when the state legislatures, except for Utah and Delaware, rushed pell-mell to ratify the popular 17th Amendment and, by doing so, slashed their own throats and destroyed federalism forever. It was a victory for special-interest tyranny and a blow to the power of state governments that would cripple them forever.

Instead of senators who thoughtfully make up their own minds as they did during the Senate’s greatest era of Clay, Webster, and Calhoun, we now have too many senators who are mere cat’s-paws for the special interests. It is the Senate’s sorriest of times in its long, checkered, and once glorious history.

Having now jumped off the Golden Gate Bridge of political reality, before I hit the water and go splat, I have introduced a bill that would repeal the 17th amendment. I use the word ‘‘would,’’ not ‘‘will,’’ because I know it doesn’t stand a chance of getting even a single cosponsor, much less a single vote beyond my own.

Abraham Lincoln, as a young man, made a speech in Springfield, IL, in which he called our founding principles ‘‘a fortress of strength.’’ Then he went on to warn, and again I quote, that they ‘‘would grow more and more dim by the silent artillery of time.’’

The guns in the battle for the salvation of our Republic may have been silenced by the enemies of

freedom and constitutional good government, but it wasn't always so. We may read in the pages of the early years of our nation of the vigorous defense of America's first principles.

Edmund Randolph, governor of Virginia and representative of that state at the Constitutional Convention, said that the object of the particular mode of electing senators was to "control the democratic branch." Recognizing the terrors historically accompanying any government with even a slight tincture of democracy, Randolph admonished that "a firmness and independence may be the more necessary in this branch, as it ought to guard the Constitution against encroachments of the Executive who will be apt to form combinations with the demagogues of the popular branch."

James Madison, known appropriately as the Father of the Constitution, said that "the use of the Senate is to consist in its proceeding with more coolness, with more system, and more wisdom than the popular branch" and to "protect the people against the transient impressions in which they themselves might be led."

During the debates on the matter in the Convention, Luther Martin of Maryland said it plainly: "The Senate is to represent the states."

Finally, Roger Sherman, an influential delegate to the Constitutional Convention of 1787, wrote in a letter to John Adams: "The senators, being … dependent on [state legislatures] for reelection, will be vigilant in supporting their rights against infringement by the legislative or executive of the United States."

With Sherman's assessment in mind, is it reasonable to regard the abolition of this check on the legislative and executive branches of the central government as a purposeful tactic of the enemies of our Constitution? That is to say, with the "artillery" of state legislatures silenced by the 17th Amendment, the ability of the legislative and executive branches to collude in the usurpation of power would be significantly increased. Indeed, the "combination" of demagogues in the executive and legislative branches has formed and has thrived in the post-17th Amendment electoral environment.

Not all the opposition to repeal of the 17th Amendment can be ascribed to the machinations of plutocrats and their allies. In fact, if polled, it is likely that most Americans would declare a preference to preserve the post-17th Amendment representative scheme.

There must be provisional accommodation for the innocent ignorance of most Americans of the fundamental principles of federalism violated by the enactment of the 17th Amendment. After all, the prevention of the dissemination of such vital information has irrefutably been a primary aim of executive branch bureaucrats unlawfully afforded superintendence over the education of the nation's children.

The words of the Founders rehearsed above are a solid foundation upon which to build our understanding of the miracle that is our Constitution and its structure. Onto that foundation we should inculcate our children with an awe and appreciation for the remarkable and inimitable plans drawn by our Founders. We must teach them that these men spent countless hours in the laboratory of self-government working out the most stable composition of a republican and federal system of government.

The specific ingredients in the American Experiment were very carefully chosen and precisely measured by the political scientists that took the lead in founding our Republic. The concoction they produced proved both stable and potent. Students of this grand endeavor must be warned that fiddling with that formula, especially by those not as well versed in the history of the disastrous outcomes of other similar experiments by statesmen of the past, will have predictable and pernicious results.

So, what of this charge of wanting to disenfranchise the voters of Alaska? Would a return to the original, pre-17th Amendment construction of the Constitution deny citizens of a state the right to elect their representatives? Yes and no.

The 17th Amendment to the U.S. Constitution was ratified in 1913 and reads in relevant part: "The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof." As set forth in the original text of Article I, senators were to be "chosen by the Legislature" of each state. Inarguably, then, the 17th Amendment stripped the state legislatures of the responsibility of electing senators to the national government and placed it in the hands of the people. It should be recalled that the American legislative branch was not designed as a parliament of representatives of the people, rather as a congress — a bicameral assembly of representatives of the people and representatives of the sovereign states. This amalgamation of the two authorities whose measured cession of sovereignty created the national government meant that the national government could not impose any new law on the people or the states without the consent of *both the people's and the states' representatives* in the bicameral legislature.

That "the people" are the ultimate sovereign in the United States is not to be seriously debated. The people of all lands are "endowed by their Creator" with the right of self-government, a right alienable only according to the constitutional expression of their will and pleasure to do so. Furthermore, as governments are the creation of men, governments are endowed only with those specific and very limited powers ceded to them by those whose sovereign will gave them life — the people.

In the case of the Senate, however, it was not "the people's" interests that were meant to be advocated. That role, the role of representing the manifest will of the people, was given to the House of Representatives. It is aphoristic to say that the Framers of the Constitution of the United States created a national government of separated powers and checks and balances. While at once establishing a dynamic and robust central authority, the Founding Fathers in their wisdom tempered the natural tendency of such a government to accumulate authority by relying upon the equally sovereign states and the retardant effect they would have upon this tendency of consolidated governments to grow unwieldy and tyrannical.

To that end, on Thursday, June 7, 1787, the delegates to the Constitutional Convention in Philadelphia voted unanimously to place the election of the members of the national Senate in the seasoned and popularly elected representatives in the various state legislatures. The river of representation of the people was to be distilled through several layers of elected representation (the definition of federalism). The people were to be represented in the new Senate as citizens of the states. Thus, removed as it was by degrees from the heat and mercurial temperament of the momentary passions of the people, said Edmund Randolph, the Senate would act as a check against the "turbulence and follies of democracy."

Alas, as of April 8, 1913, that check has been abolished and the nation was pushed closer toward falling into one of the innumerable chasms of democracy. The Senate no longer reflects the political philosophy of our Founding Fathers that the states were best suited to respond to the legitimate needs of their citizens. The interests of the "United States" have been sacrificed on the altar of popular democracy. Sadly, our Founders knew that all the republics of history died on that altar and they, through the mechanism of federalism and states' rights, sought to obviate this end for the republic they were forming.

While news of a high-profile senatorial candidate speaking out publicly in favor of the repeal of the 17th Amendment is attention grabbing, the prosaic defense of the Constitution falls to those with pens

consecrated to the abolition of tyranny and the restoration of the full panoply of republican institutions as set forth by the Constitution.

For now, we see how the repeal of one amendment (the 17th) and the re-establishing of another (the 10th), our Republic can be put back on the path that leads to smaller government and constitutional order.

To that end, constitutionalists welcome the aid of Joe Miller and others to the cause of freedom. Those already committed to this endeavor have formed a two-flanked attack against the monster of democracy and its predictable progeny — mob rule: from one side, the restoration of the rights of states to govern themselves as expressed by the 10th Amendment, and from the other, the repeal of the 17th Amendment that robbed the states of the rightful representation of their particular interests in the halls of Congress. The 17th Amendment has deprived our Republic of a crucial counterbalance to the aggressive accumulation of power that comes from the destructive devices that are the means and ends of the combination of demagogues that for decades has populated the executive and legislative branches.