

MINUTES FOR MARCH 5, 2012
COLUMBUS, KANSAS, CHEROKEE COUNTY
OFFICE OF THE COUNTY CLERK
CRYSTAL L. GATEWOOD

The Cherokee County Commissioners met March 5, 2012. Commissioners Collins, Garner, and Hilderbrand were present. The Pledge of Allegiance was said by all present. Commissioner Hilderbrand made a motion to approve the commission amended minutes for February 28, 2012; his motion was seconded by Commissioner Collins with Commissioners Garner, Collins, and Hilderbrand voting in favor. Commissioners Garner, Collins, Hilderbrand, and County Clerk Crystal Gatewood signed off on the approved meeting minutes. During the Office Heads Meeting, Commissioner Hilderbrand handed out an e-mail he had received from The Joplin Regional Planning Commission regarding a survey on input for economic development for the area and he asked the Department Heads if they would respond, saying the last day to respond is March 31, 2012.

EXECUTIVE SESSIONS CALLED BY COMMISSION

Executive Session was requested by Sheriff David Groves for Non/Elected Personnel for five minutes. Commissioner Collins made a motion to go into **Executive Session** for five minutes for **Non/Elected Personnel** with himself, Commissioners Garner and Hilderbrand, Sheriff David Groves, and Deana Randall; his motion was seconded by Commissioner Garner with Commissioners Collins, Garner, and Hilderbrand voting in favor. They went in at 10:35 AM and returned at 10:40 AM.

Executive Session was requested by County Counselor Kevin Cure for fifteen minutes for Attorney/Client Privilege regarding pending litigation. Commissioner Hilderbrand made a motion to go into **Executive Session** for fifteen minutes for **Attorney/Client Privilege regarding pending litigation** with himself, Commissioners Garner and Collins, and County Counselor Cure; his motion was seconded by Commissioner Garner with Commissioners Collins, Hilderbrand, and Garner voting in favor. They went in at 12:17 PM and returned at 12:32 PM.

MOTIONS MADE BY COMMISSION

Commissioner Hilderbrand made a motion to approve and pass **Resolution #02-2012 in regards to a resolution condemning Section 1021 of the 2012 National Defense Act...**; his motion was seconded by Commissioner Collins with Commissioners Collins, Garner and Hilderbrand voting in favor. Commissioners Hilderbrand, Collins and Garner, and County Clerk Gatewood signed off on the resolution. **A copy of Resolution 02-2012 is attached to these minutes.**

RH

Commissioner Collins made a motion to determine that the petition brought by John and Sunny Pierce regarding property access is legal and binding and the bond must be enough to cover the surveyors, other salaries, and the time involved before the board of commissioners decides an outcome, the hourly rate for three disinterested viewers will be \$10.00 an hour; his motion was seconded by Commissioner Garner with Commissioners Hilderbrand, Collins and Garner voting in favor.

APPOINTED OFFICE HEADS

Jason Allison of Emergency Preparedness gave an update on the storm sirens, the installation and placement of the sirens. The storm siren from Treece, Kansas will be placed near the Downstream Casino area instead of the Melrose area but one of the new sirens will be put in place in the Lyon/Lyon Township area. Jason also said Wayne Elliott of 911 Mapping is trying to develop an area map of storm shelters and has forms available to the public in the courthouse offices, the Health Department, and on the Sheriff's and the County Clerk's Website regarding the Cherokee County Emergency Management Citizen Storm Shelter Accountability Project in Cherokee County. The commission asked Nancy Herrenbruck to look into options for an offsite back-up system for the courthouse server in case something happens to the courthouse.

Betha Elliott of the Cherokee County Health Department reported that the NIXLE System is getting set up in her office. The system, when completed, will send warning text messages to area citizens regarding health related issues. Area citizens can sign up for this system by contacting the Cherokee County Health Department. The Health Department is working on grant opportunities to be ready to submit by July 1, 2012 (LEPP Funding). She has had a good response from area city emergency responders to get vaccines.

Wayne Elliott of 911 Mapping reported his office has sold \$143.00 in map purchases. He is also working on the Citizen Storm Shelter Accountability Project with Jason Allison.

Nancy Herrenbruck, County Appraiser, reported her office is finishing up the 2012 final reviews for the county and not as much new construction this year as last year. Her office is struggling with Orion but that should improve when the new server is up and running. She discussed the Commercial Machinery & Equipment Tax Exemption tax with the commission.

Ralph Houser, courthouse maintenance, reported everything is going well.

Deana Randall of Human Resources reported everything was going well and the mid-month cut off is March 7, 2012 at noon.

ELECTED OFFICIALS

Treasurer Juanita Hodgson reported that the server is ordered and should be here in the next two or three weeks. The county has collected \$305,344.30 in taxes since the next upcoming tax sale was mentioned.

RH

Register of Deeds Barbara Bilke reported that the 2012 January and February paperwork has increased in the Register of Deeds Office.

County Clerk Gatewood reported that the Clerk's Office is working on Homestead and Food Sales Tax refunds for area citizens, registering watercraft, issuing fishing licenses, processing deeds and getting them on the tax roll, and working on county budget reports. On the election side they are processing NVRA reports from the state and working on the April 3, 2012 city elections being held in Columbus, Baxter Springs, and West Mineral. The last day to register to vote in the city elections is March 13, 2012. The office begins mailing advance ballots out to those that have requested them on March 14, 2012. Early in-house voting in the Clerk's Office begins on March 14, 2012 and it will end April 2, 2012 at noon. The office is also working on the USD 508 Special Election for the issuing of General Obligation Bonds for building renovations and improvements within the USD 508 school district.

Sheriff David Groves reported that his department has been busy. The current number of inmates is at 58. The department is scheduling a mock accident at Columbus High School on March 16, 2012 and another at the Baxter Springs High School right before the prom. Deputy Gary Allen will be retiring after 29 years of service with the county. They are working with the US Marshall's Office on an issue. Two upcoming trials at the courthouse are scheduled for the week of March 13th - 19th, 2012 and the latter on March 27, 2012. The department is also having Willhott Training on Tuesday of this week and the training is being sponsored by the Kansas Attorney General's Office at no charge to the department.

OTHER BUSINESS

Road and Bridge Supervisor, Leonard Vanatta, and Gene Langerot updated the commission on general road, machinery, and county maintenance. The Weaver Bridge project is progressing along. The first part of April is still the schedule to begin asphaltting in the county.

John and Sunny Pierce brought a petition in regarding road access to their property and ask the commission for their help. Attorney's Darrel Shumake, Kevin Cure, Bob Tomassi were present for the discussion. The commission decided to wait for making a decision until the petition is certified and the bond is set.

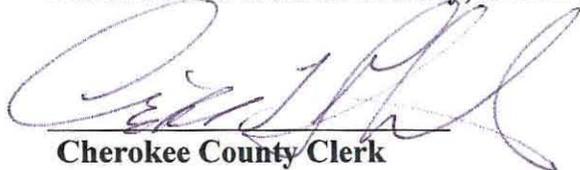
County Counselor Kevin Cure gave an update on the legal work he was working on for the commission and he discussed the following; Cereal Malt Beverage Sunday sales in the county - regarding this he explained the procedure and time frame to get it on the ballot for November 2012. The commission discussed re-districting the Cherokee County Commission Districts this year and Counselor Cure suggested the commission hold a hearing for public discussion on March 19, 2012. Commissioner Hilderbrand scheduled the hearing for the Commission Meeting on March 19, 2012 at 10:00 AM in the Cherokee County Commission Room and the public is invited to attend.

RH

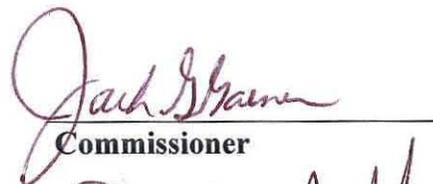
ADJOURNMENT

Commissioner Collins made a motion to adjourn at 12:46 PM; his motion was seconded by Commissioner Garner with Commissioners Garner, Collins, and Hilderbrand voting in favor. The next Cherokee County Commission meeting will be held March 12, 2012 at 9:00 AM in the Cherokee County Courthouse in Columbus, Kansas.

Resolved and ordered this day, March 12, 2012



Cherokee County Clerk



Commissioner



Commissioner



Commissioner

(Published in the official county newspaper on the 5th day of March, 2012)

RESOLUTION NO. 2 - 2012

A RESOLUTION Condemning Section 1021 of the 2012 National Defense Authorization Act;

A RESOLUTION Rendering it Unlawful for Cherokee County, Kansas, Officials and Employees to Cooperate With an Investigation and/or Detainment of United States Citizens and resident legal aliens by, or by in-part, the Armed Forces of the United States; and

A RESOLUTION Rendering it Unlawful for Individuals in the Armed Forces of the United States to Conduct Investigations or Detainments Within Cherokee County, Kansas, of United States Citizens and resident legal aliens,

BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF CHEROKEE COUNTY, KANSAS:

WHEREAS, the Congress of the United States passed the National Defense Authorization Act, 2011 P.L. 112-81, (“2012 NDAA”) for Fiscal Year 2012 on December 15, 2011;

WHEREAS, the President of the United States of America signed the 2012 NDAA into law on December 31, 2011;

WHEREAS, Section 1022 of the 2012 NDAA requires the Armed Forces of the United States to detain, pending disposition according to the Law of War, any person involved in, or whom provided substantial support to, terrorism or belligerent acts against the United States, and whom is a member of Al-Qaeda or an associated force;

WHEREAS, Section 1022 of the 2012 NDAA specifically excludes United States citizens, and lawful resident aliens for conduct occurring within the United States, from its mandatory detention provisions;

WHEREAS, Section 1021 of the 2012 NDAA purports to authorize, but does not require, the President of the United States to utilize the armed forces of the United States to detain persons the President suspects were part of, or substantially supported, al-Qaeda, the Taliban or associated forces;

WHEREAS, Section 1021 of the 2012 NDAA purports to authorize, but does not require, the President of the United States, through the Armed Forces of the United States, to dispose of such detained persons according to the Law of War, which may include but is not limited to: (1) indefinite detention without charge or trial until the end of hostilities authorized by the 2001 Authorization for Use of Military Force Against Terrorists, 2001 P.L. 107-40, (2) prosecution through a Military Commission, or (3) transfer to a foreign country or foreign entity.

WHEREAS, unlike Section 1022 of the 2012 NDAA, Section 1021 makes no specific exclusion for United States citizens and lawful resident aliens for conduct occurring within the United States;

WHEREAS, Section 1021 of the 2012 NDAA seeks to preserve existing law and authorities pertaining to the detention of United States citizens, lawful resident aliens of the United States, and any other person captured in the United States, but does not specify what such existing law or authorities are;

WHEREAS, the specific exclusion of application to United States citizens and lawful resident aliens contained in Section 1022 of the 2012 NDAA, and the absence of such exclusion in Section 1021 of the NDAA, strongly implies that the provisions of Section 1021 are intended to apply to United States citizens and lawful resident aliens, whether or not they are captured in the United States;

WHEREAS, the Office of the President of the United States, under both the administrations of George W. Bush and Barak H. Obama, has asserted the 2001 Authorization for the Use of Military Force Against Terrorists allows the Office of the President to indefinitely detain without charge United States Citizens and lawful resident aliens captured in the United States;

WHEREAS, the United States Supreme Court has not decided whether the 2001 Authorization for the Use of Military Force Against Terrorists allows the Office of the President to indefinitely detain without charge United States Citizens and lawful resident aliens captured in the United States;

WHEREAS, Section 1021 of the 2012 NDAA purports enlarge the scope of the those persons the Office of the President may indefinitely detain beyond those responsible for the September 11, 2001 terrorist attacks, and those who harbored them, as purportedly authorized by the 2001 Authorization for Use of Military Force Against Terrorists, to now include “[a] person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces;”

WHEREAS, United States Senator Carl Levin declared in colloquy on the floor of the United States Senate that the original 2012 NDAA provided that section 1021 (then section 1031 prior to final drafting) specifically would not apply to United States citizens, but that the Office of the President of the United States had requested that such restriction be removed from the 2012 NDAA;

WHEREAS, during debate within the Senate and before the passage of the 2012 NDAA, United States Senator [Mark Udall](#) introduced an amendment intended to forbid the indefinite detention of U.S. citizens, which was rejected by a vote of 38–60;

WHEREAS, United States Senator John McCain and United States Senator Lindsey Graham declared in colloquies on the floor of the United States Senate that Section 1021 of the 2012 NDAA authorized the indefinite detention of United States Citizens captured within the United States by the Armed Forces of the United States;

WHEREAS, United States Senator Lindsey Graham declared in colloquy on the floor of the United States Senate that the United States homeland is now part of “the battlefield;”

WHEREAS, the Office of President in issued a signing statement upon signing the NDAA into law that he will “not authorize the indefinite military detention without trial of American citizens” as is purportedly permitted by Section 1021 of the 2012 NDAA;

WHEREAS, the Office of President’s signing statement does not legally bind this administration or subsequent administrations;

WHEREAS, the Office of President's signing statement indicates that the President believes the Office of President possesses the authority to indefinitely detain United States Citizens pursuant to section 1021 of the 2012 NDAA;

WHEREAS, Retired four star marine generals Charles C. Krulak and Joseph P. Hoar stated publicly that as a result of the indefinite detention provision of the 2012 NDAA that "due process would be a thing of the past," and "this provision would expand the battlefield to include the United States";

WHEREAS, Retired four star marine generals Charles C. Krulak and Joseph P. Hoar also stated publicly that the mandate of military custody for most terrorism suspects "would violate not only the spirit of the post-reconstruction act limiting the use of the armed forces for domestic law enforcement but also our trust with service members, who enlist believing that they will never be asked to turn their weapons on fellow Americans";

WHEREAS, Policing the citizenry of the United States of America by the Armed Forces of the United States, as purportedly authorized by the 2012 NDAA, overturns the *Posse Comitatus* doctrine and is repugnant to a free society;

WHEREAS, Section 1021 of the 2012 NDAA as it purports to authorize, 1) detainment of United States Citizens and legal resident aliens captured within the United States of America without charge, 2) military tribunals for United States Citizens and legal resident aliens captured within the United States of America, and 3) the transfer of United States Citizens and legal resident aliens captured within the United States of America to foreign jurisdictions, is violative of the following rights enshrined in the Constitution of the United States of America;

- Article I Section 9, Clause 2's right to seek Writ of *Habeas Corpus*;
- Article III Section 3's requirement that treason must be proven by the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.
- The First Amendment's right to petition the Government for a redress of grievances;

- The Fourth Amendment's right to be free from unreasonable searches and seizures;
- The Fifth Amendment's right to be free from charge for an infamous or capitol crime until presentment or indictment by a Grand Jury;
- The Fifth Amendment's right to be free from deprivation of life, liberty, or property, without Due Process of law;
- The Sixth Amendment's right in criminal prosecutions to enjoy a speedy trial by an impartial jury in the State and District where the crime shall have been committed;
- The Sixth Amendment's right to be informed of the nature and cause of the accusation;
- The Sixth Amendment's right confront witnesses;
- The Sixth Amendment's right to Counsel;
- The Eighth Amendment's right to be free from excessive bail and fines, and cruel and unusual punishment;
- The Fourteenth Amendment's right to be free from deprivation of life, liberty, or property, without Due Process of law;

WHEREAS, Section 1021 of the 2012 NDAA as it purports to authorize, 1) detainment of United States Citizens and legal resident aliens captured within the United States of America without charge or trial, 2) military tribunals for United States Citizens and legal resident aliens captured within the United States of America, and 3) the transfer of United States Citizens and legal resident aliens captured within the United States of America to foreign jurisdictions, is repugnant to the rights enshrined in the Kansas Constitution.

WHEREAS, this Board of County Commissioners of Cherokee County, Kansas, opposes any and all rules, laws, regulations, bill language or executive orders, which amount to an overreach of the federal government and which effectively take away civil liberties;

WHEREAS, it is indisputable that the threat of terrorism is real, and that the full force of appropriate and constitutional law must be used to defeat this threat; however, winning the war against terror cannot come at the great expense of mitigating basic, fundamental, constitutional rights;

WHEREAS, undermining our own Constitutional rights serves only to concede to the terrorists' demands of changing the fabric of what made the United States of America a country of freedom, liberty and opportunity.

NOW BE IT RESOLVED THAT, the Board of County Commissioners of Cherokee County, Kansas, condemns in no uncertain terms Section 1021 of the 2012 NDAA as it purports to 1) repeal *Posse Comitatus* and authorize the President of the United States to utilize the Armed Forces of the United States to police United States citizens and lawful resident aliens within the United States of America, 2) indefinitely detain United States citizens and lawful resident aliens captured within the United States of America without charge until the end of hostilities authorized by the 2001 Authorization for Use of Military Force, 3) subject American Citizens and lawful resident aliens captured within the United States of America to military tribunals, and 4) transfer American Citizens and lawful resident aliens captured within the United States of America to a foreign country or foreign entity;

NOW THEREFORE,

1. No Cherokee County, Kansas, official or employee, acting in her or his capacity as such an official or employee, or a person contracting with Cherokee County, Kansas, or employees of a corporation contracting with the Cherokee County, Kansas, shall knowingly cooperate with an investigation and/or detainment of a United States citizen or lawful resident alien located within the United States America by, or by in-part, the Armed Force of the United States of America, excepting those of 1) the United States Coast Guard when it is not operating as a service in the Navy, 2) National Guard units and State Defense Forces while under the authority of the governor of the State of Kansas, and 3) excepting internal investigations and detainments by the Armed Forces of the United States of America of active duty members of the Armed Forces of the United States of America;

2. No member of the Armed Forces of the United States of America, nor any person acting directly with, or on behalf of, the Armed Forces of the United States of America, shall conduct investigations and/or detainments within Cherokee County, Kansas, of United States citizens and lawful resident aliens; excepting investigations or detainments by 1) the United States Coast Guard when it is not operating as a service in the Navy, 1) National Guard units and State Defense Forces while under the authority of

the governor of the State of Kansas, and 3) Internal investigations and detainments by the Armed Forces of the United States of America of active duty members of the Armed Forces of the United States of America,

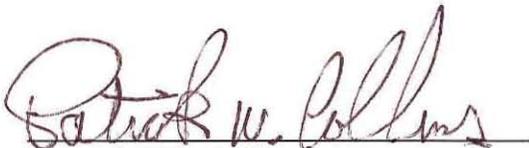
3. Any violation of the preceding sections #1 or #2 immediately above shall be punishable a fine not to exceed \$500.00 and/or 30 days in jail.

4. The Sheriff of Cherokee County, Kansas, is hereby directed to report to the Board of County Commissioners of Cherokee County, Kansas, any attempt by agencies or agents of the United States Federal Government to secure the implementation of Sections 1021 and 1022 of the National Defense Authorization Act of 2012 through the operations of that or any other state department.

5. If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this resolution, or the application thereof to any circumstances, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this resolution.

6. This resolution shall take effect and be in full force from and after its passage and publication once in the official county newspaper.

Adopted this 5TH day of March, 2012, by the BOARD OF COMMISSIONERS OF CHEROKEE COUNTY, KANSAS.



Patrick W. Collins
County Commissioner



Richard J. Hilderbrand
County Commissioner



Jack G. Garner
County Commissioner

ATTEST:

A handwritten signature in blue ink, appearing to read 'Crystal Gatewood', is written over a horizontal line.

Crystal Gatewood
County Clerk of Cherokee County,
Kansas
Resolution No. 2 - 2012

Prepared by:
Kevin Cure, Attorney