

California Commentary

Judicial Micromanagement a Nightmare for Taxpayers

By Jon Coupal

In our Republic, there are — or are supposed to be — fairly well defined lines of government authority. At an early age, our children are taught that there are three branches of government and that, under our system of federalism, the states share political power with the national government.

Throughout American history, the relative power between the federal government and the states, and between the branches of government (at the state and national level), ebb and flow subject to the political forces of the time. Sometimes those changes are violent and abrupt. The Civil War saw a huge expansion of federal power at the expense of the states. Less violent, but almost as significant, was the expansion of executive powers of the presidency in the 1930s under President Roosevelt.

No matter what one thinks about either the Civil War or FDR's New Deal, it cannot be denied that both are stark examples of major realignments of political power which redefined the very notions of "federalism." One wonders whether our Founding Fathers would even recognize America's system of governance as it exists today.

Division of power between the branches of government and between the states and federal government is justified on the well-founded and virtually proven maxim that concentrated political power results in despotism. It is for that reason that we should all be concerned when

one branch of government steps out of its traditional role and exercises powers designed for other branches.

Last year, U.S. District Court Judge Thelton Henderson placed the \$1.5 Billion California prison health care system into receivership and appointed Robert Sillen as receivership czar tasked with reforming a system that may have been responsible for the deaths of as many as 34 inmates.

To solve perceived problems in health care delivery, Sillen has carte blanche to dip into the state treasury and to suspend state laws and contracts that he sees as hindering progress.

Californians have clearly stated that they want career criminals off the streets, first by overwhelmingly approving the Three Strikes initiative — three felonies and it's life in prison — and more recently by rejecting a ballot measure that would have excluded some felonies from consideration as a third strike. However, with the demand for longer prison sentences comes a responsibility to provide for the housing and care of convicts. For this, we must rely on the Legislature and governor, and it is *their* failure to meet expectations that has resulted in Judge Henderson's seizing jurisdiction over inmate health care.

Taxpayers now find themselves in the *worst* possible predicament. They must pay whatever the director of the court appointed California

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Prison Health Care Receivership dictates, but they have *no* control through their elected representatives over how the money is being spent. And the initial indications are not good.

Director Sillen, the former head of the Santa Clara County medical system, is drawing a \$500,000 annual salary, nearly two-and-a-half times the governor's pay — although the current governor chooses to take just one dollar each year. At least two of his staff members are making close to \$200,000 per year and four more are collecting closer to \$300,000 annually. Add to this approximately 30 percent to cover benefits.

If this does not seem expensive, keep in mind that Sillen wants to provide 10,000 new hospital beds, at an estimated cost of \$3 Billion. To plan and oversee construction of the new facilities a need for 130 additional employees is anticipated.

Will this result in better health care for inmates? At this price, one would certainly hope so. However, other examples of federal judges taking over programs are not encouraging.

In 1985, a federal judge partially took over the Kansas City school system in the interest of raising student achievement scores. Judge Russell Clark instructed the schools to tell him what was needed and promised he would order taxpayers to pay for it.

At a cost of \$2 Billion, teacher salaries were fattened, the student-to-teacher ratio was lowered to 13 to 1, and spending per pupil was lifted to the highest of any large district in the country. After 12 years, student achievement scores did *not* improve.

Some will argue that prisons and schools are different, that prisoners have fewer protections and political allies than students and, therefore, it is appropriate for the courts to step forward to

rectify what may be conditions that threaten the health of inmates.

However, it is one thing for the courts to mandate service changes or improvements for a government program, and it is *another* for a court to impose judicial taxation and to attempt to micromanage a program.

The scope of judicial power in the United States is to resolve “cases and controversies” between parties over whom the court has jurisdiction. To have a judge — especially a *federal* judge — assume virtually unchecked power over a major function of a state is both troubling and dangerous.

Even a black robe cannot hide despotism.

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