5

Labor and Employment

One of the American economy's greatest strengths is individuals' and businesses' ability to adapt to changing conditions. Increases in productivity, not artificial increases in labor prices, are the key to economic growth and rising wages. Open and flexible labor markets respond rapidly and effectively to changes in market conditions.

However, many workers and employers remain subject to an array of obsolete New Deal-era labor regulations. The old adversarial model of labor relations has little to offer the 21st-century workforce, which is characterized by horizontal corporate structures, significant job mobility, and instant, constant communications. However, rather than adapt to the changing economy, many unions are turning to government for help.

One major item on organized labor's agenda is an increase in the federal minimum wage, from $7.25 to $10.10 per hour. That increase is bad policy, a feel-good measure that politicians can sell as a mandate for higher wages for everyone, but in fact eliminates entry-level jobs—and thus makes entry into the job market more difficult for workers with few or no skills.

The National Labor Relations Board (NLRB) and the Department of Labor are the key federal labor law bodies. Favorable treatment from them would give unions a wholly arbitrary advantage in their organizing efforts. Members of Congress must resist the administration's efforts to politicize regulation, adjudication, and legislation in that arena. The threats are quite real for franchising, temporary staffing, independent contracting and subcontracting, interning, volunteering, supplying, and outsourcing.

NATIONAL LABOR RELATIONS BOARD AND NATIONAL LABOR RELATIONS ACT REFORM

Members appointed to the National Labor Relations Board (NLRB), nearly exclusively, come from the organized labor or management-side law firm ranks. As a result, board policy swings like a pendulum. The Board's case precedent flip-flops in favor of organized labor or management, depending on whether Democrats or Republicans hold the Executive Office. The NLRB's biased and ever-changing regulatory landscape makes compliance with the National Labor Relations Act (NLRA) arduous for employees, employers, and unions.

Congress should:

- Pass the Workforce Democracy and Fairness Act to preempt the National Labor Relations Board's ambush election rule.
- Amend the Employee Privacy Protection Act to make the disclosure of employees' private information to union organizers a voluntary and exclusively opt-in process.
- Reverse the franchise/joint-employer standard decision.
- Abolish or greatly reduce the National Labor Relations Board's adjudicatory role.
- Pass the Protect American Jobs Act.
- Pass the Employee Rights Act (ERA) to guarantee a federally supervised secret-ballot election for organizing and recertifying votes and for preventing union interference with employees who seek to decertify a union.
- Pass the Freedom from Union Violence Act.
- Pass the Rewarding Achievement and Incentivizing Successful Employees (RAISE) Act to allow firms to offer unionized workers greater compensation for superior performance.
- End monopoly bargaining by unions by deleting "exclusive" from the National Labor Relations Act.
- Rein in NLRB overreach on outsourcing and contract staffing agencies through appropriations limitation.

During the Obama administration, the National Labor Relations Board, composed of a majority with the predisposition to a pro-union viewpoint, has issued many decisions overturning long-standing case precedent and proposed rules that tilt the playing field in favor of organized labor at the expense of employees and the free flow of commerce. Currently, the NLRB operates to benefit labor unions, not the public interest, in labor disputes.

Congress could go a long way toward reining in the NLRB by passing legislation to reverse some of its more partisan rulemakings and decisions. At best, Congress should abolish the NLRB or, at least, strip the agency of its adjudicatory and rulemaking authority.

Ambush Election Rule. The NLRB recently amended its rules governing representation case procedures. That rule change, generally known as the "ambush election" rule, is deliberately constructed to limit debate, by minimizing the time workers have to educate themselves on union representation. Specifically, the rule would shorten the time frame between the filing of a petition and the date on which an election is conducted to as little as 14 days. This is unnecessary. In FY 2013, the median time frame from the petition to when the election was conducted was 38 days, with unions winning 60 percent of all organizing elections, according to the NLRB.

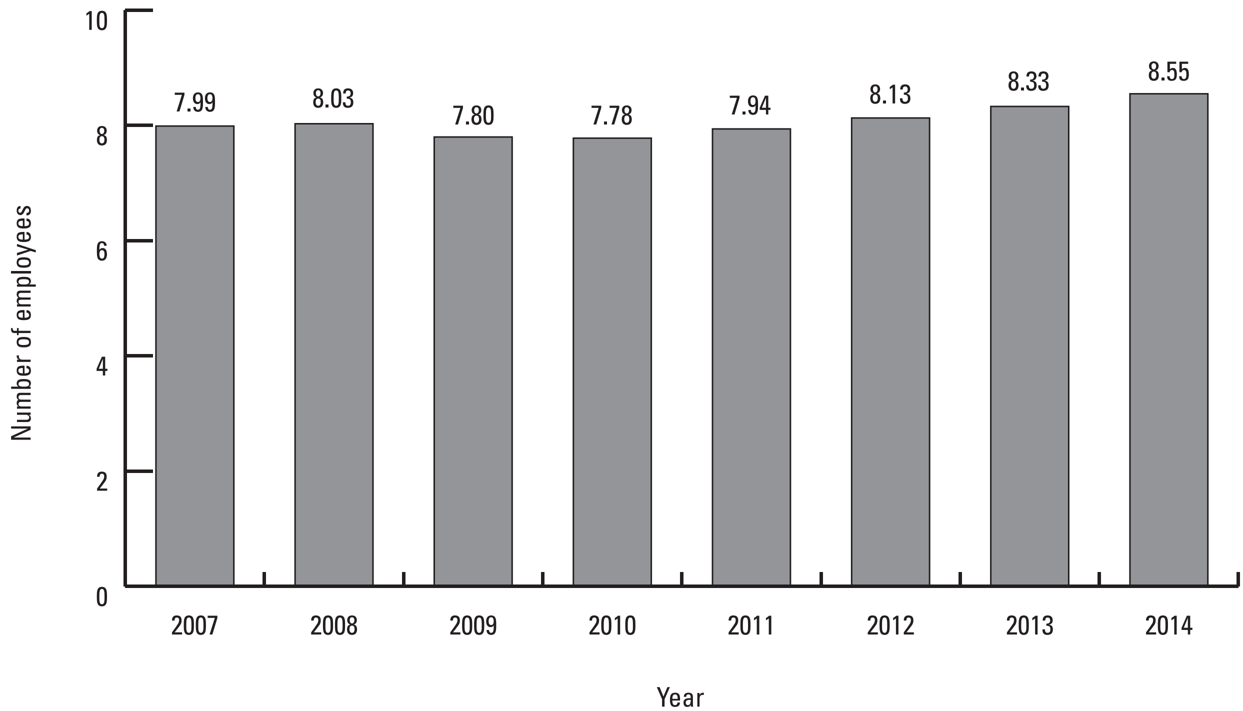
To address the shortened time frame of the NLRB's union election process, Congress should pass the Workforce Democracy and Fairness Act, which would amend Section 9 of the National Labor Relations Act and mandate a period of 35 days between the filing of the petition and the actual election.

The rule also would compel employers to provide union organizers with employees' contact information. Congress should preempt this. Government should not have the power to force employers to disclose workers' contact information to a special-interest group for any cause. That rule would almost certainly expose workers—who would not have the choice of opting out of union organizers' obtaining their information—to harassment, intimidation, and much higher risk of identity theft.

To prevent the disclosure of employees' contact information without their consent, Congress should amend the Employee Privacy Protection Act to make the disclosure of such information to union organizers a voluntary and exclusively opt-in process.

Joint Employer Decision. On July 29, 2014, the NLRB's Office of the General Counsel determined that the parent corporation of fast-food giant McDonald's is a joint employer with

Figure 5.1 Number of employees in franchise establishments in the United States from 2007 to 2014 (in millions)



Source: Statista 2014.

McDonald's franchisees and thus is liable for the franchisees' actions for purposes of employment law. The Board's criteria for what would qualify a company as a joint employer are inappropriately broad, extending to such hard-to-define concepts as indirect or potential control over workers.

The NLRB's decision threatens the successful American franchise system. If corporate McDonald's in Chicago were to be held responsible for every worker at every mom-and-pop McDonald's franchise, then corporate McDonald's would be forced to protect itself from liability. The ensuing restructuring would be quite different from the current franchise system.

In a statement, the National Restaurant Association said the decision "jeopardizes the success of 90 percent of America's restaurants who are independent operators or franchisees." And the decision's repercussions would be felt far beyond the fast-food industry, to include practically all franchised businesses, including car dealerships, hotels, dry cleaners, and a wide variety of service industries.

Organized labor favors the ruling because it would make it much easier to unionize entire franchise businesses. For example, if a local McDonald's franchise were to face unionization and corporate McDonald's were to be a joint employer, then the union would have leverage to bring corporate McDonald's to the collective-bargaining table. (Similar rulings could follow, with the NLRB general counsel filing amicus briefs in similar NLRB cases concerning Browning-Ferris Industries and Leadpoint Business Services.)

Experts: Aloysius Hogan, Trey Kovacs, Ivan Osorio, Iain Murray

The National Labor Relations Board's Adjudicatory Role. Instead of taking a piecemeal approach to enacting legislation to address problems caused by the NLRB's actions, Congress should abolish the agency or strip it of its adjudication and rulemaking authority. The Board no longer operates as it was intended by Congress—as a neutral arbiter in labor disputes. Worse, federal courts routinely give judicial deference to the NLRB on the basis of the board members' "expertise," which, as former NLRB member John Raudabaugh notes, has "proven nonexistent when case precedent is flip-flopped correlated only with political party majorities."

Congress should pass an amended version of the National Labor Relations Reorganization Act (NLRRA) of 2011, which would abolish the Board. The current version of the NLRRA transfers the NLRB's enforcement authority to the Department of Justice, and its rulemaking and election duties would be transferred to the Department of Labor. The bill should be amended to send NLRA disputes to an Article III court, where judges serve lifetime appointments, unlike NLRB members, who serve five-year terms and are therefore highly politicized.

Congress has introduced legislation to reduce the Board's authority. The Protect American Jobs Act (H.R. 795 in the 113th Congress) would take away the NLRB's authority to promulgate any regulation other than rules concerning internal Board functions.

Employee Rights Act. The Employee Rights Act (ERA) would amend Section 9(a) of the NLRA to guarantee workers a secret-ballot election when voting on union representation. Currently, a union may organize workers in two ways: by secret-ballot election or by the procedure known as card check.

To initiate a federally supervised secret-ballot election, a union must present a "showing of interest"—signed authorization cards that show at least 30 percent of employees support union representation—to the nearest NLRB regional office, which sets the election conditions, including location, time, ballot language, and eligible voters, and then holds the election.

If the union receives 50 percent plus one votes cast in favor of union representation, the union wins recognition and is certified as having exclusive representation over the collective-bargaining unit.

Under card-check, if the union obtains 50 percent plus one signed authorization cards from employees, then the union may persuade the employer to bypass the election and recognize it as the employees' exclusive representative. Without an election, workers are deprived of time to hear the pros and cons of unionization and to reflect on whether they want to unionize, which leaves workers open to union intimidation tactics.

Unions use a strategy known as a "corporate campaign" to browbeat employers into agreeing to card-check organizing. Corporate campaigns are aggressive, public relations campaigns designed to damage an employer's reputation until it accedes to union demands.

The Employee Rights Act would amend Section 9 of the National Labor Relations Act by adding a provision that requires all union recertification elections to be conducted by secret ballot.

That change is needed. Once a union is certified as the exclusive representative of a group of employees, it never needs to stand for recertification. That provision has led to what is known as inherited unions. Heritage Foundation labor researcher James Sherk found that only "7 percent of private-sector union members voted for their union. The remaining 93 percent are automatically represented by a union they had no say in electing."

To ensure that workers continue to desire union representation and new workers have a say in their own representation, the ERA amends the NLRA to require union recertification elections conducted by secret ballot once the workforce has turned over by more than 50 percent since the last election.

The ERA would also protect workers who petition to decertify their union. It would amend Section 10 of the NLRA by inserting a provision that penalizes labor unions that interfere with an employee's right to file a decertification petition, holding unions liable for lost wages or unlawful collection of union dues or fines and damages.

The NLRA already makes it an unfair labor practice for an employer to interfere with or restrain a worker's right to organize. Unions should be held to the same standard when employees petition to decertify their union. Currently, many union constitutions contain provisions that punish workers who seek to decertify their union, including through steep fines and even termination of employment. (For an example, see Communications Workers of America Constitution, Article XlX—Charges Against Members, http://cwa-union.org/pages/constitution-continued#A19; and UNITE HERE Constitution, Article 16, Section 1, Subsection (i) "Secession or fostering secession or sponsoring or advocating decertification of, or deauthorization of union security for UNITE HERE or any affiliate," http://unitehere.org/wp-content/uploads/2014UNITE-HEREConstitutionFinal.pdf.)

Freedom from Union Violence Act. Workplace violence is a crime—unless committed by a union in the course of promoting unions goals. That is the unfortunate outcome of the U.S. Supreme Court's decision in *U.S. v. Enmons*, in which the Court wrote a huge loophole into the Hobbs Act (Title 18 USC §1951), a major federal anti-extortion law. That loophole, found nowhere in the text of the Act, allows unions to use violence to extort business into giving more money, benefits, and power to unions.

As a result of federal preemption, union violence often goes unprosecuted—such as, for example, threats hurled by members of the Teamsters at the cast and crew of the television show *Top Chef* last August. As Deadline Hollywood reported on August 20, 2014, "Angry that the show had not signed a Teamsters contract and that the production hired local [production assistants] to drive cast and crew vehicles, the dozen or so picketers from Boston's Teamsters Local 25 kept at it for hours, raining down racist, sexist and homophobic threats and slurs as staffers came to and left the set that summer day."

The Freedom from Union Violence Act of 2014, introduced by Sen. David Vitter (R-La.) in the last Congress, would amend the Hobbs Act by eliminating the judicially created loophole allowing union violence. That legislation should be reintroduced in the 114th Congress.

In addition, Congress should hold hearings into workplace violence in order to expose that alarming problem.

Experts: Aloysius Hogan, Trey Kovacs, Ivan Osorio, Iain Murray

RAISE Act. Under current federal law, the wages of 7.6 million workers are capped because of inflexible wage structures in union contracts that set not only a wage floor but also a wage *ceiling* for specific categories of workers. Instead, compensation in many union contracts is established on the basis of seniority.

The Rewarding Achievement and Incentivizing Successful Employees (RAISE) Act (S. 1542 and H.R. 3154 in the 113th Congress) would allow businesses to reward employees for outstanding performance by offering them higher wages than union contracts specify. The legislation would allow individuals trapped in ironclad union wage scales to be rewarded for merit, better performance, and higher productivity. Passing the RAISE Act could result in the average union member's salary increasing by $2,700–$4,500 per year, according to calculations by Heritage Foundation analysts.

Experts: Aloysius Hogan, Trey Kovacs, Ivan Osorio, Iain Murray

End Union Monopoly Bargaining. Under the National Labor Relations Act, a worker's freedom to choose how he or she is represented in the workplace is restricted by the principle known as exclusive representation. That restriction should be lifted.

Section 9(a) of the NLRA requires that if a majority of employees at a workplace vote in favor of union representation for the purposes of collective bargaining, that union then becomes the exclusive representative of all the employees at that workplace, including workers who voted against unionization. Congress should amend the provision by deleting the word "exclusive."

Workers should not be forced to accept representation they do not want. Yet the NLRA's exclusive representation provision prohibits an individual worker who is opposed to union representation to choose representation other than the union.

Eliminating exclusive representation would make unions more receptive to the needs of their membership and would provide workers the ability to negotiate the terms of their employment, instead of being forced into a one-size-fits-all contract covering all workers in a given bargaining unit.

Rein in NLRB Overreach on Outsourcing and Contract Staffing Agencies through Appropriations Limitation. The battle over what constitutes an independent contractor, as opposed to an employee, has raged for quite a while in labor law circles. However, a series of recent NLRB decisions threatens to undo decades of precedent.

In one such case, *FedEx Home Delivery* (361 NLRB no. 55), the NLRB ruled on September 30, 2014, that drivers for the delivery firm FedEx were to be considered employees, not independent contractors. As a result, writes attorney Todd Leibowitz of the law firm BakerHostetler:

> Companies who wish to analyze whether their non-employee workers are properly classified as independent contractors must now contend with a new NLRB test, in addition to the IRS Right to Control Test (used for federal tax purposes), common law Right to Control Test (used for ERISA [Employment Retirement Income Security Act] and federal discrimination law purposes), modified Treasury version of the common law Right to Control Test (used for Affordable Care Act purposes), Economic Realities Test (used for Fair Labor Standards Act purposes), and the multitude of varying state law tests used for state wage and hour laws, workers compensation, and unemployment.

In another case, *CNN America, Inc.*, the cable news network CNN is appealing a recent NLRB ruling that forces the network to rehire workers from a temp agency *11 years* after the news giant terminated its contract.

In a third case, the NLRB ruled in favor of the Teamsters union, which argued that Browning-Ferris Industries, a client of Leadpoint, a staffing company it was trying to unionize, is a joint employer of Leadpoint employees and therefore should be bound by a collective-bargaining agreement between Leadpoint and the union. Matthew Austin, a partner at the law firm Roetzel and Andress, comments on Law360: "Let that sink in: BFI will be bound by the union contract between Leadpoint and Leadpoint's union. This [amicus brief of the NLRB general counsel and potential] ruling undermines the entire staffing and temporary employee industry" ("NLRB's 'Joint Employer' Test Will Rewrite Labor Law," Law360, September 18, 2014, http://www.ralaw.com/resources/documents/files/Law360%20Sept%202014%20Article.pdf).

An NLRB general counsel brief outright states, "The Board should not adhere to its existing joint-employer standard and should instead adopt a new standard," which would hold that joint-employer status exists in cases of direct control of workers, indirect control of workers, potential control of workers, or where industrial realities give significant control over the other business' workers (Amicus brief of the general counsel, June 26, 2014, http://www.laborrelationsupdate.com/files/2014/07/GCs-Amicus-Brief-Browning-Ferris.pdf).

Does telling a temp receptionist to dress professionally, where to sit, how to answer the phone, and when lunch and breaks occur constitute direct control, significant control, or potential control? Does adding extra tasks make a difference? Is donning a uniform a determining factor? Matthew Austin of Roetzel and Andress observes, "It's hard to imagine a scenario where the use of temporary workers, employees from a staffing agency, many subcontracting relationships, seasonal workforces and day laborers will not automatically bind the supplying and using companies."

The NLRB is waging an all-out assault on businesses that hire temps and contractors. Congress will have to step in to maintain the continued operation of those industries.

Experts: Aloysius Hogan, Trey Kovacs, Ivan Osorio, Iain Murray

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LABOR MOBILITY

Labor mobility is an important part of a free economy. Immigrant entrepreneurs have founded some of America's most iconic businesses—including Warner Brothers, Anheuser-Busch, Goya Foods, Goldman Sachs, Paramount Pictures, Sbarro, Forever 21, Google, Intel, Sun Microsystems, Yahoo!, Kraft, Pfizer, eBay, Nordstrom, and AT&T. In New York City alone, 70,000 immigrants own small businesses, including 90 percent of the city's laundry and taxi services. Studies find that immigrants are twice as likely as native-born Americans to found new businesses. Accordingly, America's employment system needs to be welcoming to immigrant entrepreneurs. At present, it is not. Moreover, efforts to clamp down on undocumented immigrants have led to unreasonable burdens being placed on employers, as the federal government outsources its policing function to them.

Congress should:

- Pass legislation introducing a more flexible and attractive immigrant visa program.
- Resist moves to make the E-Verify program, run by U.S. Citizenship and Immigration Services (USCIS), mandatory and preferably defund the program.

Immigrant Visas. America has no visa designated specifically for entrepreneurs. Most immigrants and immigrant entrepreneurs enter the country through family relations or employer-sponsored visas before they can start their own businesses. Google's Sergey Brin and eBay's Pierre Omidyar, for example, entered through the family-based immigration process. Talented foreigners without such connections must first find an employer willing to sponsor them. Then, they must usually wait years in the immigration queue before being allowed to enter. And when they finally arrive, they do so only as employees, not entrepreneurs.

America needs a genuine entrepreneurship visa, one that offers a clear path to permanent residency to any foreign-born, venture-backed founder of a new business in the United States, without further restrictions. That need should form the basis of a future bill.

Visas for entrepreneurs who invest in their own businesses are available, but with major restrictions. The E-2 treaty investor visa requires investors to justify their presence to the government every two years, and it excludes some major countries, including China, India, and Brazil. The E-2 and the EB-5 investor visa, which grants applicants a conditional visa, can be used to start businesses, but both base their requirements on specific investment levels that are too high for most new entrepreneurs to meet. The E-2 requires foreign immigrant investors to own 51 percent of the business and to have a personal minimum investment of $100,000 or more. The EB-5 requires an investment of at least $1 million, and the investor must prove that the investment has created at least 10 full-time jobs within two years.

A true entrepreneur visa would be established on the basis of what we know about how our domestic entrepreneurs start their businesses. According to the Internal Revenue Service, nonfarm sole proprietorships had average annual revenues of less than $60,000 in 2008. For small businesses, median annual revenue was $182,000 in 2012. Previous versions of entrepreneur visa proposals have required very high clearance levels by comparison with those realities. As of 2010, just 5.3 percent of immigrant-owned businesses began with startup capital of more than $250,000, the level needed for a renewal under the recent X visa proposal. Only 12.2 percent had $100,000 or more. Barely a quarter started with over $25,000.

E-Verify. In its current form, E-Verify is a voluntary Internet-based program run by U.S. Citizenship and Immigration Services, aimed at providing confirmation that a worker is eligible to work in the United States. The program compares the employee's I-9 form with U.S. government records. In the event of a mismatch, the program alerts the employer and gives the employer and the employee eight weeks to establish that the worker has the correct authorization to work.

E-Verify will result in at least 1.8 million erroneous initial nonconfirmations over the next decade, requiring legal employees to sort out those errors at federal offices. The process will, on average, cost legal employees who receive initial nonconfirmations $280 per error to resolve—or nearly $50.5 million per year. Employees who receive a tentative nonconfirmation must resolve it at their own expense and on their own time, an especially costly burden for workers living in rural areas.

According to USCIS testimony, E-Verify would cause an estimated 40,000 authorized workers to lose their jobs annually because of erroneous final nonconfirmations, costing affected workers about $134 million in lost wages per year.

Furthermore, E-Verify would have a disproportionate negative effect on legal immigrants. USCIS's official E-Verify auditor, Westat, found in 2009 that naturalized citizens and authorized foreign-born workers are 26 times more likely than native-born citizens to receive a system error. Extrapolating from that finding, foreign-born individuals can expect to receive 82 percent of all errors. That implication may encourage employers to discriminate against otherwise qualified foreign-born applicants.

For employers, implementing E-Verify will be neither simple nor inexpensive. Extrapolating from the U.S. Department of Homeland Security's estimate of the costs incurred by federal contractors in using E-Verify, businesses required to use the system will face $4.1 billion in setup costs and $2.55 billion in annual compliance costs thereafter. Employers must learn an 88-page compliance manual and undergo training before they can participate in the E-Verify program. Under the White House proposal, which exempts businesses with fewer than five employees from the system, initial setup costs would be lower, at about $1.7 billion. Mandatory E-Verify will return nonconfirmations to about 650,000 unauthorized workers per year at the current rejection rate, costing businesses about $3.95 billion per year to replace them.

Implementation of E-Verify represents enormous compliance costs for both workers and employers and an inappropriate deputization of employers by immigration authorities to do their work for them.

Congress should resist moves to make E-Verify mandatory and preferably should defund the program.

Expert: Iain Murray

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INCOME INEQUALITY

A large part of the justification for policies like a federal minimum wage and collective bargaining rests on the supposed ills of income inequality. Income inequality, the argument goes, is harmful for society because it creates winners and losers. And because inequality is an inherent part of the free-market capitalist system, Congress should reduce relative poverty by adopting policies that raise wages. However, such policies do more harm than good.

Congress should:

- Focus on policies that tackle absolute poverty, rather than inequality.
- Reject taxes on capital, including on dividends or capital gains, and reduce those taxes if given the opportunity.
- Refuse to increase, and preferably abolish, the federal minimum wage.

Concerns over income inequality revolve around the idea that the rich are getting richer, while the poor, if not getting poorer, are not getting any richer over time, leading to greater inequality and *relative* poverty. That idea has recently received some intellectual heft following the publication of French economist Thomas Piketty's bestseller *Capital in the Twenty-First Century*. In *Capital*, the broad pattern Piketty traces is that before World War I, income inequality was very high in America but was especially so in Europe. The Gini coefficient, a widely used measure of inequality, ranges from zero at absolute equality to one at absolute inequality. Piketty finds that "Belle Époque Europe exhibited a Gini coefficient of 0.85, not far from absolute inequality."

Piketty argues that the two world wars destroyed accumulated capital in Europe, leading to an era of relative equality in which it appeared that what he perceives as the problem of capitalism had been overcome. Income inequality gradually increased in the postwar decades, with the rise sharpening in the 1970s and 1980s, to the point where today it is nearing prewar levels. America, in particular, has rapidly growing inequality compared with the United Kingdom or France.

The reason for that growing inequality, Piketty argues, is that the rate of return on capital is greater than the growth rate of the economy as a whole, leading to the rich getting richer. As a result, Piketty calls for a global tax on capital, an idea endorsed by leading leftist economists, such as Paul Krugman.

Yet such an argument ignores the problem of *absolute* poverty. Today's poor are in fact much richer in most respects than the richest of a century ago. They have access to faster, safer travel, undreamed-of communications technology, and much better health care, to name but three examples, than the lords of the Belle Époque. That change has come about as a result of global wealth creation.

Taxing capital would reduce the amount of capital formation and investment. Innovators would find it more difficult to find financing for their ideas. More importantly, consumers on all steps of the economic ladder would be denied life-improving inventions, efficiencies, and conveniences. The capital tax would actively harm the poor by slowing the ongoing increase in living standards that began about 200 years ago. That slowdown would make absolute poverty eradication even more difficult than it already is.

It is a moral imperative for public policies to maximize long-run economic growth. Even a few tenths of a percentage point difference in annual economic growth rates can add up to huge differences in living standards over time. Suppose two neighboring countries start with identical per capita annual incomes of $1,000. The first country grows by 2.5 percent per year. After a century, its per capita annual income will have grown nearly twelvefold, to $11,813. Its neighbor, with 2 percent annual growth, after a century will have an annual per capita income of $7,245, barely 60 percent as much. Those extra tenths of a percent in the first country's growth rate have a huge long-run effect on human well-being.

Therefore, Congress should reject any proposals to increase taxes on dividends or capital gains and preferably should reduce them.

Minimum Wage. Another policy favored by those concerned about relative poverty is to increase the federal minimum wage. Again, that policy harms those it is intended to help. A November

2013 Gallup poll found that 76 percent of Americans would vote in favor of a $9-per-hour minimum wage if it were put to a referendum. When Seattle passed a $15-per-hour minimum wage in 2014, to be phased in over seven years, the City Council's website proclaimed, "City Council Approves $15/hour Minimum Wage in Seattle: Historic vote addresses income inequality."

The problem with that thinking is that it ignores tradeoffs. A minimum wage helps some workers but at the cost of hurting other workers. That results in a regressive income transfer and increased inequality. Some of America's least well off workers get a raise precisely as other of America's least well off workers see their hours cut, or even lose their jobs entirely. Other workers will never be hired in the first place. A 2014 Congressional Budget Office study of a proposed $10.10-per-hour minimum wage estimates that "implementing the $10.10 option would reduce employment by roughly 500,000 workers in the second half of 2016, relative to what would happen under current law."

Moreover, even those who seem to benefit from the minimum wage are often harmed in other ways. The minimum wage increase in the SeaTac Airport district near Seattle led to workers losing benefits such as 401(k) accounts, health insurance, paid leave, paid parking, and complimentary meals if they worked at a restaurant. If wage costs increase, employers look for offsetting savings elsewhere, and fringe benefits are usually the first to go. As a result, the extra money in the pay envelope usually ends up going to pay for the lost benefits, often at less favorable tax rates for the employee.

Employers can also lay off some employees or cut employees' hours. Employers will also become more reluctant to hire additional workers, particularly those with low levels of skill, if required to pay them a higher wage. Consumers also lose out. Parking companies in the SeaTac district raised their prices rather than fire workers and replace them with automated kiosks.

The minimum wage's least visible tradeoff is that some workers are never hired in the first place. The individuals who were never hired because of a minimum wage hike are impossible to identify, but the data indicate that those willing would-be workers skew toward young and minority.

Young workers typically have higher unemployment rates than older workers to begin with, as younger people typically have fewer skills and less experience than their elders. And many young people are still in school or have young children, thus limiting their hours and availability. Minimum wages amplify that disparity by pricing some inexperienced and less skilled workers out of the market altogether. Federal minimum wage increases between 2007 and 2009 helped increase the youth unemployment rate by about 3 percent. Indeed, the high minimum wage in European countries such as France helps explain the very large youth unemployment rates there—24 percent as of this writing.

Congress should oppose any increase in the minimum wage and preferably should abolish it by repealing the Fair Minimum Wage Act.

Experts: Ryan Young, Iain Murray, Aloysius Hogan, Ivan Osorio

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PUBLIC PENSION REFORM

Limited government is essential to prosperity. Conversely, having to pay for a large and growing public sector curtails entrepreneurial activity by diverting capital away from the private sector. At the state and local level, that outcome has become a major problem, with states and municipalities facing large public pension shortfalls. Although pensions are a state and local matter, the size of many pension deficits could likely lead to calls for federal assistance. Congress should resist such calls.

Congress should:

- Hold hearings aimed at clarifying the Governmental Accounting Standard Board's (GASB) decision-making process in setting discount rates of public pension plans.
- Resist calls for bailing out underfunded state public pensions.

A central factor contributing to public pension underfunding is dubious accounting facilitated by the Governmental Accounting Standards Board, an independent, quasi-private organization. For years, GASB allowed public pension managers to calculate employer contributions using discount rates based on high investment returns, usually in the 7 percent to 8 percent range. Although some pension funds can achieve such return rates, they need to do so year on year in order to keep up with the growth in pension liabilities, which rise in an uninterrupted straight line.

Given the fixed nature of public pension liabilities, pension managers should use a risk-free rate, based on investment return projections consistent with 15- to 20-year Treasury bonds, in the 3 percent to 4 percent range.

GASB reformed its pension accounting standards in June 2012, when it approved GASB Statement 67, to replace GASB Statements 25 and 27—under which pension plans could base discount rates not on the certainty of liabilities coming due but on the projected returns on plan assets—effective in mid-2013. Although a small step in the right direction, the reform did not go nearly far enough. Although the new rules call for establishing discount rates for "unfunded" pension liabilities on a lower rate of return, that rate may still be too high. Worse, supposedly funded pension plans can continue to use the same high discount rate as under GASB Statement 25.

That adoption of a dual discount rate makes little sense. Congress should seek to find out why GASB adopted that standard.

Experts: Ivan Osorio, Aloysius Hogan

For Further Reading

Ivan Osorio, "More than Good Enough for Government Work," American Enterprise Institute, April 25, 2012, http://www.aei.org/publication/more-than-good-enough-for-government-work/.

Robert Sarvis, "The High Cost of Big Labor: Understanding Public Pension Debt," Competitive Enterprise Institute, July 2014, http://cei.org/content/understanding-public-pension-debt.

PRIVATE PENSION REFORM

The Pension Benefit Guaranty Corporation (PBGC), the federal agency that insures private-sector pensions, reported a $27.4 billion deficit for FY 2013. Created by Congress in 1974, the agency is funded through premiums paid by insured companies, not federal tax dollars, but the PBGC's pension insurance scheme now functions as a huge corporate subsidy. In its current structure, the PBGC creates a major moral hazard.

Congress should:

- Give the PBGC the flexibility to adjust its own premiums to reflect risk in the future.
- Reject any PBGC bailout legistlation

While the Pension Benefit Guaranty Corporation's reported $27.4 billion deficit for FY 2013 was an improvement over the previous year's $34 billion figure, the agency still faces major challenges in fulfilling its mission. Moreover, that slightly improved outlook extends only to single-employer pension plans, not multiemployer plans, of which a significant percentage face a serious risk of insolvency. The PBGC now projects that its multiemployer program's deficit will grow from $8.3 billion in 2013 to $47 billion by FY 2023. Insolvencies now threaten about 1 million multiemployer plan beneficiaries. That level is clearly unsustainable.

Created by Congress in 1974 as part of the Employee Retirement Income Security Act, the PBGC is funded through premiums paid by insured companies, not federal tax dollars, but the PBGC's pension insurance scheme now functions as a huge corporate subsidy. In its current structure, the PBGC creates a major moral hazard.

Congress recently raised PBGC premiums, an idea the Government Accountability Office has endorsed. But Congress should go further and give the PBGC the flexibility to adjust its own premiums, like the Federal Deposit Insurance Corporation does. Lawmakers should not be in the business of setting prices, and there is no reason to make an exception for pensions, especially for an insurer supposedly funded by premiums.

For the beneficiaries of that de facto subsidy, defending it publicly requires some rhetorical sleight of hand. A May 2014 U.S. Chamber of Commerce report describes PBGC premium hikes as "essentially tax increases on the businesses that pay them." In reality, raising premiums amounts to the removal of a subsidy—a removal that can be made permanent only by Congress getting out of the business of setting the PBGC's premiums.

The U.S. government is not directly responsible for the PBGC's unfunded liabilities, but the agency's massive, mounting deficit makes a federal bailout a real possibility. In fact, some politicians have already proposed such a bailout. A bill introduced in the 112th Congress by Sen. Robert Casey (D-Penn.) sought to make the federal government explicitly liable for multiemployer plans under the PBGC's purview. The bill failed, but similar schemes could come up again, especially if the PBGC's deficit were to get much worse. Congress should resist any attempt at a bailout.

Experts: Ivan Osorio, Aloysius Hogan

For Further Reading

Paula Aven Gladyich, "The PBGC's Perfect Storm," Benefitspro.com, November 26, 2013, http://www.benefitspro.com/2013/11/26/the-pbgcs-perfect-storm.

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Nick Thornton, "PBGC Warns of Swelling Deficit in Multiemployer Plans," Benefitspro.com, June 30, 2014, http://www.benefitspro.com/2014/06/30/pbgc-warns-of-swelling-deficit-in-multiemployer-pl.