

At first glance, the "trust me" strategy sounds brilliant: Write a vague or complicated bill that can be interpreted in a sweeping way. Tie it to a righteous cause. Equate doubting the bill with doubting the cause. Woo swing votes by arguing for a narrow reading. Get the bill passed. Then maneuver the regulations and courts to enact the broadest possible interpretation.

Problem is, this doesn't always work. Cases in point: the 1990 Civil Rights Act, California's Big Green environmental initiative, and the grandmama of them all, the Equal Rights Amendment.

To beat a vague bill, there first have to be people to challenge the bill's underlying agenda, to say the bill is not what it seems. They do not have to convince legislators or the public; they merely have to arouse doubt. Few people actually accepted Phyllis Schlafly's contention that the ERA would require unisex bathrooms. But that hypothetical did raise doubts that the ERA was as innocuous as its backers claimed. And since the amendment's most

strident supporters did endorse sweeping changes in American society, extreme scenarios did seem possible if not likely.

Second, someone with political power has to be willing to oppose the seemingly unassailable. Supermajority requirements help. Legislators in conservative states could block the ERA. Republican senators could sustain Bush's Civil Rights Act veto.

In the case of a ballot initiative, summoning political courage is even easier. The ballot is secret. No one need know that you voted against the Sierra Club and in favor of the evil chemical companies. Big Green's surprise 2-to-1 defeat suggests that some Californians lied to pre-election pollsters.

It would be great if courts started to throw out vague laws. But the system is somewhat self-correcting. By refusing to say what they mean and forcing citizens to spend years in court, trust-me laws generate contempt for lawmakers. Ultimately, they erode the public trust that makes their passage possible. ■

## VOTER REVOLT?

RICK HENDERSON

**T**he ink has dried on the pundits' assessments of the recent elections. But there may be a few longer-term lessons we can glean from the November 6 ballot:

- *Honesty is the best policy.* Even in an environment that normally punishes adherence to principle, in this election the most blatantly hypocritical candidates took it on the chin.

Rep. Ron Dyson (D-Md.) became a born-again hawk, thanks to Saddam Hussein. But when Maryland voters found out that Dyson was a conscientious objector in the Vietnam years, he lost to a distinguished veteran.

In March, California gubernatorial candidate Dianne Feinstein noisily rejected negative campaigning. She then launched attack ads against Atty. Gen.

John Van de Kamp and won her primary. During the fall campaign, Feinstein took the ultimate cheap shot—portraying Sen. Pete Wilson as a sedated buffoon when he virtually voted from his hospital bed just following an emergency appendectomy.

Feinstein also flip-flopped on the Big Green environmental initiative—attacking the measure until Earth Day, then acting as if she had authored it—and on job quotas for government employees; California voters remembered both of her faces.

Jesse Helms didn't win his fourth Senate term with Bubba's vote alone (even though his legitimate campaign against racial quotas assured him of every racist vote in North Carolina); he won by accurately portraying media darling Harvey Gantt as a glutton for political pork.

Gantt used government programs to get rich by obtaining a broadcasting license and building contracts. Gantt's campaign claimed he could "make government work." Helms agreed: Harvey Gantt could make government work—for Harvey Gantt. Early on, urban, middle-class voters fled from Helms. But by tying Gantt to corruption, Helms cruised to victory, ending up with 46 percent of upwardly mobile Tar Heel votes.

- *Listen to the home folks.* As Tip O'Neill said, all politics is local. Fixation on the Beltway nearly cost Newt Gingrich and Bill Bradley their jobs. Massachusetts voters derailed John Silber's express train to Pennsylvania Ave.

And in North Carolina, when Helms ran his campaign from Washington, Gantt surged ahead. Once Helms focused on his formidable local constituency, Gantt was a goner.

**A**bortion, the S&L scandal, and other national issues had little impact on the vote—unless they were tied to specific candidates. Rep. Chip Pashayan (R-Calif.) took campaign contributions from Charles Keating and lost. Massachusetts elected a pro-choice Republican governor; Kansas, a pro-life Democrat. But neither campaign focused on abortion.

Election reform? In Florida, Lawton Chiles tells the media he squeaked past Gov. Bob Martinez because he refused campaign contributions larger than \$100; Chiles might even believe it. But as Fred Barnes noted in *The New Republic*, Chiles is a statewide hero. And in 1987, Martinez backed an unpopular services tax that lowered his favorable rating to 15 percent. It's a miracle Martinez was close.

- *If there's a huge constituency calling for activist government, it didn't vote on November 6.* Nowhere was this more true than in California, where most of the 25 ballot initiatives that promised to increase government power went down in flames.

Big Green lost 2 to 1, getting only 34 percent of the vote. Two other environmental measures garnered less than 40 percent each. Voters approved only 3 of 20 other initiatives calling for new taxes or government bonds. Yet last June, all the bond issues on the primary ballot

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# THE NEW REPUBLIC

(raising a total of \$5.1 billion) passed.

And while Californians had two chances to enact term limits for the state's elected officials, they rejected the initiative authorizing taxpayer-financed elections. Instead they chose a tougher measure that limited terms, cut legislators' hefty pensions, and slashed legislative staff budgets.

The tax revolt isn't dead, either. Nationwide, tax-limiting initiatives fared poorly. But incumbent governors in Nebraska, Kansas, and Florida lost largely because they approved unpopular tax increases. Bill Bradley nearly lost because he wouldn't defend his popular 1986 tax reforms or attack tax-hiking Gov. Jim Florio. Republicans pledged to slash spending in Massachusetts; not only did William Weld defeat John Silber, but the GOP fell only five seats short of a majority in the state legislature.

• *Nobody's found the "vision thing" yet.* The fair-haired Democrats don't have it. Voters realize that "tax the rich" eventually means "tax everybody."

The GOP is empty-handed as well. Republicans say they're different from Democrats. And some individual Republicans push their own initiatives—Jack Kemp's tenant ownership of public housing, Chris Cox's budget overhaul, John Porter's Social Security reform—but no one has articulated a sweeping plan to cut taxes, reduce spending, deregulate, and privatize. The bully pulpit is vacant.

The Democrats could step into this void before the 1992 presidential election. Al From of the moderate Democratic Leadership Council says that his party must "pick a candidate who is on the side of expanding opportunity and not the side of feeding government." Are you listening, Bill Bradley?

One universal bit of punditry is on target: People are disgusted with government in general. Only 36 percent of eligible voters went to the polls, a 50-year low. But if you plan to run in 1992 and interpret this dissatisfaction as a call for new government programs, here's some advice: Don't quit your day job. ■

possible soldiers and defend the country effectively. Furthermore, it involves government in a debate in which it has no business. As the first *Watkins* decision notes, "the Army believes that its ban against homosexuals simply codifies society's moral consensus that homosexuality is evil."

The Army also presents practical arguments, however. It maintains that the presence of gays in the ranks fosters tension, undermines morale and discipline, creates security risks, hurts the Army's public image, and impedes its recruitment efforts. If so, we must choose between a perpetually shaky national defense, leaving the whole country at risk, and occasional unfairness to individuals such as Watkins.

But this is a false dilemma. The Army can regulate actual sexual conduct without regard to preference, which the rules now target. The experience of Watkins and other openly gay soldiers shows that homosexuals can command respect and get along with both subordinates and superiors, precisely because a soldier's professional abilities have nothing to do with his or her sexuality. Far from harming the Army's ability to attract new soldiers, Watkins's sterling record would be fitting material for a recruitment commercial. Moreover, the Army's current policy actually increases the potential for security breaches by encouraging homosexual soldiers to keep their orientation secret, leaving them vulnerable to blackmail.

The Army's appeal to the prejudices of others to justify its own invidious discrimination has a familiar ring to it. A government history of World War II explains that, before it became the nation's leading example of successful racial integration, the Army "took the position that it was operating within a social framework which it did not create and which it did not have the power to alter in any significant manner." The top brass argued that "experiments within the Army in the solution of social problems are fraught with danger to efficiency, discipline and morale." In this environmentally conscious age, it's nice to know that even excuses can be recycled. ■

## THE GAY BAR

JACOB SULLUM

**T**he U.S. Army has long justified its exclusion of homosexuals as necessary to maintain military effectiveness. At the same time, however, it has implicitly acknowledged that this is a crock.

The case of former Sgt. Perry J. Watkins spotlights the Army's hypocrisy. In November, the Supreme Court let stand a 1989 decision by the U.S. Court of Appeals for the Ninth Circuit allowing Watkins, an avowed homosexual, to return to the Army. Watkins joined the service in 1967 and was open about his sexual preference throughout his 14-year career. The Army nevertheless promoted him, gave him "secret" security clearance, and allowed him to re-enlist three times.

By all accounts, Watkins was an excellent soldier; he received a perfect score on his most recent evaluation. His supe-

riors have testified that his homosexuality was well known and caused no problems. Yet in 1982 the Army refused to let him re-enlist, citing his sexual preference.

In *Watkins v. U.S. Army*, a three-judge panel of the Ninth Circuit Court initially found the Army's exclusion of gays unconstitutional on equal-protection grounds, but the full court later substituted a much narrower ruling. Even so, the case provides a compelling argument for the Army to reverse an unjust and irrational policy.

By retaining, praising, and rewarding soldiers such as Watkins, the Army tacitly admits that sexual orientation has no bearing on individual ability or performance. To exclude candidates on this basis therefore cheats taxpayers by impairing the Army's ability to field the best