Congress & Politics

February 2, 2009
111th Congress

"The alternate domination of one faction over another, sharpened by the spirit of revenge, natural to party dissension, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries which result gradually incline the minds of men to seek security and repose in the absolute power of an individual; and sooner or later the chief of some prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation, on the ruins of public liberty."

George Washington's Farewell Address

"Perhaps the fact that we have seen millions voting themselves into complete dependence on a tyrant has made our generation understand that to choose one's government is not necessarily to secure freedom."

Friedrich August Von Hayek

Important Issues

(Notice the Orwellian titles)

Employee Free Choice Act: The Union forces are focusing on this legislation, which will greatly favor any unionizing effort by decreasing the privacy of the secret ballots, by increasing government involvement in any unionizing process and by increasing penalties on businesses for various violations of law and procedure. There are no increased penalties for unions. This is a good proposal if one finds a bad employer; but this law will affect all businesses.

Every business lobby and conservative group opposes this proposal with great vigor, just as the labor and liberal groups claim it is vital. BIG money is involved.

Lilly Ledbetter Fair Pay Act: This bill passed congress rapidly and was one of the first laws President Obama signed into law. It expands the statute of limitations on wage discrimination lawsuits and may allow non-victims to sue employers for damages that relatives sustained.

More information is contained on page three of this newsletter.

A chain of legislation introduced in this Congress is very suspicious in its makeup. It is sending a strong message that the Democrats wish for the Legislature to stand above all other branches of government. And, possibly, that the federalization of the States will commence with this administration.

Several of these proposals are listed. The next page has an item on the Federalist Papers that are relevant to these Acts.

1. H.Con.Res. 13 Buckley *v* Valeo and the Supreme Court

Rep. Marcy Kaptur

The *Buckley* case was decided in 1976; in it the USSC ruled that spending money to influence elections is constitutionally protected free speech. In other words, contributing to various campaigns and candidates is protected by the First Amendment to our Constitution. The Democrats do not like it.

The header to the legislation reads: *"Expressing the sense of Congress that the Supreme Court misinterpreted the First Amendment to the Constitution in the case of Buckley v. Valeo."*

This last election proved that the pro-Obama media bias was virtually free advertising for the Democrat candidate; why is that permissible, but paid advertisements are not?

Sponsor: Rep. Marcy Kaptur (D-OH)

H.J.Res. 9 - Every Vote Counts Amendment

This proposal seeks to abolish the Electoral College and then provide for the direct popular election of the President of the United States. This legislation will also may weaken the validity of the voting process as it allows States to define down federal requirements for voter eligibility.

Rep. Gene Green

*"**Section 2.** The electors in each State shall have the qualifications requisite for electors of Senators and Representatives in Congress from that State, except that the legislature of any State may prescribe **less restrictive** qualifications with respect to residence and Congress may establish uniform residence and age qualifications."*

The Electoral College is the last foothold of our Republican form of government, it is the last power the States have within the powers of the federal system. The States have lost their appointment of Senators, and with that their ability to influence the legislative processes. The Founders of our Nation did not want a Democracy; Alexander Hamilton noted:

> ***"It has been observed that a pure democracy if it were practicable would be the most perfect government. Experience has proved that no position is more false than this. The ancient democracies in which the people themselves deliberated never possessed one good feature of government. Their very character was tyranny; their figure deformity."*** *June 21,1788*

Sponsor: Rep. Gene Green (D-TX)

H.J.Res. 5 - Unlimited Terms for the President

Now that we have Democrat in the Executive, what can be better than provide him with unlimited terms? This bill will repeal the Twenty-Second Amendment, leaving no limitation on the number of terms a president may serve.

Rep. Jose Serrano

To be fair, legislation like this has been introduced in earlier sessions of Congress. But it is partisan legislation; you won't find a Republican introducing such bills during this presidential term.

Sponsor: Rep. Jose Serrano (D-TX)

H.R. 258 - Congressional Lawmaking Authority Protection
The findings section of this bill is so inaccurate it is actually funny, in a very sad way:

Rep. Sheila Jackson-Lee
Courtesy of the Daily Lobo

"(1) The Framers of the Constitution understood that the power to make laws is such an awesome power that they intended it to be exercised by the most democratic branch of government.

"(2) To ensure that the lawmaking power would be exercised by the branch of government that is the closest and most accountable to the people the Constitution provides that ``All legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

The legislation seeks to stop any power from a signing statement made by the President. It will prohibit any funding for communicating, disseminating or publishing any statements made by the President that relates to legislation, and prohibits federal agencies from attaching any legal significance to such statements.

As far as the findings section is concerned, Congressman Jackson-Lee misses several facts. First, the Founders never used the term "awesome," and that they detested Democracies. They designed the legislature to not be a democratic branch, The Senate represented the legislatures of the States, not political parties. Their design avoided the masses who always vote in their own self interests. Moreover, Founders believed that the politicians were accountable to the laws of the Constitution, not the will of the people, as Ms. Jackson-Lee claims. The Founders feared the tyranny of the majority, which is exactly what this proposal empowers.

Sponsor: Rep. Sheila Jackson-Lee (D-TX)

H.R. 277- Criminal Contempt of Congress Procedures
In the last session of Congress the Democrats claimed that two members of the Executive were in contempt of Congress for refusing to appear at one of their hearings. But the constitutional separation of powers protects officers of the Executive and the Judiciary from the political actions of the Legislature. Since the officers of the Executive refused to show up for a publicity stunt, the Democrats have no actionable course. If an actual crime were committed the Members would simply inform an enforcement agency of the act.

Rep. Brad Miller

Powers must be kept in perspective; the official duty of the Legislative branch is to make laws that are constitutional. It is not an investigative or enforcement mechanism of the government. Their trying to criminalize acts of the opposition party has been solely for political power. It is also an abuse of the hearing system, which they now hope to fully legitimize.

This proposal attempts to give the House alternate procedures for the prosecution of certain acts of "criminal" contempt; it specifically names the Executive branch as its target.

If a member of the Staff of the President does not honor a subpoena to appear before a House panel (or similar), they will stand in violation of federal law (2 U.S.C. 192), the refusal of witness to testify or produce papers. A special counsel may be appointed to prosecute the charges.

This bill may not see the President's desk. It is a public relations move, because if it does rise to a vote, the Republicans will (most likely) question its constitutionality. Is there any doubt that the press and their Democrats will portray the nation as victims when this bill is stopped?

Sponsor: Rep. Brad Miller (D-NC)
Cosponsors: Conyers, Lee

Constitutional Corner

Short Notes on Federalist 47 & 48 & 49

Written by James Madison, these essays explained the dangers of one branch of government infringing upon the powers of the others. In his third paragraph of 47 he states:

"The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, selfappointed, or elective, may justly be pronounced the very definition of tyranny."

"...the preservation of liberty requires that the three great departments of power should be separate and distinct."

The founding fathers understood that if a faction controlled all of a government, the established law could mean little. Those favored would never face a fine or prosecution, while those out of favor could be punished for the slightest infractions, or no crime at all (we see this now with the House hearings). This practice is what is known as subjective enforcement and observance of the law. It is a powerful political tool.

In Federalist 48, Madison made a few more observations; in one he warned of the Legislature's actions of today:

"It is agreed on all sides, that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident, that none of them ought to possess, directly or indirectly, an overruling influence over the others, in the administration of their respective powers. ***It will not be denied, that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it."*** *(my emphasis)*

Madison warns that a *"...more adequate defense is indispensably necessary for the more feeble, against the more powerful, members of the government. The* ***legislative department*** *is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex."* *(my emphasis)*

In Federalist 49 Madison makes a keen observation of how the legislature tends to grow over the other departments of government, and how its members, because they are closer to the people than the other departments, grow into a position where they are seen as judges by the populace. When this happens, the passions rule, instead of reason. He writes:

"But it is the reason, alone, of the public, that ought to control and regulate the government. The passions ought to be controlled and regulated by the government."

We have the exact opposite! For the politicians to receive "reason" from the public, they must first have an educated view of our government. Most fail.

From that point we see that passions are not controlled by the government, but excited and brought to levels of fury by members of the legislature. They do this without the slightest concern for our constitutional form of government. Madison knew and wrote of these dangers; we have succumbed to them.

This newsletter is written by Steven Maikoski. My hope is that people judge government from a Constitutional perspective with limited federal involvement, which was the intent of our founding fathers. None of the information provided is to be construed as legal help or information. Consult a lawyer if you are concerned. Please realize that Congress can change the content of any bill without notice.

I wish to recognize some wonderful Internet sites and publications for information that may lead to items in this newsletter, including the Wall Street Journal, Investors Business Daily, Congressional Quarterly, Townhall.com, About.humor.com and the Patriot Post.

Constructive, polite, comments and criticism are welcome. You can reach me by email at steven@influencecongress.com. The website: influencecongress.com

Employee Fair Choice Act

Employee Free Choice Act:

There is no doubt that this bill will make it easier for Unions to organize within businesses; the question is "what's fair?"

At the forefront of the arguments is this Act's power to demand a "card-check" system for votes. The Union organizer can ask each worker, in front of his fellow employees, to vote for Union representation. They can ask for the worker's vote, right then, right now, in front of every worker.

President Bush's (43) Labor Secretary, Elaine Chao, wrote this in the Wall Street Journal on January 14, 2009:

"One of these counterproductive, special-interest initiatives is "card check," which would deprive workers of the ability to vote privately in workplace unionization elections -- a vital worker protection that dates back to the Taft-Hartley Act of 1947."

"There is a push in Congress to enact card check despite the fact that the vast majority of workers -- including rank-and-file union members -- want to keep the private ballot system in workplace unionization elections and do not want it replaced by a signature card process that will subject them to the pressures of solicitation and potential intimidation by union activists. Ironically, to decertify a union, labor leaders insist on holding private-ballot elections to protect workers from employer intimidation."

There are half-truths circulating about this legislation, mostly about its *secret* ballot issue.

If this act passes, the secret ballot is still active, BUT it is meaningless. The Union organizers can first set up a lengthy non-secret (open) voting for Union representation, then a secret ballot for those who wanted privacy.

Consider this scenario: all those who vote Pro-Union will be publicizing their votes over the days that they are cast. They let everybody know how they voted and the numbers of pro Union votes mount up. You cannot vote against the Union until the last day. Why would you demand your vote be kept secret if you were voting for the Union?

When the Union organizers have open and signed votes in favor of union membership, they can take that number and subtract it from the totals, letting them know the intent of the so-called "secret ballots." In other words, in the end, there is nothing secret about these ballots.

At the website *Change.org*, one writer poses this bill as a solution for racial discrimination: "...women and people of color enjoy greater financial and political returns from union membership than their white, male peers."

Unions increase the costs of doing business; some can afford it, some can not. But those who oppose this bill do so mainly for its deleterious effect on the secret ballot. That privacy is a foundation of our republic, why remove its strength?

Fair Pay Act

Lilly Ledbetter Fair Pay Act - Signed into Law

One of the first bills that President Obama signed into law was one that has a potential to allow more lawsuits against businesses. It passed the Senate in a rush and was signed without delay.

This act is named for a woman who worked for Goodyear Tire & Rubber Co. for 19 years. After she retired she found that she was paid less than some males in similar positions. She filed a suit and won her case. But, on appeal the Supreme Court ruled that the statute of limitations had run out for her filing time, that she should have filed at some point during her employment, not afterwards.

This new law extends the statute of limitations for claims of intentional wage discrimination. Until this bill was signed any discrimination was to be addressed while it was active or shortly afterward, as early as possible, not years later. If the employee gave notice of a perceived infraction it would give the employer a chance to correct the situation at an earlier point in time and avoid the heavy damages caused by accidental or deliberate delays in addressing the problem.

All persons and businesses have a responsibility to mitigate damages, provided they have the opportunity. Ms. Ledbetter did not file a claim during her time at work, therefore the company never had a fair opportunity to address her complaint or provide a remedy for the situation.

This new law may allow damages to accumulate at the whim of the plaintiff. This is from the legislation:

"...liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge,…"

The extended statute of limitations creates more problems for businesses in personnel management, their ability to realize loss/profit and their added vulnerability to lawsuits. It may also (depending on the interpretation) allow persons who were not injured to file lawsuits by claiming attachment to their parent or significant other.

Was Ms. Ledbetter a real victim? Possibly not. Mr. Hans Bader, the counsel for the Competitive Enterprise Institute, wrote about her case in May of 2007.

The majority pointed out that the plaintiff could just as easily have sued under the Equal Pay Act, which specifically bans sex discrimination in pay, and has a longer statute of limitations — and broader definition of discrimination — than the statutory provision that the plaintiff sued under. If she had done that, she probably would have won her lawsuit. But she didn't do that. Instead, she just sued under Title VII, alleging intentional discrimination.

(Crying Wolf: Demagoguing About Discrimination; Open Market.org)

Now that this bill has been signed into law, businesses face an increased threat of intentional discrimination lawsuits and a longer timeframe for that threat to exist.

Guns and Liberals: Since the United States Supreme Court affirmed the citizens' right to bear arms, the liberals are going a little nutty in their rage of disagreement. A recent email from a liberal group claims that a new law may soon be passed that will "*allow semiautomatic assaults [sic] rifles on D.C. streets, allow possession of .50 caliber sniper rifles that can pierce armored car plating, and even allow teenagers and children to carry loaded assault rifles by repealing age restrictions.*"

Their email draws quite a picture, doesn't it? But the reality of the matter is far different from their portrait of an OK Corral around Barack Obama's White House. First, the old bill (H.R. 6691) sat in committee for months and never received a vote. But most importantly, the lawsuit that led to the USSC decision, which led to the proposed legislation, successfully challenged the gun ban in D.C. That gun ban led to one of the highest murder rates in the nation, often three times higher than the state of Virginia's! And the liberals liked it the way it was?

Habeas Corpus Rights and Guantanamo: First, the original writing of our Constitution has this in Article I, Section 9:

> ***The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.***

Habeas Corpus is basically a process of bringing formal charges against a person. If you are jailed, they must bring up charges against you. But, if you are at war with the United States, they can suspend habeas corpus and jail you indefinitely without filing any charge. This is not from the Patriot Act, it is from the original Constitution. The design seeks to prevent enemies of the U.S. from using our courts (and attorneys) to harass our nation, promote their type of warfare and claim victimization by the U.S..

The latter half of this scenario is ready for action. When they close Guantanamo, will the prisoners be transported to the U.S. and have legal counsel? Will they be released? Will they sue the United States and bring members of the military up on charges?

If Guantanamo is closed, will the prisoners put up a sign that reads "Mission Accomplished?"

More Taxes Than Cuts: California's politicians will not make the cuts that are necessary to balance their books. Predictably, they are looking for ways to increase their "revenue," also known as new taxes.

But a tax increase requires a two-thirds majority vote of both chambers to become law; the Republicans have vowed to stop any increase in taxes. In an effort to circumnavigate that roadblock, the bureaucrats want to increase all the "fees" they can. Lawsuits are ready, claiming that such an act is the same as a tax increase.

The Los Angeles Times has chipped in, publishing an editorial that calls for changing the California Constitution to end of the supermajority requirement to raise taxes. They opine that a majority is enough to change law; our Founding Fathers disagreed with such silliness.

The message is clear: It is not that they have spent too much; they just did not tax us enough. Watch for the same from Washington DC.

From Walter Williams Slavery: the forcible use of one person to serve the purposes of another. Mr. Williams builds from this definition to the policies of our government using money from taxes to pay for services to others. It supports the argument that socialist governments are forms of slavery. It is ironic that President Obama likes socialist policies.

President Obama: "There is no disagreement that we need action by our government, a recovery plan that will help to jumpstart the economy."
Cato Institute: "With all due respect, Mr. President, that is not true."
So started a full-page advertisement in the New York times on behalf of the Cato Institute. The letter bore the names of 200 economists, refuting the claim by our new president that there was no disagreement. Using one of Obama's words, the economists stated "...it is a triumph of **hope** over experience to believe that more government spending will help the U.S. today." They believe that impediments to investment and production and savings should be removed. The president has kept to his plan; perhaps he was talking about himself or his inner circle when he said there was no disagreement.

Just a Reminder: Taxes: One process of a government taking money from the private sector. How does the economy improve because the government takes more money from it? Economics professor Walter Williams (quoted earlier) noted that there are 15 separate taxes scheduled to rise in 2010, costing Americans $200 billion a year in increased taxes.

California's Proposition 8, which restricted *Marriage* to a man and a woman, won easily in the November election. The anti-8 forces donated their best efforts and loads of money to defeat the measure; but they failed in one of the most liberal states in our Union. This is the second time that the homosexual marriage forces have lost in California; again, they are going to court and lawyers to try and force their opinions on others.

Photo courtesy Orange County Register

But the loss by the homosexual marriage cult has invigorated their protests. The newspaper "The San Francisco Gate" put up a database of all the contributors on Prop. 8; including their names, donation amounts and their places of employment. Some business owners received calls of protest from these loving, tolerant persons (note my sarcasm). The post-election demonstrations have been revealing. The people are screaming at families, women and children, calling them hateful and intolerant. Their ugliness has now been demonstrated to many who were indifferent to the issue, solidifying Prop. 8's victory. Their only hope in with the courts.

Iran's Executions: Over the recent years Iran has ordered the executions of people for homosexuality, rape, and insulting religious sanctities and law. Two boys at left were held and beaten (228 lashes) for over a year before their execution. Several women have been stoned to death; they are tied, then buried up to mid-chest before the stoning begins. *Human Rights Watch* has noted that many of the confessions are obtained during torture.

Equally as bad is the killing of a daughter for honor. This can be from refusal to marry an appointed husband or any act with a non-Muslim. The San Francisco Gate reported that honor killings may number as many as 5,000 per year. It further reported:
"*While fathers are commonly responsible for honor killings, they often act in concert with their daughters' brothers, uncles, and even female relatives. For infringements upon a Muslim daughter's "honor" constitute the greatest humiliation possible to the religious and tribal tradition from which many such immigrant families emerged. Acts that demand "punishment" include refusing to wear a hijab (or headscarf), having non-Muslim boyfriends or male friends of any origin, being sexually active, rejecting arranged marriages, aggressively seeking employment and education, and, more than anything else, attempting to assimilate into Western culture.*"

Humor: If you think the government can spend your money in wiser ways than you can, you are probably right. [] *The next two are from Jay Leno, who started his Tuesday show with the remark that since Bush was no longer the president, he could not have a monologue.* "Caroline Kennedy withdrew her bid to fill New York's vacant Senate seat. You heard about this? According to some reports, she dropped out because of marital problems. How bad is your marriage when it keeps you from replacing Hillary?" [] "You know who gave the shortest inauguration speech in history? George Washington, whose speech was just a couple minutes long; This makes sense because, remember, George Washington couldn't tell a lie, right?" [] *From Argus Hamilton:* A Green Bay school played Barack Obama's inauguration on the PA system Tuesday but accidentally had the radio dialed to Rush Limbaugh's running commentary on the event. The teachers were mortified. After its success against the Soviet Union, Radio Free Europe will now be trained on U.S. public schools in an attempt to overthrow communism.

Child Care: Four Racine (Wisconsin) sisters took in more than a half a million dollars for child care services from the government. They provided daycare for children whose mothers were working full-time jobs. Those jobs were other child care positions. In other words, they baby-sat each other's children! All four had been employed as in-home child-care providers, sporting 17 children between them. The article did not list any fathers, but did say one was a single mother with 5 children. Good Grief!