

JUNE 2016

Veritas

A PUBLICATION OF THE TEXAS PUBLIC POLICY FOUNDATION

CLEAN POWER PLAN THREATENS THE *Navajo Nation*

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Veritas

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PRESIDENT'S MESSAGE

The approach of America's 240th Independence Day calls to mind our inheritance of liberty—and the struggles it took to make the idea of our freedom into a living reality. Nearly a century ago, at an address on July 6, 1922, then-Vice President Calvin Coolidge reminded Americans that simply proclaiming an independent republic was not enough:

"It was not the Declaration that gave America its independence. It was the action of the army in the field, led by Washington and his generals. It was the support of that army by the people of the colonies. It was the sacrifice made by those who pledged their lives, their fortunes, and their sacred honor to this high purpose."

American liberty, in other words, did not derive from a document. That document itself derived from the sentiment and hearts of a people determined to make that liberty, to which they had a natural and created right, into a living reality. They strove for it, suffered for it, and won it. Their children and grandchildren proclaimed and won the same fight, for the same reasons, in another frontier republic conceived in liberty—a place called Texas.

Our fight is not on the battlefield, but in the public square, where persuasion rather than force prevails. It is a fight that the Texas Public Policy Foundation has shown again and again that it can win. We are sustained in it and victorious because of you and your support.

So much is happening at the Foundation, and I'm pleased to share some of the news of our changes and success with you in this latest edition of *Veritas*. First and foremost, it is my pleasure and honor to introduce you to Kevin Roberts, Ph.D., our new Executive Vice President. You can read more about him in this issue, and

I hope you will join me in welcoming him.


As Kevin arrives, we must also bid farewell to Executive Director Arlene Wohlgenuth, who retired in May after a long and distinguished career in public service and the conservative movement. She will be missed—not just as a lifelong warrior for liberty, but as a dear and trusted friend.

The 85th Texas Legislative Session is only a few short months away—and our team is readying plenty of intellectual ammunition to advance free enterprise, limited government, and liberty. In this issue, you will find an important article related to our work on budget and tax cuts, along with a succinct overview of the rationale and process for an Article V Convention.

You will also find a short piece on a compelling TPPF-produced video entitled, "The EPA's Threat to the Navajo Nation," which puts human faces on the economic devastation of the poor by the EPA's Clean Power Plan. Also, I am delighted to announce the publication of *Fueling Freedom: Exposing the Mad War on Energy* by our very own The Honorable Kathleen Hartnett White.

Texas and America both won their independence for the same reasons, animated by the same heart. This July 4th, we celebrate our liberty, opportunity, and prosperity—and we rededicate ourselves to defending them in the same spirit in which they were won.




Brooke Rollins
President and CEO

Veritas

Veritas is a publication of the Texas Public Policy Foundation, a 501(c)3 nonprofit, nonpartisan research institute. The Foundation's mission is to promote and defend liberty, personal responsibility, and free enterprise in Texas and the nation by educating and affecting policymakers and

the Texas public policy debate with academically sound research and outreach. Our goal is to lead the nation in public policy issues by using Texas as a model for reform.



Welcome, Kevin Roberts!

The Texas Public Policy Foundation welcomes Kevin Roberts, Ph.D., as its new Executive Vice President. Roberts succeeds Executive Director Arlene Wohlgemuth, who retired in May 2016 after a long and distinguished career in public service and the conservative movement.

“After an exhaustive national search, I am delighted to welcome Dr. Kevin Roberts as the Foundation’s new Executive Vice President, said TPPF President and CEO Brooke Rollins.

“Dr. Roberts is a distinguished academic mind, a keen policy analyst, and is dedicated to our cause of liberty. And as important as any of these, he is a man passionate about our Lone Star State. I look forward to working with him in ushering in the next phase of our organization’s growth.”

With 20 years of experience as a teacher, professor, headmaster, and college president, Dr. Roberts has been involved in a number of education reform initiatives around the country. Roberts’ love for Lone Star liberty began during his days as a conservative graduate student in Austin.

Roberts received his B.A. from the University of Louisiana at Lafayette and his M.A. from Virginia Tech University. After earning his Ph.D. in American history from The University of Texas, Roberts served as a history professor in New Mexico before starting his own K-12 school, John Paul the Great Academy, in his hometown of Lafayette. Most recently, Roberts served as president of Wyoming Catholic College, which the *New York Times* described as being full of “cowboy Catholics” for refusing federal student loans and grants. Both schools led by Roberts have earned regular recognition for being among the top Catholic schools in the nation.



Roberts and his wife, Michelle, have four children, one bird-hunting dog, and a life-long addiction to fishing.

“As someone who has implemented the spirit of Lone Star Liberty in his various leadership roles during the past decade,” Roberts says, “I am ecstatic to be part of the organization which has promoted those values in Texas, and which will export those values to the country. The future of our American Republic—not just Texas—needs the Foundation.” ★

PASSING A CONSERVATIVE BUDGET AND CUTTING TAXES IN THE 85TH LEGISLATURE

by The Honorable Talmadge Heflin and Vance Ginn, Ph.D

Texas faces multiple challenges. A slower global economy, a strong U.S. dollar, and lower oil prices since the summer of 2014 have contributed to less growth in the oil and gas industry.

These economic drags pushed Texas on the verge of a technical recession as real gross state product increased by less than half of one percent in the second and third quarters of 2015. This led to almost 100,000 combined job losses in the mining and manufacturing sectors on an annual basis and a decline of about 50 percent in total nonfarm job creation from late 2014 to early 2016.

As the 2017 Texas Legislature approaches, some legislators worry that the state’s slower economic growth and job creation won’t generate enough tax revenue to cover the current budget or leave much for the next.

Although this is possible, their focus should be on maintaining the strong economic foundation of a highly diversified Texas economy through pro-growth policies. Instead of worrying about funding the budget, legislators should question every tax dollar spent and look to cut taxes.

The Conservative Texas Budget Coalition, which includes the Foundation and 12 other organizations, recommends that the Legislature pass the second consecutive conservative budget that’s below population growth plus inflation and eliminate the business franchise. This would allow Texas legislators to be good stewards of taxpayer dollars and help Texans achieve greater prosperity with an economy more resilient to economic and fiscal challenges.

Texas is Resilient but Not Immune to Economic Challenges

The economic challenges Texas faces today would likely have caused a prolonged, severe recession in Texas if the economy looked like it did during the 1980s.

During the 1980s, the mining sector was directly related to about 21 percent of the real private economy and roughly 5 percent of the labor force. Today, mining is 15 percent of the real private economy and less than three percent of the labor force. Consequently, the combination of more economic diversification and pro-growth policies has produced a much more resilient economy. This is evident in the fact that the sustained steep drop in oil

continued >>

prices hasn't yet taken nearly as much of a toll on the Texas economy as it did in 1986 when Texas had its last major recession that lasted two years from oil production and real estate busts.

However, increased diversification contributed to Texas being more dependent on the rest of the U.S. economy. The currently slow U.S. economic expansion of only 2.1 percent average annual growth may be the weakest recovery since World War II, with no relief in sight. With the Federal Reserve having held interest rates too low for too long and (rightly) beginning to tighten credit last December, slower economic growth and lower oil prices are likely to continue as highly distorted markets correct.

In addition to overbearing regulations, including those by Dodd-Frank and others promulgated by the Obama administration, the American Dream is further out of reach for too many Americans. Without growth in exports and the oil and gas sector, which fueled much of the U.S. economic expansion since 2009, the national economy stands on a shaky foundation.

Collectively, the next U.S. recession could be much worse than the Great Recession because the national economy didn't fully correct during that downturn as the government put the economy on life support filled with hot air instead of oxygen. This could send shockwaves through Texas' economy.

Despite these economic headwinds, it's important to realize Texas' remarkable success of job creation.

During the Great Recession and since, Texas has been America's jobs engine, creating 34 percent of all U.S. civilian jobs during the last eight years in a state with less than 10 per-

cent of the nation's population. Texas has employed more net nonfarm workers in 64 of the last 66 months, and created 152,300 private sector jobs during the last 12 months through March 2016.

This massive amount of job creation has led to Texas having a lower unemployment rate than the U.S. average for more than 10 years. The Texas miracle has been alive and well thanks to a diversified economy and pro-growth policies.

Of course, Texas' economic future is unknown, but so far the sky is not falling. Texas has been blessed with a long expansion contributing to great prosperity, but there will one day be another recession.

Room to Fund the Current Budget Despite Fiscal Challenges

The 2015 Texas Legislature started with the state's coffers overflowing with cash from a robust economy. Instead of discussing how much to spend, state officials discussed how much to cut taxes. This novel concept should be the starting point every legislative session.

Before the session started that January, Comptroller Hegar gave his *Biennial Revenue Estimate* (BRE) to provide a guidepost of what was available to appropriate given the state's requirement of a balanced budget. He then released the *Certification Revenue Estimate* (CRE) in October, after the session ended in June. But, as shown in Chart 1, he noted that given slower economic growth and lower oil prices, the estimated general revenue-related funds for 2016-17 were likely to decline.

The CRE shows a higher beginning balance, lower tax collections, less funds available for transfers, and a decline in the potential surplus to \$4.1 billion than initially estimated.

CHART 1: ROOM TO FUND THE CURRENT BUDGET DESPITE CHALLENGES

	FY2016 (BRE)	FY2016 (CRE)	FY2017 (BRE)	FY2017 (CRE)
Real GDP	3.2%	2.4%	4.1%	2.3%
Nonfarm Employment	2.2%	1.7%	2.3%	1.8%
Unemployment Rate	5.0%	4.3%	5.0%	4.4%
Taxable Oil Price	\$64.52	\$49.48	\$69.27	\$56.52
Sales Tax Revenue	\$29,796,127	\$29,258,665	\$31,685,564	\$30,663,502
Franchise Tax Revenue	\$4,741,992	\$3,528,510	\$4,827,605	\$3,547,819
Net Revenue All Funds	\$111,545,560	\$108,053,259	\$109,385,492	\$105,944,086

Notes: Data are from the Texas Comptroller's BRE and CRE. Revenue amounts are in thousands of dollars.

Today, the taxable oil price in the CRE looks overestimated as recent forecasts of the average oil price are about \$15 lower in 2016 and 2017. This could lead to slower economic growth that would put pressure on fully funding the current budget and leave a tight budget next session.

Pass the Second Consecutive Conservative Budget

The 84th Texas Legislature appropriated \$209.1 billion for the 2016-17 budget period, which is a 2.9 percent increase from the previous period's expected expenditures. This conservative budget must be the first of many, given past excessive budget trends.

Legislators have recently practiced some budget constraint, particularly during the 2003, 2011, and 2015 legislative sessions when they passed budgets that increased by less than population growth plus inflation. However, in 2005 and again in 2013, spending by subsequent Legislatures increased substantially, erasing gains in previous sessions.

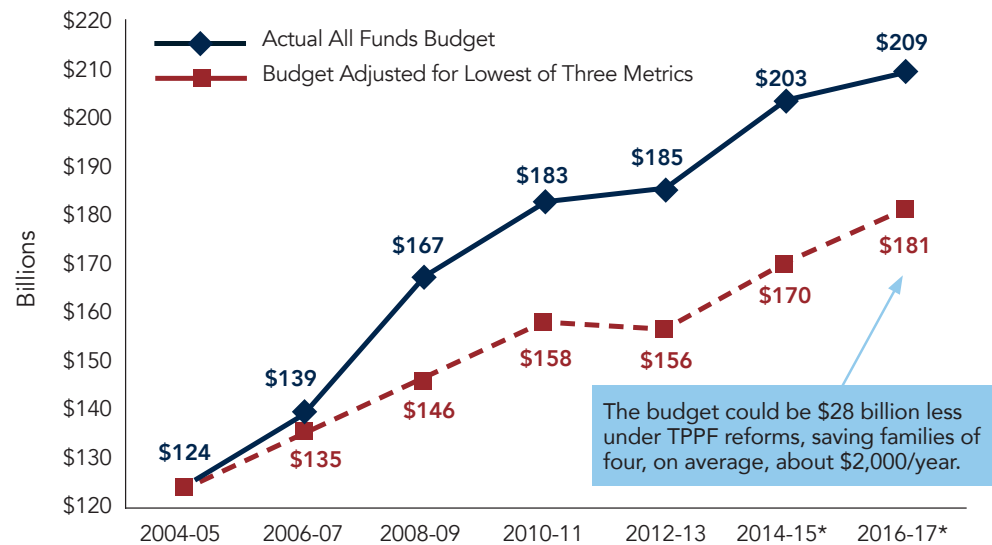
Specifically, the total budget is up an estimated 11.8 percent above the pace of compound population growth plus inflation since the

2004-05 budget. This excessive increase has burdened Texans with higher taxes and fees to sustain elevated spending levels and slowed economic growth.

While occasionally passing conservative budgets is beneficial, Texas needs to keep past budget cycles from repeating by passing a stronger statutory spending limit. The state's current weak spending limit can be traced back to several design flaws. These include the facts that the current limit includes only 45 percent of the budget, personal income isn't a reliable indicator, and projections are subject to being wrong.

With so many hindrances to budgetary prudence, it's easy to understand why Texas' spending limit has failed to effectively limit the budget. There should be spending limit reform that caps the total budget using the lowest of population growth plus inflation, personal income, or gross state product, measured by actual data for the two fiscal years before the regular legislative session. Chart 2 shows what the budget would look like if the Legislature had implemented our recommended reforms in 2003 and followed them since the 2004-05 budget. continued >>

CHART 2: TEXAS' GOVERNMENT BUDGET GROWING FASTER THAN REFORMED SPENDING LIMIT SINCE 2004-05



Notes: Data are the latest spending measures from 2004-05 to 2014-15 and appropriations for 2016-17. Adjusted budget estimates are calculated based on TPPF's recommended spending limit reform.

It may be easier next session to pass another conservative budget because there looks to be less tax revenue available from a slower economy. However, there will be proposals to tap into the state's rainy day fund that's expected to have about \$10.4 billion available to spend. Instead, the focus should be on how to spend less so the business franchise tax, commonly called the margin tax, can be put on a path to elimination.

Advancing the Texas Model by Eliminating the Margin Tax

Businesses don't pay taxes; consumers do in the form of higher prices, lower wages, and fewer jobs available. Given that taxes exist to fund essential government services, the least burdensome taxes should fund conservative budgets.

No matter how you evaluate the margin tax, it fails the least burdensome tax test, fails to meet revenue expectations, and fails to allow

Texans the opportunity to reach their full potential. Texans would be best served by eliminating this onerous tax.

The margin tax is inherently complex with multiple calculations to determine the lowest tax liability, two tax rates depending on business type, and the \$1 million gross revenue exemption. Complying with it is also markedly different than complying with the federal corporate income tax, so many firms must keep separate financial books. Because of these substantial costs, firms can spend more on compliance than their actual tax liability.

Fortunately, the 84th Texas Legislature made valiant steps toward reducing the margin tax's burden. This was accomplished by cutting the tax rates by 25 percent and raising the ceiling to file with the E-Z computation to \$20 million at a lower tax rate. These beneficial changes for a total value of \$2.6 billion took effect on January 1, 2016. These cuts not only

had the benefit of reducing the size of government, but employers also have more money to invest to boost the economy.

The Foundation's research includes a dynamic economic model that accounts for the private sector drain to pay for annual margin taxes and firms' cost of tax compliance. The estimated results of full elimination before the margin tax changes last session include:

- **More prosperity.** Texas could gain \$16 billion in new real (inflation-adjusted) total personal income within five years compared with the baseline.
- **More jobs.** Net new private sector nonfarm employment could increase by 129,200 net new jobs five years after eliminating the margin tax compared with the status quo.

A tight budget in the 2017 Legislative Session should not negate taking additional steps to achieve the ultimate goal of eliminating the margin tax. Depending on the fiscal and political environment, eliminating the margin tax in the next budget cycle may not be an option. A valuable alternative is to phase it out

over the next two budget cycles. If the phase out path is chosen, it is preferable to lower the tax rates for everyone instead of raising the revenue exemption threshold that forces the burden on fewer firms.

Weathering an Economic Downturn

The 84th Texas Legislature made great strides last session to weather an economic downturn by passing a conservative budget, \$4 billion in tax and fee relief, and billions of dollars left unspent, including roughly \$10 billion in the state's rainy day fund.

These prudent fiscal decisions helped keep the size and scope of government from crowding out the productive private sector during a slowing economy—the best economic stimulus.

By advancing economic freedom and individual liberty, Texas will better deal with potentially deep downturns and other economic circumstances. This provides Texas with the best opportunity to remain a free market bastion for Texans to achieve their hopes and dreams, and a model for others to follow. ★



The Honorable Talmadge Heflin is Director of the Foundation's Center for Fiscal Policy. Heflin served the people of Harris County as a state representative for 11 terms. Well-regarded as a legislative leader on budget and tax issues, he for several terms was the only House member to serve on both the Ways and Means and Appropriations committees. In the 78th Session, Heflin served as chairman of the House Committee on Appropriations. He navigated a \$10 billion state budget shortfall through targeted spending cuts that allowed Texans to avoid a tax increase.



Vance Ginn, Ph.D. is an economist in the Center for Fiscal Policy at the Texas Public Policy Foundation. Ginn is an expert in Texas' state budget, franchise tax, tax and expenditure limit, and other fiscal issues. Before joining the Foundation in September 2013, Ginn was a Koch Fellow, and taught at three universities and one community college across Texas. He has published peer-reviewed articles in academic journals, as well as commentaries in major media outlets across Texas and the nation.

ANNOUNCING THE LIBERTY LEADERSHIP COUNCIL

Engaging America's Future



THE RISING GENERATION known as Millennials is the largest in American history. With their oldest now in their early 30s, Millennials are stepping onto the stage as primary drivers of culture, politics, and policy. We clearly are witnessing change in the demography and life experience of the American body politic. But the question remains: is it a change toward liberty, or the dead end of big, tyrannical government?

Rather than waiting on the sidelines, the Texas Public Policy Foundation—with the encouragement and support of board members Mayes Middleton, Stacy Hock, and Kevin Sparks—has created its Liberty Leadership Council. The goal? To actively involve young professionals aged 40 or younger in our family to help advance individual liberty, personal responsibility, and free enterprise.

Beginning with the first outreach effort in Houston, other councils are also be-

ing organized in Midland and Dallas/Fort Worth this year. The 23 organizing members in Houston have set high expectations for themselves, and ensuing chapters will, similarly, have the opportunity to define their roles with TPPF.

Long term, TPPF anticipates active Liberty Leadership Councils in 5-7 Texas cities. Each Council will hold Council members only events as well as other events designed to recruit new young professionals in their city. Ultimately, we envision a statewide-level Council with representatives from each chapter and an annual statewide conference to bring everyone together for policy briefings and networking.

If you know of a favorite young professional who might be interested in the Liberty Leadership Council or would like more information, please contact Shannon Tracy at stacy@texaspolicy.com or (512) 472-2700.

MAKE THE GIFT OF A LIFETIME

Using Your Retirement Account to Fight for Freedom

There is good news for TPPF donors in their 70s with an individual retirement account. Congress recently made the IRA charitable designation permanent, and you can now donate IRA assets annually to the fight for freedom—all free from federal tax. You can now give more with less! This may be an attractive giving option if you are:

- Over 70½ and now receiving minimum IRA distributions—but do not need the extra income.
- Interested in making a significant lifetime gift to help TPPF defend and promote individual liberty, free enterprise, and personal responsibility.

The Pension Protection Act of 2006 permitted individuals to roll over up to \$100,000 annually from an IRA directly to a qualifying charity without being taxed. Now, with the passage of the PATH Act, this charitable giving opportunity is made permanent. Single and married individuals 70½ and older are eligible to give in this way from their individual retirement accounts.

Using IRA assets to make a gift during your lifetime, as opposed to giving via a bequest in your will, enables you to enjoy making a major gift to TPPF and to see the results of your generosity. For information about making an IRA charitable designation, please contact Shari Hanrahan, Special Campaigns Director, at (512) 472-2700 or shanrahan@texaspolicy.com.

TPPF BOARD PROFILE MAYES MIDDLETON



When Mayes Middleton joined the Texas Public Policy Foundation Board of Directors, Brooke Rollins already had in mind a project that would make good use of his leadership skills and business acumen. She asked Middleton if he would help her begin to build a group of young Patriots who might be future leaders for TPPF and—someday—significant donors to the Foundation.

Mayes Middleton is President of Middleton Oil Company, an independent oil and gas company that operates over 60 wells in South Texas and along the Gulf Coast. He also manages his family's mineral holdings throughout the state, as well as ranching, cattle, and farming operations in Chambers, Jefferson, Kimble, Liberty, and Webb Counties.

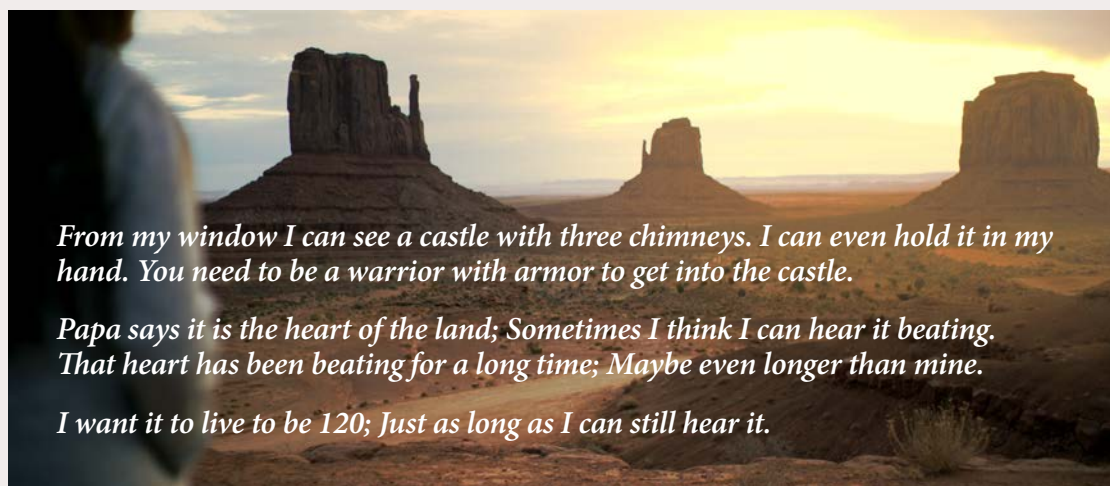
Board service is not new to Middleton. He serves on the Board of Directors of First Liberty National Bank, the Wallisville Heritage Park, and Empower Texans Foundation. He is also a member of the Texas Business Leadership Council.

A graduate of the University of Texas at Austin with degrees in Finance and Plan II Honors, Middleton also holds a JD from the University of Texas School of Law. He lives in Houston with his wife, Macy, and twin sons.

CLEAN POWER PLAN THREATENS THE NAVAJO NATION

In mid-March, the Texas Public Policy Foundation released “Navajo Nation,” a compelling video story about how the Environmental Protection Agency’s Clean Power Plan stands to devastate the proud, hardworking Navajo Nation in Arizona. If the EPA has its way, the Clean Power Plan will destroy thousands of jobs among the Navajos, as well as among the people of West Virginia, Ohio, and many other parts of the country.

Speaking over the haunting melody of a reed flute, the voice of a Navajo girl begins:



From my window I can see a castle with three chimneys. I can even hold it in my hand. You need to be a warrior with armor to get into the castle.

Papa says it is the heart of the land; Sometimes I think I can hear it beating. That heart has been beating for a long time; Maybe even longer than mine.

I want it to live to be 120; Just as long as I can still hear it.

According to Arizona State Senator Carlyle Begay, “The Navajo Nation’s unemployment rate is over 50 percent. Currently, revenue from coal represents 60 percent of the Navajo Nation’s general funds and operating budget. Absent political restrictions on the use of coal, coal mining and the Navajo Generating Station on the Navajo Nation’s land would be expected to boost its economy by over \$13 billion dollars over the next 25 years!”



Navajo Nation mines produce approximately eight to 10 million tons of coal each year, down from 13 million to 16 million tons before EPA regulations began to restrict the use of their resources.

Additionally, a coal-fired power plant owned partially by the Navajo Nation produces approximately 3,750 megawatts of electricity sold primarily outside the Nation. The industry is responsible for more than 2,500 of the highest-paying jobs in the Navajo Nation. These revenues represent their ability to act as a sovereign nation.

Coal provides the Navajo Nation with jobs, dignity, and hope. ★

View their story in their own words at the Foundation’s website.

<http://www.texaspolicy.com/blog/detail/obamas-clean-power-plan-will-destroy-navajo-nation-jobs>



THE BATTLE OVER AN ARTICLE V CONVENTION OF STATES

Answering Opponents' Concerns

by Thomas K. Lindsay, Ph.D.

This January, at TPPF's annual Policy Orientation, Governor Abbott announced his "Texas Plan," which calls on the Legislature to apply for a convention of states to propose constitutional amendments to rein in the federal government.

Why this bold move by the governor? Gallup polling reveals that 72 percent of Americans regard "big government" as a "greater threat" than "big business or big labor, a record high in the nearly 50-year history of this question." This fear is rational: Supreme Court decisions distort the Constitution through "discovering" new "rights"; presidential Executive Orders thwart the will of the people and their representatives; and Congress abdicates lawmaking authority to unelected bureaucrats. One result of Washington's disdain for the Constitution is the national debt, which, by 2019, will reach \$21 trillion. Such profligate spending is crippling economic opportunity, not only for us, but for our children and grandchildren.

As Washington expands, liberty and the rule of law shrink. Worse, Washington is unwilling to extricate Americans from

the abyss into which its power-grabs have thrust them. To bypass the federal government through the Article V process, Governor Abbott proposes nine constitutional amendments: "prohibit Congress from regulating activity that occurs wholly within one State"; require Congress to balance the budget; bar administrative agencies "and unelected bureaucrats" from making federal law as well as from "pre-empting state law"; empower a two-thirds majority of the states to veto a Supreme Court decision as well as to override a federal law or regulation; require a "seven-justice-super-majority vote" any time the Supreme Court would "invalidate a democratically enacted law"; limit the federal government "to the powers expressly delegated to it in the Constitution"; and enable state officials to sue in federal court "when federal officials overstep their bounds."

The governor clarified that his proposals are intended not to end, but to commence, a national dialogue. Although he expects disagreement over particular amendments, what large majorities do agree on is more important—that Washington has lost our trust and gained our fear.

“[T]o the support of the Constitution and Laws, let every American pledge his life, his property, and his sacred honor ... Let reverence for the laws ... be taught in schools, in seminaries, and in colleges; let it be written in Primers, spelling books, and in Almanacs; let it be preached from the pulpit, proclaimed in legislative halls, and enforced in courts of justice...” ~**Abraham Lincoln, 1838**

The mechanism for introducing amendments is Article V of the Constitution. America's founders anticipated government overreach. Article V empowers states to restore the Constitution without needing to secure the agreement of the very Congress whose encroachments make state action necessary.

A "Runaway" Convention?

Some oppose the convention-of-states movement despite agreeing that Washington "has slipped its constitutional bounds." They fear "a cure that might kill the patient"—a runaway convention, in which rogue delegates hijack the proceedings.

Many constitutional scholars have investigated this possibility. In "The Jefferson Statement," the Convention of States Project notes that George Mason, foremost among the Framers, anticipated the federal government's penchant for power-grabs. Mason played a key role in crafting the final version of Article V, arguing that states were our last, best hope. The Jefferson Statement finds the Convention process both "controlled by the states from beginning to end on all substantive matters" and constrained to consider only the subject(s) carried forward by 34 states.

Matthew Spalding and Trent England add that, even if a convention-of-states movement failed to garner 34 states, this would not spell defeat. The drive for direct election of U.S. Senators was "just one state away

from an amending convention when Congress proposed the Seventeenth Amendment in 1911."

Although they agree with The Jefferson Statement that the three-fourths-of-the-states ratification requirement "likely prevents a true 'runaway' convention from fundamentally altering the Constitution," they worry over "the lack of precedent, extensive unknowns, and considerable risks of an Article V amendments convention. . . ."

Their concerns are addressed in Robert Natelson's investigation of Article V's history. Surveying the debates at the 1787 Constitutional Convention, he too highlights Mason's role in changing Article V to "provide that a convention rather than Congress draft state-initiated amendments."

In the century preceding ratification of the Constitution, there were "at least 30 multi-government conventions. This historical record, argues Natelson, demonstrates that the delegates decided that an "amendments convention would be constituted as a convention of the states." This was the only model "known to the Founders." This view was subsequently confirmed by the U.S. Supreme Court. Natelson's answer to the question of why Article V does not explicitly delineate the composition of the convention is, "The framers' method was not to recite in the Constitution matters that everyone knew." He observes that, had Article V not been so understood by its framers, the Con-

continued >>



Texas Governor Greg Abbott announcing his “Texs Plan” at TPPF’s 2016 Policy Orientation.

stitution might never have been ratified. He thus denies that “extensive unknowns” muddy the Convention process. Analyzing court rulings on Article V, he finds that the courts have adhered to “certain rules and principles with remarkable consistency ... [C]onventions of states always have been subject to the limits imposed by their calls and by legislative authority.”

Based on his analysis of Article V’s history, Natelson concludes that each state delegation represents one vote at a convention; each state delegation’s composition is determined by its state legislature; and each state delegation is “subject to legislative instruction.” Additionally, the convention is empowered to draft “its own rules and elect its own officers.”

Scott Pruitt, Oklahoma attorney general, agrees, adding that Article V conventions may “only propose amendments. A plenary convention—a constitutional convention called for a broad and unrestrained purpose—is not authorized under the U.S. Constitution.” Pruitt thus debunks the myth that Governor Abbott is calling for a “constitutional convention.”

Losing our Founding?

But once a convention meets, it could propose any amendments it wants or even a completely redesigned Constitution.

~John Yoo

What explains the disagreement among some conservatives regarding Article V? Natelson finds that, until recently, “leading participants seem to have understood the nature and scope of an amendments convention.” However, by the 1960s, “this understanding had been lost.” He cites the work of the liberal professor, Charles Black, who “excoriated” the Article V movement and candidly advocated a course of legal obstruction.

Natelson finds that Black gets American history wrong. Black thought it unconstitutional to hold a “limited amendments convention,” because the “Founders had referred to amendments conventions as ‘general’—a term that actually referred to the number of states invited, not to the subject matter.” Black also falsely equated an amendments convention with a “constitutional convention,” presumably because the latter term implied that the gathering could roam at will.”

Nonetheless, Black’s influence was powerful. Here we encounter a political irony: Some on the Right fear a runaway convention because they have accepted the Left’s inaccurate presentation of Article V.

Risks and Rewards

Society will develop a new kind of servitude which covers the surface of society with a network of complicated rules, through which the most original minds and the most energetic characters cannot penetrate.

It does not tyrannize but it compresses, enervates, extinguishes, and stupefies a people, till each nation is reduced to nothing better than a flock of timid and industrious animals, of which the government is the shepherd. (Tocqueville, *Democracy in America*)

In the typical case we look to the states to defend their prerogatives by adopting ‘the simple expedient of not yielding’ to federal blandishments when they do not want to embrace the federal policies as their own. The States are separate and independent sovereigns. Sometimes they have to act like it. (Chief Justice Roberts, *N.F.I.B. v. Sebelius*, 2012)

Opponents of the Article V movement offer two primary objections. First, they dismiss it as a “long shot.” Second, as we have seen, some hold that a convention of states would result in the “mayhem” of a “runaway convention.”

The “long-shot” critique argues that we will waste time pursuing an unrealizable goal. Despite being included as an element of the Constitution, a convention of states has never occurred. The two-thirds-of-the-states application requirement and the three-fourths-of-the-states ratification requirement are tall orders, and rightly so. The Constitution was passed by supermajorities; hence the Constitution requires supermajorities to ratify amendments.

But the truth of this first critique undermines the second—that a convention of states would become a runaway convention. Aside from the rejoinder that proposed amendments require approval by 38 states, there is a deeper reason not to fear a runaway convention: If 34 state legisla-

tures made history with a convention call, consider all the coalitions that would have been formed in each state and nationwide. Such a massive coalition would both require and, in turn, enhance a massive increase in public awareness of our crisis.

Such a nationwide dialogue among the American people would be so transformative that it should assuage concerns over a runaway convention. These fears underestimate the effect on D.C. power-brokers of such an unprecedented popular uprising. Unscrupulous delegates and/or Congress would be unable to pull strings from behind closed doors without exciting a national uproar. History validates the expectation that, to forestall an uproar, Congress would preempt a burgeoning Article V movement through proposing its own, likeminded amendments. Were this to happen again, it would be a victory for liberty.

The U.S. Department of Education finds that only one in every three college students graduates having taken even one course in American Government, because most American universities no longer *require it*.

Moreover, as the Article V movement grows, it will educate Americans in the liberating power of our Constitution. Today, we know less and less about the Constitution, because our schools teach it less and less. The Department of Education finds that only one in three college students graduates with even one course in American Government, because most universities no longer require it. The American Council of Trustees and Alumni’s curriculum tracking concludes: continued >>

Through our Constitution, the people agree to delegate some of their natural authority to government, but only so far as the government remains faithful to its liberty-promoting purposes.

There is a crisis in American civic education. . . [R]ecent college graduates . . . cannot identify the term lengths of members of Congress, the substance of the First Amendment, or the origin of the separation of powers . . . and nearly 10 percent say that Judith Sheindlin—“Judge Judy”—is on the Supreme Court.

An additional benefit of the Article V movement, then, would be to teach Americans that they already possess their natural rights before government is ever instituted. Through our Constitution, the people agree to delegate some of their natural authority to government, but only so far as the government remains faithful to its liberty-promoting purposes. Learning this lesson would be immensely helpful to the American people, because it refutes the notion, expressed by some big-government defenders—that our rights come from government. Our rights, the Declaration of Independence argues, come from “Nature and Nature’s God,” not politicians.

As mentioned, ratification of any feared “rogue” amendments requires 38 states. Merely 13 states can veto any amendment. Are there not 13 states left on whose constitutional fidelity we can count to block

any amendments but those called for by the 34 states to rein in Washington? To believe otherwise would be to conclude that America’s experiment in self-government has already failed.

To prevent America from failing, the Article V movement has arisen. When asked about the fear that a convention of states would go “runaway,” Antonin Scalia replied, “I have no fear that such extreme proposals would come out of a constitutional convention.” He added that, because he deems a convention “necessary for some purposes,” he is willing to accept “a minimal risk of intemperate action.” Therefore, “if the only way to get that convention is to take this minimal risk, then it is a reasonable one.”

We agree. Despite possible perils, the promise of a convention of states justifies “this minimal risk,” trusting that history will show it was “reasonable.” The people are less to be feared than the federal government. A runaway convention is less to be feared than our runaway federal government.

It is time that states once again recognize the liberty-promoting powers granted them under the Constitution, and then, “act like it.” ★



Thomas K. Lindsay, Ph.D. is Director of the Foundation’s Centers for Tenth Amendment Action and Higher Education. He has more than two decades’ experience in education management and instruction, including service as a dean, provost, and college president. In 2006, Lindsay joined the National Endowment for the Humanities staff as director of the agency’s signature initiative, We the People. He was named Deputy Chairman and Chief Operating Officer in 2007. Oxford University Press recently published Lindsay’s American Government college textbook, *Investigating American Democracy* (with Gary Glenn).



Building a Legacy

TPPF DONOR PROFILE EVERETT SCHMIDT

As he opens the front door to his Sun City Georgetown home, Everett Schmidt welcomes you into a living room filled with the things he most cherishes. The room is naturally lit thanks to a wall of windows looking out into a wooded thicket where deer quietly roam. A Steinway grand piano occupies much of the floor space, and beautifully framed copies of the U.S. Constitution and the Declaration of Independence hang on the wall nearby.

Everett devoted his career to education and retains his love of learning, even as his 85 years have made moving about a bit more challenging. He began his professional career as an assistant band director in El Campo and then served as both band director and principal at Giddings (Texas) High School. In the early 60’s, Everett moved on to serve as band director at the San Jacinto College North Campus, and was named academic dean in 1973, a position he held until his 1997 retirement.

Like a great many American patriots, Everett believes the Founders were divinely inspired. “I began to support the Texas Public Policy Foundation years ago,” he says “because they were working so hard to defend and advance the philosophies that will preserve the kind of liberty and prosperity we enjoy. At some point,” he goes on, “I began to think about what I wanted to leave behind.”

Everett became a member of the Lone Star Legacy Society earlier this year. He concluded, “Citizens who have similar belief in the importance of TPPF to the future of the state and nation should also consider a commitment.” ★



“I believe we are in a life or death struggle right now. As the world continues to unravel, organizations such as TPPF are growing more important.”



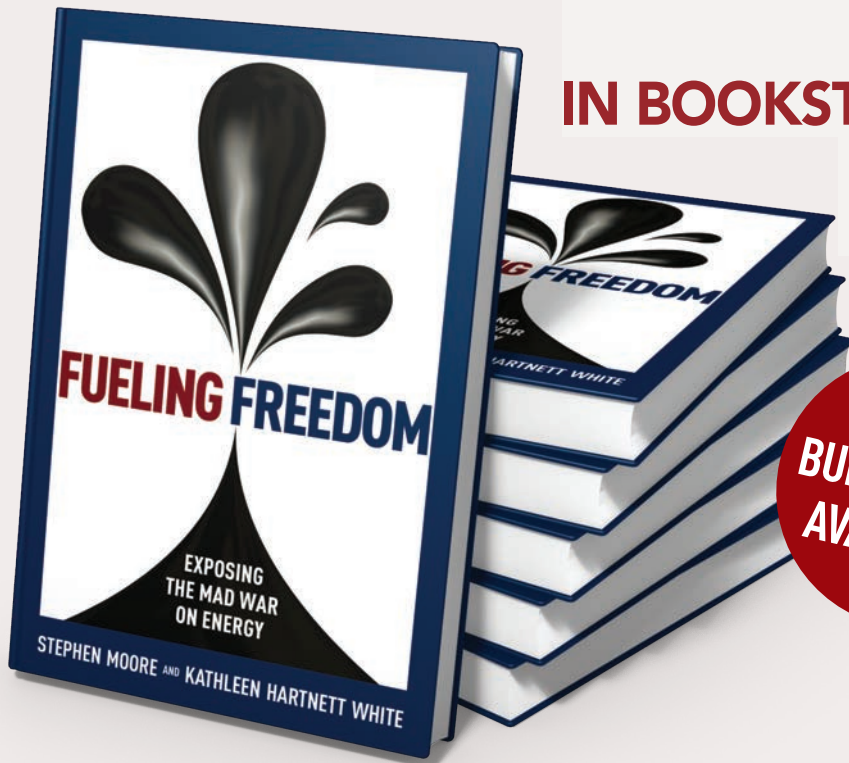
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