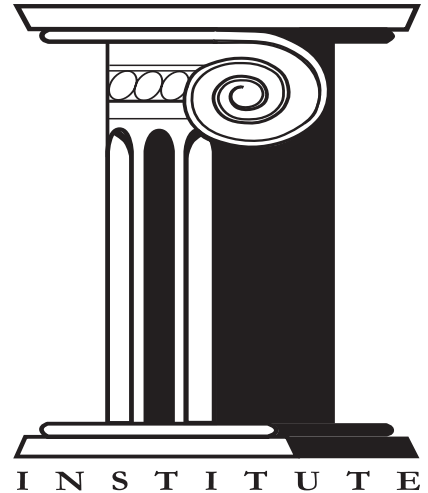


LIMITS



On Power and the Use of Coercion

The 2010 Elections: A Return to Conservatism?

by John Hendrickson

The November 2010 midterm election was a historic event at both the state and national level. With the economy, government spending, and health care being the leading issues, voters, especially led by the growing Tea Party movement, voted to reject the liberalism of President Barack Obama and the Democrat-controlled Congress in favor of electing conservatives who campaigned on not only stopping and repealing the current agenda, but also implementing policies rooted in constitutional limited government and free enterprise. This election is similar to other historic midterm elections such as 1938, 1946, and 1994 when

voters sent a clear message in their preference for a return to a more constitutional government. In addition, a sampling of the major ballot initiatives across the nation reflects the conservative direction the voters preferred and taxpayers will benefit from some of the ballot initiatives that were either passed or rejected. The 2010 elections will offer policymakers an opportunity to push for limited-government principles. It is essential for both state and national policymakers to move in a more conservative direction to solve the economic and fiscal challenges that confront the nation at large.

In addition to the Republicans taking a majority in the United States House of Representatives and gaining additional members in the Senate, the states also saw a political shift in a more conservative direction. The Republicans captured at least

680 legislative seats across the nation and 29 states have GOP affiliated Governors. As *The Wall Street Journal* recently stated this will give “Republicans a tremendous opening — obligation — to show they can tackle the fiscal, tax and pension problems that the departing politicians of both parties have failed to address.”¹ Several Governors such as Chris Christie of New Jersey, Tim Pawlenty of Minnesota, among others, are already demonstrating a commitment to limited-government and free-market policies.

In regard to state ballot issues, “voters generally rejected tax increases, often embraced tax limits, and overwhelmingly approved government accountability measures across the United States.”² The

continued on page 2

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LIMITS

December 2010
Volume 15, Number 4
Public Interest Institute
Dr. Don Racheter,
President

LIMITS is one of our quarterly membership newsletters, arriving in March, June, September, and December. It consists of short articles and essays on protection of human rights by limiting the powers of government.

LIMITS is published by Public Interest Institute at Iowa Wesleyan College, a nonpartisan, nonprofit, research and educational institute whose activities are supported by contributions from private individuals, corporations, companies, and foundations. The Institute does **not** accept government grants.

Contributions are tax-deductible under sections 501(c)(3) and 170 of the Internal Revenue Code.

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The 2010 Elections: A Return to Conservatism? by John Hendrickson

(continued from page 1)

Initiative & Referendum Institute in its report *Ballotwatch: Election Results 2010, Tea Party Spillover* reported that 159 ballot propositions appeared in the election.³ The National Taxpayers Union reported there were "a total of 93 statewide measures with an impact on taxpayers, including 43 tax-related measures, 13 bond spending issues, 30 government reform questions, and seven in direct response to Congressional action."⁴

Iowa voters had the chance to vote on two ballot questions. The first question dealt with a proposal to "divert three-eighths of sales tax increases to a natural resources and outdoor trust fund," which passed overwhelmingly. Voters rejected a measure that would have called for a constitutional convention.⁵ Supporters of a state constitutional convention were hoping a new convention could be called to not only enact tax and spending reforms, but also protect traditional marriage in Iowa in response to the recent state Supreme Court decision that legalized gay marriage. The passage of the constitutional amendment that will dedicate funding for conservation projects

may result in a sales tax increase for Iowans. Other ballot measures across the nation went in favor of taxpayers.

The state of Washington had one of the most controversial ballot measures in the nation. Initiative 1098 called for levying "an income tax on individuals making over \$200,000 and couples making over \$400,000."⁶ The measure was classified as "soak the rich" and was supported by both Bill Gates Sr. and Bill Gates Jr., and revenue generated would be dedicated to education.⁷ As economic historian Burton Folsom wrote recently, "voters saw the light (65-35) that a state cannot create prosperity by taking from its rich and giving to the poor (and the powerful lobbies)."⁸

In addition, voters in Washington voted to "repeal expansion of sales tax to candy, bottled water, and soft drinks," and in measure 1053 voters approved a requirement of "two-thirds majority vote or a popular vote to approve a tax increase."⁹ Overall the taxpayers in Washington State voiced their concern over excessive taxation and protected themselves by requiring a supermajority for tax increases.

Some additional tax-related measures across the nation that benefited taxpayers include:

- In Missouri voters approved "Proposition A to repeal the authority of cities to levy an earnings tax."

- Indiana passed Public Measure 1, which enacts "a constitutional cap on annual

property tax increases.”

- California voters approved Proposition 26, “which will make it harder to raise ‘stealth taxes’ in the form of fees by subjecting more of these levies to a two-thirds supermajority vote requirement.”

- Several states “heavily supported a variety of smaller tax exemptions and reductions for businesses, non-profit entities, and individuals such as military veterans.”¹⁰

Taxpayers also suffered some setbacks in the election. Some of the measures that were taxpayer friendly, but were rejected include:

- In Colorado voters turned down Proposition 101, which “would have reduced the state income tax and various motor vehicle fees and taxes.”

- Voters in Colorado also rejected Amendment 60 and Amendment 61. “Amendment 60 would have limited how property taxes are raised and cut mill levies in half by 2020,” while Amendment 61 “would have prohibited state borrowing and required voter approval for local government borrowing.”

- Massachusetts voters “rejected a rollback of the state sales tax from 6.25 percent to 3 percent.”

- Proposition 23 was rejected by voters in California, which was “a measure that sought to suspend a California-only ‘cap-and-trade’ bill that may lead to higher tax burdens and energy prices.”

- California voters also approved Proposition 25

“repealing the current 2/3 supermajority vote requirement to pass state budgets, making it easier for lawmakers to enact tax increases in budget debates.”¹¹

Several ballot measures promoting limited government or government reform were also approved by voters across the nation. Voters in “Arizona, South Carolina, South Dakota, and Utah adopted a measure called ‘Save Our Secret Ballot,’ which guarantees workers the right to a secret-ballot vote in union organizing elections.”¹² Oklahoma voters approved Question 750, which will strengthen initiative and referendum by reducing “the number of signatures required to initiate a constitutional change, a statutory change, or a referendum.”¹³ The National Taxpayers Union reported that voters approved about 17 measures that would support limited government “ranging from expansions of rainy day funds (Virginia voters approved a measure to increase their rainy day fund) to privatization initiatives.”¹⁴ Some defeats for limited government at the ballot box include “budget-balancing efforts in Arizona, the repeal of taxpayer funding for statewide political campaigns in Florida, and privatization of state liquor sales in Washington.”¹⁵

In response to the Patient Protection and Affordable Care Act (health-care reform), two states, Arizona and Oklahoma, followed in the footsteps of Missouri by approving the “Health Care Freedom Act,”

which not only repudiates the new health-care law, but “gives every person the right to decide whether or not to participate in a government-directed health care plan.”¹⁶ Colorado voters rejected a similar measure that would “forbid the state from requiring any person to participate in a private or public health plan.”¹⁷

In response to the election, Joseph Moser, a Policy Analyst with the National Taxpayers Union, wrote:

While the 2010 election was generally a success for fiscal conservatives, it was not without its surprises. On tax policy, there was relatively broad opposition to higher burdens and support for targeted reductions... Ballot measure contests in other years may have recorded bigger waves of victories for taxpayer activists. The late 1970s, early 1980s, and early 1990s saw passage of landmark laws that restricted the growth of future taxes through a variety of procedures. Still, 2010 represented a palpable change in fiscal tide, one that empowered tens of millions of Americans to decide for themselves just what government should (and shouldn't) do.¹⁸

Voters have certainly sent a

continued on page 6

Iowa, Proposition 8, and the Federal Marriage Amendment

by John Hendrickson

In the ongoing national debate over the definition of marriage, the state of Iowa has been in the national spotlight with the recent state Supreme Court ruling affirming the right for same-sex couples to marry, which overturns the traditional view of marriage as defined in the Defense of Marriage Act. In response, voters in Iowa drew further national attention in the November election by voting against retaining three state Supreme Court Justices, who participated in the ruling overturning the state's Defense of Marriage Act. Voters clearly do not support the judicial activism of the state Supreme Court. "Of the 74 other Iowa judges statewide who were subject to retention votes" only the three Justices were not retained, which demonstrates that voters "do not deplore an independent judiciary."¹

The election of former Governor Terry Branstad as Governor and the Republicans regaining the majority in the Iowa House of Representatives will be supportive of efforts to push through a constitutional amendment to protect traditional marriage as one man and one woman. Such an amendment "must be approved by two consecutive Legislatures and then placed on the ballot for voter approval."² Advocates,

who pushed for supporting a state-wide ballot question for a new constitutional convention in Iowa to reverse the state Supreme Court decision, were disappointed when the measure failed. Perhaps the new Governor, Republican majority in the House, and pressure from voters will push the Legislature forward with an amendment for the people to vote for or against on the marriage question. The events in Iowa and across the nation still point to the need for a Federal Marriage Amendment to the United States Constitution to protect and defend traditional marriage.

Recently a U.S. District Judge overturned California's Proposition 8, which prohibits same-sex marriage and defends marriage as an institution between one man and one woman. The measure passed with over 50 percent in support. As noted by *The Washington Times*, California will join Massachusetts, Connecticut, Iowa, Vermont, New Hampshire, and the District of Columbia that allow same-sex marriages.³ The states of Maryland, New York, and Rhode Island do not perform same-sex marriages, but they "recognize such unions from other states."⁴ The Defense of Marriage Act has also been under siege in Boston, Massachusetts, where "a federal judge ruled the Act was

unconstitutional, and that decision is on appeal."⁵ Although many states have approved amendments to their Constitutions defending traditional marriage it has become clear that the Federal Constitution must be amended to include a Federal Marriage Amendment to protect traditional marriage.

The Washington Times noted that "thirty states have approved Defense of Marriage Amendments to their constitutions, which specifically reject gay marriage," but now with the overturning of Proposition 8 the future is uncertain. Proposition 8 was overturned based upon a loose interpretation of the 14th Amendment — that "defining marriage as the union of one man and one woman, violated the due process and equal protection clauses of the Constitution."⁶ The decision is on appeal to the 9th Circuit Court of Appeals and perhaps the United States Supreme Court may hear the case.

U.S. District Judge Vaughn Walker, who issued the opinion overturning Proposition 8, is just one of many examples of judicial activism rooted in a philosophy that views the Constitution as a "living" document. "Peer-ing at the 14th Amendment, Walker found something there the authors of the amendment never knew they put there, and

even the Warren Court never found there: The states of the Union must recognize same-sex marriages as equal to traditional marriage,” noted columnist Patrick J. Buchanan.⁷ “This is not just judicial activism. This is judicial tyranny,” stated Buchanan.⁸

Judge Robert Bork wrote that “it is arguably today that the American judiciary — the Supreme Court, abetted by the lower federal and many state courts — is the single most powerful force shaping our culture.”⁹ Marriage is an issue with social and cultural implications. “A highly integrated society such as ours — with questions of property ownership, tax and economic liability, inheritance, and child custody crossing state lines — requires a uniform definition of marriage,” stated former Attorney General Edwin Meese, who served in President Ronald Reagan's administration.¹⁰ *The Washington Times* stated that “advocates of traditional marriage note that voters have never approved a same-sex marriage measure,” and “in all the states where gay marriage is legal, it was accomplished by the courts or the state Legislature.”¹¹

The recent overturning of Proposition 8 is further evidence that a Federal Marriage Amendment is needed to protect traditional marriage. A Federal Marriage Amendment would also fit with traditional federalism as noted by Attorney General Meese:

A Constitutional amendment that defines marriage would protect the states' capacity to regulate marriage by sustaining it as an institution. In order to guard the states' liberty to determine marriage policy in accord with the principles of federalism, society as a whole must prevent the institution itself from being redefined out of existence or abolished altogether.¹²

The issue and future of marriage “will shape the future of our society and the course of constitutional government in the United States.”¹³ The Federal Marriage Amendment is a solution that will provide protection for traditional marriage. As Judge Bork wrote: “The future of homosexual marriage is going to be decided at the national level; either there will be a constitutional right to such marriages, created out of whole cloth by judges, or there will be an amendment to block that development.”¹⁴

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The 2010 Elections: A Return to Conservatism?

by
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(continued from page 3)

strong message to policymakers at the state and national level that a return to more limited-government and free-market policies is needed in the current fiscal crisis that faces not just the federal government, but also many states and localities. Perhaps the 2010 midterm elections will result in a political shift away from the current progressive policies and return the nation to normalcy.

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What the Constitution Says about Taxation

by

Steve Stanek

The Constitution of the United States tells us “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; but all Duties, Imposts and Excises shall be uniform throughout the United States.”

Uniformity is hardly a hallmark of the modern U.S. tax regime. It is in fact the opposite of what the Constitution originally called for. The “originally” qualifier will become clear in a moment.

The tax code — formally known as Title 26 of the U.S. Code — covers an astonishing 3.4 million words and grows each year. With 60 lines per printed page, it fills more than 7,500 letter-size pages and includes numerous cross-references to other sections of the U.S. code that have a bearing on federal taxes.

continued on page 7

This Everest of Agony is the result of countless attempts by nearly every conceivable interest group over the years to twist the tax code to its advantage or to use it as a tool to put others at a disadvantage. Lawmakers and Presidents use the tax code to reward and punish, to manipulate businesses and individuals, and to buy votes to stay in office.

Earlier this year, for instance, the ObamaCare healthcare overhaul legislation became law only after many weeks of backroom dealing by the White House to buy votes from reluctant lawmakers. One notorious example: the “Cornhusker Kickback.” States expect more people to enroll in their Medicaid programs as a result of Obamacare, but only Nebraska was promised that federal taxpayers would pick up 100 percent of the state’s added Medicaid costs in perpetuity. This was the price Democratic Senator Ben Nelson of Nebraska demanded for his vote for ObamaCare.

The promise leaked out, and public outrage caused it to be rescinded, but dozens of other deals to buy votes were made. Where is the uniformity in that?

Because of the 16th Amendment to the Constitution, uniformity no longer matters. The Amendment states, “The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.”

James Madison, the chief architect of the Constitution,

wrote in Federalist Paper #45: “The powers delegated by the proposed Constitution to the federal government are few and defined.” The 16th Amendment has gutted the limits on government and enabled lawmakers and bureaucrats to turn the simple act of collecting taxes into a vast and complex tool of social engineering.

Congress routinely makes some states “donors” and others “beneficiaries.” Donor states pay more in federal taxes than they recoup in federal spending. Beneficiary states pay less in federal taxes than they receive in federal spending.

The same thing is happening with individuals. Today nearly 45 percent of all adults who earn income pay no federal income tax, and nearly 50 percent of all persons receive financial assistance from the federal government in the form of Social Security checks, Medicare payments, food stamps, or other handouts. These handouts, of course, are funded by the increasingly small number of persons who pay federal taxes — taxes that fall disproportionately harder on some than others, depending on what tax bracket they are in.

The Constitution also states, “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.”

Congresses and Presidents have made a joke of this provi-

sion. Presidents regularly issue “executive orders” to do things that cost taxpayers money even though they’ve not been approved by Congress. Congress exercises no oversight of swaths of spending done by the Central Intelligence Agency and other organizations in the array of national security agencies.

Spending is also being done in other non-security areas without Congress passing appropriations. Earlier this year, by a 215-210 vote, Congress used a procedural vote on an emergency war supplemental bill to attach a rider that “deemed as passed” \$1.12 trillion of spending. No budget was proposed, no vote on a budget was recorded, yet Congress deemed itself the power to spend more than \$1 trillion.

And the accounting of the federal government is beyond laughable. The government would never allow a business or charity to handle its books as the government handles its books.

Then there’s this pesky provision: “All bills for raising Revenue shall originate in the House of Representatives. . . .” Why, then, do we see so many headlines about budgets proposed by Presidents? Formally, the budgets are presented by Congress. But as we have seen depressingly often through the years, the President starts the ball rolling with his budget proposal. Lawmakers usually make the President’s proposal the floor from which to spring to even higher spending heights.

continued on page 8

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**What the Constitution Says
About Taxation
By Steve Stanek
(continued from page 8)**

As described by Gene Healy in his book *The Cult of the Presidency: America's Dangerous Devotion to Executive Power*, the American people and the lawmakers who swear an oath to uphold and defend the Constitution have ceded far more power to the President than the nation's founders ever intended. The President was never meant to have such sway over the federal budget.

The nation's first executive to swear an oath to the Constitution—George Washington—wrote, "Government is not reason; it is not eloquence; it is

force. Like fire, it is a dangerous servant and a fearful master."

The Constitution, as its author James Madison told us, was designed to give the federal government "few and defined" powers. Instead, the government has become a fearful master with nearly limitless powers, including the power to raise and spend as much money as it likes in whatever ways it chooses.

If we are to take more control of our lives and enjoy more of the fruits of our livelihoods, we need to recognize the truth in Washington's warning and embrace Madison's aim in writing a Constitution that would make the federal government more reasonable and far less forceful than it has become.

Steve Stanek is a Research Fellow at The Heartland Institute and managing editor of Budget & Tax News.

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