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Back to School—But Which One?

**R**EGULAR READERS OF *The Insider* will know that we aim to provide a mix of ideas and advice—arguments for conservative policies as well as practical advice on how to put those policies in place.

Here, we’d like to call your attention to an article that falls into the how-to category. Jacqueline Pfeffer Merrill provides detailed advice for anyone thinking about donating to higher education. In so doing, she reminds us that we should live according to our values in all aspects of our lives, including our philanthropic choices in the field of higher education.

Philanthropy has built the conservative movement—its think tanks, its activist organizations, its opinion magazines, and its candidates. It has even funded non-profits that specialize in fixing the intellectual deficits that students obtain from exposure to the Left-leaning professoriate.

It always pays to think carefully about how and where to give before cutting a check. Yet when it comes to supporting higher education, too many conservative donors simply write a check to their alma maters every year. But will the old school use that money in ways the donors would approve?

University of Pennsylvania professor Alan Charles Kors described the stakes well in these pages last year when he wrote:

A “cultural” Left that loathes the American experience—the steady advance of equal justice under law in a society of individual responsibility, economic freedom, and limited government—now commands our Ed Schools, K-12 education, so-called “higher” education, and the children’s media. These closed-shop political fiefdoms deliberately are failing utterly to communicate the values of individual rights, critical mind, and actual, comparative historical understanding to the rising generation. The greatest scene of human liberation and mobility in human history is presented to its children as a caste system.

And, as both Merrill and Maria Servold note in their respective articles, too many college

administrators are failing to stand up to the brown-shirt tactics of the Leftist mobs. That constitutes a failure to defend the very purpose of the university as a place where ideas are debated openly.


There are signs that a reckoning is coming. As Richard Vedder observes (Round Up, p. 9), when most people go to college, then a college degree is no longer a useful signal for screening job applicants. Today, you need a degree from an elite university to stand out in the job market. As a result of credential inflation, enrollment at elite universities is up and enrollment at non-elite universities is down.

But here is another problem: As Jason DeLisle and Preston Cooper point out (Round Up, p. 8), fewer middle class students are attending elite universities. Apparently, the price tag is beyond their means, and they can’t qualify for enough student aid to make it affordable.

Employers are adjusting to these realities. Apple, Google, Hilton, IBM, and Penguin Random House are just a few of the major employers who no longer require a college degree for their top jobs.

What all this means is that non-elite universities are more susceptible than elite universities to market pressures. They cannot rely on the reputational value of the credential they provide; instead they’ll have to teach actual skills and knowledge in order to attract students. And they need students, because most don’t have the huge endowments that would let them resist change.

Thus, for philanthropists who want their education donations to make a difference, non-elite universities are a buyers’ market. As Merrill writes, you can take advantage of that market by considering schools other than your alma mater—especially if your alma mater no longer reflects your values.

Merrill goes on to detail a variety of steps you can take to make sure your donation to an institution of higher education will be spent as you wish. There are options for donors of all means; so now is the time to think about how your gift giving can help fix what ails our colleges and universities. 



ALEX ADRIANSON edits *The Insider*. Have a story idea? Want to connect with him? Email [insider@heritage.org](mailto:insider@heritage.org)

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# Ten Years after the Financial Crisis, What Have We Done to Fix Its Underlying Causes?

## JOEL GRIFFITH

Ten years have now passed since reaching the depths of the housing finance crisis. Vivid memories of a cratering stock market, a sea of foreclosures, plunging home values, insolvent banks, and rocketing unemployment remain seared in our collective memory. Sadly, little has been done to fix the underlying causes of the crisis. Conventional wisdom places the blame for the boom and the bust on the failure to bail out Lehman Brothers, a lack of regulation, rampant greed, and corruption. But a close look at the facts identifies another culprit: the use of federal rules, mandates,

and subsidies to spur risky lending to benefit politicians and certain special interests.

The Community Reinvestment Act (CRA) as initially passed in 1977 instructs federal financial supervisory agencies to encourage lenders to meet the credit needs of their local communities. Regulators evaluate the success of lenders in accomplishing this mission when considering approvals of mergers, acquisitions, and other business decisions. Yet, the quantifiable goals were vague. The relative lack of additional credit extended by these lenders failed to satisfy politicians catering to a plethora of special interest groups.

BRENDAN MCDERMID/REUTERS/NEWS.COM

That began to change in the early 1990s, as regulators and politicians embarked on a mission to make home ownership affordable to a much larger portion of the population. Two government-sponsored enterprises (GSEs)—Fannie Mae and Freddie Mac—led the way by loosening their underwriting standards for mortgages purchased from private lenders. Regulators also began seriously using the CRA as leverage to spur mortgage lenders to lower their lending standards. Investors funneled trillions of dollars to the GSEs, enabling trillions of dollars of credit to flow to those with lower credit scores, minimal income documentation, less stable employment scores, and scant down payments. Investors understood that the federal government would ultimately guarantee their investments in GSE securities in the event borrowers failed to repay.

Unsurprisingly, home prices surged in response, along with the homeownership rate. But the violent end to the extended boom demonstrated the fragility of the system.

As the crisis unfolded, the Federal Reserve compounded the turmoil by engaging in credit allocation rather than providing system-wide credit liquidity. The central bank purchased trillions of dollars of government debt along with mortgage-backed securities (MBSs). Ultimately, much of this capital ended up deposited at banks. To prevent the banks from investing this new capital in securities or issuing new loans, the Federal Reserve instituted a new policy: interest payments on excess banking reserves deposited with the Federal Reserve. This policy distorted market signals and diverted capital from business expansion to the housing sector.

Ten years later, harmful incentives related to GSEs remain

pervasive throughout financial markets. The government backstop to more than \$5 trillion in GSE liabilities, persistent affordable housing goals, and the Federal Reserve's monetary experimentation continue to distort the market. Mandates and federal guarantees of home mortgage securities are fueling unaffordability even for those attaining homeownership. Home prices have surged more than 60 percent since 2012, surpassing the bubble peak.

It's time to fix the underlying cause of the crises by gradually removing the taxpayer guarantees, eliminating the mandates, improving regulatory incentives, and limiting the Federal Reserve's monetary experimentation.

*Mr. Griffith is a research fellow at The Heritage Foundation.*

## PETER J. WALLISON

Unfortunately, in the 10 years since the financial crisis, we have done nothing—literally nothing—to address its causes. The reason is clear. The 2008 financial crisis was diagnosed in the media and on the Left (yes, I repeat myself) as a failure of regulation. The election of President Barack Obama and Democratic supermajorities in the House and Senate made certain that this false diagnosis would be cemented into law with the stringent Dodd-Frank Act. In reality, however, the cause of the crisis was government housing policies, implemented principally

“In reality, the cause of the crisis was government housing policies, implemented principally by Fannie Mae and Freddie Mac, two government-sponsored enterprises that dominated the housing finance market.”

by Fannie Mae and Freddie Mac, two government-sponsored enterprises (GSEs) that dominated the housing finance market. The GSEs did not make mortgages, but bought them from banks and others, holding some for investment and selling the balance to investors through securitization.

In 1992, Congress enacted legislation known as the Affordable Housing Goals. This law required the GSEs to acquire at least 30 percent of the mortgages they bought annually from those made to borrowers at or below median income. This quota was gradually raised during the Clinton and Bush administrations

so that by 2008 more than half the mortgages they acquired had to meet this quota.

This required the GSEs to lower their underwriting standards; borrowers below median income simply could not provide the 10 percent down payment that Fannie and Freddie had traditionally required. Down payments, accordingly, declined from 10 percent in 1992 to 3 percent and eventually to zero in 2000, with these low standards also spreading to the wider market.

This built an enormous housing price bubble. If the down payment requirement is 10 percent, then \$10,000 will qualify a borrower to buy a \$100,000 home. But if the down payment is reduced to 5 percent, the same \$10,000 will enable the borrower to bid for a \$200,000 home. The difference is



made up with credit, putting great upward pressure on housing prices. Between 1997 and 2007, housing prices increased about 10 percent per year.

By 2007, home prices had gotten so high that no amount of concessionary lending could sustain the market and the housing bubble collapsed, resulting in housing price declines of 30 percent to 40 percent. This triggered a nationwide economic decline and a financial crisis in which many families lost their homes and many banks and other financial firms failed.

Regulation or deregulation had nothing to do with this, but because the crisis was diagnosed as a failure of regulation, the housing finance policies that caused the crisis remain in effect. Today, as a result, housing prices have again risen to the same level they had reached in 2004 or 2005. In a few years, then, another disastrous crash in the housing market, and another financial crisis, is likely.

*Mr. Wallison is the Arthur F. Burns Fellow in Financial Policy Studies at the American Enterprise Institute.*

## DIEGO ZULUAGA

Economists, including those working at our financial regulatory agencies, are no better today at forecasting financial crises than they were 10 years ago. Federal Reserve minutes from the months running up to September 2008 show policymakers concerned about the prospect of heightened inflation.

Those worries proved misplaced only a few weeks later, as the recession that had begun in late 2007 pushed consumer price growth below the Fed's 2 percent target, where it has remained for much of the decade since the crash.

Instead of an inflationary spiral, we got a banking crisis more severe than any since the Great Depression. The slew of prudential

rules placed on banks, insurance firms, and capital markets intermediaries since 1970 could not prevent the accumulation of large mispriced risks. Indeed, in hindsight it is clear that regulatory miscalibration of the true default probability of financial instruments, such as mortgage-backed securities, put the balance sheets of some institutions—chief among them, government-backed Fannie Mae and Freddie Mac—in very precarious positions.

Some prominent regulators have kicked themselves for relying on complex models of risk management to

calculate bank capital requirements. A simple ratio of assets to equity would have done a better job of assessing the likelihood of bank failure. Yet, as we commemorate the decennial of the crash, financial watchdogs in the United States and abroad are more than ever reliant on complicated forecasting formulas. Indeed, one of the new nominees to the Fed board is a committed proponent of so-called macroprudential forecasting, an untested set of policies that aim to



control systemic risk by predicting and managing the credit cycle.

This is false sophistication. It is doubly harmful because it gives regulators an unwarranted sense of confidence in their predictive ability, while failing to mitigate risk.

What could policymakers do to better guard against the inevitable future crash? Remove the government from mortgage credit markets. Eliminate the perception that creditors to large institutions will be rescued. Replace risk-based capital rules with simple measures that have stood the test of time.

It was the political drive for homeownership, even for those who plainly could not afford it, that sowed the seeds of the crisis. Additionally, for years the Treasury and the Fed encouraged a perception among market participants that important financial institutions would receive special treatment. When this implicit promise looked like it would not be fulfilled as Lehman Brothers crashed, financial markets went into a panic that pushed regulators to intervene in an unprecedented way—and at great cost to taxpayers.

JASON REED/REUTERS/NEWSCOM



No successful part of the economy operates in an environment where losses are socialized and the rules of the game violated without prior warning. If policymakers want our financial markets to succeed in good times and bad, they need to move away from the failed policies of the past. Ten years after the last crash, that shift has yet to happen.

*Mr. Zuluaga is a policy analyst at the Cato Institute.*

## DANIEL PRESS

Ten years ago, the United States plunged into a financial crisis that would bring the world economy to the brink of collapse. Most people probably don't know that the underlying cause of the broader financial crisis was not so much the troubles of high-flying investment banks, but the meltdown of the home mortgage market.

Who is to blame? The housing market collapse was caused by the unprecedented number of weak and risky mortgages driven by the government-sponsored enterprises Fannie Mae and Freddie Mac. Since

KEVIN LAMARQUE/REUTERS/NEWSCOM

the 1990s, the federal government zealously pushed for more affordable housing by dramatically lowering mortgage-underwriting standards. Fannie and Freddie, once arbiters of strong underwriting standards, began to accept loans made to borrowers who had little or no documentation, increasingly poor credit, dangerously low down payments, and high levels of debt compared to income. Those new policies lowered standards across the mortgage market.

The result was that by mid-2008, 57 percent of the 55 million mortgages in the financial system were either subprime or otherwise low quality—with the government backing a whopping 76 percent of them. The enormous run-up in housing prices eventually burst, taking down the mortgage-backed securities that depended upon them. When the housing market turned sour, Fannie and Freddie were riddled with toxic mortgages and were taken over by the government to prevent their collapse.

In response to the crisis, Congress passed the largest piece of legislation ever written, the Dodd-

Frank Act. Dodd-Frank failed to deal with the root cause of the crisis. If anything, the government mortgage entities such as Fannie and Freddie have only gotten bigger over the past decade.

The same policies that caused the last housing bubble are even further entrenched than before—and housing prices are again rising rapidly. Since 2012, the housing market has been on a six-year boom, with housing prices higher today than they were before the crisis, rising faster than any time since 2005. Measures of risk in the mortgage market have been growing over the years as the government housing agencies again loosen their underwriting standards.

While predicting exactly what will cause the next financial crisis is an impossible task, it is baffling that the same policies that caused the last housing bubble are even further entrenched than before. Ten years on from the financial crisis, virtually nothing has been done to combat its underlying cause: the government's meddling in the housing market.

*Mr. Press is a policy analyst at the Competitive Enterprise Institute. ■*





# Who Gets into Elite Universities? Plus: Tax Cuts, Law Enforcement for Hire, and Bias in Social Media

**Who attends elite universities?** Jason Delisle and Preston Cooper write:

[T]he share of dependent students enrolled at [selective] institutions who are from the top income quartile increased between 2003–04 and 2007–08. While these students made up 52.1 percent of the student body at selective colleges in 1999–2000, their share increased markedly after 2003–04 to 57.5 percent in 2007–08, and the figure is similar for 2011–12. [...]

The increase in the share of dependent students at selective colleges who are high income in the mid-2000s appears to have come at the expense of students from the middle two income quartiles. Most of that change can be observed in the third income quartile. Earnings for the third quartile in 2015–16 were between \$53,600 and \$98,810. That group shrank from 25.2 percent of dependent students enrolled at selective colleges in 1999–2000 to 20.5 percent

in 2011–12, the most of any income quartile. [...]

The middle class may be far more susceptible to the trends and practices that observers worried would shut low-income students out of selective colleges. It may also be that these students are caught between two competing goals and pressures that selective universities face in their enrollment practices. Enrolling low-income students requires that the universities make generous aid and discounts available to these students; the institutions must therefore continue to enroll large numbers of high-income students who pay the highest tuition prices, which helps finance the aid and discounts for low-income students. Middle-income students fall into neither category, which could be why their ranks are thinning at selective colleges and universities.

*[Jason D. Delisle and Preston Cooper, “Low-income Students at Selective Colleges: Disappearing or Holding Steady?” American Enterprise Institute, July 12]*

FTPHOTO/NEWS.COM



**Meanwhile, enrollment at non-elite universities is declining.** Richard Vedder writes:

The enrollment declines have been particularly acute in the industrial Midwest, but noticeable elsewhere as well. To cite one example, the spring 2018 enrollment at the University of Central Oklahoma was 14,313, down more than 10% from four years earlier. Facing high fixed costs and relatively stagnant or sometimes falling state support, enrollment declines mean the loss of vital tuition revenues, forcing schools to adopt previously politically unacceptable forms of change (e.g., firing tenured professors) in order to survive.

Yet amidst these declines, often even more dramatic at community colleges, highly selective admission universities’ enrollments are at record highs and their problem is not attracting students but rather deciding whom to turn away. The flagship state schools in Illinois, Michigan, and Ohio, for example, are easily achieving their enrollment goals, as are the most prestigious and expensive private elite schools nationwide. The gap between the generally wealthier top and usually poorer bottom schools is widening sharply.

Why? A large part of the reason relates to the fact that college degrees

are becoming less effective as screening devices, information helping employers separate the likely most productive, bright and disciplined prospective workers from others. When nearly everyone has some sort of post-secondary credential and posts high grades (because of grade inflation), a degree from Harvard or the University of Michigan still is highly respected, so their graduates mostly get decent jobs. That is distinctly less true of those graduating from less selective schools.

The imperfect but still useful College Scorecard website of the U.S. Department of Education tells us that average earnings after attending the [University of Michigan] are \$60,100, and 90% of students do graduate (within six years). By contrast, at [Eastern Michigan University], seven miles away, average earnings are nearly 38% less (\$37,500), and only 38% actually graduate. And the tuition at [the University of Michigan], for the

“  
College degrees are becoming less effective as screening devices, information helping employers separate the likely most productive, bright and disciplined workers from others.

typical in-state student, is only a bit more expensive. No wonder students are clamoring to get into the schools perceived to be the best, and losing interest in less selective schools.

*[Richard K. Vedder, “Why Enrollment Is Shrinking at Many American Colleges,” Independent Institute, July 11]*

**Some elite schools are engaging in racial discrimination.** Hans von Spakovsky writes:

Asian-Americans have been only about 19 percent of the freshman class at Harvard, although that number

has increased slightly since [Students for Fair Admission’s] lawsuit was filed [in 2014]. But that number has remained consistently the same for years despite the increasing numbers of Asian-American students applying to colleges.

Harvard’s own reports showed that Asian-Americans would comprise 43.4 percent of the class based on academics alone, and their share



would be 31.4 percent even if you included the university’s preferences for athletes and legacy admissions.

Harvard admissions officers keep down the numbers of highly qualified, highly credentialed Asian-Americans by unswervingly giving them low ratings on “personal” factors—the same type of low “character” and “fitness” ratings Harvard used to prevent qualified Jewish students from getting in 100 years ago. [...]

Sadly, Harvard is not alone in what it is doing. Evidence brought to light in the litigation revealed that twice

a year, admissions officers from Harvard and 15 other schools, including Columbia, Cornell, Dartmouth, Massachusetts Institute of Technology, Princeton, and Stanford get together to secretly compare their racial admission numbers to ensure they all have approximately the same racial percentages of admissions.

Another shameful example of this discrimination is M.I.T., my alma mater, which, when I was there, prided itself on being a place where applicants were accepted based on merit regardless of race. But, it seems, M.I.T. began engaging in similar discrimination in the mid-1990s. The number of Asian-American students there has been stalled at about 26 percent since then.

Caltech, M.I.T.’s big rival as a science and technology institution, has always rejected racial preferences and quotas in its admissions—and Asian-Americans now account for 43

percent of its undergraduates.

*[Hans von Spakovsky, “Racial Discrimination at Harvard and America’s Elite Universities,” The Daily Signal, August 31]*

**Every congressional district gets a tax cut in 2018.** Economic modeling by Kevin Dayaratna, Parker Sheppard, and Adam Michel finds:

Due to the TCJA [Tax Cuts and Jobs Act of 2017], the typical household in every congressional

district will see a reduction in tax liability in 2018. Nationally, 89 percent of Americans will see either a tax cut or no change.

Approximately 4 million more low-income filers will not pay any income taxes in 2018. [...]

There is a significant range in the size of the average tax cut among all filers across the 435 congressional districts, ranging from an average of slightly above \$395 (New York’s 15th district, represented in the House by Jose Serrano) to \$3,332 (California’s 18th district, represented in the House by Anna Eshoo). For families of four, the comparable range is from \$625 (NY–15) to \$5,682 (CA–18). [...]

[H]ouseholds in West Virginia on average will see an \$873 tax cut

in 2018, which corresponds to a 14 percent reduction in income taxes, the largest benefit of any state by this measure. The smallest tax cut goes to the residents of the District of Columbia, who can expect a more modest 10 percent decrease in 2018 income taxes. This reduction,

however, of over \$1,600 for 2018 is also a large tax cut and is more than enough to pay for 12 credits of tuition at the University of the District of Columbia Community College. [...]

[T]he TCJA’s tax cuts, measured on a percentage basis, benefit lower-income districts more than districts with larger incomes in bigger population centers, contrary to some claims put forward by opponents of tax reform.

For example, NY–15 will see a 32 percent decrease in income taxes as a result of the TCJA, the largest percentage reduction of any congressional district in the country.

Taxpayers in East Los Angeles, in California’s 40th congressional district, represented in the House by Lucille Roybal-Allard, benefit from a 21 percent reduction in tax liability. Both NY–15 and CA–40 average less than \$36,000 in total income per filer and receive average tax cuts of \$395 and \$510, respectively.

*[Kevin Dayaratna, Parker Sheppard, and Adam N. Michel, “Tax Cuts in Every Congressional District in Every State,” The Heritage Foundation, July 23]*

Visit [www.taxesandjobs.com](http://www.taxesandjobs.com) for a state-by-state and district-by-district breakdown of the tax cuts and their economic effects.

**Progressive donors are funding the environmental work of activist attorneys general.** It’s a case of law enforcement for hire, says Christopher C. Horner:

A large cache of public records [...] reveals an elaborate and years-long campaign by major left-leaning donors, green advocacy groups, and activist state AGs to politicize law enforcement in the service of the “progressive” environmental policy agenda.

This campaign has evolved from a failed model run by AGs—with the support of, at least, the Union



of Concerned Scientists and some faculty allies—to a complex effort entailing privately funded, in-house activist attorneys, known as Special Assistant AGs and paid by private donors, with an apparently much larger network of attorneys and public relations specialists provided to the cause also by donors.

By this means, state AGs are using law enforcement offices to advance those donors’ and environmental advocacy groups’ ideologically aligned policy agenda. Those attorneys were recruited, expressly and at least in part, to investigate and prosecute the opponents of those donors’ and green groups’ political agenda to obtain financial settlements. This is a case of law enforcement for hire.

*[Christopher C. Horner, “Law Enforcement for Rent: How Special Interests Fund Climate Policy through State Attorneys General,” Competitive Enterprise Institute, August 28]*

**Building an unbiased Facebook is easier said than done.** Unmoderated platforms are not the solution to liberal bias in content filtering, because those will fail economically, explains Iain Murray:

Recall back in 2006, conservative activists created online encyclopedia Conservapedia in reaction to

allegations of liberal bias on Wikipedia. Conservapedia hasn’t exactly caught on. It’s dominated by fringe religious issues to the point Christian conservative thought leaders like Rod Dreher and Damian Thompson scorn it (Thompson said in his book *Counterknowledge* that Conservapedia was there to “dress up nonsense as science”). What happened?

Gresham’s Law is a maxim of monetary economics that states that bad money drives out good. That is, debased or counterfeit money will circulate more than money with a high commodity value such as gold or silver. Its truth has been demonstrated repeatedly. The same effect seems to apply to speech. [...]

Firms that allow Gresham’s Law of Speech to take hold and lose (or never find) their advertisers will always be playing catch-up. Ironically, they will almost certainly have to rely on the technological innovation of the other tech firms.

“Conservatives have proven adept at building new media forms in the past—talk radio springs to mind. If they are to build a new platform for their views, it will require really innovative thinking.

build a new platform for their views it will require really innovative thinking. A “conservative Facebook” isn’t innovative, just imitative. If they can find a new model that combines quality, revenue, and continuous innovation, they’ll have the winner they want.

*[Iain Murray, “If a Conservative Facebook Is Such a Good Idea, Why Hasn’t It Happened?” Competitive Enterprise Institute, September 6]*





# Beyond Zombies: How Donors Can Help to Promote Academic Rigor and Excellence in Higher Education

BY JACQUELINE PFEFFER MERRILL

**M**ANY ALUMNI ARE DISENCHANTED with higher education. They are dismayed that their alma maters seemingly no longer uphold high standards of academic rigor, nor value free expression and open debate.

The institutions they attended—or support—are cracking down on the free speech of professors, students, and invited speakers. Just consider a small sample of incidents that have occurred all across the country during the last couple years. At Vermont's Middlebury College, protesters prevented American Enterprise Institute scholar Charles Murray from speaking at an open lecture hall and physically assaulted the faculty moderator. On the West Coast, protesters blocked the entrance to the venue

where Manhattan Institute policy expert Heather Mac Donald was to speak. Campus police at Joliet [Ill.] Junior College detained a student for handing out flyers, and campus authorities at Michigan's Kellogg Community College arrested students for handing out copies of the Constitution.

Donors and alumni are also disheartened by institutions' failure to require essential subjects like composition, mathematics, and economics. Most schools do not require undergraduates to study our nation's history and institutions of freedom. According to research by the American Council of Trustees and Alumni (ACTA), just 18 percent of colleges and universities require a broad survey course in U.S. history or

government, while less than one-third of top-ranked schools require even history majors to take a survey of U.S. history. College catalogs, meanwhile, increasingly include pop-culture courses on topics like vampires—and zombies.

Against that backdrop, would-be college donors are struck by the incongruity between the modern state of affairs on campus and academic experiences that, decades earlier, made an indelible mark on the person they have become—and set the stage for professional success. Many are hesitant to contribute to their alma maters, or higher education in general. They worry that gifts to the annual fund will support the shoddy along with the excellent, the trivial along with the profound, the transient along with the enduring.

So, at a time when supporting professors and institutions committed to intellectual rigor and the civil exchange of ideas has never been more important, some donors and alumni are turning away from college and university giving. But it doesn't have to be that way. Even smaller donors can use targeted strategies to ensure that their beneficiaries uphold a legacy of academic excellence—and that the outcomes of their philanthropic investments are aligned with their goals and values.

A first step is to consider which institution they will support. While most donors place their alma mater at the top of the list, savvy philanthropists often create a marketplace for their philanthropy by considering other schools.

Donors who graduated from a top-tier college with a large endowment, in particular, may realize a higher return on their investment by making a gift to an institution they never attended. Less affluent, but no less worthy institutions, as it turns out, often offer far greater

potential to align charitable gifts with personal priorities.

The next step is to identify programs or faculty aligned with the donor's philanthropic goals. Donors will often do well to avoid the annual funds featured prominently in a school's fundraising materials.

Unrestricted gifts, as the name implies, give institutions free rein to direct funds.

Consider the case of Robert Morin, a frugal librarian at the University of New Hampshire. When he left a quietly-amassed \$4 million to the university, just \$100,000 of his donation went to fund the library; \$1 million funded a new scoreboard for the football stadium.

Donors concerned about the fungibility of their philanthropy might consider program-specific gifts. Educational extracurricular opportunities like student newspapers or debate teams, academic departments, or institutions within a university often have their own funds or scholarships.

Friendly faculty or staff can also help steward gifts to achieve maximum impact. Faculty are, after all, on the frontlines of an institution's successes and failures. They understand how to navigate administrative barriers to program establishment and success. Some are willing to play an oversight role in the management of donor-funded programs to ensure that philanthropic investments achieve the desired results. Supportive faculty can be found through an institution's

course catalog and unearthed through outreach to department heads who share a donor's interests.

"Field-of-interest" funds that support multiple institutions can also provide a mechanism to invest in crucial collegiate programs. Just as novice investors who lack the time

or expertise to choose individual stocks wisely take advantage of mutual or indexed funds, donors may likewise be well served by giving to field-of-interest or special purpose funds.

These funds pool contributions and make grants to schools that serve a particular geographic area or student population, such as first-generation college students, or to meritorious programs in a focused academic specialty. ACTA's Fund for Academic Renewal, for example, has created Special Purpose Funds that allow donors to support subjects ranging from American history to science, from the Western tradition to economic literacy.

Once donors have settled on a school or program to support, they should consider safeguards to ensure that their gifts are used as intended and achieves its intended aims. When Herbert W. Vaughan, a prominent Boston attorney and philanthropist, funded the creation of a Harvard Law School lecture series, he went so far as to stipulate that a statement detailing his reasons for funding the series must be read as a prelude to each lecture.

Donors should push the university to offer specific and detailed

“Donors who graduated from a top-tier college with a large endowment may realize a higher return on their investment by making a gift to an institution they never attended.”





gift agreements. They should be aware that they need not accept the template “term sheet” that development officers provide. Donors can ask for significant revisions to a gift template—or have their own legal counsel draft a gift agreement.

A gift agreement that includes clear timetables for measuring and reporting on progress is far more likely to ensure the funds are spent in accordance with the donor’s wishes. The terms might require regular meetings with the donor to discuss ways to amplify the success of the program or to make necessary corrections.

Finally, donors should know that relationships can turn sour, even when all parties are working with the best of intentions. Sometimes these disagreements can be resolved, as when the University of Utah and Jon Huntsman Sr. resolved months of contentions over leadership, revenue-sharing, and operations of the Huntsman Cancer Institute. Happily, the University and Huntsman were able to settle on a new memorandum of understanding that included the recommitment of a \$120 million gift to the Cancer Institute, which

Huntsman had already supported with more than \$600 million in charitable gifts.

Not all disputes end so well. That’s why thoughtful donors should consider an “escape hatch” in the unfortunate event that a gift is not used in compliance with the donor’s intent. One example of an “escape hatch” is a reverter clause, which may allow a gift to be returned to a family foundation if the gift is not used for its intended purpose. For tax reasons, reverter clauses are generally included in a gift agreement when a gift comes through a foundation rather than from an individual.

Of course, some donors may find that their educational and academic values are best advanced by avoiding institutions altogether and instead targeting nonprofits working to support student access, academic freedom, or the study of crucial subjects. A donor who is looking to advance civil discourse might consider an organization like the Heterodox Academy—which brings together professors with diverse ideologies to advance civil debate within academia—rather than giving to any one college. Likewise,

a donor looking to support the study of the Western tradition in upstate New York might look past the area’s prestigious colleges, to make a comparable impact through the Alexander Hamilton Institute in Clinton, New York, which offers colloquia, reading groups, and seminars on canonical books and classic texts.

To be sure, higher education is wrestling with a period of unprecedented dynamism. Colleges and universities are undergoing shifts that present both risk and opportunity. Donors can play a critical role in ensuring that today’s graduates are ready to become leaders in their communities, successful in the workforce, and thoughtful lifelong learners. Targeted giving that supports real academic excellence and intellectual openness can have an enduring impact on this next generation and the future of our country. ■

*Ms. Merrill is the executive director of the Fund for Academic Renewal, which provides free programmatic and legal advisory services about higher education giving.*

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## How to Give People More Choices and Lower Prices in Health Insurance: A Conversation with Grace-Marie Turner

**A** NEW HEALTH REFORM PROPOSAL aims to replace Obamacare’s Medicaid expansion and nationwide entitlements with formula grants that states would use to provide better insurance options for high-risk and low-income patients. It’s called the Health Care Choices Proposal. Released in June, it was put together by the Health Policy Consensus Group, a group of more than 100 health policy experts from a broad array of think tanks, including state-based policy groups, physicians, and leaders of grassroots and other organizations from across the country. Grace-Marie Turner of the Galen Institute has been facilitating the group’s work in conjunction with Marie Fishpaw of The Heritage Foundation. We talked with Turner about

what the Health Care Choices Proposal will do to reform health insurance markets.

**THE INSIDER:** What went wrong with Obamacare that the Health Care Choices Proposal aims to fix?

**GRACE-MARIE TURNER:** The list of problems with Obamacare is so long we actually wrote a book about it (*Why Obamacare Is Wrong For America*, Harper Collins). To start with, former President Obama made too many unachievable promises: He said health insurance premiums would be cut by \$2,500 for families; that people could keep their doctors; that if people liked their health plans, they could keep their health plans. Supporters also said we’d finally get to universal coverage. But after Obamacare, 28 million people



still are uninsured. And costs have gone up while choices have gone down. People lost their doctors and the policies they had—policies they liked—because of Obamacare. Millions of people now can’t afford the insurance available in the individual and small group markets. The law’s many rules about what health insurance must cover and who must pay have caused premium costs to more than double. And this is forcing millions of people to drop their policies. We have to fix this for them.

**TI:** Why did that happen? What’s the flaw in Obamacare?

**GT:** Obamacare’s hubris is the root of its problems. The law’s proponents believe that the federal government has the keys to solving problems in our health sector. But the federal government cannot possibly take into account the differences between the insurance markets in Maine and Mississippi and Montana. Individuals have different needs and preferences, and states have different challenges and resources. But Obamacare created

cookie-cutter policies and told everyone they had to buy them—or face penalties. It’s like telling people they have to buy a Rolls Royce or they can’t have a car. We need to give people more options—options of policies with more flexible benefits and with premiums they can afford. One of the worst things Obamacare did was force young people to pay higher premiums so older people can pay less. The law’s

drafters thought that by mandating that everyone buy health insurance or pay a fine, they would force healthy people into the market. Well it didn’t work, and now we have risk pools that are very unstable. The Obamacare insurance markets are older and sicker, and healthy people are being driven out by high premiums and sky-high deductibles.

**TI:** What has the Trump administration done so far about these problems?

**GT:** The Trump administration has done as much as it can with the tools it has to soften the impact of Obamacare. For example, it just released new regulations for short-term limited-duration health plans. These plans give people the option of buying more affordable health insurance that doesn’t have to follow all of the rules and regulations of Obamacare. Originally, these plans had a duration of one year. The idea was to provide bridge coverage for people who were between jobs, starting a new job or company, or retiring early. The Obama administration basically shut these plans down

by limiting them to three months, but the Trump administration has revived them. It is allowing people to purchase short-term coverage for a year and to renew the plans for up to three years. This gives people what we call the “freedom option” for health insurance that is more flexible and more affordable. These plans often cost 70 percent less and offer a broader choice of health-care providers, and they can

provide protection for people with pre-existing conditions.

The administration also recognizes that people in the individual and small group markets need to be able to get the economies of scale that big companies have, so it has created a pathway for people to purchase insurance through Association Health Plans. Republicans have been talking about this idea for a long time. Sen. Mike Enzi (R-Wyo.) championed legislation to create AHPs for many years in the Senate. Now they are a reality because of new rules written by the Trump administration. If you are a building contractor with three or four employees, or if you’re a plumber, then you can buy a health plan through a trade or business association to get a better deal. Association plans help spread the risk of a high-cost employee more broadly and thereby can lower premium costs.

**TI:** Is that trying to replicate somewhat what happens on the employer’s side of the market?

**GT:** Yes, it’s trying to replicate to some extent the economies of scale and flexibility in the large employer market. AHPs also allow for national plans. If you have a company that has operations in several states, you don’t have to follow different insurance regulations in the several states where you have operations. This helps make buying insurance simpler and hopefully less expensive.

**TI:** The Trump administration has also provided waivers to the Obamacare insurance market requirements for a number of states, right?

**GT:** Yes. The Heritage Foundation just published a paper on these waivers, written by scholars Doug Badger and Ed Haislmaier. Their paper [“State Innovation: The Key to Affordable Health Care Coverage Choices”] looks

at the experiences of several states that received waivers to help them address one of the core problems of Obamacare. Obamacare put the sickest people in the same pool with healthy people and charged healthy people more to cover their extra costs. That has driven up premiums so much that healthier people are dropping their policies, and then premiums go up even more for the people who remain.

Seven states so far have received waivers to use some of the existing Obamacare funds to supplement premiums for high-risk individuals so they can take the pressure off the rest of the market. They estimate they will be able to reduce premium prices in their individual and small group markets for 2019 by between 7 percent and 30 percent by using various risk-mitigation strategies, such as creating high-risk pools. And because premiums are lower, more people can afford coverage. In Minnesota, for example, enrollment increased by 13 percent. So this is one way the administration is trying to help states by giving them more flexibility. And it shows why states should lead the way in helping their insurance markets heal from the damage that Obamacare has done.

**TI:** And what does the Health Care Choices Proposal do to build on those steps by the administration?

**GT:** The Health Care Choices Proposal is a policy proposal developed by the Health Policy Consensus Group, which is a loose affiliation of about 100 health policy experts and others with an interest and expertise in health policy. The group has been meeting at The Heritage Foundation almost every week for a year to develop a plan to fix the problems created by Obamacare. The plan represents a new generation of health policy.

RICHARD B. LEVINE/NEWS.COM



The core idea is to take power and control away from Washington, which has proven it’s incompetent in managing local health insurance markets for the entire country. Instead the Consensus Group’s plan directs existing resources and greater flexibility to the states so they can develop their own plans to give people more choice and lower prices in health insurance.

**TI:** Do you have any sense of what the states will do with the more flexible grants the plan would give them?

**GT:** The money that’s currently going to Obamacare is entitlement-based. The law basically says if you fit into certain eligibility categories, then you’re going to have your health insurance subsidized, no matter how high the premiums go. Under that

setup, there is very little incentive to spend taxpayer dollars wisely. And it’s not a financially sustainable system.

First, it’s not working for millions of people who still can’t afford coverage and who are not subsidized. It’s not working for people whose deductibles are so high—sometimes as much as \$12,000 a year for a family—that they might as well not have insurance. And it is not working for people on Obamacare plans who have little or no choice of insurance plans and very limited networks of doctors and hospitals.

We propose re-allocating Obamacare funding to the states through formula block grants that would take into account past spending and the number of low-income people in the state. States would be freed from many of the Obamacare regulations that have damaged





their small group and individual markets, and they could use the grants to focus assistance on those who really need help. They also would be able to encourage insurers to offer policies that people may actually want to buy instead of being forced into rigid Obamacare policies.

Our Consensus Group offered a few broad guidelines on how states may use the funds. Readers who are interested can view the plan details at [HealthCareReform2018.org](http://HealthCareReform2018.org). States would need to use the money to make sure lower income people are getting coverage and, if they are assigned to Medicaid, to allow them to opt out into a private plan of their choosing. The idea is to move money through the states to individuals to give them more power and control so that they are given a greater choice

“If the states receive a fixed amount of money through formula grants, then they’re going to have to be more responsible in making sure that those dollars cover as many people as possible.

waivers, that if you allow states to subsidize those with high risks and high costs separately, you’re going to be able to lower premiums for everyone else. That will attract more people into the insurance markets.

of plans that they prefer. Our proposal would require that a specific percentage of the state’s grant—and Congress will ultimately determine what that percentage is—must be used to subsidize people with high risks. That’s something that Obamacare didn’t do.

As Badger and Haislmaier showed in the paper I described earlier, this is an effective way to get premium costs under control. Our plan actually does a better job than Obamacare of providing for people who are sick. We think, based on the experience of states that have had

**TI:** How does the switch from the matching-grant set up in Medicaid to a formula grant change the incentives that states face?

**GT:** States will have new incentives to make sure taxpayer dollars are spent wisely. If the states receive a fixed amount of money through formula grants, then they’re going to have to be more responsible in making sure that those dollars go as far as possible to cover as many people as possible. And they will have new incentives to work with insurers to make sure citizens have access to quality insurance. Formula block grants would give states incentives to make the best use of federal dollars rather than devising schemes to draw down more and more federal money. Oh, and they wouldn’t be able to spend the block grant money on roads and bridges. It would have to go toward providing health coverage, focusing especially on high-risk and lower-income people.

**TI:** One thing the Consensus Group’s plan does is allow insurers the option of offering discounts for continuous coverage. Could you explain why

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insurers can’t do that now?

**GT:** Obamacare has allowed people to wait until they are sick to buy health insurance. That is like allowing people to wait until their house is on fire to buy home insurance. That completely nullifies the whole concept of insurance. Insurance can’t work if people aren’t pooling risks by paying premiums over time. But in order to have a properly functioning market, health insurance premiums have to be affordable, and the policies need to be appealing so people see insurance as valuable and want to buy it. One way to encourage people to enter and stay in the market is to give them a discount if they stay continuously covered. Our plan would allow insurers to do that. We also believe they should be able to give a

“In order to have a functioning health insurance market, premiums have to be affordable and the policies need to be appealing so people see insurance as valuable and want to buy it.

formula grant. And the states figured out how to use those resources more efficiently. Without access to an open-ended entitlement, the states will be better managers of those resources. We believe the market will provide

discount to young people who buy insurance. We believe in incentives, not mandates, fines, and penalties.

**TI:** Is the plan designed to have a budgetary impact? Is it going to save money, cost money, or be budget-neutral?

**GT:** Our plan is budget-neutral. It simply redirects existing Obamacare resources to states, but over time we believe it will save taxpayers money. We already have seen these kinds of reforms save money. In the 1990s, for example, Congress changed welfare from an entitlement to a

people with more options, including those outside traditional insurance—such as direct primary care. Direct primary care allows people to pay a primary care physician a monthly fee for routine care and then buy a less expensive catastrophic policy that covers major medical needs. There could be so many more options for coverage than we see now, but that’s only going to happen if we give states and the private marketplace the flexibility to innovate.

**TI:** Does the plan reform anything on the employer side of the market?

**GT:** Our plan doesn’t address the market for employer-sponsored health insurance. Ours is a relatively narrow plan focusing just on the individual and small group markets and people in the Medicaid expansion population. One of the many overreaches of Obamacare was that it tried to do so much in one bill that it was very disruptive and dislocating. The American people don’t have an appetite for that to happen again. So we offered a narrower approach, but one that can be transformative. This is a new generation of health reform that respects our Constitution, respects state’s rights, and that ultimately is designed to help states give millions of people more choices of coverage they can afford.

**TI:** Would you care to talk about what reforms you’d like to see beyond this plan?

**GT:** We already are working on reforms beyond the recommendations we made in our Health Care Choices Proposal. We will continue to look for ways we can be helpful in offering ideas to help vulnerable populations and to create a platform for an affordable, functional, and vibrant market for health care and health coverage. Stay tuned! 📺





# Right-to-Work for Public Employees Is Here. Now What?

BY PATRICK J. WRIGHT

ON JUNE 27, 2018, THE SUPREME COURT overturned the four decades-old agency-fee set up that had allowed state worker unions in 22 states to charge representation fees to nonmembers. In practice, the arrangement allowed unions to force nonmembers to donate billions of dollars each year in pursuit of political agendas that they had not chosen to support.

In *Janus v. American Federation of State, County and Municipal Employees*, the Court held that this arrangement violated public employees' First Amendment rights of free speech and free association. The ruling directly affected nearly 5 million public employees working in the 22 states without public sector right-to-work laws.

IN *JANUS V. AMERICAN FEDERATION OF STATE, County and Municipal Employees*, the Supreme Court held that public-sector unions could no longer force nonmembers to pay representation fees.

But the court's holding is not self-executing, and past experience and current events show that much work is necessary to overcome union roadblocks erected to prevent employees from leaving.

## Why the Agency-Fee Arrangement Violated Workers' Rights

*Janus* was a challenge to agency fees, which are the payments charged to nonmembers in a bargaining unit where there is a mandatory bargaining representative (i.e., a union). A union member pays dues, while the nonmember pays agency fees. Theoretically, under the 1977 Supreme Court case, *Abood v. Detroit Board of Education*, the public-sector nonmember employee was supposed to pay only for a proportional "nonpolitical" cost of bargaining and other union functions. Typically, a nonmember paid around 75 percent to 80 percent of what a union member paid.

Justice Samuel Alito wrote the majority opinion in *Janus* and explained some First Amendment principles:

Free speech serves many ends. It is essential to our democratic form of government and it furthers the search for truth. Whenever the Federal Government or a State prevents individuals from saying what they think on important matters or compels them to voice ideas with which they disagree, it undermines these ends.

When speech is compelled, however, additional damage is done. In that situation, individuals are coerced into betraying their convictions. Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning. [...]

Compelling a person to subsidize the speech of other private speakers raises similar First Amendment concerns. As Jefferson famously put it, "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhor[s] is sinful and tyrannical."

The majority recognized that state spending for employee benefits is "a matter of great public concern." In other words, all governmental spending on public sector wages and benefits is a political matter. Further, in collective bargaining, unions often touch upon important public policy debates. Discussing education, Justice Alito noted the controversies surrounding merit pay and pay based on seniority, teacher dismissal standards, and ways to measure student success. These public policy matters are obviously political in nature. Thus,



the majority recognized it was not possible to split public sector bargaining into political and nonpolitical categories. The old system was unworkable and based on faulty presumptions.

Assuming that an average union member pays \$600 in annual dues or agency fees, public sector unions collect around \$3 billion a year from the 5 million unionized employees in the 22 states where agency fees were legally permissible. Ninety percent of those employees are located in 11 states—California, Connecticut, Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New York, Ohio, Pennsylvania, and Washington. The remaining 10 percent are located in Alaska, Delaware, Hawaii, Maine, Missouri, Montana, New Hampshire, New Mexico, Oregon, Rhode Island, and Vermont.

Public sector unions have come to be of critical importance to the Left. The unionization rates in the private sector have collapsed. In 1983, 20.1 percent of private sector employees were unionized. By 2017, that share had dropped to 6.5 percent. In the public sector, the unionization rate is 34.4 percent, roughly where it has been since the mid-1970s. Just around 50 percent of all unionized workers today are in the public sector.

Seeking to maintain the money supply, AFSCME and its supporters contended that since *Abood* was decided in 1977 and had allowed agency fees, it would be unfair for the Supreme Court to prohibit them now. Justice Alito and the rest of the *Janus* majority were unsympathetic:

We recognize that the loss of payments from nonmembers may cause unions to experience unpleasant transition costs in the short term, and may require unions to make adjustments in order to attract and retain members. But we must weigh these disadvantages against the considerable windfall that unions have received under *Abood* for the past 41 years. It is hard to estimate how many billions of dollars have been taken from nonmembers and transferred to public-sector unions in violation of the First Amendment. Those unconstitutional exactions cannot be allowed to continue indefinitely.

## What the Ruling Means

The Supreme Court made it clear that agency-fee deductions must stop immediately, and even states like California and New York complied. What is less clear is how *Janus* applies to employees who are union members but may no longer want to be members now that their financial support can no longer be compelled. Here is the pertinent language from *Janus*:

Neither an agency fee nor any other payment to the union may be deducted from a nonmember’s wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively con-

sents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed. Rather, to be effective, the waiver must be freely given and shown by “clear and compelling” evidence. Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met.

Many people have taken this to mean that not only should all mandatory agency fee payments cease, but every union should stop collecting dues from each member until that member signs a post-*Janus* consent to join the union. This is in part based on a previous Supreme Court decision (cited in *Janus*), which indicates a waiver must be of a “known right or privilege.” Not surprisingly, the unions argue that only agency fees are affected. Litigation will likely develop on this issue.

Regardless of the way such a case would turn out, the legal process often takes a long time, and as we at the Mackinac Center have learned from experience following the passage of Michigan’s right-to-work law, freedom is not self-executing. Many employers, officials, and those in union leadership will be silent about how employees may exercise their rights. Many in the freedom movement are playing a vital role in informing these employees that they now have a choice.

## What the Unions Are Doing Now

The Supreme Court had begun questioning *Abood* in 2012’s *Knox v. Service Employee International Union* and that continued in 2014’s *Harris v. Quinn* and 2016’s *Friedrichs v. California Teachers Association*. Thus, the unions were aware that agency fees were at risk. So they turned to their legislative allies to make it harder for their current members to get out, to make it harder for third parties to inform workers of their rights, and to give themselves exclusive access to new employees.

In February, Washington enacted a state law that gave the union access to new employees so it could make at least a 30-minute presentation.

Historically, in New York, employees could leave a union and end financial support to it at any time. In April of this year, the state passed legislation that permitted unions to severely limit employees’ time period for leaving. It also gave the union the right to personal information of all new employees and to meet with new employees during work hours.

In May, New Jersey passed the “Workplace Democracy Enhancement Act.” That law gave the unions a 30- to 120-minute meeting with all new hires. The unions will also receive employees’ home and work emails and home and work phone numbers, which must be updated every four months. Other groups or individuals are banned from receiving any of this information, even through a public records search. New Jersey limited the time that employees could leave the

union to 10 days after the employee’s work anniversary date. By making this period employee-specific, the New Jersey Legislature made it harder for third parties to notify employees of their rights in a timely manner since it is difficult to ascertain an individual’s anniversary date and to thereby provide notice when the employee can act.

On the day that *Janus* was decided, California passed legislation that made employees seeking to stop dues deductions send that request to the union rather than the employer, which is now prohibited from making any type of independent inquiry. Public employers are not allowed to “discourage” employees from joining the union or from signing dues deductions. Unions are given access to new employee orientations, and the location of these orientations are to be secret so as to prevent third parties from interfering with the union’s pitch.

## The Battles Ahead

A number of lawsuits related to *Janus* already have been filed. Many seek “claw backs” of agency fee payments on a class-wide basis. Such suits have been filed against the state-level teachers unions in California, New York, Pennsylvania, New Jersey, Maryland, Minnesota, Alaska, and Washington. Similar claims have been filed against the SEIU home-help unions in California and Illinois. Other suits seek to build on *Harris v. Quinn* and *Janus* and challenge whether public employees can ever be forced into mandatory unions. Some of these cases include challenges to the pro-union legislation discussed above. It can safely be predicted that more lawsuits will be filed.

Again, the courts are not the only means of enhancing and protecting freedom. Aside from the informational campaigns mentioned earlier, there is also model legislation for governments that seek to implement *Janus*-protections fully to make certain that no employee—union member or non-union member—can be compelled to provide support to a government union.

A key question in the next couple of years will be: To what extent will unions change their political and spending habits in their quest to retain membership? In 2018, many of the largest national unions helped vulnerable Democratic incumbents in U.S. Senate seats. According to OpenSecrets.org, the

top 12 senators receiving money from government unions are all Democrats: Sens. McCaskill (Mo.), Brown (Ohio), Heitkamp (N.D.), Baldwin (Wis.), Nelson (Fla.), Tester (Mont.), Casey (Pa.), Manchin (W.V.), Cardin (Maine), Kaine (Va.), Klobuchar (Minn.) and Stabenow (Mich.). Though most of

those senators hail from right-to-work states, national unions raised money elsewhere and redistributed it to them.

But *Janus* may strike a serious blow to this model. The U.S. Supreme Court’s declaration means all state and local government workers now have a right to choose. Will union members in California, New York, and elsewhere be content to be the piggybank for political fights across the nation? Having a choice in whether to pay money to the union gives workers the option to decline to fund that agenda.

A key recent theme for many groups on the Left is “intersectionality.” The dictionary definition is “the interconnected nature of social categorizations such as race, class, and gender as they apply to a given individual or group, regarded as creating overlapping and interdependent systems of discrimination or disadvantage.” Politically speaking, it’s where a broad variety of groups on the Left gather to further the overall agenda of all. This includes unions, environmental groups, trial attorneys, and more.

The problem? Many individuals belonging to any one of these groups disagree with the agenda of the other groups. When unions can force people to pay, this isn’t a problem. But if they need to convince people that the benefits of union membership are worth the cost, the unions’ priorities might change.

No matter the manner in which the unions react, *Janus* is a monumental win for freedom. But, to make certain it has the broadest possible impact, public officials and those concerned with good public policy must make certain that steps are taken to properly implement it. These include making sure public employees know their rights and how to defend them, pursuing legal remedies when unions attempt to deny those rights, and alerting voters when lawmakers propose legislation that diminishes those rights. The *Janus* decision has too much potential for positive change to be left undefended. ■

*Mr. Wright is vice president for legal affairs at the Mackinac Center for Public Policy.*





# FREE TRADE

## AMERICA'S BEST STRATEGY TO COUNTER CHINA

BY JAMES M. ROBERTS

**S**INCE COMING INTO OFFICE IN 2016, THE Trump administration has pursued a wide variety of protectionist policies to manage and divert trade flows—such as by the imposition of tariffs and by re-writing and narrowing the scope of existing U.S. free trade agreements—that would restrict Americans' freedom to trade and impose additional costs on goods and services.

The administration offers a variety of reasons for its trade policies, which have been aimed at both adversaries as well as long-time American trade and investment partners, but at the end of the day they can generally be summarized by one word: China.

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WORKERS SORT parcels in Shenyang (left); Qingzhou Free Trade Port Area handles 360 million metric tons of cargo annually (right).

A ROBOT makes coffee during the 2018 World Intelligent Manufacturing Summit in Nanjing (left); a worker assembles a product in Weifang (right).

## How to Counter Unfair Trade Practices by China

Certainly, the White House is correct to be concerned about China. Since taking power in 2013, President Xi Jinping has doubled down on what he calls a policy of “socialism with Chinese characteristics for a new era.” He also has praised Karl Marx as “the greatest thinker of modern times.” In his quest for dictatorial power, Xi has abolished presidential term limits, denigrated Western values, and imposed a plethora of Soviet-style control mechanisms that are the hallmarks of a repressive police state. The Xi government has also imposed increasingly stringent limitations on the operations of American firms (e.g., U.S.-based hotels and airlines) in China that amount to harassment.

Xi has promised the Chinese people that, in exchange for granting him unlimited authoritarian power, his “China 2025” program will catapult China to global leadership in the cutting-edge technologies that will define the world economy of the 21st century. These technologies include aircraft fabrication, robotics, semiconductors, electric vehicles, biotechnology, artificial intelligence, and quantum computing. One way China is trying to achieve its “2025” goals is by outright theft of U.S. intellectual property. Beijing also routinely tries to force U.S. companies

“Protectionist tariffs ultimately harm the U.S. economy and are paid—not by China—but by American workers, companies, and consumers themselves. Tariffs are taxes and cannot solve the longer-term problems America faces.

to transfer valuable technology on disadvantageous terms.

All of this puts China on a collision course with the United States for world leadership. That’s because Americans know that maintaining the U.S. edge in those very same high-tech sectors will determine, in part, how America’s prosperity and living standards can be preserved and expanded in the 21st century.

The question is: What policies can the United States adopt to counter these aggressive and predatory actions by China? The solution does not lie in restricting trade. Protectionist tariffs ultimately harm the U.S. economy and are paid—not by China—but by American workers, companies, and consumers themselves. Tariffs are taxes, and they cannot solve the longer-term problems America faces.

## Trade Freedom Is Human Freedom

Over the years, the data in The Heritage Foundation’s annual *Index of Economic Freedom* have demonstrated time and again the importance of trade freedom to prosperity and well-being. Countries with the most trade freedom have higher per capita incomes, lower incidences of hunger, and cleaner environments.

As the *Index* explains, at the heart of economic freedom is individual autonomy. As Milton Friedman said, people should

be “Free to Choose” when they acquire and use economic goods and resources. Individuals know their own needs and desires better than other people do, and they should have the freedom to be guided by their own philosophies and priorities rather than have them imposed by a government or technocratic elite. Self-fulfillment, independence, and self-respect flow from the ability and responsibility to take care of oneself and one’s family. These are cornerstone concepts of human dignity and equality.

Since the inception of governments, one of the most jealously guarded and oft-misused powers has been their ability to restrict citizens’ ability to interact freely as buyers or sellers in the marketplace. The Soviet Union wildly indulged in such restrictions—and that experiment didn’t go so well.

Another dramatic and relevant example can be observed in the differences between the standard of living produced by the hybrid communist system on China’s mainland and the flourishing, free-market democracy of Taiwan. According to the CIA World Factbook, China’s 2017 per capita gross domestic product was \$16,700 (purchasing power parity), while that same metric for Taiwan was \$50,300. Mainland China may have the world’s second largest economy due to its enormous geographical size and large population, but the standard of living there is far lower than it is in Taiwan.

## Free Trade Matters

Fortunately, since World War II, government barriers to global commerce have been reduced significantly. The average world tariff rate has fallen by one-third since the turn of this century alone, and now stands at less than 3 percent.

Countries scoring well in the *Index* on trade freedom (i.e., those with low tariffs and few non-tariff barriers) enjoy stronger economic growth. But more open trade policies do not just promote economic growth; they encourage freedom—including protection of property rights and the freedom of average people to buy what they think is best for their families, regardless of attempts by special interest groups to restrict that freedom.

Importantly, free trade lowers the cost of inputs used by U.S. manufacturers to compete in the global marketplace. In 2015, 45 percent of all U.S. imports were “intermediate goods” ranging from aircraft parts to oil to zinc. U.S. manufacturers rely on these imports to create American jobs and compete globally. Another 20 percent of imports were capital goods like machinery and manufacturing equipment. U.S. tariffs on intermediate goods also drive up the cost of manufacturing.

## Trade and Investment Freedom Go Hand-in-Hand

A protectionist trade policy is almost always tied to restrictions on free and open investment—another key indicator of economic freedom in the *Index*. An open investment environment provides maximum entrepreneurial opportunities and incentives for expanded economic activity, greater productivity, and job creation. The benefits of such an environment flow not only to the individual companies that take the entrepreneurial risk in expectation of greater return, but also to society as a whole. An effective investment framework is characterized by transparency and equity, supporting all types of firms rather than just large or strategically important companies, and encourages rather than discourages innovation and competition.





Restrictions on the movement of capital, both domestic and international, undermine the efficient allocation of resources and reduce productivity, distorting economic decision-making. Restrictions on cross-border trade and investment can limit both inflows and outflows of capital, thereby shrinking markets and reducing opportunities for growth.

China imposes non-transparent investment and trade barriers on foreign firms. At the national and provincial levels, the government's regulatory systems are opaque; often the rules are available only in Chinese and can be obtained only with great difficulty. That can make it difficult and expensive for the WTO to determine if the Chinese government's policies are discriminatory and violate WTO rules. This set up allows the Chinese government to harass and intimidate companies that want to do business in China.

The U.S. government can and should vigorously challenge China at the WTO and insist upon structural reforms to end these practices. It can do so without levying tariffs. The U.S. government can also, and has, imposed limits on Chinese investment in the United States. This summer, Congress passed the Foreign Investment Risk Review Modernization Act of 2018. The law strengthened the ability of the Committee on Foreign Investment in the United States to reduce risks to national security posed by certain types of foreign investments. Counter-intelligence efforts against China have also been ramped up. All of these actions are better than levying economically damaging tariffs.

### To Counter China, Put America Back onto the Path to Economic Freedom

The benefits of restrictions on trade are concentrated among producers of protected goods, while the costs are spread among consumers throughout the country. That asymmetry makes it easier for anti-free-trade interests to mobilize politically. Figuring out how to mobilize support for free trade is therefore a major political challenge.

One way to do that is to remind Americans that the U.S. trade deficit is a blessing, not a curse. In economic terminology, trade deficits are a consumption surplus that raises the standard of living for Americans. Another point to make is that that losses of manufacturing jobs in some areas of the country (e.g., the "Rust Belt") can be explained almost entirely by changes in technology and consumer tastes, not trade. Trade remedies won't recreate manufacturing jobs in the Midwest.

A far better approach is to boost productivity by implementing policies (e.g., school choice and other market measures) that improve workers' education and skill sets. Reducing government regulation and taxes is also key to improving productivity and growing the economy.

Another important solution is to reduce and eventually eliminate the U.S. government's budget deficits. Instead of blaming other countries and levying tariffs on them, the administration and Congress should tackle the bigger reason the United States has a China problem: out-of-control

FEDORA CHIOSEA/GETTY IMAGES

federal spending and borrowing. And much of the money the government borrows to finance chronic U.S. budget deficits comes from China.

Imagine if the U.S. government had a balanced budget and didn't need to borrow billions of dollars per year from China in order to stay in business? What would China do with those billions of dollars—earned by selling products to American consumers? The Chinese would be forced to use those dollars to purchase more goods and services from American workers—that's what would happen. And that would take the wind out of the sails of all the mercantilists and protectionists now calling for tariffs.

Manufacturing workers in the upper Midwest could go back to jobs that were created, not by tariff protections, but by revitalized supply and demand due to market forces.

### Other Non-Trade U.S. Policies to Answer China's Global Challenge

To remedy specific complaints of alleged unfair trade practices by other countries (e.g., China), the better solution is not tit-for-tat protectionist measures, but more aggressive use of existing dispute resolution systems. These systems were painstakingly built (largely by the United States) over decades at the World Trade Organization and through bilateral and multilateral U.S. free trade agreements (e.g., NAFTA). They exist for a reason. Free trade agreements include features, such as investor-state dispute settlement mechanisms, that provide a fair forum in which individual companies can seek redress for specific problems.

Washington can also bring significant pressure to bear on Beijing to eliminate many non-tariff barriers. Another good U.S. policy is the Trump administration's current effort to push back globally against Chinese "sharp power" campaigns such as the Belt & Road Initiative (BRI), a program that the Washington-based Center for International Private Enterprise calls a premier example of "corrosive capitalism."

Around the globe, the Chinese government has targeted geo-strategically vital chokepoints such as Sri Lanka and the Horn of Africa, for BRI loans. Often this non-transparent lending facilitates corrupt transactions both in China and in

the borrowing nation. For example, China will lend a country more money than it needs at a higher-than-market interest rate for an over-priced infrastructure project constructed exclusively by Chinese workers, knowing that the country cannot afford to service the debt. Ultimately, the loan can be declared in default, and the Chinese government can seize the asset.

The Trump administration response to China's BRI has been admirable, and it's another example of a robust, non-tariff response to Chinese aggression. The U.S. State Department and other federal foreign affairs agencies have embarked on a multi-faceted campaign to educate developing countries about the many downsides of accepting these "corrosive capital" BRI loans.

### Free Trade Is "Fair Trade"

The Trump administration claims its policies promote "fair trade," but in practice, they simply redistribute income from American consumers to politically favored businesses, and increase government revenue through additional taxes (tariffs) that raise the price of goods and services. Presumably the president is pursuing his tariff policies to increase the economic well-being of Americans. While some may benefit from those policies, the costs to the majority of Americans (those who lack political clout in Washington) will be high. And history tells us that, once imposed, tariffs are very difficult to repeal because companies that benefit from them lobby Washington to keep them in place.

At the end of the day all free trade is "fair trade," since free trade gives consumers access to the best quality

goods at the lowest price, with minimal transaction costs imposed by the state.

Economic freedom is a basic right. It closely tracks the ideas of the Founders. Freedom to sell and buy without hidden or visible government interference—free trade—is vital to economic freedom. The sooner the Trump administration and Congress put America back onto the path to greater economic freedom, the better. ■

*Mr. Roberts is research fellow for economic freedom at The Heritage Foundation.*

“The better solution is not tit-for-tat protectionist measures, but more aggressive use of existing dispute resolution systems. These systems were painstakingly built (largely by the United States) over decades at the World Trade Organization and through free trade agreements such as NAFTA.





# Work: *What Welfare Is Missing*

BY JONATHAN INGRAM

**R**OB UNDERSANDER'S NAME WAS IN THE papers earlier this year when news broke that the Minnesota millionaire received food stamps for well over a year. Outrage followed, particularly when it was revealed that Undersander had enrolled in the welfare program—and taken taxpayer-funded benefits—simply to prove that the flawed system would allow it.

While local taxpayers demanded to know what part of the government had screwed up, the reaction from many state officials was different. Officials were more upset that Undersander proved his point than they were concerned about the loopholes in Minnesota's system that allowed the millionaire to qualify for food stamps. But the fact remained: The millionaire broke no law by receiving welfare.

Federal law generally limits the amount of financial resources—think liquid assets like bank accounts and cash—food stamp recipients can have and still qualify for the program. In order to protect resources for the truly needy, those with significant financial assets are expected to rely on them before turning to taxpayers for additional assistance.

At least, that's how it's supposed to work. But regulatory

loopholes have all but eliminated the asset test in most of the country. Food stamp enrollees are automatically exempt from the commonsense asset test if they receive a “benefit” funded by states' TANF cash welfare programs. But “benefit” is not defined in the law. So states like Minnesota use TANF dollars to print welfare brochures and then claim that the brochure itself is a “benefit.” That means anyone eligible to receive the brochure is categorically eligible for food stamps, no matter how many millions of dollars they have in the bank.

The instance was a shock for all except those who are familiar with America's current welfare state—one that has become a trap of dependency and is riddled with waste, fraud, and abuse. But this example is nothing compared to the welfare system's treatment of work as a four-letter word: The fact that a millionaire can receive taxpayer dollars is just one of many reasons that today's American welfare system is ripe for reform.

As it turns out, asset tests aren't the only requirement that have been nearly eliminated from welfare programs through regulatory loopholes. The presence of work as a basis of wel-

fare has also been removed—and the repercussions can be felt across the country.

To understand today's welfare system, it is necessary to look back at the bipartisan welfare reforms signed into law by President Bill Clinton in 1996. The reforms focused on moving able-bodied adults out of welfare by implementing work requirements and time limits, which had proven to be successful when implemented at the state level. And largely the reforms worked.

Millions of able-bodied adults transitioned off welfare; the economy prospered, and the welfare system refocused on its intended recipients: the truly needy. But where the 1996 reforms made great headway in helping those on cash welfare regain their independence, the bill's reforms failed to reach those able-bodied adults on food stamps and Medicaid. Weaker requirements, poor implementation, and bureaucratic loopholes opened the door for millions of able-bodied individuals to qualify for and receive food stamps at the expense of the truly needy.

The number of able-bodied adults dependent on food stamps remains near a record high. Federal law currently

requires able-bodied adults who are between the ages of 18 and 50 and who have no dependents to work, train, or volunteer at least 20 hours per week to remain eligible for food stamps after receiving them for three months. Yet, some gaping holes in the work requirement have allowed for chronic dependency. As a result, six in 10 able-bodied adults on food stamps do not work at all, according to the U.S. Department of Agriculture.

Federal law currently exempts all parents and all able-bodied, childless adults over the age of 50 from work requirements, despite research that shows work requirements are successful for all able-bodied adults—parents and middle-aged adults included.

Worse still, the loose work requirement is supplemented by pages of regulatory guidance that allow, and even encourage, states to use gimmicks and loopholes to keep as many able-bodied adults dependent on food stamps as possible. As a result, states have expanded food stamp eligibility, allowing individuals with higher incomes and unlimited assets, including millionaires and lottery winners, to qualify for the program in most states.



States also have abused waivers that were intended originally for areas with high unemployment rates—above 10 percent—to exempt large swaths of their states from work requirements. Today, despite a near-record-low unemployment rate and nearly 7 million available jobs across the country, more than one-third of all Americans live in an area where work requirements have been waived, according to Department of Agriculture data. In fact, of the 1,300 areas in which work requirements were waived last year, just 28 had unemployment rates above 10 percent, according to calculations by Sam Adolphsen of the Foundation for Government Accountability.

The 1996 welfare reform was not enough. The food stamp program is broken. Instead of preserving resources for poor seniors, poor children, and individuals with disabilities, the program's rules have been distorted to support millions of individuals who are capable of working and providing for themselves—millionaires included. The new face of food stamps includes more able-bodied adults, fewer and fewer of whom are working. And instead of empowering them to regain their independence through work, the program is trapping them.

Work is the single best path out of dependency. With record low unemployment rates and millions of available jobs, now is the time to act.

### The Future of Welfare

States and federal policymakers are working to restore the power of work to its rightful place, and a second round of welfare reform may be just over the horizon.

Several states have begun strengthening work requirements for food stamps, and the results are extremely encouraging. When Maine and Kansas reinstated work requirements for able-bodied, childless adults, individuals leaving food stamps found work in over 600 different industries. Their incomes more than doubled on average, offsetting any lost benefits, and their time on welfare was cut in half.

And states like Wisconsin are leading the nation even further by extending work requirements to even more able-bodied adults. In April, Governor Scott Walker's welfare reform plan was signed into law after he called a special session for the purpose of strengthening work requirements. Now, many more able-bodied adult Wisconsinites will experience

the benefits of work requirements, including parents with school-age children and some middle-aged, childless adults.

Building off this state momentum, rumblings of welfare reform can also be heard throughout Washington, D.C.

The Trump administration is championing work as the solution to America's growing welfare crisis. It issued a desperately needed executive order earlier this year to direct agencies to review welfare programs with an eye toward reform. The key goals are moving more able-bodied adult welfare recipients back to work, cracking down on welfare

fraud, and preserving resources for the truly needy.

Stronger work requirements were initially included in the House farm bill this fall, but unfortunately were stripped out. Congress and the Trump administration can help millions of able-bodied adults stuck on welfare by continuing to push hard for the next chapter of welfare reform. Waivers from work requirements need to be repealed; loopholes that allow millionaires and others to enroll in food stamps need to be closed; and resources must be preserved for the truly needy.

The American people are behind the effort. According to a Foundation for Government Accountability poll, 83 percent of voters support requirements that all able-bodied adults work or participate in job training in order to receive food stamps.

The nation was built upon the principle of hard work. But for too long, too many able-bodied Americans have been sitting on the sidelines, missing out on the strong economy, and more

importantly, missing out on a better life. The American welfare system must be restored to its original intent as a temporary safety net for the truly needy—not as a final destination for able-bodied adults or millionaires who choose to cheat the system.

Work provides purpose and enables individuals to experience the freedom of self-sufficiency. It provides a solid foundation for sobriety, distance from the criminal justice system, and the opportunity to create a better future for one's family. America's welfare system is at its breaking point. The next reforms must take our nation upward out of dependency. ■

*Mr. Ingram is vice president of research at the Foundation for Government Accountability (FGA).*

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The food stamp program is broken. Instead of preserving resources for poor seniors, poor children, and individuals with disabilities, the program's rules have been distorted to support millions of individuals who are capable of working and providing for themselves—millionaires included.



STUDENT KEVIN SHAW successfully sued Pierce College in 2017 after the school told him he could hand out copies of the United States Constitution only within designated free-speech zones.

# Free Speech on Campus:

## LAWMAKERS STEP IN WHERE COLLEGE ADMINISTRATORS HAVE FAILED

BY MARIA SERVOLD

DISTRIBUTING COPIES OF THE UNITED States Constitution seems like a reasonable thing to do on an American college campus.

But when student Kevin Shaw tried to do just that at Pierce College in 2017, he was told he could do so only in the school's "free-speech zone." According to the Foundation for Individual Rights in Education (FIRE), Pierce's "free-speech zone" made up only .003 percent of the campus. With FIRE's help, Shaw sued Pierce College and the Los Angeles Community College District to vindicate his free speech rights.

This January, a federal court denied the college's request to have the lawsuit dismissed, finding that any open areas on

a campus—not just "free-speech zones"—are and should be considered public forums, regardless of a college's policies, as Shaw claimed in his suit.

"This characterization makes sense, because after all, what is a university's purpose but to expose students to new ideas and spark dialogue?" the court wrote.

The problems of limited, blocked, interrupted, or impeded free speech on American college campuses are not new, but some experts say these problems have become more acute.

At universities across the country, speakers have been shouted down and blocked from speaking. Event attendees have been harassed. Students with viewpoints considered

PHOTO COURTESY OF DAWN BOWERY/FIRE



“dangerous” (often conservative) have been made to jump through bureaucratic hoops in order to host a talk or express their views. They have been met with more than an opposing viewpoint. In April, for example, students stormed the stage where Duke University President Vincent Price was giving a speech to alumni. The students then presented a list of demands.

State legislators are weighing in as well by considering legislation to protect free speech on college campuses.

In recent legislative sessions, lawmakers in seven states have passed bills protecting and defending free speech on college campuses. Six more states are currently considering legislation. In another 14 states, bills on the matter were introduced but ultimately defeated, according to the National Conference of State Legislatures.

Arizona, Colorado, Georgia, Louisiana, North Carolina, Tennessee, and Washington have passed some sort of campus free speech protection law. These laws range from broad to quite specific in their protections. Some simply direct public university systems to adopt free speech policies. Others outline such policies and how they should be implemented in more detail.

Joe Cohn, legislative and policy director at FIRE, helps draft and edit bills and policies across the country to defend free speech on campuses.

“It’s impossible to refute credibly that there’s a problem on campuses,” he says. “I do think it’s a serious issue that’s been brewing for many, many years. It’s been a long-standing problem because censorship has always been

popular. There hasn’t been a golden age where there wasn’t threats to free speech on campuses.”

But it seems clear we’ve reached new levels of confusion about free speech on college campuses. A much-cited 2017 study by the Brookings Institution found that 44 percent of students believe the First Amendment doesn’t protect hate speech. Only 39 percent correctly understand that it does. (Sixteen percent responded that they didn’t know if it was protected or not).

As the survey notes: “While ‘hate speech’ is odious, as long as it steers clear of well-established exceptions to the First Amendment, it is constitutionally protected.” Such exceptions include speech that “is directed to inciting or promoting imminent lawless action” or “true threats.”

“Most people don’t even understand the First Amendment,” says David Moshman, professor emeritus

of educational psychology at The University of Nebraska. “Most of the speech you find objectionable—of course you can disagree with it—but you can’t even talk about it if you don’t know what the interpretation [of the First Amendment] is.”

The current free speech battle, says FIRE’s Cohn, is partisan, in that people tend not to support the right to free speech from the other side.

“People censor who they disagree with,” he says. “On college campuses in 2018, more of the leadership comes from the

Left, so when the censorship is about a person’s politics, conservatives are disproportionately targeted. Both parties are good at fighting censorship when it’s them being censored. Neither is good at it when it’s their opponent being censored.”

State legislators and other groups, like FIRE, have been crafting bills to protect free speech for some time, but in the last few years, several important groups have weighed in on the issue.

In the fall of 2015, Stanley Kurtz, senior fellow at the Ethics and Public Policy Center, began drafting legislation to restore and protect free speech. He teamed up with the Arizona-based Goldwater Institute, which was working on a similar project. In 2017, Kurtz and Goldwater introduced model legislation that does a number of things, including reaffirming free speech principles, preventing administrations from disinviting speakers, and establishing disciplinary plans for students or others who interfere with the free speech of others.

“With administrators and faculty members unwilling to protect free speech on campus—and sometimes even taking steps that actively undermine it—legislatures are obligated to step in,” he says. “The first duty of a legislature is to defend our fundamental liberties. Public universities are obliged to uphold the First Amendment, but the First Amendment doesn’t enforce itself. When administrators fear to do so, the legislature must act.”

The model bill was the basis for legislation passed in Arizona and North Carolina. It allows students whose free speech rights have been violated to recover court costs and attorney fees from lawsuits, reaffirms that educational institutions should remain neutral on issues of public

controversy, and authorizes a committee of the board of trustees to issue a yearly report on campus free speech issues.

North Carolina’s bill, which took effect in June 2017, requires a report from a Committee on Free Expression to be published annually. All faculty at public universities in the state must cooperate and provide information to the committee, the law states, and the committee must publish its report and provide it to the board of governors, the state governor, and the North Carolina General Assembly.

Arizona’s bill, which was also based on the Goldwater model, also requires an annual report. The Arizona Board of Regents Committee on Free Expression’s first annual report, published on Sept. 1, 2018, notes that none of the state’s public universities reported any incidents of barriers to or disruptions of expression during the 2017-2018 school year.

Each of the universities has created a response team to deal with free speech incidents and several did end up mitigating problems before they got out of hand. For example, the University of Arizona received numerous complaints about “the ideology, messaging, language, and tactics of itinerant preachers who visit the UA mall.”

The report says the dean of students’ office monitors the activity and meets with community members to provide support and education regarding freedom of speech, such as how to effectively counter the speech or “disengage from the situation.”

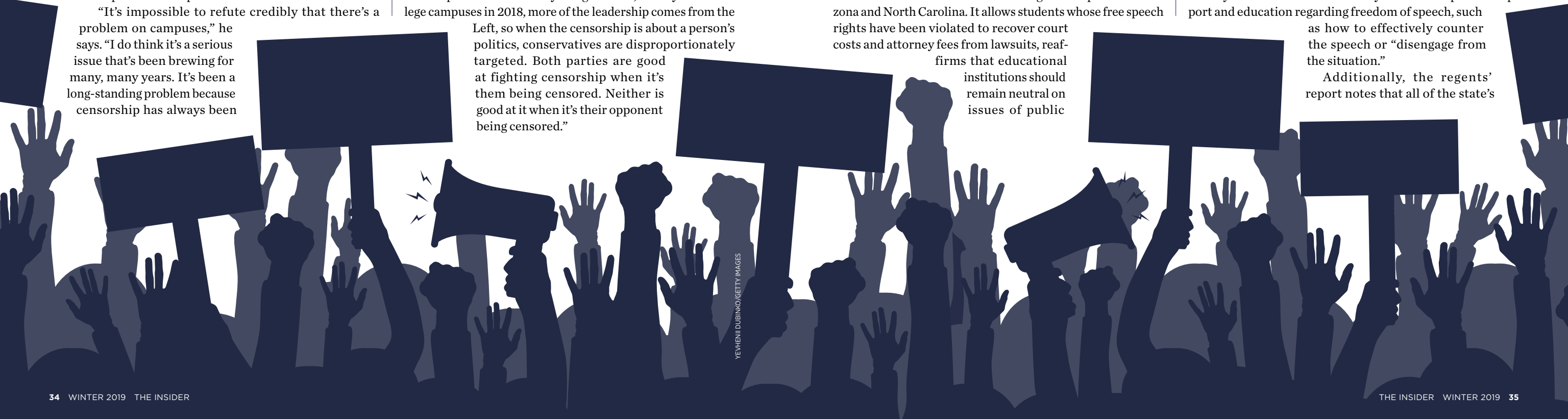
Additionally, the regents’ report notes that all of the state’s

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Forty-four percent of students believe the First Amendment doesn’t protect hate speech. Only 39 percent correctly understand that it does.

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Public universities are obliged to uphold the First Amendment. When administrators fear to do so, the legislature must act.







that funding from student fees must not be denied to any particular group based on viewpoint.

Jonathan Butcher, senior policy analyst for The Heritage Foundation, disagrees, saying that the bills in Tennessee, Louisiana, and Florida, leave a lot to be desired as far as outlining disciplinary measures—a key part of the Goldwater Proposal.

“They do more to shine sunlight on the issue than they do to actually say ‘here’s a rule; you need to follow this rule or there will be consequences,’” he says.

The University of Nebraska’s Moshman describes himself as an “intellectual freedom activist” who has written on the free speech debate for years.

He agrees that the legislation passed so far could be improved, saying some of the bills go overboard and micro-manage, but he also says it is good that many of the bills acknowledge the nonsense of “free-speech zones.”

In the 1980s and 1990s, says Moshman, there was often conservative pressure in high schools and at universities to censor certain materials, like evolutionary biology curricula,

certain topics in history, and some young adult novels. There were also efforts by some groups to promote diversity by suppressing so-called hate speech.

Some legal scholars even argue that what is often called hate speech should not be protected by the First Amendment, he says.

In their January 2018 book *Must We Defend Nazis?: Why the First Amendment Should Not Protect Hate Speech and White Supremacy*, University of Alabama law professors Richard Delgado and Jean Stefancic argue that regulating or banning hate speech would make America a fairer place and protect those often marginalized by hate speech. The fundamental disagreement between what kind of speech should and shouldn’t be allowed, and where, is stopping liberals and conservatives from having meaningful conversations, Moshman says. Instead of free speech being the cause of disagreement, it should be the common ground from which other debates can begin.

“People need to understand that free speech is how you address the kind of

political controversies we have,” he says. “It shouldn’t become part of the controversy. It should be common ground.” ■

*Ms. Servold is the assistant director of the Dow Journalism Program at Hillsdale College in Hillsdale, Michigan.*

RUSS R. SCOTT/NEWZULU/NEWSCOM

university systems have begun hosting lectures, forums, and panel discussions about free speech and civil discourse.

Passage of free-speech legislation is necessary, Kurtz says, because college faculty have abandoned the classical liberal commitment to free inquiry.

“In its place [the faculty] have adopted a postmodern skepticism that views the defense of individual rights as a cover for oppressive power,” he says. “Many students have absorbed this view, and administrators either share it, or are simply too weak to stand up for fundamental liberties.” While policies created and passed on individual campuses may help students, faculty, and speakers case-by-case, Kurtz says that the scale of the problem requires a bigger fix.

Cohn says what’s been passed so far in state legislatures is a mixed bag.

“For example, the Tennessee bill, in our view, is the gold standard of what you would want in a campus free speech bill,” he says. “All of these things are established parts of the law that have been ignored for a long time.”

Tennessee’s bill, which took effect in January, outlines 17 principles of free speech that it says “are the public policies of the state,” including that schools must allow open, outdoor areas of its campus to serve as traditional public forums, and

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The faculty have adopted a postmodern skepticism that views the defense of individual rights as a cover for oppressive power. Many students have absorbed this view, and administrators either share it, or are simply too weak to stand up for fundamental liberties.

DECEMBER

**3 Should Savers Earn the Same Rate Banks Earn on Their Federal Reserve Deposits?** American Enterprise Institute, Washington, D.C., 10 AM

**3 Bad Transitions in Central Europe and the European Union: A Conversation with Leszek Balcerowicz,** American Enterprise Institute, Washington, D.C., 2 PM

**3 The Diversity Delusion,** The Federalist Society Long Island Lawyers Chapter, Davenport Press, Mineola, N.Y., 6 PM

**3 Governance in an Emerging New World: Latin America,** Hoover Institution, Stanford University, 3:30 PM

**3 Hudson Institute Award Gala,** Intercontinental Barclay, New York, 5 PM–8 PM

**4 Holiday Party: Celebrating Lives Changed Through Criminal Justice Reform in Ohio,** Atlas Network, Cornell Club, New York, 6 PM–8:30 PM

**4 The Philosophic Fight for the Future of America,** The Heritage Foundation, Washington, D.C., 11 AM

**5 Findings from the 2018 Schooling in America Survey,** American Enterprise Institute, Washington, D.C., 4 PM

**5 Hate Speech Laws in Action: A Warning from Europe,** The Heritage Foundation, Washington, D.C., Noon

**5 Artificial Intelligence and Quantum Technology: Implications for National Security,** Hudson Institute, Washington, D.C., 11:30 AM

**5-7 National Summit on Education Reform,** ExcellinEd, Marriot Marquis, Washington, D.C.

**6 The Jones Act: Charting a New Course after a Century of Failure,** Cato Institute, Washington, D.C., 9 AM–5 PM

**6 Election Controversies: Citizens United, Shelby County, and the Question of Voting Rights,** The Federalist Society Princeton Student Chapter, Friend Center, Princeton, N.J., 5 PM

**6 When Terrorists Come Home: Rehabilitation of America’s Convicted Islamists,** The Heritage Foundation, Washington, D.C., 11 AM

**7 Saudi Arabia’s War in Yemen,** Cato Institute, Washington, D.C., 9 AM

**7 Incarceration in the Age of Trump,** The Federalist Society Philadelphia Lawyers Chapter, Huntsman Hall, University of Pennsylvania, Philadelphia, 7 PM

**10 Floored! How a Misguided Federal Reserve Experiment Deepened and Prolonged the Great Recession,** American Enterprise Institute, Washington, D.C., 5 PM

**10 The Moral Case for a Free Economy,** The Heritage Foundation, Washington, D.C., 11 AM

**11 Remembering the Life of Jeff Bell,** American Principles Project Foundation, Mayflower Hotel, Washington, D.C., 6:30 PM

**11 The New Supreme Court and the Future of Judicial Nominations,** The Federalist Society Richmond Lawyers Chapter, McGuireWoods LLP, Richmond, Va., Noon

**14 Cato Institute Surveillance Conference,** Cato Institute, Washington, D.C., 9 AM–5:30 PM

**14 Wendy P. McGraw Reagan Ranch Roundtable Luncheon with David Boaz,** Young America’s Foundation, Reagan Ranch Center, Santa Barbara, Calif., Noon



## JANUARY 2019

**10-13 International School Choice and Reform Conference,** European Association for Education Law and Policy, Pestana Pousada De Lisboa Hotel, Lisbon, Portugal

**14 Governance in an Emerging New World: Africa,** Hoover Institution, Stanford University, 3:30 PM

**15 The Constitution and Economic Freedom,** The Heritage Foundation, Washington, D.C., 11 AM

**17-19 LibertyCon,** Students for Liberty, Marriot Marquis, Washington, D.C.

**24 Second Amendment in the Federal Courts After Trump,** The Federalist Society Brigham Young Student Chapter, Brigham Young University, Provo, Utah, Noon

**25 Economic Equality Is Unjust,** The Heritage Foundation, Washington, D.C., 11 AM

**25-26 Young Americans for Freedom Training Seminar,** Young America's Foundation, Reston, Va.

## FEBRUARY

**4 Freedom and Solidarity: Why You've Gotta Have Both,** The Heritage Foundation, Washington, D.C., 11 AM

**4 Governance in an Emerging New World: Europe,** Hoover Institution, Stanford University, 3:30 PM

**5 Cato Institute Policy Perspectives,** Ritz Carlton Naples Beach, Naples, Fla., 10:30 AM-2 PM

**8-9 Freedom Conference,** Young America's Foundation, Raleigh Marriot City Center, Raleigh, N.C.

**11 Socialism Versus the Family,** The Heritage Foundation, Washington, D.C. 11 AM

**12 What Does the First Amendment Have to Do with 3-D Printed Guns?** The Federalist Society Denver Student Chapter, Sturm College of Law of University of Denver, Denver, Noon

**21 The Bill of Rights Goes High Tech,** The Federalist Society Nebraska Student Chapter, University of Nebraska College of Law, Lincoln, Neb., Noon

**21-24 CEI Summit Savannah,** Competitive Enterprise Institute, Perry Lane Hotel, Savannah, Ga.

**25 Governance in an Emerging New World: Emerging Technology and America's National Security,** Hoover Institution, Stanford University, 3:30 PM

**26 The Injustice of Qualified Immunity for Cops,** The Federalist Society Denver Student Chapter, Sturm College of Law of University of Denver, Denver, Noon

**26 Oslo Freedom Forum in Mexico,** Human Rights Foundation, Mexico City

**2/28-3/1 Asia Liberty Forum,** Atlas Network, Hilton Colombo, Colombo, Sri Lanka

## MARCH

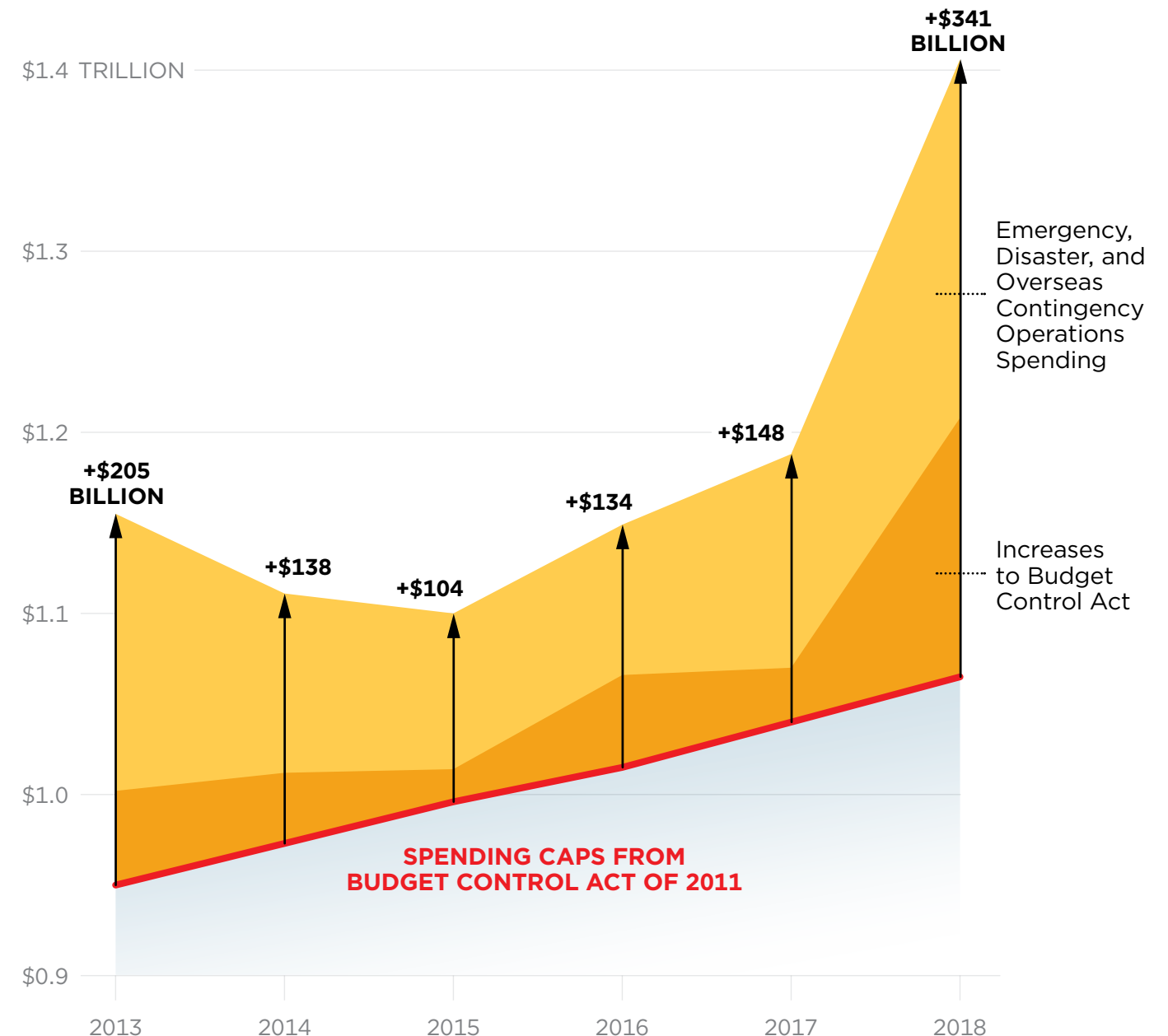
**1 Cato Institute Policy Perspectives,** Intercontinental Barclay Hotel, New York, 10:30 AM-2 PM

**6 Capitalism Without Guilt,** The Federalist Society Arkansas-Fayetteville Student Chapter, University of Arkansas School of Law, Fayetteville, Ark., Noon

**11 Economic Liberty,** The Federalist Society Brigham Young Student Chapter, J. Reuben Clark Law School, Brigham Young University, Provo, Utah, Noon

# Spending Restraint Doesn't Happen Without Political Will

Congress has exceeded the spending caps in the 2011 Budget Control Act by over \$1 trillion in the past five years.



SOURCE: Heritage Foundation calculations based on data from the Office of Management and Budget.



«Primary Addressee»  
«Address Line»  
«City», «State» «Zip»

## Like a Natural Disaster, but Man-Made

Ten years ago, the housing finance crisis turned many neighborhoods into ghost towns. The street below is in Detroit, which was particularly hard hit. In 2015, the Detroit News examined property records and found that 36 percent of all Detroit properties had been through foreclosure between 2005 and 2014; and that 84,000 total properties in Detroit are blighted, 76 percent of which are houses that have been through foreclosure. What have we done to prevent a similar crisis in the future? Turn to page 4 to find out.

CHRIS CLOR BLEND IMAGES/NEWSCOM

