



A Federal Gift Clause Could Help 'Drain the Swamp'

Trey Kovacs

January 11, 2017

If President-elect Donald Trump and Republicans in Congress are serious about coming through on the campaign promise to “drain the swamp,” it would serve them well to look to the states. They should consider introducing legislation that is modeled after a provision that is present in nearly every state constitution, which was originally created to prohibit public expenditures that primarily benefit private entities.

One of the single most important ways to “drain the swamp” is to ensure that special interests, whether those favored by the right or left, cannot profit off of the government. In addition, it is crucial that tax dollars are only spent to the benefit of the public not any individual, association, or corporation.

That is exactly what the state constitutional provision known as the “gift clause” was created to do. The best way to root out wasteful spending in the federal government is to make sure special interests cannot use their connections to steer the public’s money toward endeavors that only aid friends, business associates, or other special interests.

Removing the government’s ability to give away the public’s money, and, in turn, eliminating special interests’ incentive to lobby for it, is key to restraining runaway government spending. The Cato Institute, for example, estimates that there is \$100 billion of corporate welfare in the federal budget. And there was a point in history where state elected officials realized that giving away the public’s money to private interests was bad for business.

Gift clauses arose in reaction to scandals involving the corrupt transfer of taxpayers’ money to private enterprises. For example, in the 1830s, Illinois defaulted on interest payments after the state “invested” money to finance 1,341 miles of railroad (only 26 miles were built), and Indiana was forced into default as the result of “investment” in canals, turnpikes, and railroads.

Forty-seven state constitutions prohibit the use of public expenditures to aid private entities. For example, Wyoming’s Constitution states: “Neither the state nor any county, city, township, town, school district, or any other political subdivision, shall loan or give its credit or make donations to or in aid of any individual, association or corporation . . . nor subscribe to or become the owner of the capital stock of any association or corporation.”

In the past, gift clauses were used to strike down all sorts of schemes that wasted tax dollars. For example, in *Nebraska ex rel. Beck v. City of York* (1957), the Supreme Court voided revenue bonds in aid of a private hog packaging company, finding that no public purpose was being served. That led to decisions that strongly denounced corporate welfare:

The financing of private enterprises with public funds is foreign to the fundamental concepts of our constitutional system. . . . To permit legislation of this character to stand in the face of constitutional prohibitions would constitute a death blow to the private enterprise system and reduce the Constitution to a shambles in so far as its protection of private enterprise is concerned.

Unfortunately, over time, courts built in so many exceptions that the gift clausees was defanged in many respects. However, it does provide the federal government with a legislative model on how to bring fiscal responsibility to the federal government.

The question is, why not enact gift clause legislation at the federal level? Giving away taxpayer dollars to undeserving special interests, both corporations and unions, is a major contributor to the federal government's poor fiscal condition. Public "investments" in private ventures often go bankrupt, leaving taxpayers stuck with the bill. At one point in American history the people demanded that government stop this practice—they can do so again.