

Keep Their Feet to the FIRE: The Citizen's Checklist for Legislative Behavior

Few people stop to think about the importance of the first three words of the US Constitution: "We the people." When it comes down to it, that simple phrase is the heart of a revolution in the history of governance and the key to American exceptionalism. We, the people, grant these rights to the government. They are not granted to us by a benevolent monarch (whose less-than-benevolent heirs could change their mind). They are not the favors and protections that a government has decided to bless us with. In the end,

the people of the United States grant rights to the government, not the other way around—a fact that we underline by further limiting the powers of the government through the first 10 amendments to the Constitution. In many ways, this vesting of power with the People, rather than the government also charges the public with the responsibility to keep their own checks on government action and expansion, demanding correction where necessary.

Founding Principles

Constraining the power of the government is a founding principle—perhaps the founding principle—of our country. So determined were the Founding Fathers to express the clear limitations of the scope of federal power that their first changes to the Constitution were to clarify the things that the government was *not* allowed to do.

Contrast this, if you will, to the way that legislation proceeds in modern times, with nearly every focus on adding to the reach and power of the government, be it federal, state, or local. Jurists squint at the Interstate Commerce Clause and try to find even broader interpretations to legitimize Congressional actions that go far beyond what the framers of the Constitution must have imagined.

But there is a logic inherent in the principle of constraint and limitation, and nearly every other founding principle can be found in its wake. For example:

Individual Liberty—Perhaps the one item on which nearly all Americans can agree, regardless

of political persuasion, is the centrality of individual liberty to the American philosophy of government. While we may dispute where the lines of liberty and responsibility cross, or where one person's liberty should take a backseat to other, more fundamental principles, we remain generally united on the principle that the government must not infringe upon certain intrinsic rights.

Respect for Free Enterprise and the Free Market—So much of the history of America's founding revolves around the clear desire to conduct one's business free from government interference. We are, in essence, a country partially founded on the notion that taxation is a serious and generally undesirable matter. Yet, while there is no shortage of defenders of individual liberty, too few note that the free market is an extension thereof. After all, what good is personal freedom if it ends the moment you try to put a roof over your head or food on your table?



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Founding Principles:

- **Individual Liberty**
- **Respect for Free Enterprise and the Free Market**
- **Respect for Tradition, Family and the Foundations of Society**
- **Judicial Restraint**
- **Executive Restraint**
- **Legislative restraint**

Respect for Tradition, Family, and the Foundations of our Society—Government should not attempt to engage in social engineering or undermine the family. This includes respect for both religious freedom and religious liberty, that difficult combination of rights that guarantee both our right to practice our religion and our freedom from government intrusion, denominational favoritism, or even policies that are hostile to religious groups or agencies. It also includes an understanding of the importance of societal mores, the unwritten traditions and practices that are more deeply ingrained than any law and operate as both the glue that holds us together and the oil that allows our society to function.

Judicial Restraint—The courts should practice restraint in the same way that the legislative and executive branches should. This includes staying within its role as an interpreter of law and not expanding its power to create legislation from the bench.

Executive Restraint—While the judicial branch has received more attention for its forays into legislative action, the executive branch has been quietly growing and creating its own body of law based on the regulatory power of the executive agency. Not only does this muddy the waters of accountability, but it deprives the people of their usual avenues of redress in legislative matters. The executive’s proper role as enforcer of the law carries with it a position of

significant public trust (especially as it wields the force—the gun—that demands adherence to the law). Therefore, we must be as wary of efforts to expand executive power as with all other branches of government.

Legislative Restraint—As with the other branches, it is important for the legislature not to overstep its Constitutional bounds. But while other branches may dabble in legislative actions, the way that we identify a lack of restraint on the part of the legislature is . . . with *too much* legislation. Laws passed without a sense of accountability or without a practical method of enforcement. Onerous laws that place too great a burden on individuals or businesses. Laws that meddle in the domain of the family, parental rights, or matters of individual liberty. Laws that abuse the People’s trust as well as their treasury. The list goes on and on.

What do we do when the branches of government fail to check each other or limit assaults on liberty? Ultimately, it is the responsibility of the citizenry to keep watch on them and demand responsibility and accountability. That, of course, raises the question of how to discern the difference between the responsible and irresponsible government action. Fortunately, the Grassroot Institute has been working to develop a checklist that would help identify how well the measure in question fares in a point-by-point checklist that evaluates the measure in relation to our fundamental principles.

The Grassroot Institute Government Action Checklist

In order to evaluate a piece of pending legislation (and many other government actions), ask these questions:

Is it necessary?

It is astounding how often the inquiry could end after this simple question. A significant amount of legislation and other government action is redundant, spurred by vanity or special interests, incapable of properly addressing the problem it seeks to solve, or otherwise simply unnecessary.

Has there been a realistic and unbiased examination of the probable consequences of the action, including social, cultural, and financial consequences?

Taking responsibility for legislation means knowing as much as possible about the probable results of that measure as well as understanding the law of unintended consequences. While it may not be possible to know every conceivable cause/effect scenario, an effort must be made to evaluate the total impact of the measure in question.

What will it cost (and who will pay)?

An obvious question, but one that is not necessarily easy to get a good answer for—a sign, of course, that the measure in question is very troubling and will likely fail a number of other items on the list.

Has there been a serious and unbiased examination of the constitutionality of the action?

The legislature should not shirk its own responsibility to the Constitution by passing off questions of legality to the Courts. Not only is

this one route to the slow erosion of our basic rights, but it also wastes taxpayer funds at every level of government when passing through ultimately “illegal” laws.

Is it enforceable?

A particular vulnerability for noble-sounding vanity initiatives, but one that should be asked of every government measure—taking into account enforceability not only from the standpoint of whether it is possible, but also whether it is practical given the resources available.

Will its desired impact or results be evaluated objectively?

This is where the rubber meets the road in the question of whether the consequences of the legislation have been thoroughly considered. If there is no interest in objectively measuring whether the action meets its stated goals, then one must wonder what the true purpose of the law is.

Who is responsible for implementing, enforcing, and evaluating it?

Be especially wary of those measures that must create new agencies, divisions, or departments in order to implement or enforce them. The natural tendency of government (and government bureaucrats) is to grow, and they’re very hard to cut back once they’ve been created. And as government grows, individual rights shrink.

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In Pursuit is a regular series evaluating government policies and offering proposals to reform or modify them to match the extraordinary vision of human freedom and effective limited government contained in the Declaration of Independence. The vision points us up towards individual liberty and expressively not down to statism.

Nothing in this document should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.

If you have any comments or questions about this commentary, please contact us at:



GRASS root
Institute of Hawaii

1314 S King St Suite 1163

Honolulu, HI 96814

T: 808-591-9193

E: info@grassrootinstitute.org

grassrootinstitute.org

Does it infringe upon any individual rights or disrupt important social foundations (such as the integrity of the family or the free practice of religion)? If so, is that infringement balanced by a strong public safety or public policy argument?

This is not only about infringing upon basic constitutional rights (like religious liberty or speech), though that is, of course, an important factor. This is also about maintaining respect for societal foundations and mores, as in the right of parents to raise their children according to their beliefs. Such rights must be balanced against issues of public policy or safety, but that interest must be a strong one to justify state intervention.

Does it create a burden for business or infringe unnecessarily upon free enterprise and the free market?

This is not just about maintaining public policies that will benefit the economy, though that is an important consideration.

It is also about a more fundamental notion—that the government should allow the free market to remain so.

Does it create accountability for those responsible for passing and enforcing it, ultimately reserving power to reverse it in the hands of the voters?

Because when every other safeguard fails, the one remaining protection for the People is the fact that they can ultimately hold their elected representatives accountable and thereby find a way to address their errors. In addition, recent history has demonstrated that a lack of willingness to enforce laws already in existence has exacerbated existing problems. Laws should include accountability measures for those required to enforce the law so as to ensure that they are involved in the evaluation of the feasibility of the legislation and do not “pass the buck” on their own responsibility once a law is passed.

This checklist is just a starting point meant to raise questions about the feasibility, enforceability, legality, and desirability of legislation—and nearly any governmental action that is legislative in nature. Please think carefully about this list of 10 points and give us your thoughts on improvement or elaboration. After a period for consideration and input, we plan to make the checklist into a readily-carried card that citizens as well as legislators could use to evaluate pending legislative measures.

Please send your thoughts and constructive additions to dick@grassrootinstitute.org with a cc to maliah@grassrootinstitute.org.

The Grassroot Institute of Hawaii is a 501 (c) 3 non-profit research and educational organization that promotes individual liberty, the free market and limited and accountable government.

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