



FACTS & OPINIONS

On Public Interest Issues

Quotes

If a state expects to be ignorant and free, in a state of civilization, it expects what never was and never will be.

– Thomas Jefferson

I have no fear [Americans] will meet with tyrants in their rulers but rather with guardians...Such a power does not destroy, but it prevents existence; it does not tyrannize, but it compresses, enervates, extinguishes, and stupefies a people...

– Alexis de Tocqueville

I am against homogenized society because I want the cream to rise.

– Robert Frost

Our Off-the-Books Fiscal Problem

Phil Kerpen

Long term problems tend to get pushed aside in a town driven by the biennial election cycle. Even when politicians pretend to be thinking “long-term,” it’s usually in a distorted, short-term way. Take the national debt, which always gets a lot of attention. The debt is a concern, but it pales next to the true debt, which is more off the books than on.

Ever since Congress raised the debt ceiling in May, there has been a lot of hand-wringing about the size of annual budget deficits under President Bush. The deficit and the debt are trotted out by Republicans as a reason to cut discretionary spending and by Democrats as a reason to hike taxes. But this is more posturing for tactical short-term advantage than an attempt to confront a serious problem.

The deficit is actually quite modest in historical terms. In fiscal year 2005, it was only 2.6 percent of GDP, lower than every single year between 1980 and 1994, a

period of low interest rates and strong economic growth. So far in 2006, the deficit has been shrinking as tax revenues have increased and will likely be about 2 percent of GDP by year-end. If the deficit looks big in absolute terms, it’s only because the economy is so much larger than ever before.

Since current budget deficits are affordable, any fiscal focus on them is misdirected. That said, the country’s true fiscal outlook is not so good. A pair of reports released in May by the Medicare and Social Security Trustees and the Government Accountability Office (GAO), respectively, should serve as a wake-up call for the public and our elected representatives.

The publicly held debt, which is the sum total of all the outstanding bonds that the government has used to finance its deficit spending over the years, stands at about \$4.8 trillion. The GAO’s analysis found that other

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FACTS & OPINIONS

November 2006
Volume 12, Number 4

President
Dr. Don Racheter

FACTS & OPINIONS is one of our quarterly membership newsletters, arriving in February, May, August, and November. It consists of short articles of public interest with an emphasis on current issues.

FACTS & OPINIONS 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.

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Focus on Iowa Wesleyan College

Jonathan Miltimore

Full time enrollment for the 2006-2007 academic year at Iowa Wesleyan College reached 645 students. Part time enrollment was 204, for a total student body of 849 students.

IWC has announced plans to raise funds to remodel the campus chapel. The renovated chapel would serve the Mount Pleasant area as a potential venue for incoming performances and events. IWC History Professor Todd Brereton is currently serving as visiting professor in China.

IWC has also announced its new Homecoming King and Queen. Amber Riley, a double major in elementary and early childhood education, was elected Queen. Amber plays volleyball, basketball, and softball for IWC and is the daughter of Cindy and Gregg Riley of Mt. Pleasant.

Tremell Jones, of O'Fallon, Mo., was named King. Tremell, a senior, is a cornerback for the Iowa Wesleyan football team and a criminal justice major. He is also community advisor of Mckibbin Hall and a member of the Student Union Board.

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What's New at Public Interest Institute?

On 4-5 October, 2006, Research Analysts Jonathan Miltimore and John Hendrickson traveled to Chicago, Illinois, to attend the annual Emerging Issues Forum sponsored by the Heartland Institute. Keynote addresses were delivered by Richard A. Epstein, the James Parker Hall Distinguished Service Professor of Law at the University of Chicago, and Rev. Robert A. Sirico, co-founder and President of the Acton Institute. Institute President Don Racheter, Ph.D., also attended the event, on his return from a State Policy Network Friedman Foundation Meeting held in Milwaukee, Wisconsin.

On 24-25 August, Dr. Racheter ventured to Sioux City, Iowa for speeches with the Republican Party Executive Committee of Woodbury County and the Siouxland Chamber of Commerce. The following weekend Dr. Racheter attended

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What is the Cost of Compassion?

James Antle III

File this under famous last words, somewhere next to Herbert Hoover's pre-Depression promise that prosperity was right around the corner: "The only hope to stop the spending is to elect George W. Bush." Congressman John Shadegg (R-Ariz.) made this fateful prediction back in 2000, when most fiscal conservatives believed unified Republican control of Capitol Hill would bring about a smaller federal government.

Six years later, such hopes seem almost delusional. Together President Bush and congressional Republicans have brought about record increases in discretionary spending (much of it completely unrelated to the war on terror), an enlarged federal role in education, and the biggest new entitlement since LBJ ushered in the Great Society. Conservative compassion has ended up having a price tag comparable to the liberal variety.

In his new book *Buck Wild: How Republicans Broke the Bank and Became the Party of Big Government*, Stephen Slivinski sets out to determine what went wrong. *Buck Wild* doesn't just rehash the same old sad statistics about Bush-era budget-busting. Slivinski, the director of budget studies at the libertarian *Cato Institute*, looks

back in impressive detail at past attempts to limit government — recalling the successes and failures.

Ronald Reagan's presidency disappointed small-government conservatives. Instead of eliminating Cabinet-level departments as promised, he agreed to add one. Only a handful of significant federal programs were completely abolished. Spending continued to rise faster than revenues. The biggest budget cuts occurred during his first year in office, with spending restraint increasingly fizzling out thereafter.

Yet the 40th President's fiscal-policy record was vastly superior to that of today's GOP. In addition to achieving lasting reductions in marginal income tax rates and significant deregulation, real non-entitlement spending was \$27 billion lower in 1989 than when Reagan took the oath. The federal budget declined as a percentage of GDP and the budgets of eight Cabinet agencies grew at less than the rate of inflation for eight years.

Republicans didn't make another serious attempt to rein in federal expenditures until after the 1994 elections. This time, the GOP controlled Congress but not the White House. Small-government sentiment was particularly strong in the House, where a core group of enthusiastic freshmen were elected on populist, anti-Beltway platforms and the leadership included such outspoken conservatives as Newt Gingrich and Dick Armey.

While the rhetoric outstripped the results, congressional

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Republicans did initially cut real non-defense discretionary spending. They abolished a number of small government programs and briefly looked like they were going to change the culture in Washington. And while Bill Clinton easily outmaneuvered them during the 1995-96 government shutdown impasse, they worked together to reform welfare and trim the capital-gains tax rate.

But it was, as Slivinski puts it, a "short-lived revolution." After Clinton bested them in the budget stalemates, the GOP congressional leadership lost its nerve. Incumbents grew comfortable and

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Our Off-the-Books Fiscal Problem

Phil Kerpen

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on-the-books debts — mostly related to military and civilian pensions and retiree health — add another \$5 trillion.

The off-the-books, unfunded obligations of the federal government are an order of magnitude greater. The GAO found that the government's true debt — on-the-books and off — more than doubled between 2000 and 2005, and now stands at a staggering \$46.4 trillion.

"This is an odd time for the free-market movement. On the face of things we've won. But beneath the surface, demographics dictate a much darker outlook for the intermediate and longer-term. Despite the successes of the free-market movement, if we fail to reform Social Security and Medicare, government is on track to be larger than ever before."

The GAO, it seems, actually low-balled the true debt by using the entitlement obligations for only the next 75 years. To permanently fix these programs we'd have to put up enough money to cover all of their obligations forever. That's where the Trustees Report comes in. Using the estimates from that report, the federal government's true debt is shown to be a stunning \$94.7 trillion. That's more than \$315,000 owed by every man, woman, and child in the United States. That's \$1.25 million in debt for every family of four.

The Social Security program alone has a \$13.4 trillion liability, more than all of the government's on-the-books debt combined. Bush showed political courage when he took on Social Security reform last year, but he ran into a brick wall of opposition.

Even more disheartening, while Social Security reform was failing, the president and Congress came together to pass the Medicare prescription-drug benefit, which by itself created a \$16.2 trillion new liability for taxpayers — more than the entire Social Security shortfall. Overall, Medicare has about \$70 trillion in liabilities, about three-quarters of the federal government's fiscal exposures.

This is an odd time for the free-market movement. On the

face of things, we've won. It's been a decade since Bill Clinton declared the era of big government over, and Republicans now control all levers of political power in Washington and most in states, too. Bush was elected and reelected on a message of tax-rate reductions, spending restraint, and government reform. The policy mix seems to be working quite well, with a robust economic recovery well underway.

But beneath the surface, demographics dictate a much darker outlook for the intermediate and longer-term. Despite all of the policy and political successes of the free-market movement, if we fail to reform Social Security and Medicare, government is on track to be larger and more intrusive than ever before.

Unless our president and legislators stop playing deficit blame games and start to work on meaningful entitlement reform, these costly programs will place an impossible burden on our children and grandchildren.

Mr. Kerpen is a Policy Analyst living in Washington D.C. For more analysis visit www.philkerpen.com This article was Reprinted with Permission.

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McCain-Feingold: Remembering a Legislative Disaster

John Hendrickson

The fall season has come upon us with great speed. Just notice the cooler weather, the increasing sightings of pumpkins decorating residential porches, hunters heading out in pursuit of game, and last and not least, the increasing bombardment of political ads on radio and television. On November 7, 2006 Americans across the nation will once again go to polls and participate in the Great Experiment. On such a day it is appropriate to take a few moments to reflect on the disastrous campaign finance reform law of 2002 (McCain-Feingold), where, in an attempt to "clean up politics" and "reduce corruption," reformers struck a fateful blow to the First Amendment and the cherished canon of free speech.

McCain-Feingold eliminated all "soft money" donations to political parties, increased the limit of "hard money" contributions from \$1,000 to \$2,000, and regulated issue ads. Issue ads that identified a candidate and were funded by corporate or union money were banned thirty days before a primary election and sixty days before general elections. The only legal ads that could be broadcast

using this time frame had to be paid for using "hard money," or donations from individuals less than \$2,000.

Efforts at campaign finance reform in the 20th Century actually date back to the early 1900s, but it was not until the 1970s, in response to corruption in presidential campaigns, that Congress started to pass legislation regulating the campaign system. The Federal Election Commission (FEC) was created and charged with overseeing the Federal Election Campaign Act of 1971.

In 1976, the Supreme Court held in *Buckley v. Valeo* that some Congressional regulations — contribution limits, disclosure and reporting rules, etc. — were constitutionally permissible. However, the Court ruled that expenditures by groups or individuals, including a candidate's personal money, could not be limited. Citing the First Amendment's protection of speech, the Court ruled that money in campaigns is a form of protected speech, and thus could not be regulated.

Campaign finance reform was brought to center stage in the mid-1990s when concerns were raised about foreign contributions. In question was President Bill Clinton's acceptance of illegal contributions from Chinese Communists and Vice-President Al Gore's fundraiser in a Buddhist Monk temple. Reformers finally achieved their goal in 2002 with the McCain-Feingold bill, which was signed into law by President

George W. Bush, even though he believed the law was unconstitutional.¹

"Attention is being paid to a moral question: If the president believes that a bill is unconstitutional, or even parts of it are unconstitutional, is he bound in conscience to veto it?" asked William F. Buckley.² The President should be conscience-bound to veto such a bill, but in this case political pressure won the day.

In 2003 McCain-Feingold was brought before the Supreme Court, and in *McConnell v. Federal Election Commission* the Court upheld the law. In his dissenting (and concurring in some respects) opinion, Justice Antonin Scalia wrote: "This is a sad day for the freedom of speech. Who could have imagined that the same Court, which within the past four years has sternly disapproved of restrictions upon such inconsequential forms of expression as virtual child pornography, tobacco advertising, dissemination of illegally intercepted communications, and sexually explicit cable programming, would smile with favor upon a law that cuts to the heart of what the First Amendment is meant to protect: the right to criticize the government."³

The protection of political speech is the most vital part of the First Amendment and the cornerstone of Western liberalism since the Enlightenment. No matter how well intentioned McCain-Feingold was, it has profoundly restricted political

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McCain-Feingold: Remembering a Legislative Disaster

John Hendrickson

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speech and participation, an act anathema to Western thinkers from Socrates to Voltaire, Descartes to Mill.

Some individuals, incorrectly, view their vote as a wasted vote simply because many believe their voice cannot be heard over the corporations, unions, political action committees, and other special interests. The blame is shifted toward money in politics instead of neglect of civic awareness and responsibility.

The National Rifle Association (NRA) for example has about three million members nationwide. The NRA also endorses both Republican and Democrats for office. Most likely a member of your family, a neighbor, or someone in the next-door office is a member of the NRA. Sportsman, hunters, and firearms enthusiasts have come together to form a group that fights to protect and defend the Second Amendment and America's historic outdoor and hunting heritage. Ordinary individuals have pooled their resources together to participate in the political process.

Unfortunately, under McCain-Feingold, the NRA is now restricted in its participation in the political process. An issue advocacy group, whether it be the NRA, Sierra Club, or PETA,

can no longer freely run political issue ads directed at specific candidates during election cycles.

As John R. Lott wrote: "Newspapers can run an editorial or news stories supporting candidates any day. Unlike everyone else, the media can mention a candidate's name during the 60 days before the general election. Yet, the NRA is forbidden from placing an ad next to the editorials in those very same newspapers."⁴

The McCain-Feingold
"Who could have imagined that the same Court, which within the past four years, has sternly disapproved of restrictions upon such inconsequential forms of expression as virtual child pornography, tobacco advertising, and sexually explicit cable, would smile with favor upon a law that cuts to the heart of the First Amendment."

Facts & Opinions Question of the Quarter:

Does the GOP remain the party of limited government and fiscal discipline?

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Bipartisan Campaign Reform law of 2002 was simply bad law, and it should have been vetoed by the President. In addition, the system of checks and balances failed when the Court upheld such an inherent violation of the First Amendment. In order to clean up elections, we need to repeal McCain-Feingold and replace it with laws that eliminate foreign contributions and stress transparency. In this case all the branches of the national government failed to uphold the Constitution and, more specifically, the First Amendment which protects free speech.

Endnotes

¹ Gene Healy and Timothy Lynch, *Power Surge: The Constitutional Record of George W. Bush*, CATO Institute, Washington, D.C., 2006, 3-7.

² William F. Buckley, "Veto Finance Reform?" National Review Online, <<http://www.nationalreview.com/Buckley/buckley022602.shtm>> (2, October 2006).

³ Kevin A. Ring (ed.), *Scalia Dissents: Writings of the Supreme Court's Wittiest, Most Outspoken Justice*, Regnery, Washington, D.C., 2004, 239-240.

⁴ John R. Lott Jr. "Supreme Irrelevance: will the high court be undone by political reality?" National Review Online, <<http://www.nationalreview.com/comment/lott200312190912.asp>> (2, October 2006).

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Judicial Hubris

Jonathan Miltimore

Americans pride themselves on being, in the words of John Adams, “a government of laws, and not of men.” Lawyer jokes aside, Americans, as a whole, possess a powerful if latent esteem for and respect of the law and due process.

Perhaps this reverence is a product of the Greek rationalism that so influenced colonial America, or perhaps it is attributable to our Roman obsession with structure and order. In any case, the consequences of such a philosophy are manifest: our great battles tend to take place in political arenas and courtrooms, not in streets or fields of battle. No blood is shed; no shots are fired. Even the most momentous and controversial of issues of our time — *Brown v. Board of Education*, *Roe v. Wade*, *Bush v. Gore*, etc. — have ended, eventually, in humble deference to the law.

Today, great confusion exists regarding the proper role of the judiciary. Historically, courts have possessed two primary functions: Establish what the law is and ensure that that law conforms to the Constitution. Since *Marbury v. Madison*, it has been understood that the Court possesses the final word on the constitutionality of laws.

Today, judicial review is considered a proper court function by nearly all serious legal scholars. Yet there has always existed a caveat to the legitimacy of judicial review: the existence of an independent judiciary.

Essentially, this means the judiciary must function strictly as a legal body, not a political one. Legislatures will inevitably make “bad laws.” But it is up to the people to decide which laws are “bad laws.” This is the essence of democratic-republicanism. But note: “bad law” does not mean “unconstitutional law.” Former Attorney General Edward Meese has described judicial activism as courts “[going] beyond their role of interpreting the Constitution or statutes, and instead [substituting] their judgment of what the law ought to be, or what they think the Constitution ought to say.”¹

Today, it is not uncommon for courts to perform legislative or executive functions in transparent violation of the separation of powers. Many of these functions may seem reasonable, even desirable, to many Americans. It is essential, however, that these tasks emanate from the people and their elected officials, not an unelected body of elites.

Judicial activism essentially rips from the people their political voice and denies society the closure and catharsis achieved through the political process.

It produces a disgruntled constituency with little or no political recourse and has resulted in some of the most vitriolic battles in American history (e.g.: *Dred Scott*).

The method of divining concealed truths from penumbras of the Constitution is a device intended to circumvent the will of the people and avoid the growing pains of political progress familiar to democratic societies. Merits of intent aside, however, the process rests on a dubious premise (that history is linear) and is grossly undemocratic. If all important questions of governance are to be eventually relinquished to nine minds, brilliant or otherwise, all pretensions of representative government should cease. As a former Kentucky-born prairie lawyer once observed: “The candid citizen must confess that if the policy of the government upon vital questions, affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court...the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal.”

¹ Edwin Meese, “A Former Attorney General’s Wise Counsel on the Courts,” *The Journal of the James Madison Institute*, Summer 2006, p. 16.

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What is the Cost of Compassion?

James Antle III

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appropriators began rebelling against the fiscal hawks. Despite the presence of leading conservatives like Phil Gramm and the presidential ambitions of Bob Dole, the Senate became the place where Contract with America items went to die.

Republicans continued to blame the Clinton administration for the breakdown in budgetary discipline, but with Bush in the White House there are no more excuses left. With the GOP in control of the executive and legislative branches, government growth has only gotten worse. Slivinski detects patterns that might suggest potential cures

for the Republican majority's Potomac fever. Reagan's popularity was partly a reaction to the spending habits of Nixon-Ford Republicans while Gingrich's rise was fueled by George H.W. Bush's 1990 tax increase. The current wave of big-government conservatism may spark the next budget-slashing insurgency.

The author also contends there is nothing to fear from divided government. The 1981 Reagan budget cuts, the rate-flattening Tax Reform Act of 1986, and welfare reform all passed when the parties split control. And while several Republican government-cutters have prospered politically, overall the experiment in unified GOP government has been a failure for fiscal conservatives.

The author is senior writer for the American Conservative. Visit www.tcsdaily.com Reprinted by permission.

What's New at Public Interest Institute?

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the annual American Political Science Association conference held in Philadelphia, Pennsylvania.

On 5 October, Senior Research Analyst Amy Frantz represented Public Interest Institute at the regional meeting of the National Association of Scholars held in Bellevue, Nebraska.

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