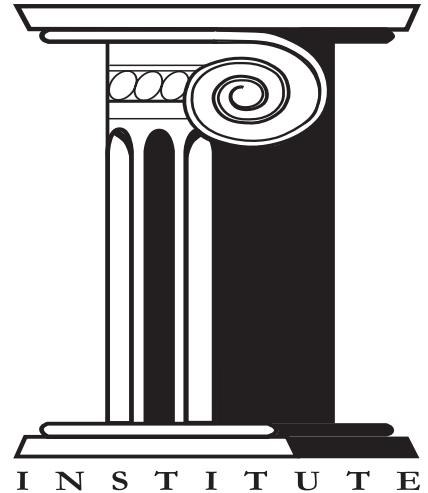


LIMITS



On Power and the Use of Coercion

Unprecedented Danger in One of the Proposed California Ballot Initiatives

by Paul M. Weyrich

A movement is underway across the nation to change the way we elect the President. Since the bitterly contested election of 2000, in which Vice President Albert A. Gore Jr. won the popular vote but lost the election to President George W. Bush, Democrats have been anxious to modify the way in which the President is elected. For many the goal is either to eradicate the Electoral College or make its votes insignificant to the outcome of the election.

Recently, Republicans and Democrats in California have proposed two separate ballot initiatives for the 2008 election that would alter the way California's electoral votes are distributed in the Electoral College. The Republican

proposal would replace the winner-take-all system with one in which the electoral votes would be awarded by how Congressional districts vote.

Meanwhile, Democrats have introduced "The National Popular Vote for President Act." This initiative would require States to award their electoral votes to whichever candidate wins the most actual votes (i.e., popular votes) nationally. It would take effect only if States representing a majority of the Electoral College votes agreed to the change. Because of California's population and influence, there is a concentrated effort to push the initiative through next year. A Democratic consultant told THE LOS ANGELES TIMES that "a lot of people who lived through the 2000 election... feel pretty strongly that we ought to have a national popular

vote. The Electoral College is a vestige of another time period." The presumption behind this statement is that if history conflicts with one's desire for power, abolish history and retain power at all costs.

But the Founders created the Electoral College because they believed it to be most prudent to protect the interests of a diverse nation. They were wary of a central government with too much power, so they established a federal system of government that limited the responsibilities of the national government and left all others to the States.

If this initiative in California and others like it across the country were to succeed our electoral system would change in two ways.

First, it would give undue influence to large urban areas at the expense of rural voters.

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What's New at PII?

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2007 Tax Issues on the Ballot

by John Hendrickson

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The Initiative & Referendum Institute at the University of Southern California reports that tax and bond issues will dominate the propositions that voters in several states will vote on in November. "Most of these measures involve tax cuts or tax relief."¹ Some of the measures include the following:

- "New Jersey voters will decide whether to redirect 1% of sales tax revenue to property tax relief.
- Texas voters will decide whether to limit the appraised value of homes for property tax purposes, whether to exempt vehicles used for businesses from property taxes, and whether to provide property tax relief to disabled veterans.
- Washington voters will consider an initiative that expands the state's requirement for a 2/3 vote by the legislature on tax increases, requires legislative approval of all fee increases by state agencies, and requires an advisory vote on tax increases that do not come before the voters on a binding referendum.
- Oregon voters will decide

whether to increase the cigarette taxes by 84.5 cent a pack as well as increase taxes on other tobacco products in order to fund health care for uninsured children."²

Other ballot propositions include bonds for capital improvement projects, land use and property rights issues, and school vouchers, among others.³ Utah, which became the first state to adopt near universal school choice through voucher reform based on the ideas of Milton Friedman, will have to decide whether or not to accept or repeal this needed education reform measure. Utah's proposition on school vouchers, if defeated by the voters, will be a devastating loss for the State's educational system.

The issue over protecting traditional marriage through state constitutional amendment is quiet during this off-year election. The Heritage Foundation's "Marriage in the 50 States," website, which keeps tracks of state marriage amendments and legislation

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First Principles: Who am I, and why am I here? Just exactly who do you think you are?

by Trent England

Your answer--your idea of what it means to be human-- is part of the foundation of your worldview.

How a person answers that question also tends to define his or her ideas about government. "But what is government itself," wrote James Madison in Federalist No. 51, "but the greatest of all reflections on human nature?"

Thomas Sowell, writing more recently, divides views of human nature into two camps: constrained and unconstrained. The first recognizes inherent and consistent limits present within mankind. The unconstrained view sees human nature as changeable, and thus, improvable.

Bonsai trees, those tiny old and dramatic-looking plants, fascinate me. A successful Bonsai grower must have a vision and patience as, with decades of planning and precise root and branch pruning, he manipulates the tree into a living work of art.

Those with the unconstrained concept of human nature believe that people are like bonsai trees. They see groups of people that way, too. With enough vision and a sharp enough pruning knife, those with the uncon-

strained view are sure that human nature can be changed and improved.

Of course, that improvement cannot come from within. A bonsai tree does not shape itself or become a masterpiece on its own. The unconstrained view looks to government for the planning and expertise -- and force -- necessary to produce better human beings, and thus, better societies and a better world.

This is an attractive, even seductive, vision. It appears to elevate all mankind. It does indeed elevate a class of planners and experts who are tasked with designing and implementing our brave new world.

Up against such a dramatic, "progressive" vision, the alternative sometimes seems pessimistic. The constrained view dismisses the idea of systematically improving human nature. Instead, it finds human nature possessed of certain indelible elements, both for better and worse.

Recent research in psychology lends credence to this position. Over the last decade, Dr. Donald Brown of UC Santa Barbara has produced a growing list of "human universal" psychological traits that he believes are common to all people regardless of cultural and historical divides.

According to the constrained view, the lessons of history may be our best guide because the desires and temptations played out in the tales of our ancestors will be the same as those that play on our descendants in ages yet unknown. This is what America's Founders believed and what sent men like Madison searching across all of human history for examples of good and, more often, bad government.

The belief in hardwired human limits also guided America's Founders to look for trade-offs and balances in creating a government, rather than tilting after perfect solutions. Following the observation quoted above, Madison wrote:

"If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."

That was the task of the Framers of our Constitution. In the *Federalist*, Madison, along with Alexander Hamilton and John Jay, argued that the delegates achieved that objective and produced, not the perfect government, but a system well

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2007 Tax Issues

by John Hendrickson
(continued from page 2)

reports that in 2008 both California and Florida will have amendments, while in 2007 Minnesota has legislation pending.⁴ State marriage amendments are geared to protecting and upholding traditional marriage based on one man and one woman.⁵ It is still unclear whether Iowa's marriage amendment will be able to clear the Democrat-controlled Legislature.

The above mentioned tax issues will be a sign as to which direction individual states will be headed in terms of economic liberty. Most interesting will be Washington's Initiative 960, which deals with votes on tax increases (see above listing for complete description).⁶ Requiring a Legislative supermajority support for tax increases is an essential protection for taxpayers, and Initiative 960 "broadens" this as well as provides additional protection for taxpayers.⁷

Nationally, as well as in several States, a resurgent effort is gaining ground by liberals and progressives to return to more government-run solutions. President Franklin Roosevelt's Blue Eagle may be resurrected like a phoenix from the ashes

of the New Deal. It is therefore important for taxpayers, through a grassroots effort, to protect their economic and social liberties through the Taxpayer Bill of Rights or TABOR measures as some states have already adopted. Taxpayers in Iowa should push their Legislators to enact a TABOR measure.⁸ In 1924, Calvin Coolidge, who truly understood the meaning of constitutional government, stated that "the power to tax is the power to destroy," and he further stated that any tax "upon the people must be carefully guarded."⁹

Every taxpayer will have to make the prudent decision whether to follow the tradition of Coolidge or Roosevelt.

(Endnotes)

¹"Election 2007 Preview," Initiative & Referendum Institute, No. 1, October 2007, p. 1.

²Ibid.

³Ibid.

⁴"Marriage in the 50 States," The Heritage Foundation, <<http://www.heritage.org/Research/Family/Marriage50/>> (October 29, 2007).

⁵For more on the Federal Marriage Amendment read INSTITUTE BRIEF: The Federal Marriage Amendment: A Needed Protection, October 2006. <www.limitedgovernment.org>

⁶"Election 2007 Preview."

⁷Ibid.

⁸For more on TABOR read LIMITS: Is a New Tax Revolt

on the Horizon? The Case for TABOR, September 2007, <www.limitedgovernment.org>

⁹Peter Hannaford (ed), *The Quotable Coolidge: Sensible Words for a New Century*, Images from the Past, Bennington, Vermont, 2001, pp. 151-152.

John Hendrickson is a Research Analyst with Public Interest Institute

For more information on the Federal Marriage Amendment, please read our October 2006 INSTITUTE BRIEF: *The Federal Marriage Amendment: A Needed Protection*

For more information on TABOR, please read: *Is a New Tax Revolt on the Horizon? The Case for TABOR*, in the September 2007 issue of *LIMITS*

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Remember to look for the December 2007 Question of the Quarter in *LIMITS!*

Make sure to look for other Questions of the Quarter in IOWA ECONOMIC SCORECARD and FACTS & OPINIONS

We look forward to reading your answers!

Unprecedented Danger
by Paul Weyrich
(Continued from page 1)

Cities like New York City, San Francisco, Chicago, and Los Angeles would have far more importance in a popular vote than they do in the Electoral College. Campaigning in Iowa and South Carolina, which currently attracts much attention, would cease because voters in those States would be of little significance to the Presidential election. Instead of representing a diverse group of Americans from across the nation, the President would represent those in large cities.

Second, it would have the potential to contradict the votes of those within the State itself. If a candidate were to win the popular vote nationwide but Californians had voted for another candidate, the votes of Californians would not go to the one for whom they had voted but to the one for whom citizens of other States had voted. So it would be possible for the voters of populous states like New York, Illinois, Texas and Florida to decide which candidate would receive California's electoral votes.

While it theoretically is possible in the Electoral College to win the Presidential election by winning the eleven most

populous States [California (55 votes), Texas (34), New York (31), Florida (27), Illinois (21), Pennsylvania (21), Ohio (20), Michigan (17), Georgia (15), New Jersey (15), and North Carolina (15)] and disregard the rest of the country, no President has ever come close to achieving such a feat. The States themselves, though populous, are too diverse. Instead, candidates must campaign across the country, maintaining the Founders' original intent that Presidential candidates seek popular support over a geographical majority of the country, not in isolated urban areas.

The Founding Fathers were highly suspicious of unregulated majorities. Hence, they deliberately created the Electoral College to constrain the will of the majority and to ensure that the votes of those in less populous States were heeded. Californians should be wary of this latest attempt to enfeeble the Electoral College. Power is seductive. James Madison perceptively warned against unrestrained majority rule in FEDERALIST #10. "When a majority is included in a faction, the form of popular government enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens," he wrote. "Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such

coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression..." This is great wisdom that, in spite of its age, is applicable today.

Paul M. Weyrich is Chairman and CEO of the Free Congress Foundation. This article appeared on the Free Congress Foundation website, www.freecongress.org, on September 5, 2007, and is reprinted with permission.

For more information
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INSTITUTE BRIEF:

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Keep It: Why Substituting
more Democracy
at the Expense of
the Electoral College is a
Bad Idea*

The staff at Public Interest
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What Would Happen if Congress Passed H.R. 1359?

by John Hendrickson

Rep. John Shadegg (R-AZ) has introduced House Resolution (H.R.) 1359. Most certainly H.R. 1359 or the “Enumerated Powers Act” will not get the coverage or debate that it deserves. The language of the bill is straightforward. The language of H.R. 1359 reads: “To require Congress to specify the source of authority under the United States Constitution for the enactment of laws, and for other purposes.”¹ In addition the language reads: “Each Act of Congress shall contain a concise and definite statement of the constitutional authority relied upon for the enactment of each portion of the Act.”²

The “Enumerated Powers Act” seems unnecessary, because in Article 1, Section 8, of the Constitution the enumerated powers of Congress are spelled out correctly and clearly. American political history has shown, even shortly after ratification of the Constitution, that not everyone agreed to the literal interpretation of the Constitution. Disagreement arises over the interpretation of the “General Welfare,” “Necessary and Proper,” and “Commerce” clauses of Article 1, Section 8. This was just as true during President George Washington’s administration as it is for President George W. Bush’s administration.

Alexander Hamilton, the nation’s first Secretary of the

Treasury, held a different view than both James Madison and Thomas Jefferson in regard to Article 1, Section 8. One of the first domestic policy controversies in President Washington’s administration arose over the creation of the first National Bank, which was championed by Hamilton.

Hamilton in his “Opinion on the Constitutionality of a National Bank,” wrote: “Now it appears to the Secretary of the Treasury, that this general principle is inherent in the very definition of Government and essential to every step of progress to be made by that of the United States; namely — that every power vested in a Government in its nature sovereign, and includes by force of the term, a right to employ all the means requisite, and fairly applicable to the attainment of the ends of such power; and which are not precluded by restrictions and exceptions specified in the constitution; or not immoral, or not contrary to the essential ends of political society.”³

Hamilton argued that although Article I, Section 8 did not literally give Congress the authority to charter a National Bank, Congress did have implied, or expanded enumerated powers, to create a National Bank, which was necessary for the economic health of the Republic. Hamilton’s argument was that the “means” justify the “ends.”

Madison opposed Hamilton’s broad interpretation of the Constitution. “The tendency of Hamilton’s construction, Madison argued, would be to destroy the meaning and effect of the principle of enumerated powers. If Congress were found to be able to spend money on any national purpose, then the federal government would soon find itself involved in regulating spheres of activity reserved to the states.”⁴

The debate between Hamilton, Madison, and Jefferson was never settled, but to some extent, Hamilton’s view is prevailing. During the 1920s the presidential administrations of both Warren G. Harding and Calvin Coolidge brought the nation back to the Madisonian tradition of limited government, but the conservative Republican ascendancy of the 1920s ended with the start of the Great Depression. The presidential election of 1932 then ushered in a new Democrat political realignment under Franklin Roosevelt and his New Deal.

The New Deal, which represented the second phase of progressivism, changed the nature of government. As Judge Robert H. Bork wrote in *The Tempting of America: The Political Seduction of the Law*: “The New Deal was an economic and governmental upheaval. It stood for a sudden and enormous centralization of power in Washington

over matters previously left to state governments or left in private hands, a centralization accomplished largely through the assumption of greatly expanded congressional powers to regulate commerce and lay taxes.”⁵

The “Enumerated Powers Act,” if passed, would provide a constitutional remedy, which already exists, to begin restoring constitutional limited government as was the original intent of the Founding Fathers. It is clear that the Founders believed in a central, yet limited government. Article 1 defines the powers and responsibilities of Congress, but the Founders also reserved powers to sovereign states. The Tenth Amendment states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”⁶

Under Federalism, the Founders wanted power to be dispersed between both the national government and the various State governments. States were not supposed to be administrative districts of the national government. In Federalist No. 45, Madison wrote: “The powers delegated by the proposed Constitution to the Federal Government, are few and defined. Those which are to remain in the State Governments are numerous and indefinite.”⁷ Madison also wrote that “the State Governments may be regarded as constituent and essential parts of the federal Government...”⁸

Walter E. Williams, an

economist at George Mason University, wrote a recent column on the “Enumerated Powers Act.” “Congressmen, openly refusing to live up to their oath of office, exhibit their deep contempt for our Constitution. The question I’ve not been able to answer satisfactorily is whether that contempt simply mirrors a similar contempt held by most of the American people,” wrote Dr. Williams.⁹

If the “Enumerated Powers Act” became law it would signify a major shift in our nation’s political culture. In addition, H.R. 1359 would move us back in the direction of Madison. H.R. 1359 reminds us how far we have gone away from the original intent of the Constitution, and that Congress actually needs to adopt into law a reminder to force itself to uphold Article 1, Section 8.

As Dr. Williams wrote: “I’m sure that if Founders such as Madison, Jefferson, or John Adams were campaigning for the 2008 presidential elections, expressing their vision of the federal government’s role, today’s Americans would run them out of town on a rail.”¹⁰ The same would hold true for some 20th century leaders such as Taft, Harding, or Coolidge.

“The Enumerated Powers Act” serves as a serious reminder of the need to return back to constitutional principles and for some, a sense of hope that principles, ideas, and truths are worth upholding and preserving.

(Endnotes)

¹H.R. 1359, “Enumerated Powers Act,” <<http://thomas.loc.gov/cgi-bin/query/C?c110:./temp/~C110TZvbGO>> (October 24, 2007).

²Ibid.

³Alexander Hamilton, *Writings, selected by Joanne B. Freeman*, The Library of America, New York, 2001, p. 613.

⁴Alex Kozinski and Steven A. Engel, “Recapturing Madison’s Constitution: Federalism without the Blank Check,” in John Samples (ed.), *James Madison and the Future of Limited Government*, CATO Institute, Washington, D.C., 2002, p. 20.

⁵Robert H. Bork, *The Tempting of America: The Political Seduction of the Law*, Simon & Schuster, New York, 1990, p. 53.

⁶The Tenth Amendment, The United States Constitution.

⁷James Madison, “The Federalist No. 45,” in Gary Wills (ed.), *The Federalist Papers by Alexander Hamilton, James Madison, and John Jay*, Bantam Books, New York, 1982, p. 236.

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⁹Walter E. Williams, “Congressional constitutional contempt,” *The Washington Times*, October 24, 2007, <<http://www.washingtontimes.com/apps/pbcs.dll/article?AID=/20071024/COMMENTARY/110240014/.htm>>

¹⁰Ibid.

John Hendrickson is a Research Analyst with Public Interest Institute.

**Public Interest Institute
at Iowa Wesleyan College
600 North Jackson Street
Mt. Pleasant, IA 52641**

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**First Principles
by Trent England
(continued from page 3)**

suited for the good government of a free people.

Here are the two great visions, man as the bonsai tree, in need of skilled experts to force him to greatness, or man simply as man -- yesterday, today, and tomorrow.

The first vision, call it unconstrained or progressive or liberal, appears to elevate man, but it elevates a few men much higher. It lifts most of mankind up only into chains. The latter vision, constrained or conservative or individualist, looks relatively pessimistic at first glance. Yet this is the idea of

man that results in the protection of individual rights and human dignity.

Take a look at Federalist No. 51 (on the internet at www.constitution.org/fed/federa51.htm or in countless print editions). Then look at our Constitution. How does the system created over two centuries ago address the issues discussed by Madison in his essay? How has our Constitution been changed, by direct amendment or court fiat or practice, to undermine those structural protections? And, most importantly, what is your view of human nature, and how does it inform your idea of the proper role of government?

Trent England is the Director of Evergreen Freedom Foundation's Citizen Action Network.

This article appeared in the August 2007 edition of Living Liberty, a publication of the Evergreen Freedom Foundation and it is reprinted with permission.

LIMITS

Question of the Quarter:

Should the Electoral College be abolished and replaced with a direct national popular vote?

Send your thoughts on this issue to us at public.interest.institute@limitedgovernment.org

We may publish some of your ideas in the March 2008 issue of LIMITS.