

LIMITS



On Power and the Use of Coercion

Increase the Odds for Limiting Government? Make It More Accountable

by Daniel F. Walker, Esq.

A substantial majority of American citizens obviously have given up hope for, or do not desire nor consider to be high priorities, issues such as ultra-minimal government, taxes eliminated or severely reduced (if that means a loss of “public services”), and private property rights strong enough to trump most zoning and land use restrictions.

Perhaps citizens who are serious about limiting government should consider finding something new to offer in addition to — not “instead of” — the standard package of individual freedom, responsibility, choice, low-or-no taxes, reduced-or-eliminated

regulation, and strong property rights.

What should be tried? What can be offered? What can advocates of freedom and sharply limited government do to reach out to centrist, far less ideologically-motivated citizens without violating the general tenets of the limited-government perspective?

Allow me to suggest that citizens who support a limited-government perspective should actively promote the concept that they also strongly advocate “accountable government.” In particular, I suggest that serious consideration be given for vigorous support of (1) “truth-in-legislation” requirements for legislative bills, (2) recall mechanisms [applicable to elected state and local officials], (3) mandatory roll-call votes for legislative bills, and (4) a “double-majority” requirement for local

governments to adopt, renew, or increase taxes, or to issue bonds.

Why advocate the above items?

- * Such mechanisms and requirements do not violate limited-government principles.
- * The above measures provide advocates of limited-government something specific to be “for” rather than merely against.
- * The measures are something with which to appeal to centrist, less ideologically-driven citizens who nonetheless want “honest” government which is “accountable” to the populace.
- * These measures would show that limited-government proponents are concerned not

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Oregon's Measure 37 Holds Real-world Lessons for Washington

by Todd Myers

Last November, Oregon voters overwhelmingly passed Measure 37, a law requiring the state and counties either to pay landowners for lost property value when new zoning restrictions are imposed or allow owners to operate under the rules in place when they bought the property. Supporters and opponents said Measure 37 would radically change the landscape of Oregon. The reality, however, is turning out to be less revolutionary than either side expected.

Opponents said passage of Measure 37 would result in "anarchy," "chaos," and a "nightmare" as rural Oregon was rapidly paved over with new development. They said the new law would bankrupt the state and counties by requiring them to pay out millions in lost-value claims. It is true that on paper the size of claims made so far seems enormous. Through June 30, Measure 37 claims against the state amount to nearly \$1.3 billion, far more than the state can pay.

In practice though, Measure 37 has not cost Oregon a dime. Rather than pay compensation, the state and counties have simply waived any land-use restrictions imposed since the owner purchased the property.

Most claims have been filed by holders of small, family-owned plots, and most have not owned the land long enough claim significant changes in land use rules. As a result, the actual number of acres affected by Measure 37 is fairly small. Many claims involve less than 100 acres, and some are only five to ten acres. Even when recently-imposed land-use regulations are waived, public safety and construction restrictions remain in place, resulting in little change in the character of rural areas.

Measure 37 opponents predicted environmental regulations would be weakened, communities threatened, and public safety ignored. A University of Washington professor warned darkly that "farmlands would have greater market value as subdivisions...flood plains are attractive locations for car dealerships and truck stops."

Our research shows, however, that these foretellers of doom are being contradicted by actual practice. The state says, "The measure does not apply to commonly and historically recognized public nuisances, public health and safety regulations, regulations required to comply with federal

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only with the ultimate ends of government, but also with the nuts and bolts of the law-making process.

* It would only help small-government advocates at debates, forums, and editorial board meetings to have something to discuss in addition to the routine rhetorical orbit of taxes, regulations, and property rights.

* If small-government advocates have something tangible for “mainstream voters” to easily digest and approve, such paves the way to bring them along to consider more principle-driven and “big” issues.

“TRUTH IN LEGISLATION”

At the national level . . .

“Truth in legislation” is a name given by law professor Brannon Denning for something in legalese called the “single-subject, descriptive-title” requirement for legislation.

Forty-four states have had some form of this measure in

their constitutions for at least 40 years, some for more than a century, requiring that a bill embrace only one subject, and that the subject be clearly identified in the title (e.g., elections; bankruptcy; water use; etc.).

Denning, in a 1999 law review article, proposed a simple version as an amendment to the U.S. Constitution: “Congress shall pass no bill, and no bill shall become law, which embraces more than one subject, that subject being clearly addressed in the title.” [Legal scholar Bernard Siegan also endorsed the measure in his 1994 book on constitution-drafting for new republics.] The U.S. Constitution lacks the requirement. This is an idea just waiting to be exploited by LP candidates for the U.S. House and Senate: As a requirement already present in 44 states, none for less than 40 years, this isn’t “mere pie-in-the-sky” theory. With such a requirement for federal legislation, no longer would special interest groups be able to get their favorite power-brokers to slip in unrelated amendments to popular bills. Funds for

“highway demonstration” construction projects in Missouri could no longer be attached to disaster-relief bills for south Florida. Privacy-reducing amendments to benefit law enforcement couldn’t be hidden in bankruptcy reform bills. Gun-control measures couldn’t be buried in a transportation bill. A bill should pass or fail on its own merits, without its passage being “purchased” by attachment of riders unrelated to the original subject of the bill.

And in the states . . .

A few states — North Carolina, New Hampshire, Massachusetts, Connecticut, Rhode Island, and Vermont — have no “single-subject, descriptive-title” state constitutional requirement for state legislative bills, therefore small-government state-legislative candidates could raise the issue in those specific states, and advocate “truth-in-legislation” as a state-constitutional requirement for state bills.

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If you are interested in reading additional articles by Daniel F. Walker visit Public Interest Institute's website to see July 2001 *INSTITUTE BRIEF*, “A Genuinely Bold Political Reform,” and August 2001 *INSTITUTE BRIEF*, “Truth In Federal Legislation: Time For A Constitutional Rule?”

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RECALL

The direct-democratic mechanism of recall, by citizen initiative and referendum, is just waiting to be robustly advocated by small-government legislative candidates in the 25 or so states which now completely lack this tool. Even in some states which have a form of recall, it is limited in scope (e.g., in Florida, where only municipal officials can be recalled under the state election code).

Think of what the recall mechanism can be to voters: A tool to discipline sitting officeholders (taxpayer employees) between elections. Advocating adoption of a recall mechanism in state constitutions, applicable to state, county, and municipal officeholders, could be a great issue-driven way to approach less-philosophical voters who nonetheless like the idea of greater voter control over elected officials. (Avoid it as a federal issue; it is too messy constitutionally.)

Check your state constitution and statutes — and if need be, check with elections officials — to determine if the recall mechanism is not available, or only applicable to certain public officials, in your state. I note in passing that the six states without a single-subject/descriptive-title requirement also have no recall mechanism, so small-government legislative candidates in North Carolina, New Hampshire, Massachusetts, Connecticut, Rhode Island and Vermont have two great “reform” measures to advocate.

**MANDATORY ROLL-CALL
VOTING — AND ITS
ABSENCE**

In Washington, D.C. . . .

Under the U.S. Constitution now, Legislators’ votes are to be recorded “on any question” only “at the desire of one-fifth of those present.” What does this mean? It means that the vote cast by a Representative or Senator will be recorded (and thus known to American citizens) only if one-fifth of those Reps or Senators present at a vote request a calling of members’ names and their respective votes on a bill. Unfortunately, it is not unusual for the “unanimous consent” procedure to be invoked, and members’ respective votes on a

given bill are not recorded. This procedure allows incumbents to misinform us as to how they really voted on a particular issue. It is, in the words of law professor Marci Hamilton, “the perfect cover for special interest legislation. You could think of it as pork-barrel with an invisible pig.”

Fiscally responsible candidates for the U.S. House and Senate should vigorously advocate amending the U.S. Constitution to require mandatory roll-call votes for all final-bill legislation, to end the cowardly practice of the “unanimous consent” procedure which empowers incumbents to hide how they cast their votes — in fact, to hide how they represent us.

In the states . . .

The same lack of a mandatory roll-call vote also exists in a few states; in North Carolina, the rule is the same as for Congress; one-fifth of the members present must call for a roll-call vote. In Massachusetts, one-sixth of the members present must request a roll-call vote. In Maine, one-fifth of members present and voting are needed to request a roll-call vote. In Texas, three members are required to request a roll-call vote. Don’t forget that concerning some issues, both those who oppose and those who favor a given bill might

agree that they don't want their votes recorded; if the votes are not recorded, then the Legislators are free to tell not only the citizens but special-interest groups whatever they want to hear, in order to gain contributions.

At this rate, North Carolina and Massachusetts appear to be particularly fertile territories for small-government state-legislative candidates to ardently embrace an "accountable government" agenda — "truth-in-legislation," recall, and "truth-in-voting" are there just waiting to be advocated.

DOUBLE-MAJORITY REQUIREMENT FOR LOCAL TAXES AND BOND ISSUES

In many states — check your state's law, and then double-check it — municipalities and counties must have sales taxes, sales tax increases, and bond issues approved by voter referendum; the state constitution may require it, or perhaps "only" state statutory law requires it.

When they can get away with it, it is not unusual for local governments to call special elections, at odd times, for these referenda, so as to increase the possibility of generally low voter turnout — except for those most motivated to see the tax or

bond issue approved.

Several years ago, voters approved an Oregon initiative which prohibits approval of property tax increases in special elections, unless there is at least a 50 percent voter turn-out for the election. If, e.g., 60% of voters at a special election approve the tax, but there is only 48% voter turn-out, then the tax is defeated; pro-tax forces at special elections no longer can depend on widespread voter apathy to get their hands deeper in Oregonians' pockets.

What a grand idea. Expand the concept. Since local governments are not going to stop raising taxes, imposing new taxes, renewing old taxes, or issuing bonds (to be paid off with future tax dollars), the pro-tax, pro-debt forces should be the ones who have to sell their ideas strongly enough to motivate at least half of all registered voters in a jurisdiction to show up and vote. Market the "voter turn-out" requirement as being akin to a "quorum" requirement for a

meeting; we don't want two members of a 10-member committee making a big decision on behalf of a committee, so why should we settle for a majority vote from a minority of registered voters?

* * *

Truth in legislation. Recall. Mandatory roll-call voting. Double-majority requirements for local taxes and bonds. It's an interesting and appealing line-up of "accountable government" measures.

Seriously consider embracing these issues. They can only expand the potential appeal of accountable as well as limited government to American citizens.

Daniel F. Walker is an attorney in Tallahassee, Florida. Among his areas of legal research emphasis are constitutional law, local government powers, and institutional mechanisms for control of government.

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Whose Health Care Is It Anyway?

by Scott W. Atlas

In the debate over health-care reform in this country, it seems that one vitally important question is too often left out of the equation: Why should we expect the government to be responsible for providing medical care in the first place?

Food, housing, and clothing are no less basic to our daily lives, and yet citizens don't want government bureaucrats to tell us what kind of cereal we can buy or how much it will cost. When it comes to health care, however, the assumption that government needs to be involved ignores the virtual stranglehold the government already exerts on health-care prices in this country and the failure of that system.

Despite the presence of private insurers in our health-care marketplace, it is the government that to a great extent controls the price of health care. It is bureaucrats who set the reimbursement rates that doctors and health-care providers use to set their pricing, rather than relying on the actual costs and profit margins for their services. The most overt example is in Medicare-covered health services, where bureaucrats set "rates of reimbursement." Some multiple of these Medicare-determined rates also serves as the basis for a significant percentage of payments by private insurers.

And it is the federal control of the health-care dollar that has led to increased costs, delays in patient care, and frustrations for both doctors and patients.

Christopher Conover of Duke University has estimated the cost of excessive regulation in the health-care market to exceed \$339 billion, with a net cost of \$169 billion — more than U.S. consumers spend every year on gasoline and oil. His figures show that the cost of the medical legal system alone, including litigation costs, court expenses, and defensive medicine, exceeds \$80 billion.

This artificial pricing structure that our government imposes on consumers and doctors is unique to health care, and it has done little to rein in costs or improve care. The real cure for rising health-care costs is direct payment from patient to doctor, eliminating the third-party-payer system that shelters patients from making cost-conscious decisions and results in massive administrative costs and the artificial pricing of medical care. Prices come down when the patient is the customer — not the government or other third-party payer. Patients consider cost when they spend their own money: refractive eye surgery, whole-body-screening CT scans, and other procedures have come down in price when

market forces are allowed to operate without third-party interference.

The isolation of the consumer from paying for health care and the inordinate amount of control that government exerts over health-care costs represent a startling exception to the free market system that has served us so well in every other major service industry. This should lead us to ask the question, **on what basis does "government" become the solution for escalating health-care costs?** And why, when it has failed to rein in those costs in the past, should we expect even more government control to be the answer today?

Scott W. Atlas is a Senior Fellow at the Hoover Institution; Professor of Radiology and Chief of Neuroradiology at Stanford University Medical School; and Editor of Power to the Patient (Hoover Press, 2005).

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law,” and other commonsense zoning restrictions.

Here are a few real-world examples of how Measure 37 is playing out. In Hood River County a landowner filed a claim for more than \$11 million. This sounds like the costly “nightmare” scenario envisioned by Measure 37 opponents. Yet, rather than pay the claim, the state simply waived newer zoning restrictions and re-instated the rules that applied when the current owner bought the land in 1977. The 1977 rules allow building single-family homes on quarter-acre lots, but only as long as they “are appropriate for the continuation of the

existing commercial agricultural enterprise in the area.” For this reason it is unlikely the owner would receive building permits for a subdivision-size development.

In Linn County a landowner sought a waiver of farmland zoning rules so Habitat for Humanity could build low income housing on his land. Under Measure 37 the zoning waiver was approved, but building permits were denied for public safety reasons. The land is on a flood plain.

A Columbia County landowner has filed a seemingly massive compensation claim of \$87 million against the state. Rather than negotiate over what is probably an inflated appraisal, Oregon waived the land-use restrictions imposed since the owner brought the property. Even so, the owner will still have to comply with pre-existing laws requiring him to “conserve forestlands for forest uses” and strictly limit any construction to what is

“necessary and accessory” for forest use.

What will happen when governments look to change zoning laws in the future? Oregon, like Washington, has a solid foundation of zoning already, making it unlikely that there will be major changes in the future. Some changes will occur, however, and it is unclear how Measure 37 will affect those changes.

While not sparking the kind of radical land-use changes supporters had hoped for, neither is Measure 37 turning out to be the “nightmare” opponents had predicted. The news from Oregon is of more than passing interest to Washington residents. There is already an effort afoot to pass a land-compensation initiative here, and voters may see a homegrown version of Measure 37 on the ballot as early as next year.

Todd Myers is Director, Center for Environmental Policy, Washington Policy Center. Reprinted with permission of the author.

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Question of the Quarter:

Do you believe the zoning laws in your area are too restrictive?

Send your thoughts on this issue to us at public.interest.institute@limitedgovernment.org.

We may publish some of your ideas in the December 2005 issue of *LIMITS*.

**Public Interest Institute
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600 North Jackson Street
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Initiative and Referendum in the States

by Amy K. Frantz

Activists in some states are organizing new Initiatives for the ballot, while in other states they are fighting to preserve the rights of citizen.

California Governor Arnold Schwarzenegger is working to secure a place on the November 8th ballot for at least two measures for California citizens to consider. One measure transfers redistricting authority from the Legislature to a bipartisan panel of retired judges. The other measure would give principals five years, instead of the current two, to evaluate new teachers before granting them lifetime tenure.

Although 77 percent of **Florida** voters approved eight-year term limits for State Legislators in 1992, Florida Legislators have placed a measure on the ballot this fall to extend term limits to twelve years. Polls in the state indicate term limits are as popular today as they were in 1992.

The **Michigan** Civil Rights Initiative Committee is working to place a measure on that state's ballot to end the use of race and gender preferences in Michigan's public institutions.

In **Oregon**, activists are working to place a measure on the 2006 ballot to limit state spending to the rate of growth

in population and inflation.

Washington State Legislators adopted a \$200+ million tax hike, ignoring laws that limited spending and required a two-thirds vote of the Legislature to increase taxes. The Washington State Supreme Court recently ruled that voters will not be allowed to file a referendum challenging the tax increase because the tax hike bill also included a provision proclaiming an "emergency." Washington activists are still fighting against this abuse of power by the state's elected officials.

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