



# THE VIEW

Issue #16

August 9, 2010

## CONSERVATIVE REPUBLICANS AND JUDICIAL ACTIVISM?

BY  
MARTY WISEMAN, Ph.D.

The intent was to write a somewhat lighthearted “back to school” column. But alas, last week a chilly political wind blew across the otherwise parched landscape, and in so doing postponed any attempt at frivolity.

Indeed, it seems that everywhere one looked over the past few days Republicans could be seen reversing long-held positions and causing observers on the left and the right to wonder if the heat had in fact had some sort of negative impact. First there was President Ronald Reagan’s ultra-conservative budget director David Stockman chastising Republicans for their steadfast resistance to any tax increase as a tool in the arsenal for attacking the burgeoning budget deficit. Stockman, it may be remembered, was the chief purveyor of supply side economics and the first advocate of the “starving the beast” approach to cutting government programs. Stockman was joined during the week by well-to-do conservative businessman and vocal critic of President Obama, Mortimer Zuckerman, whose latest broadside at Obama claimed that the highly controversial stimulus package was not large enough and that it was ill-targeted. The economic and tax debate can wait for another day.

The more startling “fruit basket turnover” of the week came in the form of the growing advocacy by a number of Republican lawmakers for revamping and re-interpreting parts of the venerable old guarantor of due process in the United States Constitution – the 14<sup>th</sup> Amendment. Ironically, many of the same Republican Senators who expressed concern over recently confirmed moderate Supreme Court Justice Elana Kegan for her judicial activism soon turned their attention to a would be precedent shattering call for change in the 14<sup>th</sup> amendment.

The reason given for the attention to this middle of the three historic Civil War Amendments is its pesky guarantee of citizenship to anyone born in the United States regardless of circumstances. The reader will remember from middle school civics class that in the years immediately following the Civil War the 13<sup>th</sup> Amendment freed the slaves, the

14<sup>th</sup> Amendment made them citizens in every state on equal footing with freedoms that could not be denied without due process of law and the 15<sup>th</sup> Amendment conveyed to newly freed males the right to vote. The very first sentence of the 14<sup>th</sup> Amendment states that “all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

Suffice it to say, that it was several decades before the promises of these three amendments were fully realized, but the 14<sup>th</sup> Amendment to the Constitution became a workhorse during the Civil Rights movement in the middle of the 1900's. Those who now advocate change state that the authors of the 14<sup>th</sup> never anticipated numbers of pregnant women crossing our borders simply to give birth to new American citizens. Hence they now embrace the need for this corrective instance of judicial activism.

This is yet another case in our long history of the need for those exercising restraint to rally around the steady old bedrock of the Constitution. Activists from both the left and the right have made runs, from time to time, at the Constitution in efforts to address momentarily complicated social issues. Such efforts are usually made as minimalist efforts at “tweaking” the language or meaning of Constitutional wording to better fit “current situations.” For example, the left has attempted to narrow the meaning of the 2<sup>nd</sup> Amendment’s protection of the right to keep and bear arms by merely eliminating protection for “Saturday night specials” or military assault weapons. The vocal and politically powerful National Rifle Association has jealously and successfully guarded against any chipping away of such gun ownership rights. There have been numerous efforts from both the right and the left to restrict freedoms of speech, assembly and religion under the 1<sup>st</sup> Amendment. Then there was the breakthrough amendment by social activists that resulted in the passage of the ill-fated 18<sup>th</sup> Amendment that prohibited the manufacture and sale of alcoholic beverages.

There are a few lessons to be learned from these and other efforts to bend the Constitution to fit the passions of the moment. First, it should be clear from this attempt that judicial activism knows no specific ideology, but it can be and is practiced by both the right and the left. Secondly, the Bill of Rights and the additional amendments that follow cannot be the subject of majority politics when they are called into action. They must protect minorities as well. Thirdly, the United States Constitution has been in place for nearly two and a quarter centuries. Social issues about which we are rightfully passionate will come and go. The Constitution would likely come apart at its seams if we endeavored to change it to conform to every politically popular position.

Finally, whether it is the 1<sup>st</sup> Amendment, the 2<sup>nd</sup> Amendment, the 14<sup>th</sup> or any of the others we had best live with some actions we do not agree with rather than commence proposing restrictions based merely on popular sentiments of the moment.



## **ABOUT THE AUTHOR:**

### **WILLIAM MARTIN WISEMAN, Ph.D**

William Martin Wiseman is Director of the John C. Stennis Institute of Government and Professor of Political Science at Mississippi State University. He received his Ph.D in 1986, his MPPA in 1980, his MS in 1974, and his BA in 1973, all awarded from Mississippi State University. In addition to his duties at Mississippi State, Dr. Wiseman is a guest professor at Jackson State University. Dr. Wiseman's areas of academic interest include American government, intergovernmental relations and federalism, county and municipal management, public personnel administration, and innovations in state and local government management.

Wiseman is a sought-after speaker on state and local government, state and local politics, political theory and rural development. Often a guest editorial writer in Mississippi daily and weekly newspapers, he can also be relied upon to evaluate federal, state and local election results for all media.

He is married to the former Bonnie Parker, and they have two children. He is active in the United Methodist Church.

Dr. Wiseman's email is [marty@sig.msstate.edu](mailto:marty@sig.msstate.edu).

## **ABOUT THE INSTITUTE:**

Elected to the United States Senate in 1947 with the promise to "plow a straight furrow to the end of the row," John C. Stennis recognized the need for an organization to assist governments with a wide range of issues and to better equip citizens to participate in the political process. In 1976, Senator Stennis set the mission parameters and ushered in the development of a policy research and assistance institute which was to bear his name as an acknowledgment of his service to the people of Mississippi.

**Mississippi State**  
UNIVERSITY

Mississippi State University does not discriminate on the basis of race, color, religion, national origin, sex, age, disability, sexual orientation, group affiliation, or veteran status.