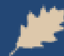
TEN State Solutions TO EMERGING ISSUES



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Ten State Solutions to Emerging Issues

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INTRODUCTION

This booklet explores solutions to the top public policy issues facing the states in 2018 and beyond in the areas of budget and tax, education, energy and environment, health care, and constitutional reform. The solutions we have identified are proven reform ideas gaining momentum among the states and with legislators.

Budget and Tax Solutions. Michigan and Pennsylvania have addressed pension reform in a sustainable way, at a time when most state pension systems across the country are diverting money away from essential government services and creating pressure for tax increases. Arizona, Kansas, and Missouri, among other states, have implemented welfare reforms that aim to move people from government dependency to self-sufficiency. Wisconsin has passed REINS legislation that forces state agencies to request approval from the legislature for any regulation that imposes $10 million or more in costs.

Education Reform Solutions. Students in the United States perform poorly compared to their counterparts in other countries, even though per-pupil spending in America is far higher. Many states have responded by expanding education choice to allow parents and students to have greater access to private schools and other educational options through education savings accounts (ESAs), school vouchers, and tax-credit scholarships. Arizona's recently expanded ESA program, for example, might serve as a model for other states. In addition, states such as Kentucky, Michigan, and Pennsylvania are looking at ways to guide students into career technical education as an alternative to the traditional college path.

Energy and Environment Solutions. Our understanding of the science and economics of environmental issues has improved in recent years, but public policy has not kept up. The concern humans are responsible for climate change and that the warming of Earth will be catastrophic has diminished, but states and national regulatory bodies continue to assume the worse and enforce "zombie regulations" intended to force a transition away from affordable and reliable fossil fuels. New technologies have made the United States a world energy superpower, but many policies being enforced today were adopted in an era when we feared we would "run out of energy" or be too dependent on imports. Kansas, Ohio, and West Virginia have taken steps to roll back their renewable energy portfolio mandates. North Dakota and Oklahoma have shown how states can support sound environmental stewardship while also being pro-energy and pro-jobs.

Health Care Solutions. North Carolina and Virginia, among other states, are considering reforms to their certificate of need laws, which restrict competition among health care providers and drive up costs. Nineteen states have opted not to expand Medicaid under the Affordable Care Act, better known as "Obamacare," seeking instead to fix some of the problems with that program. Kentucky and Rhode Island have shown how utilizing waivers can make state Medicaid programs more flexible and sustainable. Maine, Minnesota, and Vermont have demonstrated how removing barriers to dental care can help improve access to dental services, save taxpayers' money, and lower the burden on the nation's emergency rooms.

Constitutional Reform Solution. State elected officials are increasingly concerned about the national government's lack of fiscal discipline. Many state lawmakers are considering the use of Article V of the U.S. Constitution to restore the role of the states and end the practice of burdening future generations with ever-greater government debt. Article V resolutions or bills were introduced in 40 states in 2017.

1 PART ONE BUDGET & TAX SOLUTIONS

Many states face looming fiscal challenges. Tax revenues are often insufficient to keep pace with growing government spending. Limiting burdensome regulations and reforming pensions, welfare programs, and other entitlement programs are the most promising solutions to solve these fiscal challenges. These reforms can help states become more competitive, strengthen state economies, and improve states' employment outlook.

Some government pension programs have become too generous. State and local government workers are often able to retire in their 50s—a decade or more sooner than most people in the private sector can—with pension benefits that exceed the retirement benefits earned in the private sector. The burden on taxpayers to fund public sector retirement programs has been rapidly increasing, forcing elected officials to consider raising taxes, borrowing more money, making cuts to other government services, or a combination of these strategies.

Entitlement programs have also become substantially more expensive for taxpayers, and they rarely work well for those who are most in need. States can boost the effectiveness of their efforts to help those in poverty. Successful welfare reform can save billions of taxpayer dollars and improve the lot of future generations. It can also help address serious social maladies, such as crime, alcoholism, and teenage pregnancy.

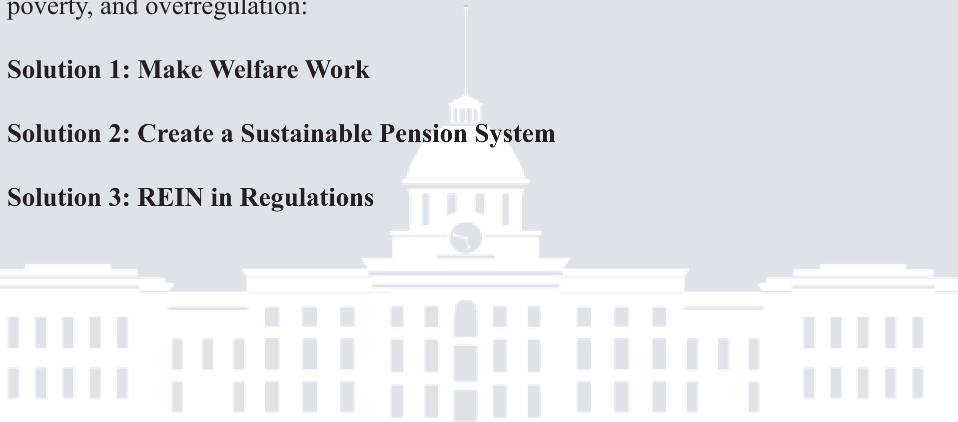
Regulations crafted by the numerous departments and agencies of state and federal executive branches have inflicted wide-ranging damage on U.S. businesses and consumers, stifling economic growth and job creation and limiting consumer choice. State-based versions of the federal Regulations from the Executive in Need of Scrutiny (REINS) Act would help to combat this growing problem.

Here are three ways state elected officials can address problems related to pensions, poverty, and overregulation:

Solution 1: Make Welfare Work

Solution 2: Create a Sustainable Pension System

Solution 3: REIN in Regulations



SOLUTION 1: MAKE WELFARE WORK

POLICY TAKEAWAYS

- More closely integrate welfare and state social services so beneficiaries can access a wide range of services in one step and caseworkers can more efficiently and effectively meet family needs and remove barriers to work in a holistic way.
- Limit the eligibility for Temporary Assistance to Needy Families (TANF) benefits to 24 months, and add time limits for food stamp eligibility.
- Strongly enforce sanctions for noncompliance with work requirements.
- Provide a cash diversion program for low-income individuals in short-term need without enrolling them in the full welfare program.
- Restore work requirements and require TANF recipients to begin work, a job search, or training for a new job immediately upon receiving benefits.

Effective state welfare programs can remove barriers that prevent recipients from attaining high-quality employment. Welfare shouldn't be about establishing government programs that do something *to* people, but rather programs that do something *for* people. Welfare's only purpose ought to be to facilitate the efforts of individuals attempting to lift themselves from poverty and government dependency into a life of self-sufficiency.

Work improves family well-being by providing a steady source of income and the opportunity to acquire assets. It also builds self-esteem through productive achievement, imposes order on adults' lifestyles, creates role models for children, and fosters relationships of respect among adults and between adults and children. Many problems in disadvantaged families trace back to not having a member of the household in the workforce.

While academic research continues on the effectiveness of specific state welfare reform policies, we believe there is general agreement on which policies work. If implemented together, the policies described here can create the incentives and opportunities needed to reconstruct ladders of opportunity so more Americans can achieve prosperous futures.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) block-granted the old Aid to Families with Dependent Children federal welfare program to the states, giving them the flexibility to reform their welfare systems. The state-run program is now called Temporary Assistance to Needy Families (TANF).

In 2008, The Heartland Institute published *Welfare Reform After Ten Years*, a state-by-state analysis of welfare reform policies.[1] In March 2015, The Heartland Institute updated that report card.[2] The updated report shows some states have developed thoughtful policies and integrated services needed to help recipients move into the workplace, but too few states are rising to the challenge. States should work to integrate services further, enforce sanctions against abuse, require TANF recipients to work, implement cash diversion programs, and limit lifetime eligibility for recipients.

Service integration is key. Welfare reform scholar Gary MacDougal wrote, “Service integration refers to programs that allow welfare and other social services to be delivered in a coordinated fashion, either physically under one roof or effectively connected in other ways.”[3] Instead of making TANF-eligible persons go to three offices for child care, job training, and substance abuse treatment, for example, service integration links all three services structurally, often with a single caseworker or “self-sufficiency coach” and preferably in a single location. Service integration aids welfare recipients by guaranteeing they have access to the help they need, when they need it.

PRWORA strongly encourages states to limit the lifetime eligibility of TANF benefits to 60 months (five years). Knowing welfare payments will end after a certain number of months creates a strong incentive for recipients to prepare for work and accept job opportunities when they become available. Many states—including Connecticut, Florida, and Kansas—have adopted policies permitting people to receive welfare for fewer than 60 months, based on the theory five years of dependency on welfare can ingrain habits and lifestyles that make it more difficult to achieve self-sufficiency.[4] Reducing this period to 24 months and limiting the duration of food stamp eligibility would still give individuals two years to find work while also creating a strong incentive for individuals to abandon welfare as a way of life.

Sanctions are enforcement tools used to secure compliance by TANF recipients with work and other requirements of eligibility. Strong, full-family sanctions encourage workforce involvement and self-sufficiency directly by giving noncompliant recipients little choice but to enter the workforce to obtain aid. They encourage workforce involvement indirectly by preparing people for the real-world penalties of their poor choices.

In their Heritage Foundation report, titled “The Determinants of Welfare Caseload Decline,” Robert Rector and Sarah Youssef state, “Under such a system, recipients are held accountable for their own actions and thus learn the habits of self-control, responsibility, and persistence, which are all hallmarks of eventual self-sufficiency. Thus the work requirement provides psychological preparation necessary for reducing dependency.”[5]

Cash diversion programs offer welfare applicants a lump sum cash payment to solve a short-term need. In exchange for receiving the cash, recipients agree not to enroll in TANF for a defined period. For example, when a working mother’s car breaks down, cash diversion allows the caseworker to provide money to fix the car without enrolling her in welfare.

Because cash diversion permits caseworkers to solve problems without adding people to welfare rolls, it decreases the amount of time they must dedicate to people who do not require long-term support. According to the Urban Institute’s Welfare Rules Database, 33 states offered some form of cash diversion program for TANF recipients in 2014.[6] Policymakers should support cash diversion programs, especially if paired with job search and counseling, because they reduce welfare rolls and government spending without imposing hardships on people who genuinely need short-term assistance.

States should also require TANF recipients to work to receive benefits. In 2009, the U.S. Census Bureau reported 52.9 percent of TANF families did not have a single parent that had worked full-time in any of the past 12 months.[7] In 2011, the U.S. Department of Health and Human Services reported only 29.5 percent of TANF recipients were engaged in “work activities,” including college attendance, job training, and job searches.

STATE CASE STUDY

Kansas: Reforms undertaken in Kansas,[8] including stronger work requirements, led to a decrease in the number of welfare recipients, an increase in TANF recipients reentering the labor force, and the doubling of incomes of exiting families in their first year off the program.[9] As of 2017, these families earned a total of $48 million more per year than when they received cash assistance.

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

At the end of fiscal year 2016, the federal government's Supplemental Nutrition Assistance Program (SNAP), commonly called the "food stamp program," provided $71 billion in benefits to approximately 44 million people, a significant increase compared to 2000, when 17 million people received $18 billion in benefits. Today, roughly 13 percent of the U.S. population is receiving assistance under the SNAP program. It is one of the largest welfare entitlements in the federal budget.

One reason SNAP grew so quickly during the recent recession is the program's failure to require recipients to actively seek employment. In 2013, just one-quarter of childless adult households receiving food stamps had earned income. The remaining three-quarters had no reported earned income.

By restoring strong work requirements, time limits, and asset and eligibility testing, states can reduce food stamp rolls, save taxpayers billions of dollars, and return more people to work and self-sufficiency. According to the Foundation for Government Accountability, "If every state restored working requirements and time limits to match the federal baseline, more than 4.8 million fewer Americans would be trapped in food stamp dependence while taxpayers would save more than $7.1 billion annually."[10]

Reinstating work requirements and the benefits that follow should not be a complicated legislative battle. Governors can simply decline to renew the work waivers they were given by the Obama administration.

STATE CASE STUDIES

Alabama: The state Department of Human Resources reported an 85 percent drop in total food stamp participation in 13 counties after work requirements were reinstated on January 1, 2017.[11]

Georgia: By the end of the first three months of Georgia's restored work requirements, the number of adults receiving benefits in three participating counties dropped 58 percent, according to the Georgia Public Policy Foundation.[12]

Maine: Gov. Paul LePage (R) implemented welfare reforms by enforcing existing rules that had long been ignored or watered down. As a result, the caseload in Maine for able-bodied adults without dependent children quickly dropped by 80 percent, falling from 13,332 in December 2014 to 2,678 recipients in March 2015.[13]

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SOLUTION 2: CREATE A SUSTAINABLE PENSION SYSTEM

POLICY TAKEAWAYS

- Cap pension benefits, increase the retirement age, and eliminate double-dipping and benefit spiking.
- Reduce rate-of-return projections to more realistic levels.
- End defined-benefit pension plans in favor of defined-contribution plans for new workers and current workers who choose them.

The unfunded liabilities of traditional defined-benefit public pensions have become a major threat to the fiscal viability of states. Under many defined-benefit plans, retirees receive a predetermined monthly benefit based on their earnings history and years on the job, regardless of investment returns, the availability of funds, or condition of state budget. According to CBS News' *MoneyWatch*, pension plans in 26 states are now less than 70 percent funded, making them "at risk" under the Employment Retirement Income Security Act. Since 2008, unfunded state pension liabilities have more than doubled, from $452 billion in 2008 to $961 billion in 2013; *MoneyWatch* estimates unfunded state pension liabilities now total $1 trillion.[1]

For years, elected officials have guaranteed pension benefits to government employees but have not adequately funded benefit accounts. They have instead shifted costs to future taxpayers. This mismanagement of pension programs goes beyond deficient appropriations and raiding funds for other purposes; there are several key flaws in many state pension systems that result in even greater deficits.

Another structural problem with state pension arrangements is they allow employees to "double dip," meaning they can receive more than one government pension at a time. Employees already vested in one pension plan are permitted to take another public job and work toward a second pension.

Another way public employees can inflate their pensions is through "spiking." This occurs when an employer dramatically increases an employee's salary at the end of his or her career, thus increasing the pension payout, which is often based on an average of the employee's salary for his or her final few years of employment.

Double-dipping and benefit spiking can be prevented by implementing rules against multiple pensions and basing pension benefits on an average of a larger range of salary years, rather than calculating benefits based on inflated end-of-career salaries alone. A Milken Institute study found if pension payouts were based on employees' compensation over at least five years, instead of the abuse-prone final year, the overall cost of funding could be lowered by up to 30 percent.[2]

Another major cost-driver for public pensions is automatic cost of living adjustments (COLAs). For many pension plans, the benefits individuals receive are increased periodically to reflect inflation and the increased cost of living. Although COLAs are common, in the private sector they are not automatic and are given only when funds are available. In many state pension systems, by contrast, COLAs are implemented automatically without regard to the government's ability to pay for them. As the number of retirees increases, a funding gap develops that grows over time.

Underfunded government pension programs are made worse when state policymakers and regulators overestimate the value of future investments and the rate of return they should expect from the investments in assets—such as bonds and securities—held by the pension fund. In addition to receiving regular tax revenue, government pension funds have typically relied on optimistic assumptions of strong investment returns. This allows government officials to reduce yearly government contributions to the funds and to buy labor peace by promising more generous retirement benefits. But when these estimates prove to be false, the level of unfunded obligations increases.[3]

Even with recent market improvements, which may or may not last, most state pension plans have yet to recover their losses related to the 2008 market crisis.[4] Results from recent years are equally poor, and most plans have missed their assumed rate of return for the 2015–16 fiscal year.[5] Pension experts recommend states use an expected investment return rate of 3.1 percent, which is based on 30-year U.S. Treasury bond yields.

Truong Bui of the Reason Foundation found states have become increasingly reliant on investment returns. Fixed-income investments and cash, which constituted nearly 96 percent of public pension assets in 1952, decreased to 27 percent by 2012. The use of private equity, hedge funds, real estate, and commodities has doubled over the past decade, from 11 percent to 23 percent. Those investments have provided lower returns in recent decades. From 1992 to 2012, the average annual yield on 30-year Treasury bonds fell from 7.67 percent to 2.92 percent. That is far less than the typical public pension fund's assumed rate of return, which remains as high as 7.75 percent. As a result, government pension funds have become even more risky.[6] If the estimated rate of return for pension funds continues to fall short of expectations, pension systems across the country will soon be in even more trouble than is currently thought.

Fortunately, pension fund regulators and lawmakers are beginning to understand the urgency of this problem and are moving to set more reasonable expectations for investment returns. By reducing the assumed rate of return, which is used to determine the present value of benefits that will be paid to retired workers in the future, pension fund regulators will increase the reported level of unfunded obligations. This will be unwelcome news to some policymakers. However, understanding the state's fiscal illness is the only way to prevent it from slipping into critical condition.

In addition to the problems created by low expected rates of return, many state and local governments use fuzzy math to balance their budgets, making it difficult to arrive at an accurate determination of their true financial status. Some state and local governments have used accounting gimmicks to hide debts and keep liabilities off their balance sheets.[7]

Demographic changes also affect pension funds, many of which have not adjusted their eligibility ages to reflect increases in average life expectancy. Because Americans are living longer, the lifetime pension benefits for public sector employees, who can retire at ages much younger than those in the private sector, can remain on the books for decades. Sheila Weinberg of Truth in Accounting and John Nothdurft of The Heartland Institute warn legislators must take steps now to prepare for the "demographics-driven tsunami about to hit many government budgets."[8]

Pushing public pension problems down the road will only make the long-term crisis worse and the solution more costly; shortchanging pension funds helps no one. Increasing taxes while ignoring the structural problems created by defined-benefit systems ensures pension systems will never become solvent. Comprehensive reforms are desperately needed.

Lawmakers should enroll all newly hired public sector workers in defined-contribution pension plans, under which retirees receive benefits based on the investment returns on contributions they and their employers make. Current workers should be given the option of transferring into a defined-contribution plan. Workers covered by defined-contribution plans own and control their pensions and can change employers without losing their accrued benefits. Defined-contribution plans also benefit taxpayers, because the pension plan burden does not rise automatically due to COLAs and is more transparent, avoiding the accounting gimmicks governments currently use to conceal liabilities.

Like private sector 401ks and Individual Retirement Accounts, defined-contribution pensions will have another positive influence: Instead of workers only seeing themselves benefitting when unions force governments to transfer additional tax dollars to them, they will benefit when the private firms whose stocks they hold in their portfolios create more wealth.

In the short term, per-year pension payouts should be capped, the retirement age should be raised, double-dipping and benefit spiking should be eliminated, realistic rate of return assumptions should be used, and pension systems should be protected from borrowing and fund raids. In the long term, pension fund sustainability will require governments to follow the private sector's lead and switch workers from defined-benefit pension systems to defined-contribution systems. Only then can states and localities eliminate the burden of future pension liabilities, avert the pension crisis, and make budgeting more predictable.

STATE CASE STUDIES

Michigan: Senate Bill 401, signed into law on July 13, 2017, automatically enrolls new teachers and other employees in the state's public schools in a defined-contribution pension plan, instead of the state's taxpayer-funded, hybrid pension plan.[9] The new plan goes into effect on February 1, 2018. New employees will have the option of joining the state's current hybrid pension program upon request.[10]

Pennsylvania: Senate Bill 1, which took effect on June 12, 2017, places nearly all state government employees in a hybrid public pension program, with half their pension benefits coming from taxpayer funds and half from employee contributions.[11] All government employees hired after January 1, 2018, will choose whether to participate in the hybrid plan or a new defined-contribution plan that is similar to the 401k retirement savings plans enjoyed by private sector workers. Current government employees will also have the opportunity to transfer from the hybrid plan to the defined-contribution plan in 2018.[12]

Wisconsin: According to Standard & Poor's, Wisconsin's pension funding ratio of 102.7 percent is behind only South Dakota as the best funded state pension fund in the United States. Wisconsin's pension system, the ninth-largest public pension fund in the United States and the 25th-largest public or private pension fund in the world, is successful because the state government has been proactive in implementing important reforms. A new reform being proposed by Wisconsin lawmakers would increase the retirement age from 55 to 60 for most new public workers (public-safety workers could retire at 52 instead of 50) and change one important way pension payments are calculated to improve the system's long-term solvency.[13]

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SOLUTION 3: REIN IN REGULATIONS

POLICY TAKEAWAYS

- Encourage legislators to more carefully monitor the effects of the laws they pass.
- Require legislators to give final approval to all major regulations.
- Give legislatures the authority to limit the power of bureaucracies while leaving the agencies appropriate flexibility to implement new regulations.

Over the past few decades, state and federal bureaucracies have dramatically increased their power. Regulations crafted by the numerous departments and agencies of state and federal executive branches have had wide-ranging impacts on businesses and consumers, stifled economic growth and job creation, and limited consumer choice.[1]

According to a 2016 study by the Mercatus Center at George Mason University, the U.S. economy has been slowed on average by 0.8 percent per year since 1980 due to the cumulative effect of regulation.[2] The study estimates if the regulatory burden placed on the economy had been held constant at levels observed in 1980, the U.S. economy in 2012 would have been about 25 percent larger than it actually was.[3]

According to the Competitive Enterprise Institute's (CEI) annual survey of the federal regulatory state, *Ten Thousand Commandments*, "regulations impose enormous burdens on American consumers, businesses, and the economy. Unnecessary and meddlesome overregulation and intervention create uncertainty that slows innovation and economic growth."[4] CEI's 2017 edition of the survey estimates the regulatory compliance and economic impacts of federal intervention to be $1.9 trillion annually, equivalent to half the level of federal spending and 10 percent of the U.S. gross domestic product.[5]

Sadly, standard practice in most states and Washington, DC is for executive branches to proliferate a plethora of regulations pursuant to laws passed by legislatures with no follow-up in regards to whether they achieve any public good or whether the economic and personal harm they cause swamp any alleged benefits. State legislators need to make monitoring regulations a top priority.[6]

State-based versions of the federal Regulations from the Executive in Need of Scrutiny (REINS) Act would accomplish this by encouraging legislators to monitor more carefully the laws it passes and their possible effects.[7]

A REINS Act aims to limit the growth of a state's regulations and bureaucracy by requiring the legislature to give final approval to any regulation that imposes an economic impact of a defined amount. It is important to remember the REINS Act does not prevent agencies from making new regulations; it is designed to ensure any new rules with a major impact on the economy face scrutiny by elected officials, who are accountable to the voters.[8]

STATE CASE STUDY

Wisconsin: A REINS Act passed in August 2017 places the threshold for legislator review at $10 million. If an agency proposes a regulation exceeding that threshold, it will need to ask the legislature to introduce a bill to authorize the regulation, modify the regulation to lower its cost, or pull back the proposed regulation.[9]

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2 PART TWO EDUCATION SOLUTIONS

Improving America's public and private K–12 schools is the most urgent public policy challenge of our era. Poor-performing schools put at risk the ability of our society to pass along to the next generation the essential core of knowledge that makes civilization possible. A free, open society is dependent on an educated citizenry that can think critically. What happens in the nation's elementary and secondary schools profoundly affects the United States' economic competitiveness and the abilities and values of the next generation of adults.

Education will be even more important in the future. Exponential technologies in information and communications, genetic engineering, nanotech, robotics, and artificial intelligence will disrupt labor markets and require new approaches to education.

The key to transforming K–12 education is school choice. It is free-market consumer choice that has created the cornucopia of goods and services that enrich our lives today. Choice can accomplish similar feats in education.

Each form of education choice has advantages and disadvantages, with the most flexible and innovative being education savings accounts.

In addition to improving K–12 education by empowering parents and students with school choice programs, policymakers and educators need to recognize the decades-long effort to push all students on a path toward a four-year college degree has had disastrous unintended consequences. In many cases, it has been a massive waste of time and money.

Every year, countless students graduate from college in debt and without being able to find productive employment. A new emphasis is now being placed on guiding some students into career technical education instead of forcing them to stay on the traditional college path. This effort will help more students find good-paying jobs that better suit their skillsets and interests.

Here are two ways policymakers can improve K–12 education and provide high school graduates with better economic opportunities:

Solution 4: Expand Private Education Choice Options

Solution 5: Prepare Students for Careers, Not Just College

SOLUTION 4: EXPAND PRIVATE EDUCATION CHOICE OPTIONS

POLICY TAKEAWAYS

- States without education savings account (ESA) programs should follow the lead of Arizona and Nevada by establishing ESAs for as many students as possible. At the very least, states should create a pilot ESA program for high-risk students.
- States with existing ESA programs should expand them to reach more students, ideally all K–12 students.
- States can grant vouchers that parents can use at any participating school of their choice for the benefit of their children.
- In states where ESAs or vouchers aren't likely to pass, additional forms of school choice—charter school expansion and tuition tax credits, for example—should be championed.

The current system of government schools in the United States is built on a nineteenth century model that emphasizes seat time rather than mastery of subjects. For the most part, students progress from one grade to the next merely by attending classes for the school year, not by proving they've learned grade-level content. It's an assembly line approach to education, and it's failing America's students. Focusing on seat time rather than mastery means educators teach based on what the average student in class is capable of learning, preventing accelerated learners from reaching their potential and leaving behind those with greater needs.

Societies, economies, and technologies have changed dramatically since the nineteenth century. In the twenty-first century, we expect to be able to make choices narrowly tailored to meet our individual wants and needs. Compared to our nineteenth century ancestors, people today choose relatively easily where to live, what occupation to work in, and what transportation to use. Why should K–12 education be any different?

The 1990 adoption of the Milwaukee Parental Choice Program marked the beginning of the modern "school choice" movement. All forms of private school choice—including private scholarship programs, tax-credit scholarships, voucher programs, and ESAs—have grown since then. According to EdChoice, during the 2016–17 school year, approximately 446,000 pupils utilized ESAs, vouchers, or tax-credit scholarships in the United States.[1]

With recent action in the states, that number will grow significantly. More than 450,000 students in Nevada alone are now eligible to use an ESA, and every K–12 student in Arizona will be eligible for an ESA by the 2020–21 school year.[2] Approximately 680,000 students are eligible for vouchers in Indiana.

In an ESA program, state education funds allocated for a child are placed in a parent-controlled savings account. Parents then use a state-provided debit card to access the funds to pay for the resources chosen for their child's unique educational program, such as tuition at a private or parochial school, tutoring, online classes, transportation, specialized therapies, textbooks, or even college courses, which can be taken while students are still in high school. Unused ESA funds may be rolled over from year to year and can be saved to pay for future college expenses.

In May 2016, EdChoice released a report in which it examines 100 empirical studies of school choice programs. Eighteen of these studies used random assignment to measure outcomes, referred to in academia as the "gold standard." The overwhelming majority of the available empirical evidence shows school choice offers families equal access to high-quality schools that meet their widely diverse needs and desires. And, according to the research, it does so at a lower cost while helping to integrate schools and improving civic values. EdChoice also found education choice benefits public school students and increases per-pupil instructional spending at public schools.[3]

Twenty-one years after the Milwaukee voucher program was adopted, in 2011, Arizona became the first state to pass an education savings account program. ESA programs for students with special needs went into effect in Florida in 2014, in Mississippi in 2015, in Tennessee in 2017, and will go into effect in North Carolina in 2018. As soon as funding for the program is approved, nearly all students in Nevada will be eligible for an ESA program that pays at least $5,000 per pupil for educational expenses.[4]

ESA programs are the ultimate "funding-follows-the-student" reform. They allow parents great flexibility in designing their child's education portfolio. Some providers might be conventional, such as tutors or music or foreign language instructors, but others are unconventional, such as entrepreneurship training or local businesses that arrange foreign travel for language immersion. Providers could team up with each other or with schools to provide students a portfolio of services that would offer a comprehensive learning experience.[5] For example, a 2016 EdChoice study of Arizona's ESA program found "28 percent of account holders spend their funds on multiple educational products and services," not just private school tuition.[6]

Because of this flexibility, ESAs may be more likely than vouchers to survive constitutional challenges, especially in states that have anti-Catholic Blaine Amendments written into their constitutions. Blaine Amendments forbid public money from being sent to parochial schools. The Supreme Court ruled in 2016 in *Trinity Lutheran v. Comer* that the State of Missouri is forbidden from excluding religious entities from public benefit programs that are available to the general public. The Court also vacated a 2015 Colorado Supreme Court judgement that used the state's Blaine Amendment as a vehicle to strike down a voucher program in Douglas County. Arizona's ESA program survived a Blaine Amendment-based legal challenge in 2014, as did Nevada's program in September 2016.

Research shows parents who are given education options tend to be more satisfied with their child's education, which leads to more parental involvement in student learning. Not a single Arizona parent reported any level of dissatisfaction with his or her ESA program, according to a 2013 EdChoice survey.[7] Ninety-one percent of parents enrolled in Mississippi's ESA program report being satisfied, and 81 percent of Indiana voucher parents are satisfied with their program.[8,9] ESAs are especially valuable for low-income families, whose educational options in the traditional public school system are generally limited to the local neighborhood public school.

In states in which ESAs aren't likely to pass, additional forms of school choice should be championed. Two examples of alternative education models are voucher programs and tax-credit scholarships. Voucher programs, which allow public funds to be used to pay for tuition at private schools, currently operate in 14 states and the District of Columbia. Tax-credit scholarship programs, which offer tax breaks to donors who contribute to scholarship-granting entities, operate in 17 states. An additional eight states—Alabama, Illinois, Indiana, Iowa, Louisiana, Minnesota (which has two

programs), South Carolina, and Wisconsin—have tax-credit or deduction laws that allow taxpayers to get back from their state governments some part of the amount they spend on private school tuition.[10,11]

STATE CASE STUDIES

Florida: With more than 137,000 participating students in its three school choice programs, the Sunshine State is the country's private school choice leader. The John M. McKay Scholarships for Students with Disabilities program, which launched in 1999, was the nation's first voucher program for children with special needs.[12] The Florida Tax Credit Scholarship Program, the country's largest, followed in 2001. Additionally, the Gardiner Scholarship ESA program commenced in 2014.[13]

Nevada: The state's ESA program, enacted in 2015, is universal and its recipients receive 100 percent of the per-pupil average basic state support level for public schools.[14] It is the most ambitious and far-reaching school choice program on the books. However, the program remains unfunded by the state.

Indiana: The Choice Scholarship Program, launched in 2011, is the largest statewide voucher program in the country, enrolling 34,000 students in 2017. Children from families earning under 200 percent of the federal poverty level or who are attending a failing public school are eligible for the program.[15]

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SOLUTION 5: PREPARE STUDENTS FOR CAREERS, NOT JUST COLLEGE

POLICY TAKEAWAYS

- States should not try to push all high school students into a four-year degree track. Doing so in the past has led to skyrocketing tuition costs and student loan debt.
- Career technical education (CTE), including apprenticeship programs, train and prepare students in trades and crafts. They should be a much larger component of education choice.
- Legislators should give students additional education and career options by allowing for more access to CTE opportunities.

For decades, high school students have been told repeatedly the only way to make a good living is to go to college to get a four-year degree. This mindset has led to surging tuition costs, skyrocketing student loan debt, a glut of graduates flooding job markets, and a large number of high school dropouts. Many good, high-paying jobs remain unfilled because of this model; there are more than six million unfilled jobs in the United States because employers cannot find employees with the proper skills.[1,2]

The good news is it seems the pendulum is finally swinging back in favor of career technical education (CTE). CTE, also called "vocational education," prepares students in trades and crafts, of which apprenticeship programs can be a key part. In 2016, 42 states made 139 policy changes relevant to CTE, an increase compared to 2015 activity, including new laws, executive orders, board of education actions, budget provisions, and ballot initiatives.[3]

The U.S. Department of Labor reports there were more than 21,000 registered operational apprenticeship programs in 2016, with roughly 500,000 people taking part in a paid apprenticeship and 49,000 people graduating from one.[4] *The Wall Street Journal* notes "nine in 10 Americans who complete apprentice training land a job," with the average starting salary for those completing an apprentice program at $60,000 per year.[5] Despite these advantages, only 5 percent of young Americans participate at some point in an apprenticeship program.

Policymakers should give students more choices when it comes to their educational options by allowing students to have access to career and technical training opportunities. Doing so would not only help students find good-paying jobs, it would increase economic growth for decades to come.[6]

STATE CASE STUDIES

Michigan: The recently created Michigan Career Pathways Alliance will "assist students in finding and understanding technical career pathways through several initiatives, including curriculum changes, adding resources within school districts, and increasing collaboration between educators and employers."[7]

Pennsylvania: Students are allowed to opt out of the state's Keystone Exams for a high school diploma if they "demonstrate readiness through industry-based skills assessments or certificates."[8,9]

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3 PART THREE ENERGY & ENVIRONMENT SOLUTIONS

Energy is the "lifeblood of our economic system," as the Nobel Prize-winning economist Milton Friedman noted.[1] It is the master resource.

Affordable, reliable, and plentiful energy is the foundation of economic growth and prosperity. Individuals and businesses pay directly to purchase electricity, which fuels nearly everything, including heating and cooling homes, running businesses and factories, powering electronic consumer devices, and transportation. The price of energy is a significant factor in the cost of the vast majority of goods and services traded in our economy. When energy is expensive, individuals and businesses have fewer resources available for food, education, health care, environmental stewardship, hiring more workers and paying them better wages, and expanding business operations.

Affordable energy, economic growth, and protecting human health from environmental pollution need not be at odds with one another. Affordable energy and economic growth create the economic resources necessary for effective environmental stewardship. The energy sources that are most abundant and affordable are surprisingly environmentally friendly, especially given recent technological advances. Often, the best way to be pro-environment is to be pro-energy.

Two ways stand out by which state elected officials can ensure the availability of low-cost, reliable, clean energy:

Solution 6: Repeal Costly Electricity Mandates

Solution 7: Unleash Domestic Energy Production

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SOLUTION 6: REPEAL COSTLY ELECTRICITY MANDATES

POLICY TAKEAWAYS

- Repeal all renewable power mandates on public utilities and subsidies for all forms of energy.
- Roll back or freeze renewable power mandates at current levels as an interim step that would avert some of the future economic pain that currently is inflicted by the mandates.
- Make renewable energy programs voluntary and waive all noncompliance penalties, thereby reducing the economic harm caused by the mandates.

Renewable power mandates (RPMs), often referred to as "renewable portfolio standards," impose expensive, heavily subsidized electricity—mainly from wind and solar energy sources—on ratepayers and taxpayers while providing few, if any, net environmental benefits.

The number of states with such mandates peaked at 30 in 2009, when Kansas and West Virginia enacted their RPMs. Since then, many state legislatures have worked to freeze, roll back, or repeal renewable power mandates. Kansas and West Virginia repealed their mandates in 2015. Several of the remaining 28 states are now considering legislation to roll back their mandates. In 2014, Ohio froze its renewable power mandates and halted the implementation of its stricter planned renewable requirements.

These mandates have been the primary incentive catalyzing the growth of the wind and solar industries. Sixty-two percent of the growth in all U.S. non-hydro renewable generation and 58 percent of all new renewable capacity additions since 2000 have been used to satisfy current mandates for renewable energy.[1,2]

The wind and solar power imposed on consumers by renewable power mandates are extremely expensive. A 2014 study by the Brookings Institution found wind power is twice as expensive as the conventional power it replaces.[3] The same study found solar power is three times as expensive as conventional power. These higher costs place real burdens on electricity consumers. Retail electricity prices in states with renewable power mandates are rising twice as fast as the national average, and the total net cost of the mandates in just 12 states was $5.76 billion in 2016.[4,5]

The rapid increase in retail electricity prices in states with renewable power mandates tells only half the story. The wind and solar power industries receive disproportionate federal, state, and local taxpayer subsidies. Those subsidies require higher taxes that impose still-higher costs than those reflected in retail electricity prices. According to the U.S. Energy Information Administration (EIA), solar power receives more federal subsidies than all fossil-fuel sources combined, even though it produces only 0.4 percent of the nation's electricity.[6] Wind power, too, receives more federal subsidies than all fossil-fuel sources combined, even though it produces just 4.4 percent of U.S. electricity. On a dollar-per-unit-of-electricity-produced basis, EIA reports the wind and solar power industries receive 25 times more subsidies than the fossil-fuel industry.

Mandating greater use of high-priced intermittent renewable energy forces the premature retirement of coal-fired units that produce electricity 24/7, at a lower cost, and that are already paid for. This not only raises prices unnecessarily, it also poses a threat to the reliability and affordability of the country's electricity supply. Australia presents a cautionary tale. It has experienced severe reliability problems, rolling blackouts, and rising

electricity prices because of government policies that forced coal-fired generation units into early retirement in favor of renewable energy.[7]

Repealing price-inflating renewable power mandates will raise living standards, because lower-cost electricity frees up money for consumers to purchase additional goods and services that improve their lives. Economic growth and net jobs will increase, because the newly available money spent on additional goods and services will create jobs throughout the economy.

THE DISAPPEARING CASE FOR RENEWABLE ENERGY

The case for subsidizing renewable energy has grown weaker as the negative health effects of emissions from the use of fossil fuels have diminished, and as new evidence reveals carbon dioxide and other greenhouse gases have less impact on climate than previously thought. The best available evidence now shows emissions of sulfur dioxide, particulate matter, and other pollutants from factories and electric power generators are so low as to have no detectable effect on human health.[8] Climate sensitivity to carbon dioxide, which also is emitted when fossil fuels are burned, is so minimal that eliminating all use of fossil fuels in the United States would likely have no detectable impact on global temperature or weather.[9]

Even if more emissions reductions were necessary, affordable and more reliable hydropower and nuclear power would be more cost-effective emissions-free options.[10] Natural gas is also a very low emissions option, with natural gas power being almost emissions-free for the U.S. Environmental Protection Agency's (EPA) six principal pollutants.[11]

The jobs claimed to be created in the renewable power industry by mandates are not "created" jobs at all, but merely jobs shifted away from the conventional energy industry. The employment shift caused by renewable energy mandates often results in net job losses, an effect quantified in studies addressing the economies of Spain and the United Kingdom.

Economists report renewable energy programs destroyed 2.2 jobs in Spain[12] and 3.7 jobs in Great Britain[13] for every one job created. Normally, when fewer workers are required to produce the same goods and services, it is a gain in efficiency and productivity. However, renewable energy mandates produce costlier fuel with fewer workers, a loss all around.

In exchange for this substantial economic harm, renewable power mandates create few, if any, net environmental benefits. The primary environmental benefit of solar and wind power is they are emissions-free. However, EPA reports power plant emissions of its six principal pollutants have already declined by more than 60 percent since 1980.[14]

In addition to being costly, wind and solar power impose their own environmental problems. Wind turbines kill 1.5 million birds and bats each year, including many protected and endangered species.[15] Concentrated solar arrays incinerate thousands of birds in mid-flight each year.[16] Also, to replace a single conventional power plant requires 40 square miles of solar panels or 600 square miles of wind turbines.[17] Increasing solar and wind power necessarily requires despoiling extensive amounts of our most treasured and pristine lands. Further, disposing of batteries and toxic materials associated with solar energy creates even more environmental problems.[18]

THE SPECIAL CASE OF NUCLEAR POWER

Nuclear power generates nearly 20 percent of the electricity in the United States, with 99 reactors in 30 states providing reliable and emissions-free power 24/7.[19] Like fossil-fuel powered electricity generators, nuclear power plants produce power at a lower cost than either wind or solar and are not intermittent, meaning they can provide essential base-load capacity.[20] They are severely disadvantaged when renewable energy is mandated or subsidized.

Rather than oppose RPMs that undermine their ability to operate nuclear power plants profitably, many utilities are asking to be treated the same way as renewable energies, pointing to their absence of emissions. In other words, instead of opposing subsidies and mandates to their competitors, the utilities want their own place at the trough and get paid higher rates for their power.

State governments in Illinois and New York recently conceded to these demands and allowed utilities to charge consumers some $2.35 billion and $7.6 billion, respectively, to keep unprofitable plants operating. According to a report from Bloomberg Intelligence, if all the nuclear plants in the Northeast were to receive the same level of subsidies as New York, ratepayers would be staring down an annual $3.9 billion rate hike.[21]

There is no free market in the energy sector, since regulations and subsidies are incredibly pervasive, so it is not sufficient to say state officials should simply allow unprofitable nuclear power plants to close rather than spend taxpayer dollars or raise electricity prices to subsidize them. The real answer is to end the RPMs and subsidies that are responsible for making nuclear power plants unprofitable in the first place. Until that happens, perfectly functional and paid-for nuclear power plants, along with coal-powered plants, will continue to be prematurely retired, costing ratepayers billions of dollars per year and reducing the reliability of electricity supplies.

STATE CASE STUDIES

Ohio: With the Buckeye State's two-year freeze on the Alternative Energy Resource Standard due to expire on January 1, 2017, the Ohio General Assembly passed legislation extending the freeze until at least 2020.[22] However, Gov. John Kasich (R) vetoed the bill, and the mandate went back into effect.

West Virginia: The state's Alternative and Renewable Energy Portfolio Standard, passed in 2009, required utilities to derive 25 percent of their energy from alternative sources by 2025. It was repealed in 2015.[23]

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SOLUTION 7: UNLEASH DOMESTIC ENERGY PRODUCTION

POLICY TAKEAWAYS

- Oppose the premature closure of coal-fired electricity generation plants.
- Regulate safe and reliable hydraulic fracturing technology on the basis of the best available science rather than on unfounded claims driven by fear and misinformation.
- Repeal all renewable power mandates and subsidies to energy companies, whether renewable, nuclear, or fossil fuels.
- Oppose or roll back carbon taxes and cap-and-trade plans, which increase the price of electricity and burden low- and middle-income households the most.

New technologies have made it possible for the United States to greatly expand the size of its reserves of fossil fuels while simultaneously reducing emissions of toxic pollutants, making the United States a world energy superpower. According to the U.S. Census Bureau, between 2007 and 2012, jobs in the mining, quarrying, and oil and gas extraction industries grew by 23.3 percent, to 903,641 people.[1]

The Trump administration has called for "clean and safe development of our Nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation."[2]

Unfortunately, many policies enforced by national and state governments today were adopted in an era when Americans feared they would "run out of energy" or be too dependent on imports. We refer to these rules and subsidies as zombie regulations: "undead" legacies of President Barack Obama's war on coal that was ended by President Donald Trump.

COAL

Coal has been a mainstay of economic growth and human well-being in the United States for more than a century. Coal powered the Industrial Revolution and enabled the United States to electrify in the twentieth century, creating the most successful economy in human history. Even today—135 years after the first coal-fired central power station was built in New York City—coal supplies roughly one-third of the electricity generated in the United States.

But coal's future appears uncertain. Competition from low-cost natural gas, rules imposed on coal-fired power plants by the Obama administration, and subsidies to renewable energy have forced more than 250 coal-fired power plants into retirement since 2010.[3] Some of those plants were older, smaller units that couldn't compete with low-priced natural gas, but many were prematurely closed due to the "war on coal" conducted by the Obama administration and by many state governments. The premature closure of these plants will cost consumers billions of dollars in higher electricity prices and lost economic opportunities.

The trend away from coal has gone too far and must be stopped, or even potentially reversed. As energy policy expert Roger Bezdek wrote in October 2017: "[T]he U.S. may require more coal than is currently anticipated for a variety of reasons. For example, [Energy Information Administration] forecasts that through 2050 natural gas costs to utilities will increase much more rapidly than coal costs."[4] According to Bezdek, the higher rate of economic growth forecast by the Trump administration and by increasing numbers of economists "will increase the demand for coal and coal-related jobs."

Actions taken by President Trump to end the "war on coal" in 2017 are already having positive effects, as American mines shipped more coal in the first three quarters of 2017 than in all of 2016, according to U.S. Energy Information Administration (EIA) data.[5]

Coal increasingly is burned cleanly, as evidenced by dramatically declining power plant emissions during recent decades. The industry should be given a chance to compete on a level playing field that is subsidy-free across the board.

NATURAL GAS

Technological advances in horizontal drilling and hydraulic fracturing, commonly called "fracking," have made oil and natural gas production among the country's fastest growing industries. In 2012, a total of 1.8 million direct, indirect, and induced jobs were supported by hydraulic fracturing for oil and natural gas.[6] Direct and indirect employment dependent on the oil and natural gas industry as a whole was estimated at 10.3 million jobs in 2015, accounting for 5.6 percent of total U.S. employment for that year.[7]

The greatest economic benefits of hydraulic fracturing are enjoyed by consumers. EIA estimated the average U.S. household in 2015 saved approximately $675 in gasoline costs compared to 2014 because of lower oil prices.[8] The Brookings Institution found low natural gas prices will save between $181 and $432 per person annually, depending on the geographic area.[9]

Oil and natural gas development is primarily regulated at the state level. Maryland and New York have banned hydraulic fracturing. Other states, including Colorado, North Dakota, Oklahoma, and Texas, have implemented common-sense rules to minimize the potential environmental risks of fracturing while maximizing the economic benefits. These regulations typically focus on site design, drilling procedures, well design and specifications, regulatory oversight and monitoring, and handling materials and waste.

Well design standards protect groundwater resources by requiring energy companies to use multiple layers of steel and cement casings to prevent well contents from entering the water supply. Additionally, avoiding disposal of wastewater in underground injection wells near known fault lines helps prevent incidents of induced seismicity. Requiring wastewater to be stored in lined pits or steel tanks before it is recycled or held in injection wells helps to limit the potential for spills and leaks.

The existing peer-reviewed evidence shows hydraulic fracturing processes do not pose a systemic threat to groundwater. Since 2010, more than 25 of these studies have been produced,[10] reinforced by the Enivironmental Protection Agency's (EPA) own $29 million, six-year study of fracking's impact on groundwater sources. EPA's massive study failed to find any systemic impact caused by the 110,000 oil and natural gas wells that have been in use across the country since 2011.[11] EPA also found instances of groundwater contamination were rare, meaning states have adequately protected public health and safety.[12]

"CARBON TAXES"

Anti-fossil-fuel activists have long urged federal and state governments should impose taxes on the carbon dioxide (CO2) released when fossil fuels are burned. While no state has passed a "carbon tax," the measures have become increasingly popular in New England and in the states along the West Coast.

The Congressional Budget Office (CBO) found a $28-per-ton CO2 tax would result in energy costs that are 250 percent higher for the poorest one-fifth of households than the richest one-fifth of households.[13] CBO reported the reason for the cost discrepancy is "a carbon tax would increase the prices of fossil fuels in direct proportion to their carbon content. Higher fuel prices, in turn, would raise production costs and ultimately drive up prices for goods and services throughout the economy … Low-income households spend a larger share of their income on goods and services whose prices would increase the most, such as electricity and transportation."[14]

Another problem with taxing CO2 is any environmental benefits that it might produce would be effectively meaningless without concomitant legislation enacted across the rest of the world. Obama's Clean Coal Plan, which was put on hold by the Supreme Court and not implemented, was a war on coal and carbon dioxide and would have raised consumer costs by billions of dollars. Yet EPA estimated the plan would have only averted .019 degrees Celsius of potential future warming by 2100, too little to even measure.

In a December 2015 speech to the U.N. Framework Convention on Climate Change, John Kerry, who was then serving as the secretary of state, said, "The fact is that even if every American citizen biked to work, carpooled to school, used only solar panels to power their homes, if we each planted a dozen trees, if we somehow eliminated all of our domestic greenhouse gas emissions, guess what—that still wouldn't be enough to offset the carbon pollution coming from the rest of the world." A state-based carbon tax would have even less impact on global temperature.[15,16]

An October 2017 poll conducted by the Associated Press and the NORC Center for Public Affairs Research for the Energy Policy Institute at the University of Chicago found 68 percent of respondents said they were unwilling to pay an extra $20 per month on their electric bill to combat climate change, an amount far less than would be necessary to actually lower CO2 emissions by the amount sought by environmental activists.[17] Almost half the respondents, 42 percent, said they would be unwilling to pay even one extra dollar.[18]

State taxes on CO2 fail as a climate policy and as an efficient tax policy. Such a tax would make everything more expensive for working Americans, leaving them less to spend and save while failing to provide few, if any, environmental benefits. Lawmakers would be doing their constituents a favor by not pursuing such destructive proposals.[19]

STATE CASE STUDIES

North Dakota: In 2013, the North Dakota Legislative Assembly passed a bill fining drillers with a gross production tax for failing to cap a flared well one year after production began.[20] In 2015, a pilot program was established permitting the state agriculture commissioner to provide technical assistance and support to surface owners and tenants on pipeline restoration, as well as follow-up support to surface owners and tenants for pipeline reclamation.[21]

Oklahoma: After a spate of tremors in 2015, the Oklahoma Corporation Commission issued more than a dozen measures and directives, which helped to reduce the number of tremors by 55 percent in 2016. These measures included increased monitoring of wells, well plugging, and wastewater volume reductions for hundreds of injection sites near seismic events.[22]

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4 PART FOUR HEALTH CARE SOLUTIONS

Waste and inefficiency are easily identified in our hospitals, government programs, and private insurance markets. We see it in the number of people who lack health insurance, the lack of price transparency in much of the health care system, the high rate of medical mistakes in hospitals, and the massive transfers of income the current system generates—often from the poor and uninsured to the well-to-do and insured.

A good health care system would not employ armies of gatekeepers to stand between doctors and their patients, wouldn't require lawsuits to ensure victims of malpractice get adequate compensation or incompetent providers lose their licenses, and wouldn't require patients to wait eight to 10 years for potentially life-saving drugs.

There are two paths to reforming health care in the United States. The first is to double-down on the mistakes made in the past by adding more regulations, subsidies, and barriers to innovation and consumer choice. The second is to learn from past mistakes, repeal ineffective and often deadly regulations and subsidies, and start fresh.

Sadly, beginning in 2009, policymakers opted for the first path by passing the Patient Protection and Affordable Care Act, more commonly known as "Obamacare." At the time this is written, efforts to repeal and replace that law have not yet been successful.

The good news is that policymakers can make health care more affordable and higher quality without increasing state budgets or the national debt, and without violating the freedoms of patients or health care providers.

Two state-level reforms in particular can improve the U.S. health care system:

Solution 8: Don't Wait for Obamacare Repeal, Reform Medicaid Now

Solution 9: Remove Regulatory Barriers to Affordable Care

SOLUTION 8: DON'T WAIT FOR OBAMACARE REPEAL, REFORM MEDICAID NOW

POLICY TAKEAWAYS

- States that have not expanded Medicaid under the Affordable Care Act (ACA) should not do so.
- States should enact Medicaid reforms by applying for Section 1115 waivers, which give states more flexibility in how they manage their Medicaid programs. States should also apply for Section 1332 waivers to create financial and regulatory reforms of the ACA.

Medicaid is a troubled entitlement program that provides health care coverage to low-income adults, children, pregnant women, and people with disabilities. The quality of care received by Medicaid beneficiaries is below that received by people with no health insurance at all.[1] In recent years, costs for Medicaid have soared along with waste and fraud.

Rather than reform Medicaid, the 2009 Affordable Care Act (ACA) offered large federal subsidies to states that agreed to expand their Medicaid programs to provide coverage to individuals with incomes up to 133 percent of the federal poverty level. To date, 31 states and the District of Columbia have expanded their programs to qualify for additional federal aid.

The cost of Medicaid is shared by states and the national government. While the national government promised to cover the immediate cost of the expansion of state programs, its share of funding will decline over time and may fall back to pre-expansion levels if Congress acts to repeal Obamacare. Medicaid rolls have been expanding faster than predicted, and recent surveys show the costs for new enrollees are higher than for those covered by the existing program.[2] This means new costs could be significant.

A federal provision called "Maintenance of Effort" requires states to fund a program at the initially agreed-upon level, regardless of the amount of federal funding received. This will leave state taxpayers on the hook for new liabilities.

The failure of Congress so far to repeal and replace Obamacare presents the states with an opportunity to develop their own programs offering aid to the poor and disabled in more cost-efficient and -effective ways. Already, several states have had success with this approach. It is time for the other states to take up the interests of their own citizens—those in need, as well as the taxpayers who foot the bills—who have been failed by the national government.

States should apply to the Department of Health and Human Services (HHS) secretary for Section 1115 waivers, giving them more flexibility managing their Medicaid programs, and for Section 1332 waivers, easing the financial and regulatory burdens of ACA. Then-HHS Secretary Tom Price invited states to submit such waiver requests in a letter sent to governors on March 14, 2017.[3]

Under Section 1115 of the Social Security Act, the HHS secretary can approve for five years renewable experimental, pilot, or demonstration projects likely to assist in promoting the objectives of the Medicaid law and that meet federal budget requirements. While Section 1115 waivers historically have been used to expand coverage, benefits, or both, states also can use them to make more consumer-friendly, market-oriented reforms to their Medicaid program.

Some reform proposals states can submit to CMS and the HHS secretary through Section 1115 waivers include:

- Requirements that able-bodied beneficiaries work, look for work, or prepare for work.
- More flexible benefit packages, allowing the enrollment of Medicaid beneficiaries in subsidized employer coverage without providing cumbersome "wrap-around" benefits.
- Payment enforcement mechanisms to encourage enrollees to pay for cost sharing.
- Deployment of incentives for enrollees to engage in healthy behaviors.
- A waiver replacing the traditional federal matching grant with a capped grant.
- Time limits on coverage, monthly income verification, and eligibility renewals.
- Capping or freezing enrollment into the program.
- Creating a pilot program that integrates a direct primary care program into the state's expensive Medicaid system.

Similarly, Section 1332 of the ACA allows states to request waivers of several key provisions of that law. A waiver will not be approved by the HHS secretary if it results in a reduction in the number of people covered by ACA or if it makes coverage more expensive or less comprehensive. States cannot, for example, waive ACA's ban on excluding people with pre-existing conditions, and the waiver also must not increase the federal deficit.

Some reform proposals states can apply for using Section 1332 waivers include ending the premium tax credit; allowing cost-sharing mechanisms like co-pays, premiums, or health savings accounts; redefining which services are considered "essential health benefits"—benefits all plans must cover under ACA; and ending community and age ratings.

A governor can request a Section 1332 waiver only after the waiver has been authorized by the state legislature. States must engage in a transparent public process when requesting a waiver.

STATE CASE STUDIES

Kentucky: The proposed Kentucky Health waiver seeks to improve the state's Medicaid system by imposing premiums on a sliding scale based on family income. The program would also require payment before coverage is provided and create penalties for nonpayment, in order to reduce waste and promote efficiency. It would also introduce a high-deductible option tied to health savings accounts to encourage enrollees to seek cost-effective medical services.[5]

Rhode Island: Since January 2009, the Ocean State has been experimenting under an HHS waiver. The waiver replaces the traditional federal matching grant with a capped grant. The capped grant limits the state's federal Medicaid matching funds to $12.075 billion over a five-year period. In exchange for the cap, the state received flexibility in administering its Medicaid program. Rhode Island requires able-bodied people with incomes above 150 percent of the poverty level to contribute toward their own health coverage. The state helps pay all or part of the cost of employer-sponsored health insurance for Medicaid-eligible families who have access to these plans.[6]

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SOLUTION 9: REMOVE REGULATORY BARRIERS TO AFFORDABLE CARE

POLICY TAKEAWAYS

- Lawmakers should roll back existing state mandates, regulations, and licensing standards that prevent patient choice and limit innovation and health care entrepreneurship.
- Many states are facing a serious shortage of dental providers.
- Strict licensing standards have become a significant barrier to dental care access.

There are many things states can do to encourage innovation, efficiency, and higher quality health care without waiting for the national government to pass laws or even grant waivers. For example, states can:

Repeal certificate of need laws: Thirty-five states require health care providers to obtain certificates of need before expanding or opening new facilities. Extensive research demonstrates certificate of need laws reduce competition and result in higher prices.[1]

Repeal mandated benefits: In the United States, there are 2,271 state laws mandating insurers cover specific health providers, procedures, or benefits. These laws often are billed as being pro-consumer, but they mostly benefit the special-interest groups that lobby for them. Repealing these mandates would lower the cost of premiums and allow millions of people to get back into the private health insurance marketplace.

Repeal guaranteed issue laws: Guaranteed issue laws require insurance companies to provide insurance to anyone who seeks it. The 1996 Health Insurance Portability and Accountability Act required insurers to offer guaranteed issue policies in the small group (two to 50 insured persons) market. Some states have tried to impose guaranteed issue on their individual markets, with disastrous effects. Guaranteed issue drives up the price of health insurance by creating an incentive for people to wait until they are sick before buying insurance. The results are soaring premiums and rising numbers of uninsured people.

Repeal community rating laws: Community rating laws require insurers to charge similar rates to all members of a community, typically without regard to age, lifestyle, health, or gender. Because an insurer cannot adjust its premiums to reflect the individual health risks of consumers, the healthy majority see their premiums rise. Like guaranteed issue, this results in an insured population with higher health care expenses than the average population, requiring higher insurance premiums. Once again, premiums increase because more healthy people choose to go without health insurance.

Repeal barriers to direct primary care (DPC): Twenty-three states have chosen to pass laws that clarify DPC is not a form of insurance nor a “risk bearing entity.” Without this distinction codified into law, DPC doctors could conceivably be regulated and licensed in the same way as insurers. DPC removes the layers of regulation and bureaucracy created by the traditional insurance system and allows physicians to see fewer patients and focus more time on each patient.[2] According to the Docs4Patient Care Foundation, under a DPC model, medical practice overhead can be reduced by as much as 40 percent.

EXPAND USE OF DENTAL THERAPISTS

Occupational licensing laws unnecessarily restrict the supply of medical care providers and reduce access to care. A good example, and place state legislators can start to repeal such regulations, is dental therapists.

According to data from the Department of Health and Human Services, more than 48 million Americans live in areas with shortages of dental services, and this is likely to worsen in the coming years.[3] The Health Resources and Services Administration projects by 2025, the number of dental shortage regions will more than double, from 7,000 to 15,600.[4] Additionally, access to care is also limited for the 74 million children and adults who rely on Medicaid and the Children's Health Insurance Program.[5] Only about one-third of American dentists accept patients on Medicaid.

Currently, dental services are delivered by three categories of practitioners:

1) **Dentists** have the skills and are authorized under state law to perform any dental health procedure. These include tooth extractions, root canals, and bridges.

2) **Dental therapists** have the skills to perform many, but not all, the functions of a fully trained dentist. According to the University of Minnesota School of Dentistry, a dental therapist is "a licensed oral health professional who practices as part of the dental team to provide educational, clinical and therapeutic patient services. Dental therapists provide basic preventive and restorative treatment to children and adults, and extractions of primary (baby) teeth under the supervision of a dentist."[6] All states with dental therapists allow them to extract adult teeth extremely loosened by disease.[7]

3) **Dental hygienists** have the skills to perform a more limited number of functions, such as teeth cleanings and X-ray preparation, but they are unable to perform extractions and fillings, the two procedures most likely to prevent oral health care diseases, which can lead to other serious health problems.

The dental therapist position does not exist under current law in many states. Allowing dental therapists to practice in all states would help to close gaps in dental care access and ensure patients receive preventive and restorative treatments, when needed.[8,9]

Licensing dental therapists to practice would give dentists the option to hire them as members of a dental team equipped to meet scores of oral care needs, under the supervision of a dentist located onsite or offsite. Dentists who want to grow their practices by employing and supervising dental therapists would be free to do so. Dentists who do not want to hire dental therapists would not be required to.

A study issued by the University of Washington found when dental therapists are employed, there are fewer extractions, fewer instances in which general anesthesia is used, and more preventive visits for adults and children.[10] Dental therapy also has the potential to increase providers' efficiency and save taxpayers' money. A 2014 Pew Charitable Trust study shows the dental therapists in Minnesota are exceeding the cost of their employment, in terms of reimbursement value.[11]

The shorter training period and narrower scope of dental therapists make them less expensive to employ than dentists. In low-income communities, where large shares of the population are enrolled in Medicaid, dental therapists have made it easier for their dentist-employers to

profit despite Medicaid's notoriously low reimbursement rates, which vary by state.[12] Only Maine, Minnesota, and Vermont allow statewide licensing for dental therapists. Permitting dental therapists to obtain licenses in other states would expand access for populations rural and urban, young and old, on Medicaid and off Medicaid. Dentists, who are currently barred from hiring dental therapists in most states, would gain the freedom to grow their practices by building their dental dream teams.[13]

STATE CASE STUDIES

Maine: Legislation was enacted in Maine in 2014 allowing dentists statewide to hire dental therapists.[14] The state is currently implementing the law to create a training program for the therapists.

Minnesota: The North Star State was the first in the country to approve legislation authorizing dental therapists, which it achieved in 2009.[15] Dental therapists in Minnesota are authorized to perform more than 70 services and procedures, including oral evaluations, disease prevention education, and consultation with the pediatricians of patients aged three or younger. Dental therapists may also perform cementation and removal of space maintainers, crown implantation, anesthetization, replacing missing and broken teeth, and suture removal.[16,17] Forty-eight percent of dental therapists are serving suburban and rural communities, where roughly 30 percent of Minnesotans live, showing dental therapists disproportionately practice in and benefit the communities that need them most.

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5 PART FIVE CONSTITUTIONAL REFORM SOLUTIONS

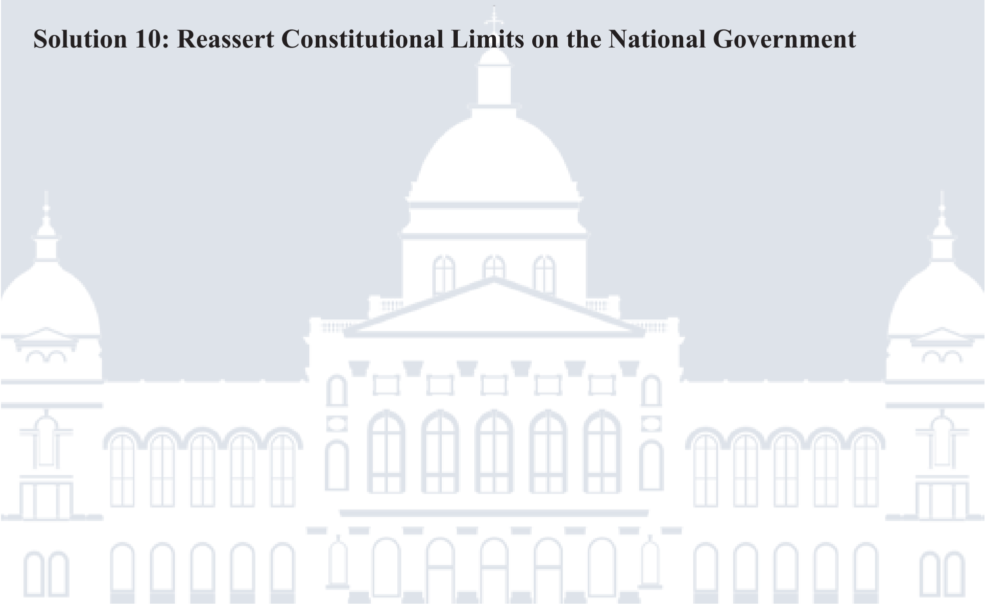
America is facing a constitutional crisis. Limits on the size and power of the national government intended by the Founding Fathers and placed in the Constitution have been violated repeatedly and with devastating consequences. Spending is completely out of control, moving the country toward bankruptcy. The national government has grown to the point that it is now a clear and present danger to American life, liberty, and happiness.

The U.S. Supreme Court and Congress are unable or unwilling to protect the Constitution from these assaults. It seems no power grab by the executive branch is too bold for a majority of Supreme Court justices to see as being beyond the scope of the Constitution, and the House and Senate are no match for a president set on "transforming" America.

Repealing past amendments and convincing future Supreme Court justices to defend the written Constitution may not be possible, but reform under Article V of the Constitution can help repair the damage they have done. Until the damage is fixed, patriots from all parts of the political spectrum will continue to win small battles but lose the bigger war for freedom.

Here is how citizens and state legislators can rein in an out-of-control national government:

Solution 10: Reassert Constitutional Limits on the National Government



SOLUTION 10: REASSERT CONSTITUTIONAL LIMITS ON THE NATIONAL GOVERNMENT

POLICY TAKEAWAYS

- The U.S. Supreme Court and Congress are unable or unwilling to rein in the national government. Citizens and states can constitutionally step forward to do the job.
- States should reassert constitutional limits on the national government via an Article V convention of the states.
- An Article V convention can be convened if two-thirds of the states (34 state legislatures) apply for a convention and then Congress calls it.
- States can form compacts to refuse to implement national regulations and programs that exceed the powers delegated to the national government by the Constitution. The compact method also can be used to call an Article V convention.

The national government carries a national debt that exceeds $20 trillion. National entitlement programs, such as Medicare and Medicaid, are all on paths to bankruptcy.[1] Many states and cities face their own impending financial cliffs, as years of overpromising wages and benefits to government workers collide with chronic under-funding of public pension funds. Government debt is a “ticking time bomb” that threatens to destroy people’s savings, the economy, and America’s leadership in the world.[2]

The regulatory state is similarly out of control. According to the Competitive Enterprise Institute’s annual survey of the cost and reach of regulations, national regulation and intervention cost U.S. consumers and businesses $1.9 trillion in 2016 in lost economic productivity and higher prices.[3] Regulations cost the average household $14,809—around 21 percent of an average family budget of $69,629.[4]

The strategy of confronting the Leviathan issue-by-issue or program-by-program has failed to rein in total national government spending, borrowing, and regulating. While policymakers and activists rightly celebrate victories at the state level or blocking one or two national programs and repealing one or two regulations, countless other programs have expanded. Some battles are won, but the war is being lost.

The root of the problem lies in the Constitution itself, a magnificent document without any doubt, “the most wonderful work ever struck off at a given time by the brain and purpose of man.”[5] But it is a document not immune to the contrivances of generations of men and women set on finding ways to evade its restrictions on their power, prestige, and access to the wealth of others. As Thomas Jefferson warned, “The natural progress of things is for liberty to yield, and government to gain ground.”

Article V of the Constitution provides a way to propose and enact amendments to it.[6] An Article V convention can be convened if two-thirds of the states (34 state legislatures) apply for a convention and then Congress calls it. Any amendments proposed by the convention then must be ratified by three-fourths of the states (38 states).

There has never been an Article V convention to enact constitutional amendments, but attempts to call a convention have happened throughout the nation’s history. Two recent notable efforts occurred during the 1960s and 1980s. U.S. Sen. Everett Dirksen (R-IL) led an effort to call a convention to reverse the Supreme Court’s decisions on *Wesberry v. Sanders* and

Reynolds v. Sims. The cases were related to redistricting and voting rights. Thirty-three state legislatures passed resolutions calling for a convention. The effort was stopped in 1969 after Dirksen died. This left the effort one state short of calling a convention. Former U.S. Sens. Jim DeMint (R-SC) and Tom Coburn (R-OK), Sen. Rand Paul (R-KY), Texas Gov. Greg Abbott (R), and scores of other influentials have endorsed using Article V as a way to rein in the federal government.

The first effort to call an Article V convention for a balanced budget amendment began in the late 1970s. State legislatures called for a convention in response to increasing federal deficits. Thirty-two states passed resolutions by 1983. The effort was stopped over fears that a proposed convention would not be limited to one subject, but a new effort began in 2011.[7] The Balanced Budget Amendment Task Force[8] is leading efforts on the political right to call a convention.

Once dismissed as too impractical or too risky, constitutional reform under Article V has emerged as a valid and even indispensable tool for the kind of changes to public policy that are needed. Six states passed Article V resolutions or bills in 2017, and all 50 states either saw bills introduced or recently adopted Article V resolutions.[9]

Twelve states have passed a multiple-subject resolution sponsored by the Convention of States.[10] The proposal includes term limits for members of Congress and reducing federal regulations, in addition to a balanced budget amendment. Nine states have passed this resolution through one house of their legislature, while another 24 state legislatures considered this resolution in the 2017 legislative session.[11]

Another way to reassert constitutional limits on the national government is through interstate compacts—agreements between two or more states on a particular policy issue. Most require the approval of the U.S. Congress. States have entered into compacts to settle a variety of public policy issues throughout our nation's history. Some notable compacts already in existence are the Great Lakes Commission, the New York-New Jersey Port Authority, and the Washington Metropolitan Transit Authority.

Alaska, Arizona, Georgia, Mississippi, and North Dakota have passed the Compact for a Balanced Budget proposal.[12] The measure, spearheaded by Compact for America, calls for an Article V convention to vote on a proposed amendment requiring a balanced federal budget through an interstate compact agreement that simplifies the procedures for calling a convention.

State compacts are a potential defense against the Patient Protection and Affordable Care Act of 2010 and the Clean Power Plan, by which the Obama administration sought to stop the use of fossil fuels, especially coal. In October 2017, the Environmental Protection Agency announced its plan to begin the recision of the Clean Power Plan.

An agreement can be entered by two or more states not to enforce particular provisions of the law, leaving enforcement fully to the federal government. Not all compact agreements require the approval of Congress. The 1893 U.S. Supreme Court decision *Virginia v. Tennessee* found only compacts affecting the delegated powers of Congress need congressional approval. Delegated powers include, but are not limited to, collecting taxes, establishing bankruptcy laws, establishing post offices, maintaining the armed forces, and regulating interstate commerce.

If a balanced budget amendment is adopted, Washington, DC will no longer have the ability to set its own credit limit and write itself a blank check. The states would become an active board of directors charged with keeping an eye on our wayward federal CEO and staff.

STATE CASE STUDIES

Balanced Budget Amendment Resolution: Passed in 28 states: Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Iowa, Kansas, Louisiana, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, West Virginia, Wisconsin, and Wyoming.[13]

Compact for a Balanced Budget: Passed in five states: Alaska, Arizona, Georgia, Mississippi, and North Dakota.[14]

Convention of States: Passed in 12 states: Alabama, Alaska, Arizona, Florida, Georgia, Indiana, Louisiana, Missouri, North Dakota, Oklahoma, Tennessee, and Texas.[15]

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NOTES

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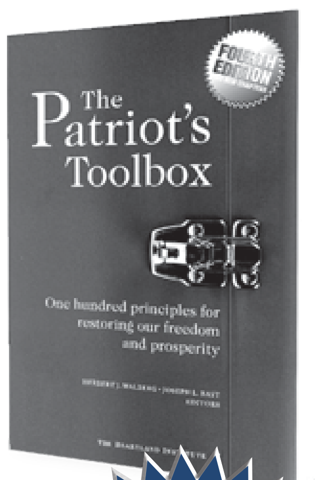

The Heartland Institute is pleased to announce the release of the fourth edition of *The Patriot's Toolbox,* coauthored and edited by Dr. Herbert Walberg and Joseph Bast, with contributions from 18 other distinguished policy experts.

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Publisher: The Heartland Institute; 4th edition (2017)
ISBN-13: 978-1-934791-62-2
ISBN-10: 1-934791-62-8
Dimensions: 6 x9 x 0.7 inches
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Many states are struggling to educate their residents, attract businesses, and deal with unfunded mandates passed down to them by the national government. With these challenges, come big opportunities.

If states were to implement the policies outlined in this booklet, public workers would control their own retirement funds, no longer having to worry about changing jobs or their state government not being able to pay their benefits. People who need social services to cope with disabilities, drug use, or other problems would get help more conveniently and efficiently and without having to "sign up for welfare" every time they need a little help.

The recommendations in this booklet would improve the quality of the schools children attend and the range of choices their parents would have. Energy costs for homes and businesses would be lower, as would fuel prices at the pump.

People who rely on Medicaid for their health care would have increased access to better care, the burden on today's taxpayers would be less, and future generations would not be denied essential services while state budgets buckle under the weight of entitlement spending. Unnecessary regulations wouldn't force hospitals, nursing homes, and other health care providers to ask for permission to offer services. And people would have greater access to affordable health care and dental care providers.

With fundamental constitutional reform, the national government would finally be held responsible for decades of reckless borrowing and spending. The states and their citizens would be returned to their rightful place of power in the federalist system of government America's founders envisioned.

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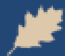

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