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Summer 2008

Navigating November's Constitutional Amendments

THE JAMES MADISON INSTITUTE

Celebrating 21 Years as Florida's Premier Free-Market Think Tank

Founded in 1987 by J. Stanley Marshall, The James Madison Institute is a non-partisan policy center dedicated to advancing the free-market principles of limited government, individual liberty, and personal responsibility.

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THE JOURNAL OF THE JAMES MADISON INSTITUTE

The Journal is a quarterly magazine provided to members and supporters of The James Madison Institute, to members of the Legislature, and to others who affect public policy in Florida. *The Journal* is intended to keep Floridians informed about their government, to advance practical public policy solutions, and to recognize those individuals who exemplify civic responsibility, character, and service to others. Opinions expressed in *The Journal* are those of the respective authors and do not necessarily reflect the views of The James Madison Institute, its staff, or its Board of Directors.

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MESSAGE FROM THE PUBLISHER

J. STANLEY MARSHALL


MARSHALL

Bettering education offerings and facilities for Florida's children was a tenet for the establishment of The James Madison Institute in 1987, and it continues to be. This issue of *The Journal* makes the point once again in several articles. One of those has special relevance to the publisher and may register in a special way with some of our readers.

Thomas DiBacco's essay on the Blaine Amendment describes with appealing lucidity the strange history of the actions of James Blaine, who was Speaker of the U.S. House of Representatives 150 years ago. Blaine's attempt to subvert the interests of American Catholics had—and still has—repercussions for efforts by school reformers to give Florida parents a place in choosing the schools their children attend.

The Florida Constitution we lived under until the revision of 1968 was written in 1885, and the Blaine Amendment, proposed and defeated in 1875, had an effect. Make sure there's no financial support for Catholic schools, it said, and Florida legislators, in their haste to secure public education for "the public"—meaning separate from any religious influence—carried out their mission zealously. Florida has conducted two more constitutional revisions, in 1978 and 1998, and the Constitution Revision Commission (CRC), on which I was privileged to serve in 1997-98, had a brief but, it turns out, important encounter with Blaine.

The matter being considered by the CRC then was how to assure the people of Florida that their Constitution guaranteed them a high-quality system of public schools. The language adopted by the CRC was in line with the mandate in Article IX of the state Constitution, that it is the state's "paramount duty" to make provision "by law for a uniform, efficient, safe, secure and high quality system of free public schools."

I was troubled during the debate by a possible interpretation of that language, one that would be taken to mean that religious schools would not be permitted to accept state-funded vouchers. The debate was vigorous and, in the end, I was convinced that Florida citizens were committed to providing high-quality schools, some of which might be operated by religious organizations. This was important to me as a school reformer of sorts, one who has believed for many years that school choice is an important right—yes, even a civil right—that parents should not be denied.

So when the work of the 1997-1998 CRC was completed, I took a deep breath and felt assured that there would be no impediment to the school voucher program that Governor Jeb Bush had advanced. I knew there would be abundant opposition from the teachers unions, but I felt the voucher legislation was legally well founded. Little did I suspect that the Florida Supreme Court would find the program in violation of the Florida Constitution on grounds that avoided conflict with the Blaine Amendment, as such, but employed arguments that have seemed to school choice supporters as Byzantine at best. Schools operated by private entities cannot, the court said, provide assurance that their schools will meet the criterion of uniformity, this in addition to the court's finding that voucher payments reduce funding for the public education system and, thus, that school choice, by its very nature, undermines the system of high-quality, free public schools.

The uniformity argument seems specious to many Floridians who are interested in genuine school reform—meaning providing better schools for all of Florida's children. Readers are encouraged to pay special attention to Amendments Seven and Nine to be acted upon by the voters in the fall election. Adopting one or both could help to advance school reform in Florida.

Worthy Words

"The world is a book, and those who do not travel read only a page."

– ST. AUGUSTINE

"Everyone wishes to have truth on his side,
but not everyone wishes to be on the side of truth."

– RICHARD WHATLEY

FROM THE EDITOR'S DESK

A NATION STILL AT RISK

ROBERT F. SANCHEZ

Twenty-five years ago the Reagan Administration's "Nation at Risk" report warned that if a hostile foreign power had done to America what our public education system had done, it would have been considered an act of war.

Yet despite the stirrings of change in the form of more pupil testing, the opening of charter schools here and there, and scattered programs allowing parents to choose their child's school, progress thus far has been unequal to the gravity of the challenges facing our nation.

Therefore, devising strategies to advance education reform remains an important goal for The James Madison Institute. That's why we were pleased to be a key player recently in an inspiring national conference that could well become an annual event.

Indeed, by now you may have read about Excellence in Action, a three-day conference on education reform co-sponsored by JMI and the Foundation for Excellence in Education, an organization founded by former Florida Governor Jeb Bush.

This conference, which was held in mid-June at Walt Disney World, received a great deal of attention from the national news media because it featured well-known speakers such as New York City Mayor Michael Bloomberg, U.S. Secretary of Education Margaret Spellings, ABC newsman John Stossel, and former First Lady Barbara Bush.

While those speakers were quite inspiring, the "strategy sessions" on various key issues were value added for the 500 or so attendees, including key policy makers representing more than 30 states.

These sessions focused on topics with provocative titles ranging from "Measuring Performance Is the Recipe for Quality Teaching" and "Money Alone Can't Buy You Student Achievement" to "Turn High Schools from Drop-Out Factories into Graduation Machines" and "The Case for Vouchers: Students learn. Taxpayers save. All schools improve."

Considering how often Florida's public education is derided by critics whose sole goal seems to be to ramp up spending, many of the conference participants from other states expressed admiration, even envy, for what Florida has managed to achieve thus far through its combination of accountability and school choice.

Indeed, as Florida's Education Commissioner Eric Smith noted during one of the strategy sessions, our state's position in Education Week's "Quality Counts" rankings has risen in the last few years to 14th from 31st. Equally heartening is the progress made by Florida's ethnic and racial minorities on key indicators

such as reading, writing, and math.

Yet, as former Gov. Jeb Bush has noted, success is never final and reform is never complete. Indeed, the forces of the status quo are trying to reverse the progress that Florida has made in education.

As several of the conference speakers reminded us, however, returning to the failed policies of the past is not a good option. That's because America's young people will need to be much better prepared than in the past to compete in what is becoming truly a global marketplace.

While America dawdles on education reform, several rapidly developing nations are far outpacing the United States in key indicators such as university degrees granted in math, science, engineering, and foreign languages relevant to the world's new economic realities.

Debra Lyons, Director of the Georgia Office of Workforce Development, put it well in quoting her boss, Georgia Governor Sonny Perdue:

"When I was a child, my mother always told me to finish the food on my plate because children in China and India were going hungry. Nowadays I urge our students to finish their education because children in China and India are hungry for their jobs."

Editor's Note:

The Journal welcomes readers' letters via e-mail or "snail mail." Complete contact information is listed inside the front cover of each issue.

LETTERS TO THE EDITOR

CALIFORNIA'S WOES ARE NOTHING NEW

TO THE EDITOR:

Regarding the recent article, "California: Here We Come" (Winter-Spring *Journal*) and the origin of "Californication":

The term has long been used by people in the Pacific Northwest to deride trends and fads that start in California metro areas and make their way north.

An Oregon governor once proposed building a wall at the Oregon border to keep out the Californians, and he was only half joking. Idaho people are repulsed by huge ribbons of interconnected expressways, great hordes of people overwhelming seashore areas and public parks,the total addiction to automobiles and commuting great distances, and cookie-cutter housing stretching to infinity. And that was California in the 1970s, when I lived there. I hear it's worse now.

MICHAEL A. VAN DYK
Miami

TRANSPARENCY IS GOOD BUT ALLOW FLEXIBILITY

TO THE EDITOR:

As a former bureaucrat, I read Sandra Fabry's Policy Brief, "Transparency in Government Spending," with great interest. Encouraging both transparency and clarity in both procurement and revenue/expenditure reporting is essential to limiting government excess.

Before moving to Florida, I spent 17 years at the University of California at Los Angeles (UCLA) in the Chancellor's Office, primarily as a budget and program analyst. I was the primary analyst on a project that involved taking apart several schools and moving the constituent departments to other units, including a newly formed School of Public Policy, for which I served for three years as the first Chief Administrative Officer.

I worked on projects that involved analyzing intra-campus, inter-campus, and inter-university data (including budgets, expenditures, student credit hours, contract-and-grant volume, faculty salaries, various types of facility use, and so on). I participated directly in creating and managing the annual budget process—actually, several different processes over my tenure in that office—and helped to create on-line data-input and reporting systems at a time when these ideas were brand-new.

The idea that "Floridians would be best served by a single, searchable online database for state expenditures ... down to the individual transaction level ..." is a whole lot harder to achieve than it sounds, particularly if "[l]ocal government entities should also be required to disclose detailed information on their expenditures in the same format on their own websites."

One size does not fit all. Agencies large and small have their internal quirks and management structures. Yes, one of the reasons for incompatible databases is simple turf-protection, but the on-the-ground operating information demands in health services are very different from the demands of the Department of Transportation.

The budgets in some agencies are 80 percent personnel; in others, external contracts may represent 60 percent of the budget. Developing a really good, useful, and cost-effective system requires a thorough understanding of the organizations that will be reporting. It also requires patience, a willingness to compromise, and a project leader with a very strong will.

...My sense of the list of information that the author deems essential is that she has simply listed the items she might find interesting for her current projects as a policy analyst. For what purpose do we need to know the residential address of a payee, and does this violate privacy laws?

...There is another reason to be cautious about recommending a "one size fits all" system. It will stifle creativity and improvement.

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AN ANALYSIS FOR FLORIDA VOTERS
NOVEMBER'S 6, 7, 8, 9 OR 10 CONSTITUTIONAL AMENDMENTS

Here at *The Journal of The James Madison Institute*, we know that our readers think for themselves because they often get in touch with us to share their views on the key issues facing our state. Therefore, we would never presume to tell our readers which candidate to support or how to vote on ballot issues.

Indeed, our charter as a non-partisan, not-for-profit organization precludes our direct involvement in lobbying or election year politicking, and we're fine with that. Our mission is to conduct credible research and disseminate the findings in order to educate and inform policy makers and voters, who can reach their own conclusions.

However, we also know that many of our readers are busy people who seek out reliable information so that they may make informed decisions when they enter the voting booth. Many cannot interrupt their lives and travel to Tallahassee to monitor first-hand what's happening in their state government.

Fortunately, JMI's staff members and several of our distinguished scholars have been in a position to do so, becoming very involved in efforts to educate and inform policy makers about various proposals related to taxes and spending.

Therefore, in this issue of *The Journal* we are sharing some of

their insights concerning the nine proposed constitutional amendments currently scheduled to appear on this November's ballot.

Amendment One was placed on the ballot by the 2007 Legislature, Amendment Two reached the ballot as a result of an initiative petition drive, and the other seven proposed amendments were placed on the ballot by the Florida Taxation and Budget Reform Commission (TBRC), a constitutional entity that is formed every 20 years.

Whether or not we all agree with any or all of the TBRC's seven proposals, Floridians owe its members a debt of gratitude. They gave countless hours of their time to listen to fiscal experts and ordinary Floridians provide information and express their viewpoints on a wide range of budget and taxation issues.

Former House Speaker Allan G. Bense, who serves on JMI's Board of Directors, was assigned the daunting task of chairing this diverse group of 25 Floridians—seven appointed by House Speaker Marco Rubio, seven by Senate President Ken Pruitt, and 11 by Governor Charlie Crist.

For a proposed Constitutional amendment to reach the November ballot, passage required a two-thirds majority—17 of the TBRC's 25 members, even if some of them were absent when the vote occurred. Therefore, reaching a consensus was not easy, nor should it be. Our state Constitution must not be altered in haste.

Enormous credit also must go to Gulf Power Company President Susan Story, who is also a dedicated member of JMI's Board of Directors. She chaired the TBRC's Finance and Taxation Committee, which vetted the proposals that reached the ballot—and some that did not.

The One That Got Away

As our members no doubt know, JMI scholars Dr. Randall Holcombe and Dr. Barry Poulson provided the TBRC with a great deal of information about Florida's need for a taxpayer protection amendment (TPA) similar to Colorado's pioneering Taxpayer Bill of Rights. In addition, JMI's Public Affairs Director Thomas Perrin worked closely with the TBRC's staff as well as the Legislature, and JMI's President/CEO Bob McClure adroitly coordinated the Institute's efforts.

JMI researchers concluded that a TPA would be the best way to rein in runaway government spending. That's because a key feature of any meaningful TPA is a requirement for voter approval of any proposal to raise revenues derived from taxes and/or fees beyond a certain well-defined threshold—typically the rate of inflation and the rate of population growth. If a TPA were in place, Florida voters would be able to decide how much government they wished to pay for.

A majority of the TBRC agreed with JMI's scholars about the need to protect Florida taxpayers from profligate government spending that stifles the private-sector economy, destroys jobs, and damages the reputation of the state's business climate.

Yet officials from various local governments vehemently objected, and the TBRC fell one vote short of approving even a watered-down version of a TPA for the November ballot. Therefore, the only remaining option for TPA supporters is legislative action or a petition drive.

At the Mercy of the Courts

Meanwhile, at press time, nine Constitutional amendments were still scheduled to appear on the November ballot. However, at least three of those amendments were facing legal challenges from groups asking the courts to deny Floridians a chance to vote on them.

At the same time, a different group—supporters of the so-called "Hometown Democracy Amendment"—are seeking a court edict to place it on the November 2008 ballot. The Florida Division of Elections had ruled that the organizers of this initiative petition proposal did not provide enough valid signatures by the February 1, 2008 deadline. The amendment's supporters disagree.

So it is at least conceivable that a judge may decide to order that this amendment be placed on the ballot. The Fall 2007 issue of our *Journal* (posted on our website) included an article by Ryan Houck outlining this proposed amendment's potentially detrimental effect on property rights, Florida's economy, and the voters' experience with lengthy and complex ballot questions on election day, so we won't discuss it again in this edition.

Nonetheless, it is possible that when the courts have finished second-guessing the TBRC, the Legislature, and the Division of Elections, Florida voters this fall will face a decision on as few as six or as many as ten Constitutional amendments.

This article will deal with the nine amendments that were scheduled to be on the ballot as of our summer *Journal*'s deadlines. What follows is a distillation of the research and insights provided by JMI scholars and staff members.

Special thanks must go to JMI's Distinguished Scholar Randall Holcombe, Public Affairs Director Thomas Perrin, and Research Associate Amar Ali. All contributed to the following analysis. However, readers should not assume that each concurs with all the pros or cons or recommendations in the following analysis, which was reformatted, edited, and augmented by Policy Director Robert Sanchez. We hope this analysis will prove helpful to our readers as they ponder these proposed amendments to Florida's basic charter of government—and reach their own conclusions.

AMENDMENT ONE
Relating to Property Rights/ Ineligible Aliens

Reference: Article I, Section 2
Ballot Summary: Proposing an amendment to the State Constitution to delete provisions authorizing the Legislature to regulate or prohibit ownership, inheritance,

disposition, and possession of real property by aliens ineligible for citizenship.

Sponsor: The Florida Legislature

Background

In the early 1900s, alien land laws were enacted by many states to restrict or regulate the purchase of land by, specifically, Japanese and other Asian immigrants "extended only to free white persons and persons of African nativity or descent." The constitutionality of these provisions has, in fact, faded over time. In the 1920s, the U.S. Supreme Court found that alien land laws were constitutional, whereas, in 1948, they found them to be on the fringe of constitutionality. Just a decade later, several states began finding their alien land laws were unconstitutional, citing racial discrimination prohibited by the Fourteenth Amendment.

Florida's current equal protection clause requires the state to treat everyone equally with an exception that permits the Legislature to oversee the ownership of property by "aliens ineligible for citizenship." Article I, Section 2 of the Florida Constitution states:

> **Basic rights**—All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

If approved by 60 percent of the voters, Amendment One would remove the section "except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law." This would therefore remove the only exception to Florida's equal protection clause.

This proposed constitutional change made its way to the ballot after passing the Legislature during the 2007 regular session. Senate Joint Resolution 0166, sponsored by Sen. Steve Geller (D-Hallandale Beach) and co-sponsored by Sen. Larcenia Bullard (D-Miami) and Sen. Victor Crist (R-Tampa), cleared the Senate unanimously and the House by an 83-31 margin.

Pro

Many believe that Florida's alien land law exception doesn't belong in the equal protection clause of the Constitution and is blatant discrimination against specific ethnic and racial groups. They also claim the language to be obsolete after almost a century of existence. It is also important to note that the Florida Legislature has never exercised its constitutional authority to regulate or prohibit property ownership by aliens ineligible for citizenship so there have been no examples of its necessity.

Con

Although there are no official records indicating opponents of this proposal, the argument could be made that removing this language would hinder the Legislature's ability to act swiftly when dealing with a homeland security threat involving a non-citizen residing in the state. Others may also believe that this provision acts as a deterrent to illegal immigration and that removing it would encourage illegal immigration.

Analysis

Amendment One is not the subject of a high-profile campaign pro or con. The resulting lack of information could be a problem in an election year when Florida voters will be subjected to a barrage of ads about other proposed amendments and the race for the White House. The brief ballot summary does not fully explain the proposal, and history suggests that Florida voters tend to vote "No" on less publicized and more opaque issues. Amendment One may very well fall into that category. However, our JMI scholars' analysis suggests that on balance this amendment would do no harm and would remove a discriminatory provision from the state Constitution.

AMENDMENT TWO
Florida Marriage Protection Amendment

Reference: Article I
Ballot Summary: This amendment protects marriage as the legal union of only one man and one woman as husband and wife and provides that no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.
Sponsor: FloridaMarriage.org

Background

As Florida's "premier free-market think tank," The James Madison Institute has generally focused on issues relevant to the relationship between government and the economy. JMI's core mission is to advocate on behalf of the timeless ideals espoused by our nation's founders: limited government, individual liberty, personal responsibility, federalism, free enterprise, property rights, and—above all—governmental accountability to the people. JMI's persistent interest in improving the quality of education arises from the desire to ensure that these principles endure from one generation to the next.

Given the daunting challenges of its core mission, JMI has avoided the kind of "mission creep" that has divided the membership and vitiated the energy of organizations that strayed too far off course. Therefore, JMI has not ventured into controversial "wedge issues" such as immigration, abortion, gun regulations, and the homosexual agenda.

JMI recognizes that many of its members, who range from "live-and-let-live libertarians" to "social conservatives," will have their own strong opinions on these kinds of

issues, with people of good faith and integrity reaching different conclusions concerning Amendment Two. Here, briefly, are the Pro and Con advanced by the two sides.

Pro

Despite the federal "Defense of Marriage Act" and a state statute prohibiting "same sex marriage," it is not beyond the realm of possibility that a Florida court at some time in the future will rule that the U.S. Constitution's "full faith and credit clause" (Article IV, Section 1) and the state Constitution's anti-discrimination provisions could be construed to mean that Florida must recognize the married status of same-sex couples who wed in other states. Amendment Two's proponents say that inserting the traditional definition of marriage in the state Constitution could prevent this. They also argue that traditional marriage strengthens the nuclear family, the building block of a stable social order, and therefore traditional marriage should enjoy legal protection.

Con

Amendment Two's opponents cite three main concerns. First, they argue that an amendment isn't needed because Florida has a statute embracing the traditional definition of marriage. Second, they caution that an unintended consequence of Amendment Two would be to prohibit "domestic partnerships," a benefit offered by some employers, including Florida universities that are attempting to recruit faculty members in a highly competitive national labor market. Finally, opponents argue that some senior citizens who cohabit but have remained unmarried in order to preserve certain pension benefits could be denied certain marital privileges such as hospital visitation rights if Amendment Two were to pass.

Analysis

JMI takes no formal institutional position on Amendment Two because it's an issue outside of the Institute's core mission. At the same time, however, JMI does recognize that ethical behavior rooted in a strong sense of morality is essential for the survival of a free society. Therefore, there will be instances in which certain issues involving personal morality interface with JMI's core mission, and JMI will articulate a position. A system of free enterprise cannot function efficiently, for instance, if signed contracts mean nothing and corrupt practices such as kickbacks and bribery taint the decisions of government officials.

Moreover, it also must be noted that JMI has repeatedly deplored the kind of "judicial activism" wherein judges' policy preferences and personal viewpoints are imposed on society in lieu of a strict reading of the law. It is likewise clear that Amendment Two would not even be on the Florida ballot in November were it not for egregious examples of judicial excess in Massachusetts and other states where judges have redefined "marriage." JMI will continue

to urge that policy decisions ought to be made by the people's elected representatives rather than by judges. Nonetheless, on Amendment Two, JMI offers no formal recommendation, given that this issue is not within the purview of JMI's core mission.

AMENDMENT THREE
Changes and Improvements Not Affecting the Assessed Value of Residential Real Property

Reference: Article VII, Sections 3 and 4; Article XII, New Section

Ballot Summary: Authorizes the Legislature, by general law, to prohibit consideration of changes or improvements to residential real property which increase resistance to wind damage and installation of renewable energy source devices as factors in assessing the property's value for ad valorem taxation purposes. Effective upon adoption, repeals the existing renewable energy source device exemption no longer in effect.

Sponsor: Florida Taxation and Budget Reform Commission

Background

The Constitution already contains a provision to exempt a "renewable energy source device" from *ad valorem* property taxes. The current provision allows the exemption to be in place for a maximum of 10 years. This amendment would eliminate the 10-year time limit on the exemption, and would further exempt improvements "made for the purpose of improving the property's resistance to wind damage." In most cases the impact of the amendment would be minimal, so there is not a strong argument for it, but there is also not a strong argument against it. At any rate, here are the Pro and Con:

Pro

One way to evaluate this amendment is to consider that taxes are the price we pay for government goods and services. When viewed that way, any improvements that make a property more resistant to wind damage, or allow it to use renewable energy sources, do not create an additional demand for government goods and services, and in some cases may reduce the demand for government goods and services. Therefore, there is no good reason why such improvements should subject a property to additional taxes. This amendment would remove any tax disincentive that might discourage a taxpayer from making these types of improvements.

Con

The argument against Amendment Three is that improvements adding to the value of a property should be treated no differently for tax purposes than other improvements. To treat them differently merely adds to Florida's long list of property tax exemptions that arguably shift the tax burden from favored groups of property owners to others.

Analysis

The use of tax incentives to achieve

certain public purposes is well established. The Taxation and Budget Reform Commission's staff analyzed the potential economic impact of each of the seven amendments the TBRC placed on the ballot. The analysis of this amendment suggested that its advantages outweighed any possible disadvantages.

AMENDMENT FOUR
Property Tax Exemption of Perpetually Conserved Land; Classification and Assessment of Land Used for Conservation

Reference: Article VII, Sections 3 and 4; Article XII, Section 28

Ballot Summary: Requires the Legislature to provide a property tax exemption for real property encumbered by perpetual conservation easements or other perpetual conservation protections, defined by general law. Requires Legislature to provide for classification and assessment of land used for conservation purposes, and not perpetually encumbered, solely on the basis of character or use. Subjects assessment benefit to conditions, limitations, and reasonable definitions established by general law. Applies to property taxes beginning in 2010.

Sponsor: Florida Taxation and Budget Reform Commission

Background

This amendment has two parts. The first part exempts property "encumbered by perpetual conservation easements or other perpetual conservation protections" from property taxation altogether. The second part would tax land used for conservation purposes solely on the basis of its character and use.

Pro

Concern about the rapid growth in Florida's population, which is projected to reach 40 million by the middle of this century, has led state and local officials to seek ways to preserve green space against the inroads of agriculture, industry, and urban sprawl. The result has been ambitious (and costly) programs in which large tracts of private property were purchased by government entities and taken off the tax rolls. Land-acquisition programs such as "Florida Forever" have had broad bipartisan support. They remain immensely popular with Florida voters, especially in densely populated urban counties, several of which have initiated their own land-buying programs.

Even so, the state and local funds available for land purchases are finite and thus not sufficient to purchase outright all of the properties that many Floridians would like to see preserved. Amendment Four provides an incentive for the owners of these properties to protect them from development without having to sell them. Granted, some of the property would go off the tax roll, but property used for conservation demands little in the way of government goods and services and should be taxed accordingly. Moreover, even if the government were to lose some property-tax revenue when the land

becomes tax-exempt, the government would be spared the up-front cost of acquiring the property.

Con

Although the second part of Amendment Four—taxing land used for conservation purposes solely on the basis of its character and use—is acceptable and desirable, the problems with the first part outweigh the benefits of the second. Amendment Four exempts property "encumbered by perpetual conservation easements or other perpetual conservation protections" from property taxation altogether. It would not seem unreasonable to tax such property according to its current use, but why should it be treated more favorably than other property used for conservation purposes?

The concept of protecting or conserving a property *in perpetuity* is troubling. Florida has been a state for 163 years. In comparison, perpetuity is a very long time. While conserving a particular piece of property for 100 or 1,000 or 10,000 years might appear desirable now, conditions change, and changed conditions may well result in a need to "un-conserve" a property because of factors that cannot be known today. So basing a total and "perpetual" tax exemption on such transitory factors would appear problematic.[1]

Opponents also note that the principal beneficiaries of this total tax exemption would be major landowners. One can easily picture a family with a large tract of land kept in its natural state and used for hunting, fishing, or other purposes. That family could keep title to the property in perpetuity and never pay any property taxes by encumbering it by a perpetual conservation easement. This tax break would be available not only to Floridians, but also to out-of-state residents with such encumbered Florida property. Owners could retain their estate tax-free in perpetuity. So potentially a large amount of Florida real estate might be permanently removed from the tax rolls. If the property really were conserved in perpetuity, the amount of exempt property could never fall, and as new owners took advantage of the exemption, this tax break's value would continue to increase year after year, forever.

Analysis

Although property owners taking advantage of the conservation easement authorized by Amendment Four commendably would be prevented from turning their land into a subdivision or a shopping mall, there are serious concerns about its long-term impact. As opponents have noted, perpetu-

1 One example is Maclay Gardens State Park in Tallahassee. The Maclay family gave it to the state on the condition that the property must remain a state park. Any change in its use would cause its ownership to revert back to the donor's heirs. Several few years ago, the city wanted to widen a road and slightly alter its course, placing the realigned road within a corner of the park property. After years of negotiations with the donor's heirs, an agreement was made and the road was extended onto former park land. A portion of the property, which the donor intended to be preserved "in perpetuity" as a park, is now a road.

ity is a long time, and conditions change. Granted, a constitution may be amended, so perpetuity may not really mean forever. If that be the case, and if the "permanent' easement on much of the property turns out to be more temporary than perpetual, the conserved property would not seem to deserve anything more than being taxed based on its current use, as would be the case for other conserved property.

On the other hand, if a large portion of the conserved properties were to remain tax exempt in perpetuity, local governments would lose revenue and would lack the flexibility to deal with changing conditions. For instance, suppose a tract of perpetually conserved land blocked a narrow swath of right-of-way badly needed as a corridor for a public purpose such a highway, pipeline, drainage canal, or electric transmission line? Would an easement for those kinds of uses be permissible or would it be subjected to a legal challenge? It's not clear.

Our scholars who analyzed Amendment Four report that they would not argue strongly against someone who supported this amendment and thought that the tax benefits it would give to major landowners—enabling them to maintain their property mostly tax-free—would be worthwhile in exchange for perpetual conservation. On balance, however, our scholars believe the perpetuity provision could be problematic.

AMENDMENT FIVE
Eliminating State Required School Property Tax and Replacing With Equivalent State Revenues to Fund Education

Reference: Article VII, Sections 4, 9, and 19; Article XII, Section 28

Ballot Summary: Replacing state required school property taxes with state revenues generating an equivalent hold harmless amount for schools through one or more of the following options: repealing sales tax exemptions not specifically excluded; increasing sales tax rate up to one percentage point; spending reductions; other revenue options created by the Legislature. Limiting subject matter of laws granting future exemptions. Limiting annual increases in assessment of non-homestead real property. Lowering property tax millage rate for schools.

Sponsor: Florida Taxation and Budget Reform Commission

Background

The main feature of Amendment Five, the so-called "Tax Swap Amendment," is that it would constitutionally eliminate school property taxes now required by the state ("required local effort" taxes)—but not property taxes for capital outlay, school renovation and repair, for lease-purchase obligations, voter-approved millage, or "discretionary *ad valorem* millage for school districts authorized by law"—and offset the loss of revenue with unspecified increases in sales

taxes, other state taxes, or spending cuts in other areas. The amendment has two other significant features. It provides that the assessed value for tax purposes of non-homestead property cannot increase by more than five percent annually. This provision is in response to the exceedingly rapid rise in assessed values from 2001-2006. Homestead property is already capped so that its assessed value can rise by no more than three percent a year, and in January 2008, voters approved a constitutional amendment that limited non-homestead property to no more than a 10-percent increase per year. This amendment would lower that 10 percent to 5 percent. The second provision is that any law creating a sales tax exemption shall contain the single subject of a single exemption, and a legislative finding that the exemption advances or serves a public purpose. This would eliminate the possibility of piggybacking a new sales tax exemption on other bills to sneak it through the Legislature.

Pro

Amendment Five ironically is opposed by some of the same organizations that have repeatedly criticized the Legislature in recent years for shifting much of the cost of funding K-12 public schools to local property taxpayers. Yet state lawmakers had little choice as they grappled with the spiraling cost of other state priorities ranging from funding prison construction and operations to fulfilling Medicaid's promise of health care for low-income families. As a result, successive legislative sessions increased the "required local effort" for public education, thereby forcing local school districts to raise their property taxes at a time when cities, counties, and special districts were also raising theirs.

The combined effect of soaring real estate values and higher tax rates from multiple jurisdictions prompted an outcry from voters demanding tax relief. The main tax relief measure approved thus far—raising the homestead exemption for owner-occupied homes and "capping" assessment increases for other properties to a whopping 10 percent a year—will provide little or no tax relief for other kinds of property. Businesses, landlords, and seasonal residents have all suffered. Amendment Five would provide a broader form of relief by substantially reducing each school district's millage rate.

That is appropriate. Many analysts have concluded that Florida's property tax system is so rife with geographic disparities and other kinds of inequities and loopholes that it is no longer a fair way to pay for a statewide system such as public education—a system that the state Constitution, as interpreted by the Florida Supreme Court in *Bush v. Holmes*, is famously required to be "uniform."

Although opponents of Amendment Five deride it as a "tax swap" rather than a tax cut, they omit some relevant points. The most likely source to replace the revenue lost by eliminating the required local effort

portion of school property taxes would be the sales tax, whether by raising the rate or eliminating some of the current exemptions. Florida is fortunate that its still-vibrant tourism industry currently attracts more than 80 million visitors a year. The visitors not only pay sales taxes but also surtaxes beyond the general rate on certain goods and services. Moreover, most visitors do not make use of the costliest government programs—schools, prisons, health care. To the extent that Florida's visitors pay more, Florida's residents will pay less, so Amendment Five, strictly speaking, is not a dollar-for-dollar tax shift.

As Amendment Five shifts much of the responsibility for funding K-12 education away from local property taxpayers and back to the state, it commendably allows future legislators a degree of flexibility in deciding how to raise revenue to replace the property tax revenue while also requiring each sales-tax issue to be considered in a process that is open and transparent. In a state where conditions change rapidly from one decade to the next, such flexibility is a virtue, not a vice. If voters are dissatisfied with the solutions fashioned by a particular group of legislators, they can always "throw the rascals out."

Con

The fundamental flaw in Amendment Five is that it does not specify where the money to offset the property tax reduction will come from; it only specifies that those revenues must be replaced. The tax increases (or spending cuts) must at least equal any property tax cuts, so it is important to realize that this amendment will not necessarily produce tax cuts for Floridians. It will produce cuts in some taxes (property taxes) in exchange for increases of an equal amount in others. Most Floridians will not see their taxes go down.

This amendment will be advertised as a substantial property tax cut, and undoubtedly property taxes will fall initially, but the first thing to notice is that the amendment does not guarantee that they will. The amendment eliminates "required local effort" taxes, but explicitly allows "discretionary *ad valorem* millage for school districts authorized by law." In other words, the amendment allows school districts to replace the eliminated "required local effort" taxes with "discretionary" taxes. Surely school districts would not do this right away, so there will be a temporary property tax cut. Yet there is nothing to prevent property taxes from creeping up to their current levels or higher. The amendment does not cap property taxes or keep them from rising, it does not require a property tax cut, and it does not prevent school districts from levying the same amount of property taxes they currently do; it just prevents the state from mandating that school districts levy them. The amendment allows school districts to levy discretionary taxes, and you can be sure that if it is allowed, at least some school districts will—especially in those school districts where the

elected school board members are beholden to the employee unions. Therefore, Florida's property owners could wind up paying the same old high property taxes for public schools while they (and, yes, Florida's visitors) pay higher sales taxes as well. Opponents say this lack of certainty as to the consequences is reason enough to reject the amendment.

Analysis

Amendment Five's opponents have gone to court to contend that the ballot language is misleading. They claim the wording makes it appear that there is a list of options for replacing the revenues currently derived from the required local effort. The amendment's opponents further argue that it is not at all clear how the Legislature would be able to enact legislation to offset the loss of those revenues. The opponents further say that's an important consideration because the amendment has a "hold harmless" provision requiring the Legislature to appropriate enough money so that the elimination of required local effort will not reduce each school district's K-12 revenue.

Are the critics correct? It's not clear. Granted, if the amendment passes, "required local effort" property taxes would be reduced by approximately $9.5 billion, bringing welcome relief to businesses and renters as well as homeowners. However, the current Florida sales tax raises only about $22 billion, so to offset that property-tax reduction through sales-tax hikes would require a 43-percent increase in sales-tax collections. The amendment does not stipulate how this revenue would be raised, and solely increasing the general sales-tax rate—currently six percent—would not suffice.

Moreover, the amendment limits the rate increase, stipulating that some of the property tax revenue could be made up by "an increase of *up to* [italics added] one percentage point to the sales and use tax..." Such a one percentage point increase in the rate could raise at most $3.6 billion, leaving another $5.9 billion in revenues that would be required to fill the gap. Critics note that Florida's sales tax rate is already high, and raising it higher would likely result in more avoidance and out-and-out evasion as Florida's "bricks and mortar" merchants compete with on-line vendors. So the potential to replace property taxes through sales-tax increases is limited in any event, and an increase of one percentage point would probably raise somewhat less than the projected $3.6 billion because of increased evasion and avoidance.

The amendment also provides yet another option, however: a repeal of existing sales-tax exemptions, although it specifically excludes repealing the current exemptions for food, prescription drugs, health services, charitable and religious organizations, residential rent, electricity and heating fuel, and a number of other items. The amendment's opponents see this as a not-so-subtle attempt to reinstitute Florida's short-lived services

tax, implemented and then quickly repealed in 1987. Yet, they argue, it is unclear that even a tax on services would be enough to close the gap.

The amendment's supporters note that it also provides other options for the Legislature to consider: the possibility of spending reductions in other areas of the state budget or raising "other revenues identified or created by the Legislature."

Some opponents argue that spending cuts would be problematic. The two big areas of state budgetary expenditures are education and health care. Funding for the state university system and community colleges could be cut to make up the difference for K-12 schools, which are protected, or the state might be able to reduce its Medicaid expenditures by expanding the reforms that have been tested in a pilot project.

If Floridians did not like the result, their only recourse would be the cumbersome and slow process of enacting yet another constitutional amendment to repeal or modify Amendment Five.

Granted, Amendment Five does hold out the promise of a much-needed property-tax cut, it does mandate that enough money be found to replace the property-tax revenue so that K-12 school funding is held harmless, and it does appropriately assign the Legislature the task of figuring out how to do it.

Are we willing to gamble on taking a specified property tax cut now in exchange for accepting unspecified other sources of revenue that will add up to $9.5 billion? That may well depend on how much they trust future legislators. Proponents of Amendment Five note that ever since fiscal conservatives achieved and maintained a majority in the Legislature, lawmakers have resisted raising taxes. Indeed, the 2008 session faced and passed the ultimate test: With $6 billion less revenue than they had the previous fiscal year, lawmakers resisted the clamor for a tax increase and instead prudently reduced spending.

Can Florida's future legislators be relied upon to be as judicious? That's a subjective judgment that each individual voter must make. Meanwhile, our JMI analysts did not manage to reach a firm consensus on Amendment Five and therefore make no recommendation**.**

AMENDMENT SIX
Assessment of Working Waterfront Property Based Upon Current Use

Reference: Article VII, Section 4; Article XII, New Section

Ballot Summary: Provides for assessment based upon use of land used predominantly for commercial fishing purposes; land used for vessel launches into waters that are navigable and accessible to the public; marinas and dry stacks that are open to the public; and water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their

support activities, subject to conditions, limitations, and reasonable definitions.

Sponsor: Florida Taxation and Budget Reform Commission

Background

Florida requires county property appraisers to determine the taxable value of most real property in accordance with its "highest and best use," a phrase often construed to mean the use most lucrative for the local government's treasury. However, there are exceptions. Farm acreage would produce more tax revenue as a subdivision or a shopping mall if taxed at a lower rate given to active agricultural land based on its current use rather than on its speculative value. The operators of waterfront businesses have been less fortunate. Bait shops, marinas, and "mom-and-pop motels" have seen their property taxes skyrocket when pricy condominiums and high-rise hotels sprouted on nearby waterfront properties. Amendment Six would remedy this by allowing these properties to be evaluated based upon their current use rather than on a property appraiser's speculation about the property's potential value if under some other "highest and best" use.

Pro

This amendment is very easy to support, based on the principle that taxes are the price we pay for government goods and services. On that basis, all property should be taxed based on its current use, not on some hypothetical best use of the property. Property should be taxed based on what it is, not on what a tax appraiser thinks it could be.

As noted above, this principle is already embodied in the Constitution for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreation purposes. This amendment would extend that same protection to working waterfront property.

Con

This well-intended amendment would create yet another tax break for a special-interest group, further distorting an already distorted property-tax structure rife with exemptions and loopholes. It would also enable speculators to buy and hold property on the cheap by placing a sham business such as a bait shop on land destined for other uses. Each time one group of taxpayers receives a break, other taxpayers wind up paying higher taxes to make up the difference.

Analysis

This amendment is essential to the survival of businesses on Florida's working waterfronts. The fact that they would be taxed out of business without this protection is a testament to the recent inordinate increases in property taxes during a real estate boom fueled to a large degree by speculation.

AMENDMENT SEVEN
Religious Freedom

Reference: Article I, Section 3
Ballot Summary: Proposing an amendment to the State Constitution to provide that an individual or entity may not be barred from participating in any public program because of religion and to delete the prohibition against using revenues from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian organization.
Sponsor: Florida Taxation and Budget Reform Commission

Background

When the First District Court of Appeal ruled against Florida's "Opportunity Scholarship" program, it cited a portion of the state Constitution that has been dubbed "the Blaine Amendment," which prohibits the government from providing public funds directly or indirectly to benefit religious organizations. (Elsewhere in this Journal, you will find an article about the Blaine Amendment's origins.) The Florida Supreme Court, in its ruling on that case (*Bush v. Holmes*) cited a different rationale. (That rationale is explained below in connection with the background discussion of Amendment Nine.)

Because of the district court's ruling in *Bush v. Holmes*, supporters of faith-based programs that receive public funds have remained fearful that in the future a broader ruling could invalidate the use of public funds for programs ranging from church-related hospitals, charter schools, and prison ministries to other kinds of scholarships (Pre-K, McKay, Corporate Tax Credit, Bright Futures) that allow the recipients to attend church-related institutions. Amendment Seven would eliminate the state Constitution's restriction on this use of public funds.

Pro

Although Amendment Seven's principal aim is to correct a questionable Florida Supreme Court decision that ended the state's "Opportunity Scholarship" program, it is needed to protect a wide range of other programs in areas beyond education. If, for example, the government wished to privatize contracts for services such as mental health programs, drug addiction treatment, and assistance to the homeless, church-affiliated programs would be eligible for funding. A strong argument in favor of this amendment is that tax dollars are collected from everyone, and people who would prefer religious schools, counseling services, and so forth deserve the same support as those who prefer institutions with no religious affiliation. On those grounds alone, this amendment appears very worthy of support. Moreover, allowing parents the opportunity to choose the school—public or private, church-related or not—that they believe best serves their children provides a "way out" for students trapped in

failing government schools.

Con

One serious argument against this amendment requires some consideration. Should the amendment pass, religious organizations that accept state money would also be subject to state regulations related to that money. For instance, governmental rules prohibiting discrimination in employment might require church-related programs to hire persons who do not share their views about personal conduct or lifestyles. Yet accepting public funds inevitably would lead to more governmental control over those organizations, which cannot realistically expect to receive public funds without also being subject to governmental oversight. Because of the potential that such funding could compromise the independence of the organizations that receive it, Amendment Seven's long-term effect may be to weaken and harm religious institutions. Of course, those institutions could avoid that harm by refusing the money. However, when spurning the money means witnessing their own parishioners' hard-earned tax dollars going to other religious groups, they may well be tempted to take the money, ignoring the potential long-run consequences.

Analysis

Our analysts believe that on balance, the advantages of Amendment Seven, which essentially repeals an artifact of 19th Century bigotry, the "Blaine Amendment," far outweigh its potential drawbacks. Their conclusion is based on the libertarian notion that those who run religious organizations ought to have the freedom to decide whether or not they wish to accept public funds and live with the government rules and restrictions that inevitably accompany public funding. Moreover, liberating children who are trapped in failing government schools—and allowing them to attend schools that are better and often safer—is reason enough to support Amendment Seven, which would also protect other faith-based programs from lawsuits by devout secularists.

AMENDMENT EIGHT
Local Option Community College Funding

Reference: Article VII, Section 9
Ballot Summary: Proposing an amendment to the State Constitution to require that the Legislature authorize counties to levy a local option sales tax to supplement community college funding; requiring voter approval to levy the tax; providing that approved taxes will sunset after 5 years and may be reauthorized by the voters.
Sponsor: Florida Taxation and Budget Reform Commission

Background

Florida's 28 community colleges have been praised as the most cost-effective element in the state's entire system of public education, which

ranges from pre-kindergarten to doctoral programs. Every high school graduate lives within commuting distance of a community college campus, sparing many the boarding costs associated with attending an institution far from home. Together these campuses deliver quality instruction and job training to thousands of students, many of whom go on to pursue advanced degrees or rewarding careers. Moreover, several of Florida's 28 community colleges are now beginning to fill a void in Florida's system of higher education by offering baccalaureate degree programs in high-demand career fields such a teaching and nursing. The evolving role of these institutions is discussed on page 35 of this *Journal* in an article by Florida's State College Chancellor Dr. Will Holcombe.

Although Florida's community colleges can be proud of their progress, their advocates say they face a chronic challenge: They lack the funding sources that are available to many of the community colleges in other states and to the other elements in Florida's own educational structure. They cannot depend on property taxes, as K-12 public school districts do, and community colleges rarely can count on gleaning large sums from endowments donated by wealthy alumni, as universities often do. Moreover, the students they serve include many from low-income and minority families for whom high tuition rate would be an obstacle to college. This leaves Florida's community colleges at the mercy of the funding decisions of a Legislature struggling to meet a wide range of important priorities. Amendment Eight offers a solution by allowing voters to approve a temporary, local-option sales tax for community colleges.

Pro

The ballot summary explains the amendment quite well. The tax is subject to voter approval, a nod to local control. The money would be raised locally and spent locally. The tax is temporary. Local oversight of local funding means closer scrutiny of the way the money is used. Taxpayers who may be comparatively indifferent to how a college spends money the Legislature sends down from Tallahassee may be more interested when it's their own local funds. This oversight places community colleges on notice to spend the money prudently and efficiently because squandering it would make it difficult to ask local voters to reauthorize an extension of the tax when it expires after five years.

Con

The Taxation and Budget Reform Commission must have perceived sales taxes as a good source of revenue for all types of expenditures. Amendment Five (above) would require a 43-percent increase in sales taxation (or equivalent increases in other revenues or Draconian spending reductions) to make up for the revenue lost under the amendment's proposed property tax cut. On top of that the TBRC offers voters the opportunity for even higher sales

taxes to help fund community colleges. Especially considering the potential combined impact of this amendment with Amendment Five, this appears to place a heavy burden on Florida's sales tax base.

Analysis

One advantage of relying principally on state funding for Florida's community colleges is that high school graduates are free to choose any community college in the state without fear of being assessed "out of district tuition" analogous to the out-of-state tuition paid by non-residents attending Florida's public colleges and universities. That freedom of choice is helpful because some highly desirable degree college programs are offered only at certain community colleges and not at others. Still other high school graduates wish to attend a community college in a city such as Gainesville, Tallahassee or Miami, with the ultimate intention to transfer to a public university in the same city. Although there is no current basis for demanding "out-of-district tuition" from students who are not local, skeptics might well wonder how long it would be before local taxpayers begin to ask why they are "subsidizing" non-local students from counties where the community college sales tax is not being collected. Moreover, unless the local-option sales tax is capped so that it does not apply to the full price of big-ticket items such as automobiles and boats, the tax differential between adjoining jurisdictions may provide an incentive for purchaser to buy elsewhere, thereby penalizing retailers in the jurisdiction where the tax is collected. Moreover, if Amendment Five were to pass, the local option tax for community colleges would be piled atop a statewide hike in a sales tax that is already high compared to many other states. Therefore, notwithstanding the great achievements of Florida's community colleges, our analysts have reluctantly concluded that this is not a good method of funding them.

AMENDMENT NINE
Requiring 65 Percent of School Funding for Classroom Instruction; State's Duty for Children's Education

Reference: Article IX, Sections 1 and 8; Article XII, Section 28

Ballot Summary: Requires at least 65 percent of school funding received by school districts be spent on classroom instruction, rather than administration; allows for differences in administrative expenditures by district. Provides the constitutional requirement for the state to provide a "uniform, efficient, safe, secure, and high quality system of free public schools" is a minimum, non exclusive duty. Reverses legal precedent prohibiting public funding of private school alternatives to public school programs without creating an entitlement.

Sponsor: Florida Taxation and Budget Reform Commission

Background

As noted in the discussion of Amendment Five, the Florida Supreme Court ruling in *Bush v. Holmes*, which invalidated Florida's "Opportunity Scholarship" program allowing the parents of student in consistently failing schools to receive a voucher to attend private schools, was not based on the so-called "Blaine Amendment" and its prohibition of public funds going directly or indirectly to religious organizations. Rather it was based on language elsewhere in the state Constitution requiring the state to maintain a system of public education that is, among other things, "uniform." Even though accountability measures such as the Florida Comprehensive Assessment Test (FCAT) have demonstrated that Florida's public schools are anything but "uniform" when it comes to quality, the Court construed "uniform" to mean that government schools were the only permissible delivery system for public education. Amendment Nine would alter that, allowing other delivery systems, including publicly funded scholarships—vouchers—for students to attend private schools.

Amendment Nine also requires that school districts spend at least 65 percent of their operating funds on classroom instruction, but the amendment leaves it to the Legislature to define the precise parameters of classroom spending. This feature of Amendment Nine responds to a public perception that some school districts have been spending inordinate sums on "bloated central bureaucracies" instead of in the classroom.

Pro

When a state audit of the Miami-Dade School District found more than 400 administrators receiving six-figure salaries, the notion of requiring a certain portion of school funding to be spent on classroom instruction garnered broad public appeal.

The 65 percent requirement, however, is but an additional selling point for Amendment Nine, which corrects the Florida Supreme Court majority's strained interpretation of the state Constitution's uniformity requirement. Countering this decision would allow the Legislature once again to free students now trapped in consistently failing government schools by removing an impediment to their receiving public funds to attend a school that they and their parents choose. In turn, allowing for choice and competition has been shown to improve the government schools.

Con

Amendment Nine is properly the target of a challenge from groups trying to remove it from the ballot because its title and ballot summary are both vague and misleading. Although the Taxation and Budget Reform Commission was not required to abide by the Constitution's "single subject rule," which applies to amendments proposed via initiative petitions, the TBRC is not at liberty to confuse the voters.

Moreover, conservatives concerned about cluttering the state Constitution with provisions deal-

ing with pregnant pigs, fishing nets, and the minimum wage may well question the notion of "chiseling in stone" a base limit—65 percent—for not-yet-defined spending on classroom instruction. First, while 65 percent may be an appropriate figure today, that may change as the technology of education changes in the future. Similarly, there may not be a clear line that delineates classroom instruction from administrative and other expenditures. For example, if the district develops instructional materials, videos, web sites, and so forth, is that considered classroom instruction? By any normal definition, the answer would be no. Along those same lines, Florida Virtual School offers educational opportunities through internet instruction—to make up failed courses, to take courses that may not be offered at a particular school, or to take additional courses. Is Florida Virtual School classroom instruction? By any normal definition of classroom instruction, it is not. Yet this may be the most effective way to deliver some instruction, and as technology develops, likely an increasing share of instruction in the future. Even if this is a good policy, do we really want to tie our hands by putting this in the Constitution?

Analysis

Amendment Nine removes a legal impediment that has blocked one alternative delivery system for public education—"Opportunity Scholarships"—and could be used to block others. Meanwhile, a study by JMI and the Friedman Foundation demonstrated that far from weakening public education, competition and choice strengthened it. Moreover, research showed that when the ill-advised *Bush v. Holmes* ruling ended the Opportunity Scholarships, there was backsliding at the impacted public schools. So the public schools do benefit. That, however, is ultimately beside the point. Floridians ought to focus on the well-being of their students, not the well-being of their public schools. If a change helps students, it is beneficial regardless of its effect on public schools. Despite concerns about the advisability of placing the 65 percent requirement in the state's basic governing document, this concern is outweighed by the advantages of removing a court-imposed impediment to parental choice in education.

Worthy Words

"Vote for the man who promises least – he'll be the least disappointing."

– BERNARD BARUCH

FLORIDA'S BLIND SPOT ON SCHOOL SPENDING

BY GREG FORSTER

A few years ago, researchers at Harvard and the University of Illinois made headlines with an astonishing experiment on "inattentional blindness." But Florida's school system has been conducting an even more astonishing experiment on the same phenomenon for years—one that's costing the taxpayers millions—without generating any headlines.

The Harvard and Illinois researchers showed test subjects a video in which three players wearing white shirts and three wearing black shirts passed basketballs back and forth. They asked the viewers to count the total number of passes among the players in white shirts, ignoring passes among black-shirted players.

What the viewers didn't know was that, midway through the video, a woman in a gorilla suit would walk slowly out to the middle of the screen. She then stopped, turned towards the camera, beat her chest, and walked the rest of the way across the screen.

After they'd watched the video, most of the test subjects still didn't know this had occurred—because they hadn't noticed the gorilla. A full 58 percent of viewers said they had seen nothing unexpected. When specifically asked if they had seen a gorilla, they still said no.[1]

The point is that people don't notice something, no matter how obvious it might be, if they're busy looking for something else instead—especially if they're looking for the opposite thing. In this case, since viewers were focusing on the white-shirted players, they didn't notice the black gorilla. By contrast, when viewers were asked to track the

passes of the black-shirted players, twice as many of them (83 percent vs. 42 percent) noticed the gorilla.

What does this have to do with Florida? Research we've conducted here at the Friedman Foundation for Educational Choice shows that Florida's school spending proves the same principle as that experiment. For years, the state has been spending ever-greater amounts on schools, yet the public remains convinced that school spending is much lower than it really is—largely because the media are so busy looking for signs of lower spending.

In 2006, we asked 1,200 Floridians about education issues, including how much they thought the state spent on education. We asked them to exclude school construction costs—for years, interest groups defending the status quo had erroneously claimed that growth in the state's school spending was due only to its unusually urgent need to build new schools. We wanted to make sure our results wouldn't be vulnerable to that kind of misdirection.

Half of Floridians (50 percent) thought that Florida spent no more than $4,000 per student on public schools. Almost two-thirds (62 percent thought it spent no more than $6,000. Only 5 percent gave the correct response—between $7,000 and $8,000—and 7 percent said it spends more. The other 25 percent declined to answer. At this rate, that gorilla could walk through the Florida school budget, and nobody would notice.

We also asked how much Florida ought to spend on public schools. Half of Floridians (51 percent) said it should spend less than $6,000 per student—well below what it actually spends now (about $8,000 per student.) Another 15 percent said it should spend between $7,000 and $8,000. So two-thirds of Floridians thought the state should spend as much as it then spent—or less. Only 17 percent said it should spend more than that, and another 17 percent didn't answer.

"At this rate, that gorilla could walk through the Florida school budget, and nobody would notice."

But the public didn't understand its own preferences. When asked whether the state's spending is too high, too low, or about right, fully 58 percent said it was too low. But in the same poll, only 17 percent had said that Florida should spend more than $8,000, which is about what it was in fact spending at that time. Meanwhile, only 3.5 percent said spending was too high, whereas 62 percent thought spending should be no more than $6,000.

How did the public get so confused and misinformed? For the most part, it's because interest groups like the teachers unions want the public to be confused and misinformed. And the media are usually too busy passing

along their claims without any critical thought to examine the facts.

At about the same time as our poll, we released a study that examined the facts on Florida's school spending. The study cited statements by the Florida Education Association, the state teachers union, claiming that schools needed more money but weren't getting it.

It also cited stories in the *Miami Herald* and *St. Petersburg Times* claiming that school boards were strapped for cash and that the state's spending on public schools was flat during then-Governor Jeb Bush's first three years in office, once it was adjusted for inflation.

In fact, inflation-adjusted spending on Florida schools rose not only during the first three years of Governor Bush's term, but in every year from 1996 to 2002. As in our poll, that figure doesn't even include the expansion of spending on school construction in Florida.

Unfortunately, the interest groups and their media enablers are also helped by the extreme difficulty of getting reliable financial information in Florida. Our study laid out the various obstacles that Florida places in the path of those who wish to find useful school finance data.

For example, state reporting requirements are designed to ensure that preliminary "draft" budgets get more attention than the actual budget data, even though the draft figures are often very different from the real data. This system hinders both transparency and accountability.

But there is one other reason Floridians might not be aware of the state's record of steady increases in school spending: When the state lags in national rankings of some categories of pupil performance, many people assume that a lack of funding is to blame—even though increased funding does not necessarily produce commensurate results.

This lack of correlation between spending and results is something statistical researchers have known for years—no, actually for decades. Indeed, there has been a huge number of empirical studies examining whether there's any direct correlation between higher spending and better student outcomes. So far the evidence is overwhelming that there isn't. The number of studies finding such a relationship is so small that they're actually more likely to represent statistical flukes than valid findings.

Florida is no different. Thanks to the state's enlightened policy on school outcome data—unlike its policy on school finances—Florida is now one of the most-studied states in the union. Because Florida makes very high quality data available to researchers, researchers prefer to study Florida. And if any of these studies have found a relationship between spending and outcomes, I'm not aware of it.

What does produce results? The state's voucher and accountability testing programs are at the top of that list. A large body of research—again thanks to the state's generosity with high-quality

data—has examined these policies, and it consistently finds that the state's voucher programs and testing requirements are boosting pupil performance in some public schools.

Despite the current year's spending reductions, the prevailing trend for many years has been ever-greater spending. So next time you read a story in the paper about how Florida schools are supposedly hurting for cash, take a closer look You may just see a gorilla in your midst.

Greg Forster is a senior fellow at the Friedman Foundation for Educational Choice.

1 You can read about the experiment at http://www.wjh.harvard.edu/~cfc/Simons1999.pdf, and see the video for yourself at http://viscog.beckman.uiuc.edu/grafs/demos/15.html.

Worthy Words

"Learned institutions ought to be favorite objects with every free people. They throw light over the public mind, which is the best security against crafty and dangerous encroachments on the public liberty."

– JAMES MADISON

LETTERS *(Continued from page 7)*

If each agency is allowed to develop its own systems—as long as they meet some basic standards—you will have some duplication of effort and expenditure. However, you will also allow "best practices" to emerge, spread, and be replaced by new best practices as technology changes and people come up with new ideas.

Transparency and clarity in government are absolutely vital to a free society It is essential that anyone advocating them do so with a full understanding of what it means to develop and implement changes within a large bureaucracy—or across a wide variety of organizations of varying size, sophistication, and (most important) mission. Prescriptive recommendations, such as those the author suggests, set even my libertarian teeth on edge. Far better to simply recommend that the governor make this a priority, and that the CFO be charged with managing this effort, and that organizations like The James Madison Institute be given a seat at the table when the stakeholders group convenes.

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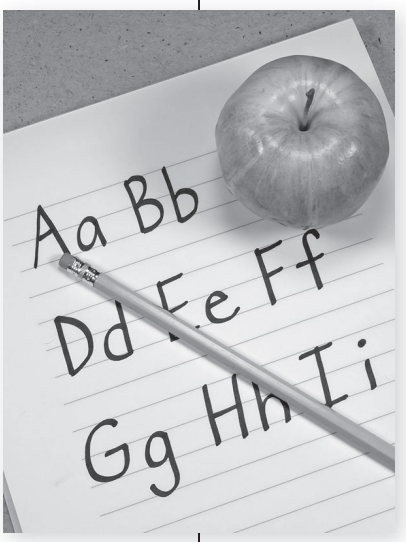
STUDY: McKAY VOUCHERS AID PUPILS WHO HAVE DISABILITIES

BY JAY P. GREENE AND MARCUS A. WINTERS

When Florida created the McKay Scholarship Program, the nation's first voucher program for students with disabilities, the primary concern was to ensure that all disabled students could obtain an adequate education. And according to a Manhattan Institute study of the program, families are indeed finding better services with McKay.



Parents of disabled students who use a voucher report higher levels of satisfaction with their private schools, fewer instances of their children being bullied, smaller class sizes, and a significantly higher likelihood that they would receive promised services in the McKay program than in their previous public school. Special education vouchers seem to be beneficial to those who use them.

But what about the vast majority of the disabled students who remain in public schools? Are they helped or hurt when families are given options to leave the public schools and take resources with them? We address this issue in a new study for the Manhattan Institute. We utilize individual student achievement data to measure the academic performance of disabled students remaining in the public schools as more private schools register to participate in the voucher program. Because more private schools signed up to receive McKay students at a faster rate in some places than others, we could see

whether the growth in achievement for the learning disabled students was greater in public schools in areas where many private schools came online compared to areas where fewer private schools did.

We found that public school students with relatively mild disabilities made statistically significant test score improvements in both math and reading as more nearby private schools began to participate in the McKay program. Students diagnosed as having a specific learning disability, the mildest category, which includes 61 percent of disabled students and 8.5 percent of all students in the state of Florida, benefited the most from the availability of school choice. The academic proficiency of students diagnosed with relatively severe disabilities was neither helped nor harmed by increased exposure to the McKay program.

Overall, the McKay Scholarship Program appears to help both disabled students who receive a voucher and those disabled students who do not receive a voucher and who remain in public schools.

Taxpayers also benefit since the average amount of a McKay Scholarship, $7,206, is far less than what would be spent to educate these students in the public schools. Even the public schools win as they avoid costly legal problems and reduce what they describe as the financial burden of growing special education enrollments. No one loses any legal rights, since disabled students can always return to their public schools and seek adequate services through the legal system. Students only gain options to find adequate services elsewhere, if they wish. This is one of those happy but rare "win-win" public policies.

"The Florida model for special education vouchers is proving so successful that it is being replicated in other states…"

The Florida model for special education vouchers is proving so successful that it is being replicated in other states around the country. Currently Arizona, Georgia, Ohio, and Utah have adopted similar programs, and several other states are considering the approach.

If the evidence from Florida and these other states continues to show positive results, the idea of offering vouchers to disabled students may draw the attention of Congress, since the federal government determines the general structure of special education policies. Of course, we still have much to learn about these programs, but the available evidence is very encouraging.

Jay P. Greene is a senior fellow at the Manhattan Institute and head of the Department of Education Reform at the University of Arkansas. Marcus A. Winters is a senior fellow at the Manhattan Institute.

JUNIOR COLLEGES TO STATE COLLEGES: THE EVOLVING ROLE OF A FLORIDA TREASURE

BY WILL HOLCOMBE

Many Floridians are surprised when they see the statistics demonstrating the productivity of the state's 28 community colleges. Consider: In 2006-07,

- 67 percent of the nursing degrees awarded in Florida were produced in community colleges;
- 61 percent of the teachers produced by our state universities began as community college students;
- 78 percent of first responders (police, fire, medical technicians, paramedics) in Florida graduated from community colleges;
- 80 percent of the minority freshmen and sophomores in public higher education in Florida attend a community college;
- Nearly 60 percent of all students who begin their higher education in Florida, begin it at a community college.

These are just a few of the statistics that describe the impact that our community colleges have on the employment health of our state. The success of the system, which is generally regarded to be the best in America, began with an exceptional initial plan. That plan's great asset was that it created colleges that could adapt to the ever-changing needs of a state such as Florida.

Once the plan was in place, subsequent Legislatures supported the expansion of the system to its present size of 28 institutions, including many with branch campuses. The

system's continuing challenge is to provide Floridians with the knowledge and skills to fill the jobs that are critical to the future of our state—a future that is always changing.

The Plan

In the mid 1950's, Gov. LeRoy Collins and the leadership of the Florida Legislature led the effort to create a junior college system that would serve as the primary entry point to higher education for the incredible population boom that was forecast to hit our state. This new system was based on five powerful principles:

- Open Admission: The colleges should provide access and opportunity to all persons who wanted to advance their careers and pursue a better quality of life for themselves and their families.
- Low Cost: These colleges should provide a high quality education at an affordable cost to the students and the taxpayers.
- Diversity of Programs: In addition to being the primary entry point for the baccalaureate degrees, these colleges should offer programs that meet the employment needs of the community at both the certificate and degree level.
- Local Control: These colleges should be locally governed so that they have the flexibility to respond quickly to the changing educational needs of their constituents without bureaucratic interference.
- Geographic Accessibility: These colleges should be placed throughout the state so that all citizens can attend without having to relocate, quit their jobs, or leave their families.

These five principles provided the framework for the plan to build the system, which was adopted by the Legislature in 1957.

Implementation, Growth and Change

Even as the system was still in its infancy, the junior college system demonstrated that it could adapt readily to the political, social, and demographic changes that were taking place in our state. Prior to 1968 most of the colleges were operated under the auspices of local school districts, but in 1968 the Florida Legislature switched the governance to boards of trustees, whose members are appointed by the Governor. As a part of that governance change, many of the junior colleges also assumed responsibility for the vocational and adult high school function, which previously had been under the local school boards. Also, in the sixties, the colleges were racially integrated and merged with Florida's twelve "black" junior colleges so that they could serve all of the state's citizens.

The 1970s and 1980s were decades of incredible growth, for both Florida and the college system. "Junior" colleges became "community" colleges to reflect the broader role these institutions played in their service districts. New relationships began with universities to expand access to baccalaureate and graduate degrees. Guaranteed transfer from the community colleges to the universities became the cornerstone

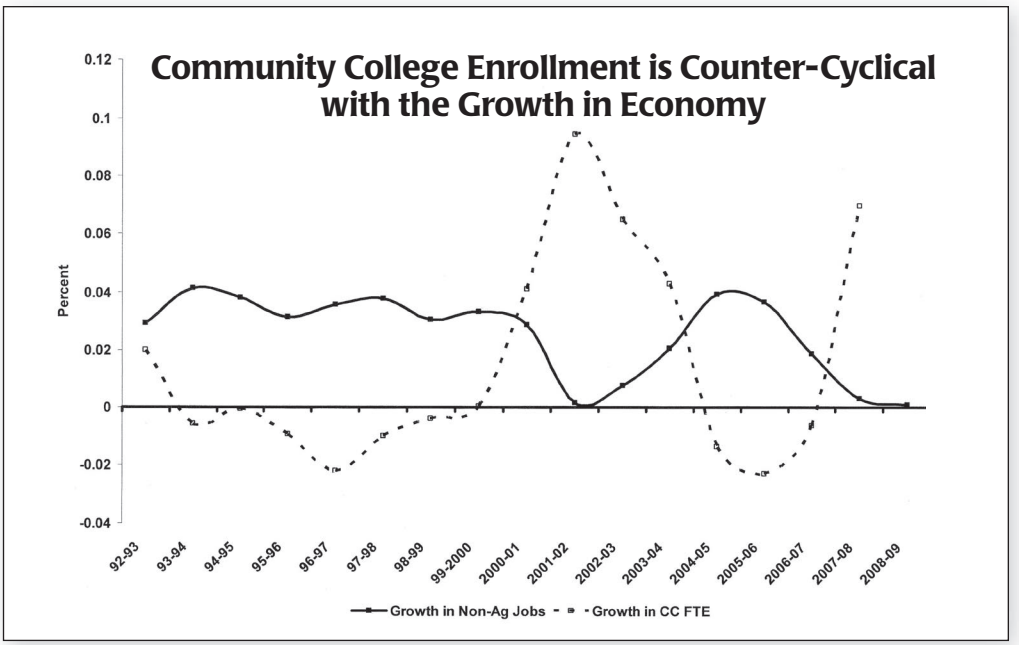
of the higher education system in our state. Partnerships also emerged with public and private employers who were seeking a reliable supply of well-trained workers for traditional as well as emerging careers, many of them based on new technology.

As the nineties began, the community college system was firmly planted in the mainstream of higher education in Florida, providing employment training as well as the first two years of the baccalaureate degree. Enrollments grew as the population of the state swelled and the numbers of high school graduates rose. At the same time, more adults began to see the community colleges as their best opportunity to advance in the workplace or obtain skills for a new career. This role became very clear when state job growth lagged due to economic downturns, such as the one Florida experienced in the early 1990s.

The chart below depicts the counter-cyclical relationship that has emerged between job growth and enrollment. It is clear that people come to community colleges to train/retrain for higher skilled careers when our economy lags. This economic recovery role has become another facet in the evolution of our colleges. The current economic difficulties in the state have contributed to an enrollment surge of more than 50,000 students during the 2007-08 school year. While it is difficult to handle such growth at a time when the Legislature lacks the resources to fund the enrollment increases, keeping the doors of our community colleges open to this retraining is critical to improving the employment growth and degree production in our state.

A New Role and New Challenges

Beginning in 2001 with specific authorization from the Florida



Legislature, some of our community colleges began to offer baccalaureate degrees to help meet the employment needs in specific discipline areas. St. Petersburg College was the first community college to be approved to grant baccalaureate degrees in Florida. Since then, nine additional colleges have been approved for four-year degrees. The rationale for these new programs is very similar to the original rationale for the establishing of the community college system: Florida needs increased production of high quality, affordable degrees that are more geographically available. Statewide shortages of teachers, nurses, and applied technology baccalaureate degrees fuel the need for these new programs.

Adding these new programs to the community college system has proven to be a time- and cost-effective way to increase the production of graduates in these high demand areas. These new programs were not intended to change the fundamental nature of the community colleges, but to build upon the successful track record these institutions have established in meeting the employment training needs of the state. However, the introduction of the baccalaureate degrees into the community college system has created some confusion and concern about the future of the system. Of particular concern is whether this new baccalaureate role will overshadow the traditional open admission community college programs that are so valuable to the state. For the first time in 50 years, it appears as though the system is evolving without a plan.

"Florida needs increased production of high quality, affordable degrees that are more geographically available."

The 2008 Legislature took a bold step toward addressing this concern by passing CS/SB 1716, the Florida College System Bill. This legislation renames the system, dropping the word "community," but preserves the core mission of the community colleges for all of the institutions regardless of the college's name. The Florida College System is composed of 28 colleges that are authorized to offer two- and four-year degrees, but not graduate programs. The bill also names nine pilot "state colleges" that will have the task of defining their institutions within the college system. Presumably, these state colleges will have a more robust baccalaureate degree program than the other colleges.

The recommended specific characteristics and funding for the state colleges will emerge from the work of the pilot college group and the College System Task Force. This task force, which is also created in the legislation, will have the responsibility for making recommendations on a number of policy issues related to all of the colleges in the system, including the state colleges. The

Commissioner of Education will appoint the members of the College System Task Force, which will include presidents from all of the college and university groups in Florida. Commissioner Eric Smith will also chair the task force, which will receive staff support from the Division of Colleges and other Florida Department of Education staff. Reports from both groups are due in early 2009.

The State Board of Education, the House, the Senate, and the Governor will receive these reports in time for consideration prior to the 2009 regular legislative session. The passage of the Florida College Bill and the formation of these two important groups to recommend more changes to the Florida Community College system constitute the most significant modifications to the system in decades. In the past, Florida's community colleges have demonstrated their ability to accept new roles without compromising their fundamental mission of access. The colleges that have already incorporated four-year degrees into their operations have done so without a loss of emphasis on lower division access. This success indicates that the expansion of access to baccalaureate degrees in Florida does not have to come at the expense of access to technical degrees and certificates in our colleges.

These new programs have not adversely impacted "2 + 2" transfer articulation with public and private universities in the state. Transfer guarantees should remain a high priority to be protected during this time of change and financial stress because the 2 + 2 pipeline will continue to be the primary route for most people to achieve a four-year degree in our state. Our collective goal should be to increase the total production of baccalaureate degrees in order to enhance the quality of our workforce, the quality of life for our citizens, and the economic well-being of the state. In addition to the structural changes, good cooperative program planning must be in place to assure the efficient movement of students from one institution to another. Historically, Florida's colleges and universities have done this better than those of any other state in our country. It must be preserved.

The opportunity to enhance higher education in Florida is exciting. The incorporation of four-year degrees into our community colleges is well underway. Creating a new plan for the future of these institutions within the context of all of higher education in Florida will make it easier for our state's leadership to understand and support these institutions as they carry out their expanded mission. Most importantly, it will better serve the educational interests of our state and its citizens. Stay tuned.

Dr. Will Holcombe is Chancellor of the Florida College System. He previously served as the long-time president of Broward Community College–now Broward College, which recently named its downtown Fort Lauderdale headquarters in his honor.

PROPERTY INSURANCE GAMBLE: FLORIDA RISKS ITS FISCAL FUTURE ON A QUIET HURRICANE SEASON

BY ELI LEHRER

One simple fact ought to dominate every discussion of Florida's homeowners' insurance system: Were a single storm to hit the wrong area, it would literally bankrupt the state. Gov. Charlie Crist and the Legislature, quite simply, have risked Florida's fiscal future in order to subsidize insurance rates for people living in coastal areas.

As it has for more than a decade, Florida's homeowners' insurance system stands on three unsteady legs: the private insurance industry, the Florida Hurricane Catastrophe Fund (the Cat Fund), and the Florida Citizens Property Insurance Corporation. Understanding how the system works—and how the Legislature failed to change it during its 2008 session—can help indicate how Florida could move towards a workable, sustainable property insurance system.

Through a series of misguided reforms culminating in a disastrous January 2007 insurance reform bill, Florida has created the nation's most hostile environment for the private homeowners' insurance industry. Rather than setting their prices based on market forces, insurers need to seek approval from the state every time they change their prices. Any challenge to state regulators—who have not historically needed to document their claims—requires expensive, long-drawn-out legal battles. As a result, prices often have no relationship to actual risks: inland Floridians pay too much for property insurance while those on the coasts pay too little.

The Florida Citizens Property

Insurance Corporation (an agency of state government despite its corporate name and façade) makes this bad situation even worse. Created as an "insurer of last resort" to provide coverage in the Keys and other difficult-to-insure locales, the 2007 reforms transformed it into the state's default insurance carrier and a price control mechanism. As a result of the 2007 reforms, it can sell insurance to anyone who receives a single quote more than 15 percent above its rates. This caps all insurance rates at Citizens-rates-plus-15 percent. As the Legislature has frozen Citizens' own rates at 2006 levels until at least 2011, the price controls imposed via Citizens will thus become more and more onerous with each passing year.

The Cat Fund, which provides mandatory backup reinsurance coverage for Citizens and all private insurers operating in Florida, creates an enormous risk to the state's finances. Following a major storm, current law allows the Cat Fund to issue as much as $36 billion in bonds all at once. While intended to reduce insurance costs, the Cat Fund simply hasn't worked. The reasons are complicated—insurance companies don't like its structure—but the fundamental model seems unworkable in any case. Since no state has ever issued more than $11 billion in bonds all at one time and the Cat Fund has failed to sell even $6 billion in bonds intended to provide "pre-event" financing, it appears doubtful that Florida could sell even close to the number of bonds it needs to. (Even if it could, the special taxes—called "assessments"—that the Cat Fund's guardians at the State Board of Administration could automatically assess almost every insurance policy in the state would more than double the typical car insurance premium.)

Given that Florida's Constitution limits the state's revenue-raising options, there would be no realistic mechanism to pay off this amount of debt without some sort of bailout or a truly massive sales tax increase. Although a federal bailout is not inconceivable, Congress would likely exact an enormous price in exchange for the aid.

The 2007 reforms have had disastrous consequences for Florida residents. Rates have actually gone up in their wake, and Citizens—despite minor shrinkage in recent months—has become the state's largest homeowners insurance writer. Meanwhile Allstate, State Farm, Liberty Mutual, USAA, and at least a dozen other companies (representing about 80 percent of all property insurance capacity in the country) have either withdrawn or scaled back from writing insurance in the state.

The Cat Fund, intended to reduce insurance premiums, hasn't worked as intended: its own stability and skinflint structure means that nearly all insurers have to buy private reinsurance anyway. Simply eliminating the Cat Fund, however, wouldn't solve the state's problems because Citizens—already the Cat Fund's biggest client—would simply have to

take on many of the liabilities itself.

While the 2008 legislative session began with a series of bold legislative measures, the Legislature's actual changes to this system amounted to almost nothing. New laws increase already steep fines on insurers who act dishonestly, require some more transparency from the state insurance department, and make it slightly easier for companies to extend auto insurance discounts to clients who can only find homeowners' coverage from Citizens. The freeze on Citizens rates also got a one-year extension—something that coastal legislators facing reelection felt their constituents would demand.

Wisely, Governor Crist vetoed a bill that would have stripped $250 million from Citizens' already inadequate reserve to subsidize upstart "private" companies. Governor Crist did the right thing on this; companies relying on the state government for startup capital would distribute all profits to their shareholders but would likely go broke following a major storm. Stable, well-managed companies with good business models can find private investors. The companies set up through a raid on Citizens' reserve would have increased Floridians' liability while lining the pockets of the startup companies' investors.

Unfortunately, anything that would have changed the fundamentals of Florida's broken system—even a little bit—failed in the Legislature. A forward looking proposal from state Chief Financial Officer Alex Sink that would have cut the size of the Cat Fund's potential liability by $3 billion failed in the last hours of the session despite support from dozens of groups. The proposal would have resulted in modest short-term increases to some property insurance premiums—coastal residents would have seen premiums go up about $5 a month while inland residents would have seen them go down about as much—while improving the state's fiscal health and attracting more competition.

"Fortunately, several poorly conceived plans that would have increased the state's liability even further also went nowhere."

A bold plan from Rep. Dennis Ross, R-Lakeland, would have bifurcated the market into government-run and private sectors while cutting exposure for the state and long-term costs for everyone. The plan received only a single hearing and then vanished from the political radar. Fortunately, several poorly conceived plans that would have increased the state's liability even further also went nowhere.

As long as Citizens' rates remain capped—until 2011—the prospects for any serious reform seem remote. Even serious reform to every other portion of the market would have little effect so long as the de facto

price controls that Citizens imposes remain in effect. Real change will require concerted action from the state's elected officials, private insurers, and Florida voters.

First, the Legislature and Governor Crist have to figure out a productive way to unwind the mess Florida has created. They must figure out an exit strategy that eliminates both the Cat Fund and Citizens as they currently exist. Proposals for a bifurcated market, which worked to get Hawaii out of a similar situation during the early 1990s, didn't get much traction this year. The Legislature may want to consider even more radical efforts, including a phased-in plan to allow market forces to set insurance rates. This could be coupled with medium-term assistance for incumbent homeowners. Under such a plan, Citizens would announce its intention to exit the windstorm-insurance business at a future date and reduce its liabilities in the meantime. The Cat Fund, meanwhile, would have its maximum size reduced to perhaps a few billion dollars. Insurance rates increases no higher than a certain predetermined level—perhaps 20 percent a year—could receive presumptive approval from state regulators and, after a period of years, the state would terminate the need to file rates at all.

This would result in price increases that could make it difficult for Floridians on fixed incomes to remain in their homes. The best solution may be aid—perhaps via property tax credits—to people living on fixed incomes coupled with ample mitigation assistance intended to lower premiums. Furthermore, rather than subsidizing private insurers, the state might even consider using Citizens' surplus to "buy out" current property owners. In return for one-time cash payments (to make up for the attendant decline in home value), homeowners might remove their property from eligibility to receive coverage through Citizens or have a Cat Fund backstop attached to private insurance. Homeowners could use the payments to pay insurance premiums, offset mitigation costs, or meet other expenses.

Second, private insurers need to review their claims processing infrastructure and make sure that they actually pay all legitimate claims in a very timely fashion. All admitted market insurance (the type of insurance that most people buy and want) exists on the basis of utmost good faith contracts. Ambiguities in contract language should face automatic resolution in favor of policy-holders. Even when they have hewed to the letter of the law, some insurers have violated this fundamental insurance principle repeatedly in the aftermath of major storms, proving slow, surly, and miserly in paying legitimate claims. The resulting wave of horror stories created much of the anti-insurer sentiment that resulted in the environment where elected officials could score political points through attacks on insurers. Quite simply,

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IT'S TIME TO UPDATE OBSOLETE POLICY ON OFFSHORE DRILLING

BY DAVID L. BATT

Florida has a more than 70-year history of oil and natural gas development. The history of the Florida industry began in the mid-1930s when the Governor and state government offered $50,000 in cash for the first oil discovery in the state. Humble Oil and Refining Company (known today as ExxonMobil) claimed the prize with a well in Collier County. That was the first of many wells that were drilled in the following decades.

While current debate centers on offshore exploration and development, Florida also offered opportunities for onshore production. In June 1970, the largest oil field east of the Mississippi River was discovered near the town of Jay in Santa Rosa County, near the westernmost tip of our Panhandle. Two years later, in 1972, and just south of Jay, the Blackjack Creek Field was discovered. The production from these fields made Florida the ninth largest oil producing state in the nation at the time.

The last well in Florida waters was drilled in 1983 on a state lease in Pensacola's East Bay. Since then, Florida laws and federal drilling moratoria have precluded any further exploration in state and federal waters. This history helps frame some of the energy realities that Florida and our nation currently face.

An Economy Thirsty for Energy

Florida needs all viable sources of energy to sustain its economic

growth. Even with relentless focus on energy efficiency, conservation, and investments in alternatives and renewables, one cannot ignore that oil and natural gas are the leading sources of energy and will remain so for the foreseeable future.

That is significant for Florida, because the state's major industries—tourism and agriculture—depend heavily on secure sources of energy. Oil provides almost 97 percent of the transportation fuels[1] that power nearly all of the cars and trucks on our nation's highways. More than 60 million American households are cooled and/or heated by natural gas.[2] And plastics, medicines, fertilizers, and countless other products that extend and enhance our quality of life are derived from oil and natural gas.

The tourism industry is a prime example. Tourists flying or driving into Florida rely on jet fuel, gasoline, or diesel to bring them here. Many hotels and spas rely on natural gas for cooling and heating, while restaurants depend on it for cooking, cooling and heating.

Because of all this activity, Florida currently ranks third[3] among all states in total energy consumption and third in total consumption of motor gasoline.[4] However, Florida accounts for less than 1 percent of U.S. crude oil production and less than 1 percent of U.S. crude oil proved sources.[5] Given this imbalance, Florida has an unusually high stake in the national energy policy debate underway. As a leading fuel consumer, Florida must consider how to best draw upon its still plentiful energy resources in order to meet the heavy and growing demand at a time when other states are also increasing their demand for energy. Moreover, America is not alone in its growing demand for energy; developing nations around the world are also clamoring for more and placing a dramatic new drain on our global resources.

It is important, however, to point out that this demand challenge is the result of positive developments in other countries. Since the 1950s, the U.S. has advocated to emerging economies that economic development is best facilitated by the adoption of market-oriented policies. Acceptance of this message in countries such as China and India—at different paces and to different degrees—has unleashed robust rates of economic growth. Their thirst for energy is an indication of human progress. Individuals in these nations are seeking to lead the quality of life that Americans have long enjoyed.

This perspective, while important, does not change the fact that we still need robust and plentiful supplies of energy here at home to continue our way of life and to offer greater opportunity for future generations of Americans.

Self-Sustaining Production

It is understandable that some Floridians would be sensitive to energy production in offshore waters. Yet, this concern must be weighed in the appropriate context with major innovations and improvements

in technology and environmental safeguards successfully pursued by industry. It has been nearly four decades since offshore drilling has negatively impacted America's beaches. An instructive example of how the industry and the government can partner effectively to conduct offshore production in an environmentally sound manner happened during Hurricane Katrina. When that storm was a Category 5 plowing through the offshore production facilities in the central Gulf of Mexico, it destroyed 113 platforms and damaged 457 pipeline segments yet, according to the U.S. Minerals Management Service, "[N]o shoreline or wildlife impacts were noted."[6]

The industry's record of no production-related spills during the 200-mile-per-hour winds and 100-foot seas associated with Hurricanes Katrina and Rita in the Gulf of Mexico are testament to its skill and commitment to safeguarding the environment. Likewise, the close cooperation between industry and the U.S. Department of Defense has made it possible for exploration and development to function while vital military training missions are carried out in the Gulf. Such safeguards must continue to hold the very highest priority.

At a time when Florida's state coffers are shrinking, policymakers should be looking at ways to hold down the costs of energy. They might also look down the road to the day when Florida could reap the financial rewards of royalty revenue from oil and gas production. The states of Alabama, Louisiana, Mississippi, and Texas will be drawing revenues from recently announced record-breaking $3.7-billion oil and gas leases located 125 miles south of the Florida Panhandle. However, Florida will not profit from the deal because of a 2006 agreement that precluded drilling anywhere near Florida's coastline.

"At a time when Florida's state coffers are shrinking, policymakers should be looking at ways to hold down the costs of energy."

Another major economic concern for our state is the high cost of generating our electricity. Now that state policymakers have ruled out new coal-fired power plants, natural gas will increase dramatically as the needed feedstock for such production—even if the state allows additional nuclear plants. The state currently produces about 37 percent[7] of its electricity from natural gas, and projections suggest that by 2015, electricity prices will be 26 percent higher because of the new state policy.[8] Natural gas reserves are abundantly available in nearby Gulf waters, but they are currently blocked by the offshore drilling ban.

Innovative Technologies Can Deliver

Most energy analysts agree that sustaining even modest economic

growth worldwide for the next several decades will require massive new investment in oil and natural gas. New investments by America's oil and natural gas industry in 2008 are expected to reach $197 billion, a more than 12 percent increase over the prior year. Reinvestment between 1992 and 2006 is equally impressive. During that period, the industry reinvested more than $1.25 trillion, while its total earnings over the same period were $900 billion. That's a reinvestment rate of 130 percent.[9]

These investments have in large part gone towards finding new ways to recover these precious resources. New seismic exploration and drilling technologies enable geologists to accurately visualize repositories of oil and gas, and explore rock formations more effectively. Fewer wells need to be drilled to access oil and gas deposits on land, and today's deepwater operations can be conducted in 10,000 feet of water. Thirty years ago, deepwater exploration meant drilling in depths of just 500 feet.

These innovations have helped. Perhaps most obvious is the discovery in 2006 in the Gulf of Mexico—175 miles off the coast of Louisiana. Several oil and natural gas companies made what may prove to be one of the largest domestic oil discoveries in a generation. The attention-grabbing discovery in the Gulf of Mexico, at a total depth of 28,000 feet, would never have been possible without the regulatory and tax code changes that encouraged companies to take on increased risk and invest more heavily in advanced technologies and high-risk exploration plays.

So, in December 2006, U.S. Congress took a small but important step in passing legislation that opens more than 8 million acres in the Gulf of Mexico for energy exploration. Some critics are already saying that the industry is not taking advantage of what it has been granted by immediately drilling; however, it must be noted that it takes years to fully evaluate, through exploratory wells and other means, once the leases are acquired to determine if full production is economically feasible.

The recent opening of new leases is a step in the right direction, but more needs to be done. Elected officials need to be encouraged to listen to the 63 percent of Floridians who responded to a poll saying that drilling should be allowed off the coast of Florida.[10] The 1.5 million barrels a day of oil from central and western Gulf of Mexico waters is equivalent to our imports from Saudi Arabia.

America has abundant energy supplies. Along our nation's Outer Continental Shelf (OCS)—an area comprising the Gulf shore and both coasts—loads of undiscovered oil and natural gas lie in wait. According to the latest published estimates, the OCS holds approximately 77 billion barrels of oil and more than 420 trillion cubic feet of natural gas. That's enough fuel to heat 100 million homes for 60 years and run 116 million automobiles for the next 15 years.[11] The oil and natural gas deposits located off our nation's shoreline would produce more energy

than the combined natural resources of both Canada and Mexico.

Conclusion

What we need is a public policy framework that learns from our past energy mistakes and works to ensure future energy security for all of America. We need greater commitment to increased energy efficiency, and we need to diversify our energy resources, drawing upon the full range of energy sources available, including alternatives. Yet we also need to increase and diversify the most cost-competitive and consumer-ready energy source—oil and natural gas.

In a global race for energy, America's economic and national security is at stake. Increasing domestic production will go a long way to stabilizing our energy supply chain at the state and national levels, while also bringing increased economic growth to Florida and adding significant revenues to the state budget. Thanks to major industry reinvestments and innovation, we have seen how domestic production can now be performed, while protecting our environment. It's time for state and federal policy to catch up with modern technology to help assure that we can meet our state and national energy needs.

David L. Batt is director of the Consumer Energy Alliance of Florida, a statewide coalition of businesses and organizations that supports the improved utilization, conservation and diversification of all domestic energy resources.

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Worthy Words

"One way to solve the traffic problem would be to keep all the cars that are not paid for off the streets."

– WILL ROGERS

A HISTORIAN'S ANALYSIS: THE ORIGINS OF "THE BLAINE AMENDMENT"

BY THOMAS V. DiBACCO

Perhaps no proposed amendment to the U.S. Constitution has been as widely misunderstood as the "Blaine Amendment," which was proposed by U.S. Representative James G. Blaine (1830-1893), a Republican from Maine, on December 14, 1875.

"No State," the proposal read, "shall make any law respecting an establishment of religion or prohibiting the free exercise thereof; and no money raised by taxation in any State, for the support of public schools, or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect, nor shall any money so raised, or lands so devoted, be divided between religious sects or denominations."

Overwhelmingly passing the House but failing to get the required two-thirds vote in the Senate, the Blaine Amendment was interpreted as an anti-Catholic measure that had a life of its own subsequently, as 37 other states (including Florida in 1885) eventually incorporated its salient features in their own constitutions. But at the time of its introduction, American Catholics were not demanding public funds for their schools or any other of their institutions.

Early on, beginning in the 1820s, Church officials in big cities attempted to get cities and states to subsidize a system of Catholic schools, but all these efforts failed. Thus, by 1875 the Roman Catholic Church in America was still more Roman than American. Comprised mostly of Irish and German immi-

grants, whose numbers would pale in contrast to the Italians, Poles, and Balkan immigrants who began to arrive by 1880, the Catholic Church in America was a low-key, make-no-noise institution that adopted the accommodationist policy of its first bishop, John Carroll. That strategy focused on protecting Catholics from the "immoral" aspects of American culture through separate institutions such as churches, convents, social organizations, seminaries, and schools. But politics was usually not a method employed to achieve such goals. To be sure, separate, so-called parochial schools were important, but American Catholicism never succeeded in educating anywhere close to a majority of youngsters through its schools, in these years or subsequently. For many church parishes, schools were too expensive, but religious education of youngsters could be effected through weekly, after-public-school catechism classes.

The rub for many Americans was not the fear of spending public funds for Catholic schools, but it was the only area of attack that could be legitimized into law that could be sustained by the courts. Americans who were critical of Catholics in these early years were often the better sort such as Blaine, who anguished over the loss of social order that their parents were born into (Blaine's mother, incidentally, was a Catholic, but had nothing in common with the new immigrants). Post-Revolutionary America saw the establishment of a new nation based on a conservative Constitution, limited suffrage accorded landholders, and presidents and legislators who came from elitist classes. By Blaine's youth, that social order was under attack as a result of acquisition of western territory and the extension of democracy and suffrage to additional constituencies. The first commoner, Andrew Jackson, would become president in 1829, and campaigning and voting assumed their modern, often disorderly characteristics.

"The only major institution in American life that was reflective of the old order was the Catholic Church…"

Blaine's small-population, homogeneous state of Maine was assuming the obscurity it richly deserved in a thriving, westward-moving, ever-democratic nation. The only major institution in American life that was reflective of the old order was the Catholic Church, with its strict, conservative, undemocratic and unchanging hierarchy, from Pope to bishops to priests. In other words, anti-Catholics were often old elites innately jealous of a tightly knit religious sect that thrived in the midst of social disorder. And unlike Mormons, another thriving and clannish religion at the time, Catholics had no absolutely offensive tenet such as the Mormons' polygamy.

Hence, the subtle attack on the Catholic Church by Blaine, Speaker of the House at the time and later an unsuccessful Republican candidate for President. It was a credible, restrained strategy, ostensibly illustrative of the necessity to separate church and state and reflective of his parliamentarian standing. For among the nativists in the general population, violence and political intimidation of Catholics, not constitutional fine points, were often employed. Convents were sometimes burned down, as in Charlestown, Massachusetts in 1834. And the Massachusetts Legislature in the 1830s set up a Joint Committee on the Inspection of Nunneries and Convents.

Sensual stories about priests seducing nuns behind convent walls became fodder for popular gossip. Street-fighting induced by commoners against Catholics punctuated city life. The American Party of the 1850s used anti-Catholic rhetoric that was successful in capturing control of several state legislatures in 1854 and 1855, emboldening it to run a candidate for president—former President Millard Fillmore—in 1856. But nativists supporting the American Party were simply too extreme in their goals, as, for example, the platform plank to "place in all offices of honor, trust, or profit, in the gift of the people, or by appointment, none but native-born Protestant citizens."

Also irritating to the upper class nativists such as Blaine was the fact that the Catholic Church in America, unlike Protestant denominations, was absolutely impervious to splintering into factions, thereby weakening the Church's tight social order. During his lifetime, Blaine would never see Catholic dissidents successfully establish separate churches, and only one—the Polish National Catholic Church, established in 1897—would be successful. To be sure, many dissidents tried, including ex-priests such as William Hogan, who recognized and longed for the enormous economic power of the American Catholic Church and contributed mightily to the nativist crusade through diatribes about the Pope:

In *Popery! As It Was and As It Is* (1855), Hogan wrote:

> "But it is much to be feared that Americans do not yet fully understand the dangers to be apprehended from the existence of Popery in the United States. It is difficult to persuade a single-hearted and single-minded republican, whose lungs were first inflated by the breath of freedom, whose first thoughts were that all men had a natural right to worship God as they pleased—that any man could be found, so lost to reason, interest, and principle, as to desire to barter those high privileges, which he may enjoy in this country, for oppression and blind submission to the dictates of a Pope."

There was no doubt that the Blaine amendment had the hope of cutting part of the umbilical cord that connected children to the Pope. But the reality in 1875 was that the American Catholic Church was quite

capable of sustaining its parishioners in doctrine in various ways outside the parochial school. Not until 1884 did a Plenary Council of Bishops in America actually require parishes to set up parochial schools, but hardship cases of parishes could be exempted.

That was the same year that the American bishops looked to higher educational goals, by endorsing the establishment of the Catholic University of America in the nation's capital.

Thomas V. DiBacco is professor emeritus at American University in Washington, D.C., a member of the James Madison Institute's Research Advisory Council, and a frequent contributor to The Journal.

Worthy Words

"Don't expect to build up the weak by pulling down the strong. Don't hurry to legislate. Give administration a chance to catch up with legislation.."

– CALVIN COOLIDGE, on becoming President of the Massachusetts Senate

HURRICANE *(Continued from page 43)*

insurers need to understand that they are in a situation partly of their own making and that overzealous and rude behavior that might result in a letter of reprimand or quiet low-dollar out-of-court settlement elsewhere can often become a major political issue in Florida. Above all, they need to pay claims.

Finally, Florida's residents have to take responsibility for the current situation. One way or another, coastal residents will eventually have to pay higher premiums while investing in mitigation. Mitigation efforts, including the My Safe Florida Home Program, can help bring down premiums for some coastal dwellers. So can new building technologies as simple as differently shaped roofs. Existing mitigation makes it safe and financially viable to live in any currently inhabited part of Florida except, perhaps, for the Keys. While retrofitting homes will cost money, rebuilding them costs even more.

Florida's property insurance system needs to change. A mix of market forces, effective mitigation efforts, and individual responsibility can point the way towards a new, better system that empowers consumers, creates wealth, and keeps Florida safe.

Eli Lehrer is a Senior Fellow of the Competitive Enterprise Institute and an Adjunct Scholar of The James Madison Institute. He is the author of the February 2008 JMI Backgrounder titled Restoring Florida's Insurance Market.

BOOK REVIEW

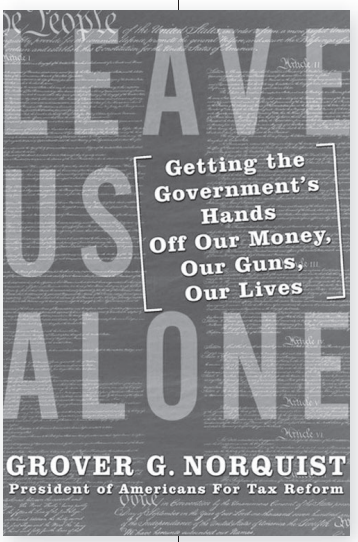
LEAVE US ALONE:
GETTING THE GOVERNMENT'S HANDS OFF OUR MONEY, OUR GUNS, OUR LIVES

By Grover G. Norquist

© 2008 HarperCollins Publishing, 338 pages

REVIEWED BY MICHAEL J. CARROLL

Conservative activist Grover G. Norquist has been a major player in the nationwide effort to lower taxes and limit government. His latest cause is transparency in government. *Journal* readers may recall his article on that topic in the Winter-Spring 2008 issue.



In Washington, D.C., Mr. Norquist, President of Americans for Tax Reform, presides over well-attended weekly meetings of "The Wednesday Group." It is an informal gathering of elected officials, lobbyists, and others representing organizations and causes that could be fairly characterized as ranging rightward from the political center. The Wednesday Group has become a model for similar gatherings in various state capitals, including Florida's, and Mr. Norquist has been a frequent guest speaker for the Tallahassee group.

This loose coalition represented in The Wednesday Group—along with its adversaries at the other end of the political spectrum—is the focus of Mr. Norquist's latest book *Leave Us Alone*. Its provocative subtitle, *Getting the Government's Hands Off Our Money, Our Guns, Our Lives*, offers a clue as to the coalition's principal elements. Together these forces helped Ronald Reagan win the White House, and in

1994 they helped a group of conservatives led by Newt Gingrich wrest control of the U.S. House of Representatives from the liberals who had dominated it for decades.

In this book, Mr. Norquist posits a nation divided into two main political camps. One he dubs the "Leave Us Alone Coalition," and the other the "Takings Coalition." (A third camp, the "Gypsies," includes a very small contingent with such shallow ideological moorings that its members tend to drift.)

"In this book, Mr. Norquist posits a nation divided into two main political camps."

Mr. Norquist goes into great detail describing the two coalitions' tendencies and the principal issues that separate them from each other—especially tax policy and the role of government. An unabashedly partisan Republican, Mr. Norquist argues that the "Democrat Party" is aligned with a Takings Coalition consisting of interests such as labor unions, trial lawyers, welfare recipients, environmental extremists, and bureaucrats, etc. They all want more government, more regulations, and higher taxes to pay for it all. They also want to use the tools of government bureaucracy and the tort system to extend governmental control over people's lives on matters ranging from guns and the environment to the cholesterol content of cheeseburgers.

Mr. Norquist argues that virtually the only thing these interests have in common is the quest for political power and, with it, a larger piece of the proverbial pie of governmental largesse once they gain that power. Thus, he argues, it is inevitable that these groups will begin fighting among themselves over how to slice the pie, ultimately weakening their political clout.

In contrast, he argues that the Leave Us Alone Coalition, though its individual elements have widely divergent interests ranging from social issues such as abortion to economic issues such as tort reform and lower taxes, is much more cohesive because its key elements have a shared desire for less government intrusion into their lives. They want to be free to operate their businesses, own firearms, home-school their children, practice their faith, and know that their property rights will be respected.

At the beginning of his book, Mr. Norquist takes great pains to define the two coalitions and explain their origins, which he says date back to the early 1900s. There is very little in this historical analysis that other writers have not said before. Mr. Norquist perceives Republicans as natural members of the Leave Us Alone Coalition and Democrats as allied with the Takings Coalition. Indeed, in his book he uses the coalition names and party labels interchangeably.

After describing the two coalitions in great detail, Mr. Norquist proceeds to describe the political

trends affecting the Democrat/Takings Coalition and the Republican/Leave Us Alone Coalition.

"I have identified trends that will affect the balance of power between Republicans and Democrats. Some are to the advantage of the Leave Us Alone Coalition. Others strengthen the Takings Coalition." He believes, perhaps correctly, that these trends "will determine who runs the American Government in 2020 and 2050."

Mr. Norquist discusses the political impact of organized labor, Second Amendment issues, home schooling, religion, the media, and voter turnout. He discusses how the two coalitions see these kinds of issues and how their stances affect the populace. The section on political trends makes up the bulk of the book and provides great background information for the conclusions that Mr. Norquist offers later on.

Once Mr. Norquist has finished describing the trends, he seeks to inform the reader on where the contentious issues of the day are—and will be. He sees the two groups doing battle at the federal and state level. He also offers some suggestions for how his Leave Us Alone Coalition can do better. He argues, for instance, that if the Leave Us Alone Coalition could convince African American voters that their best interests lie with the Republican Party, then the GOP could make inroads in this large voting bloc. The same goes, he argues, for Hispanic or Latino voters; if they could be convinced that Republicans were the party for them, the GOP could win elections for the foreseeable future.

In the third section of his book, Mr. Norquist is in familiar territory. As President of Americans for Tax Reform, he is in a good position to inform his readership of the effects of the current tax system and the pros and cons of various suggested tax reforms. In this section, his limited government philosophy comes through loud and clear, his writing is better, and his points are made more eloquently. Indeed, for this reviewer, this was the most enjoyable section of his book, despite having tax policy as its subject matter. Mr. Norquist discusses the so-called "flat tax" and "fair tax," though he does not explicitly endorse either approach in this book. Instead, he illustrates the qualities of the "fair tax" and in so doing, he evidently expects the reader to agree.

Overall, however, Mr. Norquist's book fell a little flat with this reviewer. While including lots of statistical information can help this kind of book, in this case it may have hurt more than it helped. One example: When he discusses the growth in the number of government employees—a key part of the Takings Coalition—he puts it this way: "Government workers increased in number from 13.9 million in 1994 to 15,788,000 in 2004." This method of depicting the number clearly emphasizes the second figure to further prove his point, perhaps unfairly; he should have stuck to a single statistical representation.

In addition, Mr. Norquist's basic assumptions of just who makes up

the two coalitions are dubious at best. He suggests that almost everyone clearly falls into one of the two groups because, he argues, virtually all voters decide how to vote based on one of the issues presented in his book. However, nowhere in his book does he mention one of the largest issues in modern day politics: national security and the war on terrorism. For many voters, that would be a major factor when choosing a candidate to support—especially a candidate for the White House.

Mr. Norquist's dubious premise is that the Leave Us Alone coalition, unlike the Takings coalition, is cohesive on Election Day because even though each of its member groups tends to focus on a single issue of overriding importance to that group, the coalition's member groups all have one thing in common: a desire to have the government leave them alone.

However, this reviewer could easily imagine a scenario where more than one issue determined the way an individual citizen voted. Moreover, in Florida, there is a very public dispute between two elements of Mr. Norquist's Leave Us Alone coalition: the business community, with its desire for less taxation and regulation, and the National Rifle Association, with its support of the Constitutional right to keep and bear arms. The two groups are at odds over a law recently passed allowing employees who have a concealed weapons permit to keep firearms locked in their vehicles while at work.

Mr. Norquist's book also suffers from another problem that plagues many books in this genre: the curse of reading like a lecture, with all the excitement and wit of a textbook. Despite the flaws in his basic premise, however, this reviewer found that much of the factual information included, thanks to Mr. Norquist's clearly tireless research, was fascinating. Indeed, oftentimes the book was flooded with facts, but they were intriguing nonetheless. Moreover, the author's points were made clearly, and the book was not a lengthy diatribe against the Takings Coalition, despite the frequent temptations. All in all, Mr. Norquist shed some light on a topic where little is left to say; the topic of the separation between the Left and Right.

"… in Florida, there is a very public dispute between two elements of Mr. Norquist's Leave Us Alone coalition…"

The reviewer, Florida State University senior Michael J. Carroll, currently serves as an intern at the Tallahassee offices of The James Madison Institute.

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