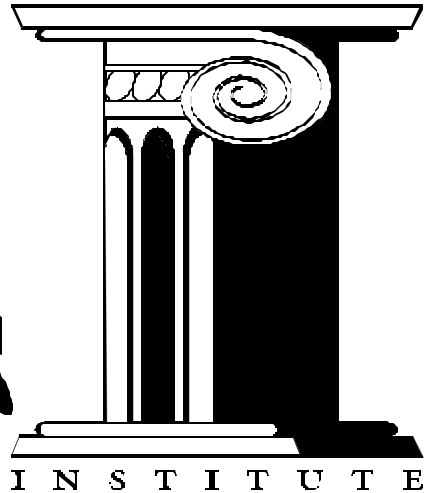


# LIMITS



*On Power and the Use of Coercion*

## By Any Means Necessary

by Dr. John Berthoud

Arguments for bigger government are based on a fundamental principle: Government is virtuous and acts for the benefit of the public. A brief look at government spending instantly dispels much of this claim.

Waste, a proliferation of pork-barrel spending, and the inability to decree that a program has outlived its usefulness are hallmarks of how government operates today. But the revenue side of the equation also demonstrates government's lack of probity.

Repeatedly and wantonly, government collects money from the public by using methods that, if they were used by a private enterprise, would make that private enterprise liable under federal racketeering laws. The only abiding principle of big-government politicians in Washington seems to be drawn from the Malcolm X dictum:

Collect revenue "by any means necessary." Several examples illustrate the point.

### Corporate taxation.

Corporations don't pay taxes. They pass them on to consumers (in the form of higher prices), workers (in the form of lower wages), or stockholders (in the form of lower earnings). Politicians know all this, of course, yet they continue to tax corporations with impunity. And why not? Rhetorically, they gain by making lofty speeches about "being tough by forcing big business to pay its fair share." Then, after corporate taxes are embedded invisibly in the price of a good, they get their loot, leaving not a fingerprint behind.

**Lawsuits against corporate America.** It turns out that our government has been so successful in extorting revenue from consumers by leaning on businesses, that it

has come up with a clever variant — suing corporations. Officials claim that government needs to launch these corporate suits to recover the costs imposed by a given product — tobacco, for instance — on society. (Forget the inconvenient fact that tobacco taxes are already so high that they more than pay for any social costs imposed by tobacco use.) Yet once government collects the loot, it doesn't share it with the taxpayers who were supposedly burdened by higher costs. Rather, it spends the money on new programs.

**Lotteries.** Several decades ago, politicians across the country hit on a new way to extract additional revenue from citizens. The basic formula was to legalize gambling through various means such as lotteries, casinos, riverboat gaming, and Jai Alai. But when they consented to allow Americans

**continued on page 5**

## LIMITS

March 2003

Volume 8, Number 1

Public Interest Institute

President

Dr. Don Racheter

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.

Permission to reprint or copy in whole or part is granted, provided a version of this credit line is used: "Reprinted by permission from LIMITS, a quarterly newsletter of Public Interest Institute."

The views expressed in this publication are those of the authors and not necessarily those of Public Interest Institute.

If you have an article you believe is worth sharing, please send it to us. All or a portion of your article may be used. The articles in this publication are brought to you in the interest of a better-informed citizenry, because **IDEAS DO MATTER.**

We invite you to:  
CALL us at 319-385-3462  
FAX to 319-385-3799  
E-MAIL to [public.interest.institute@limitedgovernment.org](mailto:public.interest.institute@limitedgovernment.org)  
VISIT our Website at [www.limitedgovernment.org](http://www.limitedgovernment.org)  
WRITE us at our address on page 8

Copyright 2003

# Federal Regulatory Agencies: Are They Treating You Fairly?

by Paul Kinyon

Business owners, nonprofit organizations, and local governments who believe they have experienced excessive or unfair federal regulatory and compliance actions have a resource and new point of contact to help them be heard by the federal government.

Recently, the Bush Administration appointed small business owner Paul Kinyon to the U.S. Small Business Administration's Regulatory Fairness Board for the Iowa, Missouri, Kansas, and Nebraska Region.

As a member of the Regulatory Fairness Board, Mr. Kinyon is empowered to hold public hearings and help organizations communicate a comment or complaint to senior regulatory officials in Washington, D.C. If desired, confidential comments are accepted and protected.

Mr. Kinyon serves as an advisor to the National Ombudsman of the U.S. Small Business Administration, Michael Barrera. Mr. Barrera investigates and facilitates resolution of reported problems or issues with federal regulatory agencies. Each year, the National Ombudsman prepares and submits a formal written report to the U.S. Congress that serves as a report card on federal agencies' treatment of small business with respect to compliance and enforcement actions.

SBA Administrator Hector Barreto recently said, "Entrepreneurs cannot operate effectively in a regulatory enforcement environment of uncertainty and confusion. Such an environment makes entrepreneurs spend more time with red tape and less time with their customers. Paul Kinyon will be a great asset to small business owners and will play an active role in advancing regulatory fairness for all small businesses."

If you are a small business, non-profit organization, or small government entity and you have a question, comment or complaint related to a federal agency that regulates your activities, please contact:

Paul J. Kinyon  
Region VII Small Business  
Regulatory Fairness Board  
Advisor to the National  
Ombudsman  
2166 Blake Blvd. SE  
Cedar Rapids, IA 52403  
Tel: 319-431-4600  
Fax: 319-378-9229  
[Pkinyon@gsb.uchicago.edu](mailto:Pkinyon@gsb.uchicago.edu)

Office of the National  
Ombudsman - U.S. Small  
Business Administration  
Regulatory Enforcement Fairness  
Program  
409 3rd Street, SW – Suite 7000  
Washington, DC 20416-0005  
Tel: 1-888-REG-FAIR (734-3247)  
Fax: 202-481-5719  
[ombudsman@sba.gov](mailto:ombudsman@sba.gov)  
[www.sba.gov/ombudsman](http://www.sba.gov/ombudsman)

# Consent of the Governed

by Dennis Polhill

The Founders wrote in the Declaration of Independence, "...whenever any form of government becomes destructive, it is the right of the people to alter or to abolish it." Since 1990 Americans have sought to "alter" an out-of-control government by imposing new limits: term limits.

Other limits proposed include tax and expenditure limits, balanced budget limits, campaign finance limits, and others.

Forty-one state Constitutions prohibit omnibus bills. Omnibus bills, also called "Christmas Tree" bills, are those that append unrelated provisions (read: payoffs) in order to attract enough votes to pass. They offer a little something for everyone, but end up authorizing things that lack merit — bad public policy. Omnibus bills make virtually everyone worse off, except politicians.

Acknowledging this flaw, the original Confederate constitution, with comparatively few departures from the U.S. Constitution, prohibited omnibus bills. If omnibus prohibition or term limits or other ideas are worthy, by what mechanism are they to be achieved? "Alter" implies a means for achieving alteration, short of revolution or creating an entirely new document.

A written constitution defines the structure of government and specifies the limits under which it may operate, partially in the form of enumerated individual rights. That is, we the people delegate limited powers to be governed by. Laws are conformity agreements between all citizens negotiated by representatives. Constitutions limit government.

.....  
*... people are sovereign,  
not the state.*  
.....

Statutes are the rules for the people.

Thus, legitimacy is ascertained by who a Constitution's owner is; irrespective of the quality contained within, who controls the amendment process? If a government controls the amendment process, then the government owns the document, not the sovereign people.

This problem is evident in fledgling democracies all over the world. They draft Constitutions, copying provisions of others, but rarely come to grips with the notion that the people are sovereign, not the state.

Article V of the U.S. Constitution addresses the amendment process. Three-quarters of the states must agree

to ratify a proposed amendment. The control question hinges on drafting proposed amendments. Most familiar is drafting proposed amendments in Congress, because all 27 amendments originated via this path. Congress can effectively draft the proposal when there is a national consensus and no conflict of interest. However, limits on Congressional power, such as term limits, are conflicts of interest. Like a first-grader setting his own bedtime, Congress is paralyzed.

Aware of the problem, the Founders included a second path for drafting proposals: "two-thirds of the several states, shall call a convention for proposing amendments." Since 1787 there have been about 400 applications from 49 states. Congress has neglected to define the rules that would either convene or govern a convention. After all, Congress would lose power if a convention occurred. Constitutional scholars are divided over interpreting the 400 convention applications, and it is likely that someone will file suit to clarify the situation.

Is it proper that Congress may frustrate efforts to set Congressional limits merely because Congress has neglected

**continued on page 4**

To continue our publications, Public Interest Institute relies on the support of our readers. Please use the enclosed postcard to help us meet our financial needs.

**Consent of the Governed**  
continued from page 3

to set the rules? Should dereliction of duty be rewarded by empowerment?

Interestingly, the widely supported proposals for new limits originate from the left, the right, and the center, suggesting a very broad and growing awareness of the need for new Congressional limits.

Some defend Congressman Tancredo's betrayal of his word [to step down after three terms] with "unilateral disarmament." Meaning: with seniority Colorado will more effectively rip off other states using the corrupt omnibus system. For Colorado to win, other states must lose. This reasoning was rejected overwhelmingly in 1990 when Colorado became the first and only state to impose term limits on its Congressional delegation. Sixteen other states agreed in 1992. Colorado reaffirmed statewide support for Congressional term limits in 1994, 1996, and 1998.

Now the politicians hope that interest in term limits has faded. The statewide 65:35 vote against lifting District Attorney term limits proves otherwise. A Rocky Mountain News poll in mid-October discovered 62% support for

term limits, virtually the same level as the 1990s. Support for term limits will not fade merely because politicians declare it so, or because they deceptively delete part of the Colorado Constitution under a false ballot title, or because they fail to exercise leadership and are unresponsive or lack accountability.

Did voters send Tom Strickland a term limits message when he appeared on the ballot as the only one of five U.S. Senate candidates who did not support term limits? Pundits and pollsters have thus far failed to offer an explanation for Allard's surprise victory.

Arrogant politicians should be cautious in their contempt for term limits. How likely is it that America's political establishment can continue to succeed in denying the people's will? We, the people, patiently, but eagerly, await political leaders who will provide the

kind of government we wish. The longer they dawdle, the more this is a measure of power and control without merit, and an indication of the need for possible further limitations to be placed on the politicians.

*Dennis Polhill is a Senior Fellow with Independence Institute.*

*Reprinted with permission from Independence Institute.*

*Independence Institute is a non-profit, non-partisan Colorado think tank. Its public policy research focuses on economic growth, education reform, local government effectiveness, and Constitutional rights.*

*For more information, visit [www.i2i.org](http://www.i2i.org) or contact Independence Institute at 14142 Denver West Parkway, Suite 185, Golden, CO 80401.*

All of our publications, including *LIMITS*, are available for sponsorship. Sponsoring a publication is an excellent way for you to show your support of our efforts to defend liberty and define the proper role of government.

For more information, please contact Development Director John Sandell at 319-385-3462 or [sandell@limitedgovernment.org](mailto:sandell@limitedgovernment.org)

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

**By Any Means  
Necessary**

**continued from page 1**

to gamble, the politicians exacted a high price. In effect, government became the “house” and set unconscionably high rates (justified by tying the revenues to education or some other “noble endeavor”). For instance, in New York state, the government “skims” 42 percent right off the top of its lottery (this doesn’t include expenses). Gambling profits like that would have made Al Capone blush.

**Hidden taxes.** According to research by the National Taxpayers Union Foundation, Americans pay at least \$657.5 billion annually in “hidden” taxes. Like excise taxes, these are levies that taxpayers don’t see. That number breaks down to \$2,642 per person. It’s hard for voters to rationally assess what they’re getting for their

tax dollars when they have no idea what they’re paying in the first place.

Not only is this shameful duplicity of taxation bad economics; it’s pure poison to a democracy. These revenue shenanigans are yet one more major cause of voter apathy and mistrust of government. While politicians have spent a lot of time in the post-Enron era lecturing corporate leaders about their finance systems, we’d probably be better off if our elected officials first focused on cleaning up their own act.

*This article originally appeared in “Perspective,” a monthly public policy journal from Oklahoma Council of Public Affairs. Visit OCPA’s website at [www.ocpathink.org](http://www.ocpathink.org).*

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

*Reprinted with permission from NTU-NTUF.*

*National Taxpayers Union was founded in 1969 to fight for the American taxpayer. NTU is the nation’s largest grassroots taxpayer organization, with 335,000 members across fifty states. NTU lobbies Congress and State Legislatures, educates politicians and the media on important taxpayer issues, and teaches its members how to become effective, united citizen lobbyists.*

*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](http://www.ntu.org), or contact National Taxpayers Union and National Taxpayers Union Foundation at:*

*108 N. Alfred Street  
Alexandria, VA 22314  
703-683-5700*

**Privatizing Iowa’s Prisons**

*A new POLICY STUDY from Public Interest Institute.*

*Privatizing a portion of Iowa’s prison system has the potential to save the state millions of dollars. As long as strict contracts and strict enforcement keep the private prison systems as safe and as well staffed as government-run institutions, and the private sector firms can run the prisons more efficiently and cheaper, Iowa has little choice but to open a portion of its rapidly expanding inmate population to the free market.*

*To read this Study, visit Public Interest Institute’s Website at [www.limitedgovernment.org](http://www.limitedgovernment.org) or contact the Institute to request a copy.*

# Businesses are People Too

by Ralph Frasca, Ph.D.

Economists are fond of the saying, “There’s no such thing as a free lunch.” So when we turn on the evening news to hear some politician calling for increases in government spending for daycare for single mothers or free drugs for the elderly or whatever, economists tend to be the first ones to scream about the taxes needed to pay for these things. This is not to say that such programs are bad ideas, but to remind everyone that these things will require sacrifices.

Perhaps, we should also remember there is no such thing as a free tax. In the end, every tax reduces our ability to spend money as we see fit. But maybe people don’t mind taxes as much if they think someone else is paying them. It’s like being someone’s dinner guest; you worry less about the tab than when you’re paying for yourself.

Too many of us want to turn big business into an unwilling host at a free dinner party. We want them to pay taxes to give us government programs. We forget that businesses are people too. We can’t increase taxes on corporations without some real person paying the bill. In most cases, that bill is paid by those who least expect it: you and me.

Most principles of economics classes include a discussion on taxes in which

the instructor demonstrates that the tax burden often falls on the shoulders of those who do not directly pay the tax. Part of the tax burden on businesses will be shifted backward toward workers and part will be shifted forward toward consumers. Taxes on businesses are paid for by workers in terms of lower wages, consumers in terms of higher prices, and, yes, by the owners in terms of lower profits. Who bears the largest share of the tax burden will be determined by who can least avoid it. Those with the fewest choices will pay the largest share of the tax bill.

.....  
*Perhaps, we should  
also remember  
there is no such thing  
as a free tax.*  
.....

Tax shifting can be explained in terms of choices and mobility. Workers who have choices are mobile. They can move from one occupation to another or one area of the country to another. If wages in their current job drop, or more likely don’t keep up with inflation, they may be able to move to another. Who is left behind at the lower wage? Those who aren’t mobile either

because they lack the requisite skills or the funds for relocating will have to work for less. This includes the poorer and less educated among us.

Consequently, any backward tax incidence is likely to hit hardest the group that can least afford it.

On the consumer side of the market, the results will be similar. Those consumers who can do without or can substitute other goods will avoid any forward shifting of the tax. Less mobile consumers, whose choices are limited, either because the goods are necessities or because they don’t have the resources to search for alternatives, will have to pay the higher prices.

Last, that part of the tax burden that cannot be shifted onto the shoulders of workers or consumers will ultimately be borne by the current stockholders. They will see some of their wealth eroded by the tax. Any new investors, however, are likely to be unaffected. Money is the most mobile of all resources. It will flee toward anywhere the after-tax return is higher. While the rich and famous may be among some of those current owners of capital stuck with a fraction of the tab, the vast majority, unfortunately, will be all the little people who have money in pension and mutual funds. Some of that money they were

## LIMITS Question of the Quarter:

Should the State of Iowa lower corporate income taxes?

Send your thoughts on this issue to us at  
[public.interest.institute@limitedgovernment.org](mailto:public.interest.institute@limitedgovernment.org).

We may publish some of your ideas in the June 2003 issue of *LIMITS*.

\*\*\*\*\*

Here are some excerpts from the responses we received to the Question of the Quarter in our December 2002 issue of *LIMITS*:  
*Would you like to see issues and initiatives on Iowa's ballot?*

"I most definitely would! . . . The First Amendment says the people shall be able to petition the government for a redress of grievances. Here in Iowa we cannot really do that without an 'Initiative & Referendum' law."

Marvin Beer  
Cedar Rapids, Iowa

Thank you to all of our readers who responded to the Question of the Quarter!

planning on for retirement or college will now be funding current taxes.

When we examine state taxes, such as an increase in the corporate tax, all of these effects are exaggerated. Who's more mobile, the corporate manager or the single mother needing daycare? Who has more choices, a buyer with Internet access to world markets, or an elderly resident unfamiliar with the new technology? The next time you hear someone complain about how big business should pay its "fair share" in taxes, you might remind them that you already do.

*Ralph R. Frasca, Ph.D. is a professor of Economics at University of Dayton and a member of the Buckeye Institute Board of Research Advisors.*

*Reprinted with permission from Buckeye Institute for Public Policy Solutions.*

*Buckeye Institute is a highly effective, independent institute that analyzes state and local government programs, taxes, and regulations in Ohio and offers policy alternatives*

*consistent with a respect for individual liberty, private property, and limited government.*

*For more information, visit Buckeye Institute's Website at [www.buckeyeinstitute.org](http://www.buckeyeinstitute.org) or contact Buckeye Institute at 4100 N. High Street, Suite 200, Columbus, OH 43214, (614) 262-1593.*

*Employees of Public Interest Institute are available for speaking engagements. If interested, contact PII for more information.*

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

NONPROFIT ORGANIZATION  
U.S. POSTAGE PAID  
MAILED FROM ZIP CODE 52761  
PERMIT NO. 338

## **Initiative and Referendum in the States**

**by Amy K. Frantz**

Some states are still contemplating concerns from last fall's ballot measures, while others are thinking ahead to next November.

### **NEVADA**

Some controversy has arisen around a Constitutional Amendment initiative to legalize marijuana for recreational purposes that was defeated by Nevada voters last November. White House Drug Czar John Walters campaigned against this measure in Nevada last fall. The Nevada Secretary of State believes the state law requires Walters to file a campaign finance disclosure report, while the Drug Czar is

claiming to be immune from this state law. More than likely, the courts will make a final decision on this disagreement.

### **OREGON**

Oregon voters defeated a Legislative Referendum in January that would have increased personal and corporate income taxes for three years to shore up the state's budget. If the tax hike had passed, more than \$300 million in spending cuts made previously by the State Legislature would have been repealed. However 55 percent of the voters rejected the tax hike, demonstrating to Legislators they prefer spending cuts to tax

increases. Let's hope other states take notice.

### **WASHINGTON**

Signatures are being collected on petitions to place a tax limit measure on the November 2003 ballot. Statutory Initiative I-800 would require a  $\frac{3}{4}$  "supermajority" vote by any state, county, or local lawmaking body to increase taxes. These entities can refer a tax hike to the voters, in which case only a simple majority would be needed to increase taxes.

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