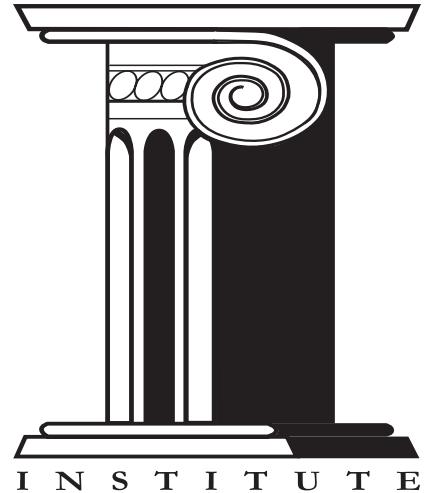


LIMITS



On Power and the Use of Coercion

Secure Liberty With Local Initiative and Referendum

by Leslie Graves and Geoff Pallay

Glenn Vodhanel is not a candidate, a campaign manager, a government official, or a city employee. But on the night of November 6, 2012, after the ballots in his hometown of Brea, California, had been counted, Vodhanel was celebrating a victory. He had brought government reform to his small community – without requiring the help of elected officials who so often combat reform.

Vodhanel popped the champagne cork when he learned that voters in Brea had resoundingly approved his brainchild, Measure T. A simple measure that places a cap on the salary of the city manager in Brea, Measure T was on

the ballot because Vodhanel collected signatures on petitions to get it on the city ballot.

Five months earlier in San Diego, city voters had approved San Diego Measure B, which also earned its spot on the city ballot because supporters collected signatures on petitions. That vote was a decisive victory for the local government pension-reform movement. The day after the election, a front-page story in *The New York Times* speculated that Measure B might start a trend in financially troubled cities across the country.

Vodhanel didn't set out to change the laws of Brea with a ballot initiative. In fact, he didn't even know what a ballot initiative was when he learned that the city manager was drawing an annual salary of \$341,000. When he tried to speak with city officials about

his concerns, he was met with a “culture of disdain” and “an environment of condescension.” He heard about a nearby city that had placed a similar initiative on its local ballot. After many hours of work over several months, Vodhanel's concern was put to a vote and approved by a majority of voters.

Older libertarians and conservatives fondly remember California's Proposition 13 property tax limit vote in 1978. That statewide ballot initiative was the result of a brushfire tax revolt in California, and its success sparked tax-limitation brushfires in other states. Proposition 13 is why fiscal conservatives often use statewide ballot initiatives as a tool to put forward policy reforms.

However, there is much less awareness among the politically

continued on page 2

What's New at PII?

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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.

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Secure Liberty With Local Initiative and Referendum by Leslie Graves and Geoff Pallay (continued from page 1)

active that the initiative and referendum process is also available in many cities.

Though the statewide ballot initiative process is available in two dozen states, 48 states have at least one city that allows its citizens to place prospective laws on the ballot by collecting signatures on petitions. Of the 10 largest cities in each state, about 70 percent of them grant this right to their citizens. The tool that Glenn Vodhanel used to circumvent the legislative process and put an issue straight on his local ballot is available to millions of Americans, in hundreds of poorly managed cities.

Ballotpedia has compiled information about the local initiative and referendum process in each state to build public awareness about this option for positive policy reform. Ballotpedia has built 50 state-specific webpages that provide complete detail on which jurisdictions allow local ballot initiatives, how many signatures are required to qualify a local measure on the ballot, how long you can circulate petitions, subject restrictions on the types of laws that can be changed through the local initiative, and

much more.

We've also published a guide to walk activists through the steps of the process, from drafting the language of the proposed law to submitting the final petition and requisite signatures to the appropriate authority. The booklet, *Local Ballot Initiatives: How citizens change laws with clipboards, conversations, and campaigns*, is available as a free download at Ballotpedia.org.

For years, organizations have tried to work with politicians to enact positive reform. But with the local ballot initiative, grassroots organizations can help effect change without the consent of the gatekeepers who so often keep change at bay.

Leslie Graves is the President of the Lucy Burns Institute and Geoff Pallay is the Director of Research.

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Yes, Threats to Religious Liberty Happen Here

by Ryan T. Anderson

Some on the left are criticizing Senator Ted Cruz's recent comments about how the drive to redefine marriage may threaten religious freedom — but a closer inspection of the issue reveals his worries were accurate, prescient, and maybe even too cautious.

In an interview with Cruz, David Brody of the Christian Broadcasting Network raised the concerns that many Christians are now expressing: “A lot of Christian scholars, when they talk about the marriage issue, they see it as a religious-freedom issue . . . as in essence going down this line toward potential ‘hate speech’ from the pulpit,” Brody said. In reply, Cruz pointed to problems abroad. “If you look at other nations that have gone down the road toward gay marriage, that’s the next step of where it gets enforced,” he said. “It gets enforced against Christian pastors who decline to perform gay marriages, who speak out and preach Biblical truths on marriage. That has been defined elsewhere as hate speech, as inconsistent with the enlightened view of government.”

Advocates of redefining marriage contend that the First Amendment ensures that pastors, priests, and other clergy in America will remain free to preach what they want to — they will never be forced to celebrate a same-sex wedding

— and liberals suggest that this is the extent of the challenge to religious liberty posed by the redefinition of marriage.

To the contrary, if marriage is redefined, then a belief that marriage is the union of a man and a woman ordered to procreation and family life — a notion once shared by virtually every human society — would increasingly be characterized as an irrational prejudice that ought to be driven to the margins of culture. The consequences for religious believers are becoming apparent.

Ted Cruz looked to other countries for examples, but he easily could have cited a growing number of incidents in the United States.

Thomas Messner, a visiting fellow at the Heritage Foundation, has documented multiple instances in which laws forbidding discrimination based on sexual orientation, as well as laws redefining marriage, have already eroded religious liberty and the rights of conscience.

After Massachusetts redefined marriage to include same-sex relationships, Catholic Charities of Boston faced a mandate to place children with same-sex couples. Rather than go against its principles, Catholic Charities decided to get out of the adoption business — a move that helps neither the orphans nor society. When Massachusetts public schools began teaching

grade-school students about same-sex marriage, the town of Lexington's school superintendent, Paul Ash, defended the decision to *The Boston Globe* with this statement: “Lexington is committed to teaching children about the world they live in, and in Massachusetts same-sex marriage is legal.” A Massachusetts appellate court ruled that parents have no right to exempt their children from these classes.

The New Mexico Human Rights Commission prosecuted a photographer for declining to photograph a same-sex “commitment ceremony.” Doctors in California were successfully sued for declining to perform an artificial insemination on a woman in a same-sex relationship. Owners of a bed-and-breakfast in Illinois who declined to rent their facility for a same-sex civil-union ceremony and reception were sued for violating the state nondiscrimination law. A Georgia wellness counselor was fired after she referred someone in a same-sex relationship to another counselor.

In fact, the Becket Fund for Religious Liberty reports that “over 350 separate state anti-discrimination provisions would likely be triggered by recognition of same-sex marriage.”

continued on page 4

Yes, Threats to Religious Liberty Happen Here
by
Ryan T. Anderson

In a letter sent to priests, deacons, and pastoral facilitators in 131 parishes, the Catholic bishop of Springfield, Ill., explains that a same-sex-marriage bill state lawmakers are considering this year does not include meaningful protections for religious liberty:

[It] would not stop the state from obligating the Knights of Columbus to make their halls available for same-sex “weddings.” It would not stop the state from requiring Catholic grade schools to hire teachers who are legally “married” to someone of the same sex. This bill would not protect Catholic hospitals, charities, or colleges, which exclude those so “married” from senior leadership positions. . . . This “religious freedom” law does nothing at all to protect the consciences of people in business, or who work for the government. We saw the harmful consequences of deceptive titles all too painfully last

year when the so-called “Religious Freedom Protection and Civil Union Act” forced Catholic Charities out of foster care and adoption services in Illinois. . . . There is no possible way — none whatsoever — for those who believe that marriage is exclusively the union of husband and wife to avoid legal penalties and harsh discriminatory treatment if the bill becomes law. Why should we expect it be otherwise? After all, we would be people who, according to the thinking behind the bill, hold onto an “unfair” view of marriage. The state would have equated our view with bigotry — which it uses the law to marginalize in every way short of criminal punishment.

Georgetown University law professor Chai Feldblum, an appointee to the U.S. Equal Employment Opportunity Commission, argues that the push to redefine marriage trumps religious-liberty concerns:

For all my sympathy for the evangelical Christian couple who may wish to run a bed-and-breakfast from which they can exclude unmarried,

straight couples and all gay couples, this is a point where I believe the “zero-sum” nature of the game inevitably comes into play. And, in making that decision in this zero-sum game, I am convinced society should come down on the side of protecting the liberty of LGBT people.

Indeed, for many supporters of redefining marriage, such infringements on religious liberty are not flaws but virtues of the movement.

Citizens must insist that the government respect those who continue to stand for marriage as the union of a man and a woman. When he “evolved” on the issue last year, President Obama insisted that the debate about marriage was a legitimate one, that there were reasonable people of good will on both sides.

Supporters of marriage as we’ve always understood it (a male-female union) “are not coming at it from a mean-spirited perspective,” Obama explained in an interview with Robin Roberts on ABC. “They’re coming at it because they care about families.” He added that “a bunch of ’em are friends of mine . . . people who I deeply respect.”

But in a growing number of incidents, government has not respected these Americans. To

continued on page 8

Obama's Middle Class Malaise

by Richard Epstein

This past week in Galesburg, Illinois, President Obama gave his first speech on his plans to reinvigorate a still stalled economy at Knox College. The speech itself received little press coverage — so little, in fact, that the Sunday *New York Times* ran a puff-piece on it to build interest in his next speech, on a similar topic, scheduled for Tuesday, July 30, in Chattanooga, Tennessee. In these speeches, the President is using the bully pulpit to argue for redistributive, pro-regulatory, pro-union policies that he claims will serve the middle class.

But his all-too familiar remarks are likely to continue to fall on deaf ears, as the public imagination turns its attention to real events, including the Securities and Exchange Commission's indictment of SAC Capital Advisors and the public fight over who will assume the chairmanship of the Federal Reserve as Ben Bernanke leaves. Will the President choose the oft-impolitic Lawrence Summers, who is suspicious of the stimulus, or the cautious Janet Yellen, who supports it?

Farewell to Supply and Demand

The President's speech at Knox College needs some close deconstruction because it sheds

harsh light on a problem that has dogged his domestic policy agenda from the beginning: intellectual rigidity. The President, who has never worked a day in the private sector, has no systematic view of the way in which businesses operate or economies grow. He never starts a discussion by asking how the basic laws of supply and demand operate, and shows no faith that markets are the best mechanism for bringing these two forces into equilibrium.

Because he does not understand rudimentary economics, he relies on anecdotes to make his argument. He notes, for example, that the Maytag plant that used to be in Galesburg is no longer in operation — it closed in 2004 — but he never asks what set of forces made it untenable for the business to continue to operate there. He never mentions that Maytag's relocation of its manufacturing operations to Mexico may have had something to do with a strong union presence or the dreadful economic climate in Illinois.

Unfortunately, our President rules out deregulation or lower taxes as a way to unleash productive forces in the country. Indeed, he is unable to grasp the simple point that the only engine of economic prosperity is an active market in which all parties benefit from voluntary exchange.

Both taxes and regulation disrupt those exchanges, causing fewer exchanges to take place — and those which do occur have generated smaller gains than they should. The two-fold attraction of markets is that they foster better incentives for production as they lower administrative costs. Their comparative flexibility means that they have a capacity for self-correction that is lacking in a top-down regulatory framework that limits wages, prices, and the other conditions of voluntary exchange.

Deconstructing Obama

Instead of suggesting policies to reduce the impact of government on production, Obama reverts into a lament for the lost middle class. He notes that our economic engine has, over time, “begun to stall”:

Technology made some jobs obsolete. Global competition sent others overseas. It became harder for unions to fight for the middle class. Washington doled out bigger tax cuts to the rich and smaller minimum wage increases for the working poor. The link between higher productivity and people's

continued on page 6

**Obama's Middle Class
Malaise**
by
Richard Epstein
(continued from page 5)

wages and salaries was severed — the income of the top 1% nearly quadrupled from 1979 to 2007, while the typical family's barely budged.

In the course of a single paragraph, he hits on so many issues—and so many mistakes — that his elegant prose conceals. Obama speaks first of how the economic engine began to stall, but he offers no timeline. His general statement may square with the economic malaise of the Carter years, but it hardly describes the solid growth during most of the Reagan and Clinton years, as both presidents grasped, however imperfectly, that any expansion of the government footprint on the economy could dull the incentives to production.

The situation turned south the past ten years. The second George Bush administrative gave us No Child Left Behind and Sarbanes-Oxley, while Obama followed with Obamacare and Dodd-Frank. Such legislation offsets many of the benefits from the Bush tax cuts, which, of course, Obama has undone. But his use of the phrase — the engine “began to stall” — conceals that he has no explanation of the ebbs and flow of the overall system.

His next sentence about technological change is every bit as otiose. Of course, technology makes some jobs obsolete. That's something we should celebrate. Technology led to the automobile, ensuring the end of the horse and buggy era. At the same time, technology led to both better products and better jobs, and more of both. Joseph Schumpeter's cycle of creative destruction explains these forces beautifully. Even Obama would not favor clamping down on the digital world in order to preserve jobs in the print media. Focusing on the negative consequences of technology obscures its far greater positives from innovation. It could easily lead government regulators to take a dim view of innovation. Next, he takes on global competition. Of course global competition sends some jobs overseas, but it also can increase jobs at home whenever we organize our own production to decrease domestic obstacles to sales abroad. But in a global economy, what we cannot do is to expect our trading partners to structure their businesses and laws to subsidize American production in their own economies.

We have learned the benefit of free trade across state lines in the United States. It is imperative that we not forget that this same logic applies to free trade across nations, where again the principle of comparative advantage — let each nation specialize in the work where it is most

efficient — offers the securest route to global and domestic improvement. The effort to shield individual workers from foreign competition comes at a cost to the system as a whole.

Unfortunately, the President cannot be open to international competition because of its crippling impact on domestic unions that work best behind a tariff wall. We should greet what he writes with deep apprehension: “It became harder for unions to fight for the middle class.” But the union movement does not represent the middle class. It receives dues only from its members, and it is only union members that receive union largesse in return. Other members of the middle class receive no assistance from unions, or are hurt by union activities. The President notes with some pride that “Airbus will build new planes in Alabama.” He might have added that Airbus chose Alabama because of its strong anti-union policies, which open up jobs for both middle class and poor people seeking economic advancement. Boeing relocated much of its business to South Carolina for the same reasons.

Indeed, it is critical to remember that today the greatest threat that unions pose to the economy does not come at the bargaining table but in the legislative arena where they work nonstop to block non-union rivals. One recent example of their job-busting behavior is The Large Retailer Accountability Act that just passed the D.C.

City Council by an 8 to 5 vote. If signed by Mayor Vincent Gray, it would mandate a \$12.50 “living wage” imposed solely on new retailers with 75,000 square feet in space and a billion dollars or more per year in sales. This ad hoc scheme exempted current unionized businesses. Indeed it is explicitly targeted at the WalMart, which has announced that if the law goes into effect, it will cancel at least three of the six new stores that it has planned for Washington, D.C., proper. That would cost D.C. some 1,800 new jobs.

Like clockwork, the AFL-CIO supports this legislation on the ground that the law “would lift thousands of working families in Washington, D.C., out of poverty and support decent wages across the retail industry.” Dream on. The unpleasant reality is that the disappearance of these jobs will hurt the same poor people whom the President wishes to help.

Yet his speech offers not one hint that he is aware of the deep conflict between his abject fealty to union objectives and the poor people he wants to lift up. Yes, there is an increasing gap between the rich and poor, but that gap won’t narrow if the President keeps plumping for a higher minimum wage that will block poor individuals, many of whom are African-American, from getting a toehold in the economy. No jobs at artificially high wages — which is what will happen, per WalMart — is no improvement over plentiful jobs at market wages.

No Obama speech is complete without lashing out at the tax cuts that Washington has doled out to the “rich.” On this point, he substantially overstates the increase in the income gap. Unfortunately, he also misses the key point that the higher rate structures have reduced income at the top, and thus the ability to fund the ever more lavish transfer programs that Washington wants to put in place. The President of course thinks that the new dawn is just around the corner, so long as we keep to his general program.

Indeed he constantly thinks of his greatest regulatory failures as his great successes. No other president has “saved the auto industry,” albeit by a corrupt bankruptcy process, or “taken on a broken health care system,” only to introduce a set of unworkable mandates that are already falling apart, or “investing in new technologies,” which tries to pick winners and ends up with losers like Solyndra. The great advances in energy have come from private developments, most notably fracking, and not from the vagaries of wind and solar energy, which no one has yet figured out how to store for future use when needed.

The President seems utterly incapable of seeing the downside to any of his policy choices. They are announced from on-high as all gain and no pain. In the face of stagnant growth, weak corporate earnings, and continued high unemployment, he shows not the slightest

recognition that some of his programs might have gone amiss.

It is easy to see, therefore, why people have tuned out the President’s recent remarks. They have heard it all countless times before. So long as the President is trapped in his intellectual wonderland that puts redistribution first and regards deregulation and lower taxation as off limits, we as a nation will be trapped in the uneasy recovery that will continue to dog us no matter who is chosen to head the Federal Reserve.

Richard A. Epstein, the Peter and Kirsten Bedford Senior Fellow at the Hoover Institution, is the Laurence A. Tisch Professor of Law, New York University Law School, and a senior lecturer at the University of Chicago. His areas of expertise include constitutional law, intellectual property, and property rights. His most recent books are Design for Liberty: Private Property, Public Administration, and the Rule of Law (2011), The Case against the Employee Free Choice Act (Hoover Press, 2009), and Supreme Neglect: How to Revive the Constitutional Protection for Private Property (Oxford Press, 2008).

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**Yes, Threats to Religious
Liberty Happen Here**

by Ryan T. Anderson

(continued from page 4)

counter this, we must insist that government not discriminate against those who hold to the historic definition of marriage. Policy should prohibit the government or anyone who receives taxpayers' dollars from discriminating in employment, licensing, accreditation, or contracting against those who believe marriage is the union of a man and a woman.

Ryan T. Anderson is the William E. Simon Fellow in Religion and a Free Society at the

Heritage Foundation and co-author, with Sherif Girgis and Robert George, of the book What Is Marriage? Man and Woman: A Defense.

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