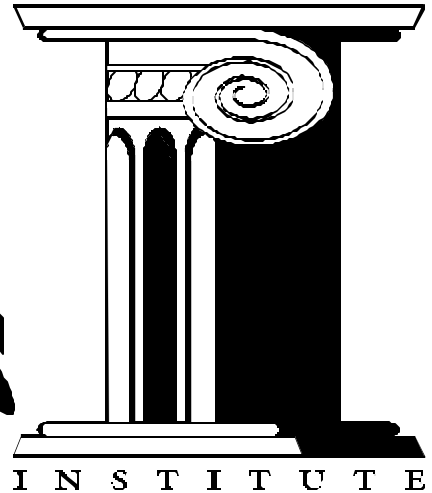


LIMITS



On Power and the Use of Coercion

Initiative and Referendum in the States

by Amy K. Frantz

The Initiative and Referendum Institute at the University of Southern California reports that 162 measures appeared on ballots across 34 states in November. Here are some of the results:

A Constitutional Amendment initiative to weaken the state's term limits and a referendum to increase property taxes were defeated by **Arkansas** voters. Nearly 70 percent of the voters rejected both of these measures demonstrating widespread support for term limits and lower taxes.

California voters approved Proposition 71, the Constitutional Amendment initiative to issue \$3 billion in bonds to fund embryonic stem cell research. Voters also approved a surtax on millionaires to support mental health programs.

In **Colorado**, voters rejected a Constitutional

Amendment initiative to change the way the state's electoral votes are allocated. (For more on this initiative, read the November *INSTITUTE BRIEF*, "Bush/Edwards in 2004?") Initiatives to increase the state's cigarette and tobacco taxes and to require Colorado utilities to increase their use of renewable energy resources were approved. (For more on the renewable energy initiative, turn to page 2 of *LIMITS*.)

Voters in both **Florida** and **Nevada** approved measures to increase the state's minimum wage from \$5.15 to \$6.15 per hour and tie future increases to inflation.

Oklahoma voters approved Question 708, limiting expenditures from the state's Rainy Day Fund. Voters also adopted Question 705, establishing a state lottery.

Washington state voters rejected Initiative 884, a statutory measure increasing

the sales tax to fund an increase in education spending. (For more on I-884, see the September 2004 issues of *LIMITS*.)

Finally, voters in eleven states faced measures to define marriage as the union between one man and one woman: Arkansas, Georgia, Kentucky, Michigan, Mississippi, Montana, North Dakota, Ohio, Oklahoma, Oregon, and Utah. The measure was approved in all eleven states.

Amy K. Frantz is a Research Analyst with Public Interest Institute.

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LIMITS

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Dr. Don Racheter,
President

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The Sons of Kyoto: Renewable Energy and Amendment 37

by Richard D. Decker

As Colorado households and businesses struggle to pay ever-increasing energy costs, Colorado voters get another chance to self-inflict another increase.

Although not quite dead yet, the Kyoto Protocol is in intensive care and on life-support. President George W. Bush announced in 2001 that the United States was not going to be a party to the protocol. Bush felt the Kyoto Protocol amounted to nothing more than an "energy tax" on the U.S. and other industrialized countries. The intent of the Kyoto Protocol was to slow the effects of "global warming" by encouraging the development of renewable energy and discouraging the use of hydrocarbon fuels. Many scientists and other environmental experts argue that the effect of these measures would be miniscule and that technological advances could have a greater impact.

With the United States out of the Kyoto Accord, environmentalists and other proponents decided they could accomplish the same goals by implementing pieces of the plan on a state-by-state basis. This piecemeal approach soon became known as "sons of Kyoto." So far sixteen states have, either through legislation

or initiative, adopted similar plans.

Renewable energy is appealing to Colorado residents. I have a solar powered radio that I use when working outside or camping. It's great, until a cloud passes overhead or I pass between the radio and the sun. That's the thing about renewable energy. It is unreliable! Renewable energy sources can be intermittent and may not be available when needed. In the wintertime, peak use periods are in the morning and at night when it is dark, which makes solar power ineffective as an alternative power source in the winter. Areas of the country experience seasonal "wind droughts," just the same as water droughts. The use of back-up energy sources fueled by coal or gas may be needed, which diminishes much of the cost savings from such renewable sources.

In Colorado, two attempts to pass measures that would require the increase of renewable energy failed. However, two Colorado political leaders, House Speaker Lola Spradley and U.S. Rep. Mark Udall are spearheading the current initiative. House Speaker Lola Spradley twice tried to get a

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What's Behind the Flu Vaccine Shortage

by Dr. Devon Herrick

The start of another flu season has found Americans facing a shortage of influenza vaccine. Although nearly 60 million flu shots will be available, vaccination is recommended for 185 million people at risk for complications. In a typical year, less than one-third of the U.S. population receives flu shots. Fortunately, since influenza is a contagious disease, it is not necessary to vaccinate everyone in order to stop widespread epidemics, or even to limit vaccinations only to those who are at risk. However, when there is a shortage, many people will seek the vaccine who might not otherwise have bothered.

How did this shortage come about? How can we prevent reoccurrences in the future?

The Demand for Flu Vaccines. Vaccination is one of the most beneficial and cost-effective health interventions. An estimated 65 million Americans catch the flu annually, resulting in 30 million physician visits. The U.S. Centers for Disease Control and Prevention (CDC) estimates the influenza virus contributes to the death of around 36,000 U.S. residents each year and accounts for more than 200,000 hospitalizations. Yet, the past few years have found us without enough vaccine to serve all the population vulnerable to the worst effects

of the disease: the elderly, the young, and those with chronic medical problems.

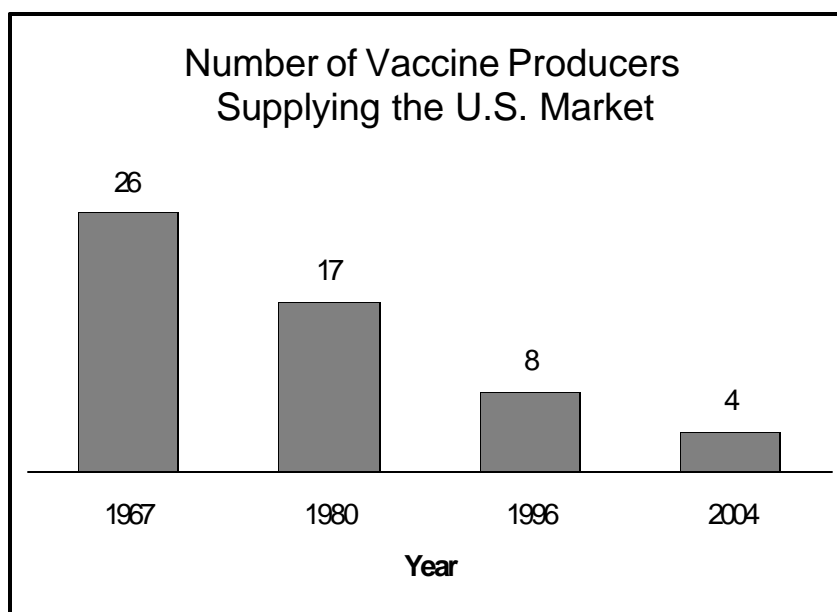
The Supply of Flu Vaccines. Nearly 40 years ago, there were about 26 makers of all types of vaccines. [See the figure.] The number fell to 17 by 1980. Now, the number of vaccine makers supplying the United States has dropped to only four. There is only a single manufacturer of the vaccines for eight diseases. There are only two major makers of flu vaccines. When there are so few producers of each vaccine, problems at a single plant can create shortages.

In recent years, the United States has come to depend on

overseas vaccine plants to provide an increasing share of the supply. One company, the Chiron Corporation, prepared 46 million doses — almost half of the anticipated supply for the United States — at its plant in Liverpool, England. However, this year's production run was rejected for import by the U.S. Food and Drug Administration (FDA) because of contamination problems.

Furthermore, making a flu vaccine is a moving target. The CDC must estimate nearly a year in advance which strains of the flu making its way across China are likely to hit North America nine months later.

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Source: Frank A. Sloan et al. (Institute of Medicine). *Financing Vaccines in the 21st Century: Assuring Access and Availability* (Washington, D.C.: National Academy Press, 2003).

What's Behind the Flu Vaccine Shortage

by Dr. Devon Herrick

(continued from page 3)

The vaccine we buy is actually a cocktail of two or three different strains, each of which is incubated separately.

Vaccine production is complex — it takes several months to incubate a batch of vaccine. If the wrong strains are picked, the product is essentially worthless. If a batch is contaminated, it is too late to produce more for the current flu season.

On the other hand, there is only about a three-month window of opportunity for producers to sell their flu vaccines for the entire year. Once a flu season has passed, remaining stockpiles are worthless. Last year one of the U.S. companies that manufacture flu vaccine, Aventis Pasteur, had to discard 5 million of the 43 million doses it produced. Two years ago, 12 million doses of flu vaccine went unused.

Vaccine Shortages.

Vaccines should be a moneymaker for drug firms. After all, nearly 300 million people in the United States alone are potential customers. One reason that there are so few producers is that the

government is by far the largest customer. According to Paul Offit of Children's Hospital of Philadelphia, author of a forthcoming book on the vaccine industry, the United States has weathered nine shortages of six vaccines since 2000. The shortages were driven by government bulk purchasing.

In 1993 Hillary Clinton championed the Vaccines for Children program, under which the government uses its purchasing power to negotiate discounts for vaccines and distributes them to physicians and various health agencies for free or at a reduced price, essentially creating a children's vaccine entitlement. As a result, more than half the supply of childhood vaccines is purchased by government at deep discounts. Many firms have simply chosen to leave the market given the low profit margins. Less than two percent of drug company revenue is derived from vaccines.

Like children's vaccines, more than half of flu vaccines are directly purchased by the government or indirectly reimbursed by the government at discounted prices. In a market where government is the dominant buyer, or monopsonist, the price may be driven so low that many producers cannot earn a profit. The exposure to legal liability lowers profitability even more.

Thus manufacturers have dropped out of the vaccine market.

Cause of Shortages: Excessive Tort Liability.

There are several reasons why firms avoid the U.S. market. But they can be summed up with one word: "profit." When tens of millions of people receive an injection of an approved drug, there are bound to be those who suffer adverse reactions. This might include those who merely react to the virus in the vaccine or those who are allergic to the eggs in which the weakened viruses are grown. Although the benefit to society of vaccination programs far outweighs the cost, a small number of individuals will become very sick. The potential liability can easily erase all the profits earned by a vaccine manufacturer.

Estimates vary, but product liability lawsuits by people who have adverse reactions may account for much more than half of the cost of most vaccines. To remedy this problem, experts like Henry I. Miller, M.D., recommend that once a manufacturer meets FDA regulatory requirements for vaccine approval, it should not be liable for damages from approved use of its products. The few individual patients suffering serious injury could be compensated by the government, as is the case with children's vaccines. In 1986,

**of individuals like you who believe in individual liberty and free-market
aid envelope to make your tax-deductible contribution to this effort today.**

Congress passed legislation creating a compensation fund and providing some liability protection for makers of childhood vaccines. However, these protections have eroded somewhat as lawyers tested the limits of “no fault” vaccine protection. No liability protection exists for adult vaccines. Last year the U.S. House of Representatives passed such legislation but the Senate did not.

Cause of Shortages:

Overregulation. A number of reforms to provide relief from regulations have been proposed to increase the supply of vaccines.

A promising approach is reciprocal regulatory agency approvals, which would allow vaccines approved and used successfully in other developed countries to be sold in the United States. Currently, the FDA is responsible for inspecting and certifying plants and processes used to produce vaccines just as it is for drugs. Vaccines manufactured abroad that have not been produced under conditions approved by the FDA may not be sold in this country. While this is meant to protect the public, it also raises the cost and delays the introduction of potentially lifesaving vaccines. For example, according to Dr. Miller, former director of the FDA’s Office of Biotechnology, Americans do not have access

to a high-quality vaccination for meningitis C, although several are in widespread use in Europe and Canada, with a track record of 20 million doses administered. The adoption of common standards and a reciprocal regulatory approval process would benefit all of the countries involved by creating a wider market for their vaccine products and benefit their citizens by giving them access to more sources of supply.

Conclusion. To have a viable vaccine industry, we will have to create the incentive for firms to produce them. The first and foremost incentive has to be the potential for profitability. For this to happen the government needs to get out of the business of buying vaccines. Congress also needs to create a safe harbor or otherwise limit the liability of firms that produce or administer an approved vaccine. In addition regulatory reforms are needed to permit vaccine makers to innovate and find the best way to produce vaccines.

Devon Herrick, Ph.D., is a Senior Fellow with National Center for Policy Analysis.

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Fiscal Analysis of the Incoming Senate

by John Berthoud

The 2004 election brought significant turnover in the United States Senate. What will the Senate election mean for taxpayers? Because most of the incoming Senators have previous service in the House of Representatives, a comparison can be made of the fiscal records of the outgoing Senators and most of the new Senators.

To undertake the analysis, this Issue Brief utilizes the most recent National Taxpayers Union (NTU) Rates Congress grades for outgoing and incoming Senators. Of course, 2003 grades were available for all nine outgoing Senators. Grades were available for six of the nine incoming Senators (Senator-elect Obama (IL), Senator-elect Salazar (CO), and Senator-elect Martinez (FL) did not have previous service in the

United States House of Representatives).¹

The NTU Rates Congress data presents a comprehensive picture of the fiscal records of these Senators and Senators-elect. Unlike those of other organizations, NTU's annual Rating does not simplistically focus on only a handful of equally-weighted "key votes." For this reason, it has received praise from lawmakers on both sides of the aisle. NTU's Rating is based on every roll call vote affecting fiscal policy (in 2003, NTU included 287 House and 269 Senate votes), and assigns a "Taxpayer Score" to each Member of Congress that indicates his or her commitment to reducing or controlling federal spending, taxes, debt, and regulation.

Table 1 provides an overview of all nine states with

new Senators. Among the highlights of the data:

✎ The latest NTU Rates Congress grade of four of the nine outgoing Senators (44 percent) was "F."

✎ The lowest grade earned by any of the six incoming Senators with previous House service was "B-." Only three of the nine outgoing Senators (33 percent) achieved a "B-" or better in the 2003 NTU Rates Congress.

✎ In five of the six cases where both outgoing and incoming Senators had grades in NTU Rates Congress, the incoming Senator has a better mark. In the sixth instance (Oklahoma), both the outgoing and incoming Senator received an "A" in their most recent NTU ranking. In other words,

continued on page 8

Table 1. The Latest NTU Grades of Outgoing & Incoming Senators

State	Outgoing Senator	Latest NTU Rates Congress Grade	(Year)	Incoming Senator	Latest NTU Rates Congress Grade	(Year)
Oklahoma	Nickles	A	2003	Coburn	A	2000
South Carolina	Hollings	F	2003	DeMint	A	2003
Georgia	Miller	C+	2003	Isakson	B	2003
Louisiana	Breaux	D	2003	Vitter	B-	2003
North Carolina	Edwards	F	2003	Burr	B-	2003
South Dakota	Daschle	F	2003	Thune	B-	2002
Colorado	Campbell	B-	2003	Salazar	N.A.	
Florida	Graham	F	2003	Martinez	N.A.	
Illinois	Fitzgerald	B	2003	Obama	N.A.	

**The Sons of Kyoto:
Renewable Energy and
Amendment 37**

by Richard D. Decker

(continued from page 2)

similar measure passed in the last legislative session (HB 04-1273). Her second effort passed in the House, but failed in the Senate.

If passed, Amendment 37 would require Colorado utilities with 40,000 or more customers to get 3 percent of their energy from renewable sources by 2007, 6 percent by 2011, and 10 percent by 2015 (amounting to 1,100 megawatts). Certain Colorado utilities would be required to generate or purchase a portion of their electric power from renewable energy resources beginning in 2007. The initiative has a cap – 50 cents a month – on what residential customers can pay. The additional cost beyond that cap would fall on business customers. The initiative would provide for financial incentives to certain customers and utilities to invest in renewable energy and would allow a utility to hold an election to either exempt or include itself in the renewable energy requirement.

Currently, utilities generate electricity using the least expensive fuel source. Electricity generated from renewable resources is

frequently more expensive than electricity generated from conventional fuels. A number of Colorado's electric utility providers currently use such renewable energy sources as solar, wind, and hydroelectric, and some of this generation is offered to environmentally conscience customers at a higher cost. Amendment 37 mandates, however, that not only will certain percentages of all electric generation come from renewable sources, but also that these percentages will escalate in future years.

Consumers and taxpayers must pay for everything. Amendment 37 is no different. Just forget about the 50 cents a month cap. There is no cap for businesses. Although the amendment requires businesses to absorb the increased cost, they will pass the cost on to consumers. One way or another, Coloradans will pay.

*Richard D. Decker is a
Colorado State Representative.*

LIMITS

Question of the Quarter:

**What do you think about the use of
renewable energy?**

Send your thoughts on this issue to us at
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We may publish some of your ideas in the
March 2005 issue of *LIMITS*.

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.....
• Colorado voters approved
• Amendment 37 on
• November 2nd, with 52%
• of voters favoring the
• Amendment.
•
• For more election results,
• read the article, "Initiative
• and Referendum in the
• States" on Page 1.
•
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Fiscal Analysis of the Incoming Senate

by John Berthoud

(continued from page 6)

in no instance does a new Senator have a lower grade than the outgoing Senator.

The bottom line is that supporters of limited government and lower taxes got very good news in the 2004 Senate elections. Come January 2005, taxpayers will have new allies in the Senate on critical votes on appropriations bills, budget process reform, pending energy and transportation bills bloated with pork, Social Security reform, and tax relief.

Endnote:

¹As of the writing of this Issue Brief, Senator Lisa Murkowski was leading her race in Alaska, but results had not been finalized.

Editor's note: Lisa Murkowski was reelected to the U.S. Senate.

Dr. John Berthoud is President of National Taxpayers Union (NTU) and National Taxpayers Union Foundation (NTUF).

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National Taxpayers Union Foundation was founded in 1977 and provides critical research on a variety of tax and fiscal issues.

For more information visit www.ntu.org, contact NTU and NTUF at 108 N. Alfred Street, Alexandria, VA 22314, or call 703-683-5700.

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