

## *NOV. 2 ELECTION WON'T STOP ALL UNCONSTITUTIONAL ACTIVITIES*

by Randy Bright <http://www.tulsabeacon.com/?p=4765>

As I write this article on the day after the mid-term elections, I think the results were about what I had expected, but like many Americans, not quite like I had hoped.

The fact that the Republicans did not gain a majority in the Senate means that most or all of the catastrophic legislature passed by Obama and the Democrats can't be easily stopped, in particular, the health care bill and the expiration of the Bush tax cuts.

My hope had been that we would see a majority of legislators that were conservative and who would return us to a government more in tune with the Constitution.

While there certainly are many Republicans who understand the Constitution as our Founders did, and perhaps even a few Democrats, the agenda is, as our future House Speaker, John Boehner said, up to Obama.

Since Obama is showing no interest in repealing anything, our economy will continue to languish for some time to come as lawmakers find a way to correct the indescribably stupid things this administration has done.

We simply must continue to fight to right those wrongs.

Benjamin Franklin was once asked what he and the framers of our Constitution had given us, to which he replied, "a republic, if you can keep it."

I think he meant that there would always be someone who would try to take our freedoms away from us. Over the coming weeks, I will be drawing more attention to an issue that should demand the attention of our nation's churches, their freedom of religion.

No one should interpret this election, or any other election for that matter, as a signal that we can ever assume that our religious rights are safe. Last week I wrote about the case of Rocky Mountain Christian Church, which could expose the Religious Land Use and Institutionalized Persons Act (RLIUPA) to the scrutiny of the U.S. Supreme Court.

To my knowledge, since its passage in 2000, it has been challenged and largely upheld by a number of lower courts, and it has been extremely valuable to churches that have been discriminated against in zoning cases.

However, I believe that if it reaches the Supreme Court, it will likely be declared unconstitutional. There is precedent to that suspicion. Most people don't realize that the RLUIPA was a result of the voiding of a similar law, the Religious Freedom Restoration Act of 1993 (RFRA).

I will explain more about the RFRA in more detail in a future article, but for now I will just say that it was

passed in response to a court case in which the courts had, according to the RFRA, “virtually eliminated the requirement that the government justify burdens on religious exercise by laws neutral to religion.” The RFRA was passed with overwhelming support in 1993 in both houses, the Senate voting 97-0 in favor of the bill.

It had been promoted by over 60 civil liberty and religious liberty groups (the Coalition for the Free Exercise of Religion), and was passed as a result of two previous U.S. Supreme Court cases (Sherbert v. Verner and Wisconsin v. Yoder) in which the “compelling interest test” was confirmed that “governments (should) not substantially burden religious exercise without compelling justification.”

The RFRA put the burden of proving the government’s “compelling interest” with actual evidence instead of simply stating it as fact with no proof. In other words, for example, if a government wanted to take church property for public use, it could not simply state that there was a valid reason for the taking, it had to prove that the property was actually needed and that it was using the least restrictive reason to do so.

The RFRA was cited in about 70 court cases until 1997, when the U.S. Supreme Court declared it unconstitutional in the case of City of Boerne, Texas v. Flores. Senator Orrin Hatch, who had supported the law, said that “This decision shows the Court’s blindness to a pervasive trend in society, which does not just discriminate against, but is expunging, religion.”

Lasting a mere four years, the RFRA was struck down by a Supreme Court that was not as liberal as the justices we have today, so it is questionable at best to think that the court we have today would not strike down the RLUIPA, especially in light of the Kelo v. New London decision in 2005.

While Kelo did not deal with religious issues per se, it did demonstrate the disregard that the court held for property rights, and since many of the cases in which the RLUIPA has been successfully used to preserve the property rights of churches, it is not unlikely that the court would show the same disregard for church rights.

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*This entry was posted on Thursday, November 11th, 2010 and is filed under Columns.*