RECEIVED
FEDERAL ELECTION
COMMISSION

2011 OCT 20 AM 11:57

OFFICE OF GENERAL
COUNSEL

William B. Canfield III
Attorney at Law
Suite 600
1900 M Street, N.W.
Washington, D. C. 20036
(202) 530-3332

October 14, 2011

Peter Reynolds, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

15044380210

Re: MURs Number 6391 and 6471
Commission on Hope, Growth & Opportunity

Dear Mr. Reynolds:

I am the pro-bono counsel to the above named Respondent and have served in that capacity since November, 2010. This letter is provided in response to our telephone conversation, your e-mail to me of September 28, 2011, and your follow-up letter to me of October 4, 2011.

As you will recall, I telephone you upon receipt of your e-mail of September 28, 2011 and expressed my interest in providing the Federal Election Commission (the "FEC") with any additional information that might supplement the formal response, dated June 1, 2011, by the Commission on Hope, Growth & Opportunity (the "CHGO") in the above captioned MURs. As you will also recall, I also expressed some puzzlement at the eight (8) newspaper articles that were attached to your e-mail of September 28, 2011 and explained to you that I questioned the probative and evidentiary value to your inquiry of newspaper articles that were (a) not authored by anyone representing the CHGO, (b) did not contain any quoted material attributed to anyone representing the CHGO, and (c) were replete with factual errors. As I explained in our telephone conversation, the views expressed in the newspaper articles you provided were, without any contradiction, the views of the authors of the articles and thus were not the views of the CHGO. In that context, I must again question the probative and evidentiary value to the FEC of newspaper reporting that is not directly attributable to the Respondent in the above captioned MURs. **As the newspaper articles you provided contain both editorial comment (as opposed to substantiated facts) AND contain material misstatements of fact, utilization of these articles by the FEC in its inquiry adversely implicates the due process rights of the CHGO to a fair and unbiased administrative review of the above captioned MURs.**

In addition, during our telephone conversation, you will recall that you also indicated that your e-mail of September 28, 2011 may have deficient in explaining the context in which the newspaper articles were sent to me and you stated that you would shortly draft a follow-up letter indicating the content in which those newspaper articles were sent. That follow-up letter, which was dated October 4, 2011, asserts that the FEC is "considering" whether the conduct alleged by the DCCC (in the original complaint) and CREW (in its copy-cat complaint) in the above captioned MURs, represented the activity

of a "political committee" in violation of sections 432, 433, and 434 of the Federal Election Campaign Act of 1971 (the "FECA"). Your letter of October 4, 2011 further details that the FEC is "considering" whether the CHGO engaged in statutory violations based upon "information provided to the Federal Election Commission ("the Commission") in the complaints and responses in these matters, as well as publicly available information..." [emphasis supplied]. Since my telephone conversation with you and your follow-up letter of October 4, 2011 were focused, exclusively, on the potential use of these articles by the FEC, it would appear that the FEC has decided to place thresh-hold credence upon the truth of these articles and intends to grant these articles probative and evidentiary value in reaching a conclusion as to the validity of the assertions made in the complaints which resulted in the above captioned MURs. If that is the case, the due-process rights of the CHGO to a fair and unbiased administrative hearing by the FEC will have been abridged.

I.

Your letter of October 4, 2011 asserts that the FEC is now "providing CHGO with an opportunity to respond to these additional considerations" [emphasis supplied]. Because I am unaware of any new information, beyond the original DCCC complaint and CHGO's formal response, coming before the FEC in this matter, I must assume that the "additional considerations" referred to in your letter of October 4, 2011, are, in fact, the newspaper articles attached to your e-mail of September 28, 2011. For purposes of this letter, and without waiving any procedural rights that CHGO has to further challenge the probative and evidentiary value of these newspaper articles, I will comment on these articles under the assumption that the FEC has granted or intends to grant these articles probative and evidentiary value in its search for the factual basis underlying the DCCC complaint.

Lake Wiley Pilot, October 14, 2010, "$1 Million In Outside Money Target's S.C.'s Spratt." This article contains one (1) and only one (1) reference to the CHGO. In paragraph ten of the article, the author asserts that "the Commission on Hope, Growth, and Opportunity was founded by Scott Reed, a prominent GOP operative who ran then-Se. Bob Dole's 1996 presidential campaign. In South Carolina, the group has spent $236,715 on anti-Spratt ads." These assertions are materially false. First, whoever Mr. Reed might be in the world of politics, he was not a "founder" of the CHGO and was never a spokesman for or an official of the CHGO. The "founders" of the CHGO are three individuals listed on the application for 501c4 status filed with the Internal Revenue Service in the Spring of 2010. None of these three CHGO "founders" is an "operative" or an official of any political party or candidate committee. These three "founders" came together to create the CHGO out of a common sense that the efforts of Congress to enact measures that would have some positive or negative impact on the nation's economy needed to be explored and elucidated for the American people. Second, the issue advertising sponsored in South Carolina by the CHGO did not contain any language that could reasonably be seen as comprising an "anti-Spratt" message in an electoral sense. If our issue advertising was viewed by the author of the article through his own partisan lens as being "anti-Spratt" it was simply and exclusively a comment on the indisputable fact that Congressman Spratt's voting record in Congress on economic policy issues was completely the obverse of his public rhetoric before his constituents. The sole purpose of the issue advertisements placed in South Carolina and other states was to inform the public about the actual, not the mythical, voting record of members of Congress on economic policy issues.

Media Matters Network: Political Correction, October 13, 2010, "Astroturfing The Airways: Right-Wing Groups Have Now Aired 60,000+ TV Ads Since Aug.1" This article, by a self-described leftwing or "progressive" media commentator, contains a single reference to the CHGO, in paragraph 5, to wit: "The other big-bucks story is more complicated. The innocent-sounding Commission on Hope,

Growth and Prosperity [sic] – a 501c4 founded by GOP operative Scott Reed – has posted a startling 2,153 ads since September. We don't know how much money they spent doing it because Reed's group has yet to report a cent of spending to the FEC (a fact that led the DCCC to file a complaint last week; good luck with that). Still, we know who's feeding Reed's tongue –twisting money machine. From the horse's mouth: 'Where's the dough coming from? The big three stepping into the batter's box are the financial services industry, the energy industry, and the health insurance industry,' Reed said." This article is replete with editorial comment and contains multiple factual inaccuracies. First, as stated above, the CHGO was not "founded by Mr. Reed nor did Mr. Reed have any official role with or serve as a press spokesman for the CHGO. In fact, the quote attributed to Mr. Reed by Media Matters Action Network was (a) apparently made in the context of the much broader issue of interest group funding of Congressional campaigns in 2010 and was thus taken out of all context by Media Matters and (b) the Reed quote was not made with reference to the specific activities of the CHGO. Second, Media Matters lists the exact number (2153) of issue advertisements placed by the CHGO and goes on assert that they cannot compute the money spent to place such issue advertising since the "group has yet to report a cent of spending to the FEC." As the FEC knows from the formal CHGO response of June 1, 2011, all advertising placements made by the CHGO were fully and contemporaneously disclosed, by source and amount, to the public, via the individual station manager's log books as is required by the Federal Communications Commission. Thus if Media Matters had accessed these station manager log books to ascertain that the CHGO had placed 2153 issue advertisements, the very same station manager's log books would have identified the exact amount that the CHGO paid to place each and every one of those issue advertisements. Contrary to the editorial commentary of Media matters that "[w]e don't know how much money they spent doing it, because Reed's group has yet to report a cent to the FEC," the total amounts spent by the CHGO to purchase the time for the 2153 issue advertisements was fully disclosed to the public, as required by the Federal Communication Commission. Third, Media Matters seems to be of the belief that a 501c4 organization must disclose its activities to the FEC. Quite obviously, this is incorrect. A tax-exempt, social welfare organization operating under section 501c4 of the Internal Revenue Code, such as the CHGO, annually reports its donations received and expenditures made to the IRS on the Form 990. Lastly, Media Matters employs an out-of-context quote from Scott Reed to imply that funding for CHGO activities was derived from "the financial services industry, the energy industry, and the health insurance industry." As applied to donations received by the CHGO this assertion or implication is completely false. As the FEC knows from the formal response of the CHGO of June 1, 2011, the sole source of funding for the CHGO came from individual United States citizens. CHGO received no funding from corporations, labor organizations, political action committees, national party committees, candidate committees, trade associations, other tax-exempt entities or from foreign nationals. In fact, CHGO sought donations from interested individuals through word-of-mouth, media attention and paid advertising. Attached, as Exhibit "A," are typical CHGO solicitations, as placed in the Wall Street Journal and Investors Business Daily in September, 2010. While " the financial services industry, the energy industry and the health insurance industry" may have funded some overtly political groups, such as American Crossroads and Crossroads GPS, they did not donate one penny to CHGO.

New York Times, October 13, 2010, "Big Spending by Republican-Friendly Groups." This article contains a reference to the CHGO, in paragraph two. In it, the author asserts that "[o]n Wednesday, four Republican-friendly groups – American Crossroads, and its related advocacy group, Crossroads GPS, the American Action Network, and the Commission on Hope, Growth and Opportunity – began a 'House surge strategy,' pouring $50 million into several dozen House races." As to the CHGO, this assertion is false and cannot be substantiated. The author and her editors clearly imply that four groups, including the CHGO coordinated and agreed upon a common strategy, to wit: the so-called "house surge strategy" cited in the article, to "pour $50 million into several dozen House races." As to the CHGO, this assertion

15044380212

is false and has no basis in fact. At no time, did anyone associated with the CHGO talk to, meet with, discuss, coordinate, or strategize on any topic with anyone from American Crossroads, Crossroads GPS, or the American Action Network. The efforts of CHGO in airing issue advertisements were those of CHGO alone and no other group, committee, association, or entity coordinated any activities with CHGO. In airing its issue advertisements, the CHGO did not talk to, meet with, discuss, coordinate, or strategize with anyone associated, formally or informally, with any political party committee, candidate committee, or political action committee. Any inference to the contrary is false and cannot be substantiated.

I Watch News: "Campaign Cash: The Independent Fundraising Gold Rush since Citizens United." This article does not refer to the CHGO and thus the CHGO is unable to comment upon any of the assertions contained in this article.

WBAL-TV: Group Airing Ad Doesn't Have To Disclose Donors." This news report contains a concluding paragraph in which the CHGO is identified as a 501c4 tax-exempt organization. That assertion is correct. As the FEC knows, donations received and expenditures made by a tax-exempt 501c4 are reported annually to the IRS on Form 990. That report to the IRS also includes the name and address of all donors to the CHGO. As to the issue advertisements placed by the CHGO on station WBAL-TV, all the WBAL-TV reporter assigned to this story had to do was access the WBAL-TV station manager's daily log book to identify the sponsor of these issue advertisements and how much the airing of each such issue advertisement cost the CHGO. CHGO's airing of issue advertising on WBAL-TV was a matter of public record and fully disclosed, on a daily basis, as is required by the Federal Communication Commission.

I Watch News: "Republican Allies Pour Money Into Ads Targeting 50-60 House Races." This article is simply and quite literally a re-write of the New York Times article of October 13, 2010 and, as such, the comments of the CHGO regarding the New York Times article of October 13, 2010, above, are equally applicable to this article and need not be reiterated. This article does contain, however, at least one material misstatement of fact. In paragraph eight, this article asserts that the CHGO "is well on its way to raising $25 million for its operations since it was created this summer by GOP strategist and lobbyist Scott Reed." As stated above, Scott Reed did not "create" the CHGO and neither was he a founder of or spokesperson for the CHGO. The CHGO was "created' in March, 2010 and not during the summer of that year. As the IRS Form 990 for the fiscal year 2010 filed by the CHGO will show, our total donations were less than $4 million and the amount of donations quoted in this article, $25 million, is so far off the mark as to appear to have been the figment of the author's imagination. The author does not attribute the $25 million figure to any source and it simply is an invented number, used by the author to misinform his readers.

Daily Herald, May 23, 2011: "Secret Donors Multiply with Finances Dwarfing Watergate." This article was written by four Bloomberg News Service reporters and was distributed by the Bloomberg Wire Service. The article contains a number of references to the activities of the CHGO. In one such reference, the authors assert that the CHGO and "four other Republican-leaning groups spent at least $4.05 million attacking candidates in the run-up to the November voting, according to campaign media estimates and TV station records obtained by Bloomberg News. None of that spending can be found searching the public database of the Federal Election Commission, and the FEC spokeswoman Mary Brandenberger said the Commission has no record of it." I am confused as to this specific assertion. First, the report cites a specific figure ("$4.05 million") for the amount spending done by the named organizations and informs the reader that this specific figure was obtained from "Campaign Media

estimates and TV station records obtained by Bloomberg News." In the next sentence the reporters assert that this specific number cannot be found in the database of the FEC, leaving the clear implication that the spending was done in secret and hidden from the FEC. Assuming, arguendo, that this latter assertion is true, how then did the Campaign Media organization (which, as the FEC knows, is in the business of researching political advertising expenditures) and Bloomberg News come to ascertain the $4.05 figure cited by the authors? Where else but from the publically disclosed records of the station managers who willingly sold air time to the CHGO for its issue advertising. Either spending on such activities was disclosed to the public or it wasn't, though Bloomberg appears to feel that both assertions are simultaneously true. The article asserts that I am the CHGO's General Counsel and that I did not comment to them on this report. That is correct, I am the only media contact for the CHGO and I have made it a practice, with respect to the activities of the CHGO, not to speak with the press about my client's activities.

15044380214

II.

The CHGO is a tax-exempt social welfare organization whose sole and stated purpose is to educate the public on matters of economic policy formulation at all levels of government. The efforts of CHGO in educating the public are funded by individual United States citizens and are not coordinated with any third party. When prospective donors are approached by the CHGO, such donors are completely and thoroughly informed of the CHGO mission and are specifically informed that the CHGO will make all decisions, in its sole discretion, as to how those donations are expended in advancing the entity's stated mission. As the FEC knows from the formal response of the CHGO on June 1, 2011, donors to the CHGO were and are given no direction or control over the purposes for which their donations are expended by the CHGO and all donations are deposited into the CHGO one and only bank account and are not segregated as to any specific purpose. In fact, the CHGO expends such donations for a wide variety of purposes all of which advance the entity's stated mission of informing the public on pending or proposed economic initiatives by governmental decision makers. Attached, as Exhibit "B," are "screen-shots" of each page of the CHGO publically available website. The CHGO website has been in place since the summer of 2010 and is up-dated on a weekly basis. The web-pages of interest would be those under the headings "MEDIA, "NEWS," and "POLLING." On these three web-pages, the CHGO provides interested citizens with an updated link to a number of news articles, opinion pieces, and public opinion polling, all of which address pending or proposed economic policy matters now before Congress and/or the Administration. In addition, some donations are used by the CHGO to advertise for additional funding in newspapers of wide circulation in the business community (sne Exhibit "A" referenced above). Also, some of the donations made to the CHGO are used to finance independent macro-economic analysis by noted US academics and scholars. In that context, please see Exhibit "C," a study entitled "An Agenda to Restore American Prosperity" whose author, Daniel J. Mitchell was formerly the chief economist at the U.S. Senate Committee on Finance and is now the senior economist at the CATO Institute in Washington, D.C. Mr. Mitchell's macro-economic analysis was copyrighted by the CHGO in early 2011 and was widely distributed on Capitol Hill in January, 2011 by the CHGO to newly elected Members or Congress. The Mitchell study was also posted on the CHGO website.

III.

Your letter of October 4, 2011 offers the CHGO an opportunity to comment, not only on the newspaper articles that were attached to your earlier e-mail to me, but also upon the FEC's "consideration" of potential statutory violations. As cited in your letter, those statutory provisions include sections 432, 433, 434 of the FECA as regards the definition of a federal 'political Committee." I

understood from our telephone conversation that while such "consideration" was being made by the Office of the General Counsel, no formal recommendation has been made on that matter to the FEC by the Office of the General Counsel. I would specifically ask to be notified if my understanding of the current procedural position of these MURs is not correct. As noted above, I believe that I have made a compelling case that the articles you attached to your e-mail of September 28, 2011 were so replete with factual inaccuracies, devoid of factual analysis, and given to editorial comment and presumption that they cannot given any probative or evidentiary weight by the FEC in a determination as whether there have been any statutory violations. Notwithstanding that fact, should the FEC give these articles any probative or evidentiary weight in determining that there is reason to believe that a statutory violation has occurred, the CHGO reserves each and every due-process right it has with respect any such determination.

As to the Office of General Counsel's "consideration" of the issue of whether any statutory violations occurred as a result of any of CHGO's myriad public policy activities, it is the position of the CHGO that it was not then, is not now, and does not intend to be a "political committee" as that term is defined in the FECA. At the direction of the CHGO, I have reviewed the FEC's organic authorities with respect to the definition of a federal "political Committee." My analysis is as follows:

The FECA (at 2 USC 431(4)(A) and 431(9)(A) and the Regulations promulgated by the FEC (11 CFR 100.5 and following) define a "political committee" as any committee, club, association, or other group of persons which receives contributions aggregating in excess of $1000 or which makes expenditures aggregating in excess of $1000 during a calendar year. The terms "contribution" and "expenditure" are defined terms as well. 11 CFR 109.52 defines a "contribution" as a gift, subscription...or deposit of money...made by any person for the purpose of influencing any election for federal office. 11 CFR 100.111 defines an "expenditure" and tracks the language of 11 CFR 100.52 in that the term "expenditure" requires an individual or group to make an expenditure for the purpose of influencing any election for federal office. As you well know, federal courts have interpreted the phrase "for the purpose of influencing any election for federal office" so as to require something more than the drawing of an inference from facts or circumstances. These courts have held that to influence a federal election a person or entity must either employ language that expressly advocates the election or defeat of an identified federal candidate or employs language which in context can have no other reasonable meaning than to urge the election or defeat of an identified federal candidate. The former standard (the use of the so-called magic words) is objective (where one uses the words 'vote for' or 'vote against' or 'support' or 'defeat' in a public communication), while the latter standard is subjective (as in "it appears to us" that there is no other reasonable interpretation of the language used, thus it must be the equivalent of the so-called magic words.) In attempting to narrow the latter, subjective, standard and to give it some context in a real world setting, the courts have held that express advocacy might occur if, when taken as a whole and with limited reference to external events, such a proximity to the election, the language under review could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates because the electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning and reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidates or encourages some other kind of action.

The issue advocacy advertising aired by the CHGO did not contain any words or express advocacy. As a consequence, the FEC must apply the less rigorous and more subjective standard to determine whether the language used by the CHGO in this specific context can have no other "reasonable meaning" other than to encourage the election or defeat of an identified federal candidate.

15044380215

In employing the subjective standard, the FEC must take the issue advertisements as "a whole" and, in doing so, may make no more than limited reference to external events, such as proximity to an election. In addition, in examining the language complained of and in applying the less rigorous standard to that language, the FEC must view the language as a "reasonable person" (an ordinary citizen rather than a government regulator)might and view the "electoral portion" of the communication as being "unmistakable, unambiguous, and suggestive of only one meaning " and further, that "reasonable minds cannot differ" as to whether the language under review does, in fact, encourage action to elect or defeat a clearly identified candidate, or weather, the language encourages "some other kind of action"

As with all its efforts, the CHGO's issue advocacy advertising had one and only one purpose...to educate the public on specific macro-economic issues such as tax policy, income redistribution proposals, federal government spending, budget issues and deficit reduction proposals being offered, debated and voted upon in Washington. To prepare the text of these issue advertisements, the CHGO (a) conducted research into such macro-economic issues then pending before the committees of jurisdiction in the House and Senate and votes cast on those proposals within those committees; (b) conducted research into those macro-economic proposals that had been reported to the House and Senate by the committees of jurisdiction and the resultant floor votes on those proposals; (3) conducted research into the percentage of votes cast by Members of Congress that were aligned with or opposed to the previously-announced positions on those same legislative matters by the respective Democratic and Republican leadership organizations in the House and Senate; and (d) reviewed the public statements made by Members of Congress characterizing the floor votes they had cast on these macro-economic proposals. Our purpose in conducting this research was to (1) determine how often a Member of Congress' public statements regarding his/her position on macro-economic issues was, in reality, at odds with that Member's actual voting record, and (2) to bring such obvious hypocrisy to the attention of the public. The review by the CHGO of public polling data over the last several decades indicates that the public, more than any other fault, scorns Members of Congress who say one thing at home and vote just the opposite in Washington. Thus, our purpose was to expose such hypocrisy where it can be demonstrated from the public record.

All research conducted by the CHGO was fact-based, unbiased, and non-partisan. The CHGO conducted research into the voting records and public statements of members of Congress from both political parties. While many of the newspaper articles referred to above asserted that the CHGO was little more than a shill for the Republican Party, where the research conducted by the CHGO suggested that a Democratic Member of Congress should be praised for the consistency of his/her voting record and public statements, the CHGO reacted accordingly. For example, the CHGO aired just such a positive advocacy advertisement in Idaho, specifically praising the fiscally-sound voting record of Congressmen Walt Minnick (D – ID.). In the end, where a Member of Congress asserted that he/she was an "independent voice" and not beholden to his/her party's leadership on macro-economic votes, the CHGO deemed it appropriate to inform the public that such was not the case.

These issue advocacy advertisements did use photographs of Members of Congress these were stock, publically-available photographs and were used only as a visual means (accompanied by text) of further identifying a particular Member of Congress. These issue advocacy advertisements contained the standard "call to action" in that the concerned viewer was asked make such concern felt by a Member of Congress by calling an identified telephone number in Washington, directly. All of these issue advertisements contained a citation to a publically-available reference that supported the voting analysis highlighted by the CHGO's research. These issue advertisements contained a complete disclaimer (a) identifying the CHGO as the sponsor of the advertising, (b) describing the CHGO as a social

15044380216

welfare organization operating under section 501c4 of the Internal Revenue Code, and (c) specifically indicating that the CHGO was not a "political committee." It may be of interest to the FEC that no one in the broadcast chain of these advertisements (from the broadcaster to the viewer) expressed any concern to the CHGO that these advertisements were not factual, misleading, untrue, or unfair, except that is for the DCCC and CREW. No station manager refused to air these messages and no citizen accessed the CHGO website or called the CHGO contact telephone number to express any concern about these issue advertisements. It appears that they only citizens troubled by the intent or content of these advertisements were the DCCC and CREW.

Concluson

The CHGO's varied and well-documented public policy activities did not and do not meet the definitional test of a "political committee." All activities undertaken by the CHGO were undertaken openly and the CHGO made no effort to hide its existence. None of the activities of the CHGO were directed or controlled by its donors. None of the activities of the CHGO was coordinated with any third party. The decisions made by the CHGO as to the content or placement of its issue advertising were based upon a non-partisan, fact-based examination of the public record, uncoordinated with any third party. As a tax-exempt 501c4 organization, is required to file, with the Internal Revenue Service, an annual Form 990 return. That annual return discloses to the IRS all donations received and expenditure made, and lists, by name and address, the source of all donations received. The CHGO paid for and produced an informational website, a macro-economic analysis that was made available to the public and to Members of Congress, newspaper advertisements seeking support from the public, and broadcast issue advertising. All of these initiatives were fact-based and non-partisan. All these initiatives were fully disclaimed to the public as to their sponsorship and the tax status of the CHGO. The issue advertisements aired by the CHGO did not include any words of "express advocacy" and the text of each advertisement was carefully drafted to insure that the viewer had a clear call to action based upon the explicit voting record and public statements of a specified Member of Congress. The intent of the CHGO in airing these issue advertisements was limited to one objective: to show citizens that the voting records and public statements of Members of Congress must not be taken at face value and that when Members of Congress make false assertions about their voting records or the absence of blind party loyalty, such misinformation can be ascertained and called-out by citizens doing their own research.

Should you have any additional questions, I would be happy to respond. Lastly, I ask that the FEC dismiss these two MUR's and take no further action against the Commission on Hope, Growth and Opportunity.

Sincerely,

William B. Canfield

15044380217

EXHIBIT "A"

ESCALATING UNEMPLOYMENT

MASSIVE NATIONAL DEBT

BUDGET DEFICITS

TIRED OF THE U.S. ECONOMY FALLING BEHIND?

The Commission on Hope, Growth and Opportunity is a public welfare organization created to advance the principle that sustained and expanding economic growth is central to America's economic future and the well-being of all American families.

FIND OUT MORE.

JOIN THE CAUSE:

HopeGrowthOpportunity.com

TO LEARN MORE OR CONTRIBUTE, CONTACT:
William Canfield, Esq.
General Counsel
Commission on Hope, Growth and Opportunity
1900 M Street, Suite 600
Washington, DC 20036
202-530-3332
info@hopegrowthopportunity.com

Paid for by the Commission on Hope, Growth and Opportunity, a tax exempt, non-profit, social welfare organization, registered under Section 501c(4) of the IRS. Not a federal political committee.

INVESTORS BUSINESS DAILY – SEPTEMBER, 2010

15042580218

ESCALATING UNEMPLOYMENT

MASSIVE NATIONAL DEBT

BUDGET DEFICITS

TIRED OF THE U.S. ECONOMY FALLING BEHIND?

The Commission on Hope, Growth and Opportunity is a public welfare organization created to advance the principle that sustained and expanding economic growth is central to America's economic future and the well-being of all American families.

FIND OUT MORE.

JOIN THE CAUSE.

HopeGrowthOpportunity.com

TO LEARN MORE OR CONTRIBUTE, CONTACT:
William Canfield, Esq.
General Counsel
Commission on Hope, Growth and Opportunity
1900 M Street, Suite 600
Washington, DC 20036
202-530-3332
info@hopegrowthopportunity.com

Paid for by the Commission on Hope, Growth and Opportunity, a tax exempt, non-profit, social welfare organization, registered under Section 501c(4) of the IRS. Not a federal political committee.

WALL STREET JOURNAL - SEPTEMBER, 2010

1504438021 9

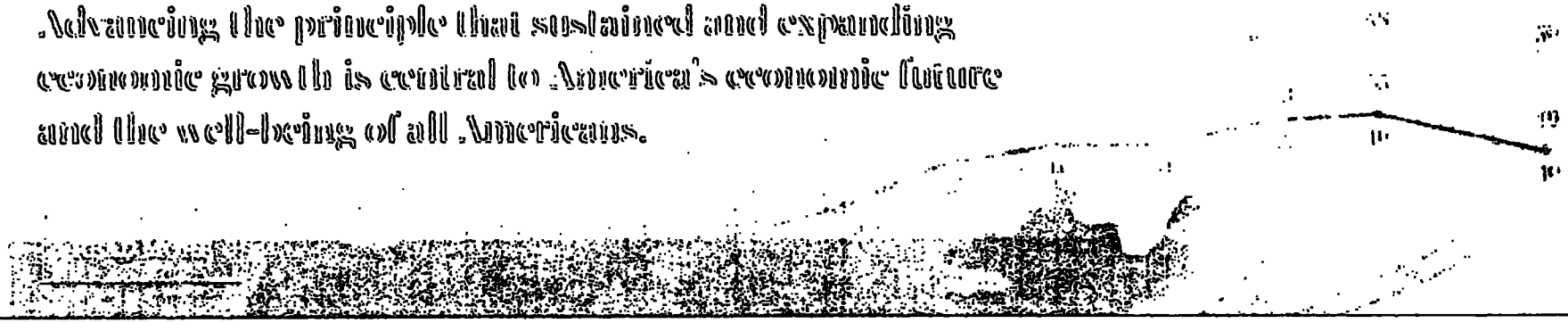
HOPE, GROWTH & OPPORTUNITY

Supporting Policies of Economic Growth and Free Enterprise

LOGIN FOR SPECIAL REPORTS

MISSION | RECENT ECONOMETRIC STUDIES | NEWS/MEDIA | ISSUE FOCUS | LATEST POLLING | CONTACT

Advancing the principle that sustained and expanding economic growth is central to America's economic future and the well-being of all Americans.



Paid for by the Commission on Hope, Growth and Opportunity, a tax exempt, non-profit, social welfare organization, registered under Section 501c(4) of the IRS. Not a federal political committee.

Commission on Hope, Growth & Opportunity | 1900 M Street, NW | Suite 600 | Washington, DC 20036 | 202-530-3332

EXHIBIT "B"

MISSION

The Commission on Hope, Growth and Opportunity (the "Commission") is a public welfare organization created to advance the principle that sustained and expanding economic growth is central to America's economic future and the well-being of all Americans.

The Commission believes and intends to inform the American public that economic expansion is necessary to America's economic future and that public policy makers must understand and make a commitment to this principle. The Commission will engage economists and other business experts to inform its understanding of the necessity for sustained economic growth and will bring the fruits of this expertise and research directly to the attention of decision makers at all levels of government. The Commission will communicate its public welfare message on the issue of sustained economic expansion to the public through all forms of mass communication, including, but not limited to, print advertising, cable television and radio messaging, as well as e-mail and direct mail communications.

The Commission will share its research and findings with public policy formulators and will encourage its supporters to communicate their views on the issues of consequence to the Commission directly with policy makers at all levels of government. The Commission will seek the commitment of these policy makers to implement statutes, rules and regulations that are consistent with free-market principles and that adhere to economic growth and expansion.

Paid for by the Commission on Hope, Growth and Opportunity, a tax exempt, non-profit, social welfare organization, registered under Section 501c(4) of the IRS. Not a federal political committee.

Econometric Studies

The Commission on Hope, Growth and Opportunity (the "Commission") is a public welfare organization created to advance the principle that sustained and expanding economic growth is central to America's economic future and the well-being of all Americans.

An Agenda to Restore American Prosperity.

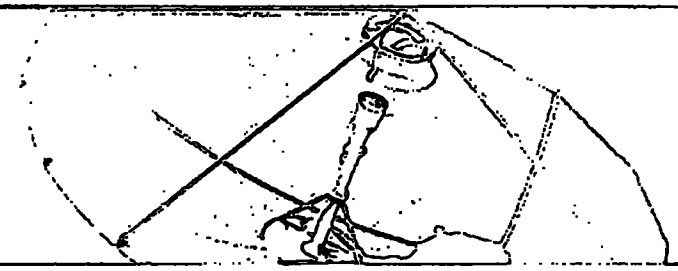
Recent Econometric Study by Dan Mitchell

The Commission believes and intends to inform the American public that economic expansion is necessary to America's economic future and that public policy makers must understand and make a commitment to this principle. The Commission will engage economists and other business experts to inform its understanding of the necessity for sustained economic growth and will bring the fruits of this expertise and research directly to the attention of decision makers at all levels of government. The Commission will communicate its public welfare message on the issue of sustained economic expansion to the public through all forms of mass communication, including, but not limited to, print advertising, cable television and radio messaging, as well as e-mail and direct mail communications.

The Commission will share its research and findings with public policy formulators and will encourage its supporters to communicate their views on the issues of consequence to the Commission directly with policy makers at all levels of government. The Commission will seek the commitment of these policy makers to implement statutes, rules and regulations that are consistent with free-market principles and that adhere to economic growth and expansion.

The Commission regularly initiates academic studies prepared by world-renowned economists and academics to

News / Media

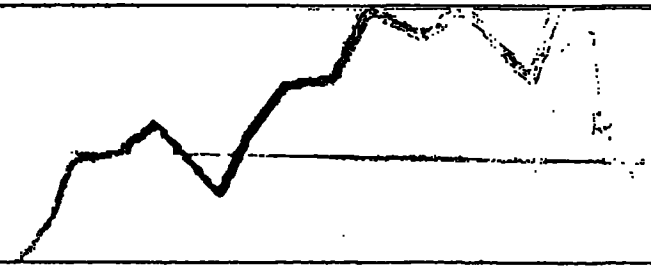


Stocks Rise on Belief Policy Makers Will Act	September 23, 2011
Private sector slowdown heightens recession fears	September 22, 2011
Foreign investment down in first half of 2011	September 20, 2011
Economic growth slides to 1 percent	August 26, 2011
Warren Buffett's Taxing the Rich Won't Solve Deficit, Says Tax Foundation	August 19, 2011
10-year Treasury yield hits record low	August 18, 2011
European crises, U.S. debt, slow global economy revive fears over banks' footing	August 18, 2011
U.S. 'dangerously close' to recession - Morgan Stanley report	August 18, 2011
Citizen Pledges	August 2011
Fed Darkens Its Outlook but Plans No Changes	June 23, 2011
Why the Jobs Situation Is Worse Than It Looks	June 20, 2011
Fitch warns U.S. on credit rating	June 21, 2011
States balance budgets with cuts, not taxes	June 15, 2011
A Slowdown for Small Businesses	June 14, 2011
Judges said to be skeptical of mandate in healthcare law	June 8, 2011
Daily economic briefings disappear from Obama's White House schedule	June 6, 2011
Bernanke faces a crucial decision as economy teeters	June 3, 2011

Issue Focus

Stimulus Has Been a Washington Job Killer	October 3, 2011
Our Economy Needs Innovation, New Ideas And Scalable Businesses	September 28, 2011
Every Job Requires an Entrepreneur	September 28, 2011
Inflation and Debt	September 22, 2011
Why the markets are giving up hope	September 7, 2011
Obama's Bad Bet on Green Energy	September 2, 2011
Don't ditch those Treasurys yet	August 30, 2011
Regulatory Cost Battle Flares Anew Between Obama, House GOP	August 31, 2011
An Entrepreneurial Fix for the U.S. Economy	August 29, 2011
A Short Primer on the National Debt	August 29, 2011
More Inflation Isn't the Answer	August 25, 2011
My Response To Buffett And Obama	August 22, 2011
Philly Fed Plunges, Stocks to Follow	August 18, 2011
Recession Warning, and the Proper Policy Response	August 8, 2011
Tax Reform's Moment?	August 5, 2011
Unknown Unknowns	July 12, 2011
An Unemployment Report That Screams Spectacular Failure	July 11, 2011

Latest Polling



Poll: What is the wealthy's 'fair share' of taxes?	September 23, 2011
The Hill Poll: Voters say Obama hurt economy, but GOP also blamed	September 12, 2011
Poll: 60% say economy getting worse	August 8, 2011
Attention to Debt Ceiling Debate Doesn't Affect Policy Views	July 13, 2011
Pessimism About National Economy Rises, Personal Financial Views Hold Steady	June 23, 2011
Poll: Americans split on debt limit	June 9, 2011
THE HILL POLL: Many voters expect to become poorer	June 6, 2011
Poll: Large majority support balanced budget amendment to Constitution	May 27, 2011
Poll: More Americans fear higher national debt than default	May 24, 2011
THE HILL POLL: Voters find recession blues difficult to shake	May 16, 2011
Americans' Economic Concerns Reach Two-Year High	May 16, 2011
Voters Want Spending Cuts and Budget Reforms Tied to Debt Limit Increase	April 26, 2011
Americans Trust Governors, Business Leaders Most on Economy	April 14, 2011
The Hill Poll: GOP seen as more reasonable in spending-cut debate	April 4, 2011
Polls: Majority of Americans believe nuclear power safe but oppose new plants	March 23, 2011
Polls: Majority of Americans believe nuclear power safe but oppose new plants	March 23, 2011

contact

Thank you for your interest....

By email:

info@hopegrowthopportunity.com

By mail:

Commission on Hope, Growth & Opportunity
William B. Canfield, General Counsel
1900 M Street, NW Suite 660
Washington, DC 20036
202-530-3332

Due to high volume of contacts, we cannot guarantee a response to all requests. Thanks.

Log In

User Name:

Password:

Remember Me Next Time.

Log In

Paid for by the Commission on Hope, Growth and Opportunity, a tax exempt, non-profit, social welfare organization, registered under Section 501c(4) of the IRS. Not a federal political committee.

Commission on Hope, Growth & Opportunity | 1900 M Street, NW | Suite 600 | Washington, DC 20036 | 202-530-3332

COMMISSION ON

HOPE, GROWTH AND OPPORTUNITY

AN AGENDA TO RESTORE AMERICAN PROSPERITY

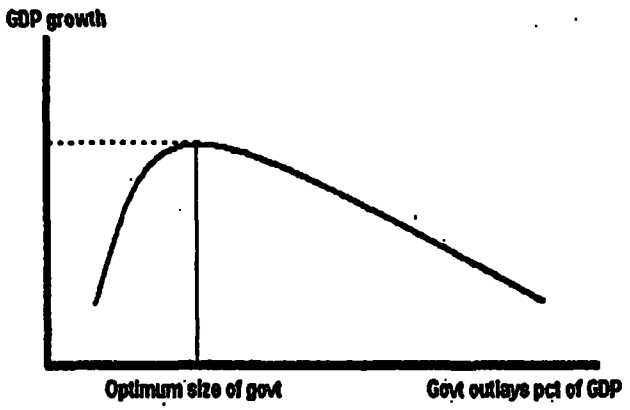
Daniel J. Mitchell

Commission on Hope, Growth & Opportunity

in a slightly different way, explaining that government spending distorts the allocation of resources by steering capital and labor to comparatively unproductive uses.

This is a general observation, though, and it is important to understand that not all forms of government spending are created equal. Some types of spending, such as outlays for a well-functioning and honest court system, often are associated with better economic performance. Spending on courts and other "public goods" helps create an environment that facilitates private sector activity.[1] That is why a modest level of government spending is associated with better economic performance, as illustrated by the Rahn Curve.

Figure 2: The Rahn Curve



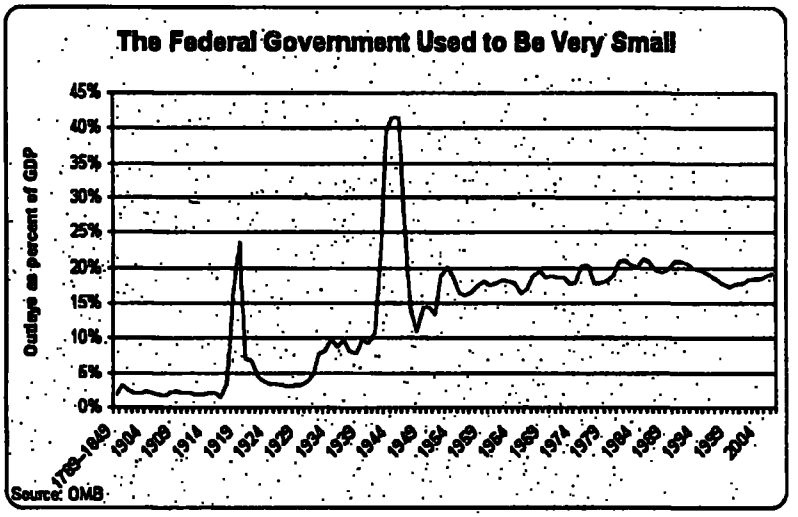
Other types of spending, for things such as highways, education, and sewer systems, can be good or bad, depending on whether politicians are making wise choices or engaging in pork-barrel vote-buying behavior. Some people say these outlays for physical capital and human capital also are examples of "public goods," but there are many examples of these services being produced privately. For purposes of this analysis, however, all that matters it that these types of spending can have a positive "rate of return" and boost economic performance, but money spent in these areas also can be inefficiently squandered.

Public goods and capital spending, however, are relatively small parts of the federal budget. Most government outlays are for purposes that unambiguously harm economic performance by misallocating resources without any offsetting benefits. Much of the federal budget is used for entitlements and redistribution – which public finance economists refer to as transfer spending and consumption spending. These are the types of outlays that represent the downward-sloping section of the Rahn Curve. More tangibly, these are the programs that have crippled so many European economies and brought nations such as Greece and Portugal to the brink of bankruptcy.

2. Excessive government spending requires destructive taxation

Taxes are the main way of financing government, so an onerous tax system is an inevitable consequence of a bloated public sector. Simply stated, if government is small, it is very difficult to have a bad tax system. But if the government is large, it is very difficult to have a good tax system.

As recently as 100 years ago, governments consumed a very small share of economic output, largely because they didn't impose entitlement and redistribution programs. Instead, governments limited their spending to genuine public goods such as national defense, and a few other activities. As a result, many nations did not need income taxes at all, and the general tax burden was very modest.



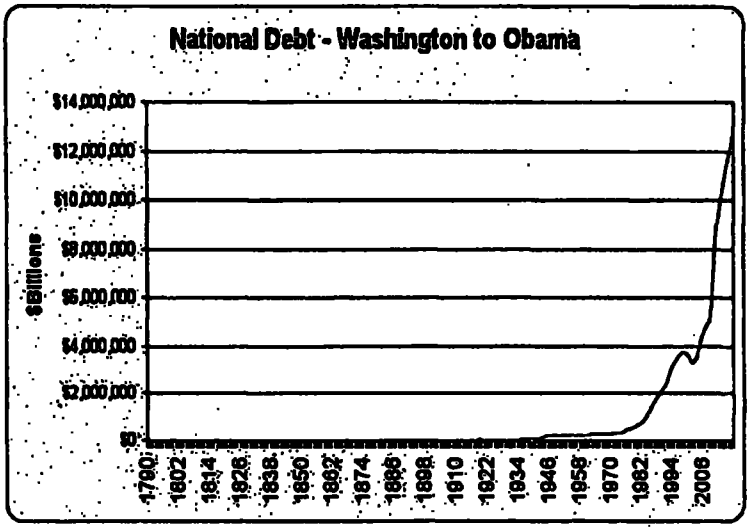
The imposition of income taxes, however, enabled politicians to engage in vote-buying behavior. This opened the door for widespread and pervasive entitlement and redistribution programs. Personal and corporate income taxes soon were augmented by payroll taxes. But even these revenue sources generally were not sufficient and the political class in most nations also has imposed a form of national sales tax known as the value-added tax.

3. Excessive government spending causes deficits and debt

Notwithstanding the huge increase in the tax burden, politicians routinely spend more money than they collect from taxpayers. This means that they have to finance a portion of their spending by borrowing from private credit markets (some nations finance excessive spending by printing money, but that is mostly a problem in the developing world).

Government borrowing is not always a bad thing. Few people would argue, for instance, that deficits were a bad thing during World War II. Defeating Nazi Germany and Imperial Japan required enormous expenditures, and it is unlikely that any tax system could have raised that amount of money.

As a general rule, however, deficits and debt are a sign that government is spending too much. And if deficits and debt are growing faster than overall economic output, this creates an ominous situation of ever-rising interest payments. At some point, as we have seen in European welfare states such as Greece, this spiral of debt, deficits, and interest payments becomes unsustainable.



It is not easy to say when debt becomes too large. The United States had a Greek-sized national debt after World War II, but that was not a barrier to growth, largely because government spending fell after the war and the economy started expanding faster than the debt. Another example is Japan, which currently has a national debt much larger than Greece (measured as a share of GDP), yet investors have considerable faith in Japan's ability to avoid default, so there is not a fiscal crisis – at least not yet.

4. Excessive government spending creates dependency

The previous items looked at macro-economic problems caused by big government. These next two sections will consider adverse micro-economic consequences of too much government spending.

A major problem in today's society is the erosion of self-reliance. Some of that problem may be cultural, but government programs almost certainly exacerbate this problem by subsidizing dependency. It is human nature that some people will follow the path of least resistance, even if that ultimately means they get mired in an unsatisfactory life of handouts and sloth.

This is not meant to imply that people always should be blamed if they wind up in dire circumstances. But it does mean that some people will coast through life and take advantage of taxpayer largesse. The challenge is figuring out a system that will help the truly downtrodden without luring able-bodied people into dependency. We know the federal government has failed in this regard, particularly when compared to the effectiveness of private charity.

5. Excessive government spending prevents efficient markets in certain sectors

Another micro-economic problem linked to big government is the tendency of government programs and activities to cause severe inefficiencies in various sectors of the economy.

One example is health care, where nearly one-half of spending is financed by government. This means that almost 50 percent of health care is consumed by people who have little concern about cost because taxpayers are footing the bill – which is known as the third-party payer problem. And even in the supposedly private portion of the health care system, government intervention further exacerbates the third-party problem, to the point where only 12 cents out of every health care dollar is paid for directly by consumers.

Higher education is another example showing how government intervention leads to higher cost and inefficiency. Federal programs to help finance college expenses made it possible for universities to boost tuition prices. This then leads to further pressure for more subsidies. Yet it is the subsidies that are to blame for the rising prices. Colleges, meanwhile, have used the extra revenue to add lots of bureaucracy, diminishing the productivity of higher education.

6. Excessive federal spending violates the Constitution

The last two items will not focus on the size of government, but instead will deal with the disadvantages of spending by a central government. The first issue is the degree to which the current size and scope of the federal government is inconsistent with the system created by America's Founding Fathers.

The U.S. Constitution was crafted to limit the power of the federal government. Indeed, Article I, Section VIII, of the Constitution lists the allowable powers of the federal government and most of the spending by the federal government is inconsistent with those enumerated powers.

For the past 70-plus years, however, the Supreme Court has ruled that there basically is no limit on the power of the federal government, so this may be a moot point. It will be interesting to see, though, what happens when the Court rules on Obamacare. That legislation, which is based on the notion that the federal government has the power to coerce Americans into buying health insurance, may finally reawaken in the Court a desire to obey the Founders and begin to restrain the power of Washington.

7. Excessive federal spending stifles diversity and innovation

Last but not least, there is a practical, non-constitutional argument for limiting the power of the federal government. When Washington imposes one-size-fits-all policies on the nation, it is very difficult to assess whether a policy is working. It took several decades, for, instance, before policy makers realized that a federal welfare entitlement was bad news for both taxpayers and poor people.

When welfare reform finally happened in the mid-1990s, the positive results were largely the result of shifting authority and responsibility to the state level. Lawmakers in the various states could try different approaches, and it was then possible for other states to copy those policies and engage in further experimentation to see what worked best.

This principle could be applied to a wide array of public policies. The decentralization of the federal government's health program for poor people, Medicaid, will be discussed in a later section of this paper. But the concept of decentralization also could be applied to transportation programs, education, and labor policy. Of course, there are some areas where it does not make sense for there to be any government involvement, such as housing, energy, and agriculture.

The mains conclusion from this section is that excessive federal spending is bad for growth and competitiveness. Moreover, the federal government tends to generate particularly poor results, suggesting that America's Founding Fathers were wise to create a system predicated on the idea that Washington would be in charge of only a limited number of tasks, such as national defense.

2. Tax increases encourage more spending

There is a debate in the academic literature about whether higher taxes lead to higher spending or whether higher spending leads to higher taxes. This "causality" debate is interesting, and Richard Vedder of the American Enterprise Institute recently estimated that every $1 of new taxes leads to $1.17 of new spending.[2]

But it doesn't matter which way the causality runs. Higher taxes are bad if they cause more spending, and higher taxes are bad if they are the result of more spending. In either case, the spending is only feasible if taxes are increased. This is because there is a limit to how much red ink politicians are willing to accept, and it doesn't matter whether the limit on deficits and debt is because of political concerns or economic concerns.

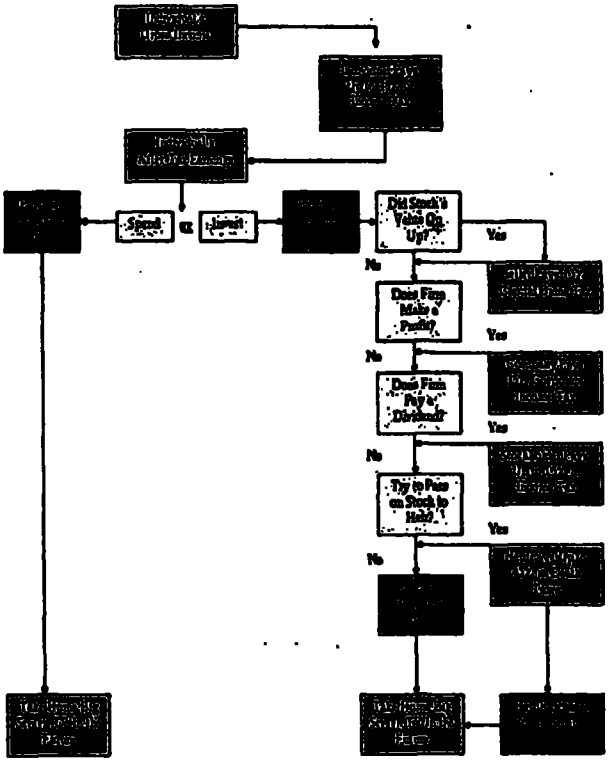
In other words, Milton Friedman was right in the 1990s when he warned that "In the long run government will spend whatever the tax system will raise, plus as much more as it can get away with." If the political system is willing to tolerate long-run deficits of, say, 5 percent of GDP, then higher taxes simply result in politicians spending more money and long-run deficits of the same amount.

3. Tax increases harm economic performance.

If taxes are increased, that almost surely will have a negative impact on economic performance. In part, this is because higher taxes facilitate higher spending and divert resources from the productive sector of the economy. But higher taxes also discourage growth by penalizing productive behavior.

Not all taxes, however, are created equal. Some types of taxes (just as is the case with spending, as discussed in the previous section) do more damage than others. The amount of harm is largely dependent on what is being taxed and the sensitivity of the taxpayer. Higher tax rates on production and wealth creation, for instance, presumably do more damage – per dollar raised – than higher tax rates on consumption.

Likewise, higher tax rates on saving and investment probably do more damage than higher tax rates on working. This is because saving and (especially) investment are more sensitive to after-tax rates of return. In non-economic language, this simply means that people are more likely to reduce their saving and investment in response to higher tax rates than they are to reduce the amount that they work.

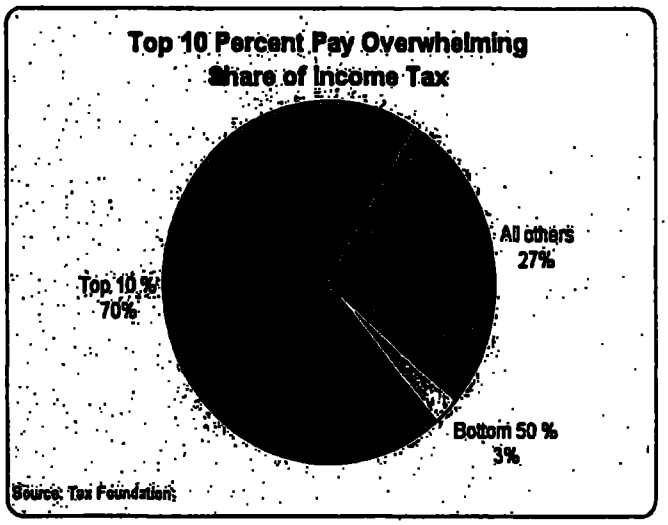


But there are always exceptions. Some taxpayers, particularly those with higher incomes or small business owners, have considerable discretion over how much income they earn – and report – to the government. So they are more likely to change their behavior in response to tax rate changes than workers who get wage and salary income and presumably have less control over their income.

4. Tax increases foment social discord

Politicians use taxation to create enmity among different groups. In large part, this is a tactic they use to grab more money, not because they actually want to divide the American people.

The most obvious example is the use of class warfare tax policy. When politicians want more money, they almost always publicize proposals to "soak the rich." The only problem (from the perspective of politicians) is that there are not nearly enough rich people to finance big government. Moreover, the top 10 percent of taxpayers already pay the lion's share of the tax burden, and further increases in the tax burden on these people would probably be futile since they would simply choose to earn less money or put more of their assets into tax shelters and other loopholes.



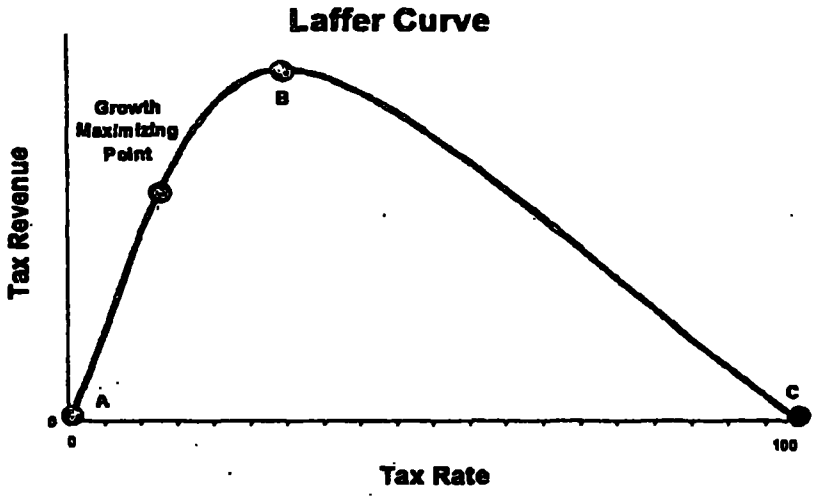
This is why the middle class is the ultimate target. That's where the big money is to finance more spending. But in order to weaken the opposition of average Americans, the politicians pretend that they will impose even bigger tax increases on upper-income taxpayers.

The introduction of the income tax is a good example. When it was first implemented in 1913, the top rate was only 7 percent and it applied to less than 1 percent of the population. Politicians at the time said it was a way to tax the rich. Over time, of course, it became a way to tax everybody.

5. Tax increases almost never raise as much revenue as projected

Even if politicians were not prone to spend additional revenue, tax increases would not be an effective way of reducing deficits because they rarely raise as much money as politicians expect. Simply stated, taxpayers change their behavior in ways that reduce the amount of tax they pay.

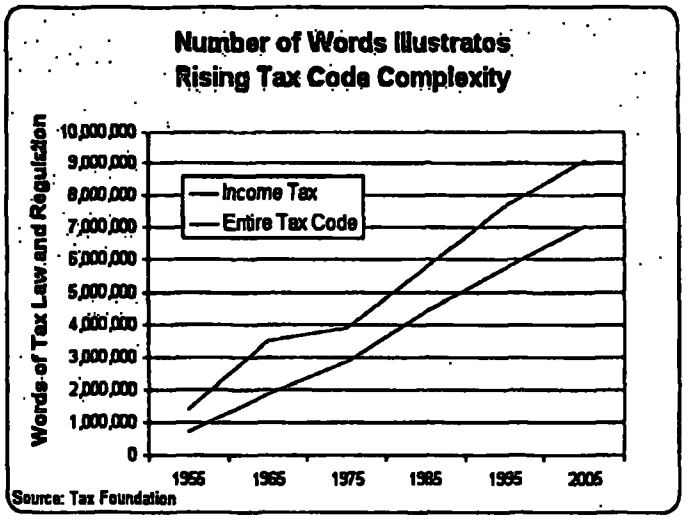
This is the "Laffer Curve" issue, though it is important to understand that this does not mean that "tax cuts pay for themselves" or that "higher tax rates lose revenue," as some politicians claim. The Laffer Curve is simply the insight that changes in tax rates lead to changes in behavior that increase or decrease the tax base. This affects the amount of tax paid, though it is only in very rare circumstances the tax base is altered by enough to completely offset the effect of the change in the tax rate.



In more straightforward, non-economic language, this simply means that if politicians double a tax rate and think they will get twice as much money, they are sorely mistaken. People will respond by using loopholes or changing the way they earn income (these are "microeconomic effects"). Or people will respond by choosing to working less, saving less, and/or investing less (what are called "macroeconomic effects"). The crowd in Washington will still get more money, but not nearly as much as they expect.

6. Tax increases encourage more loopholes.

Whenever tax rates increase, that means that there is a corresponding increase in the demand for deductions, credits, exemptions, shelters, preferences, and other loopholes. This is because tax breaks are more valuable when tax rates are high, and a simple example from the 1980s shows this one-to-one relationship. When Ronald Reagan was inaugurated, the top tax rate was an astronomical 70 percent. This meant that "rich" taxpayers saved 70 cents for every $1 of deductions they found. By 1980, however, the top tax rate was down to 28 percent, which meant that a $1 tax loophole was only worth 28 cents.



An alternative way of looking at this issue is to consider a taxpayer's incentives. If you only get to keep 30 cents of every $1 you earn, then loopholes that reduce your taxable income are very valuable. But if you get to 72 cents of every $1 you earn, then you have much less reason to search for special tax breaks.

Another argument is that tax loopholes require taxpayers use at least some portion of their income in ways that are not efficient. This distorts the allocation of resources in the economy and undermines economic performance. This may sound like economic jargon, but even small differences in growth rates can have enormous implications for living standards after 20-30 years.

7. Tax increases undermine competitiveness

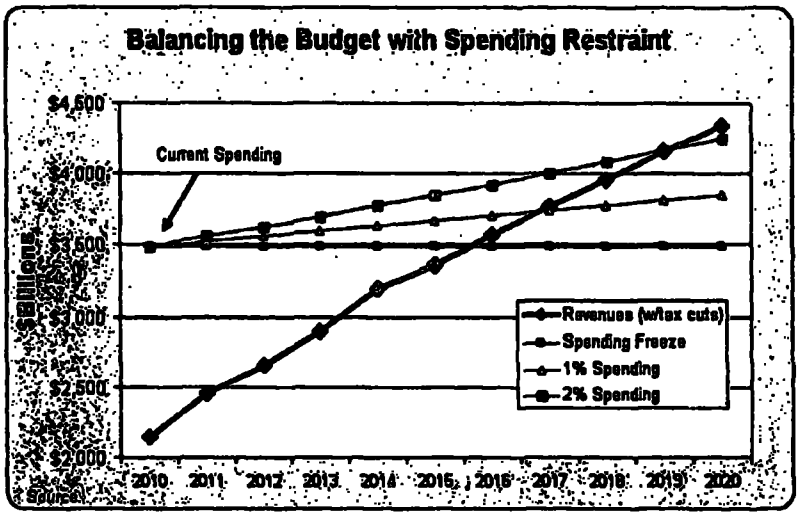
Globalization has changed the economic landscape. Jobs and investment now how much greater ability to move across borders and one of the determining factors is tax rates. Simply stated, investors, producers, and entrepreneurs care about both earning money *and* being able to keep the fruits of their labor. As economists would say, they care about the post-tax rate of return on their efforts more than the pre-tax rate of return.

Globalization has led to dramatic tax competition around the world. Top personal income tax rates in the industrialized world averaged more than 67 percent back in 1980. But because nations now compete with each other, the average top tax rate is about 25 percentage points lower. The same is true of corporate tax rates, which have dropped from about 48 percent in 1980 to less than 25 percent today.

Unfortunately, America is beginning to fall behind in the race to attract jobs, investment, and entrepreneurship. The Reagan tax rate reductions put the United States in a relatively strong position, but policy has moved in the wrong direction over the past 20 years. Income tax rates are higher, the corporate tax rate is higher, and the tax code certainly is more complex and burdensome.

Raising tax rates would exacerbate the challenges of competing in a global economy. Class warfare taxes on "big business" and the "rich" are particularly destructive since it is much easier for companies and upper-income taxpayers to reorganize their operations and investments to escape punitive taxation.

The argument against higher taxes is powerful. Giving more money to government, in the words of humorist P.J. O'Rourke, would be like giving whiskey and car keys to teenage boys. Politicians would increase spending and America would lose jobs and investment. That's a bad outcome.



As the chart illustrates, if spending is simply capped at the current level with a hard freeze, the budget is balanced by 2016. If we limit spending growth to 1 percent each year, the budget is balanced in 2017. And if we allow 2 percent annual spending growth – letting the budget keep pace with inflation, the budget balances in 2020.

Let's look at a real example. From 1994-1998, total spending grew by an average of 2.9 percent annually, and this modest bit of fiscal restraint led to a budget surplus. The deficit is much bigger today, so it would take a bit longer to reach fiscal balance, but the deficit would fall to just 1.3 percent of GDP by 2020 if politicians today were as prudent as they were in the mid-1990s.

So here's the bottom line. Balancing the budget is not difficult. Getting rid of red ink is easily achievable with modest levels of fiscal restraint. Obviously, we can – and should – do much more than simply limit the growth of federal spending. But remember, we're simply debunking the assertion that it is impossible to balance the budget without tax increases. Indeed, we're showing that the budget can be balanced while making all the tax cuts permanent and also indexing the alternative minimum tax.

But if it's so simple, why is there so much rhetoric in Washington about it being impossible? How many times have you seen stories – or heard politicians say – that we would need trillions of dollars of spending cuts to balance the budget? Yet we just looked at CBO numbers showing that we could balance the budget relatively quickly by limiting spending growth.

This disconnect is the result of something called the "current services" or "baseline" budget. The politicians in Washington put together budgets by first assuming that all previously planned spending increases should occur. Sort of like leaving fiscal policy on auto-pilot. And if somehow spending does not grow as fast as they planned, they get to say that spending has been cut.

That's sort of like assuming you're going to get a 10 percent pay hike and when your boss gives you a 4 percent pay hike, you start crying and complaining because your pay was cut by 6 percent. Sounds absurd, but that's how the budget works in the strange world of Washington.

The politicians set up this dishonest system so they could have their cake and eat it too. They get to give more money to the special interest groups while simultaneously telling voters that they're cutting spending. They love this scam, but this is one of the reasons why America is in a fiscal ditch.

Restoring fiscal discipline will not be easy. Interest groups that are used to big budget increases will be upset if spending growth is limited to 1 percent of 2 percent each year. It means entitlements will need to be reformed. It means – at least hopefully – that we get rid of programs and departments that are not legitimate functions of the federal government. You better believe that these changes will cause a lot of squealing by the lobbyists and other insiders. But all that complaining will be a sign that fiscal policy is finally heading in the right direction.

The key thing to understand is that there is no need for tax increases. Politicians might not balance the budget if we say no to all tax increases. But the experience in Europe shows that oppressive tax burdens are not a recipe for fiscal balance either. Milton Friedman was correct many years ago, when he warned that, "In the long run government will spend whatever the tax system will raise, plus as much more as it can get away with." That's why spending restraint is the only effective – and certainly the only pro-growth – way of balancing the budget.

Federalism

Recognizing that excessive spending and punitive taxation harm growth and undermine competitiveness provides a good foundation. It's also good to understand that a modest degree of spending restraint is a very effective way of reducing the burden of the public sector and that this also is a simple way to balance the budget.

But it is important to take the next step and figure out an approach to actually impose that spending restraint. Federalism can play a key role in this effort. In the context of fiscal policy, this is the notion that a big share of the spending in Washington is for things that are not proper functions of the federal government. Simply stated, the budget problem would disappear if politicians adopted a rule that the federal government would only fund things that could not be accomplished by state government, local government, or the private sector.

Fiscal federalism suggests a dramatic downsizing of the federal government. This list shows some of the cabinet departments that would be eliminated. Some involve things that should be handled by state and local governments, such as the Department of Education and Department of Transportation. Some involve things that belong in the private sector, such as the Department of Agriculture and Department of Housing and Urban Development. And some involve things that should be dramatically transformed, as will be discussed in subsequent sections about Social Security, Medicare, and Medicaid.

Department of Agriculture
Department of Commerce
Department of Labor
Department of Health and Human Services
Department of Housing and Urban Development
Department of Transportation
Department of Energy
Department of Education

This is just a partial list, and doesn't include agencies, bureaus, commissions, and other federal entities. And it doesn't mention departments that may include legitimate functions of the federal government, but easily could be merged, such as the Departments of Defense and Veterans Affairs, or Homeland Security and Justice.

The potential savings can be seen in a study by a Scandinavian economist for the Center for Freedom and Prosperity.[3] As part of a study on the growth-maximizing level of the public sector, Dr. Sven Larson estimated that the federal government would be almost 75 percent smaller than it is today if politicians had not expanded the scope of the federal government over the past 100-plus years.

Ronald Reagan actually tried to take a modest step in this direction a couple of decades ago. During his 1976 campaign for the Republican presidential nomination, he made a sweeping proposal to shift many programs to the

state and local level. He failed in that race, but once he became president in 1981, he had some success in shrinking many programs that were not appropriate functions of the federal government. But only a tiny handful of programs actually were abolished, and federalism arguments did not play a big role in fiscal policy debates.

There was an effort to resuscitate federalism when Jim Miller took over as Director of the Office of Management and Budget. The 1987 budget began with a "Budget Message of the President" making a strong case for federalism.[4] For all intents and purposes, President Reagan set up an algorithm to determine whether federal spending was appropriate in a particular area. He asked lawmakers to make fiscal decisions based on several principles, including "The government should not compete with the private sector" and "Many services can be provided better by state and local governments."

Congress didn't embrace Reagan's proposals, to put it mildly. But the President's commitment to good fiscal policy paid dividends. Government spending in 1987 wound up being only $14 billion higher than it was in 1986. Total outlays increased by only 1.4 percent (by comparison, spending grew by an average of 8.3 percent each year during the Bush Administration). Not surprisingly, fiscal restraint translated into less red ink. The budget deficit dropped from more than $220 billion to less than $150 billion, a reduction of close to one-third in the deficit (akin to reducing last year's deficit by about $500 billion). A federalism agenda could yield similarly dramatic results today.

But one thing that clearly should be stated is that federalism is not the same as states' rights. Simply stated, states have power, but people have rights. Indeed, some people (thankfully in the past) used states' rights as an argument for letting state governments oppress citizens. Federalism, by contrast, simply means a decentralization of activities from Washington, but does not dilute in any way the protection of individual rights guaranteed by the Constitution.

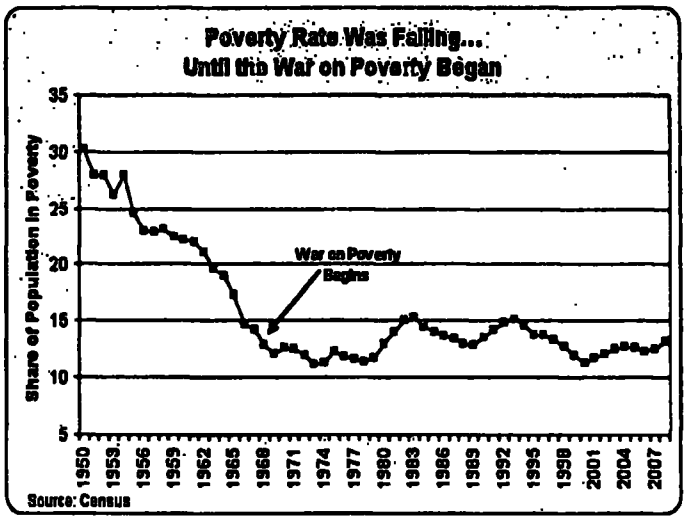
1504438024 0

But this probably has very little to do with the geographic proximity of voters and lawmakers. Instead, it is a matter of incentives. The "tragedy of the commons" problem is rather modest at the local level because even the politicians generally understand the consequences of harming their own communities. State politicians have more ability to engage in misguided behavior, but even they are constrained by the knowledge that people and businesses can escape to states with better policy.

4. Monopoly vs diversity argument – When the federal government takes responsibility for something, this necessarily means a one-size-fits-all approach. But is there any reason to think that the politicians in Washington have the right ideas about local transit systems? Does the crowd in Washington have smarter ideas about running local schools? Do Washington insiders really have the best ideas about local health-care issues? The answer to all these questions surely is a resounding no, and this doesn't even address the issue of whether special interest groups will figure out how to divert money to their own pockets.

With federalism, by contrast, states get to choose different approaches. So why might this mean better policy? The answer has nothing to do with naïve assumptions about state and local politicians being smarter or more honest. Instead, we can expect better policies because the various states will try different approaches and this diversity will reveal what works best. And state and local governments that aren't doing the right thing will have an incentive to copy better policy. But this assertion doesn't depend on the overly optimistic assumption that lawmakers want to do the right thing. Instead, one of the good things about federalism is that people and businesses can cross borders, so jurisdictions have to compete with each other to retain jobs and investment.

5. Welfare reform – A powerful example of why federalism is a good idea comes from the field of welfare policy. The politicians in Washington adopted an entitlement program supposedly designed to protect poor people – particularly mothers and children – from poverty. Many of the sponsors probably had good intentions, but this entitlement eventually morphed into an expensive system of handouts that trapped people in poverty and subsidized unwed motherhood.



Fixing the program from Washington seemed impossible. Lawmakers were reluctant to cut benefits because they didn't want to appear heartless, yet many of them had begun to realize the old approach was hurting the people it was designed to help. This problem was solved, however, when policy makers in the 1990s took a radically new approach and devolved the program back to the states. States were given funds (called "block grants"), but otherwise had fairly wide latitude to experiment with policies to reduce dependency.

of fiscal reform. But restraining the size of the federal government will only be possible unless lawmakers figure out how to curtail the entitlement state.

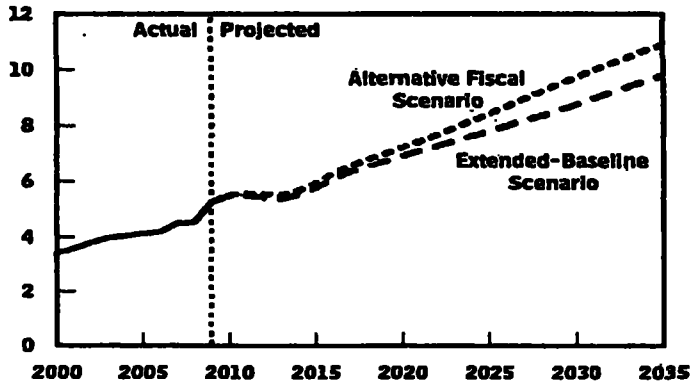
Entitlements technically are government programs that are "permanently appropriated," but the more relevant definition is that these programs automatically give money to people meeting certain eligibility requirements (over age 65, income below a certain level, etc). An entitlement gives the beneficiary a "right" to money taken from taxpayers, or to services financed by taxpayers.

Entitlements now consume nearly 60 percent of the federal budget, which is about a 100 percent increase over the past 50 years.[8] But the really shocking number is that total entitlement spending has jumped in that period from $185 billion to more than $2 trillion.[9] And those are inflation-adjusted numbers!

Those numbers are sobering, but the estimates of future spending show the problem will get even worse. The big problem is spending for healthcare entitlements. Here is a chart from the Congressional Budget Office's analysis of the long-run budgetary outlook.[10] Both the optimistic and pessimistic estimates show that federal spending on Medicare, Medicaid, Obamacare, and other programs will consume twice as much of the nation's economic output in just 25 years.

Mandatory Federal Spending on Health Care Under CBO's Long-Term Budget Scenarios

(Percentage of gross domestic product)



Source: Congressional Budget Office.

There's not enough space to analyze all of the entitlement programs, so the next three sections will discuss Social Security, Medicare, and Medicaid. Each section will briefly explain how and why these programs are unsustainable and also discuss reforms that will be good for taxpayers, good for recipients, and good for the economy..

There's another equally unpalatable choice. As a candidate, President Obama proposed to extend the payroll tax to income above $107,000. This choice would be equally debilitating, particularly since it would mean a very large marginal tax rate increase on investors, entrepreneurs, and small business owners.

Spending Restraint

The second approach is spending restraint, and there are three main choices within this category. Lawmakers can adjust the cost-of-living-adjustments (COLAs), either as a one-time measure or a permanent adjustment. This saves money right away, and could generate long-term savings if there is a permanent change in the COLA.

Another choice is to tinker with the formula that determines the benefit people get when they retire. There is a proposal to replace "wage indexing" with "price indexing." This sounds complicated, but it basically means that the initial benefit people receive in the future will not be as high as promised under current law. Future seniors, though, would get benefits at least equal to current seniors. This save money in the future.

The final choice is some sort of means-testing, which would deny benefits to retirees with income above a certain level. This tends to be popular, and would save money today and in the future, but lawmakers should be aware that it would impose an implicit tax increase on people who save and invest during their working years. After all, any earning they get from their nest egg will result in a lower Social Security benefit.

Personal Retirement Accounts

The final approach is fundamental reform, and we'll spend more time on this option since it is a bit more complicated, at least with regards to some of the details. Advocates of personal accounts often point to the Catch-22 of Social Security. Raising taxes and cutting benefits would help the program's finances, but only by making workers pay more to get less. Sort of like selling someone a hamburger but charging them for a steak. By contrast, cutting taxes and raising benefits would make Social Security a better deal for workers but it would drive the program into the red that much quicker.

Perhaps this is why so many countries around the world, facing the same demographic trends and fiscal problems as America, have responded by reforming their old-age programs with personal retirement accounts. This modernization allows policy-makers to escape the Catch-22. Younger workers forego the miserly benefits promised by government-run retirement schemes in exchange for the chance to invest a portion of their taxes privately. This saves the government money in the long run while allowing workers to amass greater retirement wealth.

There are six things you need to know about Social Security and the case for personal accounts.

1. Social Security is broke. This is a simple matter of mathematics and demographics. It's good news that we're living longer, but it means that ponzi schemes are doomed to fail. Future deficits will make our current mess seem trivial by comparison.

   - In 1950, 16 workers supported each Social Security recipient. Now there are barely three workers per recipient, and by 2030 the ratio will fall to two per beneficiary.

- Investment returns over a 40 to 45-year working life will be far higher than the paltry – or even negative – returns now promised by Social Security.

- Current retirees and older workers would stay with the current system.

5. Personal accounts would boost economic performance. The slide shows some of the reasons we'll get faster growth, which is exactly what one would expect if you replace a tax-and-transfer entitlement scheme with private savings and wealth accumulation.

   - Replacing a tax with personal savings will increase incentives for employment.

   - Personal retirement accounts mean more national savings.

   - Reforms reduces the long-run burden of government spending, freeing up resources for the productive sector of the economy.

6. Privatization is sweeping the globe. The slide on the screen shows nations with personal accounts. Chile and Australia deserve special attention because they have full privatization and their systems have been in place for 20-30 years. Not surprisingly, they're getting great results.

   - Fully or partially privatized systems exist in more than 30 nations, including Great Britain, Chile, Australia, Singapore, Mexico, Peru, Italy, Colombia, Sweden, Hong Kong, Poland, Switzerland, and the Cayman Islands.

   - Chile's system has been in place about 30 years. When first created and workers were given an option, more than 90 percent of workers choose the private savings alternative.

   - Australia has had personal retirement accounts for more than 20 years.

If all this sounds too good to be true, there is a catch. Social Security is a pay-as-you-go system, which means that taxes from today's workers are used to pay benefits to today's retirees. So if we allow younger workers to shift their payroll taxes to personal accounts, what do we use to pay benefits? Since nobody wants to pull out the rug from older workers or current retirees, we need to come up with money – a lot of money – to fulfill those promises. We're talking trillions of dollars.

But this isn't an argument against personal accounts. The transition cost of personal accounts is considerably less than the transition cost of fixing Social Security. In other words, we're in a deep hole, but it's easier to get out of the hole if we move to personal retirement accounts.

Privatization, however, is about more than numbers. Personal retirement accounts mean individual responsibility. They mean passing wealth from one generation to the next. Individual accounts mean more economic vitality. They mean saving our children and grandchildren from a future of debt. And they mean we can be free of depending on the crowd in Washington for our retirement.

Modernize Medicare with Vouchers

Medicare is a federal government entitlement program that funds healthcare for the elderly. It has three large, separate parts for hospitals, physicians, and prescription drugs. The annual budget for the program is now approaching $600 billion, and it is expected to continue rapidly growing to more than $900 billion by 2020.[11] This represents a staggering increase for a program that didn't even begin imposing costs on taxpayers until 1967.[12]

Trailing only national defense and Social Security, Medicare is the third biggest program in the federal budget. The fiscal burden of the program is greater than the combined cost of federal spending on education, environment, transportation, veterans, commerce, employment, social services, and energy.[13] This chart from the Domenici-Rivlin Debt Reduction Task Force illustrates the problem.[14]

Unfortunately, this is not a good description of the American health care system, both before and after Obamacare. Thanks to government policies, an overwhelming share of health care expenses in America are paid for by someone other than the consumer - what is known as the "third-party payer" problem. And when consumers are spending someone else's money, market forces are not very effective.

It's worth noting that in the few areas of the American health care system where a free market forces still operate – things such as cosmetic surgery and laser eye surgery, we find much better results.

All of this means we have two Medicare problems. The first problem is the program's fiscal burden, and the second problem is that market forces are being short-circuited by the government. Fortunately, there is a single solution that addresses both problems. The goal should be to replace the federal entitlement with a voucher that can be used to purchase insuranee. Sometimes called a premium-support plan, this approach could save money since the voucher could be set at an affordable level. And it would help restore a free market in health care by putting consumers back in charge of their healthcare spending and healthcare choices.

The idea already is gaining attention among reformers and policy makers. Congressman Paul Ryan (R-WI), Chairman of the House Budget Committee, has produced a "Roadmap" plan including this reform. And this proposal also is part of a broader entitlement reform plan he put together with Alice Rivlin, who served as Director of the Office of Management and Budget during the Clinton Administration. Here's a brief description of their proposal from the Congressional Budget Office.

> People who turn 65 in 2021 or later years would not enroll in the current Medicare program but instead would receive a voucher with which to purchase private health insurance. ...the amount of the voucher would be calculated by taking the average federal cost per Medicare enrollee in 2012 (net of enrollee premiums) and growing that amount at the annual rate of growth in GDP per capita plus one percentage point.[16]

There's a bit of jargon in that passage, but the key takeaway is that overall spending would be constrained by the GDP formula. John Goodman of the National Center for Policy Analysis has a more straightforward description that adds a few more details.

> Medicare would, for the first time, be transformed into rational insurance. Beginning in 2013, all enrollees would be protected by a $6,000 cap on out-of-pocket expenses; in return they would pay for more small expenses on their own. After a decade, people newly eligible for Medicare would receive a voucher to purchase private insurance instead. The value of the voucher would grow at the rate of growth of *GDP plus 1%* (note: for the past four decades, health care spending per capita nationwide has been growing at about *GDP growth plus 2%*). [17]

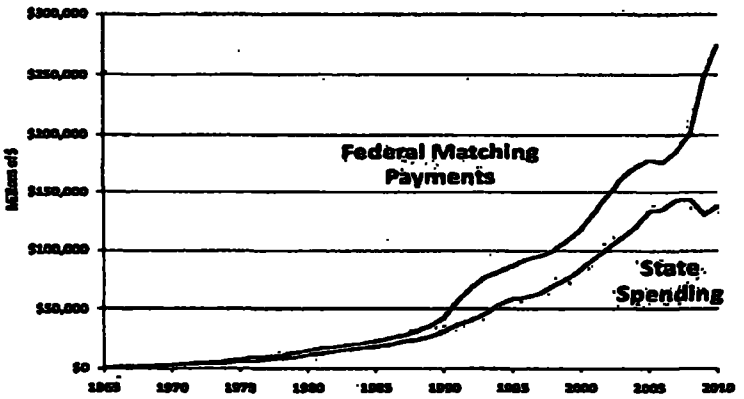
In the absence of reform, Medicare spending will drive America into a fiscal crisis. And even if some magical source of tax revenue rained down from Heaven, Medicare still would need to be reformed because of the detrimental impact it has on the functioning of healthcare markets. A premium-support plan, such as vouchers, would be good for taxpayers, good for seniors, and good for the healthcare system.

Reap the Benefits of Federalism by Block Granting Medicaid

Medicaid is a federal government entitlement program that funds healthcare for the poor, though perhaps it would be more accurate to say that it funds healthcare for the poor as well as a substantial share of nursing home costs for the elderly.

Annual spending, which is split between Washington and the states, is now more than $450 billion, as seen in the chart from the Domenici-Rivlin Task Force report. This is a shocking figure considering Medicaid at first cost less than $1 billion and supposedly was never going to be a significant item in the budget.[18]

Growth in Federal and State Spending on Medicaid, 1966-2009



But $450 billion is just the tip of the iceberg.[19] The Department of Health and Human Services projects that the annual budget for Medicaid will consume about $900 billion in less than 10 years, with $542 billion of that amount coming out of the federal budget.[20] And the long-run numbers are even more frightening.

But this is just the direct budgetary cost. There are several indirect costs that should be added to list, each of which has important consequences. They are addressed in considerable detail in a comprehensive study by the Cato Institute's Michael Cannon, but here is an abbreviated description of some of those costs.[21]

Trapping people in poverty – Medicaid subsidies are very significant, but they are only available to people with income or assets below a certain level. This creates a significant impediment, equivalent to a steep marginal tax rate, for people who want to climb the economic ladder. Taking a job or earning more income may not be attractive, though, if they lose government-provided healthcare worth thousands of dollars.

Reducing saving – The Medicaid program discourages some people from accumulating assets because there are some eligibility requirements based on people's wealth. This makes sense from a fiscal perspective because taxpayers shouldn't be paying for services when a recipient has a nest egg. But it does economic damage because many people deliberately reduce their savings or avoid building wealth in order to become eligible for the government largesse.

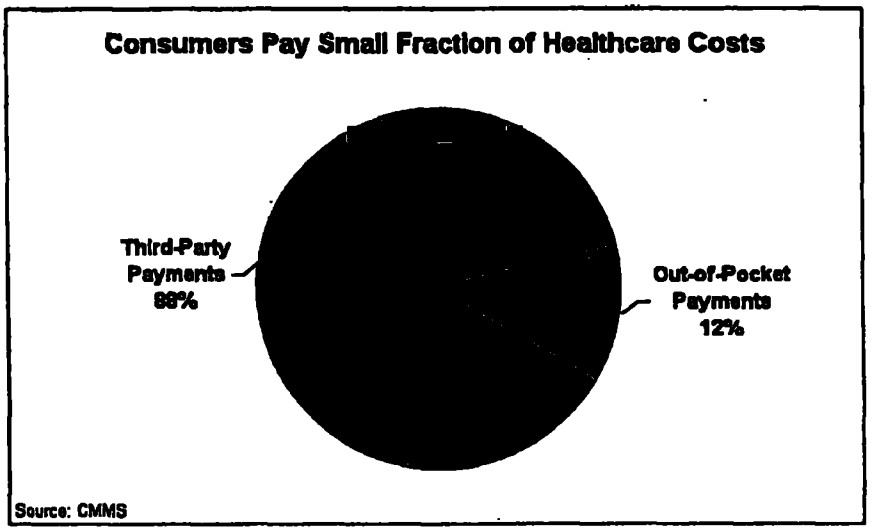
Crowding out private charity and non-profit care – There have always been poor people. Indeed, a huge share of the population 50 years ago or 100 years ago lived below what would be considered the poverty line today. Yet many of them received health care through charities and non-profit organizations created specifically for those purposes. These genuinely noble efforts, though, have largely been pushed out of existence because of government intervention.

Third-party payer – The biggest indirect cost is the impact of Medicaid on the functioning of the health care system. As discussed in the Medicare section, government intervention in the healthcare system has crippled the normal functioning of the price system. Third-party payer is pervasive, with consumers directly paying only 12 cents of every dollar of healthcare they consume. Much of the problem is driven by programs such as Medicaid, which cripple incentives for intelligent healthcare choices for entire segments of the population

So what should be done? Is there a way to fix a program that is a growing burden for taxpayers and also has other negative effects? The answer is to copy the success of welfare reform and turn the Medicaid entitlement into a block grant. As Michael Cannon succinctly explains:

> Congress should: (1) cap federal Medicaid spending, (2) block grant federal funds to the states, and (3) allow states full flexibility to define eligibility and benefits under their Medicaid programs. States should use that flexibility to target Medicaid assistance to the truly needy, reduce dependence, reduce crowd-out of private effort, and promote competitive private markets for medical care and insurance.[22]

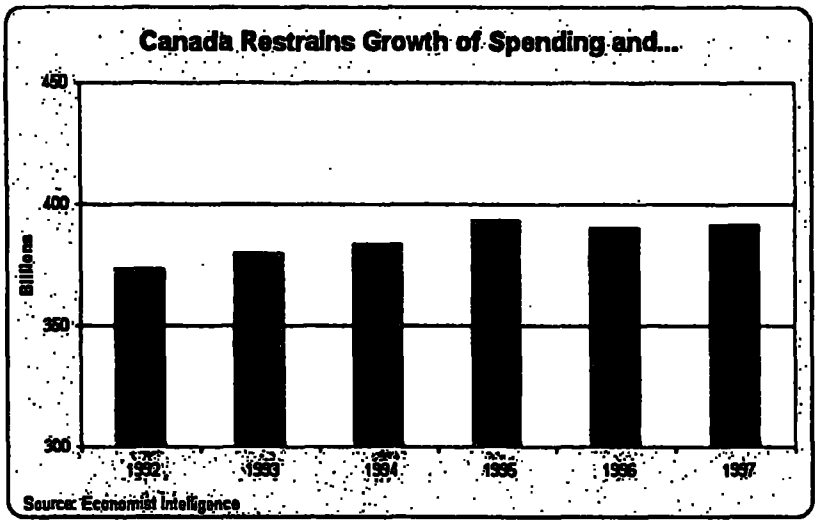
Medicaid reform would completely reverse the bizarre incentives that make the program, as currently structured, so dysfunctional. Under current law, Medicaid is a matching program so politicians at both the federal and state level have an incentive to expand benefits and beneficiaries since they can dole out a $1 of benefits and only be responsible for a portion of the cost. A block grant system, by contrast, give state politicians the authority and responsibility of deciding how best to allocate the health care dollars provided by the federal government. States could choose, of course, to spend even more.



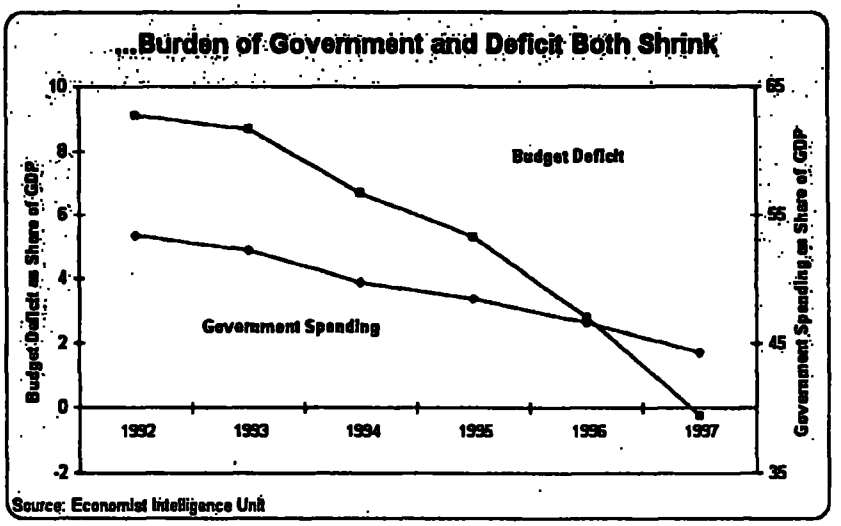
The good news is that some lawmakers and some responsible left-leaning policy experts are embracing this kind of approach. Congressman Paul Ryan (R-WI), the Chairman of the House Budget Committee, has teamed up with Alice Rivlin, who served as Director of the Office of Management and Budget for Bill Clinton, to offer a block grant proposal. Here is a very simplified description of the plan's basic approach.

> Starting in 2013, the federal share of all Medicaid payments would be converted into a block grant to be allocated among the states. The total block grant would increase annually along with currently projected growth in the Medicaid population and with growth in GDP per capita plus one percentage point.[23]

The Ryan-Rivlin formula is probably overly generous. Ideally, the block grant should be capped and then slowly phased out so that the program becomes solely a state responsibility. But compared to current law, which allows spending to grow much faster, the Ryan-Rivlin proposal would generate significant budgetary savings. Equally important, it would begin the important process of restoring market forces to the healthcare system.

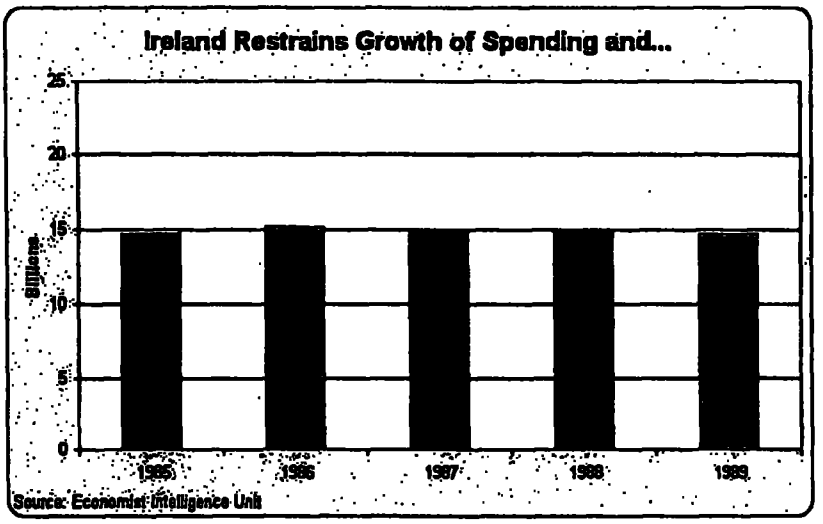


Starting with Canada, our neighbors to the north were in deep fiscal trouble in the 1980s and early 1990s. But then, beginning about 15 years ago, politicians decided to do the right thing and put the brakes on spending. For several years, government was on a diet. Between 1992 and 1997, Canada's budget rose from 374 billion to 391 billion, an average annual increase of less than 1 percent, and the fiscal balance went from a deficit of 9.1 percent of GDP to a surplus of 0.2 percent of GDP.

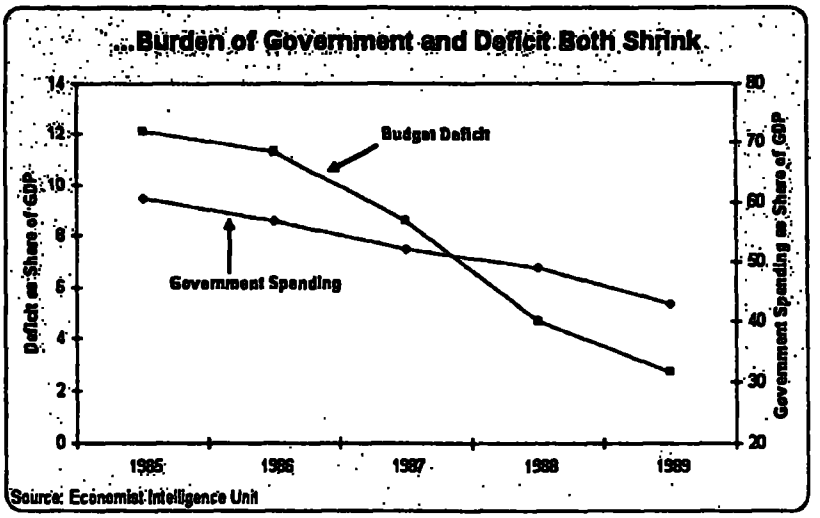


This is not to say Canada, or any of the other nations we're going to discuss, is a role model. Government is still far too large. But remember, all we're showing is that nations can move in the right direction if they simply control spending so that it grows slower than tax revenue.

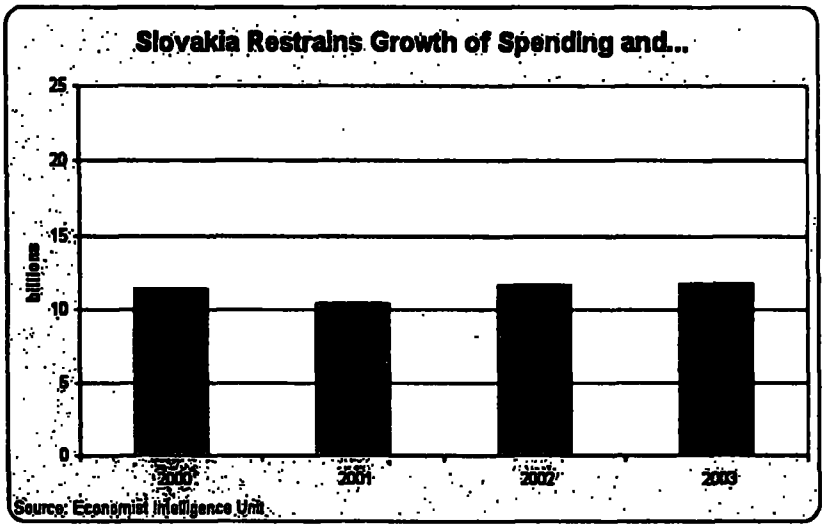
Now let's shift to Ireland. The Emerald Isle was in a tailspin in the 1980s. The burden of government spending had skyrocketed to more than 50 percent of GDP and the nation's debt was enormous. Irish policy makers realized they needed to restrain the burden of government spending. For a period of time, there was genuine fiscal restraint. The Irish budget was 14.7 billion euro in 1985 and was only 14.7 billion euro in 1989, a four-year freeze resulting in a reduction in the budget deficit from 12.1 percent of GDP to 2.7 percent of GDP.



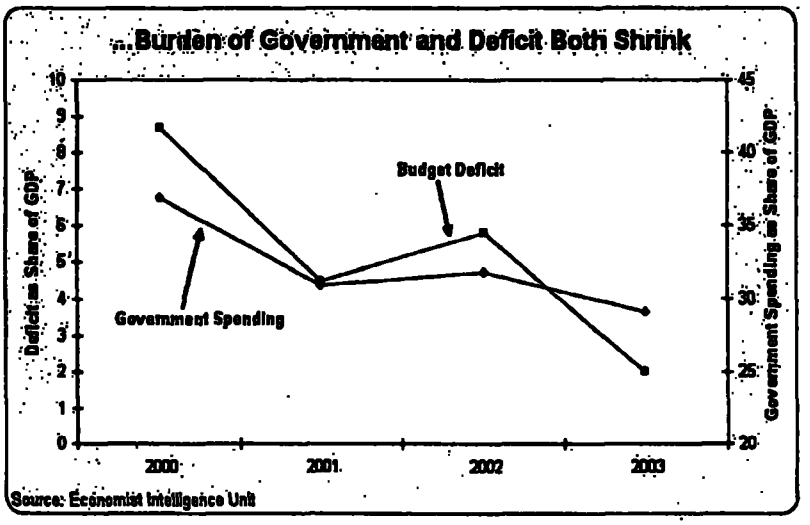
Irish politicians also implemented other pro-growth policies such as the 12.5 percent corporate tax rate that helped boost GDP, which, combined with spending restraint, lowered the burden of government spending dramatically. Sadly, Ireland didn't handle prosperity well. A housing bubble and big spending increases have erased most of the gains and I'm rather pessimistic about the future.



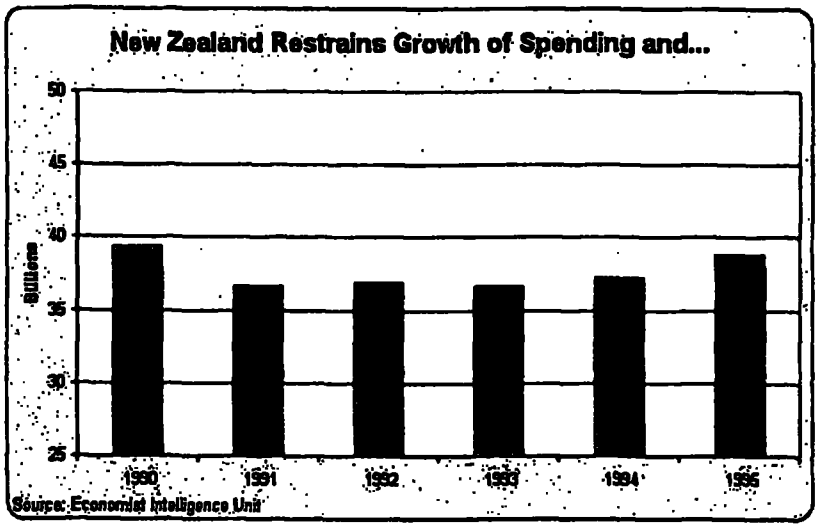
Let's cheer up with a better example. Slovakia, like many other nations that emerged from the collapse of the Soviet empire, was saddled with a bloated public sector. Once again, let's put the data up on the screen. As with our other examples, you can see a period of meaningful spending restraint starting about a decade ago. From 2000-2003, the Slovakian budget grew from 11.5 billion euro to 11.8 billion euro, an average increase of 1.3 percent, and the deficit feel from 8.7 percent of GDP to 2.0 percent of GDP.



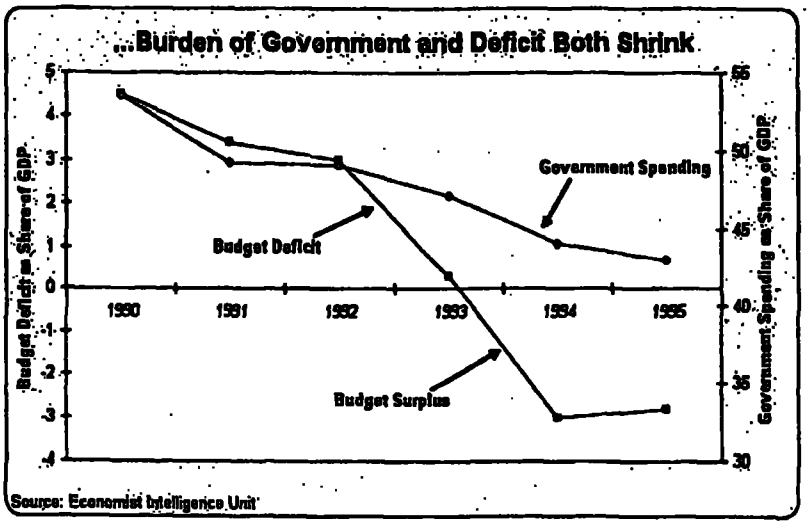
Fiscal discipline has paid dividends for Slovakia, particularly since the nation's leaders also implemented pro-growth policies such as the flat tax and personal retirement accounts that helped increase economic growth.



Last but not least, let's look at New Zealand. The burden of the public sector by the 1980s had climbed to more than one-half of economic output. Like all our examples, the Kiwis staged a turnaround by engaging in a period of fiscal discipline. Between 1990 and 1995, the New Zealand Budget actually *dropped* from 39.3 billion to 38.8 billion, and New Zealand went from a deficit of 4.5 percent of GDP to a surplus of 2.8 percent of GDP.



New Zealand lawmakers used common sense to restore fiscal sanity. They clamped down on spending and let revenues close the gap. There were other pro-growth policies that boosted economic performance, so the key variable – government spending as a share of GDP – showed big improvement.



This pattern should not be a surprise. Restraining government spending is the definition of good fiscal policy. And when the private sector is allowed to grow faster than the public sector, good things happen. No wonder the International Monetary Fun has found that reducing the burden of government spending is the key to reducing red ink.[24] The European Central Bank also found that less spending – not more taxes – was the key to deficit reduction.[25]

Conclusion

America is at a crossroads. We can solve the fiscal policy mess in our respective countries, but only if we focus on the real issue of a public sector that is too big and a budget that is too large.

This paper looks at fiscal policy and provides an overview of the key economic issues, lays out a general strategy for restraint and federalism, and then provides specific recommendations for the big three entitlement programs. It's worked in other countries, and it would work in America.

15044380252

[1] Public goods are things such as court systems and national defense, without which a market economy couldn't function. It is generally assume that private markets cannot produce public goods because of the free rider problem (why "buy" national defense of public safety if your neighbors are picking up the tab).
[2] http://online.wsj.com/article/SB10001424052748704648604575620502560925156.html
[3] http://www.freedomandprosperity.org/Papers/rahncurve/rahncurve.shtml
[4] http://fraser.stlouisfed.org/publications/usbudget/issue/5600/download/92946/BUS_1987.pdf
[5] http://www.freedomandprosperity.org/Papers/swiss/swiss.shtml
[6] http://siteresources.worldbank.org/DATASTATISTICS/Resources/GNIPC.pdf
[7] http://www.oecd.org/dataoecd/5/51/2483816.xls
[8] http://www.whitehouse.gov/sites/default/files/omb/budget/fy2011/assets/hist08z3.xls
[9] http://www.whitehouse.gov/sites/default/files/omb/budget/fy2011/assets/hist08z2.xls
[10] http://www.cbo.gov/ftpdocs/115xx/doc11579/06-30-LTBO.pdf
[11] http://www.cbo.gov/ftpdocs/117xx/doc11705/08-18-Update.pdf
[12] http://www.whitehouse.gov/sites/default/files/omb/budget/fy2011/assets/hist08z5.xls
[13] http://www.whitehouse.gov/sites/default/files/omb/budget/fy2011/assets/hist03z1.xls
[14] http://bipartisanpolicy.org/sites/default/files/FINAL%20DRTF%20REPORT%2011.16.10.pdf
[15] http://www.downsizinggovernment.org/hhs/medicare-reforms
[16] http://www.cbo.gov/ftpdocs/119xx/doc11966/11-17-Rivlin-Ryan_Preliminary_Analysis.pdf
[17] http://healthblog.ncpa.org/the-ryanrivlin-plan/
[18] http://www.whitehouse.gov/sites/default/files/omb/budget/fy2011/assets/hist08z5.xls
[19] http://www.downsizinggovernment.org/hhs/medicaid-reforms
[20] http://www.cbo.gov/ftpdocs/117xx/doc11705/08-18-Update.pdf
[21] http://www.cato.org/pubs/pas/pa548.pdf
[22] http://www.cato.org/pubs/pas/pa548.pdf
[23] http://www.cbo.gov/ftpdocs/119xx/doc11966/11-17-Rivlin-Ryan_Preliminary_Analysis.pdf
[24] http://www.imf.org/external/pubs/ft/wp/2010/wp10232.pdf
[25] http://www.ecb.int/pub/pdf/scpwps/ecbwp1241.pdf

RECEIVED
FEDERAL ELECTION
COMMISSION

2010 NOV 30 PM 2:46

OFFICE OF GENERAL
COUNSEL

ORIGINAL

BEFORE THE
FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
2010 NOV 30 PM 12:52
FEC MAIL CENTER

In The Matter Of:

Democratic Congressional Campaign Committee)
A Federal National Party Committee)

v.) **Matter Under Review # 6391**

Commission on Hope, Growth & Opportunity)
A Tax-Exempt, 501c(4) Social Welfare Organization)

MOTION TO DISMISS

Now comes the Commission on Hope, Growth & Opportunity (the "CHGO"), a social welfare organization conducting its public education activities pursuant to section 501c(4) of the Internal Revenue Code of 1986, amended, by and through its General Counsel, and presents to the Federal Election Commission (the "Commission") this Motion to Dismiss the above captioned Matter Under Review for the reasons set forth below.

The Law: The Federal Election Campaign Act of 1971, amended, at 2 United States Code β 437g(a), styled as "Enforcement – Administrative and Judicial Practice and Procedure", provides, in pertinent part, that "[W]ithin 5 days after receipt of a complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed such a violation."

Similarly, the Regulations promulgated by the Commission at 11 C.F.R. β 111.5(a), styled as "Initial Complaint Processing; Notification", provides, at pertinent part, that "[U]pon receipt of a complaint , the General Counsel shall review the complaint for substantial compliance with the technical requirements of 11 C.F.R. 111.4, and, if it complies with those requirements shall within five (5) days after receipt notify each respondent that the complaint has been filed, advise them of Commission compliance procedures, and enclose a copy of the complaint."

The Regulations further provide, at 11 C.F.R. β 111.6(b), that the Commission is precluded from taking any action on the complaint and against a respondent until such time as the respondent has had an opportunity to demonstrate that no action should be taken, except that the respondent may move an action to dismiss the complaint for procedural reasons, before providing a formal response to the complaint.

The Facts: On or about October 4, 2010, the complainant, through its Executive Director, Jon Vogel, caused the complaint at issue in this Motion to be executed and notarized. On October 5, 2010, the complaint at issue in this Motion was the subject of an extensive news report on the front page of the daily newspaper, the Politico. This article was written by John Bresnahan and Alex Vogel. On October 7, 2010, the complaint at issue in this Motion was received at the Commission and time-stamped at 10:52AM. On or about October 15, 2010, the complaint at issue in this Motion was mailed to the respondent. Between the date of the receipt of the complaint by the Commission, on October 7, 2010, and the date that the complaint was delivered to the U.S. Postal Service for delivery to the respondent, on or about October 15, 2010, a full eight (8) calendar days or six (6) business days had elapsed. This time lapse was in excess of the mandated notification provision found at 11 C.F.R. β 111.5(a) and thus the Commission's notification dated October 15, 2010 was, on its face, defective.

In fact, the Commission's notification dated October 15, 2010 was **NEVER** received by the respondent. A review of the address to which the notification dated October 15, 2010 was posted (see Exhibit "A") was incorrect, such error being a direct consequence of a mistake made by the office of the General Counsel. On or about November 16, 2010, Ms. Kim Collins of the General Counsel's office called Counsel for the respondent to inquire when the Commission could expect respondent's reply to the complaint. At that point, Counsel informed Ms. Collins that the Commission's notification had never been received. Ms. Collins expressed surprise and indicated that the Commission would repost the notification dated October 15, 2010. Thereafter, Counsel called Ms. Collins, on November 29, 2010, to inform her that the Commission's notification dated October 15, 2010 had finally been received at Counsel's and respondent's office of record. Ms. Collins indicated her belief that the delay had been caused by the Commission's staff, in that they had employed an incorrect address for the notification of October 15, 2010.

The correct address for CHGO is a matter of public record. In fact, the complainant used the proper address in the heading of the complaint. In addition, the complainant also included, in the complaint (see Exhibit "B"), a link to the website currently maintained by the respondent. Had the Commission staff carefully reviewed the address for CHGO used by the complainant or accessed the website of the respondent (see Exhibit "C"), the Commission could have determined the correct address to use in forwarding the notification dated October 15, 2010. For whatever reasons, this fundamental procedural step was not taken and the Commission's notification dated October 15, 2010. As set forth above, the Commission's "due process" notification of October 15, 2010 was not remailed by the Commission until November 16, 2010 and was not received by the respondent until November 29, 2010 (see Exhibit "D"). Thus respondent was unable to even review the allegations contained in the complaint for a full six (6) weeks after it had been first received by the Commission.

Discussion: It is inarguable that the statutory and regulatory requirements for timely notification to a respondent of the existence of a complaint received by the Commission (referenced above and incorporated herein), is based both on the notion of fundamental fairness and on Constitutionally-protected "due process" considerations. Quite clearly, the framers of these two provisions were clear in their belief that any respondent to an allegation of a statutory violation must be (a) made aware of such an allegation in a very timely manner and (b) provided with the opportunity to provide a response to any such allegation in an equally timely manner. Unfortunately, in this instance, CHGO was denied the required timely notice and opportunity to respond, to the material detriment of its reputation.

Quite clearly, the complainant "leaked" the existence of this complaint to Politico prior to its filing with the Commission. The authors of the Politico article, which appeared on the morning of October 5, 2010, quite obviously were fully informed of the allegation contained in the complaint. Upon information and belief, the co-author of the Politico article, Alex Vogel, and the Executive Director of the complainant, Jon Vogel, are related by blood. Upon information and belief, Jon Vogel was the source of the advanced notification of the allegations contained in the complaint that became the Politico report of October 5, 2010.

The reputation of CHGO was materially impacted by the leak of the complaint to Politico and by the Commission's failure to follow its own procedural rules regarding the timely notification to a respondent of a complaint received by the Office of General Counsel. Following the Politico article of October 5, 2010, Counsel to the respondent was the recipient of innumerable telephone calls from national and local media outlets regarding the complaint and the response of CHGO to the allegations. Every single news story about CHGO following the Politico article of October 5, 2010 referred to the complaint and asserted that because of the complaint, CHGO was under investigation by an agency of the federal government. Having never received the complaint from the Commission, Counsel to the respondent was unable to provide any response to such media inquires. As a direct consequence, the ability to CHGO to carry out its tax-exempt public education mission was materially and adversely impacted. Arguendo, it appears quite likely that this was the exact impact sought by the complainant in leaking the existence of the complaint to Politico on or about October 4, 2010. That the complainant cared little for the due process rights of the respondent is evidenced by the fact that the complainant executed the complaint and leaked it to Politico on October 4, 2010 but failed to actually file the complaint with the Commission until October 7, 2010.

Prayer for Relief: CHGO asks the Commission to grant this Motion to Dismiss the complaint for the reason that in failing to follow the statutory and regulatory-mandated timely notice requirements (referenced above and incorporated herein), CHGO was denied its Constitutionally-protected "due process" rights and was denied procedural fundamental fairness by the Commission.

In presenting this Motion to Dismiss, CHGO maintains all of the administrative and/or judicial procedural rights available to it under federal law and does not waive any such administrative and judicial rights.

By: _____

William B. Canfield III
Counsel to the Commission on Hope, Growth & Opportunity
Suite 600, 1900 M Street, N.W.
Washington, D.C. 20036

Dated at Washington, D.C. on November 30, 2010

15044380256

EXHIBIT "A"

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCT 15 2010

William B. Canfield
Commission on Hope Growth & Opportunity
1900 M Street, NW Suite 600
Washington, DC 20003

Re: MUR 6391

Dear Mr. Canfield:

The Federal Election Commission received a complaint that indicates the Commission on Hope Growth & Opportunity may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 6391. Please refer to this number in all future correspondence.

Under the Act you have the opportunity to demonstrate in writing that no action should be taken against the Commission on Hope Growth & Opportunity in this matter. Please submit any factual or legal materials that you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission. Please note that you have a legal obligation to preserve all documents, records and materials relating to the subject matter of the complaint until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

15044380257

EXHIBIT "B" AND EXHIBIT "C"

HONORABLE CHRIS VAN HOLLEN
CHAIRMAN

RECEIVED
FEDERAL ELECTION COMMISSION

2010 OCT -7 AM 10: 52

OFFICE OF GENERAL COUNSEL

BEFORE THE
FEDERAL ELECTION COMMISSION

Jon Vogel,
Executive Director
Democratic Congressional Campaign Committee
430 South Capitol St., SE
Washington, DC 20003,

MUR # 6391

Complainant,

v.

"B"

Commission on Hope, Growth & Opportunity
1900 M Street, NW Suite 600
Washington, D.C. 20036
(202) 530-3332

Respondent.

COMPLAINT

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) against the Commission on Hope. Growth & Opportunity ("Respondent") for violations of the Federal Election Campaign Act ("Act"), as described below.

A. FACTS

Respondent is an organization that claims to be "registered under section 501(c)(4) of the IRS."[1] As of October 1, 2010, it was not a registered political committee.

Based on information and belief, from September 24, 2010 through September 30, 2010, Respondent disseminated broadcast television advertisements attacking Congressman John

"C"

[1] *See* http://www.hopegrowthopportunity.com/ (last visited on October 1, 2010).

PAID FOR BY THE DEMOCRATIC CONGRESSIONAL CAMPAIGN COMMITTEE • 430 SOUTH CAPITOL ST. SE • WASHINGTON, DC 20003
(202) 863-1500 • WWW.DCCC.ORG • NOT AUTHORIZED BY ANY CANDIDATE OR CANDIDATE'S COMMITTEE

CONTRIBUTIONS OR GIFTS TO THE DEMOCRATIC CONGRESSIONAL CAMPAIGN COMMITTEE ARE NOT TAX DEDUCTIBLE

DCCC
Democratic Congressional Campaign Committee

D. REQUESTED ACTION

As we have shown, there is substantial evidence that Respondent has violated the Federal Election Campaign Act. We respectfully request the Commission to investigate these violations. Should the Commission determine that Respondents have violated FECA, we request that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,

Jon Vogel

SUBSCRIBED AND SWORN to before me this 4 day of October, 2010.

Notary Public

My Commission Expires:
Willie Simms
Notary Public, District of Columbia
My Commission Expires 7/31/2012

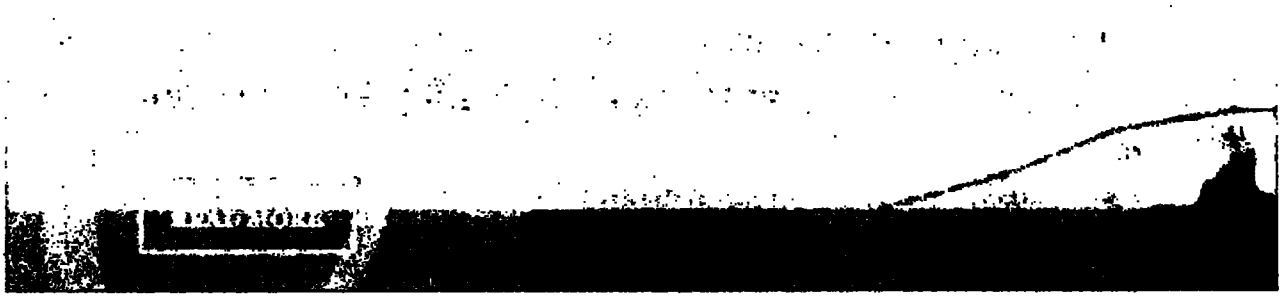
EXHIBIT "C"

COMMISSION ON

HOPE, GROWTH & OPPORTUNITY

Supporting Policies of Economic Growth and Free Enterprise

MISSION | NEWS/MEDIA | ISSUE FOCUS | LATEST



Paid for by the Commission on Hope, Growth and Opportunity, a tax exempt, non-profit, social welfare organiza
the IRS. Not a federal political committee.

Commission on Hope, Growth & Opportunity | 1900 M Street, NW | Suite 600 | Washington, I

COMMISSION ON
HOPE, GROWTH & OPPORTUNITY

Supporting Policies of Economic Growth and Free Enterprise

MISSION NEWS/MEDIA ISSUE FOCUS LATEST POLLING CONTACT

Thank you for your interest....

By email:
info@hopegrowthopportunity.com

By mail:
Commission on Hope, Growth & Opportunity
William B. Canfield, General Counsel
1900 M Street, NW Suite 600
Washington, DC 20036
202-530-3332

Due to high volume of contacts, we cannot guarantee a response to all requests. Thanks.

Paid for by the Commission on Hope, Growth and Opportunity, a tax exempt, non-profit, social welfare organization, registered under Section 501c(4) of the IRS. Not a federal political committee.

COMMISSION ON
HOPE, GROWTH & OPPORTUNITY
Supporting Policies of Economic Growth and Free Enterprise

RECEIVED
FEDERAL ELECTION
COMMISSION
2011 JUN -1 PM 2:16
OFFICE OF GENERAL
COUNSEL

June 1, 2011

Mr. Jeff Jordan
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: **Matter Under Review # 6471**

Dear Mr. Jordan:

Today, I received, by mail, the complaint in the above captioned matter. This letter is intended as the formal response of the Commission on Hope, Growth & Opportunity (the "CHGO") to this complaint.

As the Federal Election Commission (the Commission") knows, a substantially similar complaint was filed last year by the Democratic Congressional Campaign Committee, now known as Matter Under Review # 6391. Pursuant to an extension of the time to file granted by the Commission, the formal response of CHGO in MUR # 6391, was filed with your office, via fax, today.

I have carefully reviewed the allegations presented in MUR # 6471. In my considered judgment, the allegations presented in MUR # 6471 are substantially similar to, and thus duplicative of, the same allegations contained in MUR # 6391. As a consequence, I ask the Commission to incorporate by specific reference the response in MUR # 6471 as the CHGO response in MUR # 6391. The complaints which initiated both MURs are identical and the complaint in MUR # 6471 provides not a single, new factual predicate to the assertions previously made in MUR # 6391. The complaint in MUR # 6471 simply and unashamedly restates the assertions made in MUR # 6391 and appears to have done so for no other reason than to further burden your agency and to seek additional media attention for the complainant.

For the same reasons set for in the formal response of CHGO to MUR # 6391, as filed today, we ask that the Commission find that the complaint in MUR # 6471 is substantially similar, if not identical to, an on-going enforcement matter, dismiss the complaint in MUR # 6471, and take no further action against CHGO in MUR # 6471. Should the Commission desire any additional information regarding the response of CHGO in MUR # 6471, I would be happy to address such a request.

William B. Canfield
Counsel to CHGO

Paid for by the Commission on Hope, Growth and Opportunity, a tax exempt, non-profit, social welfare organization, registered under Section 501c(4) of the IRS. Not a federal political committee.

11044380262