

Is that the U.S. House - or a lynch mob?

Jim Fisher

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Thursday, as most members of the U.S. House joined a mob to impose a confiscatory tax on recipients of corporate bonuses from AIG and other companies receiving federal bailout money, Idaho's two representatives fell out of formation.

Good for them.

Democrat Walt Minnick and Republican Mike Simpson might have found themselves in a minority, 93, compared to the 328 who supported the 90 percent tax, but they were right certainly in principle and most probably in law.

First, the principle: As former law school professor and current President Barack Obama pointed out Sunday evening, the purpose of the tax code is not "to punish people," and especially not just "a handful of individuals." No matter how outraged American voters are at learning that insurance giant AIG awarded big bonuses to employees after being rescued from collapse by taxpayer dollars, use of taxation against those employees is the worst kind of congressional pandering.

The law now before the Senate does not apply only to AIG. It imposes the 90 percent tax on any bonus received by someone already earning \$250,000 from a company receiving money under the Toxic Assets Relief Program. While few Americans will shed tears for anyone receiving more than a quarter-million dollars a year from a government-subsidized business, it is the duty of Congress to keep its eye on the purpose of that subsidy.

In the case of AIG, it is to help the company relieve itself of dumb insurance policies, credit default swaps, without causing it, and those it insured, to fail and pull the economy even lower. Many of the people working to do that were not responsible for writing the dumb policies, and many are being rewarded for their performance through bonuses.

Were the tax to take effect, much of the incentive for stellar performance would be lost, not only at AIG but at all other troubled companies trying to dig themselves out of the hole former officers drove them into. As one recently hired employee of such a company, Jonathan Clements of an offshoot of Citigroup, wrote in the Wall Street Journal Monday, that is "downright stupid."

"Once my total income hits \$250,000 for the current calendar year," Clements wrote, "I will have no incentive to work a single day more in 2009."

Now, the law: Idaho's Simpson says the tax is unconstitutional and would cost taxpayers millions more in an unsuccessful attempt to defend it. And he's not alone. By confiscating property of people after they did something that was not illegal at the time, the House appears to be imposing an ex post facto law, or bill of attainder, forbidden by the U.S. Constitution.

You would think House members would know better, but the Democrats behind this move, including Ways and Means Chairman Charles Rangel, attracted the overwhelming majority of Democrats and about half of Republicans to their crusade.

Among those Republicans was eastern Washington's Cathy McMorris Rodgers. As the furor over tax-paid bonuses subsides, and this tax falls - whether in the Senate, to a presidential veto or in court - Simpson and Minnick will have cause to celebrate their coolness under pressure, while McMorris Rodgers regrets reaching for that torch. - J.F.