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The James Madison Institute

Trusted Solutions for a Better Florida

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These '20s Are Roaring

Sal Nuzzo **VICE PRESIDENT OF POLICY**

If someone were to tell me on January 1 that the President of the United States would be impeached this year and it wouldn't even be in the top five big news stories by the time 2020 was half over, I would have called them insane. Yet here we are.

The 2020s have begun with a rage unlike anything I have ever witnessed in my 45 years on this earth. The roaring '20s? Yeah,

we are kicking off a new roaring '20s and we all need to buckle up because it's looking like it's going to be a bumpy ride. A scene from the movie "The Perfect Storm" comes to mind—Mark Wahlberg and George Clooney standing on the bridge of the Andrea Gale seeing a small eye of sunshine in the chaos of three massive storms that have rendered their boat almost useless. As the eye closes and the 80-foot waves return,

Clooney's character utters in a tone of resignation, "She's not going to let us out." I hope 2020 lets us out.

We approach a new decade in a state of turmoil—a global pandemic, widespread protests over policing practices, rioting and looting by Leftists, and an election the results of which could send us further into division (regardless of which candidate wins).

At the same time, I have become acutely aware of a fact as we inch closer to November 3. We will have, for the first time ever, individuals voting who were born after September 11, 2001. This, to me, represents an inflection point—we will begin to see, over time, more and more voters whose experience does not have a life memory of the 9/11 attacks, the response, and the path our country has taken as a result. As someone attuned to the psychological impact that 9/11 had on the country, this is no small crossroads.

There are historical events that bring out the "where were you" conversation. The Kennedy assassination, the Challenger tragedy, 9/11. For some new voters, this perspective does not exist. They have no specific recall of the events of 9/11 as they occurred—and their entire life to this point has existed in a perpetual state of conflict—Afghanistan, Iraq, the financial meltdown, the 2016 election, Russia and China, COVID-19, policing—the generation born at the dawn of the millennia has drifted from one historical crisis to another without much of a break.

I recognize that the history of our Republic has been paved by tumultuous events. We were forged in revolution,

shaped in civil war, and catapulted to global power in world war. And yet, maybe because of the speed of media, it appears that there is now a seeming lack of any break in the drama. It brings pause to the question, "Will our children inherit a better America than we inherited?" It is a question on my mind quite a bit lately, as I navigate the burgeoning adolescence of my own two daughters—ages 12 and 11. The America I inherited was one of unlimited opportunity for anyone willing to study, work hard, and apply themselves. College was, for the most part, an affordable venture with both private and public choices. Entering adulthood at the dawn of the information age also meant that wealth and prosperity were achievable with technical skills and training that didn't require a college education. Back in the 1990s and early 2000s, it was not uncommon for systems engineers to have never stepped on a college campus while commanding six-figure salaries.

This is why, among the traditional articles from scholars around the country, we are including several articles written by younger writers. Students, new graduates, young professionals—their perspectives and outlooks are of paramount importance because they are on the cusp of inheriting the reins of our society. They are the upcoming economists, attorneys, social workers, educators, and entrepreneurs that we hope will create greater opportunity for all. You'll have a chance to read their words, unabridged, as they examine ideas, contemplate our current state of affairs, and attempt to proffer concrete ideas for moving to a better place societally. They come from all walks of life, represent the

entire spectrum of philosophies, and all seek to rise above rhetoric to demonstrate a passion for solutions and a commitment to addressing real challenges with real ideas.

Typically, each issue of The Journal has a common theme—either explicit or implied. Technology and innovation, criminal justice, an upcoming election. It is our hope that you'll see this issue as a little bit like society right now—a few common themes, interwoven narratives, random thoughts, and some dispersed musings that reflect a society being tossed about from wave to wave, looking for a break in the battering storms. I am proud of this issue—the authors' transparency, the difficult

topics that they have undertaken, and the willingness to continue to set aside political narratives for the sake of ideas grounded in solving complicated policy challenges.

During the course of 2020, as political or cultural events have hit with greater regularity than what seems normal, and pundits, news media, and activists from both sides have proclaimed that our very democracy is falling apart, I have had to remind myself often that we live in a republic that saw the Vice President kill a political rival in a duel.

I'm just glad we didn't have Twitter back then.



Principles for Prosperity.

A Road Map for the Future of Florida

Policy Team

As Floridians come together (figuratively) to begin the long but necessary process of restarting what had become one of the single most successful economic engines in the United States, it is our hope that we remember the principles and strategies that made Sunshine State a leader in job creation, employment, and prosperity.

We applaud Governor DeSantis, the Cabinet, and the Legislature for the efforts they have undertaken over the past 60 days

to address both the health and economic impacts of what truly defines a “black swan” event. While expecting perfection would be beyond unrealistic, their actions have helped make the overall toll of the pandemic less than it might otherwise had been.

There is much to accomplish in getting us back, and Governor DeSantis has taken the first step in establishing the Reopen Florida Task Force to begin the journey. As the task force commences, we would like to

offer the following principles to help guide discussions and frame decision-making for the best possible future for our great state.

I. Empower free markets and private enterprise

While the circumstances are certainly unique, the fundamentals of our economy are no different than they were prior to the pandemic. We generate prosperity through the power of free markets, free enterprise, and capitalism. Whether healthcare, education, or tourism, our economic recovery will be stronger and faster through empowering free markets and private enterprise.

II. Embrace deregulation wherever practical

We have seen the terrible effects of overregulation brought to bear in the pandemic. Shortages of equipment are a direct byproduct of overbearing and onerous regulations that stifled production. Florida has come a long way in eliminating unnecessary regulations. A question should be constantly asked—if a regulation or rule has been waived in a time of crisis, was it truly necessary in the first place?

III. Protect Floridians' rights—both civil and property

Looking across the U.S., there are examples aplenty of heavy-handed edicts from state and local officials that serve no purpose other than curtailing civil liberties or infringing on the private property rights of citizens. As we begin to examine both the tasks ahead as well as what we learn from the past, we should ensure that any

future responses balance the health and societal needs with the inalienable rights established by our Founders and enshrined in our governing documents.

IV. Unleash and enable the power of innovation

Innovation has aided us in the pandemic response. Social media, technology equipment, Internet video conferencing, virtual learning, viral campaigns to keep small business afloat, and other innovative efforts have made social distancing more bearable than it otherwise might have been. Recognize that these advances come about not at the directive of government, but through the power of entrepreneurs and in many cases via public-private-partnerships. Foster innovation. Challenge preconceived beliefs about education, business, and the role of industries in the state. Let it radically alter the course of our economy. We will reap the rewards.

V. Respect the proper roles of the Executive, Legislative, and Judiciary in all efforts

The founders developed a system of checks and balances that outlined our inherent rights and determined what decisions each branch of government is responsible for. The wisdom of the founders has largely been replicated in each state, and Florida should seek to ensure that we continue to respect and build up the proper roles of the executive, the legislature, and our courts in setting agendas, articulating policy, and interpreting laws and the constitution.



Trying Times

Peter Leonard

These are the times which test the heart. Our country is facing many evils. From civil unrest of unique proportions with motivations that confuse many, to a virus that has revealed, as the removal of moss which uncloaks rotting wood, the divisions that our country has been subject to. These divisions go to the depths of human motivation, and they show clearly that some Americans now profess the tenets of humanism and its consequences for

governance, while many still hold on to the overriding will of Providence and the desire for freedom over security, that government should be but a referee, and not a player—an enforcer of justice, not outcome. As a 20-year-old, I was born shortly before one of our greatest national tragedies, 9/11, and reached adolescence during the 2008 financial crises and Great Recession. Now, on the verge of adulthood, I see throughout the country the effects of COVID-19 upon

our health, our government, and the souls of the American people. These can be scary times. They have forced me to seriously consider my future and my role as an adult American in our local and national politics. I have had to come to grips with the nature of life on this planet, realizing now that, as General MacArthur once said, “There is no security on this earth, only opportunity.”

At first glance, and rightly so, the future may seem bleak. There are whispers about the growing movement of neo-Marxism and “democratic” socialism in the country—philosophies that affirm values contrary to the principles of the Founders. Far Left Progressives, motivated by the central idea of humanism, deny even the idea of God, thereby debasing the entire system of government which we possess—the affirmation that our rights are Creator-endowed. This creates a landscape for a more general and confrontational push for the economic system of socialism and the equal sharing of misery and, inevitably, the even greater expansion of a national government that will, as it always has, lead to the continued degradation of individual and state rights.

I see the scenario of liberty versus the false promise of security playing out in the COVID response. There is the ongoing debate of mask mandates and whether they are efficient in preventing the spread of the virus. It seems that government, before empirical evidence of efficacy, quickly issued rules governing personal conduct regardless of the circumstances, health implications on individuals, or the wishes of private citizens and businesses. At the outset of the pandemic, businesses were unilaterally shut

down, forcing literally millions out of work and many into poverty and unemployment. The Federal government, out of thin air, then produced trillions of dollars in relief for businesses and individuals, expanding our collective dependence on DC, and further borrowing from my future. Already more than \$21 trillion in debt, two or three trillion more seemed a pittance.

Many local governments, disregarding any trust in individuals to take care of themselves, even issued *curfews* at the start of the pandemic. Like wielding a chainsaw when a scalpel was needed, government responded to a legitimate emergency by curtailing the rights of the people.

The events that have occurred over the last several months have proven confusing and frustrating. In many ways, I have been disappointed by my government and by my fellow citizens, and I think we all feel this way for different reasons. In particular, the virus has exposed our minds and motivations, and we must now find a way forward.

Processing this new environment has been challenging. Forced from the comfortable illusion of security, I now understand that the world in which we live can quickly be thrown into total confusion bordering on chaos. Accepting this, the in-fighting, and the turmoil, I have come to develop my own perspectives that I fall back onto when the pressures of the world start to close in, and the future seems to have little hope. I recall certain figures in history who exemplified the qualities that see people through even the most terrifying realities of human existence—qualities like courage, integrity, and bravery.

We must always remember that the future has always looked bleak to those who are living in the present. I look to George Washington, the man who held the cause of our founding together, and the agony of the defeats he endured at the hands of the British Empire. With his rag-tag group of colonist soldiers, the future seemed always to be balanced on the edge of a razor. The Union cause in the Civil War was darkened by numerous defeats at the hand of General Lee and his Army of Northern Virginia. Until General Grant took command of Union forces, securing the western theatre, victory for the Republic must have seemed to be a hopeful dream. When American marines, in flat-bottom boats, bounced through the waters of the English Channel approaching certain death, charged through air hazy with bullets, climbed the bluffs of Normandy, and began the invasion of France, their victory against fascism must have seemed a long way off.

Throughout the storms of history, each individual--not just those who have risen to the heights of authority--mustered the moral courage to endure and succeed. Even when the future seemed its most bleak, courageous men and women throughout our history accepted the hand they were dealt, did the best they could with what they had, and persevered. Our Republic has endured tragedies, disasters, and wars, yet we have consistently strived for a better tomorrow. We persevere, not because we have always been united under one cause—after all, only three percent of colonists fought the British, and the Civil War was fought by countrymen against

countrymen—but because certain men and women, despite their circumstances, despite their misfortune, have struggled onward, seeking excellence and service in all that they did. They prepared themselves, sometimes without knowing, for the future service to which they were called. Ulysses Grant never knew that he would go from commanding a regiment to commanding the entire Union Army. George Washington and his militia were perpetually on the verge of defeat but they stuck it out, they fought bitterly, and they never gave in.

To my generation, to those who are likeminded, I say this: we must possess that same mindset. We must hold the truths that are self-evident in our hearts, even when everyone else says that they are antiquated; we must keep the wise words of our Founding Fathers alive in our hearts, even when they are decried for their faults; we must maintain in our actions and aspirations the American Dream because one day, in a year, five years, or 25, we may be called to service. If we are not discouraged, if we are not beaten down, if we look forward with strength, if we strive onward with courage, we will be prepared to serve our nation—a cause greater than ourselves. These trying times are a classroom, they are a knocking on the door, a warning that we must heed. Our hearts are being tested, and we must not let ourselves be broken. We must become stronger.

Peter Leonard is a student at Florida State University, where he is majoring in German and Russian. He serves as a policy intern at the James Madison Institute.



A Quick Guide to Florida's 2020 Constitutional Amendments

Policy Team

The 2020 election cycle has six amendments on the ballot for consideration, all from either citizen initiatives or legislative action.

Each amendment is unique, and each should be weighed seriously because repealing any amendment that has passed would require a new ballot initiative

garnering 60 % of the vote in a subsequent election.

As always, the mission of The James Madison Institute is to inform citizens so that, together, we may chart the course of making Florida an even more prosperous state.

TYPE	TITLE	SUBJECT	DESCRIPTION
Citizen Initiated	Amendment 1	Suffrage	States in the state Constitution that only U.S. citizens can vote in federal, state, local, or school elections
Citizen Initiated	Amendment 2	Minimum Wage	Increases the state minimum wage to \$15 by 2026
Citizen Initiated	Amendment 3	Elections	Establishes a top-two open primary system for state office primary elections
Citizen Initiated	Amendment 4	Direct Democracy	Requires voter-approved constitutional amendments to be approved by voters at a second general election
Legislatively-Referred	Amendment 5	Taxes	Increases the period during which a person may transfer “Save Our Homes” benefits to a new homestead property from two years to three years
Legislatively-Referred	Amendment 6	Taxes	Allows a homestead property tax discount to be transferred to the surviving spouse of a deceased veteran

Amendment Summaries, Pros & Cons, and Constitutional Merit Outline

AMENDMENT 1

Citizen Requirement to Vote in Florida Elections

Ballot Language: “This amendment provides that only United States Citizens who are at least eighteen years of age, permanent residents of Florida, and registered to vote, as provided by law, shall be qualified to vote in a Florida election.”

What Your Vote Means:

A **YES** vote on this amendment: Limit voting in Florida elections to only United States citizens who are at least eighteen years old, permanent Florida residents, and registered to vote in the state.

A **NO** vote on this amendment: Would keep the current language in the Florida Constitution that every citizen of the

United States who is at least eighteen years old, a permanent resident of the state, and registered to vote in the state can vote.

Pros: Clear language that defines who can and cannot vote in Florida elections.

Cons: Opponents of the measure would contend that neither the State of Florida nor any counties in the state currently allow non-citizens to vote.

AMENDMENT 2

Raising Florida's Minimum Wage

Ballot Language: “Raises minimum wage to \$10.00 per hour effective September 30th, 2021. Each September 30th thereafter, minimum wage shall increase by \$1.00 per hour until the minimum wage reaches \$15.00 per hour on September 30th, 2026. From that point forward, future minimum wage increases shall revert to being adjusted annually for inflation starting September 30th, 2027.”

Amendment 2, the state minimum

wage would increase each year as follows:

NEW MINIMUM WAGE	INCREASE FROM PREVIOUS YEAR	EFFECTIVE DATE OF INCREASE
\$10.00	\$1.46	September 30, 2021
\$11.00	\$1.00	September 30, 2022
\$12.00	\$1.00	September 30, 2023
\$13.00	\$1.00	September 30, 2024
\$14.00	\$1.00	September 30, 2025
\$15.00	\$1.00	September 30, 2026

What Your Vote Means:

A **YES** vote would increase the minimum wage to \$15 by 2026, with a \$1.46 increase in 2021 to \$10. The tipped minimum wage would also increase to \$12 an by 2026.

A **NO** vote would keep the current \$8.56 minimum wage in place, while continuing to increase with inflation.

Pros: Raise the wages of lower-wage workers • Stimulate growth in lower-wage workers’ communities • Reduce lower-wage workers’ dependence on public assistance.

Cons: Any attempt by government to set a minimum wage would result in greater unemployment, particularly in communities more in need of help.

Vast majority of those in minimum wage jobs are youth, who are using this as a first opportunity for work. Raising the minimum wage would lock them out of jobs.

Higher wages mean higher costs—and

consumers ultimately pay that increase.

Companies will be more likely to increase automation where possible and eliminate certain low-wage jobs altogether.

Massive layoffs of lower-wage workers who are the same people that this measure is designed to help.

AMENDMENT 3
All Voters Vote in Primary Elections for State Legislature, Governor, and Cabinet

Ballot Language: “Allows all registered voters to vote in primaries for State Legislature, Governor, and Cabinet regardless of political party affiliation. All candidates for an office, including party nominated candidates, appear on the same primary ballot. Two highest vote getters advance to general election. If only two candidates qualify, no primary is held and winner is determined in general election. Candidate’s party affiliation may appear on ballot as provided by law. Effective January 1, 2024.”

What Your Vote Means:

A **YES** vote would make primaries in the State of Florida open to all candidates, with the top two advancing to a runoff in the general election, regardless of party.

A **NO** vote would keep the current primary system in which each party nominates a candidate for the general election.

Pros: Open primaries would allow independent voters (25%+ of all voters) to take part in the candidate selection process.

Would allow more choices to all voters as there are typically more candidates in

open primaries.

Let more voters' voices to be heard and keep political party power brokers from being able to hand-pick a party nominee.

Cons: Would create a government regulation needlessly impacting private organizations.

Individual members of a political party should be the ones deciding who their candidate for office is.

"Crossover" voting—where someone who is registered with one party votes for a candidate in another party, selecting a candidate they feel can be beaten more easily, or one that is closer to the center of the political spectrum and may not represent the full beliefs of the party to which they belong.

Would open the primary system up to manipulation. If there was tampering by one of the major parties, it would shake Floridians' trust in the electoral process.

AMENDMENT 4

Voter Approval of Constitutional Amendments

Ballot Language: "Requires all proposed amendments or revisions to the State Constitution to be approved by the voters in two elections, instead of one, in order to take effect. The proposal applies the current thresholds for passage to each of the two elections."

What Your Vote Means:

A **YES** vote would mean that a voter-approved constitutional amendment would have to be approved by voters at a second general election to become effective.

A **NO** vote would mean that the current

system with voter-approved constitutional amendments becoming effective after one general election would stay in place.

Pros: Current process for amending Florida's Constitution is too easy, and too many constitutional amendments pass without sufficient scrutiny

Allows more time for reasons to be made for and against a particular proposed amendment.

Would limit the number of frivolous amendments that get brought forth and are ultimately passed.

Cons: Florida already requires a super-majority (60%) of voters to approve an amendment for it to pass.

Adding a requirement for the amendment to be placed on another ballot in four years would not significantly change the number of amendments that ultimately get passed.

AMENDMENT 5

Extend "Save-Our-Homes" Portability Period for Homestead Property Tax Assessment

Ballot Language: "Proposing an amendment to the State Constitution, effective January 1, 2021, to increase, from 2 years to 3 years, the period of time during which accrued Save-Our-Homes benefits may be transferred from a prior homestead to a new homestead."

What Your Vote Means:

A **YES** vote would extend the period in which someone may transfer Save-Our-Homes benefits to a new homestead property from two years to three years.

A **NO** vote would keep the current

Save-Our-Homes benefits transfer period to two years.

Pros: To transfer Save-Our-Homes benefits to another home, resident must have received a homestead exemption as of January 1 of either of the previous two years.

Not the original intent of the exemption when it was passed and thus needs to be amended to better reflect the intentions of the voters.

A three-year timetable would give ample time for a homeowner to transfer their Save-Our-Homes benefits.

Cons: Would decrease local property taxes by an annual \$1.8 million in the next fiscal year and would eventually grow to \$10.2 million annually.

Could cause an issue for some homeowners if they sell their house towards the end of one calendar year and their new home is not built by January 1 of the year after the next.

Two years is an acceptable time period to move from one home to another and to transfer those homestead property savings.

AMENDMENT 6

Homestead Property Tax Discount for Surviving Spouses of Deceased Veterans

Ballot Language: “Provides that the homestead property tax discount for certain veterans with permanent combat-related disabilities carries over to such veteran’s surviving spouse who holds legal or beneficial title to, and who permanently resides on, the homestead property, until

he or she remarries or sells or otherwise disposes of the property. The discount may be transferred to a new homestead property of the surviving spouse under certain conditions. The amendment takes effect January 1, 2021.”

What Your Vote Means:

A **YES** vote would mean that a homestead property tax discount may be transferred to the spouse of a deceased veteran.

A **NO** vote would mean that the homestead property tax discount may not be transferred to the spouse of a deceased veteran.

Pros: This amendment would transfer the homestead property tax discount to the surviving spouse until they remarry, sell, or otherwise do away with the property—and better reflects the intent of the policy when enacted.

Cons: Would potentially result in less property tax revenue—especially during a time where property tax revenue is needed in local communities throughout the state.

Many local governments are tasked with maintaining many public services with less money being brought in through tax revenue.

Another measure that would leave local government with less money to spend for their communities.

In Sum: This amendment would extend homestead property tax discounts to the spouse of a deceased veteran and allow them to keep the discounts that they are already receiving.



Modern Monetary Theory: Economic Savior or False Prophet?

Madeleine Roberts

From all the confusion that swirled around the 2008 financial crisis and the unexpected economic trends in the recovery, a novel way of looking at the American economy was born. A hodgepodge of Keynesian principles and outside-the-box economic rationalization built on an unconventional interpretation of deficits, Modern Monetary Theory (MMT) emerged as a theoretical solution to unemployment. Though the theory has

been developing for the past decade or so, it has in the past few years entered the public consciousness on never-before-seen levels, largely because of its recently gained foothold with progressive Democrats: major MMT proponent Stephanie Kelton, for example, was Bernie Sanders's economic advisor, and Representative Alexandria Ocasio-Cortez has advocated for implementation of the theory to fund the healthcare and climate change programs proposed under her

Green New Deal (Mayeda and Dmitrieva). Though not always mentioned by name, MMT principles have become ingrained in the country's political consciousness, and MMT-leaning lingo has become more and more common in light of the downturn triggered by COVID-19. Indeed, some believe it may be America's economic savior.

MMT has also received significant criticism from multiple sectors, ranging from Lawrence Summers, a former Secretary of the Treasury under President Obama, who accused MMT of being "fallacious at multiple levels," to Larry Fink, CEO of BlackRock, the largest asset managing company in the world, who labelled it "garbage" (Mayeda and Dmitrieva). Not surprisingly, fierce debate swirls around MMT and whether it is a viable alternative to fiscal austerity in the U.S. economy. Economist and George Mason University professor Scott Sumner once remarked on the debate, "MMT has constructed such a bizarre, illogical, convoluted way of thinking about macro that it's almost impervious to attack" (Coy et al).

Indeed, Modern Monetary Theory is built on several fundamental economic errors, including its conception of how government money creation works, why government deficits matter, and the causes and prevention of inflation. These glaring issues are proof that voters should be mindful of what economic policies, not merely candidates, they are voting for on election day, especially in this unprecedented and uncertain time in American history.

MMT, at its core, is the belief that the government has access to nearly unlimited funding. Since it can create its own currency,

government need not worry about escalating levels of debt as long as inflation is kept in check inasmuch as the government cannot legally declare involuntary bankruptcy (Coy et al). This is true, but what advocates of MMT fail to realize is, inflation aside, excessive money creation in this manner does not actually provide a "free lunch," as IMF's chief economist Gita Gopinath put it (Harvey; Mayeda and Dmitrieva).

Kelton argues that economists' tendency to shy away from deficits is simply a matter of perception, claiming they merely represent nongovernment surpluses. In other words, deficits are an account of how much money the government paid into households and did not tax back out (Kelton, "Sanders' 2016"). This, however, is precisely why government money creation will not have the desired effect of free funding. If the government needs additional funding and decides to issue more currency through the Treasury, according to Kelton, this extra money finds its way into households. MMT proceeds on the assumption that this money will be spent and subsequently boost production and the economy; however, it is not unreasonable to assume the public will deposit much of the excess in commercial banks. Now banks have extra currency, which they deposit in the Fed as bank reserves. The Fed, like in most countries, pays a market interest rate on these bank reserves. So in this scenario, the extra government expenditure is financed by "forced borrowing from the banking system," and the government still ends up paying interest on its debt, merely through a different process than usual (Grenville). If the government still must pay for its debt,

it makes more sense to do so through the established method of issuing US Treasury notes than through burdening the Fed with extra expense. Indeed, unlike what MMT proposes, there really is no “free lunch” for the American government.

A common misconception of MMT, stemming from its seemingly haphazard attitude towards money creation, is that MMT advocates believe deficits do not matter. Kelton, speaking on behalf of all MMT advocates, firmly rejected this claim on Twitter in 2018:



The misconception stems from *why* MMT advocates think deficits matter. Usually, large deficits precede bankruptcy, but MMT disregards deficits in this sense because the U.S. is not legally subject to this danger (Harvey). Yet MMT advocates still recognize that deficits can trigger inflation, which they view as the primary hazard of excess government fund creation and thus have designed plans to keep price levels in check (Kelton, “Sanders’ 2016”). MMT fails to consider a third risk to growing deficits, however: how they affect the U.S.’s reputation for fiscal sustainability and appeal to foreign investors. The article Kelton attached to her Tweet claims that “the notion of ‘fiscal sustainability’ or ‘solvency’ is not applicable

to a sovereign government” such as the United States (Wray). This statement is true in that the government cannot go bankrupt but, on a global economic scale, foreign investors tend to shy away from excessively increasing deficits. The reality is, even if the U.S. government can handle excessive deficits, the country could be hurt from developing a reputation around the world for fiscal irresponsibility. If the U.S. loses the confidence of international investors, it will be harder for the country to issue debt, and international demand for money holdings and debt prices will drop, culminating in the dollar plummeting and wreaking havoc on the economy (Coy et al). Perhaps a successful, longtime implementation of MMT could assure the world that excessive deficits will not trigger inflation and win back the confidence of investors; however, as MMT stands currently, a novel theory many believe to be nonsense, dollar depreciation (a harbinger of inflation) would be a very real danger if MMT was implemented.

The notion of a government creating its funding at whim depends heavily on controlling inflation, which will inevitably occur if the government continues to create money past the point where the economy can absorb the excess. Kelton shuns the most conventional solution: “I reject the idea that MMT is about using taxes to fight inflation” (Kelton, “Sanders’ 2016”). Instead, advocates of MMT propose using automatic stabilizers to combat demand-pull inflation. Since the main problem MMT seeks to solve is unemployment, the primary stabilizer proposed is a job guarantee for all Americans, which has become a central tenet of the theory (Harvey; Cohen). This

solution, however, would tend to drive up inflation, not combat it: if everyone is making at least the minimum wage, the minimum wage is worth less in real terms.

The other method by which MMT proposes to curb inflation is by breaking up large businesses, since they attribute inflation primarily to their pricing power (Coy et al). This process, too, would be inflationary because MMT advocates tend to look at big businesses the wrong way. Many businesses nowadays become large because of their ability to compete on price and sell goods cheaper than their competitors, not the other way around. (Just consider Amazon and Walmart, prime examples of this concept.) Consequently if large, efficient businesses that can afford to sell goods more cheaply were to be replaced by a number of smaller, less efficient companies, the price of goods would increase, a manifestation of cost-push inflation. Thus, MMT proponents lack a feasible plan for lessening inflation effectively, the greatest and most inevitable danger of creating government funds whenever needed.

Though some may see MMT as a creative solution to the current economic downturn, the risks associated with a full-scale implementation are too great. An MMT

system would fail to provide interest-free government funds, rendering it incapable of financing excessive government spending to boost the economy. Furthermore, should the United States adopt MMT principles in the long-term, it would struggle to maintain the dollar's international appeal as the global economy recovers. But most importantly, MMT has the potential to cause a crippling level of inflation, which has already begun to take root in the United States as government spending and the money supply continue to increase.

Such issues with economic policies like MMT, as well as all other proposed policies, should be familiar to voters when they go to the ballot box. This rings especially true as the country faces an unprecedented period of major fiscal challenges and potentially generational changes in government budget priorities. The stakes are high: the future of this country after this crisis will undoubtedly look far different than the past, and voters have a significant role to play. Indeed, it's largely up to them to shape this future.

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Preparing for a More Fractured Web

The central services under siege built global-scale networks. If policy trends hold, what comes next?

Andrea O'Sullivan

What's your worry about Silicon Valley? Most everyone has one. For some, it allows impolitic speech to flourish online. If you're like me, you're more bothered by the threat of targeted content controls. Or you might fear that some companies have just gotten a little too big. Maybe you dislike the entire

ad-based business model supporting much of big tech. Maybe you're concerned about privacy. It could be a combination of many things. Whatever your persuasion, there is usually some good reason to resist big American technology companies.

This essay will not debate the merits or demerits of any particular tech criticism.

Readers can find many such commentaries tailored to their own liking elsewhere on the world wide web. Instead, I will discuss how the many forces converging against American technology companies may result in a new web that is less, well, *worldwide*. What might such an internet look like?

We already have a good inkling. Most people have heard of one longstanding internet faultline: the so-called Great Firewall of China.¹ Residents of China cannot easily access major parts of the global internet. Instead, popular non-Chinese apps and services are reproduced by Chinese companies for those within the Firewall. We have Google, they have Baidu. We have Facebook, they have Tencent. We have Twitter, they have Weibo. And so on. No wonder China's "netizens" and global web "surfers" rarely interact.

China is by no means alone. The OpenNet Initiative tracks internet balkanization through its Global Internet Filtering Map.² Countries such as Iran, Syria, Saudi Arabia, Turkey, and Russia have imposed filtering controls for various political, social, security, and infrastructure purposes. It is no coincidence that the worst offending nations are among the top agitators against the prevailing global order.

But traditional allies have started to turn as well. The EU's landmark General Data Protection Regulation (GDPR) made many US-based websites inaccessible to much of Europe³—users had to route around such geofencing with VPNs (Virtual Private Networks) or forgo access altogether. The EU-US Privacy Shield, which regulates interbloc data flows, is undergoing legal challenges in the European Court of Justice.⁴

These trends herald a future where data localization, which limits how information can be used across borders, is the norm.⁵

Regulating data means regulating commerce. Although framed as a way to bring tech companies in line, data regulations affect anyone who engages in online commerce: that is to say, almost everyone with a computer and a connection. To a foreign retailer, for instance, data controls might as well be a trade control.⁶

Then there are content controls. Users have long been accustomed to copyright laws restricting certain media in different jurisdictions.⁷ Now even user-submitted content is increasingly subject to stronger controls. Germany's NetzDG law to target "hate speech" requires platforms to appoint local censorship representatives to comply with government removal mandates within 24 hours.⁸ A report from Justitia finds some 13 countries that have proposed or enacted laws modeled on this "digital Berlin Wall."⁹

Other countries target encryption. These strong digital security techniques help to conceal data. Yet they also frustrate law enforcement efforts to extract data. Measures like Australia's Assistance and Access Bill of 2018 require communications providers to build government backdoors into encryption technologies upon request.¹⁰ In other words, anyone with a website accessible in Australia may be deputized as a government hacker. According to Global Partners Digital's World Map of Encryption Laws and Policies, some two dozen nations impose similar obligations on individuals.¹¹ Online security, too, is becoming even more uneven.

Even in the US, cracks are growing.

California's Consumer Privacy Act is styled in the vein of the GDPR; other states are considering similar legislation.¹² Proposals like the Lawful Access to Encrypted Data Act¹³ and the EARN IT Act¹⁴ take aim at encryption like Australia. The latter also threatens liability protections enjoyed by platforms through Section 230 of the Communications Decency Act.¹⁵ If removed, platforms might more aggressively censor impolitic speech as has been done in Germany.

The net effect of these trends is to craft an internet experience that is far from universal. Should they continue, the default web will be more or less traditionally "open" depending on your location.

One reason the open web so quickly became "open" at all is that private companies and multi-stakeholder organizations provided the scale to support and connect global populations. Boosted by US policies such as Section 230 and the laissez faire *Framework for Global Electronic Commerce*,¹⁶ American companies led the charge. No wonder they dominate today.

While this global scale undoubtedly increased access, it came at the cost of seeding centralized vulnerabilities. In other words, the same entities that were so instrumental in globalizing the social internet are also the ones that can be and are targeted to descale connectivity, whatever the justification.

Imagine an alternative history where America's technology policy combination of hands-off e-commerce regulation and liability protections for platforms did not exist. It is unlikely that the platforms that are so embattled today would have

developed as they did. Lacking the scale and user accessibility that these companies provide, connectivity might still be limited to the technical few and to major institutions with the budgets and labor to navigate a fragmented computing and legal environment.

Or perhaps more development would have accrued to innovating *around* legal liabilities. If there is no central entity managing data, there is no central entity on which to place data transfer controls—governments would have to track down and control each individual user.

We are accustomed to the "walled garden" or trusted third party model of networking and computing today, but there are other options. For example, we do not rely on one platform to provide all email messaging. There are communications protocols—such as SMTP, IMAP, and POP3—that set out the rules that any entity can use to connect. Anyone can use a Gmail account or an encrypted email service or even set up their own server using the same rule set.

Much of the internet actually operates through protocols. The Department of Defense-developed TCP/IP sets the rules for how packets of data are sent. More people may be familiar with HTTP, which sets rules for how links are accessed online. Dozens of such protocols operate almost invisibly to form the internet protocol suite that supports the web. Although protocol rules are crafted by standards-setting bodies, their applications are decentralized.

Open source software projects provide other more decentralized alternatives. In contrast to proprietary software, where

code is kept secret, open source projects are developed in public by anyone who wants to contribute. Because no one entity can conceal or control the software, open source projects offer more user freedom and perhaps more security (since bugs can be caught by the public). The downside is that open source projects can be non-user friendly or slow to add new features since they are often a hobbyist pursuit.

Large companies like Facebook and Google do not operate as protocols or open source projects. They are private and centralized. But there is no technical reason that this should be the case.

In some instances, protocol or open source alternatives already exist. For example, many people are unsatisfied by Twitter's content moderation policies. They can at any time host their own Mastodon instance and run an open source social network. Twitter itself has launched an initiative—called Blue Sky—to develop similar open and decentralized technical standards for social media.¹⁷

It is no coincidence that decentralized and open source projects have attracted new interest at the same time that data controversies and controls have proliferated. Cryptocurrencies like Bitcoin—which replace trusted third parties in financial transactions with a peer-to-peer network—are some of the most well-known.¹⁸ Similar projects seek to route around trusted third party vulnerabilities in domains such as digital identity (decentralized identifiers or IDs),¹⁹ server operations (Urbis),²⁰ and marketplaces (OpenBazaar).²¹

The biggest challenge with decentralized alternatives is that nobody uses them. Most

internet users are locked into existing central platforms because of the “network effect.”²² A social network becomes more valuable as the number of connections increases. It is hard, but not impossible, to overcome network effects to compete with existing platforms. It is even more difficult to do this as an open source and perhaps unfunded project with no obvious route to monetization.

There is one other major difference—perhaps a downside—that such decentralized alternatives present. Centralized platforms compete by matching users with relevant content and other users. Decentralized networks are necessarily more opaque by design. Users are free to broadcast data, but these will be less “legible” to any intended or unintended audiences.²³ Where the platform-based web encouraged controllable virality, the protocol-based web encourages uncontrollable small-scale affinity grouping. This may be a good thing for people who wish to be discrete, but a challenge for those who seek attention.

The future of the internet may well be two-tiered. The besieged “open” web could limp along a little less openly than before. Barring significant cultural and policy change, jurisdictional data controls will continue to fracture the global internet experience. Particular platforms may come and go, but the central service provider model to which most internet users are accustomed would continue.

Then there could be a second web that is at the same time freer and more closed. This less legible web would consist of a protocol and open source software stack that is mostly federated or distributed. These tools

could empower users to freely connect. Yet lacking a central matching service, the freeweb would mostly consist of cloistered private groups. More global messaging would be technically possible, but socially much more difficult.

The upshot for people with concerns about Silicon Valley is that they may soon have the tools to route around the third

parties they dislike. The downside for people who enjoy the network effects that central platforms provide is that this kind of more global connectivity may be unavailable on both tiers of the new web environment.

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Zero-Based Budgeting & COVID-19: A New Tool for Florida

David Geller

Federal and state government responses to the COVID-19 pandemic have been devastating to the economy, which means these responses have been devastating to *people*. People's livelihoods have been significantly damaged or, at best, been made uncertain. This is because many state governments have enacted orders

for individuals to stay at home and avoid “non-essential” activities, as well as orders for “non-essential” businesses to close or significantly adjust their operations during the pandemic.

State governments, such as Florida, are facing new budget constraints as a result of the economic downturn. Florida will likely

be unable to continue the status quo of budgeting in the face of a revenue decline of between \$3-6 billion (at the state level alone). This challenge will inevitably raise questions and debate about what portion of the budget needs to be cut or which services the state provides are the most essential. Initially, state government can and must identify wasteful spending. Doing so can stave off the levels to which we will need to tap into Florida's reserves. Failure to make necessary cuts will result in the eventual depletion of these funds. This is inevitable due to the impact the lockdowns have had on Florida's tax revenue. According to the revenue estimators, Florida's tax revenue is already more than \$2 billion below projected levels. However, there is a path to take that can help aid our fiscal path ahead. Florida can and should adopt a policy of practicing *zero-based budgeting* (ZBB), a process that leaves little alternative than to eliminate the unnecessary or wasteful spending that may lie in Florida's budget.

The budgetary theory ZBB, which gained popularity in the 1970s, is essentially the practice of creating a budget starting from zero, resulting only in components that have been rigorously justified. For an organization to practice ZBB, it must determine their *decision units*, or "the lowest level at which budget decisions are made," which is typically a division or department (GFOA 3). Then, the budget authority within some designated decision unit will submit *decision packages*, which are different proposals comprised of varying spending levels for services their unit provides and describe how such spending affects the level of service.

Decision packages are then ranked, and these rankings are the basis on which budgetary authorities make decisions on where to allocate spending. This process of budgeting is all-encompassing and provides a way for organizations to make better-informed budget decisions.

While ZBB is commonly practiced among private sector firms, the public sector can benefit from adopting it, especially during the COVID-19 pandemic. By adopting ZBB, state governments can minimize costs while maximizing utility of fiscal endeavors and avoid allocating funds to wasteful spending, thereby leading to state government better serving their constituents and promoting their general welfare. In a lean state like Florida, in which per-capita state expenditures are extremely low relative to other states, this approach would be of tremendous benefit. Additionally, ZBB can preserve a proper checks-and-balances system on state government power. Florida, a state where coronavirus deaths are far less than a state like New York (with comparable population), should adopt a ZBB approach to help focus their pandemic response, move away from the one-size-fits-all response model, and make as many Floridians better off as possible.

By adopting ZBB, Florida would have to reconsider onerous restrictions such as lockdowns, which could lead to less budgetary hardship handling unemployment insurance and Medicaid. An argument can be made that lockdowns have their place in a state like New York, where COVID-19 has been most prevalent. However, a state like Florida with a far lower death toll has

less justification for such a heavy-handed one-size-fits-all response. If Florida were to practice ZBB, economic hardship could be mitigated because such extreme measures would likely not be justified.

Even in the absence of a state-mandated lockdown, Florida businesses would still experience some economic hardship. Many people, regardless of orders from government officials, will practice some form of social distancing. This will impact Florida businesses because, for many of them, continuing to attract customers means adopting measures including restricting capacities, limiting number of staff, and additional investments in cleaning supplies and protective gear. Resulting price increases will have additional negative economic impacts, thus creating additional pressure on tax collections (at both the state and local levels). Florida can mitigate these adverse effects through a ZBB approach. By continually examining every facet of the budget from the first dollar forward and eliminating waste/fraud/abuse, state government can focus appropriations toward economic relief for those most in need. The process of ZBB can provide state budgeters with a method to examine all components of the budget, particularly those that possess little to no justification, especially during a pandemic. For example, the enforcement of the most burdensome regulations on commerce do not have much justification, as they impede an already crippled economic landscape and have massive potential to drain collectible revenue. Practicing ZBB introduces much-needed scrutiny into the justification of burdensome and costly government

activities.

The main “disadvantage” of ZBB is thought to be the costs borne from justifying any and every component of a budget. However, in the context of government, this significant cost of ZBB is precisely why it would make government more efficient. The practice itself can be a useful tool for preventing moral hazard (a result of government using other peoples’ money). The consensus of economists is that people tend to act less responsibly with other peoples’ property, unless there is a significant enough cost. A commonly cited example of this phenomenon is a banker thoroughly vetting and establishing a covenant with the loan applicant. The banker is not willing to give out money to someone who is not likely to pay the loan back. To prevent this, the banker imposes a thorough process to determine whether the loan applicant is likely or not to pay them back. If the banker lends money to the applicant, usually the banker will also initiate a covenant, or strict conditions on the loan, with the applicant. The banker is imposing a cost on the applicant, so they are less likely to act irresponsibly and fail to pay the loan back. Now replace the banker with the taxpayer and the loan applicant with the government. If the government practiced ZBB, this can be viewed as the cost imposed on them to keep appropriations in check. This cost is important because, as Milton Friedman in *Free to Choose* illustrated, government welfare programs are paid for with taxpayers’ money and spent on either the taxpayer or another taxpayer (117). Spending someone else’s money on someone else is widely acknowledged as the

method guaranteeing the most ineffective and inefficient outcome. Government is not all-benevolent, and we should not expect government to use taxpayers' money as an all-benevolent entity would. The cost imposed on governments by ZBB will protect against misuse of taxpayer money.

Nevertheless, one could argue that practicing ZBB may still prevent the government from acting efficiently and fulfilling even the most necessary functions. Private firms attempting to faithfully practice ZBB have often run into this challenge. However, many of the organizations that did not completely abandon ZBB adopted either *zero line-item budgeting* or *service level budgeting*. The former is focused on determining the right input to produce the intended output, while the latter is focused on choosing the level of output or services to produce (GFOA 7). While these may not be pure ZBB practices, they nonetheless borrow significantly enough from the theory to be considered close variations. These practices are the manifestations of ZBB that attempted to mitigate its disadvantages. So, it is not unheard of to put some form of ZBB into practice and avoid overbearing costs.

If Florida were to adopt zero line-item budgeting, we may see significant changes to the budget, especially amidst the ongoing pandemic. With many out of work, Medicaid and unemployment services revenues are expected to increase without an increase in revenue. For the state to respond effectively to the needs of those bearing the burden of the pandemic, Florida must reallocate revenue to essential services. Zero line-item budgeting may be a helpful framework for

Florida to adopt to make appropriate budget cuts and reallocations. Clearly, through this lens, budget components such as Medicaid and unemployment services would have more justification than less pressing line-items. The pandemic has imposed unusual conditions for the state of Florida, so its budget must not rely on those of previous, relatively typical, years.

Adoption of zero line-item budgeting by various local governments has resulted in positive, more effective conversation about costs. Different budgetary authorities and departments put cost in front view and learned more of where money was going (GFOA 14). These insights from governments that used zero line-item budgeting could potentially foster a culture of cost-effectiveness and financial transparency within the Florida government. This is more important than ever for Floridians, as they yearn for cohesion, effectiveness, and transparency in their government's response to COVID-19. Zero line-item budgeting is one way that Florida can address the concerns of its residents.

Similarly, service level budgeting can improve Florida's domestic response to the pandemic by setting budgetary and service benchmarks. As opposed to zero line-item budgeting, service level budgeting uses decision packages and shifts focus away from line-items. The decision packages can provide more concrete goals in responding to the pandemic as well as making budgetary authorities cognizant of the implications the varying spending levels may have on current service levels. This provides a framework for clear and precise thinking about the budget.

Zero-based budgeting has great potential to stave off fiscal hardship for the state of Florida. With scrupulous processes of justification for all components of Florida's budget, taxpayer dollars are more effectively spent in their best interest. This budgetary framework also can bring more focus and efficiency to Florida's response to the pandemic and differentiate it from other states who have been affected differently and necessitate different policy justifications.

Regardless of one's view of the proper level of public expenditures, we all want government to operate in the most efficient and effective manner possible when using our money. If COVID-19 has taught us anything, it is that we can see our state's financial picture change in a noticeably short period of time. Leveraging this reality to improve our budgeting process would serve all Floridians not just now, but for generations to come.

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Amendment 2 – Florida's Economy at Stake

Adrian Moore

Imagine a group of five young minimum wage workers from a Florida beach resort chatting after work one day about Amendment 2, the Florida ballot initiative that would raise minimum wages in the state. They are excited by the prospect of getting an immediate raise to \$10/hour and an automatic \$1/hour raise for the next five years. One says he will be able to get a better car. Another wants to get his own apartment with no roommates. All are excited about

being paid more.

But fast forward six months and what is likely to have happened to these five young workers if Amendment 2 passes is not so rosy. Yes, two of them got raises and are now making the new minimum wage of \$10/hour. But the one who worked at the booth in the parking structure was laid off when the resort put in an automated parking kiosk. Another had his hours cut and then was laid off when the resort reduced staff

to help pay for higher wages for remaining workers. And a third was replaced by an older and more experienced worker for whom the old minimum wage was not enough, but the new higher minimum wage is just fine.

This is how competitive labor markets work. Mandating higher wages doesn't make every entry-level unskilled worker worth that wage. With each year as the minimum wage climbs to \$15/hour, more and more young workers will have an experience like those latter three.

Amendment 2 on November's ballot would increase the state minimum wage to \$15 by 2026, starting with an increase from \$8.56 in 2020 to \$10.00 in 2021. After 2021, the minimum wage would increase by \$1.00 each year until reaching \$15.00 in 2026. Thereafter, the minimum wage would be adjusted annually for inflation.

Proponents¹ of Amendment 2 argue that a \$15 minimum wage is necessary to give lower-income workers a living wage. They point to rising housing and transportation costs as evidence that the current minimum wage, at \$8.56 an hour, is insufficient to meet basic needs or to support a family. According to a "living wage" calculator² developed by researchers at the Massachusetts Institute of Technology, the living wage for an average single adult in Florida is approximately \$12.39 an hour. The calculation includes standard measures³ of living expenses including food, housing, healthcare, and transportation. The living wage for a two-parent household with two children is approximately \$16.14 an hour.

Proponents also say that increasing the minimum wage would result in additional

spending, thereby contributing to the broader economy. They argue that any negative employment effects will be offset by additional spending.

These arguments work well with voters. The latest poll⁴ of registered voters in May from St. Pete Polls found nearly 64 percent support Amendment 2 and only 24 percent plan to vote "No."

This is troubling when you consider how central to Florida's economy tourism and hospitality are, and how hard they have been hit by the economic fallout from the COVID-19 pandemic. Opponents⁵ of Amendment 2 argue that increasing the minimum wage will have the greatest impact on these industries and have an overall negative impact on the state's economy. They point out that a \$15 minimum wage will hurt the very workers it is intended to help, as employers may respond to higher wage requirements by reducing the number of workers they employ or cutting back hours. They point out that minimum wage jobs are meant to be entry-level positions and should not be expected to support a family. In their view, minimum wage positions provide opportunities for teenagers and young professionals to enter the workforce and learn new trades. Therefore, opponents suggest that minimum wage jobs ought to earn a "training wage" rather than a "living wage."

Meanwhile, the Florida Office of Economic and Demographic Research estimated⁶ that Amendment 2 would cost state and local governments, and especially school districts, approximately \$16 million in increased wage costs in the first year, rising to \$540 million by 2027. It will take a

lot of budget cuts, staff cuts, or tax hikes to pay those higher salaries to

entry-level government workers. And that does not count higher costs in government contracts due to higher wages for contract workers.

The proponents' argument that the higher minimum wage will increase spending and stimulate the economy is sadly ignorant of how the economy works. Raising the minimum wage does not put new money and spending into the economy, but rather it shifts money from some workers who get hours cut or are laid off to employees who now get paid a higher mandated wage. It shifts the money around, not creating anything new.

Classical economic theory is clear: minimum wages cause unemployment. However, findings from empirical research on minimum wage increases are somewhat mixed. Findings vary depending mostly on research methods and the size of wage increases being studied. In general, larger increases are more consistently found to have negative impacts on workers and consumers.

A minimum wage increase is an increase in the cost of labor. Cost increases must be offset somewhere, but employers will vary in their responses. That variation may explain the mixed empirical evidence. Some employers may offset additional costs by raising prices⁷ or reducing the number of workers⁸ they employ. Others may reduce hours⁹ and limit the number of workers on each shift. However employers respond, minimum wages disrupt the relationship between supply and demand and introduce inefficiency in the labor market. Large

increases are more disruptive and, therefore, will have more visible consequences.

Ultimately, wages are determined by the level of skill required to do a job. Low-wage jobs are generally low-skill jobs, meaning that workers can be easily replaced. That is why minimum wage positions are—and should be—primarily held by younger workers¹⁰ rather than adults supporting families. Increasing the minimum wage to a level that can support a family of four attacks the problem from the wrong end and will only serve to limit entry-level employment opportunities. Investing in skills training would be more helpful for adults stuck in low-wage jobs.

Regarding the minimum wage in Florida, it is important to note that the state minimum wage is already \$8.56 which is \$1.31 higher than the \$7.25 federal minimum wage and is updated annually to account for inflation. While proponents cite increasing living expenses as a reason to increase the minimum wage, adjusting for inflation means that the minimum wage in Florida is already designed to keep up with price changes.

Moreover, there is good reason to believe that the particular proposal provided in Amendment 2 would have a negative impact on Florida's economy. First, the proposed 75 percent increase from \$8.56 to \$15.00 is relatively large. A report¹¹ from the Heritage Foundation estimated that approximately 40 percent of workers in Florida would be impacted by a \$15 state minimum wage. This means that a lot of workers could see their wages go up, or could see their job go away, while overall it would affect a lot of the state economy.

Second, increasing the cost of labor amid high unemployment may slow economic recovery. The COVID-19 pandemic and associated shutdowns have taken a toll on Florida's economy, and empirical evidence¹² suggests that minimum wage increases have larger negative employment effects during recessions than during periods of growth when businesses may be better able to absorb additional costs. The pandemic is already devastating hotels, shops, and restaurants across the state, and the state unemployment rate was just over 11.3 percent¹³ in July. Increasing the cost of labor by 75 percent would likely stall employment growth and force even more businesses to close their doors.

Finally, the proposal ignores considerable variation¹⁴ in the cost of living across the state. Increasing the minimum wage to \$15.00 will likely have a greater impact in more rural, lower-cost areas

than in higher-cost urban areas. High-cost areas like Miami already have higher median hourly wages than lower-cost areas like Ocala. A blanket \$15.00 minimum wage would therefore represent a much larger increase in income for workers in Ocala than Miami. It would also be a larger relative cost increase for employers in Ocala and similar areas where the market is less able to bear those costs.

The bottom line is that if Amendment 2 passes there will be a lot of young workers like our imaginary friends I conjured up at the beginning of this article -- a few delighted at their raise, and many dismayed at their lost hours, lost jobs, and lost opportunities. And Florida's economy will suffer along with them.

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Protecting Democracy and the First Amendment for Florida Public Employees

F. Vincent Vernuccio

Public employees have a First Amendment right to choose whether or not to join and pay a union. Further, they have the right to ensure that certain things happen before their employers take money from their paycheck and give it to a union. Notably, an employer must have recent and adequate documentation that the employee wants the money to be withheld from their paycheck and then sent to a union.

On June 27, 2018, the United States Supreme Court ruled in *Janus vs. AFSCME*¹ that everything public sector unions do is political, and because of the political nature of their actions, the First Amendment protects public employees' choice of refraining from paying union dues. For states like Florida, which already had a right-to-work law, this part of the decision had little on-the-ground impact. Florida's right-to-work law already stopped unions,

in both the public and private sector, from being able to get a worker fired for not paying them. This part of the decision did strengthen the right-to-work protection public employees enjoyed, elevating it from a status granted by state law to a right guaranteed by the U.S. Constitution.

However, the second part of the decision has a more direct effect on right-to-work states, including Florida.

Attorneys General from right-to-work states such as Indiana² and Texas³ and members of the Michigan Civil Service Commission⁴ agree that this second part of the decision applies to public employees in their states and still needs to be implemented.

The court required that “employees clearly and affirmatively consent before any money is taken from them.” In other words, public employees have a right to have their choice protected by making dues deductions contingent on the employer first having received clear and compelling evidence of affirmative consent from the employee.

Writing for the court Justice Samuel Alito noted:

“This procedure violates the First Amendment and cannot continue. Neither an agency fee nor any other payment to the union may be deducted from a nonmember’s wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed.

Johnson v. Zerbst, 304 U. S. 458, 464 (1938); see also *Knox*, 567 U. S., at 312–313. Rather, to be effective, the waiver must be freely given and shown by “clear and compelling” evidence. *Curtis Publishing Co. v. Butts*, 388 U. S. 130, 145 (1967) (plurality opinion); see also *College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U. S. 666, 680–682 (1999). Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met.”

Texas Attorney General Ken Paxton explains this second part in his opinion: “The Court in *Janus* emphasized that an employee’s payments to a union impacts the employee’s First Amendment rights, and it made clear that a governmental entity may not deduct funds from an employee’s wages to provide payment to a union unless the employee consents, by clear and compelling evidence, to the governmental body deducting those fees.”⁵

Florida law⁶ gives public sector unions the ability to deduct dues, and it also protects the right of public employees to stop dues deduction within 30 days. The law also allows dues deductions to start at the written request of the union, not the employee. A written request from the union to have dues deducted from a public employee’s paycheck is likely to run afoul of the “clear and compelling” evidence standard from *Janus*.

Instead, Florida public employers must protect their employees’ choice by ensuring that the form authorizing dues deductions comes directly from their workers instead

of taking the union's word for it. In addition, employers should confirm public employees' intent to join and pay the union by sending a confirmation email or letter and not deducting dues until it is returned.

Indiana's Attorney General noted, "To ensure the deduction of union dues or fees from an employee comports with the Janus framework and does not occur without clear and compelling evidence that the employee freely consents to the deduction, the State and its political subdivisions must require that employees provide the necessary consent directly to them."⁷

Further, because the Supreme Court recognized the right to stop withholding dues as a First Amendment right, any form signed by public employees must contain language informing public employees they are waiving a constitutional right.

Language similar to the text below is recommended:

I, [payee name], am aware that, as a public employee, I have a First Amendment right, as recognized by the U.S. Supreme Court, to refrain from joining and paying dues or fees to a labor union. I further realize that union membership and payment of union dues are completely voluntary and that I may not be discriminated against for my refusal to join or financially support a union. I hereby authorize my employer to deduct [union name] dues from my payment check in the amounts specified in accordance with [union name] bylaws. I understand that I may revoke this authorization at any time by providing written notice to my

employer and no further debt to the union will accrue.

Finally, the court, in *Janus*, cited the *Curtis Publishing*⁸ case, which held that people cannot waive a constitutional right they do not know they have. Since public employees could not have known that they were waiving a First Amendment right before the Supreme Court decided *Janus*, any dues check-off forms signed before June 27, 2018, should be updated. Similarly, Alaska Attorney General Kevin G. Clarkson, in his opinion to the Alaska governor on implementing the *Janus* decision in that state--as well as the opinions from Texas and Indiana--note that waivers of constitutional rights must be contemporaneous, and, much like *Miranda* rights, can expire.⁹ Therefore, not only must any dues check-off forms signed before *Janus* be renewed with the correct waiver language, but they should also be reconfirmed periodically.

The Indiana opinion continued, "To ensure an employee's consent is up-to-date, as required for it be a valid waiver of the employee's First Amendment rights, an employee must be provided a regular opportunity to opt-in and opt-out."

Similarly, Attorney General Paxton wrote, "A one-time, perpetual consent to a payroll deduction for membership fees or dues is inconsistent with the Court's holding in *Janus*. A court would likely conclude that consent for one year from the time given is valid and is sufficiently contemporaneous to be constitutional."

Ensuring that Florida is complying with the Constitution and protecting its public employees is, unsurprisingly, popular with

voters. A recent poll of Florida voters by The James Madison Institute and Workers for Opportunity showed that over 70% agree that the “government must get a government worker’s permission to deduct union dues from their paycheck.” This included support from 63% of households with someone in a public sector union. Further, respondents were asked what should happen if a public employee “was not properly informed of their right to refrain from union membership.” Almost 80% would support “giving them a chance to make a fresh decision after being properly informed of their rights.” Agreement was almost as high in public sector union households, at 75%.¹⁰

Ensure school districts are complying with Florida’s recertification law

Across the country, most public employees have never had the opportunity to vote for the union at their workplace. The 10 largest school districts in Florida were organized by 1975. For example, only 1% of the teachers who were working in 1975 were still working in 2012, according to a Heritage Foundation study, meaning that 99% of those on the job that year never had a chance to vote for the union which represents them.¹¹

In March 2018, the Florida Legislature took steps to give teachers a choice and a voice on the union at their workplace. Florida lawmakers passed HB 7055, granting new protections for some unionized public employees.

Each year, unions representing “instructional personnel” (teachers) must

file a report with the Public Employees Relations Commission, showing that at least 50% of the employees in the collective bargaining unit are dues-paying members of the union. If the membership is below 50%, the union must file for a recertification election or it will no longer represent employees in the unit.¹² In order to file for an election, the union would need to collect signatures from at least 30% of teachers in the unit.¹³

Several states, including Wisconsin, Missouri, and Iowa,¹⁴ have passed union recertification laws. Florida, however, is the only state that requires a threshold to trigger the union recertification election. The other states protect union democracy by simply requiring a periodic election. Furthermore, the union recertification laws in other states are broader, applying to most public employees, not only teachers.

Additional issues have arisen with Florida’s recertification law. The Florida Public Employees Relations Commission (PERC) collects the dues-deduction forms and administers certification elections. But it should make changes to the forms it requires unions to submit and ensure accurate reporting.

On the form teachers unions use to register with PERC, they must report “the number of dues paying employees and non-dues paying employees” they have. Instructions on the form warn that “false statements may result in fine and imprisonment. ...”¹⁵

While the form makes it sound as if PERC will strongly enforce its requirements, it only says that the information a union submits must be based on the “best ...

knowledge and belief” of the signer. It does not call for any additional proof.¹⁶

An examination of forms unions submitted in 2019¹⁷ shows many of them are hovering just above the 50% membership mark. While union officials may be accurate in their belief that they have met the threshold that triggers a recertification election, PERC should require them to provide valid proof.

Since the requirement went into effect, only two unions have not met the certification threshold. The Jefferson County Education Association was decertified for not submitting the required form. The Santa Rosa Professional Educators, meanwhile, triggered an election after reporting less than 50% of employees in the workplace were dues-paying members. It later petitioned the commission, presenting it with the state-required 30% interest for an election.¹⁸

PERC has yet to issue sufficient regulatory guidance on how to prove that a union has accurately calculated the number of its dues-paying members in a worksite. The commission should issue guidance requiring stricter proof of dues-paying membership, such as signed dues check-off forms or payments receipts from the preceding pay period (or whenever the most recent dues deduction or payment for the unit was collected). Further, the commission should clarify that dues-paying members should be paying the full amount, not a discounted rate used to inflate membership numbers.

In addition to requiring PERC to strengthen its regulatory guidance, HB 7055 should be expanded to all Florida public

employees, not just school employees. And instead of requiring a threshold for recertification elections, those elections should be held on a periodic basis, just as elections for public offices are.

Voters agree that union democracy in Florida should not be limited to teachers. The JMI/WFO poll showed that over 60% of voters agree that Florida’s union recertification law should be expanded beyond just teachers.¹⁹ Finally, as happens in other states that have passed recertification laws, the Sunshine State should not impose thresholds on when public employees have the right to choose which union represents them. Rather, they should be able to regularly have a say on which union represents them.

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- 6 E.S.A. § 447.303 “Any employee organization which has been certified as a bargaining agent shall have the right to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues and uniform assessments. However, such authorization is revocable at the employee’s request upon 30 days’ written notice to the employer and employee organization. Said deductions shall commence upon the bargaining agent’s written request to the employer. Reasonable costs to the employer of said deductions shall be a proper subject of collective bargaining. Such right to deduction, unless revoked pursuant to s. 447.507, shall be in force for so long as the employee organization remains the certified bargaining agent for the employees in the unit. The public employer is expressly prohibited from any involvement in the collection of fines, penalties, or special assessments.”
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- 12 FLA. STAT. § 1012.2315(4)(c)
 1. In addition to the provisions under s. 447.305(2), an employee organization that has been certified as the bargaining agent for a unit of instructional personnel as defined in s. 1012.01(2) must include for each such certified bargaining unit the following information in its application for renewal of registration:
 - a. The number of employees in the bargaining unit who are eligible for representation by the employee organization.
 - b. The number of employees who are represented by the employee organization, specifying the number of members who pay dues and the number of members who do not pay dues.
 2. Notwithstanding the provisions of chapter 447 relating to collective bargaining, an employee organization whose dues paying membership is less than 50 percent of the employees eligible for representation in the unit, as identified in subparagraph 1., must petition the Public Employees Relations Commission pursuant to s. 447.307(2) and (3) for recertification as the exclusive representative of all employees in the unit within 1 month after the date on which the organization applies for renewal of registration pursuant to s. 447.305(2). The certification of an employee organization that does not comply with this paragraph is revoked.
- 13 FLA. STAT. § 447.307 (2) and (3)
- 14 Wisconsin, Act 10 passed in 2011 requiring election are every year; Missouri, House Bill 1413 passed in 2018 requiring elections are every three years; Iowa, House File 291 passed in 2017 requiring elections about ten months prior to the end the collective bargaining agreement, generally every two to three years; Florida, House Bill 7055 passed in 2018 requires election elections when membership in the unit drops below 50 percent.
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- 17 According to information provided by Florida Public Employee Relations Commission and school districts in response to public information requests.”
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Florida's Economic Recovery: Four Factors to Consider

Randall G. Holcombe

The current economic crisis has hit Florida harder than most states because of its heavy dependence on tourism. The state's unemployment rate rose from 2.8% in February to 14.5% in May. One result of the economic decline is declining tax revenue, compromising the ability of governments to respond to the spread of COVID-19. The shortfall in Florida's 2020-21 state government budget now looks like it will be around \$5 billion because of the

COVID-19 related recession. That shortfall is entirely due to the reduction in economic activity that, as a result, is reducing tax revenues. The fiscal health of Florida's state and local governments depends directly on the degree to which the economy recovers.

Three factors that will affect the recovery are (1) the degree to which the economy "re-opens" as government restrictions are lifted, (2) the degree to which consumers, and especially tourists, return to their pre-

pandemic activities, and (3) the degree to which long-term damage from the shutdown will slow the recovery. A fourth factor to consider is the long-term effect of far-reaching government mandates on future government operations. Government policies enacted in response to the virus set precedents that could compromise liberty in the future.

Reopening the Economy

The economic collapse that began in March was not the result of the COVID-19 virus. It was the result of government policies enacted in response to the virus. Whether government-mandated closures of businesses went too far or did not go far enough has been extensively debated. Regardless of one's views on that question, the fact is that the economic damage was the direct result of government policies designed to slow the spread of the virus. Setting aside whether the mandates were appropriate, the first step in evaluating Florida's potential for economic recovery is to recognize that the severe recession was the result of government policy.

Understanding this puts some perspective on the state's decisions to reopen the economy. Governor DeSantis has left many of the decisions on reopening to local officials, which is reasonable because the impact of the virus has varied substantially in different parts of the state. Critics who argue that Florida needs a uniform state-wide policy to combat the virus are mistaken. Regardless of whether one thinks that the state's mandates overall have been too loose or too stringent, policies that make sense in one part of the state place

overly-harsh burdens on other parts.

The economic burden is more than just a decline in state income. People have lost their jobs due to state mandates, businesses have been forced to close, in many cases bearing such a great financial burden that they will never reopen. To frame the trade-off as people's health versus the economy misses the point. The issue is imposing costs on people in one way versus imposing costs on them in another.

Governor DeSantis has been criticized by some for reopening the economy too soon, putting people's lives at risk, but there is less to this claim than at first appears. Yes, COVID-19 is very contagious, but people can choose to protect themselves by staying at home, without a government mandate requiring that everyone stay home. If the economy is allowed to re-open, people can make their own choices about how much risk they want to take. Nobody is being forced to mingle with others.

This is a difficult issue. More mandated business closures will slow the rate of transmission, but will prevent some people from working to pay their rent and put food on the table. Any policy brings with it both costs and benefits. The bottom line is that the more slowly the economy re-opens, the greater the economic costs—to citizens, and to government budgets.

Consumer Responses

A second factor standing in the way of economic recovery is the response of consumers. The state can allow restaurants, theme parks, and other businesses to reopen, but it cannot force people to go to them. A big factor in the recovery is how

rapidly people will resume the consumption patterns they had prior to the pandemic. While the economy is in the early stages of reopening, it appears that many consumers are restless and ready to venture out, but surely many people will remain cautious until the virus is brought under control. A full economic recovery will not occur until an effective vaccine is available and, even then, because the downturn has shuttered many businesses permanently, the economy will not bounce back right away.

Restoring consumer confidence is somewhat, but not completely, outside government control. President Trump has been criticized for downplaying the severity of the virus. Without passing judgment on the president's statements, his downplaying the severity of the virus has the effect of boosting consumer confidence. Statements instilling fear (from politicians and the news media) have the effect of reducing consumer confidence. Regardless of whether one thinks the severity of the virus should be downplayed or emphasized, public perception on this affects consumer confidence, and lower consumer confidence will slow the recovery.

Permanent Damage from a Temporary Shutdown

Some businesses have sufficient financial strength that they will be able to weather the temporary downturn and return to business as usual when the government restrictions are lifted and their customers are ready to return. This is less true of locally owned businesses that often count on revenues coming in from month to month to maintain their businesses. Already, many

small businesses have permanently closed and will not reopen. The financial strain of the temporary closure was too great for them to continue.

The longer the government-induced recession continues, the greater will be the number of businesses that will be so financially crippled that they will never reopen. One might like to imagine that if a vaccine became rapidly available and government restrictions were lifted, the economy would rapidly return to its pre-virus state but, for many businesses, and therefore for many employees, this will not be the case. The longer government mandates to close businesses persist, the slower will be the recovery once the restrictions are lifted.

Restrictions on Liberty

In response to government-mandated business closures and other mandates, citizens in Florida and around the country have pushed back with protests and, in some cases, lawsuits. These protests should be taken seriously for their long-term consequences in addition to their immediate effects. Shutting down a business today deprives its owners and employees of their incomes, but it also sets a precedent that makes similar future mandates more likely. Business owners are right to challenge the constitutionality of government mandates that force them to close. The pandemic will end, but one long-term threat is that it will leave increased government power over people's economic activities because of precedents set in these unusual times.

How quickly governments should allow the economy to reopen is often couched

as weighing the benefits to public health against the economic costs of a shuttered economy. This is a poor way to look at the trade-off. There are costs to any option and, for that reason, no matter what policymakers decide, they will be criticized for it. Because all options entail costs, options should be framed as imposing costs on people in one way versus imposing costs on them in another. But beyond the immediate costs and benefits, another factor is the compromise in individual liberty.

Some people argue that if the economy is reopened too fast, the virus will spread more rapidly which will put others at risk. This argument is flawed. If the economy opens faster than some people would like, they have the option of sheltering at home, regardless of what others are doing. Everyone can choose to stay home. They can have their groceries delivered to their doors. Should those who want to work to pay the rent and put food on the table be forced out of a job so others can feel safer? Should local businesses be forced into bankruptcy through government mandates that prevent them from opening? Regardless of government policy, people who feel threatened by mingling with others have the option to isolate themselves, without government mandating that everyone do so.

There are difficult trade-offs, to be sure. People are frequently advised to err on the side of caution, but in the current situation that advice applies more to individuals than to government policies. As the economy reopens, individuals can choose to self-isolate if they think that is prudent. The longer the economy remains throttled by government mandates, the slower will be the recovery once it begins.

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Broadband Providers and a Smart FCC: Keep Us Connected While We Stay Distant

Bartlett Cleland

Particularly over the last decade, much has been said about “innovation.” Many have commented on how to create an environment to inspire it, to manage it or benefit from it. In fact, so much has been said that unfortunately many people tune it out. This has happened in part because many merely pay lip service to the notion to further specific political ends and ignore, or not recognize, the need for the right government policies to create

an environment to best foster innovation.

But even worse, some politicians use innovation as a launching point to begin to advance policy reforms that do damage to the innovation ecosystem. Ignoring the value of an innovation environment, or even opposing it, seems to be the populists’ status quo.

However, few will call out innovation for criticism directly, instead aiming their misdirected ire at companies that serve as

icons of innovation. Such attacks are often in favor of older economy and declining industries that are not the pathway for the future. In that approach, only raw political power wins, the country's future is made to suffer, and the interwoven fabric of the innovation economy is harmed in the end. Amid the new and imposing challenges posed by a pandemic, having a political class that appreciates innovation as much as the economy and consumers do is valuable.

The lack of understanding that innovation is an ecosystem demonstrates a profound ignorance that easily leads to real economic harm if policies detrimental to innovation are enacted or allowed to continue in place. How so? Because a change to any part of the ecosystem has an impact on all parts of it. Specifically, the well-being of broadband, and of the internet, at least as those are understood and exist in the U.S., is dependent on all parts of the ecosystem being healthy and free from interference.

Platforms such as social networks, search engines, operating systems, web-based email, browsers, mobile apps, games and e-commerce continue to proliferate. The relationship between these various layers in the stack of the ecosystem, including the broadband service providers, is tightly woven in part because of vertical integration but also because of a web of contracts and interdependencies that make the whole function. Harming through overregulation or legislation that isolates one part of the technology stack does not necessarily lead to linear and predictable results. In fact, the opposite is usually observably true. That is, innovation related to the internet and communications space

moves rapidly but unevenly. Even the most visionary of futurists have only a slim chance of understanding where innovation is headed.

Regulatory or legislative hubris by federal, state or local governments that presume to know the direction of invention and innovation often leads to any number of unintended consequences. This is damaging pollution to the ecosystem. Fortunately, during the recent pandemic, industry was able to step up in a big way because of regulatory humility.

Near the beginning of the U.S. COVID-19 outbreak, FCC Chairman Pai asked broadband and telephone providers to take the *Keep Americans Connected* Pledge. This was not done via a command or under a threat but rather through real leadership at work. Nearly 800 broadband and telephone providers stepped up to help millions of Americans during a time of need. They pledged to not terminate service to any residential or small business customer because of an inability to pay a bill due to the disruptions caused by the coronavirus pandemic. Pledge signers also committed to waive late fees for any residential or small business customers caused by their economic circumstances related to the coronavirus pandemic, and to open Wi-Fi hotspots to any American who needed them.

Chairman Pai also encouraged all providers to expand and improve the low-income broadband programs they already possessed or to adopt programs if they didn't already have any in place. In addition, he asked providers to relax data cap policies, waive long-distance

and overage fees, work with schools and libraries on remote learning opportunities and prioritize the connectivity needs of hospitals and healthcare professionals.

Many followed the extra suggestions and even expanded on them. Comcast promised to keep Wi-Fi hotspots open through the end of 2020. Verizon automatically enrolled Pledge customers into payment plans. Charter waived a portion of past due balances, and even raised the minimum wage for its workers to \$20 an hour, investing in a workforce that can help keep people connected. Others did more.

Those efforts were clearly needed. According to OpenVault, broadband consumption increased by 47 percent in the 1st quarter of 2020, as more and more people stayed home to work and watch movies.

Through it all, critics predicted that the system would buckle, that peaks in use would crash the system. Instead, an infrastructure built with private investment increased broadband provision and the industry took on more responsibility. This was made possible because of decades of private industry investment in people and infrastructure that continues today. For example, CTIA, the trade association that represents the wireless communications industry, has reported that telecom companies built out a whopping 46,000 new cell sites last year (more than 13 percent growth in coverage) as the industry makes the transition to 5G networks.

These investments were made more likely because of the light regulatory touch approach the FCC has taken over the last few years including during the pandemic. Turning away the heavy-handed tactics of

just a few years prior, the FCC established a predictable, settled regulatory strategy that has made possible the rapid broadband expansion and higher customer satisfaction we are experiencing now.

Other helpful public policy approaches have laid the foundation for success today, as well. Not least of these efforts was the FCC's determination to fill the spectrum pipeline (the roads on which wireless communications travel) that has kept the raw material of broadband flowing.

As just one example, the need for more mid-band spectrum has become increasingly obvious. The ever-increasing demand by consumers required a full pipeline. Mid-band spectrum (1GHz to 6GHz bands) is the sweet spot segment of spectrum that combines range and power in the best balance, making it attractive for a range of uses. However, no new mid-band unlicensed spectrum had been released in a decade, so the currently-available bands have reached the point of exhaustion, having become increasingly congested.

The FCC took action to continue to maximize use and availability throughout part of the mid-band range to permit future generations of wi-fi to be deployed, providing the 5G experience in our homes and businesses as well as in urban and rural communities alike. The advent of 5G represents all that we have come to expect from wireless communications—innovations greater than streaming services—ideas such as the intelligence of things, virtual reality and the increasing connectivity needs for telehealth care and distance learning.

While the FCC is doing what can be

done now to maximize spectrum given current restraints, going forward, a plan to include more licensed spectrum must be developed with a continued focus on mid-band capacity. The combination of its actions now and this continued focus on next steps for a mid-band and licensed plan is just what the country needs as the rollout of 5G continues, enhancing the U.S. global leadership role in broadband.

The FCC has provided the right policy environment and industry rolled up its collective sleeves and has been working hard alongside. For the past several years, broadband companies have topped the list of those investing in capital improvements as reported by the Progressive Policy Institute in its annual report of companies ranked by capital investment. Once again last year, the communications and broadband sector was the top investing sector of the U.S. economy, with four out of the top ten companies being “pure” broadband companies with another three having significant investments in broadband infrastructure.

Moreover, because networks are actively managed due to usage changes over the course of a day, routine investment is a must. Such management is a “paint by number” approach that requires years of experience and constant retooling; neither of which is an inexpensive proposition. These efforts and investment have paid off.

Broadband enabled vast swaths of the economy to continue to operate, at least at some level. Millions of Americans were able to keep their jobs, telemedicine helped many, education was able to continue virtually (and could have been much better if more schools around the country had followed Florida’s lead and taken advantage

of advances in technology), and staying in touch was easier with social media and new video conferencing platforms. While much may have been lost, so much more would have if not for the broadband infrastructure across the country.

While the advances are impressive, more work remains. More than 18 million are still without broadband access—about 20 percent of rural Americans. Unsurprisingly, the importance of having access to broadband has become even more apparent during the last six months. The FCC is currently being urged to take action to clarify a rule governing the potential price gouging of providers seeking to attach 5G cells to poles that are due to be replaced. The goal should always be to make delivering rural broadband an easier hill to climb. Given its history of sensible regulations and clearing the way for industry to do what it does best, likely this broadband challenge will be overcome as well. Such an accomplishment would prepare even more of America for whatever challenge next lies ahead.

A smart public policy environment is necessary for a robust innovation ecosystem to thrive. This is a vital approach exactly for times like now when all manners of innovation are needed to hold together society. Policymakers need to recognize that their actions will directly impact innovation and technology and must think humbly and act carefully. The FCC has been a shining example of leadership while understanding the need to allow invention and creativity to flourish. The reward is a robust ecosystem ready for the big challenges as have had to be overcome this year.

Bartlett Cleland is the Executive Director



Reforms for Inmate Post-Release Support in the age of COVID

Logan Padgett

Over the past six months, COVID-19 has highlighted many issues in our society—from the large percentage of the population living paycheck-to-paycheck to racial inequities. In the criminal justice arena, there has also been a call for the release of inmates across the country to limit the potential spread of the pandemic in facilities. While most can agree that non-violent offenders who are not a threat to society should be released during this

time, we also must ensure that those being released have every opportunity to continue their path of rehabilitation.

In Florida, there are well over 10,000 cases of COVID in prison facilities across the state, making it imperative that we safely and smartly remove non-violent inmates from the prison population. One simple step could be to identify all those eligible for parole and release them as soon as possible to keep them safe. Removing individuals

from prison populations is important, but it's equally important to keep them safe once they're in society.

Historically, the state of Florida has had a plethora of challenges in ensuring that released inmates are ready for life on the outside. Upon release, returning citizens have been provided with some clothes, a bus pass, and a small amount of money for them to get started—but these are not sufficient tools to set someone on the right path, especially in the age of COVID. More troubling is the fact that officials estimate¹ as many as a third of returning citizens will have no direct family or friends to lean on. How can we expect these newly freed individuals to succeed if they do not have support from Florida or from people close to them? This will almost certainly lead to recidivism and could contribute to an even higher number of COVID cases at a time when we can least afford it.

We should be looking at ways that we can fight recidivism, prevent the further spread of this virus, and help those who are trying to better themselves. This is where the commitment to free enterprise and market competition can and will offer

concrete solutions. Organizations like the GEO Group have invested in solutions to this challenge and they can serve as a model not only for these times, but also going forward. I know this because I've seen it in action firsthand. GEO's continuum of care initiative works with individuals before they are released to provide them with job training, drug and alcohol classes, therapy, as well as a good deal of other programming to combat recidivism. Post-release, they work to provide housing, jobs, and stability through constant contact with their case managers.

Investing in providing a better life and more opportunities for reformed inmates is the right thing to do and it will help Florida's bottom line as well. It costs over \$30,000 a year to house inmates. If we can provide the tools for people to start families, find jobs, and contribute to society, the state can save millions by lowering the recidivism rate even a few percentage points. This is not big government—it's strategic government.

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Robbing Parents to Pay Paul

Why Federal Policymakers Need to Counterbalance the 'Parents' Penalty'

William Mattox

National emergencies often provoke dramatic responses from public policymakers. Sometimes, these responses are well conceived and do demonstrable good. Sometimes, they are ill conceived and the cure ends up being worse than the disease.

And sometimes, even politically-popular responses that help alleviate a crisis have serious unintended consequences that linger long after an emergency has passed—

making future problems more likely, more severe, and more daunting to address.

As today's policymakers seek to address today's national emergency, those at the federal level ought to consider the still-lingering unintended consequences of a New Deal program enacted during the Great Depression. For unless a “bug” or “virus” deeply embedded in the Social Security system is brought under control, the long-term sustainability of the American way

of life will be increasingly endangered. And this rather ominous threat ought to influence what policies are adopted even now in response to the major national challenges before us.

Parents' Double Burden

Whatever else one may think of Social Security, the creators of this government transfer program inadvertently undermined the well-being of families with children in designing their policy. To be sure, this was not their intent; and, to be fair, New Deal lawmakers probably cannot be faulted for failing to anticipate the sweeping cultural and technological changes that have facilitated America's retreat from childrearing.

Nevertheless, the Social Security system—and its old-age cousin, Medicare—rob parents of the social insurance value of raising productive children. They force parents raising children to pay more—to pay twice, in effect—to keep these government programs afloat. First, parents are required to “contribute” payroll taxes just like everyone else. Second, parents are expected to bear the costs of raising the next generation of workers on whom the Social Security and Medicare systems depend.

Considered alone, neither of these practices would seem to be problematic. After all, who could object to every earner paying his or her “fair share?” And who could find fault with the idea that parents ought to be economically responsible for the children they bring into this world?

So, it is easy to understand why the New Dealers failed to see the harm in their design—even though there were better

ways to devise an old-age income security policy. Indeed, the New Dealers could have designed Social Security to work in the manner that various Individual Retirement Accounts work today—as a voluntary savings plan offering protection against old-age poverty and/or dependency on others.

But the New Dealers were thinking more about their immediate crisis than the long-term implications of their actions. Thus, instead of creating a plan to encourage voluntary savings, they devised a mandatory entitlement program that took monies from younger taxpayers and gave them to older beneficiaries. Not only did this transfer program prove to be a boon to its first old-age recipients (who paid little or nothing into it), but it also established an unstable foundation for the program's long-term sustainability.

Indeed, as we will see, the central problem with the Social Security system is not that it offers a comparably poor return on investment compared to other old-age income security programs (though its critics are certainly right to levy this complaint). No, the central problem with the design of Social Security is that it undercuts the economic well-being of the very people (parents) on whom the system's future depends. This serious design flaw renders Social Security unstable—and unfair to parents—*unless counterbalancing measures are adopted*.

The Natural Economy

To more fully understand the problems associated with the Social Security system's design, it may be well to step back and consider how the “natural

economy” functions free from government intervention. In the natural economy, people have a powerful incentive to “be fruitful and multiply” because they know that without offspring to potentially lean on when they grow old, they could become destitute (should their health falter prematurely or their personal savings run out). In effect, the natural economy encourages adults to view children as assets—as investments—that typically deliver long-term benefits in the form of old-age economic security.

Now, obviously, there is more to life than material well-being, and far more to childrearing than economic considerations, but the important point here is that there is an inherent logic and sustainability to the natural economy. Indeed, from an economic perspective, the care and provision that adult children offer their dependent parents in old age is, in effect, payback for the care and provision these same parents previously gave their children when they were young. In economic terms, this transfer of resources from adult children to their parents can be thought of as a form of “debt repayment.”

Moreover, the inherent logic and sustainability of the natural economy can be seen in the fact that its impetus to “be fruitful and multiply” is not without restraint. Yes, children generally prove to be net assets; and, yes, the payoff for having a large family is typically greater in agrarian societies where children can work at a relatively young age than in industrialized societies where childhood dependency lasts longer. But the natural economy does not reward reckless or indiscriminate childbearing. Indeed, for children to give their parents economic security in old age,

they must grow up and become productive themselves.

So, the natural economy has an inherent concern for *how well* children are raised, not just *how many* children are raised. And this interest in raising children well isn’t just a priority for individual households, who have a personal stake in individual child outcomes, but it is also of some concern to the surrounding community, whose economic health and well-being is affected by aggregate child outcomes.

‘Live it Up’ Today— and Then Again Tomorrow!

Sadly, the flawed design of the Social Security system disrupted the inherent logic and sustainability of the natural household economy. It inadvertently altered economic incentives by creating a situation where people can “live it up” today on the monies they would have otherwise invested in childrearing, knowing that they’ll be able to “live it up” tomorrow on the monies the Social Security system takes from their neighbors’ children and transfers to them.

Now, obviously, few Americans approach major life decisions with such crass attitudes. And it would be a mistake to cast aspersions on childless adults as a group—or to lionize parents indiscriminately—since “parenthood” doesn’t always correlate with “responsible adulthood.”

It would also be a mistake, however, to pretend that people do not respond to economic incentives. And over the last 75 years, the incentive structure of the Social Security system has gradually undermined the economic well-being of people who take parenting responsibilities seriously.

Like a river current that is almost imperceptible at first but gathers strength over time as it merges with other forces flowing in the same direction, the parenting penalty in Social Security has combined with larger cultural and technological forces that have facilitated an accelerating retreat from marriage and childrearing.

Evidence of these lifestyle shifts is all around us—delayed childbearing, lower fertility rates, smaller families, more childlessness, more adults living alone, and an aging society overall.

Yet, there need not be a consensus on how to view these lifestyle shifts for us to see the problems with Social Security's design. Put another way, whether one thinks the demographic changes of the last half-century represent progress or regress should be largely irrelevant to policymakers. The goal of government leaders should not be to use public policy to reward or punish people who make lifestyle decisions that policymakers happen to like or dislike.

Just as it would be a mistake for policymakers to try and induce young people to marry or start a family prematurely, it is also a mistake for government leaders to adopt or perpetuate policies that hinder people from marrying or starting a family when they would otherwise do so in a natural economy.

The issue here isn't lifestyle preference. It is fairness. And robbing parents to pay Paul is profoundly unfair.

Running Out of Other People's Children

Most Americans do not spend time thinking about the “parents’ penalty” in

federal policy—in large part because it is the inconspicuous byproduct of flawed policies rather than a highly overt regulation or tax. Similarly, many public policymakers do not spend a lot of time worrying about the “parents’ penalty” because they either like the idea of the state supplanting natural family responsibilities (a view all too common on the socialist/feminist left) or they like the idea of young people devoting more time to the labor market than to children (a view all too common on the corporatist/materialist right).

Yet, when the topic of the “parents’ penalty” arises, some try to defend the status quo by arguing that young-to-old transfers of income via Social Security are, in effect, payback for old-to-young transfers of wealth via public education. Since non-parents pay taxes to support public schools populated “by other people’s children,” it’s only right that they should be entitled to receive Social Security transfer payments that the government takes “from other people’s children.” Or so the argument goes.

The problem with this line of thinking is that it fails to acknowledge a critical difference between old-to-young programs like education and young-to-old transfers like Social Security and Medicare. With education, taxpayers pay for something today that they once received in the past when they were young (leaving no generation shortchanged). But with Social Security and Medicare, taxpayers pay for something today that is, in turn, promised to them in the future.

Yet, this promise—this entitlement—presupposes that subsequent generations will be sufficiently large enough to fulfill all

the government's accumulated obligations (to pay all of the previous generation's debts, in other words). And in an age of elective childbearing, in which public policy fails to account adequately for parental investments in childrearing, it shouldn't surprise anyone that American fertility is now well below the "replacement rate" needed to sustain our population. Nor should it surprise anyone that recent U.S. Census Bureau data show that the 65-and-older U.S. population grew by more than a third in the last decade, while the under-18 U.S. population actually shrank in size!

For non-parents, the premise of old age entitlement programs is that there will always be an ample supply of other people's children—whether born in America or born elsewhere and brought to America—to pay for the Social Security and Medicare benefits they have been promised. But as we can see already, and will increasingly see in the future, when central planners "collectivize" or "socialize" Americans' personal resources, disrupting the natural economy and its organic intergenerational ecosystem, problems inevitably arise.

Debts pile up. Taxes become more burdensome. Ordinary people find it harder to "afford" children. The government's promises become increasingly difficult to keep—causing the cycle to repeat again. Debts pile up even higher. Taxes become even more burdensome. Ordinary people find it even harder to make time for children. And at some point, the whole house of cards comes crashing down.

To paraphrase Margaret Thatcher's famous line, the problem with runaway entitlement spending is that eventually you

run out of other people's children (to pay for everything).

No Picnic for Non-Parents

Sadly, the costs of our flawed policies are not borne by parents alone. They can be seen in the unrealized hopes of many thirty-something women who had always imagined that they would marry and raise a family someday and now find themselves in what looks like an increasingly futile race against nature. And they can be seen in the increasingly lonely lives of many elderly Americans, who are cut off from the rich web of intergenerational familial relationships that often give meaning to one's twilight years.

Moreover, the federal government's disruptive interference in the natural economy doesn't just affect family life, but it affects community life as well. In the natural economy, parents and non-parents alike have a powerful incentive to participate in "mutual aid" arrangements with neighbors, friends, churches, fraternal organizations, and the like. Historically, these formal and informal voluntary associations have provided a valuable "safety net" for widows, orphans, and others needing assistance in hard times. What's more, these interpersonal webs have often offered far more than just economic provision, satisfying deeply human longings for meaningful personal relationships and enduring social bonds.

Once again, the issue here isn't whether one should like this mutual aid association or dislike that one. People will always have different preferences about such things. The issue here is one of government interference. When public policymakers

seriously undermine natural economic incentives, social bonds inevitably fray. Organic relational ecosystems get disrupted. And human beings find themselves in an increasingly atomized society disconnected from other people—and from the natural rhythms of family and community life they would otherwise know.

Restoring Equilibrium

For policymakers looking to help restore the equilibrium of the natural economy, it might seem that the surest way to eliminate the parents' penalty in federal law would be to simply get rid of the Social Security system. And surely this is what many libertarians dream about at night. But Social Security has long been viewed as the “third rail” of American politics; and politicians who have attempted to replace or eliminate it have rarely survived in office to tell about it.

Part of the reason that Social Security reform is so fraught with political danger is because it has always been sold to the American people as a collectivized retirement savings program from which “you can one day get back what you’ve (involuntarily) paid in.”

This is, of course, a fiction. There is no vault in Washington that one can visit and view all their carefully saved contributions available for future disbursement. Nor is there even a metaphorical “lockbox” (to use a term borrowed from a long-ago Presidential candidate) that actually protects Social Security “savings” for later use. Yes, there is a separate accounting system for Social Security; and, yes, there is at least some good-faith effort to try and

maintain sufficient resources to balance the system's books over time. But tax revenue is fungible; and the solvency or insolvency of the Social Security system is in many ways irrelevant so long as the rest of the government's accounting books are severely out of balance.

Whether federal debt shows up in this column or in that column, the net effect is the same: future taxpayers (i.e. somebody's children) get stuck with a huge bill. And not only do they get stuck paying for today's deficit spending, but they also get stuck paying for all the future unfunded obligations owed to dutiful citizens who organized their old age retirement plans around the Social Security system's promises.

So, the “parents' penalty” in federal law isn't merely a problem confined to Social Security and other old-age transfer programs. In many ways, the “double burden” that Social Security imposes on parents is just the tip of the iceberg—since all federal government deficit spending assumes that there will be a sufficient number of “somebody's children” to pay off all the debts being passed down.

Thinking of these issues in broader terms can be helpful, because the best remedy for counterbalancing the “parents' penalty” in federal law is not found within the framework of the Social Security system. As we are about to see, it involves a relatively simple federal policy that has elicited support in the past from serious-minded leaders in both major political parties.

Raising the Child Tax Credit

In 1991, the bipartisan National Commission on Children issued a report entitled, “Beyond Rhetoric” that had as its central recommendation the creation of a new \$1,000 per-child tax credit in the federal income tax code. Headed by former Sen. Jay Rockefeller (D-WV), the Commission included a number of distinguished public policy leaders, including Kay Coles James who is now the president of the Heritage Foundation.

Perhaps no one influenced the Rockefeller Commission’s work more than Allan Carlson, a social and economic historian who then headed the Rockford Institute. Carlson had a long and distinguished career studying Sweden’s “family policy,” from which he concluded that even well-intentioned government efforts to “help” families almost always undermine their autonomy and self-sufficiency and lead to greater government dependency and poorer child outcomes.

Given this, Carlson urged the Rockefeller Commission to call for Congress to strengthen the economic well-being of families by allowing taxpayers with children to keep more of the money they earned. Accordingly, the Commissioners embraced a proposal to create a universal \$1,000 per-child tax credit that would help parents offset some of the basic living expenses associated with raising children.

Notably, these basic living expenses (food, clothing, shelter, etc.) are the same necessities that the New Dealers envisioned Social Security recipients using their monthly checks to cover. As such, the child tax credit can be thought of as

a counterweight designed to offset the “parents’ penalty” in Social Security. That is, in the same way that the Social Security system imposes a heavier burden on parents than non-parents to ensure that the elderly have sufficient income to cover some basic living expenses, the child tax credit lightens the tax burden on parents (vis a vis non-parents) to make it easier for parents to meet some of the basic living expenses of raising children.

That the child tax credit is a counterweight to Social Security’s “parents’ penalty” is an extremely important idea because, over the years, libertarians have often dismissed the need for such a credit, arguing that children give parents “psychic income” (an economist’s way of saying “joy in childrearing”) presumably commensurate with the out-of-pocket and opportunity costs parents incur.

Now, if the Social Security system did not exist, and the federal government were not depending on someone’s children to pay for all its unfunded liabilities, the libertarian argument against the child tax credit would have greater sway. But in a world where parents are making a “double contribution” to Social Security, the child tax credit is very much needed to restore the balance found in the natural economy.

Of course, to serve this purpose, the counterweight must be of proper size. And while it is laudable that the GOP-controlled Congress created the child tax credit in the mid-1990s—and that the subsequent Bush and Trump Administrations successfully championed meaningful increases in this credit—the child tax credit today is still only \$2,000 per child. And this is a far cry

from the \$4,800 it would need to be if it were to fully offset the Social Security system's "parents' penalty," according to Ramesh Ponnuru of the American Enterprise Institute in 2017 testimony before the U.S. Senate Finance Committee.

Starting with Baby Steps

Given the huge gulf between the current child tax credit (\$2,000) and the amount now needed to offset the "parents' penalty" (nearly \$5,000), some public leaders have suggested that Congress ought to consider an incremental strategy for filling this hole, beginning with families of newborns.

Interestingly, there is a little-known precedent for this. Back in the late 1980s and early 1990s, a group of Washington scholars familiar with Allan Carlson's work convinced the George H.W. Bush Administration to include a "wee tots" tax credit (covering newborns) in a bipartisan economic package that the White House negotiated with Congressional leaders. This provision, which provided modest relief to new parents, was designed so that it could be expanded in size—and in ages covered—in subsequent years.

Unfortunately, the "wee tots" tax credit survived only a short time, as Congressional Democrats repealed it soon after President Clinton was elected in 1992. But its brief life not only set a precedent for the larger and more expansive child tax credit that the GOP-controlled Congress passed once it gained power, but it also set a precedent for how lawmakers today can eliminate the "parents' penalty" over time.

Last year, U.S. Senators Bill Cassidy (R-LA) and Kyrsten Sinema (D-AZ) introduced

a piece of legislation that offers parents the opportunity to receive a \$5,000 child tax credit in the year of a child's birth. The legislation is designed to address growing interest in paid family leave at the federal level. And as a paid family leave proposal, the Cassidy-Sinema proposal deserves considerable and serious debate.

Indeed, unlike a paid family leave proposal introduced by U.S. Senator Kirsten Gillibrand (D-NY), the Cassidy-Sinema plan avoids placing new burdens on employers and new limits on workers. And it offers short-term economic relief to *all* families with newborns, regardless of how these households choose to organize their work and childrearing responsibilities. As such, the Cassidy-Sinema plan maximizes the economic freedom of new parents, enabling them to determine with their spouses (and their employers) what post-natal arrangement would work best in their particular situation. This sort of flexibility and autonomy is far better than a one-size-fits-all federal mandate handed down from Washington.

So, as a paid family leave plan, the Cassidy-Sinema proposal has much to commend it.

As a plan to expand the child tax credit, however, the Cassidy-Sinema proposal falls short. Curiously, what it offers to parents in year one—per-child tax benefits above the usual \$2,000—it takes back in the years that follow. Specifically, for families taking the \$5,000 newborn tax credit, the proposal reduces the child tax credit from \$2,000 to \$1,500 in each of the six years that follow.

Not only does this peculiar "payback" provision add needless complexity to the

tax code, but it turns what could have been a robust tax relief package for new parents into little more than a short-term loan. To be sure, this short-term loan would be helpful to many parents in the weeks and months following the birth of a child; but the Cassidy-Sinema plan ultimately does nothing to eliminate the overarching “parents’ penalty” in federal law.

Put another way, Cassidy-Sinema gets the first year right: \$5,000 in per-child tax relief. But it bungles the years that follow. Rather than requiring parents to “pay back” their newborn credit in subsequent years, policymakers ought to do the exact opposite. They ought to maintain the \$5,000 credit for every subsequent year, increasing eligibility up the age scale a year (or more) at a time, so that the full \$5,000 child tax credit remains in place from birth to adulthood (age 18) for the cohort born in the initial year—and for all birth cohorts in the years that follow.

That would seem to represent one of the best ways to eliminate the “parents’ penalty” incrementally over time.

Subsidizing Able-Bodied Retirement?

The Cassidy-Sinema plan is not the only paid family leave proposal that has a payback provision. Several years ago, Sen. Marco Rubio (R-FL) introduced a very novel leave plan that would allow new parents to receive short-term paid family leave payments from the Social Security system in exchange for an agreement to work longer in their twilight years before qualifying for retirement payments. In effect, the Rubio plan allows new parents to

“borrow” time from their future retirement to use now to bond with their babies.

The Rubio plan’s payback provisions have several virtues. First, they appropriately link federal policies surrounding the beginning of life with those surrounding the end of life. As such, they encourage a much-needed reappraisal of the way in which Americans organize work-and-family activities over the life cycle. Does it make sense that many couples devote more (combined) hours to paid work when children are young than they do when they are empty nesters enjoying an early retirement? Many would say it does not—and that this is yet another illustration of how the “double burden” that parents carry under federal law undermines the well-being of families with young children.

Second, the Rubio plan’s payback provisions point to another problem in the design of the Social Security system, which is that the age of eligibility for retirement benefits has not kept pace with increases in life expectancy. Whereas average life expectancy was 67 years when Social Security was created, it is now almost 80. This means that many Americans now enjoy a twilight period of *subsidized* able-bodied retirement that one cannot imagine occurring in the natural economy.

Think of it. What father would ever write the following letter to his adult children?

Dear Kids:

Today, I am turning 65 and even though I am able-bodied and still fully capable of supporting myself, I’d like to ask each of you to start sending me a monthly check, equal to roughly one-seventh of your earnings, so that

I can quit my job and have more time to hang out with my buddies at Leisure World.

Sincerely, Dad

It's hard to imagine any self-respecting man writing such a letter. Yet, this is essentially what the Social Security system does every payday. It asks—nay, requires—adult children to *subsidize* the able-bodied early retirement of people from their parents' generation (most of whom are strangers). And it does this not because the New Dealers set out to completely reorient work-and-family patterns over the life cycle. It does this because well-intentioned government policymakers failed to consider the Law of Unintended Consequences.

To its credit, the Rubio plan subtly pushes back against these economic distortions, allowing new parents to devote more time to family responsibilities when children are young and more time to gainful employment when children are grown and the nest is empty.

Yet, even though Rubio's novel proposal addresses these economic distortions, some policy leaders do not like it because it places additional short-term stress on an already fragile Social Security system. Along these same lines, some believe that working within the framework of the Social Security system severely limits the expandability of economic benefits to families with children. Whereas a \$5,000 tax credit for newborns could be easily expanded up the age scale over time, any similar benefits working within the Social Security framework would be difficult to expand to a wider pool of parents.

Broadening the Conversation

Both the Rubio plan—and the Cassidy-Sinema plan—offer Congress a far better paid family leave policy than the Gillibrand proposal. Together, they have sparked a very fruitful conversation that needs to continue—and to grow.

Indeed, the conversation about how best to help parents in the first year of a child's life needs to be considered within the broader context of how best to eliminate the “parents' penalty.”

Interestingly, it may very well be that the best solution to this broader question is one that somehow combines elements of these two laudable paid family leave proposals. Specifically, Congress ought to consider adopting a modified version of Cassidy-Sinema's tax benefits (a universal \$5,000 child credit beginning at birth and continuing, year after year, until the child reaches age 18). Additionally, Congress ought to consider adopting a modified version of Rubio's payback plan (a gradual across-the-board increase in the Social Security retirement age that gives future recipients sufficient time to adjust their life plans).

Taken together, these two policy ideas not only would strengthen the economic well-being of families with children, but they also would eliminate the pernicious “parents' penalty” that has been undermining the natural impetus to invest in childrearing for far too long.

William Mattox is the Director of the Marshall Center for Educational Options at The James Madison Institute.



Replacing Poverty with Prosperity

Closing Florida's Equity Gaps

One Zip Code at a Time

Michael Williams

It was just before Christmas and I was on my lunchbreak visiting my wife's kindergarten class in zip code 32304 (Tallahassee). I read two books to the students, helped with some math and made sure everyone had their snack. Later that day, the kids were making gifts for their parents. One little boy came up to my wife and said, "Miss Williams, who should I give this ornament to?" "It's for your mom or dad," she told him. "I don't have one. Can I

give it to Mr. Michael?"

When she told me, I was speechless. I had only volunteered a couple of times in her classroom but for that young man, that was enough. My wife was a teacher at an elementary school in the 32304—Florida's zip code with the highest number of households in poverty. Ninety-nine percent of the children she taught received free or reduced lunch did not live in a household with both parents; many didn't live with

either parent.

We are living in unprecedented times. I could be writing about the deep and lasting impacts of the COVID-19 pandemic, the global recession, the upcoming election, or the realities of Florida's hurricane season. So why am I telling you a story about a kindergartner? Because his story could be told in hundreds of zip codes around Florida.

Florida has 870,505 children living in poverty: that's 21.3 percent of all of Florida's under-18 population. Half of those children live in just 15 percent of Florida's 983 zip codes. To be blunt, this means half of Florida's children living in poverty live in just 150 zip codes. This is not just a problem for those living in poverty. This is a threat to Florida's future.

The Florida Chamber Foundation created the Florida 2030 Plan, a measurable blueprint to propel Florida from the 17th largest economy (if we were a nation) in the world to the 10th largest economy over the next 10 years. The Florida 2030 Blueprint has 39 fully-researched and measurable action items we must achieve to be successful.

One of these goals is to cut Florida's childhood poverty rate in half by 2030—from 21.3 percent to less than 10 percent. Florida's economy cannot fully thrive if almost 900,000 children and their families don't know where their next meal will come from and/or feel stuck in their situation.

To accomplish this, Florida's business community, through the Florida Prosperity Initiative, is executing a strategic effort based on free-market principles to close the equity gaps that exist. The Florida Chamber of Commerce is proud to partner with The

James Madison Institute as we work to advance private-sector solutions to secure Florida's future.

America finds itself in a moment of immense opportunity to propel the principles of free enterprise and prosperity into long-overdue change to promote diversity, inclusion and equity of opportunity. One nation under God must mean freedom for all, and we must rededicate ourselves to our national values by ensuring every American has an equitable opportunity at earned success. As our Chamber president told Congress, while equitable outcomes are not guaranteed, every child should have an equitable shot at a better life.

We need bold action and the dedication of Florida's business leaders now more than ever. America is the land of opportunity for people who want to work and the Florida Chamber Foundation is honored to invite you to join our efforts, which we began years ago, to create a collective impact that fosters a pathway for opportunity in every Florida zip code, for every Floridian. The Florida Chamber Foundation's Prosperity Initiative aims to make Florida the national example of meaningful and lasting change, one zip code, one neighborhood, one family at a time.

When the COVID-19 crisis began, no one anticipated a scenario like the one we've all experienced for the last few months; a worldwide health pandemic accompanied by an economic downturn unthinkable only a few months prior. Entire industry sectors shuttered, our education system navigating uncertain waters, and hundreds of thousands of Floridians who had no thought of losing their job finding

themselves filing for unemployment. For many, these are new experiences, but for many of our most impoverished zip codes, this is an economic reality that has been in place long before COVID-19. It's clear the launch of the Florida Prosperity Initiative could not have been more providential. Our work has not slowed down, it has accelerated to meet the mounting crisis.

The sad fact is the economic downturn caused by COVID-19 will disproportionately harm Floridians who live near or below the poverty line. Many of the working poor rely on Florida's tourism, travel and hospitality industries for employment and job training. As those industries have effectively closed, many Floridians are left with few immediate options and face an uncertain future as to when and if their jobs come back. Many children rely on free and reduced lunch provided by schools that aren't open right now. Many childcare providers are closed and families are forced into extremely difficult decisions with the limited resources they have. If they're fortunate enough to still be employed, do they stay home with their kids and risk losing their job or leave their kids home alone or with low-quality childcare?

Like many of you, we quickly assessed how the pandemic and the economic crisis that followed would affect us. The Florida Chamber had just launched a 5-year, \$105 million strategic plan in the months prior to COVID-19. This strategic plan now serves as the framework for how the Florida Chamber and Chamber Foundation will relaunch Florida. While tactics may change, the goals of the plan remain the same.

In 2016, the Florida Chamber

Foundation launched the **Prosperity Initiative**, creating a long-term business plan to break the cycle of generational poverty one zip code and one child at a time. The Prosperity Initiative identified ten "root causes" that either cause, or keep, individuals in generational poverty:

- **Job Opportunities** Increased income and opportunity are essential to ending poverty. Many Floridians living in poverty need upskilling and training to compete in a changing workforce. Florida's service and hospitality industry, home to many entry-level jobs, has taken a tremendous hit due to COVID-19 and it's not clear which of those jobs will survive in the "next normal".
- **Education** Educational outcomes vary by zip code and those children living in poverty face many additional challenges that hinder their opportunities. Lower educational achievement does not create the same economic opportunity that higher education and job skill training create.
- **Workforce Housing** The lack of attainable workforce housing is critically low in Florida. More affordable housing is generally located in more suburban and rural areas and away from economic engines of major metropolitan areas. Decades old zoning policies have created systematically-segregated communities and have been the source of many of the other root causes of poverty that have created a

deeper divide in America.

- **Transportation** Without access to reliable transportation, everything from employment to health to access to food is jeopardized.
- **Health** Those living in poverty routinely have less access to quality health care and are often constrained by their reduced access to reliable transportation. Many in poverty don't make use of health and wellness checks and instead only access medical treatment when a problem arises and may be too late to treat effectively. Emergency rooms may provide world-class medical care but it's not our best approach to create healthy neighborhoods. Access to and utilization of preventative care is essential in creating healthy and prosperous communities.
- **Food Security** Whether food "deserts" where food access is the issue, or food "swamps" where access to low quality unhealthy food is the only option, food security is one of the most important factors in battling generational poverty. Healthy and readily available food options are essential to reducing chronic illness and allowing children's developing minds and bodies to thrive.
- **Child and Family Care** Access to high-quality early learning options and safe, stable family structures are essential to ensuring we are creating a generation of children who can tackle each educational milestone as it comes.

Children who are socially, educationally or emotionally unprepared to enter kindergarten are set up to lag behind their entire academic career. Only 53% of our kindergarteners are ready for kindergarten and we're focused on achieving 100% by 2030.

- **Safety** No child should have to constantly worry about their physical safety. Safe, stable families and neighborhoods create opportunities for children to be able to grow, learn and thrive.
- **Justice** Our criminal justice system too frequently leads to disproportionately bad outcomes for individuals from Florida's poorest zip codes. Reforms are needed to ensure criminals serve sentences commensurate with their crime and to ensure the criminal justice system can be a second chance at a better life and not a pathway to a lifetime of incarceration.
- **Community Voice** If the community doesn't believe things will ever change, and feels like their voice won't make a difference, the cycle of generational poverty will continue. Every voice matters and our collective impact will only work when everyone feels part of the solution.

Research shows poverty rates differ greatly along racial lines. For example, black Floridians are more than twice as likely to live below the poverty line as white Floridians. By unifying Florida through the Florida Chamber Foundation's Prosperity

Initiative, we can, must, and will do more to address the racial inequities that exist. The first step is simply bringing awareness to the inequities that exist.

The Florida Prosperity Initiative presents data and research to business partners, community leaders, local chambers of commerce and public sector officials to help them create grassroots strategies for ending the cycle of generational poverty in each of our 983 zip codes. Almost without exception, when the realities of childhood poverty in their communities are presented, business owners and civic leaders respond, “I didn’t know this existed here and now that I do, I need to be a part of the solution.”

Many other leaders have brought to our attention existing business-led programs and resources that we share as Promising Practices. A Promising Practice is a proven, effective solution that follows a collective impact model by addressing multiple root causes of poverty at once. We are constantly adding to our list, which can be viewed at ProsperityFL.org.

Whatever size your business is and no matter how much time you can commit, the Florida Prosperity Initiative has a place for you to connect. We are creating a statewide advisory board to develop a framework that addresses problems concerning all of Florida, followed by 67 county prosperity initiatives that focus on regionally specific issues, and ultimately 983 zip code level initiatives to replace poverty with prosperity at the neighborhood level. Every business in Florida can influence equity of opportunity and we have created the Prosperity Initiative to ensure that this collective influence is the permanent game changer.

Prosperity Advisory Council Our advisory council is made up of leaders who see the vision for what Florida can be and how their organization can be at the forefront of a partnership in executing our strategic plan for reducing childhood poverty in every zip code in Florida.

County Prosperity Leader Many county-wide organizations can play a key role in ending inequality of opportunities by banding together to create Prosperity Initiatives for their local communities. Many counties and municipalities have a tremendous network of private and public sector partnerships and non-profit organizations already in place who are focused on specific root causes of poverty. With the business community uniting for good and aligning these entities in a collective impact model across multiple zip codes, the total impact on a county can have ripple effects. We are not looking to replace these leading groups, but rather knit them together for better synergy, efficiency and outcomes.

Zip Code Leader Within the County Prosperity Initiative, many high-poverty zip codes might exist. For each zip code, a business leader has the opportunity to step up and unite the private, public, non-profit, and faith communities within a specific zip code to tackle the 10 root causes of poverty and how they affect the residents of that specific zip code. A zip code leader does not volunteer to solve the problem alone, but rather commits to building the right team to address the root causes of poverty.

Think of the zip code leader as a community quarterback.

Stakeholder All Floridians have the opportunity to be stakeholders in this effort. Florida is home for all of us, regardless of what zip codes we live in. Investing in our neighbors, sharing Promising Practices, and encouraging prosperity in our most impoverished zip codes creates more opportunity and more prosperity for all zip codes.

The framework is relatively new, but there are already many leaders in Florida's business community who have become advisory council members, county prosperity leaders, and zip code level advocates, building teams of businesses and nonprofit organizations to make a permanent impact. For example, in Leon County's 32304, in Broward's 33311, and in Volusia's 32114, business leaders are

“adopting” zip codes and focusing on specific root causes of poverty and acting as trailblazers of these efforts. Some companies, such as Florida Blue, are quarterbacking five zip codes—including Duval's 32206, Broward's 33311, Orange County's 32805 and Hillsborough's 33612 and also 33613. To add your company to the fight, visit FLChamber.com/BeTheSolution.

Progress is possible and we will measure our results as we go. We urge you to partner with the Florida Chamber Foundation's Prosperity Initiative to assist your company in developing a plan of action designed to engage in the Chamber's efforts to bring Floridians out of poverty by leveraging all our free-enterprise system has to offer.

Michael Williams is the Executive Director of the Florida Prosperity Initiative at the Florida Chamber Foundation. To share your ideas, ask a question or learn more, please email Michael at mwilliams@flfoundation.org



Policing, Qualified Immunity, and the Rise of the Warrior Cop

Samuel R. Staley, PhD

The death of George Floyd under the knee of a Minneapolis police officer triggered a once-in-a-generation groundswell of public awareness about policing and injustices embedded in the justice system. Street protests and demonstrations, mostly peaceful, emerged in more than 2,000 cities and towns and in all 50 states.

Florida has not been immune to these protests. Concerns about excessive

force continue to crop up in places such as Tallahassee,¹ Tampa,² Jacksonville,³ Sarasota,⁴ and Miami, among others. For example, in 2014, an unarmed black man was killed in Pasco County⁵ (north of Clearwater) after county sheriffs' deputies mistook a hand movement for a reach for a gun during a small-scale prescription drug bust. Concerns about excessive force and inadequate training led to a formal agreement⁶ between the U.S. Department

of Justice and the city of Miami's police department to institute, monitor, and enforce a renewed commitment to best practices in 2016.

The Taxpayers' Burden of Police Misconduct

Protests aside, police misconduct is expensive. Between 2000 and 2015, The Wall Street Journal reported⁷ that the 10 largest US cities paid out a combined \$1 billion for police misconduct claims. These cities paid \$248 million in 2015 alone, a significant increase from 2000. Police misconduct claims accounted for more than two-thirds of the police payouts in New York City; Chicago; Philadelphia; Washington, D.C.; Dallas; and Baltimore between 2000 and 2014.

In Florida, a lawsuit against the Palm Beach County⁸ sheriff cited a series of 10 civilian payouts and civil court judgements over 18 months against deputies, amounting to \$6 million, as evidence of a "culture of excessive force." A 10-month investigation by the Orlando Sentinel⁹ found the Orlando Police Department used force 3,100 times between 2000 and 2014. These incidents injured 1,900 people with most requiring professional medical attention. Lawsuits resulted in payouts of \$3.6 million for excessive force. Interestingly, while use of force was common among officers, the Sentinel found just five percent of the cops accounted for one quarter of the incidents.

This trend toward more reports of police misconduct and greater payouts is strikingly at odds with U.S. crime rates. Crime, including violent crime, has fallen dramatically¹⁰ over the past twenty years.

While crime rates increased somewhat between 2014 and 2016, the reversal was not dramatic and may well reflect a plateau rather than a long-term trend upward.

More Training is Not Enough

The question then becomes: Are there policy reforms that can reduce instances of excessive use of force and police misconduct?

Training is part of the solution but not enough in and of itself. Weeding out applicants with a track record of use of force also would help. Those with repeated accusations or claims of excessive force should be reassigned to positions that do not require interactions with suspects, or they should be fired. Training, for its part, could do more to emphasize de-escalation and non-lethal alternatives to firearm-dependent approaches to use of force.

Training could also include what the business world calls "cultural competency": understanding, communicating, and interacting productively with people from different cultures. While the level of stress police undergo is different from the business world, and requires different approaches, the issues of communication and interpretation are similar to those working in aligned occupations such as social work, clinical psychology, and law. Department policies could also do a much better job of helping law enforcement officers evaluate when and how force should be applied or used. Arrests for nonviolent offenses where the suspect is known -- Eric Garner selling cigarettes on a sidewalk in New York or George Floyd passing a counterfeit \$20 bill in Minneapolis -- may not be suitable for

applying deadly force.

But these strategies and recommendations have been around for decades. The continued frequency of excessive use of force cases suggests more systemic reform would be of greater value for many law enforcement agencies. In these cases, the problem is not an isolated arrest or a “bad apple.” The scale and variety of the incidents suggests law enforcement agencies should examine patterns of behavior and judgements in conflict situations.

Qualified Immunity

Systemic change is difficult without institutional change.

One of the more important institutional reforms supported by those from both the political left and right would be reforming the concept of “qualified immunity.” Qualified immunity is not a specific policy, but rather a judicial doctrine. In theory, qualified immunity protects law enforcement officers from undue financial liability if they commit acts while performing their job. Their work puts them in inherently risky situations, sometimes requiring snap judgements. Subjecting law enforcement officers to financial liability because they made an error in judgement in an uncertain moment of high tension would prevent them from performing their jobs. Imagine a cop hesitating to rescue a child from a life-threatening assault because they were worried about making the wrong decision and being sued.

On the surface, qualified immunity seems completely reasonable. Police need to be incentivized to protect citizens from personal and property damage. They rarely

earn enough to retain attorneys in the event they are sued.

In practice, qualified immunity has become a shield for even the most egregious behavior. The courts have interpreted the doctrine so narrowly that even police officers that violate the constitutional rights of suspects are immune to civil penalties. An analysis of 9,225 civil cases¹¹ where local jurisdictions or police were found liable for damages by law professor Joanna Schwartz found less than one percent of the officers involved were held personally responsible for financial damages (amounting to 0.2 percent of the entire financial payout by governments).

When the U.S. Supreme Court first introduced the concept, the intent was to protect police departments from nuisance lawsuits or attempts by trial attorneys to sue for damages despite good faith attempts to enforce the law. Schwartz’s research, however, found that the doctrine reduces the number of lawsuits brought because, in part, attorneys do not think they can win.

The doctrine has also become increasingly porous and broad. As federal judge Don Hewitt wrote in one legal opinion, “To some observers, qualified immunity smacks of unqualified impunity, letting public officials duck consequences for bad behavior — no matter how palpably unreasonable — as long as they were the first to behave badly.” Professor Schwartz is even more blunt:¹² “Qualified immunity is historically unmoored, ineffective at achieving its policy ends, and detrimental to the development of constitutional law.”

David French, an attorney with impeccable conservative credentials,

writes in the *National Review*¹³ that “after generations of judges have interpreted the statute, the phrase ‘shall be liable’ has come to mean ‘may occasionally be liable.’” Even officers who have exhibited gross negligence -- such as breaking down the wrong door and shooting an innocent person -- cannot be found criminally liable. Soberingly, under current judicial doctrine, killing someone who is innocent does not count as a violation of their constitutional rights.

Rolling back qualified immunity has unusually broad support. One friend of the court brief¹⁴ arguing for dismantling this doctrine was filed on the behalf of such ideologically diverse organizations as the American Civil Liberties Union, the Second Amendment Foundation, Americans for Prosperity, the National Police Accountability Project, Reason Foundation, Freedom Partners Chamber of Commerce, the Institute for Justice, and the Law Enforcement Action Partnership.

Malpractice Insurance for Police Departments

But reining in qualified immunity probably does not go far enough. The remedy still relies primarily on the court system which compartmentalizes use of force and dilutes the impact into discrete events. Court cases follow lengthy investigations and are drawn out over years. They take a life of their own, often distancing the incident and its consequences from the broader issues. Each case is viewed as a discrete incident rather than an indication of a pattern that needs to be addressed systemically.

A potentially more far-reaching solution would require police departments to carry the functional equivalent of private malpractice insurance.¹⁵ University of Maryland sociologist and Brookings Institution scholar Rashawn Ray¹⁶ argues that this reform has much more potential to reduce excessive force complaints and payouts. By shifting payments away from discrete, compartmentalized incidents - creating the potentially misleading impression police misconduct is about individual “bad apples” -- private insurance would provide dramatic incentives to look at the problem holistically.

Private insurers set rates using actuaries who specialize in evaluating risks and estimating the potential liability for insurers. Even with qualified immunity in place, private insurance companies could hold police departments and other law enforcement agencies liable for negligence, poor judgement, or the negative consequences of their behavior through their insurance pricing and risk assessments. By shifting the responsibility for payouts to insurance companies and allowing insurance rates to be set based on the likelihood of a civil payout, the entire law enforcement agency has incentives to align policies, procedures, and objectives around organization minimizing instances, events, and behaviors that put the department at great financial liability -- like police misconduct.

Moreover, the insurance rates become a measure of effectiveness and success. Taxpayers and elected officials will have more transparency into police department

practices and their consequences. Lower premiums imply lower financial risk and, implicitly, fewer instances of excessive use of force. Similarly, higher insurance payments would reflect higher levels of systemic abuse and exposure. Higher insurance premiums should put pressure on department budgets. Elected officials and law enforcement representatives would have stronger incentives to address systemic problems to reduce their exposure.

Thus, we would expect police departments and other law enforcement agencies to be proactive in their training and programming focused on reducing exposure. Departments that emphasize de-escalation, non-lethal means of restraint, and prioritize protection of persons and property, including suspects, will have less exposure and lower premiums.

Moving Beyond “A Few Bad Apples”

Grappling with police misconduct is an important policy issue that states, cities, and counties need to address forthrightly. Regardless of how one views the current spate of urban violence, the initial protests in the wake of George Floyd’s death drew widespread and diverse support because the concerns, if not details of the specific cases, were legitimate. Police misconduct appears to the general public to be more widespread and less well managed than police departments are willing to admit.

Rising complaints about police misconduct should not be surprising given the way law enforcement is shielded from bearing the consequences of poor training,

bad judgement, and excessive reliance on lethal force to subdue suspects. If suspects are treated with the presumption of guilt, and officers assume their targets will respond to an arrest with a life-threatening response directed at law enforcement, police will consequently prioritize their own safety over the civil rights of the suspects. When this behavior and attitude becomes ingrained in the organization’s culture, incidents of excessive force and police misconduct are all but inevitable.

The key to remedying the situation is aligning incentives more appropriately so that law enforcement agencies balance the rights of citizens with the needs of officers to perform their work as safely as possible. Creating institution-wide incentives to consider the consequences of use of force by reining in qualified immunity and requiring law enforcement agencies to carry malpractice insurance would create powerful incentives to restructure use-of-force training, reassign officers prone to police misconduct, avoid hiring officers with a track record of excessive force, and move policing back toward an attitude of community guardianship.

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Let's Set a New Bar

Camille Infantolino

Through the immense chaos created by the COVID-19 pandemic, one unanticipated opportunity stood out: a chance for licensing boards to re-think their established processes for professional licensing. Specifically, the Florida Supreme Court, through the Florida Board of Bar Examiners, had a rare opportunity to consider making progressive changes for a more efficient and more modern licensing process for Florida attorneys. However, in

the 11th hour the Court chose the option that most closely resembled the established tradition for professional licensing, fumbling the chance to make some good change and forfeiting some of the public's trust in the process.

The established licensing process for Florida attorneys generally includes the following components: (1) the Multistate Professional Responsibility Examination (MPRE), (2) the character and fitness

investigation, (3) Part A of the bar exam, which tests both general law and Florida law, and (4) Part B of the bar exam, called the Multistate Bar Examination (MBE).¹ Generally, law students apply for the bar in their first year of law school to initiate the character and fitness investigation. Students will then wait to take the MPRE until the months preceding or beginning their third year of law school, since MPRE scores are valid for only 25 months. Parts A and B of the bar exam are administered as a two-day examination in Tampa, Florida just twice a year: July and February. The bar exam has been criticized for several reasons, including but not limited to the relevancy and depth of the substantive subject areas tested, the relevancy of the laws tested (e.g. “general” law in addition to Florida law), and its closed book nature which does not resemble actual practice. However, there was neither a clear opportunity nor a pressing reason to rethink the licensing procedures until the COVID-19 pandemic called into question the safety of congregating all Florida test takers into one convention center for a two-day examination.

Although many stakeholders foresaw the issues related to administering an exam like the ones in years past and voiced opinions on viable solutions, the most notable suggestions were those of the deans of Florida’s 12 law schools. In an open letter dated April 7, 2020, the deans of Florida’s twelve law schools expressed “insights,” “observations,” and their “ideas for proposed solutions.” The letter outlined five well-researched solutions that balanced the need for a “rigorous process [...] to ensure the competency of new

attorneys” with the unprecedented impact of the COVID-19 pandemic. The solutions included:

Offering classrooms and logistical support at each of the twelve law school campuses at no cost to enable “simultaneous small-group testing with ample spacing between examinees.” This option would have reduced required travel, facilitated social distancing measures, and allowed the integrity of the exam to remain intact.

Offering two additional exam administrations in September, which would have allowed for more flexibility for testing as well as reduced the number of test takers at each test administration, thus lowering the risk of COVID-19 transmission and facilitating social distancing measures.

Allowing taking the bar exam in parts to be more efficient by (a) lowering the examination fee for those taking only one part of the exam, (b) refunding a portion of the examination fees for test takers who initially signed up for both parts but chose to take only one part, and (c) allowing test takers to take the parts in any order.

Expanding the Certified Legal Intern (CLI) program to allow candidates who pass the character and fitness investigation to begin practicing under the supervision of a licensed attorney until they have an opportunity to sit for and pass the bar examination. This would have allowed candidates to begin working more quickly after graduation even if the bar examination were delayed, therefore alleviating some financial burden.

Admission without examination. This solution would require graduates to complete a designated period of supervised

practice under a licensed attorney before gaining admission to the Florida Bar. Although this option would be the most drastic change, it would be the safest response to the COVID-19 pandemic and would be entirely possible due to the rigorous nature of Florida's character and fitness process. Note that this option unintentionally addressed long held concerns about the substance of the exam in addition to addressing issues with the logistical procedures.²

In response to the deans' letter, the board, with the permission of the court, decided to administer the July bar exam on the dates originally scheduled—on July 28-29—but in two locations (Tampa and Orlando) and while observing social distancing, mandatory masks, quarantining before and after, and other screening protocols. When asked about the reasoning behind this decision, the board stated concerns for waiting until September to administer the exam due to hurricane season. The board further explained that opting for more than two testing locations could compromise exam security and that all other safety requirements were approved by the Department of Health.

Once this decision was made, the board received heavy backlash characterizing the examination as a super-spreading event. After much advocacy by stakeholders including examinees, deans, and members of the state legislature, the court determined that an online examination on August 18 would be a better solution. Soon after, the court moved the date to August 19 to allow examinees to vote in the primary elections. The examination was set to be administered

through a software called ILG technologies, which included live proctoring through examinees' webcams as examinees took the exam in their homes. Interestingly, the logic used to dismiss the deans' proposal of various testing centers at the law schools was conveniently not applied to dismiss the idea of examinees taking the exam in their homes.

As the exam date approached, it became clear that the software was not ready. Examinees were repeatedly asked to download and test new versions of the software, which not only took time away from their studying but increased already high stress levels with each failure of the latest version of the software. As the versions of the software progressed, so did the issues experienced by the examinees/beta testers. Examinees who downloaded and tested the software as instructed reported hacking attempts into their bank accounts, iCloud keychains, email addresses and more as well as overheating and freezing on their computers. This was likely because examinees were required to disable and uninstall all antivirus protection off of their computers so that the software could function properly (although it never did). Amidst the board's silence on these issues, examinees took to social media to warn other test takers of the security issues with the software. Those who posted warnings were personally contacted and intimidated into removing the posts by none other than the founder of ILG Technologies. Still the board remained silent.

At about 11pm on Sunday, August 16th (less than four days before the exam), examinees received correspondence from

the board cancelling the exam due to the issues with the software. On August 19th, the Florida Supreme Court released an apology video by Chief Justice Canady acknowledging the criticisms received and admitting to their failures.³ Finally, on August 26th, the board released a new date for the exam: October 13. Interestingly again, the logic for dismissing the deans' suggestion for a September exam—hurricane season—was conveniently not used to dismiss the idea of an October exam. Cherry-picking the applicability of certain excuses seems to be a trend. Furthermore, the board has allegedly dropped ILG Technologies as its software provider in favor of ExamSoft. Finally, the board created a provisional licensing scheme to come into effect in September which would allow examinees to practice under the supervision of a Florida barred attorney until the examinee receives his or her license. Unfortunately, this scheme is too little too late and will help only a fraction of examinees.

This debacle is a perfect example of

the dangers which result from allowing the elite of a profession to regulate themselves. It is the perfect cocktail of inefficient governmental bureaucracy with a splash of outdated views and a sprinkle of out-of-touch. The symptoms: gatekeeping the profession, extreme financial hardship, and hazing. The cure: deregulation, communication, and respect. Crossing the bridge from juris doctor to esquire should require a showing of competency that mirrors the work which an attorney truly does. The bar exam does not achieve this goal and therefore the fixation with its preservation is beyond comprehension.

Ultimately, the COVID-19 pandemic could have been an opportunity to rethink established licensing requirements and explore new, more efficient, and up-to-date options. However, the court, through the board, chose to cling to tradition at the expense of modernization of licensing procedures, rather than experimenting with innovation.

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Tackling Florida's Blue-Green Algae Crisis

Vittorio Nastasi

Florida summers are typically marked by bustling theme parks and crowded beaches, but the COVID-19 pandemic has largely shut down the state's tourism industry this year. While the pandemic will eventually subside, another crisis—toxic blue-green algae blooms—poses a longer-term threat to the state's tourism economy. Blooms in 2016 and 2018 were severe enough to cause states of emergency to be declared, generating negative headlines

across the country. Tackling Florida's algae crisis is essential for a strong recovery and will help ensure continued growth for years to come.

Toxic cyanobacteria, or blue-green algae, kill wildlife and present serious health hazards to humans.¹ Contact with or accidental ingestion of the algae can cause irritation to the gastrointestinal tract, liver, nervous system and skin. Some research even links long-term exposure

to the development of neurodegenerative disorders like Amyotrophic Lateral Sclerosis (ALS) and Alzheimer's disease.²

The algae thrive in warm freshwater and brackish habitats like the lakes, rivers, and estuaries found throughout Florida. Combined with sunlight and an influx of nutrients from urban and agricultural sources, the algae “bloom” and form a thick layer of green slime on the water's surface. While algae blooms occur in waterbodies all around the state, Lake Okeechobee and the wider Everglades region are at the heart of Florida's water quality crisis.

How We Got Here

Prior to human settlement, the Everglades was more than twice the size it is today. Water originating in central Florida flowed into Lake Okeechobee through the Kissimmee River, carrying nutrients along the way. In the rainy months, water spilled over the lake's southern shore and into a vast “river of grass” stretching to the Gulf and Florida Bay. The Everglades acted as a sort of natural filter, taking up nutrients as water slowly moved through the system.

Beginning in the 1850s, large-scale drainage projects cleared the way for development. A series of hurricanes in the early 1900s prompted the construction of the Herbert Hoover Dike around Lake Okeechobee and a network of canals and levees to provide flood protection to south Florida's growing population. These measures enabled tremendous growth and agricultural productivity in the region, but at significant cost to the environment.

Today, much of the water-flow north of Lake Okeechobee remains intact, but

urban and agricultural development have increased the amount of nutrients reaching the lake, leading to frequent algae blooms. Moreover, the Herbert Hoover Dike and other flood control measures block the natural flow south of the lake. Instead, much of the water in Lake Okeechobee is released to the east and west coasts through the St. Lucie and Caloosahatchee rivers. This altered flow spreads blooms down the rivers and to the coastal estuaries while drying out grasslands to the south.

Ongoing Restoration Efforts

In 2000, Congress authorized the Comprehensive Everglades Restoration Plan (CERP)—a joint effort between the state of Florida and the U.S. Army Corps of Engineers. Widely considered the largest environmental restoration program in the world, the plan encompasses over 50 projects with timelines spanning multiple decades.³ Collectively, the projects will provide water treatment, storage, and conveyance to reduce nutrient pollution, avoid large discharges to the coasts, and send more water south to the Everglades.

There has been little progress in the two decades since CERP was authorized. Political conflicts and bureaucratic delays have led to extended timelines and increased costs. Notably, the federal government is more than \$1 billion dollars behind the state in fulfilling its funding obligations under the equal funding agreement for CERP projects.⁴ Fortunately, Governor DeSantis has prioritized Everglades restoration since taking office. An executive order issued in January 2019 called on state agencies to expedite the planning and construction of

several key infrastructure projects included under CERP.

Despite this renewed momentum, the storage and treatment capacity included in current CERP plans is likely insufficient to meet the scale of the problem. It is also far more cost effective to address sources of nutrient pollution directly than to provide treatment after the fact. Consequently, restoration must take a more comprehensive approach than large-scale infrastructure projects alone.

Addressing Sources of Nutrient Pollution

Florida lawmakers recently passed the Clean Waterways Act during the 2020 legislative session. The sweeping legislation addresses many of the largest sources of nutrient pollution including agricultural runoff, failing septic systems, and wastewater spills.

The largest source of nutrient pollution in the Okeechobee watershed is agricultural runoff. The primary tool for reducing nutrient pollution from agricultural producers is the adoption of “Best Management Practices” (BMPs) developed by the Florida Department of Agriculture and Consumer Services. Producers in the watersheds are required to either

implement BMPs or conduct monitoring to demonstrate compliance with water quality standards. The Clean Waterways Act strengthens the BMP program by requiring onsite inspections every two years to ensure that producers are properly implementing BMPs and meeting nutrient reduction goals.

Florida’s 2.6 million septic systems

are perhaps the second largest source of nutrient pollution.⁵ Septic systems are well-suited for low-density areas with sufficient separation between the drainfield and groundwater. However, they can be a major problem in high-density areas, in close proximity to waterways, or in areas with higher water tables—especially when they are improperly maintained. The Clean Waterways Act transfers oversight of septic systems from the Department of Health to the Department of Environmental Protection. In areas where septic systems are responsible for at least 20 percent of nutrient pollution, the law also requires local governments to develop septic remediation plans.

Florida’s aging sewage infrastructure is another major source of nutrient pollution addressed by the Clean Waterways Act. Between 2009 and 2019, nearly 23,000 sewage spills across the state released 1.6 billion gallons of wastewater into the environment—over 370 million gallons of which were completely untreated.⁶ The Clean Waterways Act creates a wastewater grant program that will help fund local projects to upgrade sewer infrastructure and convert existing septic systems. Similar to septic remediation plans, local governments will also be required to develop wastewater treatment plans in areas where wastewater is responsible for at least 20 percent of nutrient pollution.

Further Policy Recommendations

The Clean Waterways Act is a strong first step but tackling Florida’s algae crisis will require additional actions at the private,

municipal, state, and federal levels.

Private actors can take simple, voluntary steps to reduce their contributions to nutrient pollution. While a large number of septic systems will be converted to sewer over the coming years, many households will continue to rely on septic systems. Proper routine maintenance and inspection of septic systems can go a long way toward reducing the risk of system failure. For those who rely on sewer systems, responsible disposal of greases and fats can help avoid pipe bursts that cause sewage spills. Households can also voluntarily reduce fertilizer use and avoid excessive landscaping. While these measures may appear insignificant at the individual level, they could have a real impact if adopted by the millions of households that call Florida home.

Municipal governments also have an important role to play. While the Clean Waterways Act includes some funding and requirements for wastewater improvements, local governments are ultimately responsible for wastewater management. It is vital that aging sewer infrastructure be replaced and upgraded over time to keep up with population growth. Public-private partnerships could help offset some of the costs associated with construction, operation, and maintenance.

Local governments can also limit the spread of septic systems by requiring sewer connections for new development. In areas near vulnerable waterbodies, fertilizer-use ordinances may be appropriate to reduce runoff.

State and federal authorities should primarily focus on completing CERP projects on time and on budget. Getting the appropriate storage and treatment infrastructure in place will significantly reduce the risk of algal blooms over the next few years as the state's economy recovers. Improved water quality monitoring systems and data will also be useful for assessing the effectiveness of ongoing projects and guiding further restoration efforts. Finally, the federal government should eliminate the system of tariffs and subsidies that prop up the sugar industry south of Lake Okeechobee.

Florida's water quality crisis is among the state's most complex challenges and getting our response right is critical. Lawmakers have made significant progress in recent years, but there is plenty more to be done. Maintaining the current momentum for restoration is all the more important as the economy begins to recover.

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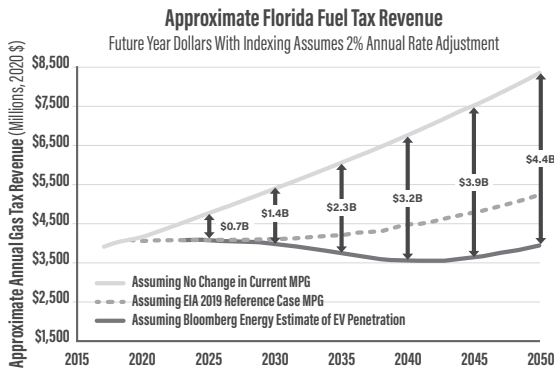
How Florida Highways Can Keep Pace with Growth

Dr. Robert Poole

Florida continues to be one of America's fastest-growing states. Last year we added more than 233,000 people, second only to Texas, which added 327,000. Thanks to Florida DOT and Florida's Turnpike, our highways have largely kept pace with this growth, but this may soon change.

The problem is that most of Florida's highways are paid for by the per-gallon tax on gasoline and diesel fuel. For the average motorist, the state gas tax (which varies by county) averages 37 cents/gallon. But the revenue stream produced by gas taxes is about to enter a long-term decline, posing a serious threat to Florida's highways.

The graph [Figure 1] shows a realistic projection of what is likely to happen. The top line shows that population and the accompanying growth in driving would keep gas-tax revenue rising—*if and only if* current vehicle fuel efficiency did not change over the next 30 years. But as new high-miles-per-gallon cars replace old gas guzzlers, the second line shows how rapidly gas-tax revenue will likely decrease during coming decades. The third line adds in the effect of projected electric vehicle sales (which use no gas at all). The bottom line is that to maintain the top line gas tax revenue, the state gas tax would have to double to 76 cents/gallon by 2035 and go to \$1.14/gallon by 2050.



Source: CDM Smith 2020 White Paper

The same problem faces all other states, but the urgency is far greater in high-growth states like Florida and Texas. A decade ago, a national commission appointed by Congress analyzed over a dozen possible solutions. Their recommendation was that, over several decades, America needs to *replace* per-gallon gas taxes with per-mile charges. These are generally called mileage-based user fees (MBUFs).

The MBUF idea has been around for a decade, but surveys show that most people haven't bought into the idea. Some see it as requiring some kind of "Big Brother" gadget in every car that reports when and where you drive. Others don't trust government to replace the gas tax with a mileage charge and are sure the MBUF would simply be a new tax in addition to the gas tax. And some state transportation agencies have focused so much on the need for new revenue that it has fanned motorists' distrust of the idea.

In a recent JMI policy study, I suggest a way forward for this much-needed change in how we pay for highways. Instead of just focusing on the need for more revenue, the idea needs to be understood as a way of saving Florida's highways from being

overwhelmed by more traffic than they can possibly handle as the state keeps growing.

We need a system that is better than the gas tax, across the board. Here are the problems that need fixing:

The gas tax cannot accommodate future vehicle propulsion choices—batteries, fuel cells, LNG, or whatever else may be used.

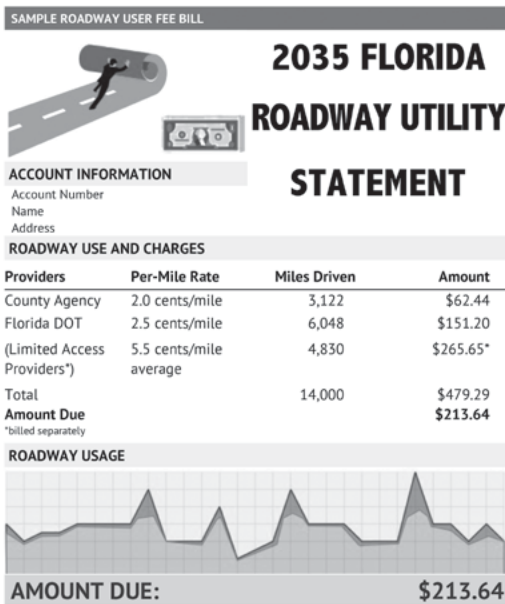
The gas tax is not transparent; most people have no idea how much they pay or where the money goes or who is responsible for spending it wisely.

The gas tax "charges" motorists the same amount to drive on two-lane country roads and major freeways, even though the latter cost far more to build and maintain.

And the gas tax is no longer a true user fee; Florida diverts nearly 14 percent of the revenue to non-highway uses.

The good news is that Florida already has a true user fee that addresses all four of those shortcomings. Electronic tolling applies to all vehicles, goes directly to the providers of the toll roads, charges enough to fully pay for costly major highways, and is not diverted to non-highway uses. Best of all, the SunPass electronic tolling system operates statewide, and is now compatible with the E-ZPass electronic tolling throughout the USA east of the Mississippi.

The SunPass system works very well on what are called *limited-access highways*—those you can only get on and get off at a limited number of places. Antennas can be located at those places to record where you get on and where you get off and charge you for the miles in between. There are no toll booths.



However, this approach would not work for ordinary highways, like U.S. 1, U.S. 41, or major state highways like SR 60. You would need antennas at hundreds of thousands of cross streets to record miles driven on those if using a SunPass type system. Given this reality, the best plan would be for Florida to start the long-term transition to per-mile charges by expanding SunPass only to all the Interstates and freeways in the state—as a *replacement* for the state gas tax on those roads. You would get a gas tax rebate for the miles you drive on tolled Interstates, calculated by the SunPass system that knows the make and model number of the vehicle, and hence its EPA-rated miles per gallon. (These kinds of fuel tax rebates are already available to trucks using the Massachusetts Turnpike and the New York Thruway, so nothing new needs to be invented to do this.)

The recommendation is that Florida

begin this transition with a master plan for all the state's limited-access highways, figuring out—over the next two decades—which ones need major rebuilding due to aging pavement, which ones will need more lanes when, and which major interchanges need to be redesigned and rebuilt. That will make it possible to estimate the per-mile rates to be charged by the expanded SunPass tolling system.

Once this effort is under way, Florida DOT can start to reserve its shrinking gas tax monies for the rest of the state's highways, while carrying out pilot projects to test different ways people could report their non-SunPass miles and be charged a lower rate for them. About a dozen states have already learned a lot by doing pilot projects like this, but Florida has not. As a first step, Florida DOT could join the multi-state pilot project for I-95, America's longest north-south Interstate.

Eventually, Floridians would end up with a far more transparent and accountable way of paying for highways, getting an annual statement like a property tax bill showing what they paid for each category of roadway. In that happy future, highway bills would be as common as electric bills and water bills, and motorists would know what they are paying and whom to hold accountable for their roadways.

The future of shrinking gas tax revenues won't be avoided—Florida must figure out how to address it with good policy.

Robert Poole is director of transportation policy and Searle Freedom Trust Transportation Fellow at Reason Foundation and a member of the Research Advisory Council at JMI.



The Need for Comprehensive Cryptoasset Policy

Sean Stein Smith

Blockchain and cryptocurrencies are, based on any objective and level-headed analysis, situated to redefine and drive change across industry verticals for years to come. Investment, in the form of financial resources and human capital, continues to accelerate as blockchain adoption increases in the United States and internationally. Even as the blockchain and broader cryptoasset ecosystem continues to develop, however, the lack of comprehensive

public policy and regulation continues to hamstring further development. This is not to say that every facet of the sector needs detailed regulation, but the need for consistent frameworks and guidelines that are both understandable and lay the groundwork for continued innovation is increasingly clear. Breaking down the need for more public policy, there are several areas in which further clarification would assist the continued development and

integration of blockchain for commercial usage.

Policy and policy debates might not always drive an economic sector forward, but in the blockchain and cryptoasset space a comprehensive and level-headed assessment of policy choices seems increasingly required. Level-headed, objective, and reasonable debate and examination around policy frameworks and guidelines is required, will provide much needed clarity to the marketplace, and will encourage further investment, growth, and development. Hearings and Congressional grilling of ideas building on the blockchain, including the scrutiny of projects like Libra, provide only a partial benefit; conversations need to be pro-growth and iterative to have a legitimate chance at fostering continued advancement. The very idea of blockchain was to create a decentralized and distributed alternative to traditional financial and commercial power brokers. A noble goal, but one that is at odds with the clarity and comfort necessary for both individuals and institutions to adopt blockchain iterations at a wholesale level.

Cryptoasset clarification

Cryptoassets, specifically the cryptocurrency Bitcoin, may have been how the mainstream business community was introduced to the blockchain space, but even with the worldwide interest and engagement with the space there remain substantial gaps in how these assets are reported and treated from a financial perspective. The regulatory framework that has developed is fragmented and continuously changing both in the United

States and internationally. While it is logical that different nations will develop alternative regulatory frameworks and guidelines, the current landscape is not only fragmented but also somewhat contradictory even within the same jurisdiction. Focusing on the United States, the current tax treatment of cryptoassets—as property—creates an environment with unnecessary complexity and compliance guidelines. In addition to this non-optimal tax treatment and classification there are also conflicting reporting and regulatory guidelines issued by any number of regulatory organizations including the SEC, CFTC, and others. As if these contradictory requirements were not enough, the Financial Accounting Standards Board—the standard-setting body for U.S. GAAP (Generally Accepted Accounting Principles)—has yet to issue any authoritative reporting guidelines linked to cryptoassets. Such a confusing and fragmented regulatory landscape discourages innovation, stymies commercial adoption, and may lead to the United States falling behind other nations. Guidelines are not, by any extension, a driver of innovation but guardrails and frameworks are indeed required if organizations are to make long-term investments.

Blockchain liability and insurance

Policy and the public policy framework, especially when it comes to new technology, is not usually something that is discussed as prerequisite for the further development and maturation of the ecosystem. The blockchain community and ecosystem, however, does seem to

require at least a preliminary discussion and analysis of how blockchain insurance policies can be developed. Upon initial review, such a thread of discussion might seem unusual, but is actually connected to another burgeoning area of policy and private sector discussion: cybersecurity insurance. With cybersecurity hacks, breaches, and other incidents costing U.S. organizations billions annually, private sector organizations realize the seriousness of this issue. Blockchain might be associated by some to reduce cybersecurity risk, and while that is true from a certain perspective that only represents a partial view of how the technology fits into the broader business landscape. It is true that the tamper-resistant nature of the ledger, alongside the consensus methodologies at the center of blockchain iterations, may reduce some types of risk, the technical complexity of implementing blockchain systems can amplify other risks. With organizations across industry lines adopting blockchain and storing ever-increasing amounts of information on blockchain augmented platforms, the risk of these networks being breached will increase as well. Whenever a blockchain, such as the permissionless Bitcoin or Ethereum blockchains are modified for commercial adoption (such as at JP Morgan), or a distributed ledger developed by a single entity is widely adopted (like the array of IBM Hyperledger options) there is the potential that—by customizing these solutions—some of the very strength of the blockchain will be undermined. Establishing insurance policies and protocols is not only good business sense but is also imperative for

the continued maturation of the ecosystem. Particularly in the healthcare and financial services space, developing a logical and business-friendly insurance protocol for data stored on blockchains seems a rather clear next step to facilitate future adoption.

Smart contract enforceability

Following cryptocurrencies, the next most popular application and use case for blockchain across industry lines is the rise of smart contracts. Despite the continued hype, excitement, and debate around the potential future of the blockchain ecosystem it is important to recognize the fact that—by itself—a blockchain is not able to communicate, interact with, or take actions. A blockchain, no matter what the specific label or iteration, is simply a distributed and decentralized ledger of information. In other words, it is simply a repository where transactional data are stored in the form of blocks; smart contracts represent the proverbial links between blockchains and other technology systems. Although initial opinions and publicly available information have tended to recognize and validate the rights and obligations linked to smart contracts as equivalent and enforceable like traditional contracts, there are a few outstanding items that remain unaddressed. For example, what occurs if a smart contract is coded incorrectly, so that even if the contract operates correctly and as advertised it does not make business sense? Is there to be a role for arbitrators and mediators in an environment where contracts can be increasingly automated? And lastly, what is the exposure of organizations in the legal and other fields attempting to offer

advisory services connected to blockchain and cryptoasset services? Fortunately, there is a substantial amount of legal precedent in existence for traditional contracts but providing some kind of answers to these smart contract specific matters is necessary for broader adoption.

Blockchain continues to develop and grow at an accelerating rate, and the private market innovation has driven this development to date. Proceeding cautiously, to not stymie growth, there is a need for robust policy discussion. Developing and maintaining a leadership position in this fast-moving space, as well as the associated

technologies such as 5G and IoT, requires a common-sense, flexible, and iterative public policy framework to be developed sooner rather than later.

The market, and the individuals and institutions who partake in it, will be better off for it.

Dr. Sean Stein Smith is a professor at the City University of New York—Lehman College. He also is the chairperson of the NJCPA's Emerging Technologies Interest Group (#NJCPATech) and serves on the Advisory Board of the Wall Street Blockchain Alliance, where he co-chairs the Accounting Work Group.

Editor's note: Chris Sprowls penned this article 12 years ago while in law school at Stetson University, where he was vice president of the Stetson chapter of the Federalist Society. He will assume the role of Speaker of the Florida House of Representatives in November 2020.

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The Federalist Society: An Ally In The Fight Against Judicial Activism

Chris Sprowls



In the wake of last year's dismissal of several U.S. Attorneys, left-wing political pundits and bloggers found an unusual target: The Federalist Society. While the Society has no identified political ties, does not file lawsuits on behalf of conservative issues, and in no way lobbies on Capitol Hill, critics have taken aim at

the group for its so-called "political clout" to influence both judicial and political appointees within the Bush administration.

In an all too familiar fashion, these critics have portrayed this legal society as a secret conservative organization that has an unhealthy effect on the integrity of our government. This article is intended to

shine a light on what the Federalist Society really is, what it stands for, and what it means in the fight for the preservation of “originalism.”

The Federalist Society for Law and Public Policy Studies traces its origin to 1982, when a group of conservative and libertarian law students became dismayed by the absence of instruction—or instructors, for that matter—expressing an originalist approach to legal analysis. Originalism, or strict constructionism, is the legal philosophy that jurists should interpret the Constitution in a manner that reflects the original intent of the framers.

Originalists believe that the Framers scripted a document that would not evolve, devolve, or morph throughout the history of the Republic. Of course, the Framers did expect the document to be amended, as evidenced by the fact that they chose to amend it themselves, but they could not have intended for carefully chosen words to convey a different meaning today than when adopted in 1789.

Alexander Hamilton, James Madison, and John Jay wrote the Federalist Papers in 1787 to convince the young nation that it was because men are not angels that we need government, and that this government would perpetuate the spirit of the revolution by providing a system in which no one branch would dominate the other two, with the ultimate purpose of protecting the basic rights granted to our individual citizens by the document then and now.¹

The Federalist Society is about exploring these ideas. The society has over 180 chapters with 5,000 student members at law schools across the country. The lawyer division boasts 20,000 members, and in 1996 the society began a Faculty Division to encourage academic dialogue. In Florida, all ten accredited law schools claim chapters. Many of Florida’s conservative-minded lawyers and jurists remain involved with the group through lawyer divisions in Tampa, Orlando, Miami, and Tallahassee.²

The society offers law students the opportunity to engage legal scholars and leaders in their respective fields by utilizing the organization’s speaker’s bureau. The bureau provides a dynamic and broad field of interesting speakers for chapters to invite to speaking engagements, group meetings, or special seminars. The Federalist Society pays for these speakers to visit law school chapters, thus providing the means necessary to allow students to engage in the intellectual discourse that the society embodies.

Ronald Reagan knew the impact that the organization would have on America’s legal education when he said, “The Federalist Society is changing the culture of our nation’s law schools. You are returning the values and concepts of law as our Founders understood them to scholarly dialogue, and through that dialogue, to our legal institutions.”

Mr. Reagan, who once quipped that freedom is only a “generation from extinction,” knew that the Society did and would serve the Republic by safeguarding

the intent of the Framers and ensure that the dialogue and spirit of federalism as it was described in the Federalist Papers and embodied in the Constitution would live forever.

The Federalist Society is dedicated to the proposition that in order to preserve our Republic's most sacred of principles, the rule of law; we must constantly be vigilant in our study, understanding the commitment to the law, and through it, to freedom.

As for the Society's influence on the debate over originalism, we must look only to the many notable current and former members, including Justices John Roberts, Samuel Alito, Antonin Scalia, and Clarence Thomas. Former Solicitor General Theodore Olson and Judge Robert Bork are also among the group's most prestigious supporters.

While these individuals are some of the most conservative individuals in the eyes of the legal community, they are also some of its most celebrated scholars. Some critics, noticing that many of the attorneys being hired by the Department of Justice are members of the Federalist Society, have asserted that membership was perhaps code for conservative, somehow indicating that this person is a true believer in some standardized, wholesale version of conservatism.

However, the critics have seemed to notice that many of the same individuals are members of the American Bar Association, our nation's largest legal organization. Hiring members of the ABA does not stir suspicions of a conspiracy, nor does it serve as a lightning rod for political rhetoric, despite the fact that a larger number of government lawyers are members of the ABA than of the Federalist Society.

The Federalist Society and its members are about exchanging ideas concerning the future of our system while clinging to our most venerated and rooted principles - those that the Republic was founded upon and without which our nation would surely perish.

These gatekeepers often find themselves in government service, not because of who controls Congress or the White House, but because the essence of their beliefs is derived from the principles that the Founders gave us and constitute the pillar upon which our system rests: the rule of law.

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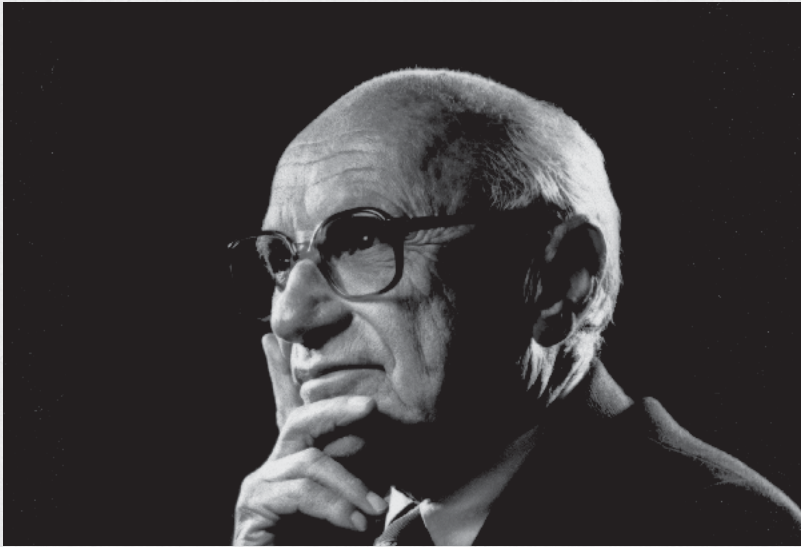
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Milton Friedman's “Mistake”: One Idea that Could Catalyze a Nation

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If there's one viewpoint that Americans all across the political spectrum share nowadays despite the pervasive polarization on most issues, it's that the federal government is wasteful, bloated, and inefficient, and that it infringes on our liberty in a wide variety of ways.

This viewpoint is reflected in polls of Republicans and Democrats, liberals and conservatives, old and young. Even well-

meaning advocates of an active federal government acknowledge that there are broad and pervasive challenges related to the current scope of government activity. They may believe in government's capacity to solve problems, but they know that the current system in Washington, D.C. is severely dysfunctional.

Nonetheless, even though most Americans acknowledge the severity of

the problem with federal spending and borrowing out of control, the national debt rising to alarming levels, and the growth in entitlements unsustainable, there does not seem to be much in the way of movement to address the problem by getting to the root of it.

As a policy wonk, I spend an inordinate amount of time in the depths of detail on the goals, impacts, and consequences (intended and unintended) of the decisions made by elected officials on a variety of issues. I get paid to pay attention. And much of the time it seems like I am alone in the wilderness.

That's disheartening in light of the daunting magnitude of the problem. Consider: For the 2014 fiscal year, total federal spending amounted to more than \$3.5 trillion. That number alone makes comprehending the challenge daunting. In the context of a \$3.5 trillion budget, millions of dollars amount to mere rounding errors, and our ability to feel vested in the scope and effectiveness of how our money is spent is almost nonexistent. It almost seems impossible to begin thinking about how to turn this massive ship in the right direction. Almost.

I have often considered one of the most brilliant market inventions of the 20th Century to be the development and implementation of casino chips. Consider—in separating gamblers from their actual cash and replacing it with colorful plastic discs, casino owners were able to gain a unique and very important psychological advantage over patrons. It's a challenge to separate a player from a crisp \$100 greenback featuring the bust of Ben

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Franklin himself; it's far easier to part with a colorful plastic disc. The cash already feels gone—it's just a matter of playing with the discs until there are no more left. The casino has won, even before you've placed a single bet.

What does this have to do with federal fiscal policy? The answer can be found in a change in the psychology of taxation dating back to 1943. There was a precedent: After the 16th Amendment was ratified in 1913 empowering Congress “to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration,” taxes were required to be withheld. That changed in 1916 when overwhelming public complaints about the system led to passage of the Income Tax Act of 1916, which eliminated the previous practice. From that point until World War II, individuals were compelled to pay their bill in total by March 15 of the following year, or apply to make quarterly installment payments on their tax bill. If you owed the federal government \$1,000 on your income from 1920, you would pay the full amount by March 15 or \$250 per quarter in 1921. The system was straightforward and for the most part, transparent.

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With America’s entry into World War II, the massive defense buildup of the 1940s created a need for more government revenues. The military needed planes, ships, guns, and bullets. The federal budget rose from about \$9 billion in 1940 to \$98 billion by 1945. The “immediate” need for revenue resulted in a law passed in 1943 called the Current Tax Payment Act.

The Current Tax Payment Act radically changed the employer/employee dynamic from that point forward. The Act compelled all employers to withhold federal income taxes from employees’ paychecks, and to remit them directly to the United States Treasury. In doing so, the federal government accomplished what casino owners would with the development of casino chips—it implemented a psychological barrier separating people who had earned wages from their money before the tax bill was officially due—and even before they had received their earned wages. In

testimony before the U.S. Congress in 1942, businessman and Chairman of the New York Federal Reserve Bank Beardsley Ruml even laid out the psychological argument behind withholding, explicitly stating that mandatory withholding by employers would “dampen taxpayer opposition.”

In a spate of irony that will not be lost on the free market-minded, the suggestion for the Current Tax Payment Act came from none other than the iconic Milton Friedman. In his 1971 work titled “Milton Friedman Unraveled,” Austrian School economist Murray Rothbard provides an analysis of the impact of Friedman’s plan:

“Before World War II, when income tax rates were far lower than now, there was no withholding system; everyone paid his annual bill in one lump sum, on March 15. It is obvious that under this system, the Internal Revenue Service could never hope to extract the entire annual sum, at current confiscatory rates, from the mass of the working population. The whole ghastly system would have happily broken down long before this. Only the Friedmanite withholding tax has permitted the government to use every employer as an unpaid tax collector, extracting the tax quietly and silently from each paycheck.”

In placing a buffer between individuals and the government concerning the confiscation of their earned wages for taxing purposes, the Act served as a metaphorical anesthetic—numbing taxpayers to the true impact of the earned wages they are

forced to send to the government. In the simple act of withholding smaller amounts of money from each wage earner over the course of every pay period, as opposed to compelling individuals to write a check to the U.S. Treasury, the federal government has been permitted to grow from a budget of \$9 billion in 1940 to more than \$3.5 TRILLION in 2014—an increase of 38,700 percent over the 74-year period. By contrast, U.S. GDP went from \$100 billion in 1940 to \$17.7 trillion in 2014, an increase of 17,600 percent during that same time frame.

Translation: Federal tax revenues grew by a rate more than double our economic activity. In an interview with Brian Doherty from the June 1995 issue of Reason Magazine, Friedman was asked about his involvement in introducing withholding: “I played a significant role, no question about it, in introducing withholding. I think it’s a great mistake for peacetime, but in 1941–43, all of us were concentrating on the war.

“One of the major opponents of the idea was the IRS. Because every organization knows that the only way you can do anything is the way they’ve always been doing it. This was something new, and they kept telling us how impossible it was. It was a very interesting and very challenging intellectual task.

“I was an employee at the Treasury Department. We were in a wartime situation. How do you raise the enormous amount of taxes you need for wartime? We were all in favor of cutting inflation. I wasn’t as sophisticated about how to do it then as I would be now, but there’s no doubt that one of the ways to avoid inflation was to finance

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as large a fraction of current spending with tax money as possible.

“I have no apologies for it, but I really wish we hadn’t found it necessary and I wish there were some way of abolishing withholding now.”

So can anything be done?

The Current Tax Payment Act was a duly passed piece of legislation from the United States Congress and signed by President Franklin Delano Roosevelt. And thus, what the Congress passes, the Congress can certainly repeal.

Repeal the Current Tax Payment Act.

Yes, repeal it. Get rid of it entirely. Heed Milton Friedman’s plea and take us back to the glory days of tax processing prior to World War II. What would this mean? It would free up lots of time employers spend withholding, processing, and submitting income tax payments on behalf of 150 million plus workers in the U.S. It would eliminate an administrative process from employers and enable them to concentrate on the fundamental reason they are in business—to create economic activity.

More importantly, it would remove an unnecessary barrier separating individual wage earners from feeling the true impact of the tax burden they bear. If you earn

\$52,000 per year, you would receive your pay at the rate of \$1,000 per week in its entirety—right into your bank account. Subsequently, if you owe \$5,000 in income taxes (including Social Security and Medicaid contributions), you would be forced to pay that \$5,000 by either writing a check or making an online payment, just as you would any other bill you receive—directly from your own bank account.

When individuals receive a bill and make a payment on it, they are vested in the performance of that good or service. If the electricity does not work appropriately for a period of time during the month, customers will rightly expect some type of accommodation in their bill for utility services.

The same currently cannot be said about the federal government. If we repeal the Current Tax Payment Act and restore that expectation, we would see a movement of millions of people immediately more engaged in the decisions that policy makers

in Washington make with their money. I can envision the start of a crusade to demand action in how our federal government spends our money. I can imagine individuals becoming far more aware of the fact that Washington D.C.'s wasteful borrowing from our grandchildren is strangling current and future prosperity. I predict we would be far more aggressive in demanding solutions to the pressing challenges in discretionary spending, our entitlement programs, welfare programs, and our infrastructure needs.

Repeal the Current Tax Payment Act and create a catalyst for waking up millions of Americans who have been anesthetized to how bad our fiscal situation has actually become. Let hindsight not be gained in vain.

Sal Nuzzo is the vice president of policy and director of the Center for Economic Prosperity at The James Madison Institute.



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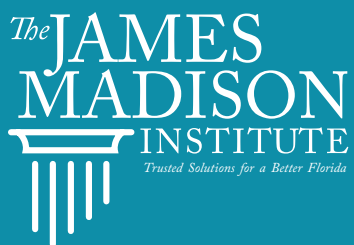
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