

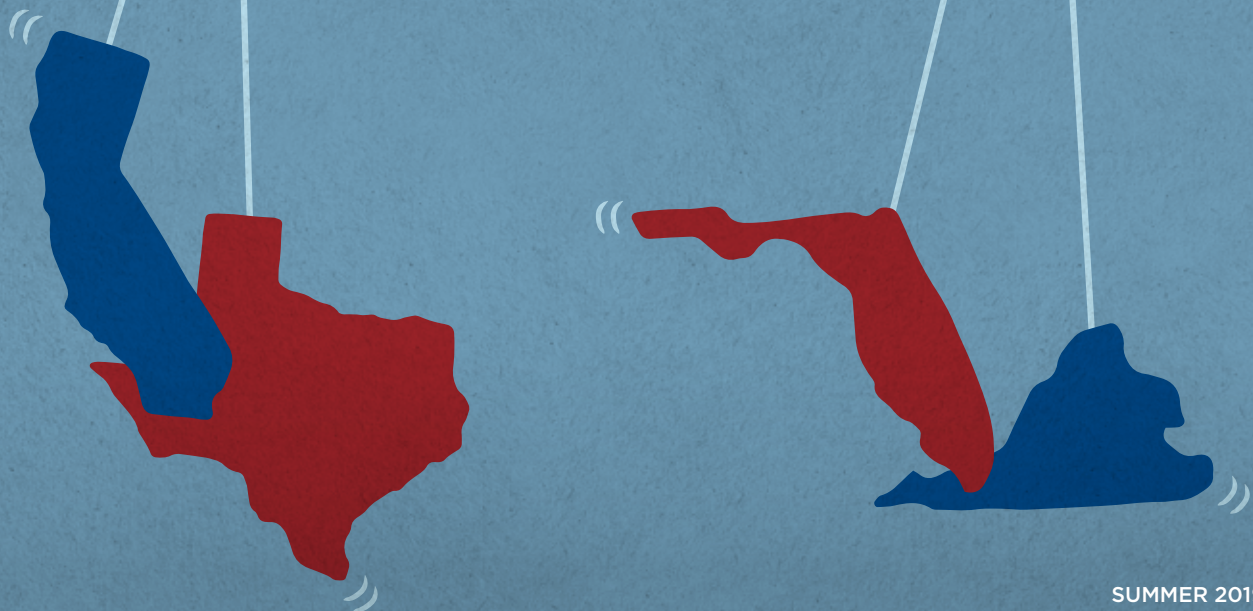
THE **INSIDER**

Reining in Civil Forfeiture

Medicare for All Threatens Health

Disrupting the Colorado "Blueprint"

Fouling Up Federalism



SUMMER 2019

The Federal Government Does Too Much

ONE ADVANTAGE OF OUR FEDERAL system is that it sets up a kind of competition in policymaking. The ability of citizens to vote with their feet keeps states on the lookout for better ways of doing things. States that have problems in common can learn from each other's experiences. Policies that work well in one state can be replicated in others. Most critically, states can discover what doesn't work without having to impose a bad solution on the entire country.

That's how it's supposed to work—in theory. In practice, federal lawmakers think there is nothing states do that shouldn't be shaped by Washington's priorities. We can see that hubris at work in three of our feature articles here, most especially in our cover story by Mike Nichols. He notes that there are now at least 1,386 federal grant-in-aid programs that spend \$728 billion per year. Why, you might ask, must taxpayers send so much money to Washington, merely so that the federal government can send it back to the states?

The answer is control. When the money comes back to the states, it comes with conditions on how the money must be spent. Those strings often compel state and local policymakers to make absurd choices. One case in point: \$60,000 spent on an elevator in a middle school; the elevator is hardly ever used, but the expense satisfied a "maintenance of effort requirement" that guarantees the school district's receipt of federal money in future years.

There is a kind of prisoner's dilemma going on: States may be free to make better choices by refusing the federal money; but the savings that such choices generate would simply end up being redistributed to other states. The only way to fix the problem is for Washington to decide to get out of the business of bribing states with taxpayers' money. Whence will come the leadership for that agenda?

Washington has also interfered with state efforts to put the brakes on an abuse known

as civil asset forfeiture. Civil asset forfeiture allows law enforcement agencies to seize property on the mere suspicion that it has been used in a crime and keep the property unless the owner can prove otherwise. As Darpana Sheth writes, the problem is not only that this shifts the burden of proof from the government to the accused, but that the process itself makes it difficult for property owners to even get a hearing before an impartial judge.

Since 2014, 33 states have passed laws limiting the ability of state and local law enforcement agencies to use civil asset forfeiture. The federal equitable sharing program, however, lets local law enforcement agencies participate in joint operations with federal agencies and keep a share of the proceeds from forfeitures—thus evading state limits. States could pass laws forbidding their law enforcement agencies from participating in the federal program—and seven of them have. Congress, however, could do all citizens a favor by eliminating the equitable sharing program entirely and putting limits on the use of civil asset forfeiture by federal agencies. There are bills before Congress that would do just that.

States are also helping fix the mess Obamacare has made of health insurance. Seven states have used Obamacare waivers to create alternative financing programs that, on average, have reduced health insurance premiums by 7.5 percent from 2018. Non-waiver states saw an average increase of 3.1 percent. Yet some lawmakers still pine for top-down federal control of health care financing. They are pushing a bill that would create a Medicare for All program. As Kevin Pham details, universal health care entitlements have a history of reducing, not expanding, the supply of health care. Even worse, the bill would provide virtually no escape for either patients or doctors to contract outside of Medicare. If you like your health plan, too bad for you. [■](#)



ALEX ADRIANSON edits The Insider. Have a story idea? Want to connect with him? Email insider@heritage.org

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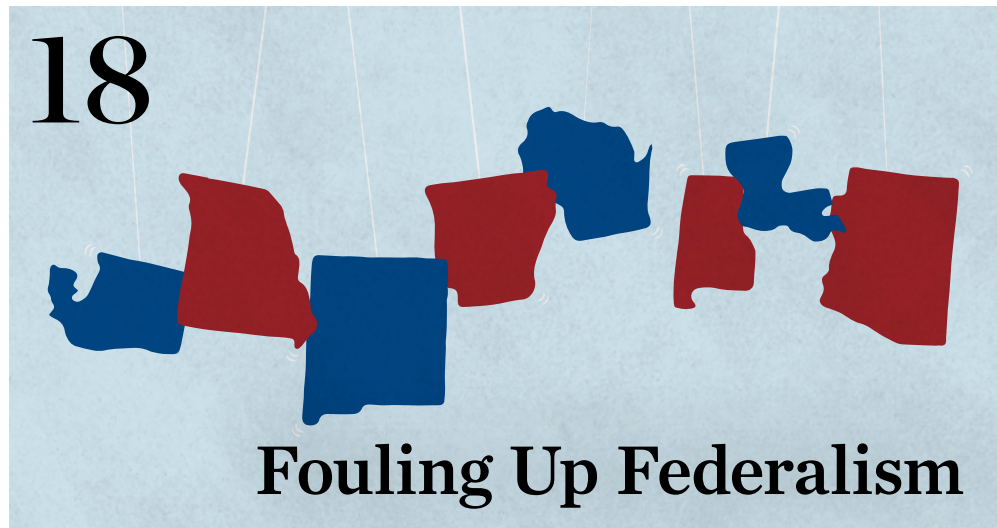
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A Health Plan for President Trump and Congress



Obamacare vs. Health Care, Welfare and Responsibility, Sunsetting Regulations, Capitalism Is Pro-Diversity

Protecting Obamacare is not the same as protecting health care. John Merline writes:

[O]nce Obamacare went into effect and premiums in the individual insurance market spiraled upward—doubling from 2013 to 2017, and up another 27 percent in 2018—the short-term insurance market exploded. It rocketed up by 121 percent in just Obamacare’s first two years.

Rather than recognize this for what it was—a clear sign that Obamacare was failing—the Obama administration tried to kill this market

off by limiting short plans to just three months. The rule mandating this didn’t go into effect until late 2016, and [President] Trump reversed it the first chance he got.

Every study that’s looked into it concluded that Trump’s reversal would expand insurance coverage, with some estimates as high as 4 million. Unfortunately, several Democratic states reimposed the Obama limits. And those in the House want to do so nationwide.

The nonpartisan Congressional Budget Office says that if those House Democrats got

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their way, 1.5 million more people would be forced off plans they like.

No matter. Democrats say this is “junk insurance” that nobody should be buying.

But that, too, is a lie.

A new study from the Manhattan Institute found that short-term plans often provided better coverage at lower cost than comparable Obamacare plans.

In Fulton County, Ga., for example, an Obamacare silver plan will cost a 30-year-old non-smoker \$467 a month, for a plan with \$2,000+ deductible, and an almost \$8,000 out-of-pocket maximum.

A comparable short-term plan—with a slightly higher deductible but a lower out-of-pocket maximum—has premiums of just \$250 a month. That’s 46 percent cheaper.

The study also found that while most if not all Obamacare plans available in any given market are HMO plans—which provide no coverage for providers outside the plans’ narrow networks—many of the short-term plans are PPOs, which typically have much broader provider lists.

The study’s author, Chris Pope, goes on to say that short-term plans “cover a significantly larger share of medical costs than ACA exchange plans for the same premiums.”

What’s “junk” about that?

When *The Washington Post* looked into short-term plans, it came to a similar conclusion, finding them “more consumer-friendly and less like ‘junk’ insurance than Democrats originally charge.”

More importantly, the people buying these short-term plans don’t consider them “junk.” In fact, satisfaction rates are at 91 percent, according to eHealth, which is *significantly higher* than the 70 percent satisfaction rate among Obamacare enrollees (most of whom are getting generous premium

subsidies). [John Merline, “Democrats Are Pro-Choice, Except When It Comes to Health Care,” *Issues & Insights*, May 22]

The welfare state erodes responsibility. Nima Sanandaji writes:

The World Value Survey gives strong support for the claim that norms in the Nordic countries have eroded. In the 1981–84 survey, for example, 82 percent of Swedes agreed with the statement “Claiming government benefits to which you are not entitled is never justifiable.” In the 2010–14 wave, merely 55 percent held the same view. The pattern is found in the other Nordic nations as well. This fall in responsibility seems to be stabilizing lately, following tax cuts and significant reductions in welfare-state generosity.

A number of attitude studies in Sweden conclude that a significant portion of the population has come to consider it acceptable to live on sickness benefits even if you aren’t sick. A survey from 2002, for example, showed that 60 percent of Swedes believed that it was acceptable to claim sick leave when you were not sick. Four years later, a center-right government was elected on the promise to cut the welfare benefits and taxes significantly. In fact, Swedish governments on both the right and the left have reduced the generosity of the welfare system. Additionally, gatekeeping functions

have been introduced, mainly for sick-leave claims, to limit over-utilization and outright cheating. [Nima Sanandaji, “The Swedish Lesson: Welfare States Create Moral Hazard,” *National Review*, May 17]

Idaho puts sunset rules in action.

James Broughel writes:

Something rather remarkable just happened in Idaho. The state legislature opted to—in essence—repeal the entire state regulatory code. The cause may have been dysfunction across legislative chambers, but the result is serendipitous. A new governor is presented with an unprecedented opportunity to repeal an outdated and burdensome regulatory code and replace it with a more streamlined and sensible set of rules. Other states should be paying close attention. The situation came about due to the somewhat unconventional nature of Idaho’s regulatory process. Each year, the state’s entire existing body of regulations expires unless

reauthorized for an additional year by the legislature. In most years, reauthorization happens smoothly, but not this year.

Instead, the legislature wrapped up an acrimonious session in April without passing a rule-reauthorization bill. As a result, come July 1, some 8,200 pages of regulations containing 736 chapters of state rules will expire. Any rules the governor opts to keep will have

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to be implemented as emergency regulations, and the legislature will consider them anew when it returns next January.

Gov. Brad Little, sworn into office in January, already had a nascent red tape cutting effort underway, but the impending regulatory cliff creates some new dynamics. Previously, each rule the governor wanted cut would have had to be justified as a new rulemaking action; now, every regulation that agencies want to keep has to be justified. The burden of proof has switched. [...]

The Idaho case also highlights the power of sunset provisions—or automatic expiration dates built into laws or regulations. In the past, academic research has found that sunset provisions are sometimes ineffective. Legislatures and agencies often readopt regulations without much thought. To work well, sunsets may need to be structured such that large swaths of rules expire simultaneously, with reauthorization responsibilities falling to the legislature rather than regulators. Sunsets are perhaps most useful when rules are allowed to lapse and then forced back through the rulemaking process all over again. That way they can be subjected to public scrutiny, cost-benefit analysis, and perhaps even court challenges. *[James Broughel, “Idaho Repeals Its Regulatory Code,” Mercatus Center, May 9]*

Government-run health care gives you the right to be on a waiting list. Tim Evans writes:

Against the popular view that the [National Health Service] provides free and unlimited health care, history demonstrates that the supply of NHS services has always been limited in significant ways. Experience shows that people have never had an absolute right to free and equal treatment on demand.

What they have had instead is an unlimited right of access to a waiting list from which (with a few exceptions) they will not be excluded. This right of access is not equivalent to a right to treatment, as any notional right to treatment has little value in practice if it is available only at the end of a two-year waiting time. The right to health care is unlimited in the long term but is strictly limited in the short term when health care is actually required, at the very least, to relieve pain or discomfort.

Today, many hundreds of thousands of people are on NHS waiting lists, and countless tens of thousands are trying to get on a list. After decades of reforms and extra tens of billions of pounds invested, out of 4 million patients admitted to NHS hospitals for routine treatment in 2007, more than half still had to wait at home more than 18 weeks before receiving that treatment.

While government ministers frequently shy away from talking about the parlous realities of waiting times, figures indicate that 12 percent—almost half a million people—waited more than a year for their treatment and care during 2006 and 2007. [...]

While the number of people on NHS waiting lists dropped between 2008 and 2011, not least because greater collaboration with private hospitals enabled greater responsiveness, the waiting list for NHS treatment has grown since 2012. In summer 2018, the figure stood at 4.12 million people on waiting lists,

up 3 percent from the year before, and up 59 percent from 2.42 million at the end of March 2010. According to research by the House of Commons Library, “Once estimates for missing data are included the waiting list is currently thought to be at 4.31 million—up 7 percent year-on-year and 42 percent over five years.” *[Tim Evans, “London Calling: Don’t Commit to Nationalized Health Care,” The Heritage Foundation, May 3]*

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Experience shows that people have never had an absolute right to free and equal treatment on demand. What they have had instead is an unlimited right of access to a waiting list.

The Trump trade policy on China hasn’t figured out enforcement.

Derek Scissors writes:

[E]nforcing acceptable Chinese behavior on intellectual property requires far stronger action than the United States has ever taken.

China is highly indebted. It will rapidly age over the next generation. Its natural resources are depleted. Its economy thus increasingly relies on innovation, as the Communist Party recognizes.

The catch is the party requires state-owned (near-) monopolies, in banking, oil, telecom, and many other sectors. Sheltered from competition, state enterprises have little reason to innovate. To spur growth in these areas, China leaves itself no choice but acquire foreign technology, by hook or crook.

America can’t change this with enforcement offices or constant meetings. It requires retaliation against offenders severe enough to put them out of business, in order to deter others. In 27 months, the Trump administration has taken major (public) IP action against



exactly one Chinese firm. We've failed to act on our own, and no deal with Beijing can make that more likely. [Derek Scissors, "A Better Approach to China Trade," *American Enterprise Institute*, April 17]

Bad data are boosting Medicare for All proposal. The United States spends a lot more per person on health care than other economically advanced countries, yet has lower life expectancy and higher infant mortality rates than many of those countries. The problem, says Sen. Bernie Sanders and others, is that we don't have Medicare for All. But, writes Robert Moffit, non-medical factors and bad statistics, are the real sources of these variations in outcomes:

In a 2017 study for the *Journal of the American Medical Association*,

researchers found that 74 percent of American variation in life expectancy—indeed, the largest source of variation—was attributable to behavioral and metabolic risk factors.

The recent annual declines in American life expectancy, based on data from the Centers for Disease Control and Prevention, were largely attributable to increased drug overdoses (opioids) and suicides.

Then, there is the special category of infant mortality. "Our infant mortality rate, kids and babies who are dying, is the highest," says [Rep. Pramilla] Jayapal [D-Wash.].

The truth is more complicated. In their 2018 study, the *JAMA* researchers report that American infant mortality is indeed higher than in 10 other high-income countries. Notably, however, the researchers also found that when adjusting for

low birth weights, the U.S. statistical ranking improves significantly.

They write: "When adjusting neonatal mortality to exclude deaths of infants born weighing less than 1,000g [about 2.2 pounds], the United States ranked fifth relative to the other countries, with 1.61 deaths per 1,000 live births, compared with a mean of 1.70 for all 11 countries."

Comparisons of infant mortality between the United States and other countries are often flawed because definitions of terms and measurements are different.

As Sally Pipes, president of the Pacific Research Institute, notes, "The United States ... counts every live birth in its infant-mortality statistics. But France only includes babies born after 22 weeks of gestation. In Poland, a baby has to weigh more than 1 pound, 2 ounces to count as a live birth.

“The World Health Organization notes that it is common practice in several countries, including Belgium, France, and Spain to ‘register as live births only those infants who survived for a specified period beyond birth.’”

Note also that the United States has high rates of pre-term births. American medical professionals, including those participating in Medicaid, will thus intervene in complex and difficult cases and literally spend hundreds of thousands of dollars to save the life of a premature infant.

Medical professionals in other countries do not necessarily make the same moral and financial commitments. *[Robert Moffit, “Ignore Medicare for All Advocates’ Claims on Life Expectancy in US. Here Are the Facts.” The Daily Signal, April 18]*

The movement that demands diversity thinks everybody should want the same things. Sen. Elizabeth Warren’s call to break up Amazon is a call to reduce consumer choice, writes James Hanley:

Amazon’s true value to consumers is not low cost and free shipping but the great variety of goods it makes available to people, both directly and from third-party sellers. [...]

The need for variety to meet human needs is rediscovered every time there’s value in discovering it. For example, in WWII, the U.S. Army discovered that there were no average pilots when it tried to design a standard cockpit to decrease pilot-error. Not even one of the thousands of pilots they measured was average on the 10 most important measures, so seats and control mechanisms had to be made adjustable to the variation in pilots’ torso, leg, and arm sizes. They learned something unwary clothing shoppers have learned time and again: One size fits all doesn’t.



What this example demonstrates is that the market does not provide splendid variety as a wasteful frivolity. Even in the absence of a profit motive, variety is necessary to accommodate human differences. [...]

Some will argue that there’s a difference between need and want, that shoes and aircraft safety are different than deodorant. Oddly, though, they never push this argument to its logical end and condemn variety in music. But as economist Art Carden recently wrote about the death of Keith Flint, the frontman for the British electronic band The Prodigy, “[e]conomic growth [...] means much more than material production.” How many styles of music do we need? Materially, none. Immaterially, as many as all those stressed out American workers want to help themselves relax after a hard day at work.

Amazon has made its fortune on offering the great variety of

goods that the varying millions of individual purchasers want. Warren’s call for breaking up Amazon, like Sanders’s complaint about deodorants and sneakers, although nominally aimed at the corporation, effectively targets individuals for their decisions to choose goods and services that they decide best meet their personal needs and desires.

[James E. Hanley, “Save Amazon from Elizabeth Warren,” Foundation for Economic Education, April 1]

After you bribe your way into school, then what? Thomas Lindsey writes that the admissions scandal “has depended for its success on the ‘other’ college scandal: rampant grade inflation”:

As one writer wondered, “Wouldn’t admission under false pretenses result in the kids flunking out? Wouldn’t their lack of merit be revealed by the simple pressure of the schooling?”



ACTRESS LORI LOUGHLIN ARRIVES AT the John Joseph Moakley U.S. Courthouse in Boston on April 3, 2019. Loughlin and her husband are among dozens of parents facing charges in a college admissions cheating scandal.

In a better world, the answer to both of these questions would be “Yes.” But we live in the world higher education has created, where the “pressure of schooling” is virtually no pressure at all.

Consider these facts: A 50-plus-year nationwide study of the history of college grading finds that, in the early 1960s, an A grade was awarded in colleges nationwide 15 percent of the time. But today, an A is *the most common grade* given in college; the percentage of A grades has tripled, to 45 percent nationwide. Seventy-five percent of all grades awarded now are either Aes or Bs. The National Association of Colleges and Employers reported in 2013 that “66 percent of employers screen candidates by grade point average (GPA).”

As I recounted here, employers have known about grade inflation for years, which is why their most

common complaint to me is that college transcripts have become less and less meaningful. After all, virtually all new college graduates sport nothing but Aes or Bs on their transcripts. For the same reason, grade inflation also hinders the ability of graduate school admissions boards to differentiate meaningfully among student transcripts.

So, the answer to the question, “How did these unqualified students manage to graduate from these elite institutions?” is straightforward: When an A is the most common grade given in college, how hard is it to graduate? [Tom Lindsay, “*The ‘Other’ College Scandal: Grade Inflation Has Turned Transcripts into Monopoly Money*,” *Forbes*, March 30]

Europe doesn’t have wealth taxes anymore. Such taxes, European policymakers have learned, raise

little money but cost a lot in compliance, writes Chris Edwards:

More than a dozen European countries used to have wealth taxes, but nearly all of these countries repealed them, including Austria, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, the Netherlands, Luxembourg, and Sweden. Wealth taxes survive only in Norway, Spain, and Switzerland.

Before repeal, European wealth taxes—with a variety of rates and bases—tended to raise only about 0.2 percent of gross domestic product in revenue, based on Organization for Economic Cooperation and Development data. That is only 1/40th as much as the U.S. federal income tax raises.

Yet for little revenue, wealth taxes are difficult to administer and enforce. They may require taxpayers to report the values of financial securities, homes, furniture, artwork, jewelry, antiques, vehicles, boats, pension rights, family businesses, farm assets, land, intellectual property, and much else. But owners do not know the market values of many assets, and values change over time, so costly wealth-tax compliance would only make accountants wealthy.

And what about wealth held abroad? There is no way the Internal Revenue Service would be able to track down and value everything U.S. residents owned on a global basis.

In the 1970s, the British Labour government pushed for a national wealth tax and failed. The minister in charge, Denis Healey, said in his memoirs, “We had committed ourselves to a Wealth Tax; but in five years I found it impossible to draft one which would yield enough revenue to be worth the administrative cost and political hassle. [Chris Edwards, “*Why Europe Axed Its Wealth Taxes*,” *Cato Institute*, March 27] ■



How to Reach Millennials, Minorities, and Women with Conservative Ideas

BY DEANA BASS WILLIAMS AND DEE DEE BASS WILBON

If you talk to anyone about shaping the future of this nation, they will tell you that there are certain demographics that must be touched—millennials, women, and minorities. And so I tell people that unless our ideas are reaching those demographics, then we are going to be looking at a shrinking minority view in this country.

—Kay Coles James, President,
The Heritage Foundation

MINORITIES, WOMEN, AND millennials are three communities least likely to identify as conservatives.

The survival of the conservative movement is possible only if we grow our number among these groups. It is not at all rocket science. Yet in the 30 plus years that we have identified as conservatives and in the 20 years that we have worked in the conservative movement, we have seen efforts to expand the base fail miserably. The failure has been so glorious that the only way to fail better would be to fail on purpose.

Conservatives naturally bristle at talk of expanding the base to women, minorities, and millennials. The rejection comes not because of some covert racism or sexism or an unwillingness to be inclusive. Rather, conservatives oppose making appeals based on demographics. Conservatives rightly believe dividing the sexes and races pits communities against one another. Separation by such

distinctions should make all Americans cautious. Over a century ago, the “separate but equal” doctrine in the Supreme Court’s *Plessy v. Ferguson* (1896) decision moved America many steps away from the goal of being one perfect union where all men are created equal. The court’s decision in *Brown v. Board of Education* (1954) began to march us back in the right direction.

But sincere efforts to expand the conservative movement to deliberately include underrepresented groups are not an exercise in identity politics; they are an effort to unite, not divide. At its very core, identity politics builds walls between the races. What we propose is breaking down walls by identifying shared beliefs with new audiences. Failure to do so will render the conservative movement a dinosaur, a footnote in American history.

Many conservatives believe the history of the Republican Party (which has tended to be the home of conservatives) should play a role in building alliances with African Americans and women. Republicans take pride in roots that stretch back to strong and early support of the women’s suffrage movement and the abolitionist movement. How many times have you heard Republicans beam about being the party of Lincoln and the Emancipation Proclamation? It is, in fact, true that Democratic President Lyndon Johnson needed support from across the

aisle to pass the Voting Rights Act of 1965. Republicans like Rep. Charles (Mac) Mathias of Maryland and Sen. Jacob Javits of New York were the champions who carried the bill across the finish line. This rich history is important, but engagement with the issues people care about now is necessary to encourage new audiences to look at our agenda and solutions for America.

Even though growing the base is what everyone wants, it is hard to get conservatives to actually do it right. We have more examples of the wrong way to engage than effective engagement. For example, the wrong way to reach out to African Americans is to visit black churches on the Sunday before the Tuesday of a close election. The wrong way to engage women is to convene a panel of all male legislators to talk about abortion. Simply throwing your content on every social media platform available is the wrong way to engage millennials and Generation Z.

There are no sure-fire recipes for 100 percent success, but sitting on your hands and doing nothing is a guaranteed recipe for failure. Our decades of outreach experience have taught us that three concrete actions give you a chance of reaching new audiences: show up, speak up, and shut up and learn.

Show Up

Show up has long been the outreach mantra. It is a simple enough concept. If we don't show up, we have no chance of reaching new audiences. Some conservatives are eager to show up, but the big question is where? Most people are familiar with the NAACP and the National Urban League. But, there are a number of great community organizations that present avenues for engagement. For example, African American sororities and fraternities are more than mere college cliques.

They represent thousands of pro-business, pro-economic-freedom professionals who continue to stay engaged in the success of their communities.

True engagement is an intentional and sometimes uncomfortable two-way street. We conservatives put efforts into short-term outreach and scratch our heads when the results yield nothing. The reason the results are disappointing is because most efforts are designed for quick victories on Election Day. The efforts being made are not to build relationships with minority communities to understand their concerns.

Success will come only if we are focused on long-term efforts at building trust and earning the right to be heard. We regret to say that there are very few examples of conservatives making an effort and doing it the right way. The longest, most consistent effort to reach minorities with conservative ideas that we have seen is The Gloucester Institute.

It was founded over a decade ago by Kay Coles James (now president of The Heritage Foundation) and her husband Charles James. Its mission is to train and nurture the next generation of minority leaders to be better critical thinkers and well-informed citizens.

The Gloucester Institute shows up and sticks around. We have been blessed to see first hand the real-time investment Gloucester makes in the lives of minority college students who participate in the institute's Emerging Leaders program. Students from diverse political backgrounds are given the opportunity to meet and discuss issues with Cabinet-level officials, national community advocates, and business leaders. No

investment in their professional success is left to chance. From learning appropriate dining etiquette to dressing for the success of the C-Suite, Gloucester makes the investment.

Most critically, the institute does not teach students to be conservatives, but rather trains them to consider all points of view (including the conservative one) about problems such as poverty, disinvestment, community policing, and education.

Speak Up

In 2015 our firm, Bass Public Affairs, was hired by Ben Carson's presidential campaign. That April, Carson was invited to speak at Al Sharpton's National Action Network conference.

Many prominent conservatives criticized Carson for accepting the invitation. They said attending would only legitimize Sharpton. Such thinking will kill any true efforts at reaching new audiences with conservative ideas.

Carson's participation in

the forum did not legitimize Sharpton. Sharpton is made legitimate by the hundreds of thousands of people who watch his MSNBC cable program and listen to his Sirius XM radio show. He is legitimate because of his huge influence in social media. Ignoring him and the audience he attracts doesn't erase him or his ideas from the public square.

Ignoring Sharpton only means ignoring his audience and leaving space for liberals to define conservatives. When Sharpton introduced Carson, he said they may not agree on the day of the week, but he appreciated Carson's willingness to join him on stage. The audience

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Three concrete actions give you a chance of reaching new audiences: show up, speak up, and shut up and learn.

welcomed Carson with polite applause. However, by the end of his remarks, they were applauding enthusiastically and rushing the stage to shake his hand and to snap selfies.

Carson may have won over only 10 people in that audience, but that's how the movement grows—a few people at a time. But even more important, he did not cede ground and leave open an opportunity for the liberal narrative about conservatives to thrive. Ninety-nine percent of the audience was African American. How often do conservatives penetrate the liberal base with a direct message?

Carson's speaking at the NAN conference would have been identity politics if he had sought to engage a black audience with a different message than he used with white audiences. He did not change his message. He also did not believe the hype from the mainstream media or Sharpton himself who paints pictures of conservatives as unfeeling hypocrites whose values are out of touch with regular people.

The national news media does a fine job of painting such a picture of conservatives when it comes to issues like abortion. If we actually believe the major news outlets, women came to near riots because states like Georgia and Alabama have curbed access to abortions. In reality, women are far more outraged and disgusted by late-term abortions and the passage of pro-infanticide legislation like that of New York.

In 2017, as Planned Parenthood marked its 100th anniversary, Bass Public Affairs hosted a series of roundtables with women from all

walks of life who were pro-choice. We were honest and transparent in our invitation, making sure that each woman invited understood that we were pro-life and interested in hearing how they arrived at their pro-choice stance.

Most of the women had never actually talked through why they considered themselves pro-choice. Fewer still had ever heard the explanation of what happens during a late-term abortion.

Yes, it was a bit terrifying, but it was important for us to speak

up on the issue. The roundtables were among the most amazing, deeply moving conversations we have ever had. The conversations were uncomfortable but necessary. In the end, we made an impact in two areas. First, we actually changed minds about abortion. But for those women who remained pro-choice, they no longer painted all conservative pro-lifers with the broad-brush strokes of unfeeling hypocrites.

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Engagement means not only talking about issues that are important to you, but also shutting up to listen to issues of importance to the communities you want to reach.

Shut Up and Learn

Finally, engagement means not only talking about issues that are important to you, but also shutting up to listen to issues of importance to the communities you want to reach. Here again lies the rub. Conservatives have an aversion to the idea that different demographics have concerns that are not shared by the overall community. It seems offensive to say that thoughts, ideas, and policy are not race-, gender-, and age-neutral.

The issue of income inequality consistently ranks as one of the

top three concerns of millennials. Millennials' and Generation Z's concerns for income inequality have created what most conservatives would view as a misguided love affair with socialism. The best way to engage millennials on this issue is to shut up and listen to their concerns. Listening to millennials might surprise you. We have created allies and eliminated adversaries when we are silent long enough to hear and understand their goals. When we listen to millennials, it is clear that they do not despise America or even find fault with authority and order. They simply have a huge heart for the down-and-out. They root with passion for the underdog. Ultimately, they want the same outcome we want: healthy, thriving communities.

We are free market capitalists, and we are always inspired and impressed when millennials in our mentoring group share their heart for low-income, disadvantaged communities. Because we believe in attacking policy not people, we do not call millennials misguided snowflakes when they articulate plans that amount to little more than wealth redistribution. Because we have spent time listening to them and not attacking them, when we lay out basic truths of how socialism and wealth distribution have only worked in Smurf Village, they are far more inclined to listen.

Heritage Foundation founder Ed Feulner often reminds the conservative movement that it is better to add and multiply than to divide and subtract. As we look to the future, the most effective way to multiply is to show up, speak up and by all means, shut up and learn. ■

Mrs. Bass Wilbon and Mrs. Bass Williams are the founders of Bass Public Affairs and GROWTHComms.com, an annual conference for conservative communicators.



A FRACKING RIG OPERATES NEAR Loveland, Colorado.

Fighting for the Soul of Colorado: An Interview with Jon Caldara

JON CALDARA IS THE PRESIDENT of the Independence Institute in Colorado. In last November's elections, Colorado Democrats captured all of the state's constitutional offices and both legislative chambers—the first time that has happened since 1936. Since then, a blitz of leftist lawmaking is turning Colorado into a progressive laboratory. We talk with Caldara about the challenge of running a free-market think tank in a state where progressives hold all the power.

THE INSIDER: You have described the work of the Left since the election as an effort to turn Colorado into Venezuela. What have Colorado lawmakers been up to?

JON CALDARA: They have been fulfilling their mission of turning Colorado into Venezuela. They have put restrictions on oil and gas development that will slowly choke off the industry here in Colorado. They have committed the state to the National Popular Vote plan, under which we pledge our electoral votes to the presidential candidate who receives the most popular votes nationwide. In other words, they have given our electoral votes to the voters in California and New York.

They passed a so-called “red flag” law on guns, but it isn't really a red flag law. It's more of a gun-ban law that takes away a gun owner's presumption of innocence. They've put price caps on pharmaceutical drugs. They've given cities the green light for raising minimum wages.

They've passed a new sex-ed law that mandates students be taught about the transsexual lifestyle. They've created more corporate welfare for feel-good green energy. I grew up in Colorado, and I've never seen such a lurch to the Left in my life.

TI: How do the new the oil and gas restrictions work? How are those going to affect Colorado's economy?

JC: It's important to know the background. In the last election, there was a fracking ban put on the ballot. They called it a set-back; it would have set back how far you could go in developing oil and gas resources. It would have put oil and gas development out of reach of nearly 80 percent of Colorado. The people defeated that by about a 10-point margin.

So instead the legislature passed what they call local control of oil and gas, which means that all the city councils that hate oil and gas will run them out of business. But if a locality supports oil and gas development, then that does not necessarily mean it will be allowed, because now the state has changed the regulatory structure and the oversight committee. Basically, the new law says: If the locals don't shut down your oil and gas development, the state will.

TI: Is that an overreach for legislators then if the people didn't want it?

JC: It is, without a doubt, an overreach. But beyond that, it is hurting the very people about whom progressives claim they care. Much of Colorado's workforce, particularly up north, are working-class families who make a decent living and keep their communities going through oil and gas development. Up in Weld County, where most of the oil in development is located, hundreds of millions of dollars per year go to education thanks to

tax revenues generated by oil and gas extraction. So, it's not just a betrayal of what the people voted on last fall; it is going to hurt working families the most.

TI: Are there going to be electoral consequences of that policy?

JC: Well, we will find out next year in 2020, but I will say that there has already been a consequence. Rochelle Galindo, the representative in House District 50, a large part of Weld County, was on her way to being recalled when she read the tea leaves and resigned. According to the polling we had, the voters were going to remove her from office, and it only makes sense. Like the representative of a ski town voting to make skiing illegal, she voted directly against the interests of her constituents.

TI: State lawmakers are not the only ones pushing new gun control initiatives, right?

JC: I've taken a personal stand on a law that my hometown of Boulder passed. They call it an assault weapon ban. Not only does it outlaw the purchase and ownership of lots of different types of semi-automatic weapons, but it also outlaws any magazine more than 10 rounds. I announced that I would not comply with this law. They had a grandfathering period. If I self-identified as a gun owner, brought myself to the police for an investigation, opened up my guns for inspection, ran through another background check, and paid for it again, and then paid for another fee, they would give me a permission slip to keep what I already own.

I don't see that the tolerant people of Boulder would treat any other group of people this way. My hometown of Boulder is kind of the Berkeley of the Rockies, and they pride themselves on their diversity and their tolerance. But in fact they are the most undiverse



and most intolerant town in all of Colorado. They will bend over backwards to help certain people with lifestyles that they like or people with different religious views or different ethnic groups, but when it comes to people whose lifestyle includes gun ownership, the message is pretty clear: We don't want you ugly people in our lily white town, so we're going to make it illegal for you to live the lifestyle you have, and hopefully you'll just leave.

So, I'm in open defiance of that. Through the Mountain State's Legal Foundation, I've filed a federal complaint about it, which is tied up in the courts right now. But, at any point, my house could be raided, and I could be arrested.

TI: But you're not in jail yet, right?

JC: I'm not in jail yet, but it is a difficult thing, particularly for my family. My daughter, who was a sophomore in high school, got bullied by her fellow students for



JON CALDARA, PRESIDENT OF THE Independence Institute, discusses how tax increases would hurt the Colorado economy.

my actions. She came home crying after they berated her for it. Mind you, this happened in a school that puts up posters urging diversity and tolerance on students.

TI: And those restrictions are a burden above and beyond the state's red flag law, right?

JC: The state passed a red flag law, which in concept is not necessarily a bad idea, but in the details it is a gun grab idea. It creates a process in which gun rights can be denied to those who are deemed a danger to others, but in so doing it rips away the presumption of innocence, and puts the burden of proof on the accused. Former roommates or old girlfriends can make an accusation and have you disarmed, and then you have to fight to get your rights back after you've been disarmed.

TI: You've written that policy changes are only part of the story—that liberals'

attitudes about how political battles are fought have also changed. How so?

JC: I grew up in the '70s, and I remember good liberals. They were very principled people who fought for inclusion of all sorts of people, but they would always say things like: The ends don't justify the means. You're innocent until proven guilty. The process matters. Now the Left is promoting changes in law that rip away process and the rights of dissenters in order to get what they consider the right result. The oil and gas bill is a perfect example. The red flag bill is a perfect example. In the past, ACLU-type liberals would have come out against these things, but not today. It's disturbing to see. At least in Colorado, the progressive movement is hardcore intolerant, and what they want is what they want, and they'll get it any way they can, and getting what they want includes ending gun ownership, ending fossil fuel development, and ending educational choice.

TI: I'm going to be like a sideline reporter asking an athlete to tell us about the game he just lost, but would you care to diagnose what's gone wrong for the liberty-loving movement in Colorado?

JC: It's an easy thing to diagnose. The Left, some 15 years ago, looked at the Independence Institute and realized that if they did the kind of work that we do, but added a couple zeros to the end of the budget, they could build a political infrastructure. So, the difference is quite simply on the donor level. You have people on the Left who are willing to invest a lot more money into politics to get their goals. There is a hardcore group we call the "gang of four" that funded a plan that has been come to be known as The Blueprint, which was originally about getting civil unions and then gay marriage approved.

So you have donors who not only put up the money, but they put the money into political infrastructure before they put it into candidates.

Colorado Republicans (who are the conservatives) have been using the same playbook for the past half a century. They give money to their candidates. That candidate rents an office, he rents a phone system, he rents computers, he rents databases, and he rents people (i.e., workers) for maybe four to six months. Win or lose, at the end of the campaign, all that infrastructure comes crashing down.

The Left instead built an infrastructure that built the databases, that built the think tanks, that built the legal firms, that built the voter registration firms, that built the polling outfits, that built the investigative reporting outlets to push a narrative. They invested in those activities first, and over time

that built up a movement that allowed them to win. To put it another way, conservatives in Colorado traditionally bet on horses. The progressives in Colorado were rich, and they bought the racetrack.

TI: We know that the business community is happy to donate to whoever has power. How has the current dominance of the Left affected your ability to raise funds? Has it changed your strategy?

JC: It's good and bad. There are many Colorado conservatives who have donor fatigue, because they've been using the old playbook of giving their money to candidates. Since we were focused on building long-term political infrastructure, we never really received much of their money to begin with. Those donors are burnt out, and I can't blame them, because their political investments haven't paid off.

However, there seems to be a growing realization that our work here at the Independence Institute to build what we call a permanent freedom infrastructure is the right strategy. That work includes coalition building, journalism—including investigative reporting—legal work, market research, and talent-building. All these things are necessary, but so many on our team want to just skip over them. There is a growing realization that these activities need to be funded if we're going to ever win back our state.

So, I'm very optimistic that people are waking up to this fact. They don't want to see Colorado turn into California. They are aware that our demographics are changing, that people are rushing to Colorado from the failed big government states of California, and Illinois, and New York. That's changing the political system here. It's not too late, but we must get moving on it right away.

TI: Many of our readers run state-based policy organizations. For those who are thinking about broadening their work from policy to these other areas, what's the first step?

JC: The very first step is an admission. I think it's almost like an alcoholic admitting he has a problem. For too long, liberty-minded policy organizations have been willing to be right at the expense of winning, but they're not mutually exclusive.

The first part of any political movement is to have the right policies and the right intellectual ammunition, and that's what our policy groups do so very well. But then you have to figure out how to engage so that your ideas become politically relevant, so that they are actually part of the political fight.

We have four steps. The first step is doing the intellectual work—that is, policy think tank work. The next part is the distribution work, which requires realizing that people don't come to you. You have to sell it to them. We do that through our news aggregator Complete Colorado. We do that through our television program on Colorado Public Television. I write a column in the *Denver Post*. We do talk radio programs. We have podcasts. We're a media force, and we have five ways to distribute our work.

The next part is the coalition building, because winning politically is a game of addition. Or, as we say, freedom is a team sport. So we work quite a bit on coalition building, trying to get our dysfunctional center-right team to communicate better with one another, to work together for common causes, and to try to do it smartly so that we

can have victories, even if they are incremental victories.

And then the last step of the process is actually going into political battle. That means lobbying on legislation, putting measures on the ballot, submitting public-interest comments, and working with 501c(4)s and other organizations to get the punch going. We even get involved in recall campaigns.

We *think* about freedom. That's the think tank stuff. We *talk* about freedom. That's the distribution of our ideas. Then we work to build a team, the coalition. So we try to *act*

about freedom. And then finally we try to make change, which is when we *create* freedom. That is our four-step process.

TI: Is it fair to say that right now you're focusing on steps one, two and three, because step four requires more people who agree with you holding power?

JC: No. You would be wrong.

For instance, our investigative reporting played a key role in getting the recall of Rochelle Galinda started. Our reporting built the narrative that put the pressure on her to resign. We put things on the ballot that we think will bring voters to the polls. A few years ago we put a measure on the ballot to open up negotiations between unions and school districts to the public, so that taxpayers, students, and teachers could see what was happening. We lobby down at the capital on bills. So we are very involved in all four of those categories.

TI: Your outreach work takes a variety of forms. You've launched

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Conservatives
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traditionally bet
on horses. The
progressives
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were rich, and
they bought the
racetrack.”

a fundraising platform for liberty-promoting projects, and you are training teachers how to use guns to defend their schools. How are those efforts going?

JC: Both of those projects help us build a coalition for liberty. The idea with FreedomFy is to have a GoFundMe or Act Blue for conservatives and libertarians, a place where people can put up their projects, get funding, and meet other people who are like-minded.

A case-in-point of how this works: Rob Natelson did a tremendous amount of research and writing on the National Popular Vote Compact, which now Colorado has sadly joined. Because of that work, activists had the ammunition to try to refer the measure to the people—that is, to overturn what the legislature did. We’re the only state whose legislature approved the compact without even a single token Republican vote. The group who organized the opposition is a citizen group. They needed money to print their petitions. They went to FreedomFy. They wanted to get \$15,000 to help offset printing costs. They were able to raise \$22,000. More importantly, they raised it from about 400 people. Those 400 people then have a connection and can be asked to carry those petitions. So they’ve got 400 potential foot soldiers in their battle, and that’s the addition part.

We keep hearing that platforms like GoFundMe, and YouTube, and Facebook are squelching free

speech and pulling the rug out from conservatives and libertarians. The idea of FreedomFy is to have a safe space where the center-right can come together for common interests.

The other thing you mentioned is our FASTER training. It stands for Faculty and Staff Training in Emergency Response. While many people talk about school shootings, we’re one of the few groups that is actually doing something about

the danger. We train school administrators and teachers how to defend their schools with firearms, and how to provide tactical emergency triage after a shooting. There are 178 school districts in Colorado. Over 30 of them now allow trained teachers to carry a concealed weapon. There are now many schools in Colorado where a would-be shooter knows he will face armed resistance from adults who have been trained to protect our children.

My daughter, for instance, goes to a school that does not allow armed teachers.

There’s a proud sign

posted outside that says nobody here really has a gun, so it will take a long time to stop you. We want to send the opposite message.

Also, it breaks the false narrative that educators, and particularly women, don’t support guns. It reminds me quite a bit of the air marshal program created after 9/11. About 10 percent of all federal pilots carry a concealed weapon, and they’ve been trained by the air marshals on how to respond if somebody tries to take over their

plane. We haven’t seen a hijacking since 9/11. I wish we could say the same thing about school shootings.

TL: Why should we pay attention to what’s going on in Colorado?

JC: I grew up in Colorado. Colorado was always the place where people came to unleash their talents, to write their own biographies, to take risk, and to be free to make their own decisions. That’s always been the Colorado culture. That culture of longing to be free to make your own decisions is being replaced with a California culture, where we demand to make decisions for other people. That battle is now playing out in Colorado, and our goal is to celebrate and return to the true Colorado culture.

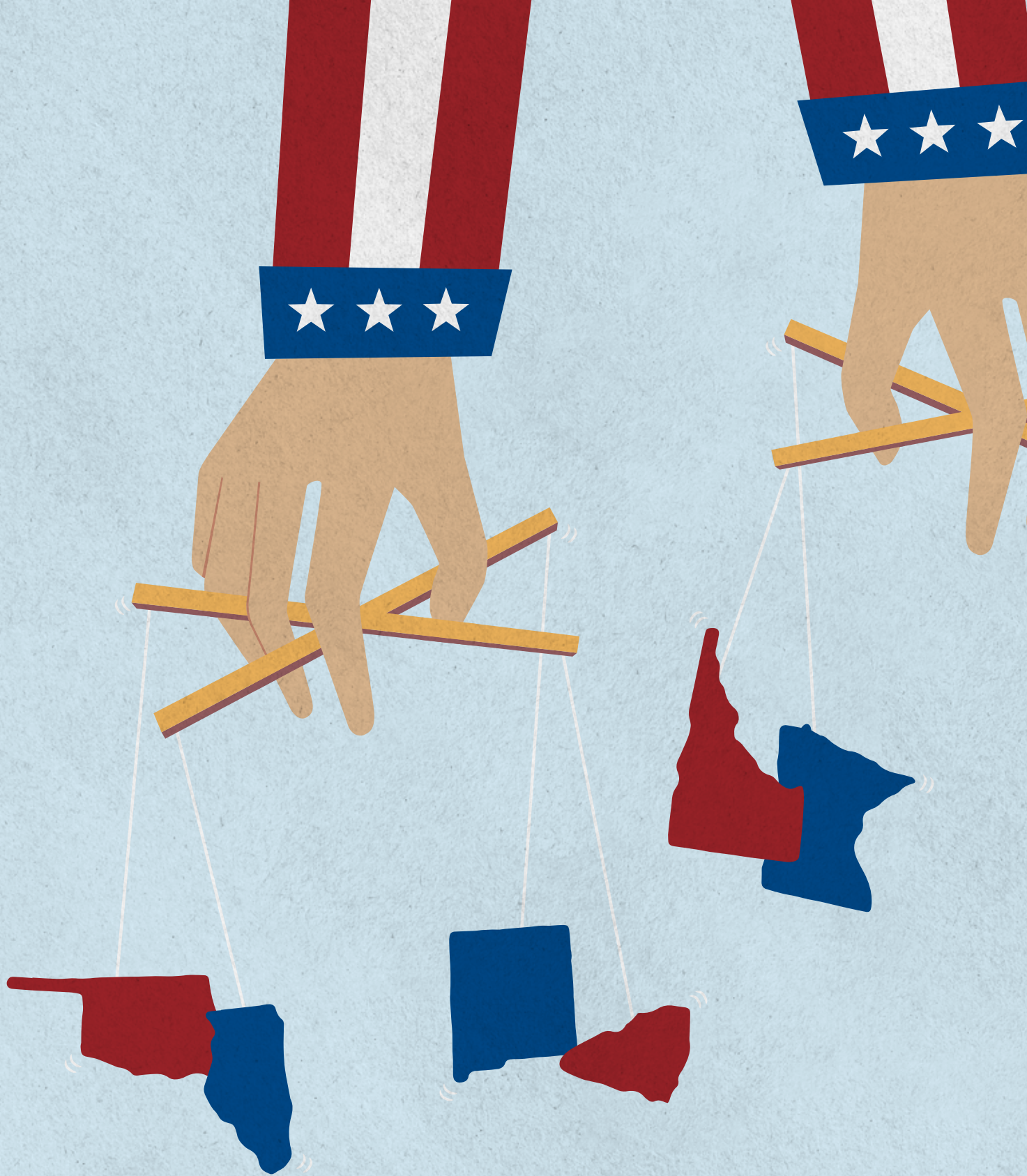
There was a reason why Ayn Rand put her mythical Galt’s Gulch in Colorado. This was a place that drew people who loved liberty like a magnet. Now it draws people who like the comparatively lower house prices, and the skiing, and the ability to coerce other people.

We are in a battle for Colorado’s soul, and if we fail, it’s not just Colorado that’s at risk. The same plan, The Blueprint, is being deployed in other states, including in Texas. People say it can’t happen in Texas. Well, people used to say it couldn’t happen in Colorado. If Texas goes, game over, the nation goes. That’s why our job is to build and create the antidote to this blueprint, and bring Colorado back, so that we can inoculate other states from this terrible experiment.

That’s why Colorado has outsized importance. If you care about preserving a free country, then you should have your eye on Colorado—and hopefully your resources helping out in Colorado. We must find the antidote, and we will, if we can get the resources to do it. ■

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Fouling Up Federalism

How Federal Grant-in-Aid Programs Drive Irrational Policymaking and Undermine Democratic Accountability

BY MIKE NICHOLS

AS PART OF THE SUCCESSFUL EFFORT to lure the Democratic National Convention to Milwaukee in the summer of 2020, city leaders have promised free, unlimited rides to convention-goers on their shiny, new, mostly federally funded, \$128 million streetcar.

This is entirely fitting.

The streetcar, a classic example of political “grant-standing” that has all the makings of a colossal boondoggle, has never been subject to normal economics. It would never have been built if riders or local taxpayers actually had to pay the cost of the thing. And it’s altogether unclear whether anyone will really use it if and when the city starts to charge fares regularly.

The only reason the streetcar exists at all is that 28 years ago, the federal government for some reason gave the Milwaukee area close to \$300 million for a bus-only highway between Milwaukee and Waukesha County to the west. Turned out that the governor at the time, Tommy Thompson, wasn’t really up for a bus-only highway, so other Wisconsin politicians spent the next 25 years (yes, 25 years) trying to find a way to avoid losing all that free, federal cash.

One of those ways was the streetcar, now officially known as The Hop.

The federal government, in the end, financed \$69 million of the \$128 million Hop; the rest of the initial funding came from local tax incremental financing districts (a different tale of abuse for a different day).

The Hop has been running since last fall on only about two miles of track in a small portion of downtown Milwaukee. Predictably, it is already plagued by what appears to be low ridership (the city says the system that counts the number of riders is busted, but it’s hard not to notice completely empty cars), tracks that dead-end in the middle of streets and may never lead anywhere, and widespread disinterest among almost anyone who has someplace else to sleep.

Never mind the fact that Milwaukee tore out its original streetcars in the middle of the last century because even then—way back before Uber or electric scooters or the prospect of driverless vehicles—they were already a nostalgic thing of the past.

Unfortunately, the waste and lack of common sense on display along the new tracks today isn’t just a problem for Milwaukee.

Those grants awarded way back in 1991 are known as federal grants-in-aid, and they are even more ubiquitous today.

Grants-in-Aid

There are many types of direct, domestic federal spending, including contracts, direct entitlements, and a wide variety of grants. Researchers and writers in the Badger Institute's Project for 21st Century Federalism spent the better part of three years investigating just one: grants-in-aid—funds that flow directly from federal coffers to state and local governments.

Grants-in-aid were relatively rare until the 1960s when President Lyndon Johnson made them a focal point of his War on Poverty. Today, they are so prevalent that the government essentially has stopped counting how many such grant programs even exist, but Chris Edwards of the Cato Institute recently put the number of such programs at 1,386.

The total outlay rose from \$7 billion in 1960 to an estimated \$728 billion in 2018. The system has grown so quickly that most states today get about one-third of their revenues from the federal government.

We looked at Wisconsin as a microcosm of what's happening all across America. In Wisconsin alone, if you include the University of Wisconsin System, more than 10,000 full-time-equivalent "state employees" are actually paid with federal dollars. Multiply that by 50 and you see the extent of the problem.

Some departments of state government, as a result, have become little more than offshoots of Washington, D.C.:

- Fully 73 percent of the Wisconsin Department of Workforce Development's 1,603 workers are paid with federal funds.
- At the Department of Children and Families, 48 percent are paid with federal funds.
- At the Department of Transportation, it's 25 percent.

Through grants-in-aid, the federal government inserts itself into everything from environmental issues to research on aging. Wetland management, hunter safety, water quality, nutrition and health issues, crime victim assistance, land acquisition, and gang resistance are just a few of the policy areas that are subject to federal control through grant-in-aid programs.

Almost nowhere is the intrusion as pronounced, however, as in the education realm. Nearly half (49 percent) of employees in the Wisconsin Department of Public Instruction (DPI), 313 workers, are federally paid and essentially work for the federal government.

Over the past two decades, federal aid to DPI has grown twice as fast as the agency's budget—and much of that federal money is spent on administration and bureaucracy rather than bettering the lives and minds of Wisconsin's children.

Almost half of those 313 workers, in fact, appear to be performing purely administrative duties rather than anything directly affecting what happens in the state's classrooms. That includes accountants, grant specialists, administrators, attorneys, and human resources personnel.

In addition to the federal bureaucracy, in other words, two often duplicative bureaucracies have been constructed at the local and state level.

Wisconsinites paid over \$53 billion in taxes to the federal government in 2017 alone, according to the Internal Revenue Service Data Book. Some of that money stays in Washington, D.C., or is spent outside the country. But these other bureaucracies have been constructed to make sure that much of that money returns to where it came from in the first place.

"The paperwork—it needs to be checked 52 ways to Sunday. I can't even imagine how many personnel they have whose sole job is just checking boxes," said Ted Neitzke, a former school superintendent referring to the bureaucracy in the state Department of Public Instruction.

An Even Bigger Problem

Overspending and bureaucratic bloat are enormous concerns. The Congressional Budget Office now projects that federal debt held by the public will reach 96 percent of gross domestic product (or \$29 trillion) by 2028—the largest percentage since 1946.

But the grants also incentivize poor policy decisions, decrease local accountability and innovation, transfer authority to unelected bureaucrats, and generally foster a culture of unrealistic and illogical expectations. Everything is expected to be free—and not just streetcar rides for the DNC.

The Badger Institute's recent book, *Federal Grant\$tanding*, demonstrates how Americans are bridleing at the intrusiveness of the federal government in their lives and simultaneously shaking their heads at the absurdity.

There is, admittedly, plenty to laugh about.

In 2011, for instance, Oostburg School District officials in Sheboygan County spent nearly \$60,000 to build an elevator in its middle school.

The school had no students or staff using wheelchairs, and there is handicapped access elsewhere in the building—so nobody really needs or uses the elevator except occasionally when a grandparent enters the school through a nearby entrance after hours to watch a basketball or volleyball game.

Local school officials built it to satisfy federal "maintenance of effort" requirements that demand they spend at least the same amount of local tax dollars year after year or face a loss of federal funding. In other words, even if school districts find ways to save money, they still are compelled to spend it.

"We would not have put (the elevator) in without the required use of the money, as it is only used for after-school activities, and the cost would not have allowed us to do it oth-

erwise,” district business manager Kristin DeBruine said. “That simply just doesn’t make sense at all.”

In Waupaca County, meanwhile, federal rules prohibit special education students from riding on buses with non-special education students, requiring districts to operate duplicative bus routes, said Drew Niehans, business manager of the Weyauwega-Fremont School District.

“This not only limits our routes but will also not always be in the best interest of the (special education) students as it will isolate them,” he said.

Niehans was one of hundreds of school officials—teachers, administrators, and school board members—who responded to a series of Badger Institute surveys in 2017 and 2018 asking them about how federal involvement in their schools affects them and their students.

The predominant opinion: Giving more flexibility to local educators and parents would help schools operate more efficiently and effectively—and it would be better for the students.

Why It Continues

Sometimes, local leaders take the federal money to protect legitimate programs. Sometimes, politicians take the money for purely political reasons. There is still some political currency, particularly among redistributionists, in showing that you can bring back as much federal loot as possible. Politicians love these grants. Those in the nation’s capital get to claim they are helping constituents (i.e., voters) back home; and politicians back home get to brag about securing federal money to build the latest road or streetcar.

To the extent the loot flows to special interests back home, maybe it is a winning voter-turnout strategy. But we have our doubts. Americans, exposed time and again to such absurdities, have lost faith in the people who govern them.

Asked how much trust and confidence they have in the executive and legislative branches, almost 60 percent of respondents to a 2018 Gallup poll said that they have either “not very much” or “none at all.”

There is a troubling disconnect between the people and the leaders, a sure sign of an unhealthy republic.

Sadly, this distrust of the federal government now has infected America’s views of state and local governments as well. Only 20 percent of Americans currently have a great deal of trust and confidence in their state government, and the percentage who have a great deal of trust and confidence in their local government is only slightly higher at 23 percent.

Americans are starting to see local and state government the same way that they see the federal leviathan—and no wonder; they are often one and the same.

Our fundamental finding is simple: There is tremendous disquietude and repugnance, to borrow terms used in the *Federalist Papers*, among the people. And one of the primary reasons is the flow of federal money that for so long has increased politicians’ popularity is also undermining their credibility and ultimately the great experiment that is America.

At the same time, that money is in essence buying a very tenuous and brittle obedience that can last only as long as the grants do and is, in the meantime, costing the states and their residents dearly.

State governments today are too often no longer these “visible guardians of life and property” written of in the *Federalist Papers*. Nor are their activities regularly and plainly before the public eye. They are more distant, more detached, more like the federal government because in so many ways that is exactly what they are.

States have become beggars and sycophants and have abdicated their own responsibilities.

It is clear that the eventual costs of continuing apace, the incessant growth of federal debt, the loss of time and money and American ingenuity, the cost in dollars at the state and local level, the greatly diminished trust and confidence, the loss of liberty—which is really just the ability to live a purposeful life in what-

ever way one chooses without government interference—is threatening the dual system of governance that the Founding Fathers envisioned.

The system has to be disentangled. But how exactly?

Increase transparency. Demand metrics. Try to limit the amount of money the federal government has to offer, and illustrate how accepting that money is self-defeating to the states and the people who live in them. Most importantly, devolve power and responsibility back to the states. Reassert the basic principles of federalism that the Founders so brilliantly conceived.

After all, merely making local taxpayers pay for the things that their local political leaders propose surely would result in better decisions—or, at the very least, limit the number of “free” rides on the \$128 million Hop. ■

*Mr. Nichols is president of the Badger Institute. The institute’s book *Federal Grant\$anding* is available at badgerinstitute.org.*

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State governments today are more distant, more detached, more like the federal government because in so many ways that is exactly what they are. States have become beggars and sycophants and have abdicated their own responsibilities.

The Police Can Take Your Stuff: The Civil Forfeiture Reforms We Still Need

BY DARPANA SHETH

GERARDO SERRANO WAS DRIVING TO Mexico to visit family when he was stopped at the border crossing in Eagle Pass, Texas. Serrano, a U.S. citizen and legal gun owner, had forgotten that he left five low-caliber bullets in the center console of his truck. U.S. Customs and Border Protection agents used his unintentional slip-up as an opportunity to seize and hold Serrano's truck on the grounds that he was knowingly transporting "munitions of war."

Serrano was never charged with any crime. After detaining him for four hours, CBP agents told him he was free to go. But they were using civil forfeiture to keep his truck. Serrano was required to post a bond of 10 percent of the value of the truck—around \$3,800—just to contest the seizure and get his case before a judge. But for over two years, the agency held Gerardo's truck without ever filing a forfeiture complaint and taking the matter to a judge.

During those two years, Gerardo spent thousands of dollars on rental cars and payments to insure and register the truck, which he could not drive. No court ever approved the seizure of Gerardo's truck, and Gerardo never had an opportunity to argue to a judge that he should get the truck back.

What Is Civil Forfeiture?

Welcome to the upside-down world of civil forfeiture, where law enforcement agencies can seize your property without ever charging you with a crime and keep it or its proceeds to pad its budget. Unfortunately, Gerardo's story is not unique. Tens of thousands of Americans have been stripped of their property and then have faced the necessity and expense of navigating a procedural maze to get it back. Between 2001 and 2018, the Departments of Justice and the Treasury kept more than \$42 billion through forfeiture. In just one year, 2016 (the most recent year for which detailed data are publicly available), the Justice Department obtained 13,339 assets valued at more than \$1.8 billion through forfeiture.

Civil forfeiture gives law enforcement financial incentives to seize property, and does so without adequate safeguards of property owners' rights. For example, at the federal level, most forfeitures are accomplished administratively, without any judicial oversight. Once property is seized, the burden is on the property owner to file a claim to contest the seizure. If the owner fails to do so, or files a claim that is deemed late or

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insufficient by the seizing agency, the property is automatically forfeited. Additionally, under federal and most state laws, once the government proves that the property is more than likely connected to a crime, the burden is on property owners to prove they are innocent; that is, they must prove that they did not know about the illegal use of their property. This completely reverses the presumption of innocence, a hallmark of the American justice system that the Supreme Court has repeatedly clarified applies to civil as well as criminal cases.

Defenders claim that civil forfeiture is a valuable crime-fighting tool. But a recent study published by the Institute for Justice concludes that the nation's largest forfeiture program does not help police fight crime. Specifically, the study finds:

- More forfeiture proceeds do not translate into more crimes solved, despite claims that forfeiture gives law enforcement more resources to fight crime.
 - More forfeiture proceeds do not mean less drug use, even though forfeiture is claimed to rid the streets of drugs by crippling drug dealers and cartels financially.
- When local economics suffer, forfeiture activity increases, suggesting police make greater use of forfeiture when local budgets are tight. A 1 percentage point increase in local unemployment—a standard proxy for fiscal stress—is associated with a statistically significant 9 percentage point increase in seizures of property for forfeiture.

“These results add to a growing body of evidence suggesting that forfeiture’s value in fighting crime is exaggerated and that police do use forfeiture to raise revenue,” said Brian Kelly, an associate professor of economics at Seattle University and the author of the study.

Reform So Far

It is no surprise that reforming civil forfeiture is an issue that crosses party lines. Forfeiture reform is part of both the national Republican and Democratic party platforms. Since 2014, when the Institute for Justice launched its national initiative to end forfeiture abuse, over 350 editorials from outlets, including *The Wall Street Journal* and *The Washington Post*, have called for civil forfeiture reform. And polls have repeatedly shown that the overwhelming majority of Americans oppose civil forfeiture. The latest poll in October 2018 found that 63 percent of Americans oppose letting law enforcement keep the proceeds from forfeited property and 69 percent oppose a federal program called Equitable Sharing, which lets local and state agencies work with federal officials to seize property for forfeiture in exchange for up to 80 percent of forfeiture proceeds. This program allows local law enforcement agencies to bypass state laws that limit the use of civil forfeiture or the forfeited assets that agencies can keep.

Legislators have responded to this clarion call for reform: Since 2014, 33 states and the District of Columbia have reformed their forfeiture laws. Fifteen states now require a criminal conviction (though not necessarily of the property owner) to forfeit most or all types of property using civil forfeiture. The gold standard for reform is New Mexico, which like North Carolina and Nebraska, has abolished civil forfeiture outright. Without a single vote in opposition, Republican Gov. Susana Martinez, (a former prosecutor) signed this landmark reform in 2015. Now, law enforcement in New Mexico can forfeit property only after convicting the owner of a crime. Vitally, all forfeiture money must be deposited in the general fund, removing the financial incentive to seize property and preventing forfeiture from becoming a law-enforcement slush fund.

While other states have not abolished civil forfeiture, they have enacted significant reforms to the civil proceedings. Sixteen states and the District of Columbia now require the government to prove that a property owner knew about illegal use of his property in order to obtain a forfeiture order, thereby restoring the presumption of innocence. Twenty-two



states and the District of Columbia have mandated new reporting requirements for seizure and forfeiture activity. And seven states (including Nebraska and New Mexico) and the District of Columbia have passed legislation preventing state and local law enforcement from participating in the federal Equitable Sharing program as a way of bypassing state limits on the use of civil forfeiture.

At the federal level, Congress recently passed legislation that stops the Internal Revenue Service from using civil forfeiture to raid the bank accounts of small-business owners. The Clyde-Hirsch-Sowers RESPECT (Restraining Excessive Seizure of Property through the Exploitation of Civil Asset Forfeiture Tools) Act, passed as part of broader IRS reforms, is named after Institute for Justice clients who had their entire bank accounts seized solely because they frequently deposited or withdrew cash in amounts under \$10,000. Although they were never charged with any crime and the funds were legally earned, the IRS claimed they had “structured” their financial transactions to avoid the reporting requirement for financial transactions of \$10,000 or more. Through laws prohibiting “structuring,” the IRS confiscated more than \$242 million in more than 2,500 cases from 2005 to 2012. After high-profile media coverage, including a front-page feature in *The New York Times* and an editorial in *The Wall Street Journal*, the IRS changed its policy to limit forfeiture for currency “structuring” only to cases when the funds in question are derived from an illegal source or used to conceal illegal activity. The RESPECT Act codifies this policy change so that it cannot be reversed with a stroke of the pen by a future administration. However, it does not address similar “structuring” forfeitures by the Justice Department or any other type of forfeitures.

Reforms Currently in Congress

Broader reform bills have been introduced in the House of Representatives with bipartisan support. Both the Fifth

Amendment Integrity Restoration (“FAIR”) Act, H.R. 1895, and the Deterring Undue Enforcement by Protecting Rights Of Citizens from Equitable Sharing and Seizures (“DUE PROCESS”) Act, H.R. 2835, would substantially overhaul federal forfeiture practices, which were last amended almost two decades ago with the Civil Asset Forfeiture Reform Act of 2000.

True to its name, the DUE PROCESS Act, introduced on May 17, 2019, by Rep. James Sensenbrenner, R-Wis., with bipartisan support, provides necessary safeguards for owners fighting to regain property seized by the police.

First, it restores the presumption of innocence by properly placing the burden of proof on the government to show that the property owner knew about illegal use of his property.

Second, it raises the standard of proof in civil-forfeiture proceedings to “clear and convincing evidence.” Under current law, the government needs to meet only a preponderance of evidence standard—i.e., show that property is more likely than not connected to a crime.

Third, for those who cannot afford counsel, the DUE PROCESS Act guarantees legal representation in administrative and judicial forfeiture proceedings.

Fourth, it extends the RESPECT Act’s limits on currency seizures for “structuring” to the Justice Department.

Fifth, it allows defendants an opportunity to contest the pretrial restraint of property needed to pay for counsel, overturning the U.S. Supreme Court’s distressing decision in *Kaley v. United States*. As Chief Justice John Roberts noted in his dissent, this decision “allow[s] the government to initiate a prosecution and then, at its option, disarm its presumptively innocent opponent by depriving him of his counsel of choice—without even an opportunity to be heard.”

Finally, the DUE PROCESS Act increases oversight and transparency of federal forfeiture programs by requiring an annual audit of federal civil forfeitures and by creating



FROM LEFT: FIVE FORGOTTEN LOW-CALIBER bullets were all it took for Gerardo Serrano to lose his truck. The U.S. Customs and Border Protection Agency found the bullets in the center console of Serrano's truck and claimed he was trying to smuggle arms into Mexico.

IN MARCH OF 2017, PHIL Parhamovich was pulled over by the Wyoming Highway Patrol. Officers pressured him to sign a waiver, wrote him a ticket for not wearing a seatbelt, and then took \$91,800 in cash they had found in the car. A Wyoming state judge eventually ordered the money returned to Parhamovich in December 2017.

RUSTEM KAZAZI WAS PLANNING TO use \$58,100, packed in a carry-on suitcase, to fix up a house and purchase a property in Albania. But, without charging him with any crime, the Customs and Border Protection Agency seized his money at Cleveland Hopkins International Airport. Six months later, with the help of the Institute for Justice, a federal judge ordered CBP to return the money.

NURSE ANTHONIA NWAORIE WAS PLANNING to start a medical clinic in Nigeria when the Customs and Border Protection Agency seized \$41,377 of her money at Houston International Airport. Unknowingly, she was in violation of a federal law requiring travelers to file a report when they leave the country with more than \$10,000 in cash. Eventually, the CBP offered to give the money back if Nwaorie signed a Hold Harmless Agreement. Nwaorie is now the class representative in a class action lawsuit seeking to stop the CBP's practice of asking property owners to waive their rights in order to get their property returned.

two publicly available databases on the use of civil forfeiture. As far as the bill goes, however, it does not address the core financial incentives fueling abuse.

The FAIR Act, introduced on March 27, 2019, by Rep. Tim Walberg, R-Mich., and Rep. Jamie Raskin, D-Md., and four other co-sponsors of both parties, provides for comprehensive reform. In addition to the first four procedural protections provided by the DUE PROCESS Act, the FAIR Act removes the financial incentive of law-enforcement agencies to seize and forfeit property in two ways. First, it redirects all forfeiture proceeds from the Department of Justice's Assets Forfeiture Fund to the General Fund of the U.S. Treasury, restoring Congress's constitutional authority to appropriate funds.

Second, the FAIR Act abolishes the Equitable Sharing Program and thereby prevents state and local law enforcement from evading their own stricter state laws by partnering with federal authorities. Congress should not undermine states that are seeking to protect their citizens' constitutional rights and govern their own law-enforcement practices. The FAIR Act is key to respecting principles of federalism.

Administrative Forfeitures Still Unaddressed

While both federal bills go a long way toward addressing the deficiencies of federal forfeiture law, neither addresses administrative forfeitures, which constitute most federal forfeitures. There is a widespread misconception that forfeitures are overseen by a judge. But most forfeitures at the federal level are done by the seizing agency itself, without any judicial involvement. This means that the seizing agency acts as investigator, prosecutor, and jury while the property owners never see a judge or have their day in court. Without judicial review, the sole determination of whether forfeiture is warranted is made by the seizing agency, which stands to gain financially from the proceeds. Indeed, 88 percent of

all civil forfeitures pursued by the Justice Department are processed administratively, rather than judicially.

In many of these cases, the value of the property seized is worth less than the cost of hiring an attorney. So even those who can afford counsel make the rational economic decision not to contest the forfeiture when doing so would cost more than their property. Additionally, as noted above, the decision as to whether a claim is timely or sufficient is made, not by a judicial officer, but by officials within the seizing agency. In any other kind of federal civil-enforcement action, the government is required to file a complaint before an enforcement action occurs. There is no legitimate reason for reversing this procedure in forfeiture cases by requiring the property owner to file a claim in order to trigger the government's duty to file a complaint.

Administrative forfeitures should be abolished to ensure that property owners have the full legal protections available in the judicial system. Ultimately, however, the best reform remains to abolish civil forfeiture altogether and replace it with criminal forfeiture.

In a just system, forfeiture acts as a form of punishment for those who have been found guilty of wrongdoing. If an individual has not been found guilty, then no punishment is appropriate. No one in America should lose their property without being convicted of a crime.

As for Gerardo, he ultimately got his truck back but only after he filed a federal class-action lawsuit challenging the constitutionality of CBP's practices. In addition to seeking damages, the class action seeks a court order requiring CBP to provide prompt hearings to all owners of vehicles it seizes. The lawsuit is currently before the U.S. Court of Appeals for the Fifth Circuit, which will hear argument next term. [■](#)

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More Medicare, Less Health Care: How Medicare for All Threatens Patient Health

BY KEVIN LEE PHAM

IT IS A BIPARTISAN NOTION THAT AMERICAN health care is in dire need of reform. American health care spending constitutes 18 percent of the gross domestic product of the largest national economy on the planet. By contrast, the country that is number two in GDP spent on health care is the immensely wealthy nation of Switzerland, whose health care spending comes in at only about 12 percent of its GDP, according to data from the Organisation for Economic Cooperation and Development.

One reason we spend so much on health care relative to other countries is that the United States is a hub of medical innovation and technology. New procedures and experimental drugs provide great value to American patients, but we pay more to obtain them. Differences in health statuses of

national populations also account for some of the variance in health care outlays. Our superior cancer survival rates speak to the immense economic and social value we place on the individual life.

At the same time, insurance premiums have been climbing inexorably for decades, leaving Americans desperate for relief and policymakers searching for answers. Decades of legislative and regulatory interaction between the government, health insurers, and hospitals have drained massive amounts of value from the U.S. system.

Some lawmakers believe Medicare for All will rein in health care expenditures. Sen. Bernie Sanders, I-Vt., and Rep. Pramila Jayapal, D-Wash., have introduced a Medicare for All proposal (S. 1804 in the Senate and H.R. 1384 in the

House of Representatives) that mandates: all Americans be provided health care coverage, with benefits determined by the Department of Health and Human Services; all benefits be paid on the basis of the Medicare fee schedule, and practically all private health plans would be illegal. This would be a radical government takeover of health financing—one that ignores fundamental economic reality at the peril of Americans' health.

Medicare Already Distorts Health Care

American health care is often called market-based, but the fact is that the single largest health care payer in the United States is the federal government. Medicare and Medicaid account for approximately 40 percent of national health spending, according to data from the Centers for Medicare and Medicaid Services. As the government already controls an outsized portion of the health care market, rules and regulations that the government applies to Medicare and Medicaid tend to influence the practices of private insurers. For instance, the Evaluation and Management Services (E/M) guidelines for documentation were originally intended for use by physicians to bill Medicare; they have since been adopted across the entire health care sector.

(The E/M guidelines have been little changed since 1997, when most documentation was done with pen and paper. This has been an enduring detriment to efficient health care that is completely untouched by Medicare for All.)

Medicare reimbursement rates also create problems for the health care system. The Congressional Budget Office found that for similar services, prices ranged from 11 to 139 percent greater for private insurance as compared to the fees for traditional Medicare. The Center for Medicare and Medicaid Services has the legal authority to set prices for itself, which it does through a fee schedule based on criteria that were implemented in 1989.

Providers must charge private payers higher prices in order to be able to cover costs. Medicare for All does not seek to alleviate the market distortion but, rather, eliminates the market itself. While prices can be forced lower by bureaucratic diktat, such a move does not repeal the laws of economics, which tell us that all resources are limited and have alternative uses. Without prices to provide signals about the relative value of alternative uses of resources, those resources will be misallocated and critical health care needs will go unmet.

Fee-for-Service Medicare Provides Less Value than Private Plans

Medicare itself offers some useful insight into the efficacy of government health care compared to private health care. Traditional Medicare, also known as Parts A and B, operates on a fee schedule and is the model on which Medicare for All is based. Part C is Medicare Advantage, a program created in 2003 under which Medicare beneficiaries can choose from competing private plans.

In a broad study of over 2 million beneficiaries of both traditional Medicare and Medicare Advantage, the research firm Avalere found that patients with more complex health care needs fared better under Medicare Advantage plans than in traditional Medicare.

As a case-in-point, consider diabetes—one of the most important risk factors for many health issues, including heart attack, stroke, and kidney disease. Beneficiaries in Medicare Advantage had a diabetic complications rate of 8.2 percent as compared to 17.1 percent for those covered under traditional Medicare. At the same time, health care costs for Medicare Advantage beneficiaries were 5.7 percent less than those for traditional Medicare patients.

Patients on Medicare Advantage plans were also hospitalized 23.1 percent less and had 32.7 percent fewer emergency room visits than patients covered by traditional Medicare. It should be emphasized that the two study populations mirror one another in demographics and degree of morbidity.

These results show the value of competition in health care: Medicare Advantage plans provide higher quality care and manage chronic conditions better, which is critical for aging populations. Yet, Medicare for All will move the entirety of American health care to the traditional model that produces worse health outcomes at a higher cost than the Advantage model.

Medicare's Price Controls Make It Harder to Find Care

All the current deficiencies of traditional Medicare will only get worse as physicians start disappearing from medical practice.

According to the 2018 Physicians Foundation Survey, more than 1 in 5 physicians either limit the number of Medicare patients they see or refuse to see them at all. For Medicaid, the number is almost 1 in 3.

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Medicare Advantage plans provide higher quality care and manage chronic conditions better. Yet, Medicare for All will move the entirety of American health care to the traditional model that produces worse health outcomes at a higher cost.

The situation is particularly bad in primary care. True to its name, primary care is generally the entry point into the medical system, and access to it is associated with better health outcomes. According to the survey, 32 percent of primary care physicians limit or refuse Medicare patients; the figure is 36 percent for Medicaid patients.

While the Physicians Foundation Survey did not ask the reason doctors limit or refuse Medicare or Medicaid patients, the results show that salaried physicians were less likely than doctors who own their own practice to refuse these patients. Over 50 percent of practice owners limit or refuse Medicare patients. Practice owners feel the brunt of the difference between private and government payments, whereas employed physicians are often paid in a manner agnostic of the insurance type.

Universal Care Gives You Access to a Waiting List

Fixed payments in government programs are discouraging physicians from treating government-insured patients. What happens when, by law, everyone is a government-insured patient?

The United Kingdom's National Health Service provides a sobering example. The NHS has set itself the goal of treating all emergency patients within four hours of their arrival at hospital. Yet, when surveyed by the British Medical Association, British physicians have consistently cited inadequate resourcing and staffing as contributing to emergency patient wait times frequently in excess of four hours. The problem came to a head in 2018 when a particularly virulent strain of influenza and a heat wave caught the NHS with a dire shortage of hospital beds. Average wait times skyrocketed, and tens of thousands of procedures were delayed or canceled in an attempt to alleviate the staff workload. The situation has deteriorated such that NHS England is planning to eliminate the four-hour standard altogether.

Medicare for All Would Practically Outlaw Private Medicine

NHS offers one great advantage over Medicare for All: the British system allows physicians, insurers, and patients to contract privately for health care services. Private insurance plans are often used in the United Kingdom by patients who have grown frustrated with NHS waiting times, and such plans have recently regained popularity. Medicare for All, by contrast, would outlaw this exact behavior.

Section 107 of the Medicare for All bill says: "it shall be unlawful for— (1) a private health insurer to sell health insurance coverage that duplicates the benefits provided under this Act." In other words, it will be expressly illegal for any private company or employer to provide health benefits that compete with the government, although the bill is gracious enough to allow insurers or employers to provide for everything not covered in the legislation.

This provision to outlaw private plans that duplicate government coverage, allowing only the sale of supplemental plans, is similar to Canadian Medicare, which covers all Canadian citizens. In Canada, approximately 30 percent of health care spending is private spending, with 12.4 percent coming from private insurers, according to the Canadian Institute for Health Information. The Canadian system, however, does not include dental, vision, and prescription drug coverage, and this is generally the space in which Canadian

insurance operates. Medicare for All would leave almost no room for the private sector. Essentially, cosmetic surgery and experimental drugs would be the only areas in which private provision is allowed.

If Medicare for All passes, you will not keep your health care plan. And you will not be able to find one if you so choose. Proponents of Medicare for All argue the loss in choice is a worthy tradeoff, but they will have to countenance the government's having the final say in health care choices between patient and provider. Title II of Medicare for All gives the secretary

of health and human services authority to determine what items or services are "medically necessary or appropriate for maintenance of health." If the government program works as planned and is administered by a wise and benevolent bureaucracy, then there should be no problem. Real world examples tend to suggest otherwise.

The NHS, for instance, decided to cut or limit coverage for certain procedures in an effort to control costs, deeming certain procedures, such as tonsillectomies, "unnecessary." There are certain indications for tonsillectomy, including airway obstruction or recurrent infection, and the necessity of it should be decided in the clinic rather than by a government bureaucracy. Even routine procedures are not safe from cutbacks in the event of shortages of hospital beds, and some 50,000 scheduled operations were canceled due to last year's harsh flu season.

It is theoretically possible for an individual to avoid that kind of government intrusion into his health choices. Enrollment in Medicare for All would not be required, but indi-

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Fixed payments in government programs are discouraging physicians from treating government-insured patients. What happens when, by law, everyone is a government-insured patient?



viduals would have to opt out in order to avoid it. Likewise, participation as a provider technically would be voluntary. But the bill makes it virtually impossible to practice medicine without participating in the program.

Under Title III, nonparticipating providers could not bill the government for services offered under Medicare for All. And if the provider does furnish such a service, he or she would have to submit an affidavit affirming the service and could not participate in Medicare for All or treat anyone covered by it for a period of one year.

Thus, if a patient wants to avoid waiting for an appointment with a physician and contract with one privately, that physician either would have to renounce his participation in Medicare for All, which would cover practically everyone in the United States, or he already must have been practicing outside the program.

There likely would be a market for direct primary care physicians, otherwise known as concierge medicine doctors, but it is unrealistic to expect these services to be widely available to the average American.

In essence, we would see a two-tiered medical system: one for most Americans, and one for wealthy Americans. This is a common complaint in Canada, and one of the ways the Canadian Medical Association has suggested to address it is by contracting more with, interestingly, private insurers.

Medicare for All would make it nearly impossible to

practice medicine outside of participation in the program. Patients would have little other option than to accept the medical decisions of the HHS secretary.

Medicare for All disregards what we know of markets and of the laws of supply and demand; though the law mandates medical coverage for all, it does nothing to increase the number of providers of medical care. And without more providers of health care, there will not be more health care.

Real Solutions

There is a great deal to be done to improve American health care. Increasing transparency for health care prices is a good start. Regulatory reform could free providers from the burdens of bureaucratic paperwork and empower patients as consumers to make informed decisions about their own health.

It is the American spirit to innovate our way to better solutions, and any future reform must allow innovation to happen rather than strong-arm the country into what this or that politician thinks is a good idea. Medicare for All has been presented as a remedy to our problems, but based on all we know, the cure will be worse than the disease. ■

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A Health Plan for President Trump and Congress

BY MARIE FISHPAW AND JOHN C. GOODMAN



PRESIDENT DONALD TRUMP SAYS HE WANTS health reform that will be better than Obamacare, better than what we had before Obamacare, and better than Medicare for All. And he's not alone. Sixty-nine percent of U.S. voters say health care remains a top priority, according to Pew Research Center. And, according to a Heritage Foundation poll conducted in March, an overwhelming majority of Americans say our health care system should offer lower costs and higher quality care (97 percent), and should give people more choices (94 percent).

To make those goals a reality, health reforms should focus on making it as easy as possible for people to access innovations such as:

1. Personal, portable health insurance that travels with them from job to job and in and out of the labor market.
2. Round-the-clock communication with their personal physicians by phone, email, and Skype.
3. Telemedicine, so they can even "visit" the doctor from home—avoiding traffic, long waits, and unneeded emergency-room visits.
4. Centers of excellence that specialize in chronic health conditions (including preexisting conditions) and actively compete for patients.
5. Accounts owned and controlled by patients who are willing to manage their own care, including most forms of chronic care and even routine surgery.

Government should not mandate these changes. If employees and their employers like the arrangements they now have, they should be able to keep them. But government needs to get out of the way, cut red tape and conflicting requirements, and quit interfering with the opportunity for people to have better options.

The Trump administration has already implemented executive actions that have brought us closer to all five of these goals. But to complete the reforms, Congress needs to enact legislation.

Here are some particulars.

Personal and Portable Health Insurance

In an ideal world, most people would own their own health insurance and take it with them as they traveled from job to job and in and out of the labor market. Some employers may have better insurance than is available on the open market. But others might prefer to make a cash contribution to help employees pay their own premiums rather than provide insurance directly.

Some employers were actually doing that before Obamacare. They used an account called a Health Reimbursement Arrangement (HRA), providing tax-free funds employees could use to buy their own health insurance. But with Obamacare came regulations and threats of steep employer fines that effectively deep-sixed this option.

Thankfully, the Trump administration is reversing course. Beginning next January, employers will be able to use HRAs to help employees obtain their own coverage with the administration's blessing.

The Council of Economic Advisers estimates this change will affect 11 million workers. But it would affect far more if states cleaned up their individual markets to make them a more attractive option.

Congressional action should codify what the administration has already done and expand the reform in several ways. In particular, states need broad authority to authorize insurance products that meet their residents' needs, rather than meeting Obamacare's expensive mandates. Congress also needs to give states the freedom to make reforms that would lower costs and expand access to care.

Round-the-Clock Medical Care

Concierge doctors used to be available only to the rich. Today, direct primary care is far more affordable. Atlas MD in Wichita, Kansas, for example, provides all primary care along with 24/7 phone and email access and generic drugs for less than what Medicaid pays. It helps patients gain access to specialist care and diagnostic tests, with minimal waiting. The cost: \$50 per month for a middle-aged adult and \$10 per month for a child.

There are 790 direct-primary-care practices like Atlas in the United States, according to Philip Eskew, the founder of Direct Primary Care Frontier. Typically, they provide round-the-clock access to a physician via phone, email, and Skype. These practices have a number of attractive features—and an excellent track record: They expand access to care, improve the quality of care, reduce overall health-care spending, and report high levels of patient satisfaction.

This development has the potential to radically transform the way medicine is practiced in the United States. The only things standing in the way are unwise public policies.

A number of employers are creating access to direct primary care as an employee benefit. However, under current law they cannot put tax-free dollars into an account and let employees use the money to select a direct-pay doctor of their choosing.

The Trump administration has directed federal agencies to see if HRA accounts and health savings accounts (see below) can be used as vehicles to overcome the current regulatory obstacles.

In addition, the administration hopes to make Medicare more open to direct primary care. Under the arrangement, Medicare would pay a fixed monthly fee to a physician or physician group instead of the traditional fee-for-service payments. In return, the physicians would provide virtually all primary care. The fees would range from \$90 to \$120 a month, depending on the patient's age and medical complexity.

While this is a good start, more is needed to make direct primary care widely available to Medicare patients. The reason: Most direct-primary-care doctors have opted out of all third-party insurance arrangements, including Medicare. These doctors cannot contract with a Medicare patient unless they are in Medicare. Further, once in Medicare, doctors won't be free to engage in the type of innovation that makes direct contracting so successful.

Congress can and should eliminate this Catch-22.

Access to Telemedicine

The ability to deliver medical care remotely is growing by leaps and bounds. It promises to lower medical costs, increase quality, and reduce the time and travel cost of patient care. For example:

- After hip and knee replacements at Tallahassee Memorial HealthCare, patients are transported to rehab facilities, nursing homes, and even their own homes—where follow-up observations are made with video cameras.

- A nurse at Mercy Virtual Hospital in St. Louis can use a camera in a hospital room in North Carolina to see that an IV bag is almost empty. She can then call and instruct a nurse on the floor to refill it. The telemedicine cameras are powerful enough to detect a patient's skin color. Microphones can pick up patient coughs, gasps, and groans.

The problem? Medicare doesn't pay for any of those services. And since private insurers and employers tend to pay the way Medicare pays, the entire country is missing out on incredible advances in telemedical technology.

This situation is not an oversight. The Social Security Act allows Medicare to pay for telemedicine only under strictly limited circumstances. For the most part, doctors can examine, consult with, and treat patients remotely only in rural areas, and even there, patients can't be treated in their own homes.

The Centers for Medicare & Medicaid Services (CMS) recently eased the restrictions on telemedicine for some pro-

viders. As of January 1, doctors in Medicare Advantage plans and accountable-care organizations have been able to bill Medicare if they use phone, email, Skype, and other technologies to consult with patients remotely to determine if they need an in-office visit. Patients can be anywhere, including their own homes. Doctors can also bill Medicare to review and analyze medical images patients send them. And they can bill for telemedical consultations with other doctors.

But these are baby steps. Congress needs to liberate telemedicine once and for all.

Access to Centers of Excellence

On the Obamacare exchanges, there has been a race to the bottom as health plans try to attract the healthy and avoid the sick. Increasingly, enrollees have been denied access to the best doctors and the best facilities. In Dallas, for example, no individual insurance plan includes Southwestern Medical Center, which may be the best medical research center in

the world. In Texas generally, cancer patients with Obamacare insurance don't have access to MD Anderson Cancer Center in Houston. This pattern is repeated all over the country.

The most successful Obamacare insurers are Medicaid contractors. The plans that have survived in the exchanges look like Medicaid managed care with a high deductible. The networks include only those doctors who will accept Medicaid fees coupled with all the hassle of managed-care bureaucracy.

Before Obamacare, most states had risk pools for the small number of people who entered the individual market with an expensive preexisting condition and were denied access to ordinary insurance coverage. The risk-pool plans looked like garden-variety Blue Cross plans, with access to almost all doctors and hospitals. While some risk pools had problems—such as being over-subscribed and unable to take new customers—those problems were discrete and addressable.

Obamacare threw out this model in favor of a D.C.-designed solution. The result? Access to care for people with preexisting chronic conditions has seriously deteriorated. That needs to change.

Entities such as Cancer Treatment Centers of America need to be able to enter the individual market, restrict enrollment to patients who have cancer, and receive a premium that covers their expected costs.

Instead of expecting every health plan to be all things to all patients, we should encourage specialization. We need focused facilities for such chronic conditions as cancer care,

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Telemedicine promises to lower medical costs, increase quality, and reduce the time and travel cost of patient care. The problem? Medicare doesn't pay for it.



diabetic care, and heart disease. To make the market work better, medical records need to travel with the patient from plan to plan, and insurers need to be able to design better risk-adjustment mechanisms rather than being forced into federal government-designed systems.

How can these changes be made? Here it is even more critical that government clear away today's barriers and let private markets function.

The CMS has taken steps in that direction using its rulemaking and waiver authorities. Seven states have used waivers to lower health insurance premiums. In Maryland, premiums that had been expected to rise 30 percent actually fell by 13 percent thanks to state reforms.

Congressional action will almost certainly be needed to complete the task. Ideally, states should be given broad authority to reform their private individual markets, with one important proviso: Conditions must get better for people

who have health problems. "Better" means lower premiums, lower deductibles, and broader networks of providers. And people who are sick or in low-income households must be free to use their existing subsidies to pick the right plan for them, rather than being warehoused into Medicaid or Obamacare.

States must not only show unmistakable progress in this respect, but also establish as a goal a market in which sick people can get access to the doctors they need—without raising costs for everyone else, as Obamacare does today.

It doesn't take new federal mandates and programs to reach these goals. Rather, the Trump administration's regulatory relief has amply demonstrated that we move in the right direction when states are allowed to escape existing mandates that have distorted market incentives and led to our current problems.

Congress could help empower the states to carry out needed reforms by enacting the Health Care Choices Pro-



PRESIDENT TRUMP SIGNS AN EXECUTIVE order intended to improve quality and price transparency in health care, June 24, 2019.

posal, developed by the Health Policy Consensus Group and supported by more than 100 conservative leaders across the country. This proposal would block-grant Obamacare funds to the states and give them wide discretion to reform their individual health-insurance markets. The Center for Health and the Economy estimates that this proposal would lower health-care premiums by as much as a third, would insure about the same number of people as Obamacare, and would better protect people with preexisting conditions and high health costs.

Patient Power

How can we control health-care costs and at the same time improve quality and create greater access to care? Here is one answer: Give patients control over more of their health-care dollars.

Roughly 25 million people now manage some of their own health-care dollars through health savings accounts (HSAs), which they own and control. The evidence shows that these patients are conservative shoppers in the medical marketplace—saving money without any deterioration in the quality

MARK WILSON/GETTY IMAGES

or access to care. However, the potential for these accounts is much greater.

Right now, patients use HSAs primarily to pay small medical bills below their deductibles. But these accounts could and should be used in just about every aspect of medicine, including expensive surgery, chronic illness, custodial care, and emergency-room visits.

For example, there is mounting evidence that patients suffering from diabetes, heart disease, cancer, and other chronic illnesses can (with training) manage a lot of their own care as well as—or better than—traditional doctor therapy can. If they are going to manage their own care, they will do an even better job if they are also managing the money that pays for that care.

In addition, patients could—spending from an HSA that they own and control—manage almost all the money used for primary care, including routine doctor visits and most diagnostic tests. If patients control the money, it will flow toward cost-saving options. They will substitute less expensive phone and email consultations for doctor's-office visits; they will shop for better prices on everything from blood tests to mammograms; and they will opt for walk-in clinics and free-standing emergency care instead of hospital emergency rooms when appropriate.

On the East Coast and the West Coast, Uber-type doctor visits at nights and on the weekends are an increasingly popular alternative to the emergency room. A doctor house call costs about \$100, and the doctor usually arrives within an hour. Emergency rooms typically charge about five times more. Give patients control of the money and you will see this service all over the country.

HSAs can also help control the cost of expensive surgery. For example, WellPoint (Anthem) in California limited the amount it would pay for hip and knee replacements to \$30,000 for its CALPER enrollees. Patients could get the procedure done at any hospital, but if the cost was greater than that amount, they had to pay out of their own pockets. This experiment had a dramatic effect, bringing down the cost of surgery across all of California. But the impact would have been even more dramatic if WellPoint had deposited \$30,000 in the account of every patient who was a candidate for surgery. That way, if a patient found a hospital whose cost was, say, \$28,000, the patient would enjoy a \$2,000 “profit.”



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Both insurers and their enrollees would do better still if they considered traveling for care. Health City Cayman Islands offers high-quality hip and knee replacements for one-half to one-third less than what the procedures cost in California. Employers have found employees not very receptive to medical travel. But let the patient have \$30,000 in an HSA with the opportunity to save \$10,000 or more, and the willingness to travel is likely to soar.

To take advantage of the full potential of HSAs, we need three policy changes: (1) People should be able to use completely flexible HSAs, wrapping them around any health-insurance plan and using them to pay for any medical costs the plan does not cover; (2) they should be able to use their HSAs to pay premiums as well as out-of-pocket expenses; and (3) health plans should be allowed to have “shared savings programs,” where enrollees who choose better and cheaper care get to keep their share of their savings in their HSA.

The Trump administration recently made a major announcement with respect to the first of these changes. Going forward, employees with HSAs will be exempt from the high-deductible requirement for the treatment of chronic disease. This means that the employer or insurer will be able to provide first-dollar coverage for some services without running afoul of HSA regulations.

The reform agenda proposed here would radically transform the U.S. health-care system by empowering patients, liberating markets, and removing government obstacles to lower-cost, higher-quality, more accessible health care. It builds on emerging successes by innovators empowered by President Trump: doctors trying new ways of delivering care, states trying new ways of healing broken private markets, and patients demanding better care at lower costs.

President Trump should build on these successes and work with Congress to clear away the barriers blocking these innovators from spreading their wings. That's the way to provide better care at lower costs. ■

Ms. Fishpaw is the director of domestic policy studies at The Heritage Foundation. Mr. Goodman is president of the Goodman Institute and the author of Priceless (Independent Institute, 2012). A version of this article was previously published at National Review.



YOUNG AMERICA'S FOUNDATION HOSTS MANY events for students, including the High School Free Enterprise Leaders Conference (Sept. 13-14), The Road to Freedom Seminar: Secrets to Advancing Free Enterprise Over Socialism (Sept. 20-21), and events for both high school and college students at the Reagan Ranch in California (Oct. 2-5 and Nov. 8-9). This photo was taken at their 41st National Conservative Student Conference in July.

SEPTEMBER

4 **Panic Attack: Young Radicals in the Age of Trump featuring Robby Soave,** Goldwater Institute, Arizona State University Memorial Union, Tempe, Ariz., 5 PM – 7 PM

9 **Cribsheet: A Data-Drive Guide to Better, More Relaxed Parenting, from Birth to Preschool,** Cato Institute, Washington, D.C., Noon

9 **The Supreme Court's 2019 Term,** John Locke Foundation, 4800 Six Forks Road, Suite 220, Raleigh, N.C., Noon

9 **Conversations with Tyler: Alain Bertaud,** Mercatus Center, ASPIRE at One World Observatory, New York, 6 PM

10 **A Good Provider Is One Who Leaves,** American Enterprise Institute, Washington, D.C., 3 PM

11 **The Human Cost of War: Assessing Civilian Casualties Since 9/11,** Cato Institute, Washington, D.C., Noon

12 **The Fund for American Studies Journalism Awards Dinner,** Metropolitan Club, New York, 6 PM

13 **Campus Culture of Intellectual Freedom: How Trustees Can Help,** American Council of Trustees and Alumni, Allegheny College, Meadville, Pa.

13-14 **High School Free Enterprise Leaders Conference,** Young America's Foundation, Reston, Va.

13-24 **Media Research Center's Mediterranean Cruise,** ms Koningsdam, Rome.

14 **Constitution Day Celebration,** Claremont Institute, Chapman University, Orange, Calif.

16 **Does Capitalism Help or Harm Women? A Debate,** Cato Institute, Washington, D.C., 6:30 PM

17 **The Supreme Court: Past and Prologue,** Cato Institute and The George M. Yeager Family Foundation, Cato Institute, Washington, D.C., 10:30 AM – 7 PM

17 **Common Law Originalism: 2019 Walter Berns Annual Constitution Day Lecture with James Stoner,** American Enterprise Institute, Washington, D.C., 5:30 PM

17 **Close Encounters of a Judicial Kind: The Sometimes Alien World of State Judges and State Constitutional Law, Ashbrook Center, Myers Convocation Center, Ashland University, Ashland, Ohio, Noon**

17 **Spirit of Las Vegas: Nevada Policy Research Institute's Anniversary Dinner, The Venetian, Las Vegas, 6 PM – 9 PM**

17-19 **The Founders Divided, Center for Constitutional Studies, Utah Valley University, Orem, Utah**

18 **Introduction to Constitutional Law: 100 Supreme Court Cases Everyone Should Know, Cato Institute, Washington, D.C., Noon**

20-21 **The Road to Freedom Seminar: Secrets to Advancing Free Enterprise Over Socialism, Young America's Foundation, Reston, Va.**

22-30 **In the Footsteps of Churchill: A TFAS Trip from England to Morocco, The Fund for American Studies, London**

24 **A Century of Ideas: New Regional Orders and New Ways of War: Europe, the Middle East, and Asia, Hoover Institution, Hauck Auditorium, Stanford, Calif., 4:30 PM**

24-25 **Florida Tech & Innovation Summit, James Madison Institute, DoubleTree by Hilton Orlando East and University of Central Florida Fairwinds Alumni Center, Orlando**

26 **The Wealth of Religions, American Enterprise Institute, Washington D.C., 12:15 PM**

OCTOBER

2 **A Century of Ideas: Tax and Monetary Reform: From Ideas to Actions over One Hundred Years, Hoover Institution, Hauck Auditorium, Stanford, Calif., 4:30 PM**

2-5 **High School Conference at the Reagan Ranch, Young America's Foundation, The Reagan Ranch Center, Santa Barbara, Calif.**

3 **Claremont Institute 40th Anniversary Cruise, Crystal Serenity, Barcelona.**

7 **Fall Briefing featuring Kimberly Strassel, Center of the American Experiment, Ordway Center for the Performing Arts, St. Paul, 6 PM – 9:30 PM**

11 **Washington Policy Center Annual Dinner, Hyatt Regency, Bellevue, Wash., 6 PM**

11-12 **The Future of Work, Mercatus Center & Niskanen Center, Mercatus Center, Arlington, Va.**

11-13 **Values Voter Summit, Omni Shoreham Hotel, Washington, D.C.**

15-17 **Conscious Capitalism CEO Summit, Hyatt Lost Pines Resort, Austin, Texas**

16 **Eighth Annual AEI-CRN Housing Conference, American Enterprise Institute & Collateral Risk Network, American Enterprise Institute, Washington, D.C., 8 AM – 1:15 PM**

17 **James G. Martin Center for Academic Renewal Fourth Annual Policy Banquet, Carolina Country Club, Raleigh, N.C., 6 PM**

18 **Athena Roundtable, American Council of Trustees and Alumni, Ronald Reagan Building & International Trade Center, Washington, D.C.**

18-19 **Philadelphia Society Fall Meeting: Populism, Markets, and Political Economy, Ritz Carlton Tysons Corner, McLean, Va.**

23 **The Case for Space: How the Revolution in Spaceflight Opens up a Future of Limitless Possibility, Cato Institute, Washington, D.C., 6 PM**

23-24 Philanthropy Roundtable Annual Meeting, Park Hyatt Aviara, Carlsbad, Calif.

24 Washington Policy Center Eastern Washington Annual Dinner, Davenport Grand Hotel, Spokane, Wash., 6 PM

25 Cato Institute Policy Perspectives 2019, Intercontinental Barclay Hotel, New York, 10:30 AM – 2 PM

25-27 Rediscovering America Weekend: Abraham Lincoln's Washington, DC, Ashbrook Center, Washington, D.C.

29-November 1

State Policy Network Annual Meeting, The Broadmoor, Colorado Springs

30 William F. Buckley Jr. Prize Dinner, National Review Institute, The Breakers, Palm Beach, Fla., 5 PM – 10 PM

NOVEMBER

4 A Century of Ideas: Hoover's One Hundred Years of War, Revolution, and Peace, Hoover Institution, Hauck Auditorium, Stanford, Calif., 4:30 PM

4 A Roadmap to Health Care Price Transparency in Massachusetts, Pioneer Institute, Massachusetts State House, Boston, 1:30 PM – 3:30 PM

6 Herman Kahn Award Gala, Hudson Institute, New York, 6 PM – 9 PM

6-7 Liberty Forum & Freedom Dinner, Atlas Network, Crowne Plaza Times Square Hotel and Intrepid Museum Manhattan, New York

8 Cato Institute Policy Perspectives 2019, Ritz-Carlton, Chicago, 10:30 AM – 2 PM

8 Goldwater Institute Annual Dinner, JW Marriot Scottsdale Camelback Inn Resort, Scottsdale, Ariz., 6:30 PM

8 Triumph of Liberty Gala Dinner & Truman-Reagan Medal of Freedom Ceremony, Victims of Communism Memorial Foundation, Union Station, Washington, D.C., 6 PM

8-9 Fall College Retreat at the Reagan Ranch, Young America's Foundation, The Reagan Ranch Center, Santa Barbara, Calif.

13 Independent Women's Forum Annual Awards Gala, DAR Constitution Hall, Washington, D.C., 6 PM – 10 PM

14 Our Populist Moment, Ashbrook Center, Myers Convocation Center, Ashland University, Ashland, Ohio, Noon

14 37th Annual Monetary Conference—Fed Policy: A Shadow Review, Cato Institute, Washington, D.C., 8:30 AM – 5:30 PM

14 Foreign Policy Research Institute Annual Dinner, Union League of Philadelphia, Philadelphia, 6 PM – 9 PM

14-16 National Lawyers Convention, Federalist Society, Mayflower Hotel, Washington, D.C.

15 Georgia Legislative Policy Forum, Georgia Public Policy Foundation, Renaissance Atlanta Waverly Hotel and Convention Center, Atlanta, 7:30 AM – 3 PM

19 A Century of Ideas: Labor and Capital Market Policy, Hoover Institution, Hauck Auditorium, Stanford, Calif., 4:30 PM

21 Tax Prom, Tax Foundation, National Building Museum, Washington, D.C., 6 PM

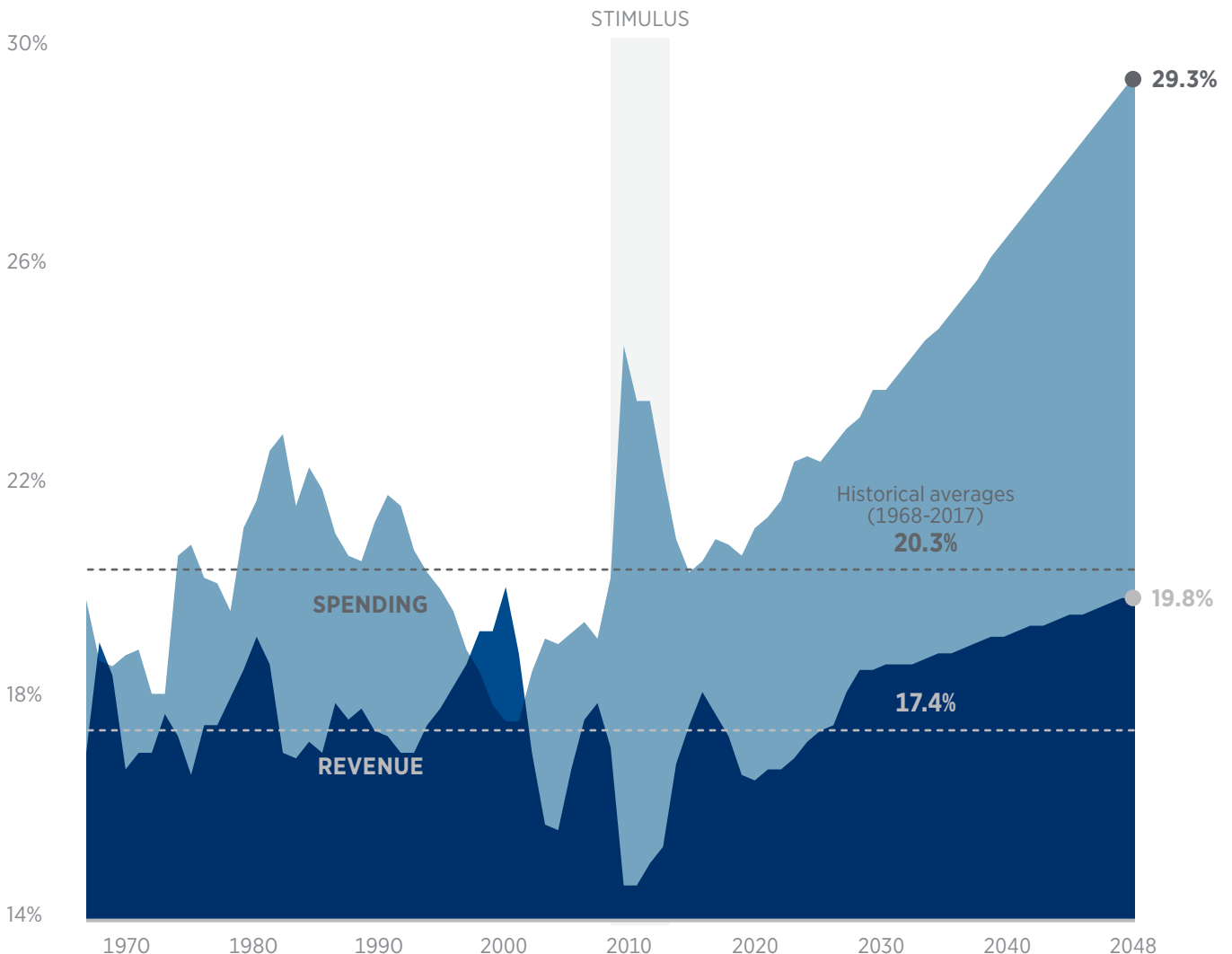
DECEMBER

4-6 States & Nation Policy Summit, American Legislative Exchange Council, Westin Kierland Resort and Spa, Scottsdale, Ariz.

Federal Spending Greatly Exceeds Revenues

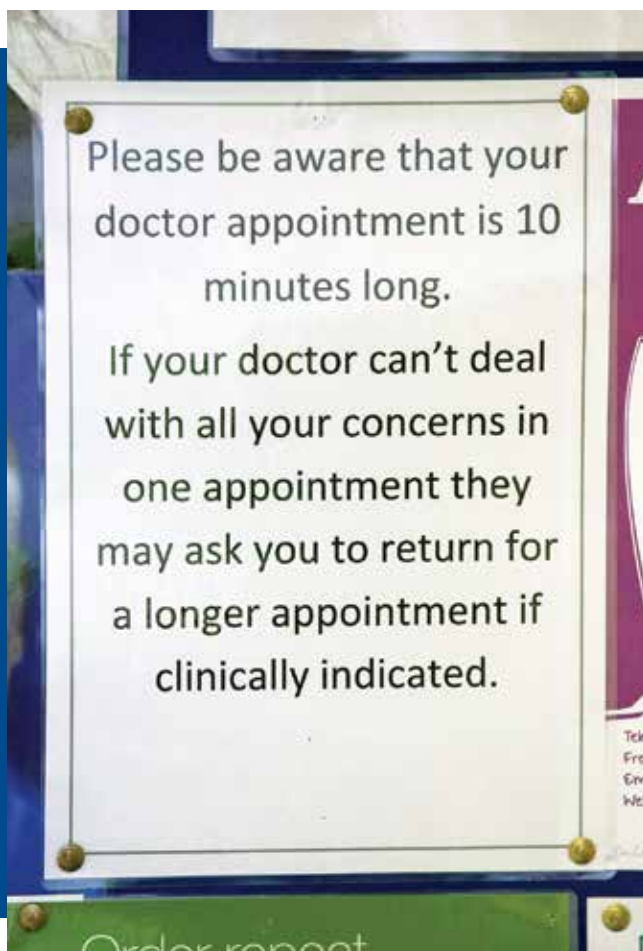
Spending and Revenue Projections under Current Policies for the Next Three Decades

PERCENTAGE OF GDP



SOURCE: Congressional Budget Office, *The 2018 Long-Term Budget Outlook* (www.cbo.gov/publication/53919), as presented in Chart 5 in The Heritage Foundation, *Blueprint for Balance: A Federal Budget for Fiscal Year 2020*, (www.heritage.org/sites/default/files/2019-06/BlueprintforBalance_AFederalBudgetforFY2020.pdf), p. 15, May 2019.

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



Government-Run Health Care Is Government-Rationed Health Care

At this General Practitioners surgery in London, if your problems don't fit their schedule, then you'll have to schedule again. Britain's National Health Service promises free medical care for all, but the reality is free access to a waiting list. Four million Britons currently wait for routine surgery. In the United States, proponents of Medicare for All want to make the federal government the financier of virtually all medical care for Americans, which means it would decide what procedures are covered and how much doctors will be paid. To learn more, read our feature beginning at page 26.

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