2006

Emerging Issues

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Edited by
Diane Carol Bast
Michael Van Winkle

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19 South LaSalle Street #903
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phone 312/377-4000
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Introduction

By Joseph L. Bast[1]

On September 13, 2005, The Heartland Institute hosted its second annual Emerging Issues Forum. Directed by Master of Ceremonies Joseph A. Morris, president of The Lincoln Legal Foundation, the program featured 11 speakers from across the country, addressing emerging public policy issues from the economy to welfare reform. Their focus was on the future: looking ahead at what issues are "emerging." What are we going to be debating next year, and the year after, and the year after? What issues are going to dominate elections or government affairs efforts in the future?

Grace-Marie Turner, president of the Galen Institute, delivered the luncheon keynote address, discussing the future of the consumer-directed movement in health care. "The emerging move toward consumerism in this country has great potential to get incentives properly aligned in the health industry," she noted, "making consumers more value-conscious and benefitting consumers and their employers."

An audience of 80 people listened and participated in follow-up small group discussions with the speakers. Many continued their conversations late into the evening, joining more than 500 guests at The Heartland Institute's Twenty-First Anniversary Benefit Dinner.

About The Heartland Institute

The Heartland Institute is a nonprofit organization devoted to discovering and promoting free-market solutions to social and economic problems. While there are hundreds of thousands of nonprofit advocacy groups and think tanks in the United States, few of them are devoted to protecting and expanding individual liberty and freedom.

That's an odd thing, because freedom is really the wellspring of all the other benefits and all the other good things most of these groups are trying to accomplish. Without freedom, we don't have prosperity; without prosperity, we don't have good health care. We're not able to respond to emergencies, like Hurricane Katrina; we don't have better

[1] Joseph L. Bast is president of The Heartland Institute. He was the principal organizer of the 2005 Emerging Issues Forum.

schools. All of these things track back to the peace and prosperity that freedom makes possible.

Freedom does not defend itself very well. It is always being chipped away by special interest groups and little compromises. And yet there is this very small, straggling, little network of nonprofit groups, like The Heartland Institute, that try to defend freedom on a regular basis.

The Heartland Institute's primary audience is the nation's 7,300 state elected officials. They oversee huge budgets, and they set policy on education and health care and the environment. They are in many ways more influential than the federal government, so we try to provide as much good public policy research from a free-market perspective to these state legislators as we can.

Heartland sends to state elected officials—as well as members of Congress, thousands of municipal officials, and journalists—a publication about once a week: four public policy newspapers and one public policy newsletter. Eighty-four percent of state legislators say they read one of our publications; nearly half of them say one of our publications has changed their mind or affected public policy.

Thanks to Sponsors

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I also express my sincere appreciation to Joseph A. Morris, president of The Lincoln Legal Foundation. He is greatly admired for his many contributions to the conservative libertarian movement, and for his class, dignity, and great ideas. We're very lucky to have him here in Chicago, and to have him serve as Master of Ceremonies for the 2005 Emerging Issues Forum.

Welcoming Remarks

By Joseph A. Morris[2]

Welcome to The Heartland Institute's second annual Emerging Issues Forum. Thank you for joining us today.

My essential credential for this Master of Ceremonies role is that my first name is Joe. Apparently, to lead The Heartland Institute you have to be named Joe.

The Book of Ecclesiastes tells us there's nothing new under the sun, and in some really important respects that's true. There are some fundamentals about human nature, human needs, the characteristics of the human spirit that just don't change from time-to-time, generation-to-generation, age-to-age. People are people, and those things about us that are disgusting—the greed, the insensitivity, the cruelty—you find that age-to-age, place-to-place, that's an aspect of the human condition. Sometimes when it emerges, it shocks us. We don't expect it in a place like New Orleans in the twenty-first century, and yet there are moments when it seems as if the veneer of human civilization is really quite thin.

And then there are other aspects of humanity that are also equally eternal and truly inspiring: the search for love, and the willingness to give it; the passion for creating new life; the passion for ideas; the passion for enterprise; the desire to see people happy; the desire to see people helped; the desire to end hurt and end pain; the desire to succeed; the will to compete. All these things are eternal too.

So in those fundamental respects, there's nothing new under the sun. And yet, of course, as the human kaleidoscope forms and reforms, sometimes new patterns emerge, and some of these eternal issues turn out to present themselves to us squarely in the face in new ways. For each of us, going through our time in history, we find these challenges and opportunities to do good things and do right things ... and as we say, issues emerge.

For example, today we're going to talk about the Supreme Court's recent decision in the field of eminent domain. Paul Fisher, a very

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[2] Joseph A. Morris is president and general counsel of The Lincoln Legal Foundation and a partner in the law firm of Morris & De La Rosa. He served as Master of Ceremonies of the 2005 Emerging Issues Forum.

distinguished Chicago lawyer and director of The Heartland Institute, will be talking about the *Kelo* decision and its implications later in our program today. The issue of eminent domain, the question of the power of government at all levels to take private property for public use upon payment of just compensation, is an issue that's been around since long before the Constitution was adopted. It was an issue for kings and barons and the emerging middle class in England in the early stages of development of the common law.

And yet that eternal question of the power of the state versus the power of one's self to be a king in one's own home emerges afresh in 2005 as really, perhaps, a pitchfork rebellion issue. Here is a question of Constitutional law that ordinary citizens can understand and get pretty darn angry about. There is an opportunity not only to mobilize public sentiment in a sense, but perhaps even to do something deeper: to teach. To teach people more deeply about Constitutional issues, more deeply about the relationship between individual and state, more deeply about the principles that underlay a Constitutional order such as ours.

So that is what is meant, in a sense, by "emerging issues." We are delighted to have you with us today as we try to do some advanced thinking about issues that are going to emerge and how they can be addressed, and how grappling with them can advance the cause of liberty in the Midwest and throughout the country.

1
Economy

The U.S. Economy: A Tale of Two Futures

Brian Wesbury[3]

I have tried to come up with one word to describe my feelings about the economy today, and the word I keep coming up with is … annoyed. Let me explain.

I was sitting at a dinner party a few months ago, and across the table from me was a woman. She was not an economist, not a professor of finance, not an elected government official, just a regular human being. She was well-read. I'm not saying she read Adam Smith on the weekends, but she read the newspapers and stayed up on the current issues. She looked across at me and said, "Hey, the French just voted no on this constitution thing. What's going on?"

She knows I'm an economist, and rather than get into the details of what was really going on there, I said: "Well the French are not happy with their economy. They have a 10 percent unemployment rate. Forget that they caused it and that the constitution might actually help them get rid of it. They have a 10 percent unemployment rate!" She looked at me and said, "They do? Well what is the unemployment rate in the United States?" At that time it was 5 percent, but today it is 4.9 percent. "Really?" she said. "I thought our economy wasn't doing as well as theirs."

Of course, my jaw hit the floor! I believe this conversation is a testament to how horrible our media is at telling the story about what's going on around the world economically. Have you noticed everyone seems to believe the housing market is in a bubble? This is just another

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[3] Brian Wesbury is chief investment strategist and chairman of the investment committee at Claymore Securities, Inc., a financial services firm based in Lisle, Illinois. He also serves as The Heartland Institute's senior fellow for federal budgets, trade, taxes, and monetary policy. *The Wall Street Journal* ranked Wesbury the nation's #1 U.S. economic forecaster in 2001 and *USA Today* ranked him as one of the nation's top 10 forecasters in 2004.

example of how badly our media covers the economy. The conventional wisdom is that there is absolutely no justification for the number of new and existing home sales over the past three or four years. But the same conventional wisdom says the oil market is priced 100 percent correctly; supply and demand justify every single penny of the price of a barrel of oil today. Think about that. How can that be? If markets are always right, then neither one of them is in a bubble.

It is telling that what is good about our economy—that 70 percent of Americans now own their homes—is reported as bad news because it is believed to be a bubble. What is bad about our economy—a $63 barrel of oil—is really, really bad. What is good is bad and what is bad is really bad; and that's the world we live in.

A Technological Revolution

What is leading us to this negative opinion about our world? For one thing, we are living through a massive upheaval, a transformation in our economy that we have not seen in a century. You have to go back to the Industrial Revolution to find anything of its magnitude.

How many people in this room have an iPod or some other digital music player? When I started asking this question about a year ago, it was about 10 percent of the room; it looks like about 20 to 25 percent now. If you own an iPod, or any other digital music player, chances are you no longer go to the record store. Instead, you purchase your music online. We are selling more music today than we ever have in history and yet, record stores and distributors are seeing their business plummet. Technology is causing losses of jobs in industries that are booming, and people are confused.

It is very instructive to go back and read the history of the late 1800s and early 1900s. William Jennings Bryan gave a very famous speech, right here in Chicago, about not crucifying us on a cross of gold. He was responding to a similar economic upheaval. Farmers, in particular, were seeing their crop prices falling because productivity was booming. If you believed then that you were going to farm just the way your father and grandfather did, you would be out of a job. Just like those farmers, modern producers have to work hard to stay on the cutting edge of technology or productivity. If they don't, profits will suffer.

Productivity and Deflation

Despite all the great things going on during this boom in productivity, there are many people who do not understand and are looking for ways out, much like we did a hundred years ago. The federal government was forced to drive the federal funds rate down to 1 percent in 2003. Why? Because of deflation in the economy from increased productivity.

With respect to monetary policy, the technology boom has a dark side to it. Most people do not understand the forces that Mises and Hayek taught us about. Deflation resulting from productivity is a good thing! One of the reasons the naysayers and alarmists believe this trend is bad is they do not want to run hard enough to keep up.

There is another issue here too. Some people do not understand some costs are sunk, and you *really* have no other choice but to buy the latest, greatest machine. If you do not, you are going out of business ... and fast.

Taxes and Economic Growth

We have learned in the past few years that the more progressivity we have in our tax system, the more volatility we have in government's income stream. California is a perfect example of this. California reaped rewards from the boom of the late 1990s and spent it all. When that boom ended, its revenues plummeted.

This also happened at the national level. In terms of tax revenue, we were over 20 percent of GDP in the late 1990s before we fell below 16 percent. The more progressive a tax code is, the worse the deficit is during down times in the economy. High-income households make up a larger percentage of a progressive tax base and take the biggest hit during economic downturns.

As a result of the Bush tax cut of 2003, we have good economic growth, but we also have a more progressive tax code than we did in the late 1990s. Thus, we are setting ourselves up for some potentially negative outcomes in the future and we are using the Fed to bail us out. We are mistaking deficits in the public world for evidence that taxes may not be high enough.

A Pessimistic Forecast

I see two possible futures for us right now, and as a forecasting economist I am torn between them. Today, I am an optimist, so I will save the best scenario for last.

As for the bad, we now are living through a period much like the early- and mid-1960s, when we were basically in the final stages of a 20-year boom in the economy. The boom began right after World War II as incomes, housing values, and wealth dramatically increased. The Kennedy tax cuts of 1964 led to 4 percent and 5 percent economic growth in 1964 and 1965, respectively.

What did we do with that wealth? We started major welfare initiatives and called them the "Great Society." That spending was accelerated by Richard Nixon and resulted in the stagflation of the 1970s, marked by slower growth, double-digit inflation, and double-digit interest rates.

We are seeing the same kinds of things happening today. The Medicare prescription drug benefit is a huge $12 or $13 trillion entitlement. We made a run at reforming Social Security, but we could not get anywhere with it. It appears even Connie Mack's tax reform commission has been derailed, and now two Supreme Court nominations may be prelude to the real lame duck years of a Bush administration that will likely get nothing done on the tax side. Add to all this the massive federal spending related to Hurricane Katrina and it seems possible we are back in a period like the mid-1960s, where an incredible boom has lifted our wealth but we decide we cannot have any person, no matter what the catastrophe, wait more than 24 to 36 hours for the cavalry to arrive.

Of course, we cannot fault people for wanting the cavalry. If I were in their position, I would want the cavalry there too. However, the costs are huge, and if we decide to redistribute wealth so dramatically then the waffling in the stock market we have seen over the past year-and-a-half could be the beginning of a long period without real gains, just like the 1970s.

An Optimistic Forecast

Now I'll give you the good version of our future. We are not necessarily on the road to stagflation; let me give you a few reasons why.

First, when you really look at what happened after Katrina, all of the factors we have been discussing—technology, the productivity advances, and efficiency gains—combined with business continuity planning developed since 9/11, coalesced to form an army of private-sector companies willing and able to produce and deliver things to the affected regions more effectively than the government. This story may not get out as much as it should because the media is so focused on the government response.

Second, our low unemployment rate will enable the people affected by the storm to recover much more quickly than we expect. They are going to be able to do so because of the private sector, not the public sector. Some people will believe it is all public sector, but I know for a fact that much of the help people are getting is coming from the private sector. What comes out of Katrina could actually be a good thing.

Third, Health Savings Accounts (HSAs) are transforming our health care landscape as we speak. As they grow, they will overwhelm the cost of the drug benefit that will begin in 2006. The drag on the economy created by the government entitlement will be offset by the increased efficiency of HSAs.

Finally, with regard to tax reform, Connie Mack realized a long time ago that his commission was never going to get a flat tax or a national sales tax, so he has focused on some piecemeal changes that are very important. There is going to be a big focus on fixing the Alternative Minimum Tax (AMT) and a much greater use of tax-free or tax-deferred savings vehicles. I hope they also will lift caps on the amount of money that can be saved in tax-free or tax-deferred vehicles and make those vehicles available to persons with high incomes. In effect, this would be a back-door move towards a better tax regime.

When you tie it all together—the economy, the private sector, the potential of this new economic age we live in—I think we could actually make a great deal of progress. While we can always be pessimistic about the future, I believe the trend going forward is much more toward the creation of wealth rather than its redistribution.

2

Education

School Choice:
A Steady Pace Toward Success

Robert C. Enlow[4]

It was 50 years ago, in 1955, that Milton Friedman launched the modern school choice movement by articulating an old Adam Smith idea in a fresh and new way. It was just 10 years ago when Friedman said in the *Washington Post*, "I sense we are on the verge of a breakthrough in one state or another which will then sweep like wildfire through the rest of the country." It was only nine years ago that he and his wife Rose started the Milton & Rose Friedman Foundation.

Given all the defeats and setbacks you might have heard about, the obvious question has to be: What progress has been made on school choice in the past few years? Are we anywhere near Milton Friedman's gold standard of choice? Is the school choice movement a raging inferno? A dying ember? Or something completely different? To answer this, we should look at what has happened in 2004 and 2005 within a factual and historical context.

Legislative Activity

The first question is: How many school choice bills were introduced in legislatures across the country this year? There were roughly 154 bills introduced in 38 states; 63 of them were voucher-related; 49 were direct tax credit bills similar to the program that already exists in Illinois; and 42 were scholarship tax credits. The sheer number of bills introduced in the past year is high.

However, just because our numbers are high does not necessarily mean we are making progress. It could be that we are manufacturing a lot

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[4] Robert C. Enlow joined the newly established Milton & Rose D. Friedman Foundation for Educational Choice in 1996 as a fundraiser and projects coordinator. In 1999, he was promoted to vice president, programs and public relations, and in 2003 he was named executive director.

of widgets, but people are not really considering buying them, much less putting in new orders.

So we have to ask the second question: Are school choice bills getting serious consideration, or are a bunch of right-wingers introducing them merely for the sake of saying they're doing something?

Not including the bills that passed just at the committee level this year, which were numerous, school choice legislation passed in 19 legislative chambers in 12 states. Importantly, much of the activity has been in states that had previously passed school choice programs, such as Arizona, Florida, Minnesota, and Pennsylvania. States that already have choice apparently are no longer afraid of it and generally want more of it.

We also have seen that a universal school choice program can pass an entire legislative body. Arizona's Senate passed a universal voucher bill, and the Arizona House passed it on two readings out of three. Though the universal voucher did not become law, the legislature did end up passing a law to expand the state's existing scholarship tax credit program.

We have manufactured a significant number of widgets, and we know people are expressing interest in buying those widgets. How many deals have we actually closed? Are we *passing* any school choice programs into law?

As a matter of fact, we are. In 2004 and 2005, legislation was passed in six states. Four new programs were passed in Florida, Ohio, Pennsylvania, and Utah; and six existing programs were modified and expanded in Arizona, Florida, Minnesota, two in Ohio, and Pennsylvania.

The final question we need to ask is whether our widgets are any good. Are the bills being passed any good? Or are they the sort of small but limited bills that help only a very narrow segment of society?

Frankly, most bills being passed are limited to specific types of children, those with disabilities or those from lower-income families. However, that is not the end of the story. This year, unlike previous years, no bill was introduced that started at a level of 185 percent of poverty, as was the case in Milwaukee. They all started at 200 percent to 250 percent, which means they were more inclusive than before. This is important because middle-income families *and* the working poor need access to school choice.

A Controlled Burn

Given these facts, what conclusion can we make about the progress of school choice? School choice does not seem to be either a dying ember or a raging inferno; it is something more like a controlled burn. Is this a good thing?

While we would all love to see that raging inferno, there are several ways in which this controlled burn helps the movement. It means the school choice movement as a whole is maturing. Like the rise of compulsory education between the 1830s and the 1910s, we are slowly becoming a dominant item on the education reform menu.

Moreover, there is growing recognition that the movement needs a long-term vision if it is to succeed. All of us who work in the movement know it takes time, years even. Getting a school choice program passed is not as simple as pouring hot water on top of instant Ramen noodles; it takes a lot of effort.

The fact that every year we are passing new laws and modifying existing laws means there are enough programs in operation that we can look critically at what has worked and what has not worked. The movement can evaluate itself and ask, “Are we doing the right thing?” And this sort of introspection will give us even more credibility. The fact that we are discussing seriously the relative merits of the various programs shows we are moving from a “let’s get it done” mentality to a “let’s get it done right” mentality.

This internal scrutiny already has led to a number of positive developments. First, there has been a great deal of effort to focus the movement on how to design and pass legislation that can withstand constitutional scrutiny and is easy to implement. For example, working with our partners at the Alliance for School Choice and American Legislative Exchange Council, the Friedman Foundation designed five model bills that we then circulated among legislators across the country. Of course, these are just models, and every state has its own way of doing it; but having experts coming together from around the country to look at what works and what doesn’t is a very good step forward.

Another positive development of this self-criticism is a meaningful discussion on the kind of accountability that should or should not be in place when private schools accept vouchers. For instance, in Milwaukee it is the school choice supporters who have helped make sure 63 private schools over two years would not be included in the program, since they were not ready for prime time. We do not want bad PR to hurt us, like it has in Florida. We have to make sure the providers are good, and we have to help them become even better.

An example of this is Pennsylvania, where one group is now helping others learn the financial side of running a scholarship organization. We are realizing it is important to be able to take apart school budgets and say, “This is exactly what it’s going to cost, and these are the winners and these are the losers.”

Finally, this self-scrutiny allows us to address how the logistics of exercising choice can influence the overall effectiveness of a choice program. In 2004, the Friedman Foundation released a study grading voucher and tax credit programs around the country. We graded programs based on how many parents were able to use vouchers and tax credits, how much purchasing power parents had, and the amount of freedom given to private schools. Our thesis was simple: If parents have easy access, then the program is going to function better.

While this study generated a great deal of media coverage and even some controversy, there is little doubt the grades and recommendations for improvement helped inspire real changes in existing programs. In Cleveland, for instance, we gave them an ‘F’ for purchasing power because $2,500 does not buy a poor child an education. They have since raised the voucher amount. That is a solid move in the right direction.

From Best to Worst

With regard to our ease-of-use study, let me give you a quick preview of what we have learned this year about the various programs around the country. We rated six programs “excellent”: Arizona, Illinois, Iowa, Milwaukee, Maine, and Vermont. Milwaukee is a means-tested voucher program; Maine and Vermont are tuitioning vouchers; Arizona is a scholarship tax credit; and Illinois and Iowa are direct tax credits.

Milwaukee is excellent because parents work directly with the private schools and fill out a very simple form to enroll their children. In Maine and Vermont parents use the same method of choosing a private school as they would choosing a public school; they simply go to the school they want. In Arizona, there are very simple processes for parents to fill out forms and, because there are no income restrictions on the program, the scholarship organization or the state does not have to collect a whole bunch of unnecessary information that would create barriers to entry for parents. As for the tax credit programs in Illinois and Iowa, parents just fill out their tax forms and attach a receipt.

Programs rated “good” are relatively easy for parents to use but they have some problems and barriers to entry. These include the Florida McKay voucher program for special-needs students, and the tax credit programs in Florida, Minnesota, and Pennsylvania. McKay’s program has an online application process, which is a good thing, but it limits some parents' access. Florida and Pennsylvania's tax credit programs have forms that are very cumbersome. While Milwaukee has a simple five-question form, Florida and Pennsylvania require parents to fill out detailed questionnaires by hand. In Minnesota you have to itemize each expense by type.

The programs we rated as "fair" include the Cleveland program and the Ohio autism program. They are rated fair because they have rules that make it tough for parents to make use of the program. For example, in Cleveland parents must apply not to the school, but to the state's Office of School Choice Options, and the forms require tax returns for all members of the household. Thus, if you have seven people in your household, you have to have seven tax returns! Ohio's autism program is similarly problematic because parents must pay for the services first and then be reimbursed. It seems pretty obvious that we should strive to make it easier for parents to use both programs.

The worst programs in the country are the Washington, D.C. program and Florida's A+ program. The reasons are very simple. For the D.C. program, parents must appear in person and fill out a 17-page form to determine eligibility! Though the Washington Scholarship Fund, which manages the program, has done a tremendous job in overcoming this design hurdle, it is still a hurdle.

The problem with Florida's A+ program is that once the state announces school grades, parents have only two weeks to apply for the program. Then they are given a confirmation number that has to be given to the private school, which then has to submit that confirmation number via the Web. It is all very onerous, and it is something you and I would not put up with.

If our thesis is right, that few barriers to entry lead to a better program, then you would guess the programs rated excellent and good would have higher participation levels than those rated fair and poor. As a matter of fact, they do! Since 1998, participation in the Milwaukee program has seen the sharpest growth of all school choice programs in the country. Meanwhile, Florida's troubled A+ program has seen a 5 percent drop in participation rates since it started in 2000.

In my view, this kind of internal scrutiny will help us ultimately reach Milton Friedman's gold standard. It is important that we continue to publish these kinds of studies.

While I've focused so far on the positive aspects of the controlled burn of school reform, I would be remiss if I did not mention some of the negatives as well. Specifically, we may down the road regret our decision to be incremental instead of focusing on universal choice.

I once had a conversation with Dr. Friedman on this very topic. I was telling him about how we had just passed the Utah special-needs program and he looked me square in the eye and said, “That’s not what we want.” I responded: “Okay, yes, it’s not enough people. We don’t have enough children. You’re right, but we have begun to separate the financing of the schools in Utah from the administration of schools for at least one class of children without regard to income.” “Yes, but it’s still not big enough,” he responded. “You’re right,” I said, “it’s not big enough, but this year it was special-needs students, next year it’s ESL students, then it’s pink students, then blue students; we’ll go sector by sector, class of children by class of children, until we get choice for all children.”

In the end, it is healthy for us to debate whether we are going too fast, or too slow, and it is easy to get frustrated with the pace of our cause. It is my opinion that a controlled burn will help us learn more and help school choice succeed in the long run.

3
Health Care

The Health Industry Is Under Attack

Richard Dolinar M.D.[5]

Health care remains an emerging issue in this country because we no longer have a functioning marketplace where the relationship between producer and consumer is characterized by exchange and mutual benefit. In the health care industry today, patients purchase services from doctors and hospitals, but it is often a third party, either the government or an insurance company, that foots the bill. Other than in our families, where else in our society does one buy from another and leave someone else responsible for the bill? I have two young boys, and when they buy something, the bill is addressed to me. But do we see such an economic paradigm anywhere else? No, we do not … and for good reason.

Can you imagine if I could buy a car and make you pay for it? It would be a great deal for me, but is it a great deal for you? Of course not. Yet in the health care industry, that is precisely what we do, and the result is that the consumer always wants to consume more while the payer always wants to pay less. This is reasonable given the circumstances. Health care consumers are not tethered in any reasonable way to the price of their care. In essence, they are spending other people's money and, as we all know, no one spends other people's money as carefully as they spend their own. Meanwhile, whoever is holding the purse strings wants to pay less because they are not receiving any product or benefitting from any service. In the end, everyone suffers.

The roots of the problem trace back to the establishment of entitlements in 1935 with the passage of the Social Security Act. Medicare and Medicaid, although established 30 years later in 1965, are

[5] A clinical endocrinologist specializing in diabetes, Richard Dolinar earned his medical degree from The State University of New York at Buffalo and did his endocrinology fellowship at Duke University. He serves as The Heartland Institute's senior fellow for health care policy. He is co-author of the book *Diabetes 101*, now in its third edition.

actually part of Social Security. Social Security fundamentally changed how we are eligible for benefits. Prior to Social Security, you deserved any benefits you worked for and earned. After Social Security, you still deserved benefits—but you did not necessarily have to work for them.

A current example of this is the prescription drug benefit in the Medicare Modernization Act of 2003. Every Medicare beneficiary is now entitled to prescription drugs, even though when they were working not one penny of their own money was put aside for it.

System Under Stress

The timing could not be worse. These distortions and stresses are occurring at a time when we are under the constant threat of not only natural disasters such as Hurricanes Katrina and Rita, but also man-made disasters such as international terrorism. When such disasters occur, we rely on our health care system to save lives and relieve suffering, yet we continue to put this system under attack. We should be building this system up rather than watching it be torn down. We need to create *excess* capacity in the system so that when the next disaster hits, we are able to respond effectively.

Our health care system has not responded well to these challenges. We already have a severe nursing shortage across the entire U.S., and we are starting to see physician shortages. Pharmaceutical shortages will soon become evident as that industry is forced down the same road the vaccine industry has traveled.

Remember the flu vaccine shortage of 2004? Not too many years ago we had more than 25 companies making vaccines. Due to the federal government's interference in the vaccine market, it was no longer profitable for many of these companies to make vaccines. Companies left this market and redirected their resources. By last year, there were only five companies making vaccines and only one of them, Chiron, manufactured flu vaccines for adults. When that company encountered technical problems in the manufacturing process (as pharmaceutical manufacturers often do), there was no one left to fill the void. Millions of Americans went without the vaccine and risked contracting the flu.

The problem would have been avoided if the federal government had not attempted to lower the price of vaccines through legislation. Unfortunately, legislating lower prices did not make the costs go away. Because the costs were substantial and the price was pushed to an artificially low level by the government, companies could no longer make a profit in the vaccine business. Those of us who were not protected and contracted the flu paid a high price in the pain and suffering we endured. Some of our unprotected elderly citizens paid the ultimate price when they lost their lives to the flu and its complications.

We are seeing the same situation in the pharmaceutical industry. Already, mergers are decreasing the number of pharmaceutical companies and lawsuit abuse is creating a risk-averse climate in which breakthrough drugs may not get developed.

Just look at the recent $253 million verdict against Merck, the developer of Vioxx. The size of this verdict is especially remarkable when one considers the patient died in his sleep without severe and prolonged suffering. He did not sustain multi-million-dollar hospital bills, as can happen when one has been admitted to the ICU for an extended period of time. Moreover, the amount of money the Vioxx patient could have made in his remaining lifetime (in fact in his entire lifetime), working as he did in a low-level job at Wal-Mart, would not even approach this $253 million figure. Yet, a jury awarded that amount to his wife—who was married to him for only about a year.

High Cost of Investment

It has been estimated that the cost of developing a new drug and bringing it to market is more than $800 million. If you were the CEO of a pharmaceutical company, how willing would you be in our current regulatory and legal climate to invest that much capital into research and development of new drugs? How eager would you be to develop such drugs, realizing that lawsuits involving just one of those new drugs could bankrupt and destroy your entire company?

Thus, an emerging trend I foresee in the pharmaceutical industry is that future investment and research will probably be much more limited in focus and conservative in nature. To limit their legal exposure, companies will focus primarily on cancer drugs to the exclusion of others. The risk from such drugs could be much less from a legal perspective when compared to developing drugs to treat other maladies. After all, how many plaintiffs will be willing to sue if they realize the patient has terminal cancer and this new drug might be the patient's only hope for survival? But research could trend away from drugs that treat the many other illnesses and chronic problems we all face.

Or perhaps rather than risk capital on research "in-house," including research on cancer drugs, companies will instead search for smaller companies that appear to have discovered a promising new molecular or biological entity that could be developed into the next blockbuster drug. They could then attempt to partner with them or purchase them outright.

By doing so, their overhead could be decreased, but in the process, their in-house research teams would be dismantled.

Or, most unfortunately, the pharmaceutical companies might try to limit their legal exposure and escape from the regulatory and legal burdens in health care by changing into companies that no longer produce pharmaceuticals but instead have diversified into other areas of the economy where their capital can be more efficiently, safely, and profitably invested. If this were to occur, we would all pay a high price in the form of pain, suffering, and even death that could have been prevented by the new drugs that were never developed.

Another big issue for the pharmaceutical industry is drug re-importation. The web site www.buysafedrugs.info has information about the particular problems involved in bringing drugs in from other countries. In Canada, there are investigations regarding counterfeit drugs. In some cases patients are believed to have died as a result of taking suspected counterfeits. I practice in Arizona. On occasion, some of my patients have gone to Mexico for their drugs, where they can, of course, buy them very cheaply. But upon analysis here in the United States, 25 percent of these drugs were determined to be counterfeit; the other 75 percent had no chain of custody, which means there is no guarantee they were stored at the right temperatures or handled properly.

It is expensive to research, develop, and ultimately bring prescription drugs to the marketplace. However, placing price controls on this industry is not the answer. I often think of Leonard Read's essay on the pencil. Take a simple pencil and consider all the people it takes to make that pencil. If the government says you can sell those pencils only at 90 cents a box as opposed to one dollar, what would happen? Some of the people involved in the manufacture and distribution of those pencils would have to take a 10 percent cut in pay, which means they would now have added incentives to do other things. The lumberman, who used to cut wood for the pencils, now has more incentive to cut down trees to build furniture, which would give him a higher profit. The person who used to drive the pencils to the marketplace might now haul computers instead. The end result is that while the price looks terrifically low on the shelf, there is no stock to sell at that price.

I saw this with my own eyes in Moscow back in the 1970s, when it was still part of the Soviet Union. Their premier department store, GUM, was situated on Red Square in Moscow and its prices were terrifically low. But its shelves were bare!

Today, the shelves in our pharmacies are at risk of going bare as federal and state governments and insurance companies impose ever more onerous rules and regulations upon our health care system. This is a tragedy, because as a physician, these medications are the tools I use to treat my patients. They are what differentiates me from clergy.

This brings us to the actual treatment of patients. We do not live in a perfect world. Sometimes our practices—the manner in which we treat patients—are bad practices. We just do not realize it until new scientific research shows us there is a better way to treat a particular condition.

For instance, as a teenager I had a very bad case of acne. At that time, doctors used radiation to treat severe acne because the other treatments did not work. With time we learned that patients treated in this way developed thyroid tumors at a higher incidence than the rest of the population. These had to be removed surgically. Some of these tumors turned out to be malignant. Fortunately, when they removed mine it was not. But today I do not have a thyroid because of my acne treatment. At the time, we thought radiation therapy was a good idea. It was not. Fortunately, today's children are no longer radiated for acne.

When we treat patients, we always use our best medical judgment. The question is always this: Given the information currently available, what is the best treatment for this individual patient right now, today? We realize full well that we are acting on incomplete data, and that information might become available tomorrow proving this treatment was wrong. It takes time to develop such expertise and to learn the proper way to evaluate the current data and apply it to the individual patient.

The practice of medicine is both an art and a science, and good practice is always a combination of both. Notice we do not talk about the "practice" of math or the "practice" of physics. These are called the "hard" sciences, because given a set of predisposing factors, the result of an action is always the same. For example, two plus two is always four. Two hydrogen atoms when attached to an oxygen atom always form water. But medicine is a "soft" science. What works in one patient might not always work in another. A drug such as penicillin can save the life of one patient but take the life of another by causing anaphylactic shock.

Since the practice of medicine is both art and science, when you regulate the art of medicine, the results can be disastrous. When the patient comes into the office, he or she is a unique individual with a unique history and unique problems. One needs to be in the room with the patient and the doctor to see the art of medicine unfold. What is unique about this patient's case? What have the research studies shown? What has been my experience with this disease? What are the patient's desires? What are his values? All of these questions must be considered when advising the patient about the most appropriate therapy. Thus treatment decisions do not solely involve the science of medicine. Unfortunately, this fact is not always appreciated by those outside the field of medicine today.

With the Medicare Modernization Act of 2003, we have the beginnings of a pay-for-performance system that proposes the doctor and his fee be judged on some empirical measure. It attempts to objectify the practice of medicine, ignoring the subjective component to it. An unintended consequence is that pay-for-performance creates incentives for the physician to see the healthier, more compliant patients and avoid the sick ones (the ones who really need his care) in order to maintain a high "report card" rating. Under this plan, if you went to the doctor's office with a very serious illness, he or she would have an incentive to send you elsewhere. Under pay-for-performance, he has more incentive to take care of patients who are healthier and have easier conditions to cure. Obviously this is not the best development for patients and yet, this pay-for-performance approach is being embraced by third-party payers.

The standard justification for instituting pay-for-performance is quality. This explanation is partly legitimate, but mostly a smoke screen. The real reason for instituting pay-for-performance is the growing conviction that Medicare and Medicaid are no longer financially sustainable. Pay-for-performance offers the false hope that third parties (government and insurance companies) will be able to control and, therefore, pay less for medical care. It is the newest form of price control on the health care system; managed care's new disguise.

I am very concerned that the doctor/patient relationship has been eclipsed by the third-party/patient relationship. Third-party payers (the government and insurance companies) are now making treatment decisions instead of patients and their physicians. We all should be concerned about this, because we will all ultimately become patients.

Many doctors, frustrated with the current health care system, have told me, "I just cannot wait to get out of medicine and retire." When they do, I usually reply: "Nobody gets out of medicine alive. Someday we are all going to be a patient, and if you think that it is hard being a health care provider in today's health care system, just wait until you become a health care recipient!"

4

Race and Poverty

The Aftermath of Hurricane Katrina

Lee Walker[6]

I am supposed to talk about economics and entrepreneurship, a topic I talked about just a few weeks ago in Boston to a group of political senior staffers from Congress and civil rights organizations. But Hurricane Katrina has since become international news, and will likely preoccupy us for months to come, so I feel compelled to say a few words on the subject. Lucky for me, this conference is focused on *emerging* issues. If ever there was one, this is it.

Katrina's Impact on Race Relations

So I asked myself, "How is a hurricane hitting the Gulf Coast an 'emerging' issue?" We've had strong hurricanes before. Just a few years ago Hurricane Andrew devastated Florida in what, at that time, was the most expensive hurricane ever. (I do not think Katrina will have any trouble overtaking that record.) But after Andrew we did not have a national debate about poverty and race. It was simply another natural disaster.

Katrina, though, is not just another natural disaster. Most people don't realize this, but in the black community, 9/11 was perceived as a "white thing." This is not to say there weren't blacks who worked and died in the World Trade Center. But the media coverage reinforced a perception that it was whites who were suffering. The victims were white. The heroes were white. But with Katrina, this perception has changed.

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[6] Lee H. Walker is president of The New Coalition for Economic and Social Change and a senior fellow of The Heartland Institute. He is a member of the editorial board of the *Chicago Defender.*

The media's coverage of the Katrina disaster has focused almost exclusively on poor blacks trapped in the city of New Orleans. There is no escaping that blacks are suffering in the wake of Katrina.

Beyond just the fact that blacks are suffering, there is a perception that *being black* has contributed to the suffering. The Pew Research Center recently conducted a poll of a thousand people and found 66 percent of blacks felt the government's response would have been different if the victims had been white. In the very same poll, 77 percent of whites disagreed.

What is disturbing about this is what it tells us about race in America. Blacks and whites still do not see eye to eye. How can we live together and have such completely different views of the way the world works? Would government's response have been better had the victims been white? Or rich? Does it matter? Can class and race account for what has happened on the streets of New Orleans? These are some of the questions we have to ask ourselves.

I saw one cartoon with a bus, full of people, standing on its back end. The folks in the back appeared to be black and were underwater. The water had not reached the folks in the front of the bus, who were white. I will let you figure out what's being said. All I know is, it's not positive.

One of the reasons Hurricane Katrina has become an issue is the questions it has forced us to ask. In some ways we have been avoiding these questions for years.

What Can We Learn?

More immediate than these questions, though, is what the future holds for the people. The historic city of New Orleans is 80 percent under water. In some places that water is 20 feet high. The crisis is almost unbelievable! One thing we can learn from this experience is that putting *people* first, rather than politics, is the only decent thing to do.

The blame game will not get those people out of their attics and into shelters. It was months before the media started playing the blame game after 9/11. They waited until the rubble was cleared and the recovery was underway. Why are they so eager to exploit the suffering of Katrina's victims? Will politics get in the way of recovery?

There is a lesson to be learned for other coastal cities. It seems difficult to imagine that a city so vulnerable was so unprepared. I'll bet other coastal cities are already asking themselves whether they are prepared for this kind of catastrophe. Time will tell.

What Does the Future Hold?

What kind of city will New Orleans be in the future? I think this disaster in some ways helps make a case in favor of the recent Supreme Court decision in *Kelo*. This is certainly a story of revitalizing an economically distressed city, including its downtown and waterfront areas, creating jobs, and increasing taxes and other revenues. Can New Orleans really rebuild successfully without a plan? Could the eminent domain powers protected by *Kelo* help New Orleans rebuild stronger than before? Could New Orleans be the new Las Vegas, successful with affordable housing and small, profitable businesses? There is an opportunity for cooperation between the public and private sector on a scale we've never seen.

I listened to the current mayor of New Orleans on *Meet the Press* last Sunday, saying he was aware of groups around the city making plans to rebuild without working with the mayor's office. If ever there was a time for a collaborative effort, this is it. Between a governor, a mayor, and the federal government, there can be no weakest link.

Unfortunately, cooperation between the public and private sectors presents as many challenges as it does opportunities. One major opportunity is for cooperation to make the city stronger. A potential problem, however, is that this cooperation could also produce a weaker city. Why? As all of us here know, government is very good at stifling entrepreneurship and innovation. If the reconstruction efforts proceed without a concern for business interests and profits, the result could be a New Orleans no one wants to work or live in. Excessive regulation and red tape will guarantee a long, hard road back to economic success.

Rebuilding New Orleans will be a story of challenges and opportunities. I hope the right combination of public and private interest will deliver a bright future for the troubled city. At this point, the only thing that is for certain is that we will still be discussing Katrina's aftermath at next year's Emerging Issues Forum.

5

Keynote Address

How Consumer-Directed Health Care Is Revolutionizing the Industry

Grace-Marie Turner[7]

We could talk today about how to change our approach to the taxation of health insurance in order to open up the marketplace for health insurance rather than confining it to the workplace. We could talk about transforming public programs like Medicare and Medicaid through an injection of market competition and choice. But with your permission, I would like to focus on consumer-directed health care, an emerging issue that could have a transformative impact on both private and public health programs.

Consumerism is working to our advantage in the health sector, despite the fears and criticisms of those who have a vision of a government-controlled health care system. A number of studies are showing, for example, that companies and individuals who move to consumer-directed health care experience lower costs while maintaining access to needed health care.

Health Savings Accounts

Health Savings Accounts (HSAs) are the newest entrants in the field of consumer-directed health care. HSAs were created as part of the Medicare Modernization Act and became available January 1, 2004. They allow individuals, employers, or employees to invest tax-free dollars in health accounts to pay for routine health care. The accounts are accompanied by insurance policies to cover larger medical bills.

America’s Health Insurance Plans (AHIP), which represents the country’s major insurers and health plans, surveyed its members earlier this year and found more than a million people were enrolled in HSAs as

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[7] Grace-Marie Turner is president of the Galen Institute, a public policy research organization she founded in 1995 to promote an informed debate over free-market ideas for health reform.

of March 2005. The study also found 37 percent of those purchasing individual policies were previously uninsured.

While critics claim HSAs will be attractive only to the young and healthy, studies have shown that 40 percent of HSA purchasers make less than $50,000 a year, a majority of purchasers are families with children, and about half are over age 40. HSAs have broad appeal. Blue Cross/Blue Shield has found those selecting consumer-directed health plans have similar health problems to those with traditional insurance.

The facts show consumer-directed plans defy the critics because they not only attract the young, the healthy, and the wealthy, but they also have broad appeal, and are thus helping to provide new options to people who have been uninsured.

HSAs are only one example of a constellation of offerings that give consumers more power and control over health care decisions. Other consumer-directed products, such as Health Reimbursement Arrangements (HRAs), are also helping companies to lower their health costs while providing incentives for employees to be more engaged in managing costs and care.

HRAs, which were enabled by a Treasury Department ruling in 2002, are sister accounts of HSAs but are available only through employers. Some companies that have replaced their traditional health insurance with HRAs have seen their health costs fall by more than 10 percent, even as the use of preventive services by workers increased by as much as 23 percent.

Success of Consumer-Directed Products

Companies in the health field have produced a number of studies reporting on experience with consumer-directed health care products. In addition, others have conducted surveys and produced studies analyzing the advantages and challenges of consumer-directed health care.

eHealthInsurance, the largest online health insurance broker in the United States, representing more than 140 major health insurance companies, conducted a survey of people who had purchased health insurance from among the 6,500 products it offered in the first six months of 2005. It reported:

- Nearly two-thirds of HSA purchasers paid $100 a month or less for their plans.

- Premiums for HSA-eligible insurance *dropped* 15 percent between 2004 and the first half of 2005.

- HSA plans are comprehensive, with most covering 100 percent of the costs of hospitalization, lab tests, emergency room visits, prescription drugs, and doctors' visits after the deductible is met.

- HSAs also continue to be attractive to those with modest incomes: More than 40 percent of HSA-eligible plan purchasers earned $50,000 or less annually.

- Age distribution continues to follow a bell curve: 55 percent of HSA purchasers are under age 40, and 45 percent are 40 or older, including nearly 19 percent who were age 50 or older.

An earlier eHealthInsurance study looked at the lowest premium prices available in the country's 50 largest cities for 30-year-old singles buying a policy with a maximum deductible of $1,000 and 20 percent coinsurance afterward. It found seven of the least expensive cities were in California, with plans in Long Beach, the most affordable city, at $54 a month. The common denominator for the least expensive cities was competition and less regulation; the most affordable cities have at least 66 health plans available on eHealthInsurance.com.

Not surprisingly, the two large cities with the most expensive insurance were Boston, at $268 a month, and New York, at $334. Both operate under state-mandated guaranteed issue and community rating laws. Guaranteed issue requires insurers to sell policies to anyone who applies and agrees to pay the premium, even if they wait to buy insurance until they are already sick. Community rating requires that insurers charge the same price to everyone in a community, regardless of the differences in risk posed by individuals.

Assurant Health, one of the leading health insurers targeting individuals and small groups, analyzed its data to see who was purchasing Health Savings Accounts and found:

- 57 percent were over age 40.

- 73 percent were families with children.

- 29 percent had family incomes of less than $50,000.

- And most importantly, 40 percent did not indicate having prior health insurance coverage.

America's Health Insurance Plans, mentioned earlier, found similar uptake among the uninsured in a survey of its members: 37 percent of those purchasing HSA plans were previously uninsured.

AHIP also found the number of people purchasing HSAs doubled between September 2004 and March 2005, a fact it attributed to lower premiums that are attracting employers, the uninsured, and older purchasers. Highlights:

- 1,031,000 people had HSA-qualifying health plans as of March 2005, up from 438,000 in September 2004.
- 27 percent of the policies in the small group market were sold to employers who didn't previously offer coverage.
- Nearly half of the people covered by an HSA plan were over age 40.

The average premiums in the AHIP survey ranged from about $100 a month for a 20-something single to about $460 for a family policy for those between 55 and 64.

Aetna studied companies that had purchased Aetna HealthFund Accounts, its branded name for Health Reimbursement Arrangements. Aetna prepared a study in June 2005 comparing HRA experience in 2003 to the first nine months of 2004 and found employer savings basically were sustained in 2004. In 2003, medical costs in the HRA plans increased 4 percent and in 2004, they increased an average of 6 percent. This is higher than the first year, but still much less than the health cost increases experienced by companies offering traditional insurance.

Other findings:

- Costs fell by nearly 20 percent for some employers.
- 50 percent of employees had some funds left at the end of the year to roll over into their account for the next year.
- Lower use of inpatient, laboratory, and primary care physician visits drove costs down.
- Consumer-directed plan participants are more likely to visit ambulatory care facilities and specialists than their counterparts in traditional plans.

- Health measurements were stable for members with chronic conditions.

- Companies with the highest employee uptake of consumer-directed plans had the greatest cost savings: Plan sponsors with 70 percent or greater participation had a 13.4 percent decrease in medical costs. Plans with less than 5 percent participation had a 9.9 percent increase in medical costs.

The company also found HRA plan holders with chronic conditions, such as diabetics, continued to seek necessary care, and there were increases in the use of preventive services.

Aetna found employers who made their consumer-directed offerings as attractive as traditional plans experienced the greatest participation and the most savings. Communication, education, and the engagement of leadership were crucial to the plans' successes.

McKinsey & Co. has conducted the most extensive survey yet of consumer-directed health care plans. They conducted focus groups, one-on-one interviews, and in-depth analyses of the health insurance arrangements of more than 2,500 Americans. Most of the consumer-directed health plans McKinsey studied were Health Reimbursement Arrangements, but there were some HSAs in the study. It attempted to eliminate adverse selection bias by studying consumer behavior for only those companies that offered employees only consumer-directed health plans, called "full-replacement" plans.

McKinsey found consumer-directed health plans increase consumer engagement in health care decision-making and health management. It found improved care for those with chronic diseases. But McKinsey also found the biggest stumbling block right now is the lack of consumer-friendly decision support tools, especially information on prices. McKinsey found:

- Consumer-directed plan consumers were more value conscious: They were 50 percent more likely to ask about costs and three times more likely to have chosen a less extensive, less expensive treatment option. They also were much more likely to visit an urgent care center than a hospital emergency room.

- Consumers were more attentive to wellness and prevention: They were 25 percent more likely to engage in healthy behaviors and

30 percent more likely to get an annual physical. Why? Fifty-one percent of consumer-directed consumers agreed, "If I catch an issue early, I will save money in the long run."

- Consumers are more attentive to cost control and to behavior changes that could result in better health outcomes and cost savings over the long term. Consumers with consumer-directed plans were more likely to perform independent research to identify treatment options, even when insurance was paying; and they were 20 percent more likely to comply with treatment regimens for chronic conditions.

But more work must be done before consumers will be satisfied with consumer-directed products. McKinsey found only 44 percent of consumers said they were more satisfied with consumer-directed plans than they had been with their previous health plan. (It is worth noting McKinsey studied only those companies that gave employees no other option than the new plans.) Many were dissatisfied with the information available to them. In particular, 80 percent said they did not have sufficient information on the prices doctors charge.

More Information Needed

This is the huge challenge of the consumer-directed movement. If consumers are to respond to new incentives and to manage their health care and spending, they must have information.

Some of our colleagues have argued that consumer-directed health care products should be held back until these decision support tools are in place. But these tools are much more likely to be developed quickly and to be more user-friendly if consumers are demanding the information. One major insurer that invested heavily in consumer decision support tools found the system was seldom used because consumers had few incentives to become more informed and to shop for value.

Harris Interactive conducted a telephone survey of 2,000 adults to gauge "Consumer Attitudes toward Health Care." One of the most striking findings in this survey was consumer ignorance about health care prices. "While consumers can guess the price of a new Honda Accord within $300," Harris found, "those surveyed were off by $8,100 in their price estimations for a four-day hospital stay." In addition, 63 percent of those who had received medical care in the past two years did not know the cost of the treatment until the bill arrived. Ten percent said they never knew the cost.

Clearly, new programs that give consumers information about the true cost of the health care they are consuming are a positive step.

American Financial Group (AFG), a Cincinnati-based property and casualty company with 5,000 employees, conducted an in-depth survey of its employees to determine the best way to introduce consumer-directed plans. Senior executives at AFG were actively involved in explaining the new health plans and how they could make the company stronger and give them more control. Once employees understood the challenges facing the company with health costs, they better understood how they could be part of the solution with the new plan offerings. The results:

- 54 percent of employees chose either the HSA or HRA plans in the first year.
- Greater choice was the most popular feature of the new health plans.
- Giving the new health plans the AFG brand, rather than the UnitedHealth product it was, created a sense of ownership and investment.

Interestingly, the term "consumer" carried negative connotations. The employees did not see themselves as consumers and said the term suggested to them a lack of control. They liked knowing they had "choice" and "control." The company does not yet have financial data on its program, which was launched in January 2005.

Public opinion pollster Frank Luntz of Luntz, Maslansky Strategic Research conducted a focus group in June to learn how average people outside the health care industry respond to information about Health Savings Accounts. He found:

- The fact that HSAs provide choices and allow individuals great flexibility in investment options, contribution times, and disbursements is a big selling point for consumers.
- The idea of personal responsibility resonates. People want to be treated like adults, and nowhere does that impulse burn more brightly

than in managing one's health. HSAs are an innovative program that empowers consumers to take control of their health.

- People are very attracted to the fact that HSAs have no "use it or lose it" penalty. The single most important attribute in considering an HSA were that HSAs are 100 percent portable so your account moves with you and that savings are owned by the HSA holder and roll over from year to year.

- HSAs' tax-free earnings and tax-free deposits—as well as tax-free expenditures—drew huge accolades.

Luntz recommends HSAs be described as follows: "Wherever you go, your Health Savings Account goes with you. You own the account. It's yours—bottom line. So whether you change jobs or houses or communities … your account moves with you. We all know the nightmare of changing *anything*. With HSAs, change is not a problem. Your account is 100 percent portable. It goes where you go … providing savings for your health care when and where you need it."

Challenges Ahead

Despite all the success for consumer-directed health care, some challenges remain. For instance, some employers have been reluctant to take the step from HRAs to HSAs because HSA legislation would limit their ability to provide a prescription drug benefit alongside the HSA. Employers do not want to discourage employees from taking needed medications, which employers fear their employees would do if they have to pay out of pocket. However, the U.S. Treasury Department has ruled certain drugs could be covered under the insurance contract as part of Congress's "preventive care" authorization. Medications for chronic conditions such as hypertension, high cholesterol, diabetes, asthma, and osteoporosis can be covered by insurance for HSA holders without violating the provisions of the insurance deductible.

Actual experience with consumer-directed health care products should calm the fears of critics. Consumer-directed plans clearly have broad appeal and offer a new option for the uninsured, rather than simply helping the rich and healthy stay that way.

But the marketplace still has a lot of work to do to make consumer-directed health plans attractive to millions more people. Employers, employees, physicians, hospitals, consumers, financial institutions, health plans, and many others involved in the health sector are still experimenting with the best ways to structure and market their consumer-directed offerings. Better information tools, more consumer-friendly delivery options, more competition, and most importantly, better information on prices, are essential for the market to work in the health sector, as anywhere else.

Consumer-directed health care needs to catch on quickly enough for companies investing in new plans, technologies, and services to survive, but not so quickly that people are in plans before the market is ready. A Goldilocks-like pace would be ideal; not too fast, not too slow, but just fast enough for the market to be able to respond to the demands of millions of newly empowered consumers seeking more affordable health insurance and better value in their health care.

Saving Health Care

So what is the larger public policy issue here? With the advent of consumer-directed health care, we have the foundation to save the private health sector in this country. For decades, we have been marching toward more and more government control, with 45 percent of all health spending in this country now financed by government. Companies have been dropping employee coverage, and the number of uninsured has been rising. Without new tools to reverse this trend, we most certainly would be on a one-way street toward national health insurance.

Many people do still think, of course, that the government should take over health care. More and more physicians, as Dr. Richard Dolinar discussed earlier, believe a single-payer health system is the easy answer. That is, they believe this until they ask the second and third questions ... and see it would lead to uncontrollable costs, political control over spending decisions, and limits on access to care.

The emerging move toward consumerism in this country has great potential to get incentives properly aligned in the health industry, making consumers more value-conscious and benefitting consumers and their employers.

By lowering the cost of health coverage and thereby expanding access to health care, the private sector is solving problems the government has failed to address despite spending trillions of tax dollars. The private sector is beginning to give us a glimmer of hope that the doctor we see a generation from now will *not* be wearing a lab coat that says "Property of the U.S. Government." Instead, empowered consumers will be accessing medical information and talking with their doctors online; surgeries will be much less frequent and much less invasive, with much more telemedicine and computer assistance; genetic testing and cures will detect and prevent or control disease before it strikes; and consumers will have appropriate private insurance coverage for all of these medical advances.

Organizations like The Heartland Institute are crucial in advancing the movement toward a true free market in the health sector. Together, we are turning the tide and showing that there is a future for consumerism, competition, and innovation in health care.

6
Environment

Four Emerging Issues to Watch

James M. Taylor[8]

I would like to call your attention to four environmental policy areas where we can expect to see a great deal of focus in the near future. These areas are global warming, mercury, CAFE standards, and nuclear power.

Global Warming

Regarding global warming, legal battles are currently taking shape regarding state plans to restrict greenhouse gas emissions. Most significantly, the state of California is attempting to require dramatic cuts in automotive carbon dioxide (CO2) emissions. From a legal standpoint, this is very problematic because the only practical way to achieve significant cuts in automotive CO2 emissions is by increasing fuel economy. Congress alone, and not the individual states, has the authority to impose fuel economy mandates. Accordingly, the issue is whether "greenhouse gas regulations," which are *de facto* fuel economy mandates, infringe upon Congress's sole authority.

The California plan is currently in the early stages of litigation. Several states have indicated they are ready to follow California's lead if California wins in the courts. It seems this case is going to have a significant impact on where the battle over prospective greenhouse gas limitations will be fought. If California wins in its lawsuit, then states will have far more power to impose greenhouse gas limitations. If California loses, the burden will be more on the federal government.

Another emerging global warming issue is the growing scientific agreement about the extent of predicted future warming. While there are still those who predict a catastrophic warming of 5 or 10 degrees Celsius over the next century, and there are other reputable scientists who predict

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[8] James M. Taylor is managing editor of *Environment & Climate News* and a senior fellow for The Heartland Institute.

absolutely no warming in the future, the scientific data are gravitating around a figure of about 1 to 1½ degrees Celsius. This is at the extreme low end of the Intergovernmental Panel on Climate Change (IPCC) estimates and is well within the range of human adaptability.

This growing scientific agreement bears watching, not only because of the scientific ramifications, but also to see how it plays out with the media and in legislatures across the nation. If the media does not report on this growing agreement and ignores the story, and if legislatures do not absorb this, then we can expect to see a cascade of legislation being proposed to strictly limit greenhouse gas emissions. However, if the media does report it and legislatures at the federal and state level do absorb it, then the legs may very well be cut out from underneath the alarmist global warming movement. So keep an eye on this in upcoming months.

Still another emerging global warming issue will likely be new and improved means by which the media will skew the facts regarding global warming. A recent example gives us an indication of the potential problem.

Satellite temperature readings have shown since 1979 that the Earth's climate has been warming at approximately 0.09 degrees Celsius per decade. These data have been confounding global warming alarmists who predict, according to their skewed computer models, a warming of 0.2, 0.3, or 0.4 degrees Celsius per decade.

Just last month, there was a re-examination of the data by an independent source. The re-examination found that rather than having a warming of approximately 0.09 degrees Celsius per decade, we actually can measure a warming of 0.12 degrees Celsius per decade. This is a minor adjustment to the numbers we have seen, showing only slightly more warming than was initially thought to be the case. The new numbers are still at the very low end of the IPCC estimates, and still well within the range of human adaptability.

Now with that in mind, take a look at what the media had to say when reporting this story. From the August 12 issue of *USA Today*, and I quote, "Satellite and weather balloon research today removes a last bastion of scientific doubt about global warming." From the August 12 *New York Times*, "The new paper identifies a fresh error in the original calculations that more firmly than ever showed a warming in the troposphere."

Let me give you another example of how the media skews the science regarding global warming. I would like to read to you excerpts from an article recently published by CNN and Reuters:

> "Himalayan glaciers are receding at among the fastest rates in the world due to global warming, threatening water shortages for millions of people in China, Nepal, and India," a leading conservation group said on Monday. The Worldwide Fund for Nature said in a new study that Himalayan glaciers were receding 10 to 15 meters per year on average, and that the rate was accelerating as global warming increases. "Himalayan glaciers are among the fastest retreating glaciers globally due to the effects of global warming," WWF said in a statement. "This will eventually result in water shortages for hundreds of millions of people who rely on glacier-dependent rivers in China, India, and Nepal."

There is not one mention of any evidence in the article, or data, or opinion that would run counter to the alarmist theme of the article.

Being the cynic that I am, I decided to do a Google search, and I typed in "Himalayas," "glaciers," and "warming." Lo and behold, right at the very top of Google's search results, the first article I saw, was an article that had been published the day before the CNN/Reuters article. *Insurance Digest*, which does not have a political ax to grind, had this to say about Himalayan alpine glaciers:

> There's good news for the geologists and the environmental scientists who have been craving to assuage their anxieties over shrinking of glaciers and drying up of snow-fed rivers. Heavy snows in the higher regions of Himachal Pradesh this year have rejuvenated them all. The snowfall has given a fresh lease on life to both perennial and seasonal glaciers in the region.

Of course, this news never found its way into the CNN/Reuters article, and unless CNN/Reuters readers had the diligence to do a Google search and check for themselves, they would believe that here we have a smoking gun proving alarmist predictions of global warming.

So as we go into the months ahead, and you watch the news or read newspaper articles purporting to provide irrefutable evidence of alarming global warming or purporting to be a final nail in the skeptics' coffin, please take it with a grain of salt until and unless you do further research. The media cannot be relied upon to accurately convey the truth about global warming.

Mercury

The second policy issue we will see taking focus in the upcoming months is mercury.

The federal government recently promulgated new mercury standards that will reduce mercury emissions from coal-fired power plants by 70 percent. This marks the first time the government has imposed caps on mercury emissions. Nonetheless, environmental activists are attempting to convince state legislatures to impose still more stringent mercury standards. This bears watching in the months ahead because this is a battle that will be played out in state legislatures across the country.

One subplot we should pay attention to is that opposition to the most stringent mercury standards is remarkably bipartisan. In Pennsylvania, for example, the Department of Environmental Protection is seeking to implement its own stringent state-specific standards. In response, Republican and Democratic environmental committee chairs in the state legislature have made a point of letting the media and the Department of Environmental Protection know they oppose these proposed standards. They have written letters to the head of the Department of Environmental Protection and to local media. Their message is clear: The science does not support the new standards, which would be economically costly to the citizens of Pennsylvania. Watch for this theme to be replayed over the upcoming months in various state legislatures around the country.

CAFE Standards

A third upcoming policy focus will involve corporate average fuel economy standards, or CAFE standards.

On August 23, the federal government proposed new standards affecting light trucks. According to the new standards, light trucks will be subdivided into six different categories according to weight. This reverses current standards, under which all light trucks are lumped together regardless of weight.

There are two significant consequences to the new proposed standards. First, it is projected that we will see an improvement in fuel economy for light trucks by 2 miles per gallon across the board, regardless of the weight classification.

Second, the current bias toward imported light trucks will be removed, and American light trucks will be able to compete on a level playing field. The reason is that imported light trucks typically achieve their fuel economy standards by being lighter and less crashworthy. American light trucks, by contrast, are somewhat heavier and more crashworthy, relying on modern combustion technology to improve fuel economy.

One would think the environmental activists would be happy with these new standards. After all, we are going to see an improvement in fuel economy. But one would be wrong.

The activist groups have come out strongly against these new standards, the rationale apparently being these standards need to be more far-reaching and more draconian, and if they cannot have the whole cake, the activists do not want even a piece of it.

We must keep in mind that the only practical way to achieve the very substantial fuel economy adjustments the activists are seeking is by making American vehicles smaller, lighter, and less crashworthy. Therefore, every time you turn on the TV news and see activists calling for more stringent fuel economy standards, I invite you to do what I do. If you are sitting at the dinner table, pound the dinner table. If you are standing at a podium, pound the podium. And as you do so, repeat the following chant, and I know you all know it well: "No blood for oil! No blood for oil! No blood for oil!"

It is essentially the blood of drivers and passengers that the activists are demanding. By demanding that vehicles become smaller and less crashworthy, the activists want us to sacrifice thousands of American lives each and every year merely to conserve a tiny fraction of America's fuel consumption.

Nuclear Power

The fourth and final emerging issue I'd like to address today is the re-emergence of nuclear power. With environmental restrictions and rising costs associated with coal and natural gas, nuclear power is becoming more economically and politically appealing than in years past. Significantly, nuclear power carries the advantage of zero emissions, both in terms of standard air pollutants and greenhouse gas emissions, which lately have been of more concern to activist groups. Moreover, nuclear power is more economical than so-called renewable alternatives, such as solar and wind power.

Importantly, the nuclear reactor technology that exists today is light years ahead of what was available in the 1970s, the last time a nuclear power plant began construction in the U.S. In many nations throughout the world, and in China in particular, nuclear power is becoming the power source of choice. It is only a matter of time until this impacts America. In Alaska and South Carolina we already have power companies proposing to build new nuclear power plants.

In the past, activists were united against nuclear power, but due to the emergence of greenhouse gas emissions as a focus of the activist groups, the fact that nuclear power is an emissions-free resource has led many of them to come out in support of nuclear power.

In conclusion, let me suggest that, while the media will not report it, technology and science are gradually winning the day in these four important arenas of the environmental policy debate. It is possible, even likely, that the alarmists will win some political battles, particularly at the state level, before their movement completely runs out of gas and credibility. But the momentum has switched sides, and there are reasons to believe we are finally on the winning side of this debate.

7
Emissions Trading

Understanding Emissions Trading

Jim Johnston[9]

The European Union's efforts to control greenhouse gas (carbon dioxide) emissions have not been going well. There was great hope that the sequestration of carbon by planting trees would be widespread. It turns out it will be allowed only on a member country to emerging state basis—the private sector will not be allowed to participate. There will be no early reduction awards. People who have reduced their carbon emissions will get punished for their good behavior.

Moreover, there are going to be four levels of review: private auditors at the state level; member states; the European Commission; and at the very top level, if you can believe it, will be the United Nations. That should be enough to scare off most participants.

Emissions Trading Theory

In the beginning, the basic thinking behind emissions trading was that there were a couple of different sources for emission abatement: those that have a low cost of reduction and those that have a high cost. The idea was that low-cost sources would over-reduce and then sell their excess, in the form of emission credits, to the high-cost sources. This formed the basis of very elaborate claims about the substantial savings that would result from emissions trading.

There is, however, another theory of emissions trading. During a peak-load period, when a power plant is pushing the limits of its emission allowance, it would either use banked allowances that have been put aside in reserve, or shut down and buy electricity from other power sources. If this is how emissions permits are actually used—as

[9] James L. Johnston is a member of the board of directors of The Heartland Institute. Johnston retired in January 1993 from his position as senior economist at Amoco Corporation, whose economics department he joined in 1975.

insurance against regulations—then they will not necessarily lead to lower emissions.

Which of these two models of emissions trading is correct becomes clear when you compare the price of a sulphur dioxide (SO2) permit to the price of low-sulfur coal and natural gas. In the first case—allowance trading supposedly to reduce emissions—the principal fuel involved is low-sulphur coal. During the early years of SO2 trading, it was claimed by Resources for the Future (an energy policy think tank) that the reason allowance prices were so low was that the price of low-sulphur coal was correspondingly low. If the emission price trails the price of coal, then permits are being used to reduce the cost of reducing emissions.

The second model of price use predicts that the allowance price varies with the price of natural gas, since natural gas is, at the margin, the fuel used to generate electricity during peak-load periods.

In October 2004 allowance prices were very low, about $200 per ton of sulphur dioxide. Then in 2004, the prices jumped way up. If you compare allowance prices between low-sulphur coal and natural gas it becomes clear there is very little trading going on for reducing the cost of meeting emission limits. By contrast, natural gas futures started jumping up in 2004 about the same time that the allowance prices were jumping up. Over the past year, from September 2004 to September 2005, natural gas prices have continued to climb. Part of that, of course, has to do with the Katrina oil shock.

Barriers to Trading

Why is the trading limited and why are the savings ephemeral? First of all, allowances are not property rights, which means the government can change the rules, in effect "taking" allowances. If you specifically exclude allowances from being defined as property, the government does not bear the consequences of its bad decisions; it can alter or even eliminate the trading system at no cost. This already has happened. In California during the electricity crisis of 2001, the trading of RECLAIM (Regional Clean Air Incentives Market) credits was curtailed.

Another barrier to trading emissions is the negative stigma attached to pollution. Reducing emissions will be better received by the general public and, more importantly, by regulators, than buying permission to continue to pollute.

Furthermore, energy markets are more liquid than allowance markets, especially in the case of natural gas. Natural gas contracts are so liquid that the volume of trading each day is something like nine to 10 times the consumption of natural gas. Allowances, on the other hand, hardly trade above the number assigned and sometimes even below. Thus, allowance trading causes consumers in one area to pay for reductions in other areas. That makes consumers a little testy sometimes, especially up in the Northeast part of the United States where they do not like being downwind from power plants in Wisconsin.

The Katrina Effect

This brings us to Hurricane Katrina. U.S. oil production in the Gulf area is about 30 percent of total domestic production. U.S. natural gas production in the Gulf area is about 20 percent. Refining capacity in the wake of Hurricane Katrina has fallen by 10 percent. The good news is that the Strategic Petroleum Reserve, on an international level, released 60 million barrels. Of that, 30 million barrels are going to be released by the U.S. reserves.

That is a sterling contribution to the energy problem we have had. It follows by about 4,000 years the experiment that Joseph and the Pharaoh conducted on how to prepare for a famine. As you all know since you are good Bible readers, in the Book of Genesis, Joseph and the Pharaoh put aside one-fifth of the crops in the good years for a famine seven years in the future! They did not damage the market for grain and allowed the Egyptians to survive a very serious problem.

There is going to be some increase in refined product imports. Crude oil futures, after jumping up in the wake of Hurricane Katrina, have settled back down to $63.34 a barrel. The reason I use futures contracts is because they are really much more liquid than stock markets.

Looking at unleaded gasoline futures, you can see an even more dramatic run-up and decline in prices. It closed yesterday at $1.87. Now, there is a big difference between $1.87 and what you are seeing at the pump. Is that price gouging? I suspect it probably is, but remember that half of that difference in price is taxes. So it is the government that is price gouging the consumers.

Another lesson here is that the price of energy goes up and down. In 1998 and 1999, the price of oil, corrected for inflation, was the lowest it has ever been ... but there was not one television exposé or congressional investigation into how consumers were gouging the oil companies!

Illinois has among the highest prices in the nation for gasoline, because it has among the highest taxes on motor fuels. There could be substantial savings at the pump if the government would restrain itself for a few months and not collect that tax.

8
Eminent Domain

Life After *Kelo*

Paul Fisher[10]

Thanks to the recent Supreme Court decision in *Kelo v. City of New London*, eminent domain has emerged as one of the hottest issues in the country.

If you have somehow been under a rock for several weeks, *Kelo* was a case decided by the U.S. Supreme Court several weeks ago that arose from a property dispute in Connecticut. The City of New London decided it had a plan for certain property on the town's waterfront and it went through a series of studies to determine what was "wrong" with the way development had been occurring up until that time.

The problems, according to city officials, were low tax revenue and an unfavorable mix of land uses. They felt they had the opportunity to create an economic development bonanza by tying a redevelopment plan to a new research park being built for the Pfizer Corporation. They thought they had the best of all possible worlds: a major corporation willing to build a plant, and nobody of any importance in the way. They thought they would be able to redevelop—getting a lot of nice condominiums, a hotel, and a marina—and become one of those wonderful little towns where people come in from out of town and spend money on caviar and wine.

As it happens, some very long-time residents lived on the waterfront. In some cases they had lived there for 60 years. One family's ancestors had lived there for 90 years. Needless to say, these residents were not terribly interested in moving. So when the redevelopment agents came knocking at the door, offering to buy their homes, the answer was no. The residents were told, "Well, if you don't sell, we're going to *give* them your property." Quite a few people buckled under the threat, but some continued to say no. Fortunately, the defiant found a friend in the

[10] Paul E. Fisher is a real estate attorney, head of the real estate practice at McGuireWoods LLP, and a member of the Board of Directors of The Heartland Institute.

Institute for Justice, which took on the case and fought it all the way to the Supreme Court.

The issue is really a very simple one: Does government, in this case the New London city government, have the authority to use the power of condemnation to take property, not for the purpose of a road or a library, but for the purpose of private development? Does it have the authority to condemn just because doing so will create a public benefit? Notice the term I am using is "public benefit" and not "public use." Is this a legitimate use of eminent domain?

What Is Public Use?

To understand the *Kelo* decision, you have to go back to basics. It is not a terribly complicated question, but the courts and the media would like you to think it is complicated. The U.S. Constitution is very clear, and while state constitutions use somewhat different language, they all say very close to the same thing: Condemnation (eminent domain) can be used for a public use; and if it is used, just compensation must be paid.

Of course, the term "public use" is subject to interpretation, and there has been a lot of it over the years. For most of our history public uses were understood to be the kind of things I mentioned—building a facility open to the public. Examples would be a city hall, a public park, a public road, or a public library. The term moved slightly over time, but until *Kelo*, it has never been moved quite so far.

The proponents of this expanded use of eminent domain argued "public use" is anything that benefits the public, as determined by the public agency that is doing the taking. But if public use is something that benefits the public, rather than something "used" by the public, what counts as a benefit? The most important benefit cited in *Kelo* was tax revenue. Redeveloping the property, in this case mainly homes and some small businesses, would produce more tax revenue. What other public benefits? It would create jobs, jobs more valuable than the existing ones.

That was the kind of analysis the Court undertook, and there has been a push in this direction over the past 30 years. So it was not totally by surprise that this came upon us. However, most expected the Court would show a little more restraint. Unfortunately, it did not. But in the same way, this decision has been a blessing because the issue is now squarely in front of us.

There were five justices who agreed this is an appropriate use of eminent domain. Four justices dissented. There were two very well-written dissents, one by the retiring Sandra Day O'Connor and the other by Clarence Thomas. Both dissenters pointed out that no one's property will be safe from condemnation, because everyone's property can be used in a way that will produce more tax revenue or jobs. If you operate a Motel 6, a Hyatt is going to produce more tax revenue. If you have a little bungalow, a multi-unit condominium building is going to produce more tax revenue.

Anthony Kennedy wrote an interesting concurrence to the majority decision, which was written by David Souter. Kennedy cautioned the Court not to let this become an excuse for pretext in takings ("pretext" means you do not really have a reason for the taking). How do you avoid a pretext? The Court was very clear. You have a careful public study and a process of holding hearings and listening to objections. So what they have done, in effect, is enact full-employment legislation for consultants who can tell you the benefits of condemnation. As for the process, even in the worst cases you do not find many situations where politicians are unwilling to go through a process. Even in cities like Chicago, where we know in advance what the City Council will ultimately do, they still hold hearings. So it is unclear how the hearing process is going to protect homeowners from pretext takings.

A Slippery Slope

The first time we saw any movement toward public benefit, as opposed to public use, was in a group of cases that dealt with slum clearance. Slum clearance started us down this slippery slope. As is often the case, it starts with something that sounds so innocent.

The whole notion in the slum clearance cases was that, even though we do not know today who is going to develop the property or how, we do know we want to do something about dilapidated neighborhoods and housing and children living in dangerous, crime-ridden neighborhoods. It was thought we had to take the property, clear it, and then find a way to put it to public use.

Eventually we are going to put the property in use, and it will not be the government that does it. It will be a private developer. Yes, it is going to go from private party to private party, but for a good purpose. That is the argument, and it is based on some of the standard tenets used to justify all government action, i.e. protecting the health, safety, and welfare of the citizens. There were some successful uses of so-called urban renewal, but most cases of urban renewal became caught up in scandal and corruption, as government programs often do.

We then had an infamous case that came out of Detroit called *Poletown*. This decision pushed the blight argument one step further. Poletown was a heavily Polish neighborhood in Detroit. General Motors decided it needed more land for expansion and thought Poletown was the perfect place for it, but the residents did not want to sell their property. So, with a little help from the local redevelopment agency, GM used the power of condemnation to remove people from Poletown. It has become an infamous decision in Michigan. So much so that if you mention the word "Poletown" in certain areas of Detroit, you had better duck for cover! The Michigan Supreme Court has started to turn its back on the *Poletown* decision, which is very encouraging.

We also have had a couple of other interesting movements along the way. We had a decision involving transfer of property rights in Hawaii that the U.S. Supreme Court decided again on public benefit rather than public use. They wanted to encourage the transfer of fee title ownership of land to residents because Hawaii had very little land, and almost all of it was owned by a small number of families. The state legislature adopted a scheme to force transfer of ownership, and the Court decided this was good public policy. It was good for the citizens; they would have a wider distribution of property ownership. So again it was a creeping movement into the brave new world of *Kelo*.

What the Future Holds

You probably get the feeling there's been an impressive public outcry. The number of editorials has been stunning. There have been articles written in quite a few law reviews, and state legislatures are handling it as well. There have been an enormous number of proposals from Congress. It is easy to get the impression that the reaction is so strong that everything is going to be righted.

I am going to caution you to be careful not to give in to that dangerous impression. What drives state legislatures and the federal legislature is tax revenue, and the *Kelo* decision goes directly to this ability to raise taxes. As soon as the government's ability to raise taxes is threatened, you had better be sure you are ready for the bulldozer.

Now I do not want to be entirely negative. I want to ask how we get ready to meet this enormous challenge. It is not going away. What we are seeing is a reaction on the state level and on the federal level. The federal level is sexier in many ways, because with one fell swoop you solve the problem and everything is right again. We all like these sexy solutions. I am going to tell you, though, that the sexy solution is unlikely to be effective.

The problem with the federal approach is that property ownership is largely a state-regulated activity. When the federal government gets involved in protecting a state right, it normally does so in a clumsy way and causes more trouble than good. While I am happy to see certain federal legislators trying, I think their efforts are going to turn out to be insufficient.

The simple solution, if it ever happens, would be a federal constitutional amendment clarifying the Fifth Amendment, clearly stating that public use is public use and that does not include redevelopment purposes. That would be a simple solution ... but I hope you are planning to live a long time if you want to see that.

The other simple solution would be for the U.S. Supreme Court to wake up tomorrow and in a new case say, “You know what? We were wrong.” That could happen; it does happen sometimes. We’ve got movements in this country that have spent 20, 30, 40 years and longer trying to correct bad court decisions. But that is probably not where the solution will come from either.

The attempts to address eminent domain at the federal level have largely dealt with two very narrow approaches. One is binding the use of the condemnation power by the federal government. To the extent that the federal government is the condemning power, the federal government, by statute, can be restricted. The Court was very clear that there is nothing in *Kelo* that prevents the federal government or states from restricting their own powers. The problem with this approach is that there are very few federal condemnations. They represent probably one-tenth of 1 percent of all condemnations, and they are largely limited to military bases.

Another option for the federal government is to restrict the use of federal funds. This is where most of the post-*Kelo* efforts have been focused. The basic idea is that if you want to use federal funds for any state-level project, you cannot use eminent domain for private redevelopment.

I can tell you, though, that even if such federal legislation could be passed, state agencies are geniuses at figuring out how to structure deals in a way that they will never violate the letter of the law.

So the action is going to be on the state level. It will not be sexy, and it will not be easy.

Every single state is a battleground. Every single county and city is a battleground. On the state level, every state legislature has the ability to restrict itself. Some have already proposed legislation. Alabama has passed legislation that is consistent with the law prior to *Kelo,* though it still recognizes the blight exception and so it is not ideal. But there are many other states, more than 30 now, with legislation pending. If all the states can be encouraged to do what Alabama has done, restrict themselves, and can actually live by their restrictions, we could have an enormous shift in the landscape.

The problem is, as I said before, that state and local governments are driven by taxes. They may say, "We do not want our citizens to be damaged," but then you take away their tax revenue and so they will say, "Well maybe we did not mean that, and maybe we really only meant the next state, the one in Mississippi." So it is going to be a long-term battle.

Waterfront Battles

Allow me to close with a true story. I just spent some time in California, where I got a tour of some property along the coastline from one of my aunts, who is 95 and still owns property on the coastline, God bless her.

She was telling me about her battle with the California Coastal Commission. The California Coastal Commission is an agency created for the purpose of preventing development along the coast from the northern tip to the southern tip of California. The commission adopted severe regulations limiting the use and development of property for a period of about 20 years. So she did battle with them, and she got them to change their rules somewhat, but she found it was very expensive. There are not very many friends out there and she was attacked as being an obstructionist. She said, "How do they do this? How do they take away property rights of people and nobody seems to care?"

The good news is that we know now some people do care. The bad news is that threats to our property will continue to occur despite our concern.

9

Technology

Emerging Telecom Issues

Raymond Gifford[11]

I want to speak to you today about three things that are important to any conversation about emerging technology issues.

First, why does technology policy matter? Why should you care about it at all? We realize there are opportunity costs in our lives and we might have a tendency to want to devote more of our efforts toward things that are more weighty, say education reform, welfare reform, or health care reform. I want to make the case that technology policy does matter.

Second, why is technology policy in its own category? A great federal judge from Chicago, Frank Easterbrook, wrote an article on Internet law, which was a hot thing in the late 1990s, called "The Law of the Horse." In it he argued there was no reason to study Internet law. Lawyers should understand contracts and property law, and out of that comes the set of rights and responsibilities that apply to the Internet. So I need to explain to you why technology policy exists as a separate category, rather than following directly from property and contract law.

Finally, I want to talk about what has happened recently regarding technology and where the future seems to be taking us. Fortunately, I think it all will ultimately tie back into the weightier issues that really compel all of us.

Technology Policy Matters

If you looked at the business section of the *Wall Street Journal* today, you would have seen technology issues are at the forefront of what is going on in business. eBay has agreed to purchase Voice over Internet Protocol (VoIP) provider Skype, a company out of Luxembourg. Oracle

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[11] Raymond Gifford is president of the Progress & Freedom Foundation and a member of its board. Before joining the foundation in 2003, Gifford served as chairman of the Colorado Public Utilities Commission for four years, following his appointment by Governor Bill Owens.

is buying Siebel Systems, thus further consolidating the enterprise software market.

We also see things going the opposite way. For instance, Carl Icahn is leading a proxy battle within Time Warner to break up the company and separate the media properties from the new economy properties. CBS Viacom has now split in two, separating the old media properties and the slow growth of CBS from the new Internet properties of Viacom and the hot cable channels.

So why should we care about technology policy? As a University of Chicago guy, my first look at anything is from an economics angle, and the economics of technology are irrefutable. The productivity growth in our economy can be traced directly to productivity gains from information technology. For about 20 years starting in the 1980s, economists were asking, "Where are the productivity gains from all this technology investment?" It was really mystifying. It just was not showing up in economic growth figures.

Dale Jorgenson started to find those productivity gains. They took longer to happen than most people thought, but they were there and they were profound. In fact, Jorgenson attributes to ITC (information, technology, and communications) 80 percent to 90 percent of the productivity gains that exist in the economy year in, year out. So technology is tremendously important.

We are in a digital revolution that is on par with the industrial revolution in terms of its social, political, and economic impact. What it means to us from a social and political standpoint is still unclear, but we can all see glimmers of it with things like blogs becoming very prominent and undermining traditional media. While we cannot fully appreciate what is going on, we also cannot overstate its importance.

Technology On Its Own

Why should we treat technology as a separate issue? Except in a disparaging way, we do not generally talk about things like steel policy or automobile industry policy without putting them in the context of broader economic policy. Even when we do, particularly at The Heartland Institute, we disparage that type of thinking as terrible. So why do we still talk about technology policy as a distinct set of policies? I think the answer can be summed up by counter-posing two models of regulation.

In our legal system we really start from what I would call rule of law regulation, which is regulation handed down through common law courts. This is the traditional law of property rights and contracts, and it is in stark contrast with what we largely have in the technology sphere, which is what I describe as legislative regulation. Legislative regulation is a system where legislatures, be they actual legislatures in Congress or legislative administrative commissions, make decisions about rights. Technology policy is unique because everything, from basic networks to the Internet, is subject to legislative regulation. Property rights are contingent upon agencies like the Federal Communications Commission (FCC), which regulates all networks from copper wires to broadband.

Do you have property rights if you own a network? The answer in property law is yes—subject, of course, to certain limitations that property law dictates. But at the FCC, where those property rights are contingent, you do not have property rights. Spectrum or cable, it is a public resource. Even when you move into other areas of the industry, the regulatory onslaught continues.

For instance, with the content layer of the Internet protocol stock, you have positive intellectual property laws of copyright and patent defining the industry. But how are copyright and patent defined? They are defined by Congress! The legislative nature of technology regulation thus makes it a very unstable space within which to operate. Every one of your rights and expectations is subject to veto by the relevant legislative or regulatory commission. This is why we treat technology policy differently.

Now this is important because it introduces one very large hazard: The stakes for engaging in rent-seeking are enormous. That is to say, seeking favor from Congress or a regulatory commission can pay off handsomely under a regime of legislative regulation. It is possible, of course, to buy off a court—Alabama has made a growth industry out of selling its courts to plaintiffs' lawyers—however, it is much easier and requires much less investment to buy off a legislature. This is how the content industries, particularly Hollywood, can extend the length of copyright indefinitely just before Mickey Mouse's copyright is about ready to lapse. It may be a good thing that Mickey Mouse is still under copyright, but it might be better to get a lot of that stuff out into the public domain. In the regulatory sphere, the amounts of lobbying energy poured into the FCC and the state utility commissions in order to gain advantage over or even destroy corporate competitors is incredible.

We are in the throes of trying to break the chains of a long history of legislative regulation and move to rule-of-law regulation. Needless to say, there are forces preventing us from getting there. For instance, there are enormous vested interests in the legislative model. There are armies of lawyers in Washington who make a very nice living off of the current regime. There are even ex-state regulators, like me, who make a good living pontificating against what they used to do.

Reasons for Optimism

That said, I think there is some cause for optimism and hope in our Supreme Court, though it may seem strange after *Kelo*. This last term, we saw two major decisions come down from the Supreme Court relating specifically to technology, and the aftermath of these cases has been quite positive.

The first case, usually called the *Brand X* case, involved the Internet at the network level. The FCC ruled that cable modems should not be regulated like common carriers; they should be free of the regulatory taxes on the phone system or anything else. The Supreme Court agreed. The FCC, to its credit, has since followed up by ruling that cable's main rival, DSL, will also be an unregulated, untaxed service. Those are very good things.

At another layer of the Internet, the applications and content layer, the Supreme Court heard the *Grokster* case. *Grokster* is a peer-to-peer (P2P) file-sharing program by which people can share files. There are a number of them, like Kazaa and Napster (which was the original file-sharing program), but the big one right now is BitTorrent. P2P is a great technology, but I think everyone knows what it is being used for. It is being used to illegally download and trade movies and music. With faster broadband connections and a program like BitTorrent, you can download movies and TV shows to your heart's content, but it is still a copyright violation, and the content industries do not like it.

With *Grokster*, it appears the Supreme Court has brilliantly "split the baby," by agreeing P2P applications are wonderful and we should allow innovation with regard to Internet applications; but, at the same time, we cannot allow people to create and advertise a program that is designed to facilitate music piracy. That is a contributory infringement of copyright.

Grokster has been sent back to the lower court, but what has developed post-*Grokster* is an amazing detente. It used to be in Washington, that if you wanted to have a fun panel and be assured of good press and fireworks, you would invite Barry Shapiro from the consumer electronics industry and Fritz Attaway from the Motion Picture Association of America. All you had to say was "file sharing" or "peer-to-peer" and watch them scream at each other for a half hour, usually calling each other communists at some point. It was great theater.

However, now the consumer electronics industry has said, in essence, "Maybe you content people have a point and we should be working together to build a business model that is not premised on intellectual property theft." For their part, the content people are saying, "My goodness, we would have new distribution channels if we could just do it legally." So a detente has come about since the *Grokster* decision, one that I would never have thought possible.

In many ways, we are still trying to overcome the hangover of the progressive era, when we got the great acronymic agencies like the FCC. The presumption then was that very smart people could design and regulate an industry in a way that was better for all of us. Thankfully, I think we have all lost faith in that model of government, and so technology policy appears set to move in the right direction. We will have to watch municipal entry into the broadband market—I know The Heartland Institute has done some great work on this—but I remain cautiously optimistic.

10

Welfare Reform

Why Welfare Reform Worked and How to Keep it Going

Gary MacDougal[12]

Victor Hugo said, "There's nothing more powerful in the world than an idea whose time has come." I think the idea we should think about is that there is no necessary reason why anyone in the U.S. should be on welfare. We have a great economy. There is a ton of money in the government systems that are supposed to help folks who need to be moved from welfare to work. There is no reason why *anybody* should be on welfare, and therefore, I introduce myself as a person who specializes in Herculean quests and whose goal is to see this become as close to a reality as possible. I think I have a lot going for me as I pursue this quest.

How many of you believe, for example, that people in the inner city and the south side of Chicago really want to work? There is a misconception out there that people do not, but I can tell you that, like the rest of us, most people, even those who have not had the chance, see work as a good thing and as part of a happy life. They take great pride in having their kids see them getting up in the morning and going off to work. I think we have the resources there; we have a pool of potentially employable people and a tremendously strong economy. We have to import lots of immigrants in order to staff hotels and restaurants and to pick crops, and without lots of immigrants our economy would suffer worse than in the wake of Katrina. There are plenty of jobs around.

There is, however, a huge geographic mismatch between those who would like the jobs and where the jobs are located. There are other barriers—barriers most of us in this room did not face—keeping people from this otherwise smooth transition from welfare to work.

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[12] The former CEO of a Fortune 1000 company, Gary MacDougal served four years as chairman of the Illinois Governor's Task Force on Human Services Reform. MacDougal is the author of *Make a Difference*, which describes how he persuaded then-governor of Illinois Jim Edgar to create a Task Force on Human Services Reform, which MacDougal then chaired from 1993 until 1997. During that time, he helped to conceive, design, adopt, and implement a far-reaching reorganization of human services in Illinois.

There is also a sense in which it is enlightened self-interest to hire people off of welfare. At UPS, where I am a director, we have hired 60,000 people from the welfare rolls, more than any other company. When we were first beginning this back in 1996, we hired the first group of 50 people in Chicago. Three years later 37 of them were still on the job. These are people we would not have hired otherwise because they were not high school graduates and so on. But guess what? With the aid of some mentoring, this group's turnover was lower than the norm at UPS. So it is truly a good business risk that paid off for UPS.

I do not really have enough time to go through many of the points of welfare reform, but I will touch on some highlights. I've told one of my great heroes, a fellow named Newt Gingrich, on numerous occasions that if he put nothing else on his tombstone, with the welfare bill that he got passed in 1996 he will have made more of a difference in more human beings' lives than almost anybody we know. The results were spectacular and would not have happened without him. Clinton turned it down twice before finally he was persuaded by Dick Morris to sign. So it all happened, and now it goes down as one of the defining pluses (along with NAFTA) of the otherwise tawdry Clinton administration.

The big thing about welfare reform is that there is a five-year term limit on eligibility for benefits. It is now called Temporary Assistance for Needy Families (TANF) and ends at five years. You cannot make a career out of being on welfare. The groundwork was laid by Governor Tommy Thompson in Wisconsin and John Engler in Michigan and the experiments they did at the state level. In my view, state governments are the engines of creativity, and the state experiments led to spectacular national results.

There were 12.2 million people on welfare in 1996 when welfare reform occurred and there are now 4.7 million, according to the most recent Health and Human Services Web site stats. That is fantastic! You are talking about nearly 8 million fewer people on welfare.

Of course, the media is in permanent denial about anything Republicans have done that is actually good for people. They just dismiss it saying, "Heck, the economy was really good in the 1990s." Yet in the 1980s' economic expansion, guess what? The welfare rolls grew also. There has been no correlation between the growth in the economy and what happens in welfare. Welfare reform undoubtedly worked better with a good economy, but you cannot say welfare reform was successful *because* of the economy. Also, welfare rolls stayed low when the economy softened in 2000.

I think we *can* say that compassionate conservatives have done more to help poor people and African-Americans living in the inner city than Democrats ever thought of doing. We have school choice, we have faith-based initiatives, and we have welfare reform—and we are getting absolutely no credit for any of it. But then, it is nice to do the right thing even if you don't get credit.

Reform in Illinois

The exciting thing for me, the psychic income I get out of all this is that in Illinois we had great results. The number of welfare recipients in Illinois declined from 642,000 in 1996 to 87,545 in 2003, an 86 percent decline. Ten counties have even been welfare-free. This performance is second only to Wyoming—which is not a fair comparison—and ahead of all states with large metropolitan areas. Cook County, "ground zero" for all of this, had an 85 percent decline in its welfare rolls!

President George W. Bush came to the UPS facility on Jefferson Street on the south side of Chicago, which employs lots of folks. There on the platform was a woman from the south side who had been on welfare for 15 years. She had nine kids, no work history to speak of, and came to UPS as part of the initial welfare-to-work cohort in the Illinois reform program. She was up there on the platform with the CEO of UPS, Mike Eskew; the mayor of Chicago, Mr. Daley; and the president of the United States. She was the most polished, happy woman you have ever seen in your entire life. She had been working for UPS for three years and had been promoted to supervisor. She had gotten her GED at night and had even become a stockholder.

Now this is what happens with welfare reform and it has been happening over and over and over again. Most of the people who have left the welfare rolls in Illinois are working—most at above minimum wage—and that is a start. It is not the total answer when it comes to supporting a family of four, but it is definitely that first rung on the ladder of opportunity.

Earned Income Tax Credit

Most people do not understand there is a thing called the Earned Income Tax Credit (EITC). If you get a job making beds at the minimum wage you get an additional amount in reverse income tax (one of the few things the government does right) of $4,500. So if you take 2,000 hours times $6.00 an hour and get $12,000, and you add the $4,500, you are almost out of poverty. You will rarely read about the EITC when liberals are talking about the plight of people in poverty in this country. The media does not accept that and does not want you to understand the minimum wage is only a piece of the income people get, not to mention food stamps and the gigantic cash economy (estimated at 15 percent of GDP) for housekeepers, handymen, etc.

Service Integration

In Illinois, three things have happened, all described in my book, *Make a Difference*. We have integrated human services so that most of the various needs of the whole family are dealt with in one place, in 128 offices around the state for Illinois. In those offices are people who can connect you with jobs, transportation, and child care as well as welfare payments and food stamps. It is not perfectly integrated yet, but they are continuing to work in that direction.

I had lunch three weeks ago with Carol Adams, who runs the Department of Human Services here in Illinois and who agrees there is need for a continuing push toward integration. But the fact is that we are more integrated, even though there is a long way to go, than almost any other state. We should be very happy with the progress we have made. We are doing a better job of connecting government services with private providers in these communities and we are measuring outcomes. Each office is being measured.

The welfare problem is not about money. After all, as my book shows, the federal, state, and local governments are putting $400 billion in to help the disadvantaged, which is almost $10,000 per person in poverty in this country (the poverty line is $18,000). That is $40,000 for a family of four.

So there is a river of money flowing to those below the poverty line, but it is not connecting as effectively as it should be, because it is not integrated. If you get a job and you get transportation, but you still don't have child care, you are not going to stay in the job. If you get child care and you are connected with a job, but you don't have alcohol and substance abuse treatment, you are not going to stay with the job. Some pieces are missing, and we are wasting money on the other pieces. That is my assessment of what is happening.

A recent survey of those technically below the $18,000 poverty line showed 65 percent now have a clothes washer, 58 percent a clothes dryer, 17 percent a dishwasher, 24 percent a personal computer, 56 percent cable TV, and so on. If you travel a lot, as I do, in places like India and China, you will wonder about what poverty really is. Our definition of poverty is a very good one and is very useful, but the conditions are not as difficult in terms of material possessions as you might be led to believe.

Opponents to Reform

The federal government, big providers, and the unions are the culprits. In my book I talk about Catholic Charities, one of the big providers, and how they opposed welfare reform at the national level. They opposed what I believe is one of the most significant social advances in policy toward poor people in our lifetime. It was opposed by Catholic Charities vigorously at the national level, and passive resistance was experienced here in Illinois at the local level. That's all explained in the book.

The unions—AFSCME in particular, which has some 35,000 employees in Illinois—were dead-set against welfare reform. Anyone who cared about poor people and understood the political dynamics of welfare reform would not support Al Gore, who was owned and operated by AFSCME. I (along with many others!) take credit for 500 Bush votes in Florida because my op-ed on ASFCME appeared in the *Times* right before the election. With all the New York retirees down there ... well, clearly George Bush would not be president were it not for my article!

In the future we need to get the rest of the states on board in terms of integrating services. That is why I have been working with the governor of Alabama. We have a Governor's Task Force there and are making progress but we have got to get the rest of the states. While some are moving in the right direction (Florida has done a good job on welfare reform, for instance), there is still a lot of progress to be made.

Fathers Play a Key Role

A crucial piece of this puzzle is the dads of kids on welfare. Many of them are in prison, or just out of prison, or at least have prison records. There are 600,000 of them coming out of prisons this year. Two-thirds will return in three years because they cannot get jobs and will likely be marked for life.

When you have paid your dues, you need to have a chance to change your life and get a job. Jeb Bush has asked me to set up a task force in Florida, which I have done, and we are moving quickly to deal with the 26,000 ex-offenders who are coming out of prison this year. We want to connect each one with a caring, competent adult and a job. This is important because you cannot expect to have social stability without reconnecting these dads.

Seventy percent of the people coming out of prison have alcohol and drug abuse problems, which is another issue. We need to fix the federal government to continue our progress on these challenges. I am meeting in Washington on Thursday and Friday with some people at the White House. In the new welfare reauthorization bill there is a chance for states to have more control. Ten states can apply for waivers to combine these programs and to simplify and streamline what comes out of Washington. I am excited about that and I think it can make a huge difference. I already have some states lined up that are going to apply.

Finally, there is a cultural issue. Bill Cosby had a point: Individuals have to take responsibility for their choices. But it is also the responsibility of society. Society has to provide a path that individuals can follow. Individual responsibility is huge, but we have to remove the barriers so that if people do take responsibility, they have a chance for success.

Right now, many people have given up because they do not think they have a chance. Individual responsibility is not working for many. If nobody in your family or building has worked and you do not even *know* anybody who has worked, you do not have what most of us had in the way of opportunity.

Let me end by saying there is a guy by the name of Daniel Burnham who said, "Make no small plans." My goal, and I hope I live long enough to see this happen, is to have fewer than 1 million people nationwide on welfare, which is fewer than 10 percent of the 12 million enrollees we started with in 1996. I want to reconnect fathers to these families, preferably in a married state. It all fits together and it takes enlightened self-interest on the part of all of us to get involved.

11

Tobacco Policy

How Smokeless Tobacco Can Save Lives

Dr. Brad Rodu[13]

Cigarette smoking and its devastating consequences may not seem like an emerging issue, because the American campaign against smoking is 40 years old. But there are still 46 million smokers in the United States, of which about 440,000 will die every year from smoking-related diseases, according to the Centers for Disease Control and Prevention. If the status quo continues, over the next 20 years about 8 million smokers will die.

The anti-smoking campaign is an abject failure. It has failed primarily because it delivers to smokers an ultimatum: quit smoking or die. The only quitting tactics offered to smokers are behavioral therapy and temporary use of nicotine, but for most smokers these strategies are ineffective. For example, a National Cancer Institute manual for physicians gives these behavioral tips for quitting smoking: Keep your hands busy, doodle, knit, type a letter, cut a drinking straw into cigarette-sized pieces and inhale air, and, my favorite, "keep a daydream ready to go." In reality, these tips do little to mitigate the effects of nicotine, the most powerful of all addictive agents.

Why Don't Smokers Quit?

Nicotine replacement, according to current federal regulatory framework, is just as ineffective as behavioral therapy. First, despite over-the-counter status, nicotine medications remain far too expensive. Smokers can purchase a pack of cigarettes for $2 to $5, depending on state tax rates; or they can purchase a box nicotine gum or patches that costs $30 to $50.

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[13] Dr. Brad Rodu is professor of medicine at the University of Louisville and a member of the university's James Graham Brown Cancer Center. For the past decade, Dr. Rodu has been the leading advocate of tobacco harm reduction, involving the substitution of safer tobacco products for smokers who are unable or unwilling to quit smoking with conventional cessation methods.

This is not a realistic choice for many smokers. Instead, it is a major economic barrier to quitting.

Second, even if a smoker buys nicotine replacement medications, he or she will find them very unsatisfying because they are purposely designed *not* to be addictive. A comprehensive review two years ago found that over-the-counter nicotine medicines are effective for only 7 percent of smokers. This means for every one hundred smokers who try the patch or gum, ninety-three fail. This is all under the watchful eye of the Food and Drug Administration. Would the FDA allow any other drug on the market that was only 7 percent effective? Aspirin for headaches? Birth control pills? Of course not! The FDA approval remains, despite the medications' consistent failure to meet reasonable efficacy standards.

Nicotine Like Caffeine

Compare nicotine to caffeine. Both are addictive drugs. Both give users pleasurable feelings, mood elevation, and enhanced concentration and performance. And both are addictive. But just like caffeine, nicotine does not cause cancer, heart disease, or emphysema. This basic fact is not understood by most smokers, and even comes as a surprise to many physicians. In fact, nicotine can be used just as safely as caffeine; it is the *burning of tobacco* that confers the risks for cancers and heart diseases. The important and distinguishing feature of tobacco harm reduction is providing information to smokers about consuming smoke-free nicotine options that are vastly safer than smoking.

Our tobacco harm reduction strategy offers smokers alternative forms of nicotine. Of all the products available today on the marketplace, smokeless tobacco is the most effective, because it meets criteria for consumer acceptability, safety, and nicotine delivery.

It is important for smokers to understand today's smokeless tobacco products are not the same as those our grandfathers used. Modern products have jettisoned the "spitting" image, and they are available as small, discreet, wafer-like packets or pellets of tobacco that can be used invisibly. Moreover, unlike nicotine medications, smokeless tobacco products also deliver nicotine levels very comparable to smoking. Addictive? Sure … and very effective.

Risks of Smokeless Tobacco

What about the risks? Smokeless tobacco products are demonstrably 98 percent safer than cigarettes. When smokeless tobacco is used instead of cigarettes, and nicotine is delivered through the lining of the mouth, there is no risk for emphysema, for lung cancer, or for heart disease. The only risk resulting from long-term use of smokeless tobacco is mouth cancer. But even this risk is less than half the mouth cancer risk from smoking, and very low in real terms.

In fact, the risk of using smokeless tobacco over a lifetime is similar in magnitude to the risk we all assume when traveling by automobile. How have we dealt with the real but limited risk associated with automobile use? Our society has implemented harm reduction, by incorporating seatbelts, air bags, anti-lock brakes, collapsible frames, and a whole host of other safety features attempting to make automobiles as safe as possible. What has our society offered smokers? A quit-or-die cessation strategy.

Finally, there is evidence from Sweden smokeless tobacco can greatly reduce smoking levels across an entire society. Sweden has transitioned away from smoking over the past 40 or 50 years. The change has come mainly among men who now have a very high usage of smokeless tobacco. As a consequence, Sweden has the lowest smoking rate in Europe and one of the lowest in the developed world. To no surprise, they also have lower prevalence of all smoking-related diseases, including lung cancer. Research published last year shows that if Sweden's male smoking rates were operable across the entire (15-member) European Union, almost 200,000 fewer smokers would die every year.

Role of Tax Policy

One barrier to such a transition in the U.S. is tax policy. In Sweden the tax on smokeless tobacco is low and the tax on cigarettes is high, which creates an incentive for smokers to switch to safer products. Kentucky has recently followed suit by changing its tax policy. This year Kentucky imposed its first-ever tobacco tax, but Governor Ernie Fletcher devised a tax strategy stipulating that higher-risk products deserve higher taxes. Unfortunately, most other states have yet to catch on. As of June 2005, 24 states had higher taxes on smokeless tobacco—on average 1.7 times higher—than on cigarettes. Harm reduction provides a compelling case for lowering taxes on smokeless tobacco.

Reason for Optimism

There is now growing interest in tobacco harm reduction strategies among public health experts. Britain's Royal College of Physicians, one of the world's most prestigious medical societies, issued a report that stated: "As a way of using nicotine, the consumption of non-combustible [smokeless] tobacco is on the order of 10 to 1,000 times less hazardous than smoking, depending on the product." The RCP made an even bolder statement, acknowledging that some smokeless tobacco manufacturers may want to market their products "as a 'harm reduction' option for nicotine users, and they may find support for that in the public health community."

A "quit or die" tobacco public health policy dictated by extremists has failed American smokers. Now, moderate and reasonable persons in the anti-smoking campaign, and the public at large, must challenge the extremists and their failed policies and practices. It is time that those policies and practices change.

Speaker Biographies

Joseph L. Bast

Joseph Bast is president and CEO of The Heartland Institute, a national nonprofit research center founded in 1984 and located in Chicago, Illinois. According to a recent telephone survey, among state elected officials The Heartland Institute is among the nation's best-known and most highly regarded "think tanks."

Bast is the coauthor of 10 books, including *Rebuilding America's Schools* (1990), *Why We Spend Too Much on Health Care* (1992), *Eco-Sanity: A Common-Sense Guide to Environmentalism* (1994), and *Education & Capitalism* (2003). His writing has appeared in *Phi Delta Kappan, The Wall Street Journal*, *Investor's Business Daily*, *The Cato Journal, USA Today*, and many of the country's largest-circulation newspapers.

He is the publisher of four monthly newspapers: *School Reform News*, *Environment & Climate News*, *Health Care News,* and *Budget & Tax News.* All four publications are delivered to every state and federal legislator in the country, as well as 8,400 municipal officials, some 2,000 journalists, and thousands of grassroots activists and public policy research organizations.

Bast has been recognized for his contributions to public policy research and debate, including being named one of "The 88 to Watch in 1988" by the *Chicago Tribune*; recipient of the 1994 Roe Award from State Policy Network; commissioned a Kentucky Colonel by Gov. Paul E. Patton on June 19, 1996; co-recipient of the 1996 Sir Antony Fisher International Memorial Award; recipient of the 1998 Eagle Award from Eagle Forum; and recipient of the 2004 Champion of Liberty award from the Libertarian National Committee. He was elected a member of The Philadelphia Society in 2002.

Richard Dolinar, M.D.

A private practice clinical endocrinologist in Phoenix, Arizona, Dr. Dolinar earned his Medical Degree from The State University of New York at Buffalo and did his endocrinology fellowship at Duke University.

Dr. Dolinar has testified before the U.S. Senate Subcommittee on Consumer Affairs and also has given Congressional briefings on the Hill regarding health care issues. He represented the American Association of Clinical Endocrinologists (AACE) at public hearings regarding the Medicare Modernization Act of 2003 and the Medicare Drug Benefit. He also has presented to state legislators as well as various health care industry professionals. Dr. Dolinar has been interviewed by local and national media, including CNN, CBS, and PBS, regarding his opinions on health care issues.

A published author, in both professional and consumer publications, Dr. Dolinar's articles and opinion pieces have appeared in *The Wall Street Journal*, *USA Today*, *New York Times*, *New England Journal of Medicine*, *Journal of the American Medical Association*, and *Diabetes Research*. His articles also have appeared on various Web sites. He is coauthor of the book, *Diabetes 101*.

Dr. Dolinar is a member of the board of directors of AACE and serves on its National Legislative and Regulatory Committee. He is the chair of its Future of Healthcare Task Force. Dr. Dolinar also serves as a senior fellow in health care policy at The Heartland Institute and has held leadership positions in other professional organizations, including the Juvenile Diabetes Research Foundation and the American Diabetes Association.

Dr. Dolinar served as a flight surgeon in the Vietnam War and is a retired U.S. Air Force Colonel.

Robert C. Enlow

Robert Enlow has been executive director of the Milton and Rose D. Friedman Foundation since 2003. He joined the Friedman Foundation when it first opened in 1996, serving as fundraiser, projects coordinator, and vice president before being named executive director. Under his leadership the Friedman Foundation has become one of the nation's leading advocates of school choice, working in dozens of states to advance school choice by disseminating research, sponsoring seminars, undertaking advertising campaigns, organizing community leaders, and providing grants.

Enlow is the author of *Grading Vouchers, Ranking America's School Choice Programs* and coauthor of "Early School Choice," a chapter in *An Education Agenda: Let Parents Choose Their Children's School*. His articles and quotes have appeared in *The Wall Street Journal*, *New York Times*, *Arizona Republic*, and *National Review*. He is also a regular guest on talk radio and has testified before the U.S. Senate and legislatures across the country. His civic positions include private sector chairman of the Education Task Force for the American Legislative Exchange Council and advisory board member of Children First: School Choice Trust.

Paul E. Fisher

Paul E. Fisher, a real estate attorney and head of real estate at McGuireWoods, is a member of the board of directors of The Heartland Institute.

Fisher has extensive experience in the areas of construction finance, securitized lending, entertainment law, banking industry regulation, and commercial real estate development. He has worked extensively on the deregulation of the banking industry and the relationship between capital and debt in real estate finance. Fisher also has spoken before many professional groups on the role of legal opinion in complex commercial real estate transactions.

Raymond Gifford

Ray Gifford is president of the Progress & Freedom Foundation and a member of its board of directors.

Before joining the foundation in 2003, Gifford served as chairman of the Colorado Public Utilities Commission for four years, following his appointment by Governor Bill Owens. As a regulator, Gifford aspired to a competitive, consumer-driven telecommunications market; a low-cost, unbundled natural gas utility; a reliable, efficient electric system; and an economically rational regulatory scheme for transportation.

Before joining the commission, Gifford served under then-Colorado attorney general (now Bush cabinet member) Gale Norton as first assistant attorney general. From 1993-1996, he worked for two national law firms—Kirkland & Ellis and Baker & Hostetler. The meager satisfactions of private practice led him scrambling into the attorney general's office.

Gifford earned his law degree from the University of Chicago, where he absorbed the "law and economics" jurisprudence for which the school is (in)famous. He thus burdens his colleagues with his views on: the Coase theorem, public choice theory, and the Chicago School antitrust revolution. In law school, he served as president of the Federalist Society and chairman of the Edmund Burke Society.

Gifford studied philosophy, earning a Bachelor's degree from St. John's College in Annapolis, Maryland, home to the "Great Books" curriculum. Gifford teaches a seminar on the law and economics of the information age at the University of Colorado School of Law. He is a member of the American Law Institute.

James L. Johnston

James L. Johnston is a member of the board of directors of The Heartland Institute, an independent, nonprofit research center founded in 1984 and headquartered in Chicago, Illinois.

Johnston retired in January 1993 from his position as senior economist at Amoco Corporation, whose economics department he joined in 1975. His primary responsibilities while at Amoco included the economic analysis of public policy issues and the hedging of corporate risk.

Prior to his employment at Amoco, Johnston served as an economist with the RAND Corporation, the Institute for Defense Analyses, and the Secretary's Office of the U.S. Treasury. He served on the U.S. delegation to the United Nations Conference on the Law of the Sea.

Johnston's current research has focused on electric utility deregulation in Illinois and other states; pollution trading under the climate change treaty, Clean Air Act, and RECLAIM system for the South Coast Air District; and a general theory of regulation, available on the Web site of The Heartland Institute.

Johnston serves on the board of directors of the Institute for Energy Research and the Acton Institute for Religion and Liberty.

Johnston earned his Bachelor's and Master's degrees in economics from the University of Southern California and did graduate work toward a Ph.D. in economics at UCLA.

Gary MacDougal

The former CEO of a highly successful Fortune 1000 company, Gary MacDougal served four years as chairman of the Illinois Governor's Task Force on Human Services Reform. He currently serves as an advisor to the Governor's Task Force on Human Services Reform in Alabama and the Governor's Task Force on Ex-offender Reentry in Florida.

MacDougal is the author of *Make a Difference* (New York, NY: St. Martin's Press, 2nd edition 2005), which describes how he persuaded then-governor of Illinois Jim Edgar to create a Task Force on Human Services Reform, which MacDougal then chaired from 1993 until 1997. During that time, he helped to conceive, design, adopt, and implement a far-reaching reorganization of human services in Illinois.

MacDougal is a trustee of the Casey Foundation, a $3 billion foundation for children and families at risk, and the MacDougal Family Foundation. He serves as a director of United Parcel Service (UPS), two venture capital funds, and the Bulgarian American Enterprise Fund. He is also a pro bono lecturer and writer and a policy advisor to The Heartland Institute.

Joseph A. Morris

Joseph A. Morris is a partner in the law firm of Morris & De La Rosa, with offices in Chicago and London. Morris is resident at the Chicago office. He maintains an active practice conducting trials and appeals, particularly in the areas of constitutional, business, labor, and international law. He is a member of the Bars of the Supreme Court of the United States, the Supreme Court of Illinois, and other courts.

Morris served under President Ronald Reagan as assistant attorney general of the United States and director of the Department of Justice Office of Liaison Services, in which capacity he was the attorney general's top assistant in charge of international affairs and liaison with state and local prosecutors and law enforcement agencies; the general counsel of the United States Office of Personnel Management; the special counsel to the chairman of the Equal Employment Opportunity Commission; and the chief of staff and general counsel of the United States Information Agency. He also has been an American delegate to the United Nations Commission on Human Rights in Geneva and both a government and a public member of the Administrative Conference of the United States.

He is a director of the American Conservative Union and is chairman of the United Republican Fund of Illinois. He has been a director of The Philadelphia Society and is a leader in other Republican Party and conservative political bodies. He was the 1994 nominee of the Republican Party for president of the Cook County Board (serving a population of more than 5 million people, including Chicago); although defeated in a Democrat stronghold, he received half-a-million votes and turned in the best Republican record in a generation.

He serves pro bono publico as president and general counsel of The Lincoln Legal Foundation and is active in a number of other bar, civic, and charitable organizations.

A frequent lecturer and debater, he has appeared on such national and local television and radio programs as ABC's "Good Morning, America," NBC's "Nightly News," the syndicated "Entertainment Tonight," CNN's "Day Watch" and "Crossfire," C-SPAN's "Washington Journal," WTTW-TV's "Chicago Tonight," and WGN-Radio's "Extension 720 with Milt Rosenberg." He was formerly co-host of "Equal Time," a public affairs show broadcast weekday evenings on WBEZ-Radio, the National Public Radio affiliate in Chicago. He has spoken and published widely on business, legal, economic, public policy, and foreign relations matters.

Brad Rodu, D.D.S.

Dr. Brad Rodu is professor of medicine at the University of Louisville and a member of the university's James Graham Brown Cancer Center.

For the past decade, Dr. Rodu has been the leading advocate of tobacco harm reduction, involving the substitution of safer tobacco products for smokers who are unable or unwilling to quit smoking with conventional cessation methods. In addition to numerous contributions in the peer-reviewed scientific literature, Dr. Rodu has written commentaries for the general press and has authored the book, *For Smokers Only: How Smokeless Tobacco Can Save Your Life*. He served as an expert witness at a 2003 Congressional hearing on tobacco harm reduction and has spoken at international forums on the subject, including one held in London at the British Houses of Parliament.

A native of Ohio, Dr. Rodu earned his dental degree from the Ohio State University in 1977. After an oral pathology residency program at Emory University, Dr. Rodu completed fellowships at the University of Alabama at Birmingham (UAB) sponsored by the American Cancer Society and the National Cancer Institute. He was on the UAB faculty from 1981 to 2005, with appointments in the Departments of Pathology, Surgery-Otolaryngology and Radiation Oncology (School of Medicine), Epidemiology (School of Public Health), and Diagnostic Sciences (School of Dentistry).

James M. Taylor

James M. Taylor is managing editor of *Environment & Climate News* and a senior fellow for The Heartland Institute.

Taylor formerly served as a legal analyst for Defenders of Property Rights, a public interest legal foundation dedicated to the protection of property rights against excessive government regulation. While in law school, Taylor interned at the Cato Institute's Center for Constitutional Studies, focusing on constitutional protections of private property. Taylor also served as president of the Syracuse University chapter of the Federalist Society, an organization dedicated to protecting individual freedoms and conservative/libertarian values in our nation's legal system. Taylor was founder and editor-in-chief of the Syracuse University *Federalist Voice*.

Taylor is a nationally known expert and frequent speaker on a variety of employment law topics. He has made national appearances on the Fox News Channel as well as the “Good Morning America” and “Newsmakers” national radio programs. He also has been published in numerous major newspapers and magazines. He received his Bachelor of Arts degree from Dartmouth College and his Juris Doctor from the Syracuse University College of Law.

Grace-Marie Turner

Grace-Marie Turner is president of the Galen Institute, a public policy research organization she founded in 1995 to promote an informed debate over free-market ideas for health reform. She speaks and writes extensively about incentives to promote a more competitive, consumer-driven marketplace in the health sector.

The Galen Institute has been instrumental in promoting Health Savings Accounts and other consumer-friendly ideas that transfer power over health care decisions from bureaucracies to individuals.

In December 2004, Turner was invited by President George W. Bush to speak on HSAs and consumer-directed health reform at the White House Economic Summit. She recently was appointed by former HHS Secretary Tommy Thompson to serve as a member of the National Advisory Council on Healthcare Research and Quality.

Turner also is founder and facilitator of the Health Policy Consensus Group, which serves as a forum for analysts from market-oriented think tanks around the country to analyze and develop health policy recommendations.

She is the editor of *Empowering Health Care Consumers through Tax Reform*, published by the University of Michigan Press.

In 1995-1996, Turner served as executive director of the National Commission on Economic Growth and Tax Reform. For 12 years, she was president of Arnett & Co., a health policy analysis and communications firm in Washington, D.C. Her early career was in politics and journalism, where she received numerous awards for her writings on economics and politics.

Lee H. Walker

Lee Walker is president of The New Coalition for Economic and Social Change and a senior fellow of The Heartland Institute. He is a director of the Black United Fund of Illinois and the Gidwitz Center for Urban Policy at National Louis University, and chairman of the board of the American Fund and trustee of the Foundation Board for the University of the Orange Free State (South Africa).

Walker is a member of the editorial board of the *Chicago Defender* and a former monthly columnist for *Crain’s Chicago Business*. He is a member of Sigma Pi Phi, Delta Alpha Boulé (Northern Illinois), Chicago Chapter of National Guardsmen Inc., and Chicago Chapter of the National Black Journalists. In 2001 he received the Pioneer Award from the Republican National Committee. He was the 2002 National President of the National Guardsmen Inc. He is listed in *Who’s Who Among Black Americans*.

Walker graduated from Fordham University, New York City, majoring in economics, with additional studies at the University of Chicago, New York University, Brooklyn College, and Alabama State University. In 1975, Walker was elected vice president of the Brooklyn, New York chapter of the NAACP. He worked for 10 years as director of labor relations for a shopping center management company before joining Sears, Roebuck and Company in 1970. He worked for Sears for 23 years, the first 10 in the New York buying office and the next 13 in the national headquarters in Chicago. Walker accepted an early retirement offer from Sears in 1993 and since then has worked full-time as president of The New Coalition.

Since 1981, Walker has served as a member of the Community Development Board of the University of Chicago's Office of Special Programs. He is a former member of the Illinois Board of Higher Education and the Chicago State University Foundation; a trustee of the Illinois State Community College System; a commissioner with the Midwestern (10 States) Higher Education Commission; and a member of the Community Advisory Panel of WTTW-TV (PBS). Between 1990 and 1992 he was chairman of the Merit Advisory Board of the Department of Personnel of the Office of the Secretary of State of Illinois.

On the back of Walker's business card is a quotation from Booker T. Washington he says has guided his life. It reads, "I have learned that success is to be measured, not so much by the position one has reached in life, as by the obstacles which have been overcome while trying to succeed."

Brian Wesbury

Brian Wesbury is chief investment strategist and chairman of the investment committee at Claymore Securities, Inc., a financial services firm based in Lisle, Illinois. He also serves as The Heartland Institute's senior fellow for federal budgets, trade, taxes, and monetary policy. *The Wall Street Journal* ranked Wesbury the nation's #1 U.S. economic forecaster in 2001 and *USA Today* ranked him as one of the nation's top 10 forecasters in 2004.

Wesbury writes a monthly column for *The American Spectator* magazine and serves as the magazine's economics editor. He is a contributor to the editorial page at *The Wall Street Journal* and is a regular co-host on CNBC's "Squawk Box."

Wesbury is a member of the Academic Advisory Council of the Federal Reserve Bank of Chicago and an adjunct professor of economics at Wheaton College in Wheaton, Illinois. In 1995 and 1996, he served as chief economist for the Joint Economic Committee of the U.S. Congress.

Wesbury's career as an economist began in 1982 at Harris Bank in Chicago. He also has served as vice president and economist for The Chicago Corporation and as senior vice president and chief economist at Griffin, Kubik, Stephens & Thompson, Inc.

Wesbury received an M.B.A. from Northwestern University's Kellogg Graduate School of Management and a B.A. in economics from the University of Montana. McGraw-Hill published Wesbury's first book, *The New Era of Wealth*, in October 1999.