FREE TO PROSPER

A PRO-GROWTH AGENDA FOR THE 119TH CONGRESS

Edited by Matthew Adams, with contributions from CEI experts

COMPETITIVE ENTERPRISE INSTITUTE

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Competitive Enterprise Institute

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Introduction

by Matthew Adams

"All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Article I, Section 1 of the United States Constitution

According to the Competitive Enterprise Institute's most recent count, federal regulatory agencies issued 46 rules for every law passed by Congress. This "unconstitutionality index" goes hand in hand with our latest analysis which shows the total cost of federal regulation tops more than $2 trillion annually. The average US household pays nearly $16,000 each year in a hidden regulatory tax.

Regulators have overreached and claimed quasi-legislative powers. These powers were rightly vested in Congress and not the executive by Article I of the Constitution. With unelected bureaucrats at the litany of alphabet soup agencies adding so much red tape and causing such burdensome negative economic effects each year, it is painfully obvious that structural, Constitution-minded reforms are needed.

There is also the US national debt, which is just over $36 trillion and growing fast. It is an understatement to say that the decisions we make collectively as a nation over the next decade will determine the next century of American economic prosperity and strength.

With the recent political trifecta coming out of the November elections, the 119th Congress offers free market and limited government advocates in the legislative branch unique opportunities to implement the necessary reforms. Now is the time to downsize the size and scope of the administrative state and bring about restraint, transparency, and accountability to our regulatory processes.

With all this in mind, it is my pleasure to share with you the 2025 edition of *Free to Prosper: A Pro-Growth Agenda for the 119th Congress.*

First published in 2015 for the 114th Congress, *Free to Prosper* offers legislators a set of concrete policy proposals prepared by CEI experts to help them tackle the pressing issues of today.

It is a compendium of practical, tailored, and actionable ideas to help you, lawmakers and staffers, get things done. Politics is the art of the possible and this is a guidebook for reforms that are doable. It does not include every proposal under the sun. It's not overly ideological or partisan. It does not promise to solve every problem. Rather, it is designed to help you navigate the complexities of governance, the labyrinth of regulation, and ultimately make good on some of those promises made on the campaign trail.

The report gives special attention to structural regulatory reforms and legislation like the Regulations from the Executive in Need of Scrutiny (REINS) Act and the Guidance Out of Darkness (GOOD) Act that would take an axe to the regulatory state. It discusses regulation post-*Chevron* deference and advocates for an "Abuse of Crisis Prevention Act" to safeguard against the kind of COVID-era lawmaking which hurt our economy and unleashed a new slew of regulatory mandates. It calls for a restoration of the constitutional principles upon which we were founded and outlines how Congress can reclaim its Article I powers.

Many of the top issues for voters during the 2024 election are here. This booklet addresses inflation, health care, trade, and artificial intelligence. And it goes on to address the many other domestic economic issues in need of attention: energy and environment, banking and finance, labor and employment, technology and telecommunications, antitrust, and much else.

Whether you're a seasoned Capitol Hill legislative director or greenhorn legislative correspondent hot off a campaign, I trust that you'll find *Free to Prosper* helpful to you as you go about the important work of legislating.

The practical, achievable, and timely recommendations found in our agenda for the 119th Congress do not require unanimous support. However, they do demand legislative champions. It is CEI's hope, and my hope, to partner with you over the next year to advance some of these reforms.

Matthew Adams is Senior Government Affairs Manager of the Competitive Enterprise Institute.

Regulatory reform and government efficiency

1

Regulations raise the cost of groceries, energy, and housing at a time when families are still smarting from the post-pandemic inflation. Regulations make it harder to start new businesses, build new infrastructure, and deliver medicine to sick people. They cost the average household more than $15,000 per year, and the burdens are still growing. The time for reform is now.

Nearly all of the Competitive Enterprise Institute's (CEI) work involves regulation in one way or another. We have specialists in tech policy, labor policy, energy and environment, and several other regulatory areas. These beginning chapters are about the regulatory system itself, rather than individual regulations.

One of CEI's policy mantras is that institutions matter. Think of institutions as the rules of the game, rather than the game itself. In regulatory policy, institutions are things such as the government's separation of powers, how the rulemaking process is structured, procedures for cost-benefit analysis and public comments, and procedures for unwinding rules that are obsolete or do not work as intended.

In short: If you want a better game, adopt better rules.

This chapter briefly maps the extent of federal regulation, outlines a few principles for institution-level reform, then looks at recent legislation that would improve the rules of the regulatory game.

You may be wondering: Exactly how much regulation is there?

The federal government has a spending budget that shows the public how much each department is spending, and on what, and how much tax revenue the government raises. It has no equivalent for regulations. This makes it nearly impossible to give definitive estimates on federal regulatory burdens.

The Competitive Enterprise Institute's Wayne Crews fills this gap with his annual *Ten Thousand Commandments* report, which collects disparate government data into one document. The government should be doing this, by law. Until it does, *Ten Thousand Commandments* will have to suffice.

All federal regulations are collected in a Code of Federal Regulations. The most recent print edition contains 243 volumes and roughly 188,000 pages. These pages contain about 1.1 million individual regulatory restrictions.

That is just the stock of existing regulations. There is also a constant flow of more than 3,000 new regulations every year. The twice-annual Unified Agenda, which lists planned regulations from every agency, typically contains more than 3,500 regulations.

The daily Federal Register publishes all proposed and final regulations from every agency. It also contains presidential documents, agency notices, and other documents that often serve as informal rulemakings. These are known as "regulatory dark matter" for their lack of transparency. The Federal Register topped 100,000 pages for the first time in 2024, breaking 2016's record of 96,994 pages.

Total compliance costs for federal regulations is at least $2.1 trillion per year, or more than $15,000 per household. That is nearly 8 percent of GDP. Paperwork burdens for just the year 2022 were more than 10 billion hours, equivalent to nearly 15,000 human lifetimes.

Now that we know the rough extent of federal regulations, how to reform them becomes terribly important. Here are four principles for regulatory reform that lasts:

1. Institutions matter. Getting rid of specific regulations is not enough. Congress must also reform the systems that create those regulations.
2. Congress needs to be involved in reform. Use legislation, not just Executive Orders.
3. Congress should require agencies to be more transparent about the regulations they issue and their cost.
4. Remember that regulations are made and enforced by the real-world government we have, not the ideal government we want.

Let's look at each of these in turn.

Institutions matter: It is not enough to get rid of specific rules that are harmful, redundant, or do not work as intended. Reformers must also reform the institutions that generate bad regulations in the first place.

Current regulatory institutions make it too easy to pass new regulations, and too difficult to get rid of old ones. It lacks transparency, and the executive branch has too much power to enact regulations that Congress never intended. For regulatory reform to last longer than a change of power, reformers must enact system-level reforms. Otherwise, repealed regulations will just come back after a few years.

Congressional involvement matters: Congress must be more involved in rulemaking, and the executive branch should have a smaller role. There are two reasons for this. One is that the Constitution states, “All legislative Powers herein granted shall be vested in a Congress of the United States.” It gives none to the executive.

In 2023, Congress passed 68 bills, and agencies issued 3,018 new regulations. The difference is a factor of 44. Executive branch agencies have passed major new regulations on issues ranging from net neutrality to non-compete clauses that Congress never approved, or in the case of cap-and-trade rules for emissions, policies that Congress specifically voted against. While such rules are often overturned in court, it takes years, and success is not guaranteed.

The second reason is permanence. Donald Trump issued a series of Executive Orders early in his term enacting several institution-level regulatory reforms. These included a one-in, two-out rule for new regulations; a centralized public portal for publishing regulatory dark matter such as guidance documents.

Since Congress never passed legislation to codify these Executive Orders, Joe Biden repealed them when he took office, and the reforms went away. Trump was distracted by other matters, and Congress was distracted with him. Republicans then lost their congressional majority in the 2018 midterm elections, and with it went their chance to enact permanent legislation. Executive Orders are not enough. Congress must pass legislation which will outlast a change in power.

Transparency matters: Agencies need to disclose more and higher-quality information about their regulatory burdens. Transparency declined during the Biden administration. However, since Biden repeated Trump’s mistake of using Executive Orders instead of congressional legislation, reformers can easily restore lost transparency.

Things were already bad. Fewer than 1 percent of rules receive full cost-benefit analysis. Then the Biden administration changed cost-benefit procedures. The Office of Information and Regulatory Affairs (OIRA) inside the Office of Management (OMB) was traditionally charged with providing objective cost-benefit information that agencies could use in decision-making.

Biden’s Executive Order 14094 changed OIRA’s job to justifying the regulations agencies send to it. Analysts were ordered to become cheerleaders. New discount rate rules resulted in automatically lower long-term cost estimates. Biden also doubled the cost threshold from $100 million to $200 million for larger regulations that receive additional scrutiny, so that fewer rules receive that scrutiny. These rules were also renamed from the descriptive “economically significant” to the anodyne “Section 3(f)(1).” Congress should pass legislation restoring that lost transparency.

Enforcement matters: Regulations are made and enforced by the government we have, not the government we want. Many well-intentioned policies fall prey to bureaucratic bungling, regulatory capture (whereby businesses game the regulatory process to hobble competitors), or both. It is important to remember what a real-world government is capable of doing—and what it cannot do.

A cardinal rule of politics is not to give yourself powers you would not want your opponent to have. In a democracy such as ours, power regularly changes hands. This is an important lesson for Congress to keep in mind as it passes legislation to address the problems of the day.

Moreover, a federal response is not always appropriate. America's federal system has multiple levels of government, with different strengths and weaknesses. That flexibility is crucial for allowing public policy to respond to a rapidly unfolding crisis, especially in a country as large and diverse as the United States. Some policy matters are truly nationwide, and deserve a federal response. Other policy areas are better addressed by state and local governments that are closer to the problem.

Governance does not always require government. Markets need rules and standards to thrive. Sometimes these come from government, and sometimes they don't. People capable of coming up with a surprising amount of regulatory solutions on their own. Private governance standards can evolve more quickly to meet changing times than can distant government regulators. Bottom-up often outperforms top-down.

Still, there are a number of regulatory reform measures that would do much to fix the issue of overregulation. In CEI's estimation, Congress should:

- Pass the REINS Act;
- Pass the GOOD Act; and
- Pass the LIBERATE ACT.

REINS Act: The separation of powers is tilted too far towards the executive branch. The Regulations from the Executive In Need of Scrutiny (REINS) Act would restore some balance by requiring congressional votes on all agency rules costing more than $100 million per year. This would enable Congress to ensure that executive branch regulations are in line with congressional intent. The REINS Act has already passed the House in multiple congressional sessions.

A new version of REINS, introduced late in the 118th Congress by Sen. Rand Paul (R-KY) and Rep. Kat Cammack (R-FL), is stronger than previous version. It includes guidance documents as well as traditional regulations; exempts deregulatory measures from REINS votes; allows individuals to sue agencies if their rules dodge a required REINS vote; and it allows individuals to "argue that the average

person would not have known their actions violated federal law if the statue did not clearly state it."

This gives Congress an incentive to write more detailed legislation that does not give agencies a blank check. It also gives agencies an incentive to make sure their regulations fit their authorizing legislation.

GOOD Act: The Guidance Out Of Darkness (GOOD) Act, sponsored by Rep. Bob Good (R-VA) and Sen. Ron Johnson (R-WI), brings transparency to regulatory dark matter. Agencies issue guidance documents to clarify ambiguities and fill gaps in their regulations. Guidance documents are not technically binding, but courts have traditionally treated them that way. This gives agencies a way to issue new regulations without going through the required notice-and-comment rulemaking process that has been in place since 1946.

The GOOD Act would create a central public portal where all agencies are required to publish all guidance documents. Guidance that does not make it into the portal by a certain deadline becomes null and void. A Trump Executive Order similar to the GOOD Act uncovered more than 100,000 guidance documents.

Although Joe Biden nullified Trump's GOOD Act-style Executive Order, he did say he would sign the GOOD Act if it crossed his desk. The bill also passed its committee with unanimous bipartisan support, which means the GOOD Act has good political prospects, regardless of which party is in power. This should make it a priority for reformers.

LIBERATE Act: This bill would help repeal old and obsolete regulations. Its full title is the Locating the Inefficiencies of Bureaucratic Edicts to Reform and Transform the Economy Act. Sen. Mike Lee (R-UT) introduced it in the 118th Congress as S. 4920. The idea is similar to the Base Realignment and Closure (BRAC) Commissions of the 1990s.

When the Cold War ended, the military wanted to close unneeded military bases. But no member of Congress would vote to close a base in their district and risk political blowback. The solution was to outsource the tough decisions to an independent commission.

It examined every base, determined which ones were no longer needed, and sent a recommendation package to Congress. It was an up-or-down deal, with no amendments allowed, to prevent it from being watered down. Congress was also required to hold a vote within a certain amount of time, so the commission's work would not die through neglect.

The BRAC model worked. Multiple rounds saved taxpayers billions of dollars.

Today, the same model can work for regulations. A regulatory BRAC-style Commission should annually comb portions of the 188,000-page Code of Federal Regulations for obsolete, harmful, or redundant regulations, and send a repeal package to Congress for a time-limited up-or-down vote.

The LIBERATE Act is one of several ways to structure a regulatory BRAC Commission, each with its pros and cons. Other methods have been introduced in recent years by Rep. Virginia Foxx (R-NC), Rep. Josh Gottheimer (D-NJ), Sen. Rick Scott (R-FL), and others. What is important is that Congress pass some version of the idea.

Neither Congress nor agencies are willing to trim unneeded regulations on their own, even though most of them agree on the need to do so. A commission can solve the collective action problem and stimulate the economy without increasing spending.

End the spending-regulation continuum

While administrative state reforms are crucial, they are not enough. Most aspects of American life, from the structure of industry to the homes we live in, the food we eat, and the health choices we make, are not public policy matters – and certainly not federal ones! Along with restoring the non-delegation doctrine to safeguard this separation, the doctrine of strictly limited enumerated powers must also be remembered.

An alarming trend in recent years has seen spending and regulation united as one, sometimes without the consent of our representatives. This is most clear in implementation of the CHIPS and Science Act where the Department of Commerce added “strings” to federal funding after passage of the bill, without Congress ever weighing in. Commerce Secretary Gina Raimondo added stipulations saying any companies requesting federal dollars for semiconductor business must then offer paid parental leave.

The CHIPS and Science Act and other Biden-era inflation, infrastructure, and tech laws, for instance, were profoundly regulatory in nature even before administrators pick up the implementation baton. Unfortunately, restoring Article I lawmaking power to Congress offers limited utility when legislators in both parties recognize few constraints on their own power. The fusion of what should be plainly seen as unconstitutional hyper-spending with hyper-regulation illustrates that Congress’s disregard for enumerated powers, on top of over-delegation to agencies, poses a huge challenge to the liberty of Americans.

To build on things like the REINS Act, GOOD Act, and LIBERATE Act, Congress should:

- Terminate several departments and agencies;
- Anticipate post-*Chevron* strategic mobilization;
- Ensure current regulatory reform laws are followed; and
- Enact an Abuse of Crisis Prevention Act.

Terminate: During the 119th Congress, we will undoubtedly hear much talk about downsizing bureaucracy. Congress should follow that by taking the bold step of abolishing entire federal departments and agencies, returning governance to states, localities, and civil society. Growth of the federal bureaucracy has saddled the nation with a staggering $35 trillion debt and left constitutional norms behind.

The time for merely tweaking a few regulations has passed and most arguments for better regulations are misguided. For example, many on the center-right still treats antitrust intervention as a legitimate pursuit so long as the coercion advances nebulous “consumer welfare.” In reality, antitrust deeply undermines consumer welfare. It disrupts not merely firms but entire industries and the broader economy’s natural evolution and efficiencies.

Across the bureaucracies, legislators should prioritize the repeal of entire statutes that birthed the administrative state in the first place, privatize, and ultimately restore federalism.

Anticipate: The Supreme Court’s June 28, 2024, decision *Loper Bright Enterprises v. Raimondo* decision ended the Chevron deference doctrine established in 1984’s *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* ruling. Under Chevron, courts deferred to federal agencies’ reasonable interpretations of ambiguous statutes.

However, the majority opinion in *Loper* concluded that this deference undermined the separation of powers, expanding executive authority at the expense of judicial oversight. Regulatory advocates will mobilize quickly and they have much to work with. Indeed, most of the leverageable administrative apparatus was erected long before *Chevron*, and remains intact.

The problem, especially post-COVID, is less about agency misinterpretation of ambiguous statutes, as in *Loper*, and more about agencies’ implementation of unambiguous things that Congress actually passed. These include bills to ban things that Congress has no business banning, such as TikTok; subsidies and grants to seduce the private sector; and the federal government throwing its procurement and contracting weight around.

The 119th Congress must not overlook the fact that, *Loper* notwithstanding, Congress has already given progressives the tools they need to cherry-pick among statutes and authorize nearly anything.

A glaring example is student loan forgiveness debacle. The Biden administration jumped from a COVID emergency rationale to a dubious exploitation of the 2002 HEROES (Higher Education Relief Opportunities for Students) Act.

Another way for Congress shore up *Loper* would be requiring formal rulemakings for statutes with significant regulatory implications. While the Section 553(c) default in the Administrative Procedure Act is notice-and-comment rulemaking, Congress has it in its power to raise that bar.

Ensure: The 119th Congress should appreciate that several laws aimed at improving regulatory transparency and oversight are already on the books but are routinely ignored. It is time to rectify this neglect. These laws include the Regulatory Right-to-Know Act's requirements for annual and aggregate cost estimates; the Congressional Review Act's (CRA) mandate that rules be reported to the Government Accountability Office and both houses of Congress; the Paperwork Reduction Act's annual paperwork burden accounting; the routinely ignored Regulatory Flexibility Act, and more. Even the inventory of federal programs required by the Government Performance and Results Act (GPRA) remains unfulfilled.

Enacting new reform laws is futile if those already in place continue to be disregarded. Congress should insist on compliance and apply penalties if that doesn't happen.

Enact: The exploitation of crises in the twenty-first century—such as 9/11, the 2008 financial meltdown, and COVID—lies at the root of significant explosions in spending and regulation. Legislation which we would call the Abuse of Crisis Prevention Act is urgently needed to prevent the next inevitable economic shock from triggering another multi-trillion-dollar, hyper-regulatory surge.

A map of such legislation might look something like this: Title I would focus on dismantling the administrative state through regulatory reforms detailed above; Title II would commit policymakers to prioritizing the promotion of intergenerational wealth over the accrual of intergenerational federal debt; Title III would encourage businesses and corporations to shore themselves up against "rainy day" events, thus reducing many bad reactions to crises; Title IV would limit abuse of emergency declarations and advance comprehensive insurance market reforms that privatize preparedness; Title V would strengthen state and local sovereignty, empowering them in ways that transcend the unfulfilled promises of conventional federalism. Lastly, Title VI would have sanctions for political exploitation of crises, so that regulators and officials would think twice before going there.

Conclusion

Conventional regulatory reforms are essential. Congress must also go beyond merely combating bureaucracy by confronting its own interventionist and paternalistic tendencies. It is popular for reformers to insist that Congress must reclaim its lawmaking authority from the executive branch, and they have a point. However, Congress's own disregard of enumerated powers has caused tremendous problems as well. By committing to thoroughgoing reform of the bureaucracy and also to checking itself, Congress can begin to turn around the problems caused by and out-of-control regulatory state.

Experts: Clyde Wayne Crews Jr., Ryan Young

For further reading:

Clyde Wayne Crews Jr., Ten Thousand Commandments: Sizing up the Federal Government's New Rules and Regulations: 2024 Edition, Competitive Enterprise Institute, 2024, https://cei.org/studies/ten-thousand-commandments-2024/.

Clyde Wayne Crews Jr., The Case for Letting Crises Go to Waste: How an 'Abuse-of-Crisis Prevention Act Can Help Rein in Runaway Government Growth, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4151917.

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Ryan Young, "How to Make Sure Reformed #NeverNeeded Regulations Stay that Way," WebMemo No. 57, Competitive Enterprise Institute, July 2020, https://cei.org/studies/how-to-make-sure-reformed-neverneeded-regulations-stay-that-way/.

Philip Hamburger, Is Administrative Law Unlawful? (Chicago: University of Chicago Press, 2014).

Constitutional restoration

2

Restraining the federal government's powers is at the heart of our Constitution. That document designates the boundaries of federal power as well as separates and balances the government's executive, legislative, and judicial functions. These restrictions not only limit what the government can do, but they also limit which branch of the government may do it. This demarcating, separating, and balancing is supposed to prevent any one branch of government from wholly dominating another.

There is a sharp conflict between this classical vision of American constitutionalism and the day-to-day proceedings of the modern administrative state. In particular, many federal agencies now wield a multitude of both executive and non-executive powers. That is: some of their powers appear to be executive in nature, but others appear to be legislative or judicial.

Many Cabinet agencies now wield powers once confined to the legislative or executive branch. Such agencies now investigate and prosecute those who are alleged to have broken the law (an executive function); they issue rules with the force of law (a legislative function); and they conduct hearings, trials, and appeals to apply the law (a judicial function). An observer of these agencies exercising various powers—especially when those powers cross intragovernmental property lines—may wonder what is left of the Constitution's promise of the balance and the separation of powers.

Both the separation and the balance of powers are vital elements of American governance. Congress should set new boundaries to restore these structural aspects of governance to their proper place. The long-term plan should be that legislative powers will be reassigned to Congress and judicial powers now exercised by administrative agencies will be reassigned to Article III federal courts. This restructuring would revive classical American constitutionalism and lead to a transformative change in American governance. We call this reconstruction Constitutional Restoration. Constitutional restoration will banish the specter of unlimited government, relegating it to the dustbin of history.

Constitutional restoration, as applied to the modern administrative state, is essential to good government — and not just because it makes for a cleaner or more aesthetically elegant federal structure. In *The Federalist* Number 47, when James Madison warned that "the accumulation of all powers, legislative, executive, and judiciary, in the same hands" may justly be called "the very definition of tyranny," he was not just explaining the formal beauty or the aesthetic importance of a well-designed organizational chart.

Madison's fundamental concern was that a collapse of the separation of powers would create terrible consequences for real people's lives because it would demolish the system of limited government that is a necessary condition of individual freedom. Preserving this freedom is contingent upon each branch exercising only its constitutionally prescribed powers. To revive the federal Constitution's separation of powers and balance of powers, Congress should:

- Amend the Administrative Procedure Act (APA) by eliminating the adjudicatory authority of federal agencies;
- Fully implement what CEI has called "constitutional restoration"; and
- Reassert control over the CFPB and other similarly unaccountable federal bureaucracies.

Amend the APA: Eliminating the adjudicatory authority of federal agencies (aside from federal benefit adjudication) and absorbing what was the work of administrative law judges (ALJs) into the work of an enlarged federal judiciary would end a state of affairs in which defendants' constitutional rights are increasingly undermined. This issue is something many courts—including the Supreme Court— have acknowledged. Many agencies have disregarded the APA's guardrails by expanding their bureaucratic control over adjudication, including switching the burden of proof onto the accused, the Labor Department's empowering of its ALJs to deny a private party's access to evidence (beyond the exclusion categories in section 556 of the APA), board members in the NLRB making *ex parte* communications with its ALJs to review their draft opinions (in violation section 557 of the APA), and in some entities (like the SEC) allowing agency leaders to initiate and resolve all cases absent from their ALJs, and allowing agency leaders to bypass ALJs to resolve cases. Although the Jarkesy decision has achieved some progress, the ultimate resolution is through the passage of federal legislation that ensures that only impartial Article III judges exercise adjudicatory powers.

Restore the Constitution: In the long run, Congress should take additional measures to reassign all federal legislative powers to Congress and all federal judicial powers to Article III courts. The best way to do this would be a gradual transition of staff and funding from the executive branch to Congress itself that would, over the long run, allow our federal legislature to produce sufficiently detailed legislation so that the issuance of interpretive regulation would be less frequent and less necessary.

Measures of this kind would restore the constitutional design based on political accountability and self-government. The array of positive effects that constitutional restoration would create includes encouraging Congress to make hard decisions rather than delegating such decisions to unaccountable bureaucrats.

Control CFPB, other agencies: The best way to do so would be by ending permanent appropriations processes that create invulnerability to congressional oversight and modification. Congress is responsible for guarding the public trust for all federal programs and all federal spending. The status quo, which allows the CFPB complete and unmodified discretion to capture and spend Treasury funds, is an unambiguous abandonment of Congress's guardianship of the public trust.

Experts: Dan Greenberg, David McFadden, Devin Watkins

For further reading:

Dan Greenberg & Devin Watkins, "Constitutional Restoration: How to rebuild the separation of powers," June 22, 2023, https://cei.org/studies/constitutional-restoration-how-to-rebuild-the-separation-of-powers/

Inflation

Inflation was most voters' top issue in the 2024 election, even amid all the other distractions. While inflation is now back down to near target levels, Congress should prioritize making sure inflation does not come back. There are three things Congress can do to contain inflation for the long term: spend less, enact a monetary policy rule for the Federal Reserve, and give the Federal Reserve a single mandate of keeping inflation low.

Policymakers should also remember that inflation does not come from corporate greed, or from the other party being power. It does not come from supply shocks, or even from bad policies such as tariffs. Inflation comes from the money supply outstripping real productivity.

When the money supply grows faster than real goods and services, you get inflation. If the money supply grows more slowly than real goods and services, you get deflation.

Good monetary policy is a matching game, where the Federal Reserve tries to keep the money supply in sync with what the real economy is doing. In the simplest version, if the economy grows by 5 percent, then the money supply should grow by 5 percent to match.

In the real world, there are other variables such as the velocity of money, or how fast dollars get spent and re-spent; lag times from the Fed's actions, which are long and variable; and other policy constraints the Fed must deal with. But that matching game concept is crucial to understanding how inflation works, and how to keep it under control. With this dynamic in mind, Congress should:

- Spend less and lower the budget deficit;
- Ensure the Fed's independence with a monetary policy rule; and
- Oppose efforts to expand the Fed's dual mandate to include non-economic issues such as climate and social justice.

Spend less: Stimulus spending, paid for with massive money supply growth, is what caused the great post-pandemic inflation. In the short run, Congress needs to reject calls for more stimulus spending.

The Fed started growing the money supply on its own within weeks of COVID arriving in America. This was to help counter a slower velocity of money during lockdowns, when people were staying home and spending less. The Fed overdid it, which gave the COVID inflation its start. Then Congress began a series of trillion-dollar stimulus bills, which made inflation even worse. These bills included the CARES Act, the CHIPS Act, an infrastructure bill, the Inflation Reduction Act, and others. The Trump administration added more than $6 trillion to the federal debt after COVID-19 hit, and the Biden administration was no better.

While the Federal Reserve is independent, when Congress grows the debt by such large amounts, the Fed more or less has to help finance it. Add those trillions of dollars of debt to the stimulus the Fed was already doing on its own, and the result was massive inflation. The Fed grew the money supply at quadruple its usual rate. As a result, inflation roughly quadrupled as well, from around 2 percent to a peak of more than 9 percent.

As of this writing, the Fed has rolled back its excesses enough to get inflation back under 3 percent. Inflation remains above its 2 percent target largely because the Fed and Congress lack credibility on future spending restraint. Markets expect more stimulus whenever there is a downturn, so people are pricing that expected inflation into their contracts, investments, and other long-term decisions.

In the short run, Congress can help by rejecting stimulus spending, loud and clear.

In the long run, Congress will have to grab onto the third rail of politics—entitlement reform. This is not optional. The current pay-as-you-go model is unsustainable. The only way to have a solvent entitlement system is to transition to a personal accounts model, as more than 30 countries have already done.

Social Security and Medicare currently have more than $110 trillion in unfunded liabilities. This is roughly four times America's GDP. Without entitlement reform, there is a real risk Congress will turn to the monetary printing press rather than risk political blowback from tax hikes and benefit cuts.

Pass monetary rule: Congress should help the Fed commit to a rule-based monetary policy. During the Great Moderation that lasted from the early 1990s to 2007, inflation remained low and stable. A major reason was that the Fed informally committed itself to a predetermined policy rule: If inflation reaches a certain level, the Fed automatically adjusted interest rates (and, indirectly, the money supply) by a matching amount determined by the rule.

When Fed policy makers take a more discretionary approach, the result is often higher and more volatile inflation, with all the economic harm that implies. That was the case during most of the 1960s and 1970s, when inflation was all over the map and peaked at nearly 15 percent.

During most of the Great Moderation, the Fed followed a "Taylor rule," which focuses on interest rates. There are other possible rules the Fed could adopt that would also work well. The Fed could directly target the money supply or focus on nominal gross domestic product (NGDP). The rule that is chosen is less important than choosing a rule in the first place and committing to it.

Credibly committing to a rule has two major benefits.

One is predictability, which is good for long-term planning and investment. Predictability also helps to manage inflation expectations, which are the biggest remaining problem from the post-COVID inflation.

Under the current discretion-based system, policymakers are tempted to use emergency measures and a try-anything approach during downturns. That often makes things worse than sticking to a rule.

In the long term, too much monetary discretion can discourage investment because people become reluctant to make lengthy commitments if they don't know what the monetary environment will look like the next time a recession hits.

Companies will set prices based on where they think inflation is headed. If they expect inflation to be high, they will increase their prices early and often. A credible Fed policy rule would keep inflation expectations low and stable—and accordingly influence the way companies adjust their prices.

Monetary rules also safeguard the Fed against political interference. President Lyndon Johnson physically intimidated then-Fed Chairman William McChesney Martin at his Texas ranch to convince him to boost inflation to stimulate the economy leading up to the 1968 election. President Richard Nixon made threats against then-Chairman Arthur Burns for similar reasons during his tenure. More recently, Presidents Trump and Biden have also made unsubtle hints about what they would like the Fed to do.

Those tactics worked because the Fed had the discretion to enact those policies. If the Fed was bound by a monetary rule, Fed chairs can tell politicians that they do not have the authority to do what they are being asked.

A monetary rule is one way to preserve the Fed's independence while adding predictability that entrepreneurs and investors can plan around. Congress should help the Fed enact such a rule, whether that rule targets interest rates, the money supply, or NGDP.

Simplify Fed's mission: The Fed already has a self-contradictory dual mandate: Keep inflation low and employment high. In the short run, the Fed can boost employment by boosting inflation. Cutting inflation can come at the cost of a slower economy.

It can achieve one of its goals or the other, but not both. That tension limits the Fed's effectiveness because it requires Fed policy makers to use discretion as to which plank to prioritize at a given time. More discretion means less predictability, which makes long-term investments and other decisions more difficult throughout the economy.

Congress should simplify the Fed's job to a single mandate of keeping inflation low. Congress should also oppose efforts to expand the Fed's mission to include environmental and social policy considerations.

The dual mandate status quo is bad enough. If Congress were to also require the Fed to also factor climate change, economic inequality, and social justice issues into its monetary policy decisions, the results would be even less predictable inflation.

In the long run, an incoherent mission can threaten the Fed's independence. If the Fed is given a quadruple or even quintuple mandate, some parts of it will be impossible to fulfill.

The fact that tradeoffs exist will anger some members of Congress, who will propose taking control of some aspect of the Fed's contradictory mandates, until the Fed is no longer independent. As countries from Argentina to Zimbabwe can attest, central bank independence is fundamental to preventing runaway inflation.

Instead, the Fed should have a single mandate: Keep inflation low. There are better ways to pursue other policy objectives, and they will be more effective in pursuing those goals when inflation is stable and low.

Expert: Ryan Young

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Health care

For the first time in many years, health care has not been a top political issue. Nevertheless, there are several important health care issues that the next Congress will face. To ensure better health care regulation, Congress should:

- Defeat attempts to regulate Pharmacy Benefit Managers (PBMs);
- Allow the enhanced Affordable Care Act (ACA) subsidies that were extended by the Inflation Reduction Act (IRA) to expire in 2025;
- Authorize the Centers for Disease Control and Prevention (CDC) for the first time; and
- Enact legislation expanding site-neutral payments in Medicare.

Resist PBM regulation: Pharmacy Benefit Managers (PBMs) are private businesses that developed in the free market to manage prescription drug benefits for health insurance plan sponsors. Congress is considering several bills that would restrict PBM functioning by limiting or eliminating rebates and discounts that pass through PBMs and by requiring PBMs to disclose pricing and other confidential terms of their contracting. These proposals should be rejected because they would reduce competition, increase costs, worsen health, and halt market developments that benefit patients.

Most Americans have prescription-drug coverage. Nearly all plan sponsors—including commercial health plans, self-insured employer plans, union plans, Medicare Part D plans, the Federal Employees Health Benefits Program, state government employee plans, Medicaid plans, and others—have found value in pharmacy benefit management services that PBMs provide including designing benefit plans, negotiating lower prices, and processing prescription drug claims.

PBMs enhance competition through group purchasing and negotiated discounts, much like a Costco buyers' club, providing substantial economic and health benefits for consumers and taxpayers. They negotiate lower prices from drug makers, in the form of rebates and discounts, in exchange for placement on plans' drug formularies and increased sales volume.

PBMs also select pharmacies to include in their plan networks, obtaining discounts and higher quality retailing in exchange for favorable placement in drug-plan-pharmacy networks, which drives traffic to cooperating pharmacies. Patients get more beneficial drugs at lower costs, which translates into lower insurance premiums and improved health.

PBMs generate billions of dollars in consumer and taxpayer savings resulting from manufacturer and pharmacy rebates and discounts, the value of better drug utilization in preventing more serious illness and expensive healthcare use, an increased pace of drug development, and government savings from decreased premium subsidies and premium tax expenditures.

Current legislative proposals—including the Lower Costs, More Transparency Act (H.R. 5378), passed in the House in December 2023—would limit or eliminate rebates and discounts that PBMs pass back to sponsors and require PBMs to disclose pricing and other confidential contract terms. These provisions could decrease competition and result in higher, not lower, costs, sacrificing much of the value PBMs provide. The proposals will limit the ability of smaller PBMs to compete and could lead to anti-competitive collusion.

The CBO estimated an earlier rule to eliminate rebates would cost $176 billion in extra Medicare Part D spending over 10 years. The transparency and reporting requirements in the legislation could facilitate tacit collusion and reduce price competition in the concentrated PBM industry. Information about competitors' prices can enable sellers, particularly the larger PBMs that are integrated with health insurers and pharmacies, to maintain above market, oligopoly prices. Smaller, independent PBMs, which often compete by providing more transparent contracts and other innovative arrangements, will be disadvantaged resulting in decreased competition and higher prices and spending.

ACA subsidy expiration: The 2021 American Rescue Plan enhanced the subsidies for people who enroll on the ACA market exchanges in two ways:

1. By reducing the percentage of income people were expected to pay for benchmark plans they made zero premium plans with low or no deductibles available to people with incomes between 100 to 150 of the Federal Poverty Level (FPL); and
2. By removing the upper income cap, previously set at 400 percent FPL, for subsidy eligibility.

These provisions were set to expire in 2022 but were extended through 2025 by the 2022 Inflation Reduction Act. Some legislators are pushing to permanently extend these subsidy expansions. This would be an ill-advised and costly move.

The enhanced subsidies created an incentive for people with income below 100 percent FPL or above 150 percent FPL and unscrupulous insurance brokers to mis-state their income as falling within the 100-150 FPL range to qualify for free insurance. The percentage of enrollees reporting income in this range has increased substantially since the enhanced subsidies took effect. Forty-two percent of enrollees in 2024 had fully subsidized premiums. The problem is that in many states there are more people enrolling in the 100-150 FPL range than could possibly be eligible based on income data. Nationwide, there are 4-5 million improperly enrolled people with improper subsidy expenditures of $15-$20 billion.

In addition, no one has explained why individuals and families with income above 400 percent FPL should receive additional subsidies. These wealthier people can pay their fair share of premiums.

The Congressional Budget Office (CBO) estimates that permanently extending these subsidies would increase the federal budget deficit by $335 billion over the 2025–2034 period. CBO also estimates that half of new enrollees if the subsidies are permanently extended will have incomes above 400 percent FPL. It estimates that the average annual premium tax credit for enrollees with incomes at 750 percent FPL—that's nearly a quarter of a million dollars for a family—would be $2,030. In an era of exploding deficits, the country cannot afford this massive addition to the deficit and to subsidize the wealthy. Congress should let the subsidies expire.

Authorize the CDC: The CDC has acknowledged its poor performance during the Covid-19 pandemic but appears to have little insight into what went wrong. Instead of introspection and reform, it has proposed little more than increased funding.

The CDC has never been fully authorized by Congress. Instead, it grew in a haphazard manner into a large, diffuse agency with priorities that are far afield from its core mission of controlling and preventing communicable disease outbreaks with programs that duplicate those of other agencies and departments. This lack of focus left the agency unprepared for the pandemic and distracted it from an effective response.

Congress should comprehensively authorize the CDC for the first time and reaffirm the agency's original mission to combat communicable, infectious diseases. It should eliminate or move the many areas where the CDC does not have expertise and duplicates other authorized agencies' programs such as prevention initiatives, social determinants of health, environmental issues, and violence prevention, to agencies where they can be, or already are, better addressed. This will restore public trust, likely reduce spending and leave the CDC better prepared to combat the next pandemic.

Site-neutral Medicare payments: Medicare pays more for the same services performed in hospital outpatient departments (HOPDs), whether on the hospital campus or off-campus, than it does when the services are provided outside of a hospital owned setting such as physicians' offices or Ambulatory Surgery Centers.

Many private payers, following Medicare's lead, also pay higher reimbursements for services in HOPDs. Medicare's reimbursement system creates an incentive for hospitals to acquire physician practices and incorporate them into HOPDs, leading to healthcare consolidation, decreased competition, and higher spending. It also increases out-of-pocket costs for patients in traditional Medicare through higher Part B deductibles and cost-sharing amounts. MedPAC estimated that aligning Medicare payment rates for a set of outpatient service categories that could be safely performed outside of HOPDs would have reduced Part B spending by $6 billion and beneficiary cost sharing by $1.5 billion in 2021.

The Bipartisan Budget Act of 2015 restricted this differential payment system to older, grandfathered HOPDs. Nevertheless, both Medicare and patients continue to pay billions of dollars more for the same services provided in the older, exempted HOPDs than in other settings despite no evidence of any difference in quality.

There have been multiple proposals to reverse this wasteful practice and establish site neutrality. The Lower Costs, More Transparency Act (H.R. 5378) contains problematic provisions regarding PBMs, but includes a provision that would equalize Medicare Part B payments for drug administration services in off-campus HOPDs with payments made in other provider settings. CBO estimated it would save $4 billion over 10 years. The Site-based Invoicing and Transparency Enhancement (SITE) Act (S.1869) would end the exemption from site-neutral payment requirements for off-campus HOPDs under Medicare. Neither bill has advanced.

President Trump's 2021 budget proposal included broader site-neutral payment reforms. CBO estimated that his proposal to extend reforms to all services in off-campus HOPDs would save $39 billion and his proposal to align payments for on-campus HOPDs for services commonly provided in non-hospital settings would save $102 billion over ten years.

There is no rationale for continuing the current, wasteful Medicare payment policy. Congress should extend site-neutral payments to the providers who remain exempted under the 2015 Budget Act.

Expert: Joel Zinberg

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Energy and environment

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From the very beginning, the Biden-Harris administration aggressively pursued an agenda that prioritizes climate change considerations above all else, including the production of affordable and reliable American energy. The tone was set on Inauguration Day 2021 with a wave of anti-energy Executive Orders – reentering the United Nations' Paris Agreement and its US commitments to reduce emissions of greenhouse gases, canceling the Keystone XL pipeline, blocking oil leasing in the Arctic National Wildlife Refuge and other federal lands, as well as many other steps to reverse pro-energy policies instituted by the previous administration.

In the four years since, the administration has not let up – record low levels of oil and gas leasing on federal lands, a moratorium on new liquefied natural gas (LNG) export facilities, unprecedented permitting delays for needed pipelines and other projects, Environmental Protection Agency regulations favoring electric vehicles (EVs) over gasoline powered ones as well as regulations further hampering coal and natural gas-fired electricity, a wave of Department of Energy appliance regulations targeting gas stoves and other home appliances, and much more. Even federal agencies with no logical jurisdiction over climate change matters, such as the Securities and Exchange Commission, have been swept up in the administration's "whole of government" obsession with regulations targeting greenhouse gas emissions.

The ultimate target of this sweeping climate agenda is the coal, oil, and natural gas for which America is the world's leading producer. This is the affordable energy serving our homes and businesses while supporting millions of energy industry jobs and billions of dollars in export revenues. Thus, the engine of the American economy is literally under threat by the Biden-Harris agenda.

In tandem with this expansive array of regulatory and permitting sticks, the president and Congress have enacted potentially trillions of dollars of carrots in the form of subsidies for politically favored alternative energy sources and technologies. The 2022 Inflation Reduction Act added to an already crowded field of handouts for everything from onshore and offshore industrial wind to manufacturing facilities for EV batteries and solar panels to consumer purchases

of electric vehicles. These Green New Deal-style policies cost us as taxpayers while favoring more expensive and less reliable energy – a double whammy that harms family budgets and the American economy overall.

It is imperative for Congress to take on these measures in a comprehensive manner. In doing so, lawmakers will help to bring down energy prices, defend consumer freedom, and increase the abundance and reliability of our nation's energy. To fix the current dismal state of energy policy in this country, Congress should:

- Officially withdraw from the Paris Agreement;
- Greatly reduce the impediments placed on the production, use, and export of domestically produced fossil fuels;
- Repeal the energy and climate provisions of the Inflation Reduction Act;
- Repeal climate-related regulations that impose costs higher than any likely benefits and enact constraints on agency authority to promulgate additional ones;
- Refrain from enacting a carbon tax or the PROVE IT Act;
- Reject policies that hurt electricity reliability and seek to impose a heavy-handed federal role in transmission policy;
- Develop across-the-board permitting reform that does not pick winners and losers; and
- Constrain the Department of Energy's authority to set additional home appliance regulations.

Paris Agreement, other treaties: The United Nations' 2015 Paris Agreement would commit the US to extremely burdensome, economy-wide restrictions on greenhouse gas emissions in the name of addressing climate change. Specifically, it would force reductions in the use of affordable coal, oil, and natural gas that this nation possesses in great abundance and that we depend on for more than 80 percent of our energy. At the same time, the Paris Agreement would confer an unfair advantage on many other nations, including China, that face less stringent provisions.

Treaties must be submitted to the Senate for the constitutionally-required ratification vote and garner a two-thirds supermajority. Most observers believe that the Paris Agreement would fall well short of the necessary 67 Senate votes.

For this reason, President Obama never submitted the Paris Agreement to the Senate for a vote. Instead, he began implementing it anyway. President Trump put an end to this in 2017 by withdrawing from the treaty. Although doing so stopped implementation for the time being, Trump did not submit the treaty to the Senate where a rejection would have put a permanent end to it. On Inauguration Day 2021, President Biden revived the Paris Agreement and the Obama approach.

Notwithstanding legitimate questions about the current legal status of the Paris Agreement, the treaty is already being used by the Biden administration and climate policy advocates to justify numerous domestic climate measures and create a legal precedent on which future climate obligations can be built.

For these reasons, the Paris Agreement should be submitted to the Senate for the long-overdue ratification vote where its failure would put a definitive end to what well may be the worst treaty ever for the American people.

The Paris Agreement is bad policy. It is made much worse by the fact that the United Nations classifies China as a developing nation and thus subjects it to less stringent requirements. China is even eligible for funding provided by the US and other developed nations to assist developing countries in complying with its limited requirements under Paris. Bills have been introduced that would withdraw all US funding for the Paris Agreement and other treaties until the United Nations reclassifies China as a developed country under them. Such bills should be enacted into law.

Domestic fossil fuel restrictions: President Biden came into office having made the extraordinary and unprecedented promise to end American oil and natural gas production. This has proven to be a difficult task for him– along with coal, these fossil fuels are the strong preference of American homeowners, vehicle owners, and business owners due to their affordability and reliability. Not surprisingly, Congress has shown little interest in legislation restricting access to nation's abundant supplies of these energy sources. Nonetheless, the Biden-Harris administration has made inroads, especially as regards oil and gas leasing on federal lands and offshore areas.

Granted, domestic oil and natural gas output is currently at record highs, but the increase is due to projects that could not be stopped by the current administration. This includes production from state and private lands as well as federal leases from previous administrations. However, reduced levels of new leasing in the most recent Outer Continental Shelf 5-Year Plan bodes ill for future production.

From Inauguration Day onward, the administration attempted to cancel previously-issued leases as well as cut back on new leasing, and has done so based on climate change considerations. Several of these efforts have run into legal difficulties. The law in fact requires a minimum of oil and gas leases be offered each year. But the administration has managed to reduce leasing activity to levels well below the historic average.

Much-needed oil and gas infrastructure has also been subjected to federal permitting delays and outright rejections. For example, according to the Energy Information Administration, natural gas pipeline approvals in 2022 (the most recent

year available) were at the lowest level since records began in the 1990s, despite the fact that the fracking revolution has unlocked record high reserves. Note that blocking needed infrastructure is one way that the federal government can choke off new oil and gas production from state and private lands where it otherwise has little control.

The administration's recently-announced moratorium on the approval of additional liquefied natural gas (LNG) exports – currently under legal challenge – is another potential impediment. By placing limits on future natural gas export growth, such restrictions would have a chilling effect on domestic production. And the Day One assault on the Keystone XL pipeline has likely discouraged other potential oil infrastructure projects. Congress should do what it can to undo these Biden actions and reduce governmental obstacles that will unleash American energy.

Inflation Reduction Act: Enacted in 2022 without the support of a single congressional Republican, the Inflation Reduction Act (IRA) provides sweeping and in some cases uncapped subsidies for politically favored alternative energy sources and technologies. Few if any "green" energy lobbyists failed to get what they wanted from this massive giveaway. The Congressional Budget Office's initial cost estimate of $369 billion dollars through 2031 now appears to be several times too low.

These harmful subsidies centrally plan how energy is used and produced in the country. They are a means to try and create demand for goods and prop up businesses that progressives favor but would not succeed without the subsidies. Not that the subsidies would necessarily achieve those objectives. In fact, it should not surprise anyone that little is being achieved by these expenditures. Two years in, and nearly all the Green New Deal-style projects bankrolled under the IRA are turning into disappointments for its proponents.

For example, the billions spent on subsidies of up to $7,500 for the purchase of an EV are proving insufficient to overcome most new car buyers' preference for gasoline-powered cars and trucks. And with EV sales failing to live up to the hype, this is yet another reason why the tens of billions more in tax credits and other incentives to build EV battery factories is looking like it will be a costly mistake. Boondoggles beget more boondoggles under the IRA.

The same is true for other favored energy alternatives such as sustainable aviation fuel and green hydrogen. Some heavily subsidized companies are now saying that need even more cash to stay afloat. What is missing is evidence of anything incentivized under the IRA progressing to the point where it could eventually stand on its own without handouts. Meanwhile, true energy success stories, like the fracking revolution, happened in the absence of expensive government meddling like that in the IRA, a lesson that Washington has failed to learn.

For the electric sector, the IRA threatens both higher electric bills and reduced reliability by subsidizing intermittent wind and solar generation and doing so at the same time as baseload coal and natural gas generation is being hit with ever-increasing regulatory burdens from the Environmental Protection Agency. The very threats to reliability warned about by PJM and the North American Electric Reliability Corporation (NERC) are the ones actively encouraged by this agenda. Thanks to the IRA, the American people face a greater likelihood of future blackouts – and are being made to pay for the privilege.

Congress should make it a priority to eliminate these IRA subsidies that are not only costly but will also hurt the well-being of Americans.

Climate change regulations: Over the last 30 years, numerous climate change bills have been introduced in Congress seeking to create explicit regulatory or tax authority penalizing greenhouse gas emissions, chiefly carbon dioxide from the combustion of coal, oil, and natural gas. All of these bills have failed to become law, most likely because the American people find such measures to be more damaging than beneficial. Nonetheless, the Biden-Harris administration has sidestepped the will of Congress by misusing unrelated regulatory authority to promulgate measures pursuing its climate change goals. These regulations are both bad law and bad policy.

The ability of federal agencies to freelance into climate change regulations absent statutory authority has always been on shaky ground, and all the more so in light of some recent Supreme Court decisions. This includes *West Virginia v. EPA,* in which the Supreme Court reversed an agency regulation that would shift the nation's electric generation towards those the agency deems climate friendlier, namely from coal and natural gas to wind and solar. The Court's ruling found the Clean Air Act did not authorize the agency to impose such a sweeping and highly consequential change – an application of the so-called major questions doctrine.

Similarly, the ruling should constrain EPA from using regulations to force a shift away from gasoline powered vehicles and towards electric ones, given the absence of any statutory authority to tell Americans what to drive. At the very least, this should put an end to forays into climate policy from agencies, like the Securities and Exchange Commission, which never had any environmental authority in the first place.

It is imperative for Congress to reassert its role and affirmatively place limits on agency efforts to pursue climate policy that the American people never asked for. As part of this effort, Congress should expressly prohibit the regulation of greenhouse gases.

Carbon taxes, PROVE IT Act: A tax on the carbon intensity of fuels, emissions, or products is a market-rigging policy, not a free market one. The environmental rationales for a carbon tax do not survive inspection. A carbon tax would not be revenue-neutral and would not displace greenhouse gas regulations. Even a revenue neutral carbon tax would be economically harmful. Whether "modest" or aggressive, the tax would have negligible effects on climate change.

Congress, therefore, should reject legislative proposals to establish a carbon tax or other policies that would facilitate its enactment.

A carbon tax rigs energy markets. It drives investment into renewable energy sources not by lowering their cost or improving their performance but by making coal, oil, and natural gas more expensive. Those fuels supply 83 percent of US commercial energy.

Because energy is a fundamental factor of production, a carbon tax makes almost everything more expensive—food, housing, medical care, transportation, education, and consumer goods. Quite simply, a carbon tax is a tax on almost every facet of life and punishes energy use. It is hard to imagine a more toxic concoction than being pro-tax and anti-energy.

Neither the social cost of carbon (SCC) nor the alleged climate crisis justify new taxes imposing large costs on the economy. The SCC—a guesstimate of the cumulative climate damages from an incremental ton of carbon dioxide—is deeply speculative and prone to user manipulation. The climate crisis is a political narrative spun out of errant climate models, inflated emission scenarios, and unreasonable pessimism about human adaptive capabilities.

No enacted carbon tax would be "revenue neutral" and revenue neutral does not mean "not harmful." The smaller the base on which a tax of a given size is levied, the greater its destructive impact. The tax base for a carbon tax is much narrower than those for other taxes. Thus, for example, cutting income or FICA taxes by $100 billion would not come close to offsetting the economic damage from a new $100 billion tax on fossil-fuel companies or their products.

Even a politically impossible carbon tax that achieves Net-Zero emissions by 2100 at a cost of trillions of dollars would avert less than 0.2°C of global warming by 2100. It would mean huge costs to achieve miniscule benefits. Congress should also oppose legislation that would facilitate enactment of a carbon tax. A prime example is S. 1863, the PROVE IT Act, in the 118th Congress.

Purportedly a research program to simply measure the carbon intensities of imported and domestically produced goods, the PROVE IT Act would establish the complex federal database necessary for a carbon border adjustment mechanism (CBAM). A CBAM would enable federal officials to impose tariffs on imports

equivalent to any carbon tax imposed on similar domestically produced goods. The political function of a CBAM is to make carbon taxes tolerable to domestic manufacturers by subjecting foreign competitors to the same tax burden. It is a political prerequisite for enacting a domestic carbon tax.

The PROVE IT Act's database would enable narrow partisan majorities to enact both domestic and border carbon taxes via a future reconciliation bill, which requires only 51 votes for passage in the Senate. Inflation Reduction Act sponsors used that strategy in August 2022 to enact unprecedented new taxes on methane emissions. Affordable energy advocates should be vigilant against a replay of that strategy in the 119th Congress.

Electricity and reliability: Electricity needs to be reliable and affordable. Therefore, electricity policy should prioritize these concerns over other ambitions. This means allowing reliable thermal generators (e.g. coal, natural gas, nuclear) to compete without harmful government intervention and opposing all energy subsidies especially those that favor less reliable sources of power like wind and solar.

The extension of subsidies for the wind and solar buildout contained in the Inflation Reduction Act, namely the Investment Tax Credit and the Production Tax Credit, should be repealed. These subsidies upset the balance in energy markets and make it more difficult for reliable generators to compete economically.

The IRA renewable energy subsidies are also a root cause of current attempts to build out transmission to support the connection of newly built and planned wind and solar facilities to the grid. Despite claims that the transmission is needed for reliability, the vast majority of the transmission connection queue is unreliable wind and solar that only provide power intermittently. These efforts should be opposed when they would harm electricity consumers. Consumers should not be required to pay for superfluous transmission that benefits the owners of intermittent facilities to the detriment of consumers and reliability. Congress should also protect the state's role in transmission and fight efforts to federalize the grid.

There are many other concerns regarding the grid. It is important that the government not dictate the electricity mix. This means rejecting clean energy and climate policies that have deleterious effects on the energy mix.

It is also essential to fight policies that lead to the premature closure of reliable electricity sources, especially because more of them will be needed in the coming years as power demand increases from data center demand. Congress should kill off federal regulations, such as the EPA's power plant rule, which would in effect force the closure of reliable power capacity.

The reliability and affordability of the electricity grid is being attacked in all directions. On the federal level, the seemingly endless barrage of subsidies and regulations are being used as a means to centrally plan a shift away from reliable electricity to unreliable electricity, In the United States, Americans should never have to expect brownouts and blackouts. However, the nation is headed in that direction if we continue down this path to unreliable electricity. Congress needs to change course now before it becomes too late.

Permitting reform: Permitting reform is critical to revitalizing America's infrastructure and energy sectors. To be truly effective, it must be comprehensive and apply across all sectors.

Reform efforts should begin with—but not be limited to—modernizing the National Environmental Policy Act (NEPA). Given that lawsuits under NEPA are one of the biggest obstacles to development, litigation reform must be a central component of any overhaul. This should include implementing a zone of interest standing requirement, which would limit who has the right to challenge energy and infrastructure projects in court and therefore reduce frivolous lawsuits that unnecessarily delay projects.

Similarly, adopting a substantial performance standard for agencies—setting clear criteria for when an agency has sufficiently completed an environmental impact assessment—would prevent endless legal challenges over the most minor details in analysis.

In addition, Congress should repeal the Council on Environmental Quality (CEQ) NEPA Implementing Regulations (Phase 2). This rule introduces vague environmental justice and climate-related mandates, that are likely to increase litigation and delays even further. Congress should also clarify that CEQ's role is to oversee NEPA's implementation primarily through issuing guidance to federal agencies, and that it does not have the authority to impose substantive requirements beyond NEPA's procedural focus.

Any congressional effort at permitting reform must also acknowledge the intersection between Inflation Reduction Act (IRA) subsidies and the broader energy landscape. The IRA commits billions of dollars in subsidies to renewable energy projects, which in turn depend heavily on expanding transmission infrastructure.

Allowing federal transmission policy changes to advance without addressing the distortions caused by these subsidies, or without implementing parallel reforms in other areas—such as streamlining permitting for nuclear energy projects, fossil fuel infrastructure, and pipeline development—would create an imbalanced energy policy. True reform must ensure a level playing field across energy sources, avoiding favoritism toward specific industries.

Finally, Congress should look beyond NEPA to modernize other critical environmental statutes, including the Clean Water Act and the Endangered Species Act, which themselves create significant delays and regulatory uncertainty beyond NEPA. Reforming these statutes in tandem would substantially reduce the bureaucratic barriers that currently stifle development across the United States.

Home appliance regulations: In January 2023, Consumer Product Safety Commission (CPSC) Commissioner Richard Trumka Jr. created quite a shock when he announced his agency was investigating the safety of gas stoves and that a ban on them as "a real possibility."

This caused a powerful consumer backlash against such government meddling, followed up by Biden-Harris administration denials that any such restrictions were in the works. In reality, the administration has been busy promulgating a wave of problematic appliances regulations, not just for stoves but for nearly every major home appliance.

Most of these are Department of Energy (DOE) energy efficiency standards, including ones targeting stoves, furnaces, dishwashers, water heaters, refrigerators, washing machines, ceiling fans, and light bulbs. Some of these rules threaten to raise up-front costs more than is likely to be earned back in the form of energy savings. Others compromise appliance performance, features, reliability and choice. Some do both.

These appliance regulations are justified, at least in part, by climate change considerations. For each new standard, DOE calculates the claimed climate change benefits resulting from reduced appliance energy consumption. Not surprisingly, these monetized climate benefits are grossly inflated, and they are about to get worse now the agency has proposed using a new methodology that will increase them several-fold. These questionable environmental considerations depart from the overriding emphasis in the law on the best interests of consumers.

Efforts to address appliance overregulation have included bills specifically protecting gas stoves as well as broad reform bills requiring more extensive justification from DOE before setting any additional rules. While these measures are steps in the right direction, Congress should sunset or at least greatly limit agency authority to target home appliances any further. Congress should also expand agency authority to revisit and repeal existing regulations that are causing problems, and explicitly forbid the inclusion of claimed climate benefits in all future rulemakings.

Experts: Daren Bakst, Ben Lieberman, Marlo Lewis, James Broughel, Paige Lambermont

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Banking and finance

Access to safe and reliable financial services is fundamental to Americans' prosperity. However, since the passage of the Sarbanes-Oxley Act in 2002, regulators have used their expanded authority to impose burdensome rules that interfere in Americans' financial decisions and hinder access to financial services for consumers and businesses.

Furthermore, the subsequent increased politicization of financial services as a public policy tool has eroded public confidence in financial institutions and their regulators and led to the growth of alternative forms of financial services and instruments— most notably cryptocurrency—which are now attracting politicians' and regulators' attention. Regulators have set in place rules that would block beneficial mergers out of misguided concerns of financial institutions having too much market power, while proposing schemes that would crowd out innovations through direct government competition in cryptocurrency and payments.

Instead of giving financial regulators even more authority, it would be much better depoliticize financial services, reduce political interference in private capital formation, and tell regulators to keep their hands off cryptocurrency. To achieve these good goals, Congress should:

- Make the Consumer Financial Protection Bureau accountable to Congress and check its overreach;
- End the Federal Reserve's regulatory overreach; and
- End financial regulatory agencies' blocking bank merger and new banks.

Check the CFPB: The Consumer Financial Protection Bureau wields vast power over many types of businesses that extend credit, yet is unaccountable to lawmakers by design. The drafters of the Dodd-Frank financial overhaul of 2010 shielded the CFPB from accountability by making the director nearly impossible for the president to remove and creating a funding mechanism that bypasses Congress. The Federal Reserve must fund the CFPB from the Fed's own earnings. The Supreme Court restored some accountability when it made the CFPB director subject to presidential

removal, but unfortunately declined to fix the funding mechanism that leaves Congress without meaningful oversight.

Congress should do what the Supreme Court would not and put the CFPB directly under its appropriations so it can exercise the power of the purse to rein in the CFPB's overreaching burdensome rules and edicts. Rep. Andy Barr's (R-KY) Taking Account of Bureaucrats' Spending (TABS) Act would achieve this objective.

Even if Congress cannot secure this funding oversight, it should do what it can to overturn the CFPB's most egregious acts. It should block all final rules it can with the Congressional Review Act resolutions, so that the newly elected president will be better able implement CFPB policy in the direction he wishes it to go. It should overturn the CFPB's rule mandating $8 price controls on credit card late fees – currently blocked by federal courts. This rule would raise costs for consumers who pay their credit card bills on time and would reduce credit availability for everyone.

Congress should also eliminate the CFPB's complaint database, which has proven unreliable and has been misused by CFPB researchers. Lawmakers should also tighten the definition of the terms "unfair" and "abusive" in Dodd-Frank's list of adjectives for acts the CFPB may prohibit, so that the terms "unfair" and "abusive" can no longer be used by the CFPB to paternalistically punish products and services officials simply don't like.

End Fed regulatory overreach: The Federal Reserve is a multi-functional government entity. It sets monetary policy by controlling the supply of US dollars as well as supervises and regulates the many US banks under its jurisdiction. In recent years, without any new authority from Congress, it has launched and contemplated business ventures that directly compete with the banks under its regulatory jurisdiction.

In 2023, the Fed launched the FedNow payment system as a government-backed competitor to private sector alternatives. It competes directly with the private sector bank-based payment systems RTP and Zelle, and indirectly competes with FinTech apps such as Chime and Dave that have high rates of customer satisfaction as well as privately issued cryptocurrencies. The Fed's government-subsidized presence in this market could crowd out private-sector firms and stifle innovation. FedNow also means the Fed now can see intimate details of consumer transactions, raising huge privacy red flags.

Similar concerns about the Fed stifling innovation and having access to private consumer info arise with proposal for the Fed to issue a central bank digital currency (CBDC). If the Federal Reserve, rather than the private sector, were to issue its own cryptocurrency, the US government would have direct access to the digital ledger that records financial transactions for individuals using that currency. Know Your Customer rules governing banking will empower the federal government

to track and identify nearly every CBDC transaction. Even with safeguards, the information on individual purchase and investment decisions that the Fed would store would be vulnerable to hacking and abuse.

Congress should pass an anti-CBDC bill, along the lines of the CBDC Anti-Surveillance State Act that passed the House in 2024, barring the Fed from creating or contracting out the creation of a CBDC. And it should pass a law clarifying that the Fed has no authority to implement the FedNow payment system and to cease and desist operation of that system.

Congress should also check the Fed's massive regulatory power over the payments system by repealing the Durbin Amendment of Dodd-Frank that tasks the Fed with setting price controls for interchange fees that merchants pay and debit card transactions. The Fed's implementation of the Durbin price controls in 2011 through Regulation II resulted in banks sharply reducing free checking for low balance accounts and in debit card rewards virtually disappearing, as the bulk of the costs of processing debit cards shifted from retailers to consumers. Congress should overturn the Fed's latest proposed rule making the price controls in Regulation II even worse. Similarly, Congress should reject the Credit Card Competition Act that would give the Fed further powers to issue mandates forcing down credit card interchange fees.

Allow mergers, new banks: CEI has long supported competition in all areas of the economy, with an emphasis on consumer choice and consumer welfare, and has highlighted government regulatory barriers that have inhibited competition. For instance, we have decried regulatory barriers to new, or de novo, banks that have been put in place since the Financial Crisis of 2008. We have pointed to the problems posed to both competitiveness and financial stability by the lack of new banking entrants in comparison to past decades.

Over the past two years, financial regulatory agencies have started to express concerns about the lack of competitiveness in the financial sector, but have not moved to ease regulatory barriers to new entrants. Instead, agencies like the Federal Deposit Insurance Corporation (FDIC) have begun to put in place rules to block mergers and acquisitions (M&A) that would be beneficial to consumer choice and financial stability.

As former FDIC Chair Sheila Bair and former FDIC Vice Chair Thomas Hoenig have observed, the FDIC's pending proposed policy statement on M&A "will have a chilling impact on positive M&A banking activity, including among regional banks where consolidation could strengthen their ability to compete with the mega banks." They have noted that "the unintended consequence… could be to reduce, not promote, competition in the banking industry."

Congress should help promote true competition in the banking sector by passing legislation to knock down regulatory barriers. It should also rescind, or if possible overturn by CRA, the policy statements of the FDIC and other agencies that would block beneficial mergers.

It would be helpful to pass legislation along the lines of Rep. Andy Barr's (R-KY) Promoting Access to Capital in Underbanked Communities Act that would require the FDIC to move toward a system of phased-in capital. This would allow de novo banks to build capital as they gain customers, rather than having to meet a nearly impossible burden for massive amounts of capital up-front.

Congress should also set statutory deadlines for approval of new banks and credit unions *and* for M&A. The legislation should provide that any application will be deemed approved unless denied by the banking agency within 120 days of filing.

Experts: John Berlau, Iain Murray

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Corporate governance

Issues pertaining to corporate governance impact every facet of our financial lives. The regulations from agencies like the Securities and Exchange Commission greatly affect our 401(k) s, 403 (b)s, individual retirement accounts, and ultimately our ability to invest our hard-earned money freely for the future or otherwise.

With increased rulemaking in these areas, paired with the rampant growth of environmental, social, and governance (ESG) investing mandates, it is necessary that Congress adopt reforms to restore freedom to these markets and ensure the ability of American investors to make the decisions best suited to their interests and needs. To achieve those ends, Congress should:

- Amend the Securities Act of 1933, the Securities and Exchange Act of 1934, and the Investment Company Act of 1940;
- Amend Title I of Employee Retirement Income Security Act of 1974; and
- Eliminate any SEC requirement that financial advisors must vote on proxy ballots.

Amendment securities acts: The popularity of environmental, social, and governance (ESG) theory in the business world for many years fueled an enthusiasm for integrating such factors into both individual firm management and portfolio selection. This generally takes one of two major forms: as a purely profit-driven way of avoiding business risks associated with things like climate change and via a semi-concessionary altruistic method in which investors accept the likelihood of lower investment returns through divestment from firms that are legal, but considered ethically problematic, such as fossil fuel, tobacco, and firearms producers.

While ESG integration and investing has often been defended as a mainstream, non-ideological approach to financial management, it is in fact part of an ideologically driven effort to introduce controversial policy positions into management practice, industry standards, and regulatory policy. In the last few years, conservative, centrist, and even some left-leaning ESG critics have multiplied, as have legislative and regulatory efforts to stop or reverse government policy that encourages this

trend. Currently, enthusiasm for ESG investing is waning, with many industry and policy experts considering its popularity to have peaked.

One of the most significant instances of ESG-related overreach enacted when enthusiasm was at its peak, however, is the climate disclosure rule published by the Securities and Exchange Commission (SEC) in March 2024. This rule effectively requires firms to prioritize an array of politically motivated "stakeholder" groups ahead of the true legal owners of corporations, their shareholders. The proposal is legally unjustified, not needed to cover legitimate climate concerns, misapplies the concept of materiality, will not lead to consistent data reporting, and ignores significant compliance costs.

SEC commissioners have also hinted at even more far-reaching disclosure mandates in this area, including one regarding management of "human capital," (i.e., a diversity, equity, and inclusion or DEI requirement) which would suffer from many of the same flaws. Even if the federal government were to create a quantitative method for measuring all of the relevant data categories in question, no prescriptive rule can replace the discernment of corporate managers, board members, and voting shareholders when it comes to the relative costs and benefits of engaging with these topics. Different firms will be exposed to climate and workforce management risks to differing degrees and the calculus for what policies to adopt and what data to disclose will vary by firm. This is what the SEC's long-standing "principles-based" materiality standard is built around and why the SEC's one-sized fits all climate rule is inappropriate

Furthermore, the SEC seems to be acting on flimsy legal authority in this regard. Former SEC Deputy General Counsel Andrew Vollmer argues that the agency does not have the authority to issue the kind of climate disclosure rule it has proposed. He writes in an August 2021 study that "even if climate-change information is material to investors, the SEC does not currently have statutory authority to make rules requiring companies to disclose it."

Moreover, the kind of disclosures that the SEC seeks to mandate would be subjective and inherently disparaging in the context of an administration policy explicitly seeking to choke off access to capital by energy-intensive firms. This would put the legality of the rule in significant peril in light of the precedent in *National Association of Manufacturers v. SEC* (2014).

The legitimacy of the SEC's climate disclosure rule is currently being litigated in the Eight Circuit, with the claims of multiple plaintiffs having been consolidated into a single proceeding. That should not stop Congress from proceeding on its own to solve the problem, however. Amending the SEC's statutory authority to eliminate policymaking consistent with the climate disclosure rule would simply moot the current legal challenge.

Congress should Amend the Securities Act of 1933, the Securities and Exchange Act of 1934, and the Investment Company Act of 1940 to reestablish and permanently define the traditional understanding of "materiality" and limit the SEC's ability to establish disclosure requirements and prescribe other behavior by registrant firms in ways that are outside of that definition. The SEC should not have the authority to prescribe for managers and investors which risks and considerations are "more equal" than others. The Prioritizing Economic Growth Over Woke Policies Act (H.R. 4790), passed by the House in the 118th Congress, can serve as a model here.

Amend retirement act: Being able to provide oneself with a financially secure retirement represents the final phase of the American Dream and the capstone of the path that generally includes getting an education, building a career, buying a home, and raising a family.

After a string of high-profile corporate and union pensions defaults in the mid-20th century raised the salience of the issue politically, Congress passed the Employee Retirement Income Security Act (ERISA) in 1974. ERISA requires pension fund managers "to act solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants." However, in recent years, politically motivated pension managers have sought to direct capital toward other, unrelated "non-pecuniary" goals, including those associated with environmental, social, and governance (ESG) theory.

During the Trump administration, under the leadership of former Secretary of Labor Eugene Scalia, the Department of Labor published a final rule, "Financial Factors in Selecting Plan Investments," to protect pension plan beneficiaries from having the value of their retirement assets eroded by this trend. The department subsequently published a related rule, "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights," modifying the expectations for proxy voting by pension fund managers with respect to ESG considerations. This rule, as with the previous one, had the goal of protecting retirees' assets from politically motivated mismanagement.

However, in March 2021 the Biden administration's Department of Labor announced that it would not enforce these recently enacted rules and intended to "revisit" them. This was, in part, an effort to comply with President Biden's executive order 13990 "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," which directed federal agencies to review existing regulations promulgated under the previous administration that may be inconsistent with the then-current administration's policies on climate change. The new rule on ESG and pension management from the Department of Labor, overturning the two previous rules from the Trump administration, was published in November 2022.

That new rule cites the language of Executive Order 13990 as justification but omits the section of the order that calls for it to be "implemented in a manner consistent with applicable law." Overriding the investment security of pension fund beneficiaries in pursuit of unrelated policy goals is not consistent with the requirements of current law, and therefore the new rule should not be considered valid. ERISA requires pension funds and the people who administer them to render investments decisions solely toward funding the retirements of workers. There is no mention of climate change, gender diversity, or denying capital to firms that are not considered to be "socially responsible."

The two Trump-era rules restated that expectation and warned against the increasingly frequent practice of using ESG factors to select investments and guide their proxy voting, rather than traditional calculations of risk-adjusted return. Managers who did choose to include ESG factors in their investment decisions were expected to demonstrate that these political considerations were not resulting in lower returns but were only being used as a tiebreaker among options with otherwise identical expected returns.

Safeguarding the retirement security of working Americans is a vital societal goal, and a key element of the American dream. Men and women who have worked and saved for decades, especially when they have no ability to take their pension benefits into an individualized plan, should not have their financial futures determined by the political and social whims of whomever is hired to manage their fund's investments.

Congress should End the back-and-forth rulemakings at the Department of Labor by amending Title I of ERISA to clarify that pension fiduciaries must pursue only pecuniary benefits for beneficiaries, as was the standard expectation since the law was passed. For a model on how to proceed, see Protecting Americans' Investments from Woke Policies Act (H.R. 5339), which the House passed during the 118th Congress.

Nix proxy voting mandates: Asset managers and financial advisors that hold securities on behalf of their clients are called on every year to consider and cast proxy ballots on a wide range of shareholder resolutions. Fully researching every individual proposal being considered by every public company would be a costly and onerous task. Outsourcing that function to a proxy advisory firm may offer a reasonable solution. Current federal regulation, however, has upended the natural market demand for proxy advisors and led to perverse consequences in financial markets.

Prior SEC rules requiring asset managers to vote on proxy ballots that they don't necessarily consider relevant, coupled with the provision that any proxy advisor's recommendations is deemed to fulfill their duty under this rule, has created an entirely artificial demand for these services. This has given an unwarranted amount of influence to what has, for many years, been a narrow duopoly of dominant firms in the industry. Moreover, proxy advisory firms routinely engage in coordinated business practices of both advising on votes and selling consulting services on how to navigate the proxy ballot process that clearly presents a conflict of interest to institutional clients and to the underlying shareholders for whom the proxy advisors' clients work.

Worryingly, the SEC has not upheld its own policy regarding the proper classification of proxy advisory firms, in particular its 2020 Proxy Advisor Rule that categorizes proxy advisor recommendations to companies and shareholders as "solicitations." Failing to do so has only emboldened the proxy advisor duopoly of Glass Lewis and ISS to operate as if the securities laws do not apply to them. The classification of proxy services as solicitations means that they are subject to oversight and transparency expectations, including providing clear guarantees against any conflicts of interest.

Today's SEC has refused to enforce the solicitation provision of its 2020 rule in court and has amended two key requirements that otherwise hold proxy advisory firms accountable to the companies they are affecting. These amendments have unjustly insulated the proxy duopoly and have even sparked a circuit court split. The Fifth Circuit recently ruled that the SEC's amendments were unlawful, while the Sixth Circuit sided with the SEC. The SEC should not selectively decide whether to uphold its rules (or sabotage them) to secure legal privileges for ideologically aligned proxy firms. Much of the duopoly's undue influence in the ESG space has flown under the radar because of the lack of rigorous SEC oversight.

Congress should eliminate any SEC requirement that financial advisors must vote on proxy ballots unless they determine such voting to be in their clients' best interest. Additionally, Congress should reverse the presumption that purchasing proxy advisory voting services relieves them of further due diligence when they do choose to participate in the proxy ballot process on behalf of clients.

Experts: Richard Morrison, Stone Washington

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Labor and employment

Employers are struggling to fill open positions and supply chains are still fragile. Federal employment policy needs to adapt to new economic realities rather than forcing emerging industries to conform to outdated laws.

The supply chain crises in recent years highlight the damage to the broader economy when flexibility and adaptability are lost. Shortages of truckers caused by federal regulations and antiquated ports resulted in freight backlogs that have rippled throughout the economy and allowed unions to hold the economy for ransom.

Meanwhile, workers across the economy are opting for new work models such as gig economy jobs and contract work. It's time to focus on policies that protect individual workers and maximize their ability to sell their labor on an open market. To facilitate this new reality, Congress should:

- Amend the Fair Labor Standards Act (FLSA) to allow workers to register with the Department of Labor (DOL) as freelancers;
- Pass the Employee Rights Act; and
- Place the ports and their workers under the Railway Labor Act instead of the National Labor Relations Act.

Fair Labor Standards Act: The Fair Labor Standards Act currently does not have an official category for "self employed." Congress should add one and allow workers to register with the Department of Labor as a freelancers. This could be done electronically through the main DOL website. Workers would get a freelancer ID number to provide when applying for contract work. This would clarify their employment status, exempting them from the FLSA's requirements, such as allowing the employer to set regular work hours.

Workers would be assured the opportunity to do short-term contract work on their own time and schedule. The amendment would override state laws like California's AB5 but only in instances in which a worker affirmatively seeks freelancer status.

Employee Rights Act: The Employee Rights Act (H.R. 2700, S. 1201, 118th Congress) would amend the National Labor Relations Act and related laws to provide certainty that the unions directly represent workers by requiring secret ballot elections, actual majority support to gain recognition, and outlawing coercive actions by the unions during elections.

The bill would do nothing to limit the power of unions when they represent the collective voice of workers. It would also require unions to get members' authorization to spend their dues money on non-representation activities, such as political spending and activism.

It would clarify when a business can be considered a joint employer with another business. Joint employment refers to when a company is legally responsible for workplace violations at another business. Traditionally, this applies only when one business has "direct control" over some aspect of the second company's work, such as in the case of a contractor-subcontractor relationship. Direct control places responsibility for workplace conditions on those who are actually responsible.

The Biden administration wanted joint employer status to extend to cases in which a business has "indirect control" over another company, a vague standard that could theoretically allow regulators to sanction companies for violations in which they had no role.

Finally, the Employee Rights Act would codify workers' rights under the Supreme Court's ruling in *Communications Workers of America v. Beck,* preventing their union dues from being used to subsidize political activity and speech the workers oppose. The Union Members Right to Know Act would also guarantee this right.

Ports under Railway Labor Act: October's strike at east coast and Gulf of Mexico ports by the International Longshoremen's Association (ILA) threatened to bring the economy to a halt. The National Labor Relations Act (NLRA) gives the White House the authority to order a mandatory 80-day cool-down period to hold off such strikes but cannot prevent a walkout from eventually happening. Given the ports' importance to interstate commerce, Congress should place them under the Railway Labor Act (RLA) instead of the NLRA.

The RLA, which covers the rail and airline industries, gives the White House and Congress the power to resolve strikes by forcing binding contracts on both sides. This will encourage management and the unions to resolve future negotiations quickly to prevent federal intervention.

Experts: Sean Higgins, Iain Murray

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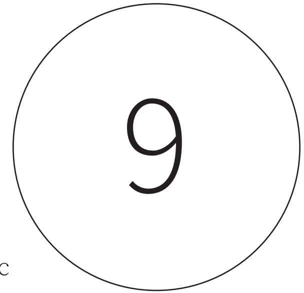
Transportation



Mobility for both people and goods is one of a modern economy's most important needs. The COVID-19 pandemic revealed how sensitive the nation's supply chains are to transportation disruption. A serious train derailment in East Palestine, Ohio has also led to calls for rail reregulation while unnecessary efforts to reauthorize the Surface Transportation Board would give it too much authority.

Congress has also incentivized a move to electric vehicles without proper consideration of the implications for highway maintenance, currently funded by the gas tax. Congress needs to re-examine all of these issues carefully with a view to ensuring that America's people and goods keep moving. Specifically, Congress should:

- Resist calls for rail reregulation and in particular not pass the Railroad Safety Act or The Freight Rail Shipping Fair Market Act;
- Remove barriers to easier transportation of goods by raising the weight limit for interstate trucking to at least 91,000 lb., starting with an opt-in multistate pilot program;
- Help ensure that the long-term upkeep of highways is proportionate with their use by shifting all transportation revenue and expenditure programs toward funding mechanisms, such as mileage-based user fees, that reflect the user-pays–user-benefits principle; and
- Repeal the Jones Act.

Railroad regulation: The deregulation of railroads spearheaded by President Carter in the late 1970s has proved to be extremely successful, allowing for significant investment in new rail infrastructure. Nevertheless, a strong lobby exists in the form of shippers for reregulation, which takes every opportunity to call for greater restrictions on what railroads can charge them. Railroad regulators' 2024 rule on reciprocal switching fell short of what this lobby desired, so attentions have turned to granting the Surface Transportation Board more powers over common carriage (see, for instance, bills from previous Congresses such as the Freight Rail Shipping Fair Market Act).

This would be a mistake. Common carriage works best as a common law, case-by-case approach allowing common carriage rules to evolve according to circumstances. Giving regulators more powers to define, interpret, and adjudicate common carriage rules would disrupt this evolutionary process and separate common carriage from its common law origins. Moreover, there is evidence that existing common carriage rules in areas like hazardous materials put all the burden of risk on the railroads when it should belong on the companies shipping the hazardous goods, or at least be shared more equitably.

Shipping of hazardous materials also gave rise to other overbearing proposals for regulation, such as the Railway Safety Act and its variants that were introduced after the East Palestine rail accident. The subsequent National Transportation Safety Board investigation reveals that most of the RSA proposals for regulation were either overblown or irrelevant. Indeed, the NTSB found that virtually all of its recommendations could be implemented under existing authority. However, rail unions among others continue to push for mandated crew sizes, which were shown not to be an issue in the accident. Congress should reject the Railway Safety Act and the Railroad Safety Enhancement Act of 2024.

Interstate trucking: Current federal limits for interstate truck gross vehicle weight (GVW) are set at 80,000 lb. with a maximum of five axles. However, all 50 states allow higher GVW trucks to transport goods within their borders, mostly via state or local roads. The lower interstate limit increases the number of trucks needed to carry goods, demand for drivers in a tight labor market, emissions, and traffic congestion.

All of these factors lower the trucking industry's competitiveness against freight rail. Many current trucks are capable of hauling higher weights but instead run only partly full for part of the routes, a fact that underscores the inefficiency of the current weight limits.

To alleviate this, Congress should authorize an opt-in pilot program for states to test the effects of increasing the federal GVW to at least 91,000 lb. on six axles. The pilot program would enable the federal government and the states to assess the safety implications of higher GVW, although a 10-year pilot program in Idaho found no evidence of decreased safety. Moreover, several European countries allow 44-metric ton (97,000 lb.) trucks with no appreciable safety concerns. In fact, the European Union, which is well known for a precautionary approach, is considering increasing its current 40-metric ton weight limit to 44 metric tons across the continent.

The pilot program would immediately reduce strain on the supply chain, lessen the need for more truck drivers, and reduce congestion. According to the Rocky Mountain Institute, which places a considerable premium on emissions reduction, it will also significantly reduce carbon emissions. As such, it represents a "no regrets" emissions policy—one that reduces emissions but is worth doing even if emissions do not present a threat.

As for infrastructure concerns, studies have found that the addition of a sixth axle reduces wear and tear on road surfaces by 37 percent. The current federal bridge standard is already compliant with a 91,000 lb. weight limit.

The opt-in pilot program should accommodate all states that show willingness to participate, to maximize the collection of useful data.

Highway funding: The starting point for sound transportation policy should be adherence to the user-pays–user-benefits principle. Transportation infrastructure and operations should be paid for by the users who directly benefit from them. Despite some spillover effects, the vast majority of benefits accrue to the transportation network's users.

Compared with general revenue funding of government-owned infrastructure and services, user-pays offers the following advantages:

1. **Transparency:** Unlike tax dollars that wind through convoluted bureaucracies, charges "follow" users.
2. **Fairness:** Users pay and benefit directly from improvements generated from their payments; users who use the systems more pay more.
3. **Signaling of investment:** Operating revenues generally track use, and popular systems can be identified for targeted improvements.

Unfortunately, many federal transportation programs do not adhere to the user-pays principle. In those cases, the programs should be reformed to meet the user-pays principle through methods such as tolling. If that proves not to be possible, it suggests that the program has high costs and low value and should be eliminated.

This principle is particularly important as Congress considers what to do about the federal gas tax and the Federal Highway Trust Fund for which it provides revenue. As more and more drivers turn to electric vehicles, the gas tax will be paid disproportionately by owners of older vehicles who are likely to be less affluent. To ensure that the Trust Fund has a consistent source of revenue and to ensure fairness for all road users, a replacement will need to be found. It is particularly important that Congress consider this given the subsidies made available for electric vehicle transitions in recent legislation.

Mileage-based user fees (MBUFs) are in many ways a direct replacement for the gas tax, reflecting the same user-pays–user-benefits principles. Congress should expand existing pilot programs to better assess the feasibility of this mechanism and to address drivers' privacy concerns and insist that the executive branch deploys those programs (the current Transportation Department has slow-walked them).

Congress should be wary of attempts to impose MBUFs in addition to the gas tax. The fees are unlikely to be seen as acceptable if they simply increase the cost of travel.

Jones Act: Congress should repeal the Jones Act of 1920, a Buy American bill for maritime shipping that forbids foreign-flagged vessels from shipping goods between US ports. They may carry goods to and from the United States, but not from one US port to another. As result, Jones Act-compliant shipping is multiples more expensive than it would be in a freer market.

The Jones Act raises the cost of living in Alaska, Hawaii, and American territories such as Puerto Rico. It raises energy costs on the mainland, especially in New England. It hampers disaster relief efforts nearly every hurricane season. It gives dockworkers' unions more power to resist automation. And by making trucking relatively more expensive, the Jones Act contributes to highway congestion throughout the country.

Domestic maritime shippers, legally insulated from competition, often charge triple or more the rates of foreign shippers on comparable routes. The Jones Act's price differential is so out of whack with world markets that oil refineries, especially near the East Coast, often find it cheaper to ship in oil from places such as Russia than from Houston or New Orleans. The diplomatic and national security implications are obvious.

Furthermore, the Jones Act has nearly destroyed the US shipbuilding industry. Only about 90 oceangoing vessels remain in the Jones Act fleet. The few shipyards that can build commercial oceangoing vessels are being kept afloat only by defense contracts. American shippers are forced to use aging, inefficient ships that would be unacceptable in a competitive market. It is well past time to repeal it.

Experts: Iain Murray, Ryan Young

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Antitrust

There is a global push to strengthen and broaden antitrust laws. American technology companies are the primary targets. In the US, this fight is happening simultaneously in state legislatures, federal agencies, and Congress. To ensure that smarter antitrust regulation prevails, Congress should:

- Place antitrust enforcement in one agency, the Department of Justice and remove antitrust authority from the Federal Trade Commission (FTC);
- Shrink the scope of antitrust policy in general; and
- Oppose efforts to expand antitrust policy.

Send it to DOJ: Congress should eliminate the present dual enforcement of the US antitrust laws and designate the Department of Justice as the sole antitrust enforcer. This would aid in the depoliticization of antitrust enforcement and guarantee a fairer process for private defendants.

The DOJ's Antitrust Division is required to file antitrust suits in federal court, where it must abide by the Federal Rules of Evidence and Federal Rules of Civil Procedure. Currently, the FTC adjudicates antitrust cases in its internal administrative law court where it acts as the prosecutor, judge, and jury. Furthermore, the FTC promulgates its own rules on how these adjudications takes place.

Eliminating the FTC's antitrust authority is not a new idea. In 1980, Stanford Law Professor William F. Baxter, who would eventually go on to head the DOJ's Antitrust Division, argued that the FTC should lose all antitrust authority. "I see no arguments whatsoever for preserving these two agencies. The FTC in my view has done a lousy job with its piece of the antitrust elephant," Baxter said.

In light of recent FTC overreach, the time for action has come. Congress should streamline antitrust enforcement into a single agency. The One Agency Act, introduced in both the 117th Congress (S. 633, H.R. 2926) and the 118th Congress (H.R. 7737) would accomplish this.

Scope of antitrust: The free market, driven by competition and consumer choice, is more effective at promoting prosperity than antitrust regulation, which often hinders innovation and is susceptible to political manipulation. History demonstrates that economic freedom, not government intervention, is the most powerful engine for societal good and individual empowerment. Antitrust regulators are shifting away from the consumer welfare standard towards a "big is bad" approach. This structural approach disregards consumers and instead attempts to expand antitrust beyond its traditional focus on consumers to encompass broader social and political goals.

With the 2023 Merger Guidelines finalized in December, the antitrust agencies have wasted no time in bringing lawsuits to test their application. The FTC's challenge to the Kroger-Albertsons merger is the first big challenge to a horizontal merger under the new guidelines. The two grocers, who are merging for the purpose of being better equipped to compete with market leader Walmart, are at risk of having their merger scuttled by the Commission. If the FTC is successful, the combined firms' potential to reduce prices for consumers would be cut off.

The vague language of the Sherman Act, the FTC Act, and the Clayton Act has allowed antitrust enforcement to become politicized, creating uncertainty for businesses. Congress should either define key terms more precisely or repeal them altogether. Ideally, Congress should remove the federal government from the merger review process entirely.

The Federal Trade Commission is also intent on reviving enforcement of the Robinson-Patman Act, a depression-era law that prohibits price discrimination with the purpose of protecting small businesses from being undercut by larger and more efficient retailers who can negotiate lower prices for their customers. In other words, Robinson-Patman enforcement is essentially a mandate to raise prices. It is an anti-consumer law. Congress should repeal the Robinson-Patman Act.

Don't expand antitrust: Furthermore, Congress should refrain from passing legislation that expands the DOJ's and FTC's antitrust authority. Proposals like the American Innovation and Choice Online Act (S. 2033, 118th Congress) and the Advertising Middlemen Endangering Rigorous Internet Competition Accountability Act (S. 1073, 118th Congress) continue to be introduced in Congress and threaten the prosperity of the internet economy. These bills, as well as the Open App Markets Act (S. 2710, H.R. 7030, 117th Congress), attempt to micromanage markets to the detriment of consumers and small businesses.

Efforts to abandon the consumer welfare standard and expand the antitrust agencies' authority would harm the nation's economic health and make the problems they are trying to solve even worse. And these negative unintended consequences would extend far beyond its effects on America's tech industry, one that leads the world in innovation and success.

Experts: Jessica Melugin, Alex Reinauer, Ryan Young, Iain Murray, Wayne Crews

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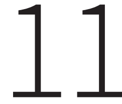
Artificial intelligence



The rapid development of artificial intelligence (AI) presents both significant opportunities and challenges for US policymakers. While AI offers the potential to revolutionize industries from healthcare to finance to transportation, it also introduces new risks, such as data privacy concerns, cybersecurity threats, and the potential for the spread of misinformation online. Congress should take a balanced approach to regulating AI—one that fosters innovation while addressing those risks where existing laws are demonstrated to come up short.

Many current discussions around AI regulation are driven by fears of highly speculative risks, such as a potential "AI apocalypse" where artificial general intelligence surpasses human intelligence and poses existential threats. While it is important to monitor long-term risks, Congress should focus on concrete, immediate risks in areas like data security and election interference, recognizing that many fraudulent practices are already covered by existing law.

Creating overly restrictive regulations in response to hypothetical worst-case scenarios would stifle innovation and place US companies at a competitive disadvantage to foreign adversaries like China. National security agencies will often be best equipped to address threats from bad actors.

Some critics have raised concerns about the energy consumption of AI technologies, particularly as AI models grow larger and more complex. However, AI's energy use creates jobs and leads to follow-on innovations. It also drives investment in more efficient computing infrastructure and more energy sources. Instead of taxing or imposing blanket restrictions on AI's electricity consumption, Congress should allow the market to drive energy efficiency improvements.

Commendably, companies in the AI sector have already begun implementing self-regulatory measures, such as establishing ethical guidelines and adopting responsible AI practices. Congress can recognize these efforts and praise them for their flexibility, while avoiding imposing heavy-handed rules that may discourage companies from taking proactive measures of their own. To help along this enormously promising technology, Congress should:

- Encourage evidence-based regulatory approaches;
- Resist calls for sweeping AI legislation; and
- Avoid creating a new federal AI regulatory agency.

Evidence-based approaches: Congress can require that any AI regulation be grounded in strong empirical evidence. Regulatory proposals should demonstrate that they are addressing an actual, measurable problem, rather than simply reacting to abstract concerns. This includes following a structured process to ensure effective policymaking: 1) demonstrating a problem exists, 2) defining the desired outcome, 3) identifying alternative solutions, and 4) ranking the alternatives based on cost-effectiveness and societal net benefit.

No sweeping legislation: Congress should resist efforts to impose licensing requirements or other mandatory pre-approval processes for AI models, as these would create unnecessary hurdles that disproportionately inhibit startups, open source developers, and smaller companies. When states pass sweeping anti-innovation laws governing AI, Congress should consider ways to pre-empt them.

No Department of AI: Proposals to create a new federal agency dedicated to regulating AI would result in bureaucratic meddling that slows the technology's development. Congress should instead rely on existing regulatory frameworks and ensure rules are up to date to reflect modern technology. Likewise, efforts to establish international AI regulatory bodies, akin to the International Atomic Energy Agency, should be avoided as these will undermine US sovereignty.

Experts: James Broughel, Jessica Melugin

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Online speech

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Online speech is under attack on two fronts. The first front is government chipping away or repealing the protections granted by Section 230 of the 1996 Communications Decency Act. The second front is government officials' "jawboning" of citizen's speech on major online platforms. To address these threats to a fundamental right, Congress should:

- Oppose all efforts to repeal Section 230 of the 1996 Communications Decency Act;
- Oppose all efforts to curtail Section 230 in child safety legislation; and
- Make government "jawboning" more difficult with transparency and oversight requirements.

Save Section 230: In the 118th session, Congress considered an all-out repeal of Section 230 of the Communications Decency Act of 1996, the liability shield that places legal responsibility on the speaker of content instead of the host of that content. This arrangement has allowed for the greatest egalitarian increase of speech ever known to humanity.

Assuring that platforms will not be sued for other's content has allowed them to leave up more speech and build a business model to support those forums. To remove Section 230 legal protections would undo those incentives, cause more content to be removed, and create a windfall for the plaintiff's bar. All efforts to repeal Section 230 should be opposed.

Different child safety protections: More targeting dismantling of Section 230 protections often focuses on child safety issues online, like the Kids Online Safety Act. KOSA would not only bring the same harmful consequences as mentioned above, but would also do little to keep kids safer online and sacrifice even adult's online privacy and anonymity by triggering age verification. Efforts to improve child safety online are better pursued with legislation like the Invest in Child Safety Act, which invests in law enforcement resources.

Curtail jawboning: Content moderation decisions, which are not First Amendment violations and, in fact, protected as the speech rights of the platforms themselves, are not the threat to free speech that government "jawboning" is. Evidence of government pressure on major social media platforms about elections integrity concerns, COVID information, and other issues, came to light in the so-called "Twitter files." The issue was considered at the Supreme Court in the last term, but the Court resolved very little.

Congress should act to clarify the limits of government's power to influence online content moderation decisions, even if only demanding more transparency. CEI recommends model legislation, like that of Foundation for Individual Rights and Expression's, be considered by Congress.

Experts: Jessica Melugin, Dan Greenberg

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Telecommunications

Improved Internet connectivity is essential to promote innovation, reduce socioeconomic inequality at home, and improve America's global economic competitiveness abroad. To further connectivity and lighten the current regulatory burden on the American people, Congress should:

- Remove regulatory barriers and reform programs like universal service funding;
- Focus on oversight and reform of that Broadband Equity Access Deployment program; and
- Allow as much spectrum to move to best and highest use in the private sector by reauthorizing the Federal Communications Commission's auction authority.

Universal Service Fund surcharge: Broadband subsidy programs should be under congressional oversight. To that end, the current universal service funding needs reform and Congress should shift the USF's funding from the current surcharge to direct congressional appropriations.

The Federal Communications Commission (FCC) imposes the surcharge on revenues for telecommunications services and telecommunications service providers generally pass it on to consumers on their bill. The surcharge was only 3 percent in 1998, but it steadily increased to reach 34.4 percent as of the third quarter of 2024. While applied to telecommunications services, funds received from the surcharge are largely used for broadband networks.

The 5th Circuit Federal Court of Appeals recently held that the USF surcharge is not a fee (as the FCC has labelled it) but rather an unconstitutional tax because Congress violated the non-delegation doctrine by delegating its taxing power to the FCC. While other federal courts of appeals have upheld the surcharge, the 5th Circuit ruling demonstrates the need for reform.

Shifting the USF surcharge to direct congressional appropriations will have three advantages over the current funding mechanism:

1. Direct congressional appropriations will address the 5th Circuit's ruling that Congress violated the non-delegation doctrine by reclaiming its taxing power.
2. Appropriations can help Congress hold the FCC accountable for how funds are used according to the Government Accountability Office. USF programs are plagued by inefficiency and the lack of internal controls, and other sources have also criticized the misuse of funds.
3. Appropriations will allow Congress to set a hard limit on the amount of USF assistance, encouraging more efficient usage of such funds period to that end, Congress should consider annual reviews of different USF programs effectiveness at meeting their intended targets such reviews can enable evidence based decision making about which programs should continue to be funded and how much funding should be allocated.

It is important that Congress take these steps to reform the USF surcharge.

Broadband equity: The Broadband Equity, Access and Deployment Program (BEAD) was signed into law by President Biden in November 2021 as part of the Infrastructure Investment and Jobs Act. BEAD dedicates $42.45 billion to construct broadband networks, establish subsidies to offset the cost of Internet service for lower income households and create programs to provide end users with devices and training. The overriding goal of the program is to address the digital divide. It provides funding grants to the states.

The National Telecommunications and Information Administration (NTIA) is charged with overseeing the program and allocating funds. However, as of September 2024 and almost 3 years since the program was enacted, no funds have been distributed and 13 states are awaiting funding. This is due to the NTIA's cumbersome and detailed bureaucratic application and review processes.

Congress should assert its oversight authority and push the NTIA to reform its processes so that funds can be expeditiously allocated in accordance with the congressional appropriation. This can be done while ensuring that allocation challenge processes prevent overbuilding of already served areas. Reforms can include simplifying and streamlining the NTIA's processes and requirements. The goal should be to fulfill the appropriation as made by Congress and not allow bureaucratic process delays to win.

The USF surcharge and BEAD demonstrate the pitfalls of large scale subsidy programs. Congress should prioritize private investment and market competition for broadband funding and deployment, and the FCC should seek to reduce regulatory barriers to private broadband investment and to promote competition

between different types of Internet service providers, such as cable, fiber, and satellite. Creating a market friendly regulatory environment is crucial to reducing broadband subscription prices and ensuring universal Internet access while lowering costs to taxpayers.

Spectrum allocation: The United States is engaged in a global technology competition and is in danger of falling behind by failing to move spectrum from government control into the private sector. Spectrum is a finite resource that is necessary for both cellular networks and fixed wireless services. An increased amount of spectrum in the marketplace is necessary to enable internet service providers to meet ever increasing multi-gigabit broadband speed demands. Without it, next generation technology will be in jeopardy and America will be at risk of falling behind. Federal agencies currently control most of the available spectrum and the FCC's spectrum auction authority has lapsed for the first time in 30 years.

Congress should prioritize reauthorizing the FCC's auction authority and moving more spectrum to its best and highest use to further market competition and innovation. This includes exclusive use mid-band spectrum that is well suited for 5G and shared spectrum that is used by services such as Wi-Fi and Bluetooth. These steps are necessary to maintain technological competitiveness which in turn is necessary for national security. There are bills before Congress dealing with spectrum allocation, including the Sens. Ten Cruz (R-TX) John Thune (R-SD)-sponsored Spectrum Pipeline Act of 2024 and the Sen. Maria Cantwell (D-WA)-sponsored Spectrum and National Security Act.

Experts: Brian Rankin, Jessica Melugin

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Civil asset forfeiture

Civil asset forfeiture is a controversial tool used by federal, state, and local law enforcement agencies to seize cash, vehicles, houses, or other property that is believed to be connected to a crime. Law enforcement agencies can seize property even when the property's owner has no knowledge of, or has not been charged with, any crime. Under state and federal forfeiture laws, law enforcement agencies can then sell seized assets—or, in the case of cash, directly absorb the money—and use the proceeds to fund and expand agency budgets.

The civil forfeiture regime is in dire need of reform. Because civil forfeitures are not criminal actions, owners of seized assets are not afforded fundamental protections, including the right to legal representation, which makes it more likely that the owners will be permanently deprived of their property without ever having their day in court.

Civil forfeiture proceedings create significant disadvantages for owners who attempt to challenge the seizure and recover their property. Unlike criminal defendants, they must pay for their own litigation expenses, including attorneys' fees. In court, property owners lack the protections that criminal defendants customarily have. In criminal proceedings, guilt is determined by the demanding constitutional standard of "beyond a reasonable doubt." In civil forfeiture proceedings, the government merely needs to show that the property is connected to a crime by a "preponderance of evidence"—that is, the majority of the weight of the evidence. In some states, law enforcement officials need only to satisfy an even lower standard—probable cause—for government agencies to keep the property.

Although some jurisdictions have passed reforms that protect property owners from the overuse or misuse of civil forfeiture, federal equitable sharing programs allow state and local law enforcement to circumvent state-level reforms that limit their ability to seize assets from people who have not been charged with crimes. The institution of civil forfeiture encourages law enforcement officials to pursue revenue that can increase their own office budgets, thus diverting them from efforts to advance public safety and control crime.

Furthermore, civil forfeiture often creates a perverse dynamic in which property owners who are subjected to it may be forced into acquiescing to the seizure of their property without any remedy, essentially because attorneys' fees outweigh the expected value of the property they seek to recover.

To begin addressing this injustice, Congress should:

- Pass the Fifth Amendment Integrity Restoration (FAIR) Act; and
- Work to curtail civil asset forfeiture at the federal level.

Pass the FAIR Act: Versions of the Act have contained provisions to:

- End the federal equitable sharing program;
- Create a more demanding burden of proof for owner liability;
- Restore the principle of innocent until proven guilty;
- Protect the right to counsel;
- Remove the profit incentive for law enforcement;
- Enact transparency requirements; and
- Award multiple damages to successful plaintiffs.

The current version of the FAIR Act passed unanimously (26-0) out of the House Judiciary Committee in 2023. Its 18 House cosponsors are divided evenly among Republicans and Democrats.

Curtail federal civil asset forfeiture: Ideally, this would be accomplished by ending the federal two-track process of separate criminal prosecutions of individuals and civil forfeitures of their property. A streamlined process that encompasses one single court action covering both prosecution and forfeiture would be more equitable to the parties involved.

Expert: Dan Greenberg

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Trade

The top trade policy priority of Congress should be undoing the Trump and Biden administrations' failed protectionist policies. Congress can start by taking back tariff-making powers from an executive branch that has abused those powers.

Although neither party is enthusiastic about liberalizing trade, it would counter some of the price increases from post-pandemic monetary inflation on housing, autos, food, clothing, and other essential goods. Freer trade would also make America's supply networks more resilient during crises, and would advance US foreign policy interests against Russia and China. To further American peace and prosperity, Congress should:

- Support tariff relief and reclaim its tariff-making authority from an executive branch that has abused it;
- Rebuild or replace the World Trade Organization (WTO) and its rules-based trade dispute resolution system; and
- Work with the president to pursue free trade agreements with allies that focus solely on trade.

Tariff relief: Trump doubled US tariffs during his first term. Trump's tariffs are still costing American families more than $1,200 per year. Joe Biden mostly kept those tariffs in place and added new import taxes on solar panels, lumber, and medical supplies. Tariffs have made cars, housing, food, clothing, and electronics less affordable and have snarled supply networks.

Those costs came without benefits. Four rounds of back-and-forth escalating tariffs with China yielded not a single substantive reform from Beijing. The stress that trade wars put on supply networks hampered pandemic response efforts.

American manufacturing output reached an all-time high in 2018, right when Trump started to raise tariffs. Output went down in 2019 due to those tariffs, as well as to retaliatory tariffs reducing exports. The 2020 pandemic put a further damper on manufacturing, which has since revived, but has yet to regain its pre-tariff 2018 peak.

Congress should repeal those tariffs. Unfortunately, repeal is not enough. Under current law the president could simply re-enact those tariffs. Congress must treat the root problem by reclaiming the tariff-making authority it delegated to the president in earlier legislation. That institution-level reform is the only way to prevent future unilateral presidential tariff-making.

Congress should repeal Section 232 of the Trade Expansion Act of 1962, which President Trump used to enact steel and aluminum tariffs—against allies—on dubious national security grounds. The Biden administration extended most of those tariffs on similar grounds. Congress should also repeal Sections 201 and 301 of the Trade Act of 1974, which Trump and Biden used to enact tariffs against China, Europe, and many countries.

Congress should also repeal other tariff-making provisions that have not yet been used by today's protectionists, but could be by the current or future administrations. These include Section 338 of the Tariff Act of 1930, better known as the Smoot-Hawley Tariff Act; Section 122 of the Trade Act of 1974, which allows the president to enact a 15 percent universal tariff for 150 days; and the International Economic Emergency Powers Act (IEEPA), which grants broad powers to the president if they declare an emergency, which has already happened at least 69 times. If Congress is unwilling to repeal IEEPA, it should at least amend it to specifically exclude tariff-making powers.

Revive or replace WTO: It is in America's interest to have a rules-based international trading system. The World Trade Organization's dispute resolution system provided a way for the US to get other countries to reform their unfair trading practices. It did so with an 85 percent win rate.

Starting under the Obama administration, the US refused to appoint new judges to this system. Trump and Biden continued this policy. The system no longer functions due to the lack of judges.

At this point, the WTO may be mortally wounded. If revival attempts fail, a successor organization, limited to liberal democracies, and with no special rules for developing countries, would create a sustainable way for countries to peacefully settle disputes and continue to slowly but surely reduce trade barriers, as the General Agreement on Tariffs and Trade (GATT) and the WTO did from World War II's aftermath until recently.

Free trade agreements: Free trade agreements have stalled under the last two administrations. Trump withdrew the US from the Trans-Pacific Partnership (TPP), which provides an economic and diplomatic counterweight to China. TPP continues on, with a dozen member countries and no American input, as the Comprehensive and Progressive Trans-Pacific Partnership (CP-TPP).

Trump replaced the North American Free Trade Agreement (NAFTA) with the United States-Mexico-Canada Agreement (USMCA), which notably has neither "free" nor "trade" in its name. USMCA left most of NAFTA in place, but added labor and environmental regulations to North American trade, as well as rules-of-origin requirements that make cars more expensive.

Rather than rejoin TPP, the Biden administration proposed the Indo-Pacific Economic Framework (IPEF), which as of this writing contains no trade provisions at all. The Biden administration also declined to begin negotiations on expected trade agreements with the UK, EU, and other important partners.

After four rounds of back-and-forth tariff increases with China, the Trump administration attempted a Phase One agreement with China that went nowhere.

The Biden administration also refused to begin expected negotiations on trade agreements with the United Kingdom, European Union, and other allies. Besides offering economic benefits, these agreements could strengthen US alliances against Russia, China, and other threats.

One reason for the Biden administration's reluctance is the negotiations are lengthy, complex, and contentious, while the stakes are relatively low. The main problem is that trade agreements now typically consist mostly of trade-unrelated provisions such as labor and environmental policies. Trade agreements should instead stick to trade. Separate issues should have separate negotiations. This would simplify trade agreements and speed up their passage.

It might be easier to start this policy overhaul with a smaller agreement with a trusted ally, such as Switzerland or another similarly-sized country. Besides tariffs, the key concept in a simplified agreement would mutual recognition. This is the idea that if one country's regulatory system approves a product, then the other partner countries also approve it automatically.

Mutual recognition could benefit consumers, producers, and regulators in countless industries, such as pharmaceuticals, manufacturing equipment, home appliances, and more.

The executive branch is uninterested in reform, which means it is up to Congress to get trade policy back on track. Congress can help by renewing trade promotion authority (TPA), also called fast track authority. This gives the president more leeway in negotiations while retaining Congress' final say. Fast-track lapsed in 2021, and can be renewed at any time.

Experts: Ryan Young, Iain Murray, Kent Lassman

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