

107th Tennessee General Assembly

LEGISLATORS'

guide to the issues



Tennessee Center for Policy Research



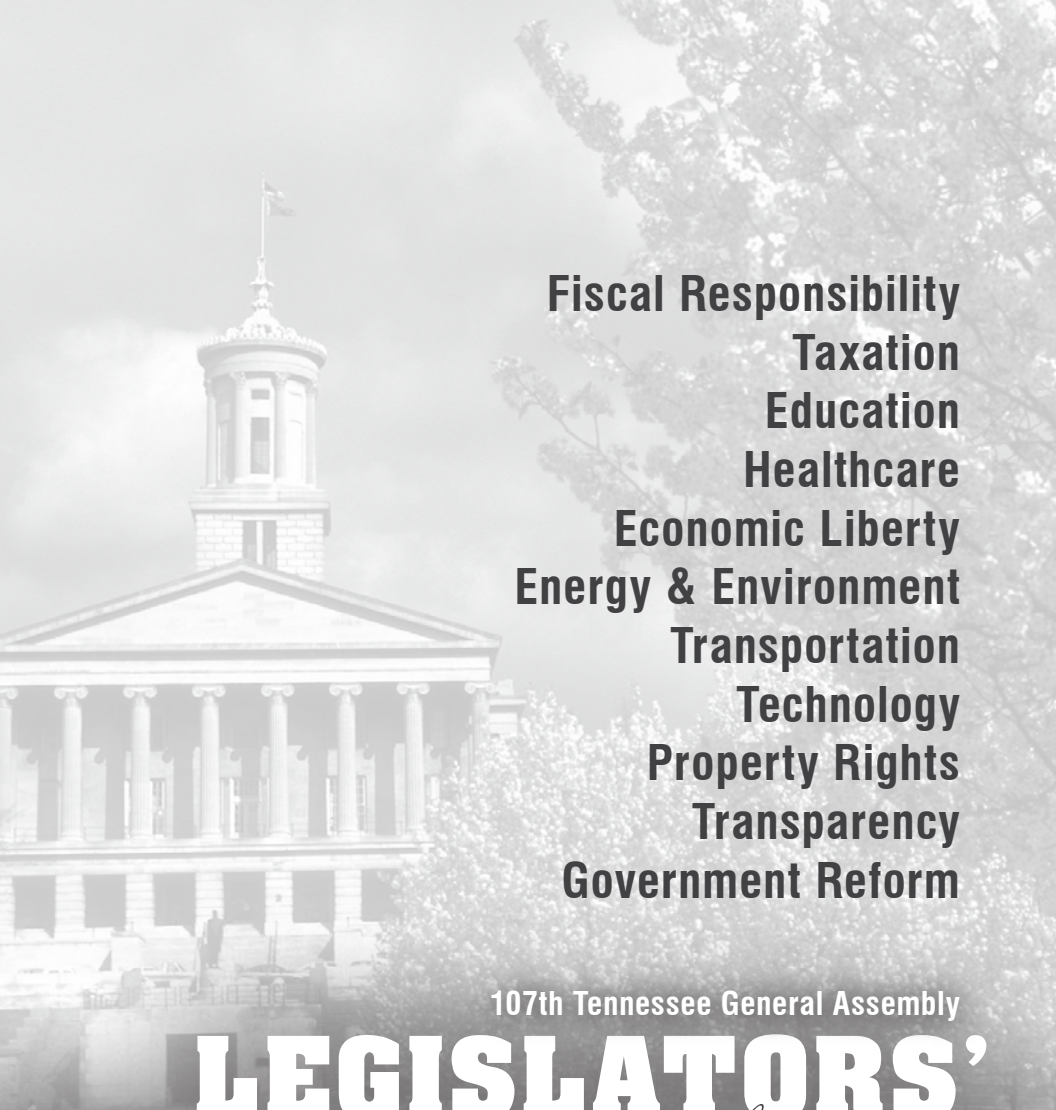
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**Fiscal Responsibility
Taxation
Education
Healthcare
Economic Liberty
Energy & Environment
Transportation
Technology
Property Rights
Transparency
Government Reform**

107th Tennessee General Assembly

LEGISLATORS' *guide to the issues*

by Justin Owen, Allyn Milojevich, and Jourdon Causseaux.
Edited by Christopher Butler and Michele Thompson.



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FORWARD

The Tennessee Center for Policy Research proudly introduces the second edition of our *Legislators' Guide to the Issues*. Upon the inauguration of each Tennessee General Assembly, the Center will present every senator and representative with a comprehensive analysis of a range of public policy issues facing the State of Tennessee. The 2011-2012 *Legislators' Guide to the Issues* will serve to provide detailed free market policy recommendations on dozens of issues that will come before the 107th General Assembly. We hope you will find the information contained in this guide useful and insightful.

As policy issues arise during the next two years, please keep this guide within reach, turning to it for a free market, limited government alternative to status quo policy solutions. Further, if you are interested in obtaining additional information about a particular policy recommendation, do not hesitate to contact us. The Tennessee Center for Policy Research exists to assist you, the public servant, in promoting free market policy solutions grounded in individual liberty and limited government.

We wish you the best of luck during the 107th General Assembly, as you and your fellow legislators conduct the people's business. On behalf of our board of directors, scholars, and staff, thank you for your service, and your commitment to a freer, more prosperous Tennessee.

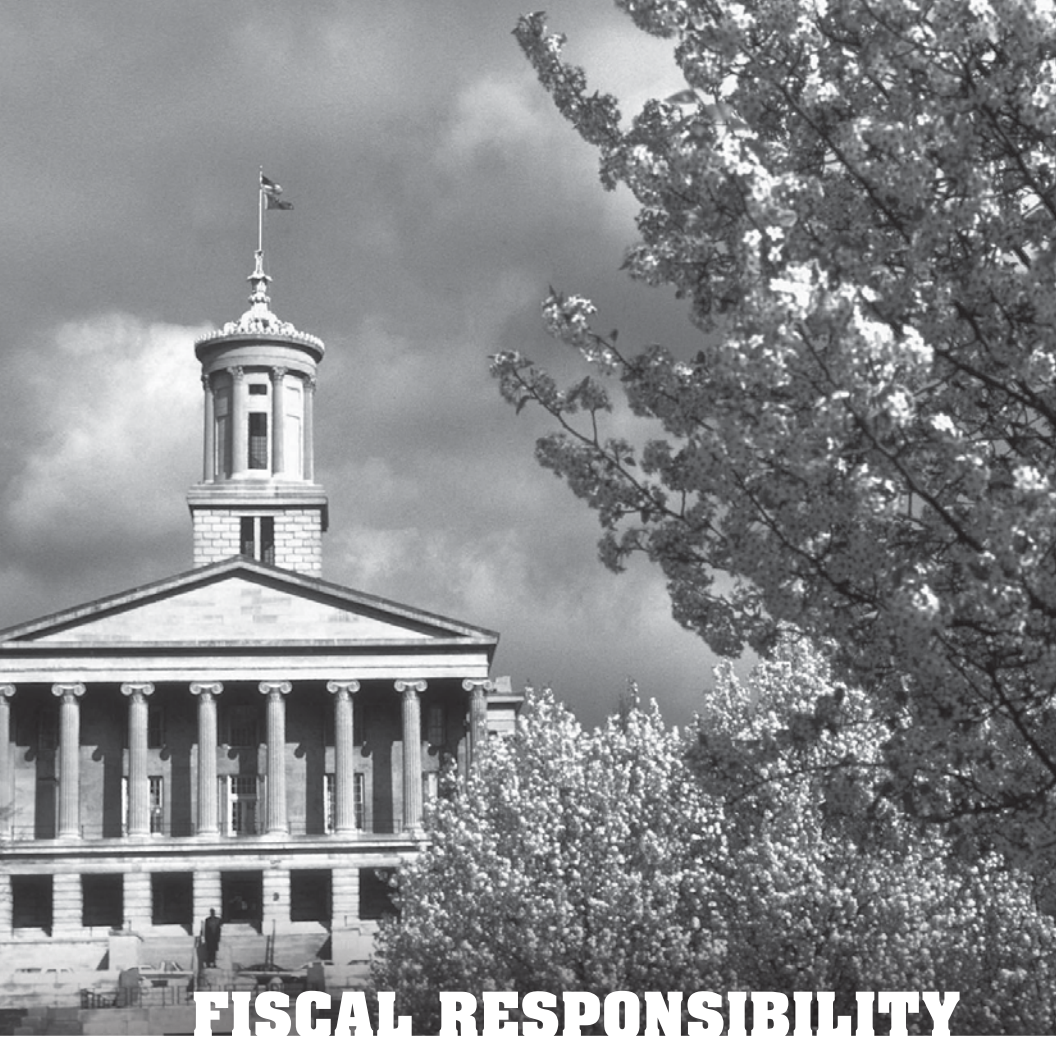
Sincerely,



Justin Owen, President



Tennessee Center for Policy Research



FISCAL RESPONSIBILITY

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FISCAL RESPONSIBILITY

budget review act

- ★ *Require a waiting period of 72 hours between the time an appropriations or revenue-related bill is introduced and the time a vote is taken.*

THE PROBLEM

At a time when the state faces a significant budgetary shortfall, it is imperative that lawmakers give due consideration to every piece of legislation that affects the budget. Currently, proposed legislation can change frequently and quickly, leaving lawmakers unable to adequately fulfill their duties. Further, when appropriations or revenue-related bills are moved quickly through the legislative process, taxpayers are afforded little time to learn about the legislation and make their voices heard. This often leads to poor decision making on the part of policymakers, and can cause serious budgetary constraints at a later point in time.

OUR SOLUTION

The General Assembly should statutorily prohibit a vote on any bill that impacts appropriations or revenues for a period of 72 hours after its introduction. This will give both lawmakers and taxpayers an opportunity to analyze the legislation before votes are cast that will impact the budget. A 72-hour budget review period would bring about much-needed transparency and fiscal responsibility to the state legislature by providing taxpayers an opportunity to become engaged in the process.



FISCAL RESPONSIBILITY

copeland cap



Strengthen the Copeland Cap through a constitutional amendment to protect taxpayers from runaway spending.

THE PROBLEM

Enacted in 1978, the Copeland Cap is meant to curb wasteful spending by preventing the General Assembly from increasing spending at a faster rate than personal income growth. If the state budget grows at a higher percentage year-over-year than Tennesseans' personal income, the legislature must approve the excess spending in a separate bill.

Unfortunately, the Copeland Cap can be overridden by a simple majority vote, rendering it practically ineffective. As a result, the cap has been exceeded 14 times since its enactment, costing taxpayers billions of dollars.¹

OUR SOLUTION

The General Assembly should amend the Tennessee Constitution to require a supermajority vote to override the Copeland Cap. By amending the Constitution to require a two-thirds vote rather than a simple majority to override the cap, lawmakers could curb spending abuse, while still preserving their ability to raise needed funds in times of emergency or disaster.

RESOURCES

Drew Johnson, "Solving Tennessee's Spending Problem." *The Chattanooga*. February 1, 2006.

<http://www.tennesseepolicy.org/2006/02/solving-tennessees-spending-problem/>



FISCAL RESPONSIBILITY

kicker law

- ★ *Enact a kicker law that would require the General Assembly to return surplus revenue to taxpayers in years when revenues are strong.*

THE PROBLEM

Government spending is not only a Washington, D.C. problem, it is a Tennessee problem as well. In the time it takes to read this sentence, state government will spend more than \$3,000. The General Assembly could rein in this spending by enacting a law that would require any surplus revenue to be returned to taxpayers at the end of each fiscal year. Part of the problem is that budget shortfalls are often viewed as resulting from too little revenue instead of too much spending. Further, when revenues do exceed spending, lawmakers frequently jump at the opportunity to advance their political pet projects rather than remaining fiscally responsible with taxpayer money.

OUR SOLUTION

The General Assembly should enact a kicker law like the one in Oregon. Under the kicker law, if tax collections rise beyond General Fund estimates, any surplus amount remaining after topping off the state's rainy day fund would be refunded to taxpayers. This could be done in a number of ways, including the removal of the sales tax on groceries for as long as the surplus allows.

Turning the kicker law idea into reality gives Tennessee's lawmakers a chance to prove their commitment to fiscal restraint. It would also serve taxpayers well by potentially saving every family in the state hundreds of dollars in taxes every year.

RESOURCES

Drew Johnson and Daniel Phillips, "It's Time for State Government to 'Kick' its Wasteful Spending Habit." *Johnson City Press*. July 2, 2006.

<http://www.tennesseepolicy.org/2006/07/it's-time-for-state-government-to-kick-its-wasteful-spending-habit/>



FISCAL RESPONSIBILITY

state grace commission



Establish an independent commission to undertake a comprehensive review of state government spending and recommend savings opportunities.

THE PROBLEM

While many elected officials understand the need for exposing and cutting wasteful government spending, it is often a challenging proposal to actually implement. The existence of an independent commission to find and propose necessary cuts would make lawmakers' jobs easier. It would also preserve the autonomy needed to effectively pursue such cuts by mitigating internal political and bureaucratic pressures that currently keep spending high.

OUR SOLUTION

The General Assembly should establish an independent state commission to review government spending and recommend areas where cuts can be made. In the past, the federal government had tremendous success in this realm. In 1982, President Ronald Reagan organized a panel of business executives and private sector volunteers into the Private Sector Survey on Cost Control—otherwise known as the Grace Commission. The panel made 2,478 recommendations that saved taxpayers \$424.4 billion during a three-year period.² A similar commission comprised of business leaders and volunteers in Tennessee would provide the best opportunity to cut wasteful government spending.

RESOURCES

Introduction, "2010 Tennessee Pork Report," Tennessee Center for Policy Research.

<http://www.tennesseepolicy.org/wp-content/uploads/2010-Tennessee-Pork-Report.pdf>



FISCAL RESPONSIBILITY

technical corrections

- ★ *Return the annual technical corrections bill to its original purpose, halting its use as a vehicle for stealth tax increases.*

THE PROBLEM

The technical corrections bill was once used to make minor corrections and clarifications to the state tax code. However, for the past several years, the technical corrections bill has been used to pass disguised tax increases to a tune of \$115 million a year.³ Tax increases—proposed and passed—have targeted professional athletes, cable customers, real estate investors, hotel food, drivers' licenses, business telecommunications, health club dues, propane, computer software, and large items such as furniture and equipment. Until the Tennessee Center for Policy Research began publishing an analysis of the bill, many lawmakers were uninformed about the hidden tax proposals littered throughout. Further, lawmakers have been forced to cast one vote when numerous votes should be required to make such sweeping changes to the state tax code.

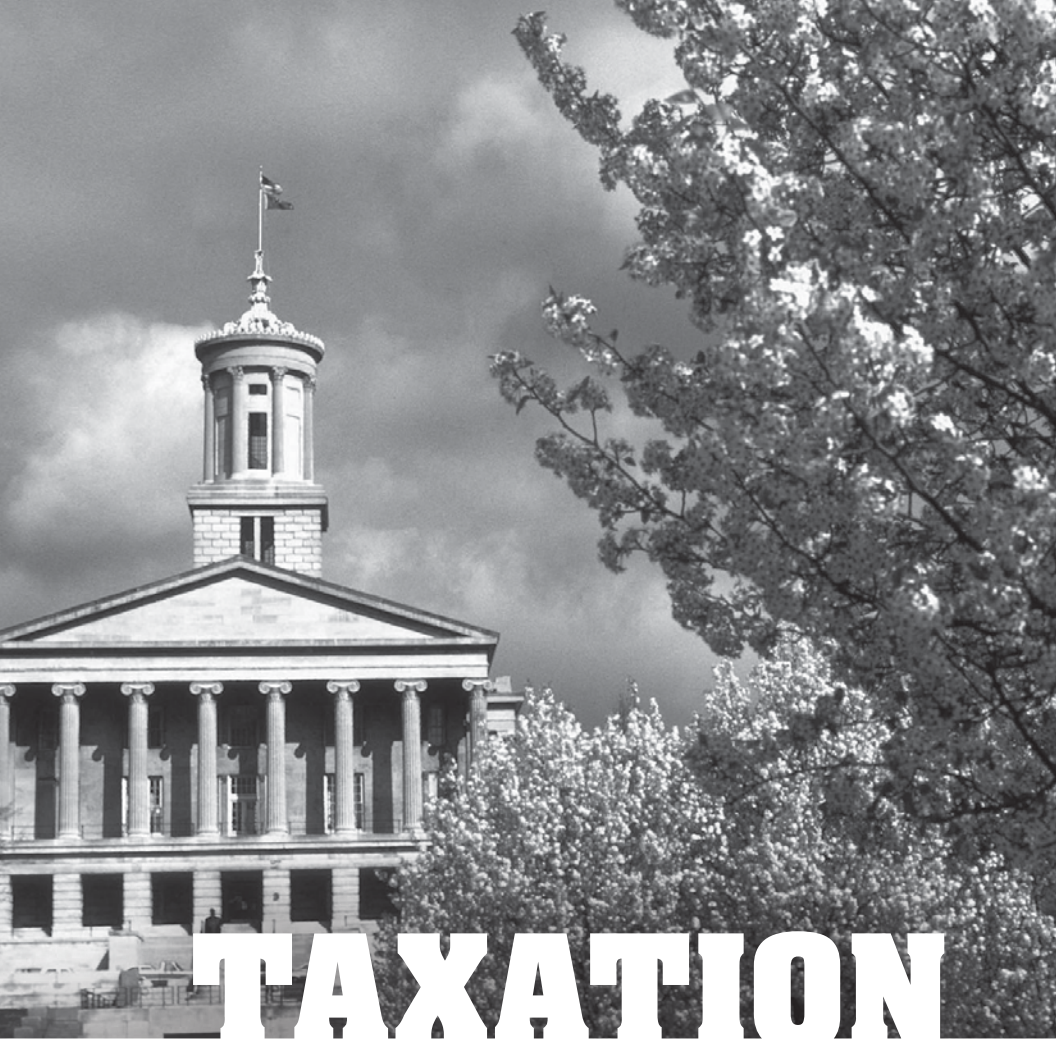
OUR SOLUTION

The General Assembly should end the abuse of this process. The technical corrections bill should be limited to its original intent, and every proposed tax increase should be filed, debated, and voted on individually, not shoved through legislative committees all at once. Reining in this out-of-control process will bring fiscal responsibility to the annual budget and provide taxpayers with a clearer picture of their state's tax policy.

RESOURCES

Justin Owen, "Annual process lacks honesty and transparency." *The Tennessean*. October 7, 2010.

<http://www.tennesseepolicy.org/2010/10/annual-process-lacks-honesty-and-transparency/>



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TAXATION

income tax amendment



Pass a constitutional amendment reaffirming that a state income tax is unconstitutional.

THE PROBLEM

The Tennessee Supreme Court has addressed the issue of the state's authority to tax income three times. Each time, the Court ruled that a tax on income must be limited to income derived from stocks and bonds. As a result, an income tax on labor is unconstitutional. Despite the Court's rulings, significant efforts were made in 2002 to enact an income tax on Tennesseans, and an income tax on labor has frequently been proposed by various members of the General Assembly since then. Although the Supreme Court rulings on the issue serve as precedent, the specific question of whether an income tax on labor is constitutional has not directly been addressed, leading some to argue (including a former attorney general) that if structured properly, an income tax on labor could withstand judicial review.

OUR SOLUTION

The General Assembly should propose a constitutional amendment reaffirming that an income tax on labor is unconstitutional, quashing attempts to pass such a tax once and for all. Tennessee is one of only nine states that do not tax income derived from labor. Every single day 20,000 taxpayers flee states with income taxes to settle in non-income tax states.⁴ Since 1967, states that tax income have seen a 42 percent increase in government spending and a 64 percent decrease in personal income growth.⁵ Because it is in the best interest of Tennesseans and is the longstanding policy of the state to prevent the enactment of an income tax on labor, it is necessary and prudent to clarify the language of the Constitution.

RESOURCES

Jenifer Zeigler Rowland and David Rowland, "All Caught Up: How Tax Policy May Have Allowed Tennessee to Outgrow Missouri." Show-Me Institute and Tennessee Center for Policy Research.

http://tcpr.temp.lexi.net/wp-content/uploads/20090806_all_caught_up.pdf

TAXATION

hall income tax

- ★ *Eliminate the Hall Income Tax to encourage wealthy and retired individuals to move to Tennessee.*

THE PROBLEM

A tax on income from labor is unconstitutional in Tennessee; however, the state does allow one form of taxation on a type of income. Since 1929, the state has collected a tax on interest from bonds, notes and stock dividends.⁶ The tax is referred to as the Hall Income Tax and raises very little revenue, but it makes Tennessee an unwelcoming place for investors. The tax is projected to generate approximately \$200 million in revenue for fiscal year 2010-2011, representing less than two percent of state revenues.⁷ Although it provides a very insignificant portion of state revenue, it has serious negative consequences. Because it only targets interests and dividends from stocks, bonds and notes, it is essentially a tax on investors. Levying the tax discourages retirees and the wealthy—the groups who invest most often—from relocating to Tennessee. It also results in fewer investments by existing Tennessee residents and even encourages them to relocate elsewhere to avoid the sizeable six percent tax rate.⁸

OUR SOLUTION

The General Assembly should repeal the Hall Income Tax because it suppresses savings and investment in our state economy. Eliminating the Hall Income Tax would lead to capital formation and economic growth. It would also draw retirees and wealthy investors into Tennessee to contribute to the economy.

TAXATION

death tax



Eliminate the state inheritance tax or “piggyback” the state’s estate tax exemption level to that of the federal level.

THE PROBLEM

Tennessee currently has two death taxes, an inheritance tax and an estate tax, making it one of only 11 states that still imposes an inheritance tax. Inheritance and estate taxes are currently imposed on estates that exceed \$1 million.⁹ An estate tax in itself not only discourages investment, but can also lead to investment-reducing alternatives such as liquidation, downsizing, divestiture, or retirement.¹⁰

Proponents continually argue that the inheritor of wealth does not deserve it because they did not earn it directly. However, the rights to that wealth lie with the deceased person, the person who earned it originally and who paid taxes on it continually while living, and not the government. An *Investor’s Business Daily* editorial quotes it best: “People should not be punished because they work hard, become successful and want to pass on the fruits of their labor, or even their ancestors’ labor, to their children. As has been said, families shouldn’t be required to visit the undertaker and the tax collector on the same day.”¹¹

OUR SOLUTION

The General Assembly should eliminate the state’s inheritance tax or “piggyback” the state’s estate tax exemption level to that of the federal level (i.e., if the estate is exempt from federal taxation it is also exempt from state taxation). Tennessee’s estate tax operates independently from federal law, so it is possible for an estate to be subject to state tax while exempt from federal tax. Elimination of the inheritance tax or the raising of the exemption level will allow the deceased to dispose of their wealth as they so choose, which will lead to greater investment by Tennesseans.



TAXATION

sales tax on food

★ *Reduce or eliminate the sales tax on food for all Tennesseans.*

THE PROBLEM

Tennessee, like every other state, is facing a serious economic downturn. The state budget is in the red, as are the budgets of many Tennesseans. Citizens across the state are reallocating incomes and eliminating the purchase of discretionary items to cope with the tough times. However, food purchases are a necessity for everyone and not something that can be done without. Grocery purchases in Tennessee are currently taxed at a rate of 5.5 percent.¹² Of all 50 states and the District of Columbia, Tennessee has the third highest food tax rate in the nation; only Mississippi and Idaho have higher tax rates.¹³

While most Americans pay no state sales tax on groceries, shoppers in Tennessee fork over to state tax collectors the equivalent of more than three weeks' worth of food purchases every year.¹⁴ Sales taxes on groceries are regressive, meaning they take a larger percentage of the income of poor people than of wealthier people. Not only is Tennessee's food sales tax regressive, it leads to Tennesseans purchasing groceries in border states that either do not impose a sales tax or have a lower rate.¹⁵ Five states currently fall in this category, encouraging Tennesseans to purchase groceries out-of-state, contributing to the tax coffers of those states instead of Tennessee's.

OUR SOLUTION

The General Assembly should alleviate the tax burden of all Tennesseans by permanently reducing or eliminating the sales tax on food. Tennesseans should not pay a tax on items of necessity. This is especially true in times of economic strife, when families must operate on tighter budgets. This reduction would free up much-needed resources for Tennesseans, while at the same time attracting residents of neighboring states to spend money in Tennessee and contribute to the state's tax base.

TAXATION

gasoline tax



Lower the gasoline tax and permanently eliminate the automatic increase in the state tax to offset reductions in the federal gasoline tax.

THE PROBLEM

Families across Tennessee are facing tight economic times, and volatile gas prices play a significant role in strained family budgets. Tennessee currently imposes a gasoline tax of 21.4 cents per gallon.¹⁶ When added to the federal rate of 18.4 cents per gallon, Tennesseans spend nearly 40 cents per gallon in taxes. At current gas prices, taxes account for approximately 14 percent of the average gasoline price, making gasoline one of the most highly taxed goods in Tennessee.¹⁷ Of the eight states that border Tennessee, six have a lower gasoline tax rate than the Volunteer State.¹⁸ This means that, rather than bringing out-of-state drivers into the state to fill up on gasoline and increase in-state revenue, Tennessee is forcing thousands of its own residents across state lines in search of cheaper gas.

Another problem with Tennessee's current gasoline tax scheme is the state law mandating that any reduction in the federal tax rate be offset by an increase in the state tax rate.¹⁹ Therefore, even if Congress decided to alleviate drivers' arduous tax burden by reducing the federal gasoline tax, Tennesseans would still pay the same amount of taxes at the pump.

OUR SOLUTION

The General Assembly should reduce the burden on taxpayers by lowering the gasoline tax. Tennessee has the ability to compete with neighboring states for gasoline tax revenues by attracting out-of-state residents looking to fill their tanks more cheaply. In addition, a lower gasoline tax would encourage residents to remain in the state when purchasing fuel. The General Assembly should also eliminate the mandate that any federal reductions in the gasoline tax be offset by an increase in the state gasoline tax. Not only does the policy hurt Tennessee motorists, but it could potentially make Tennessee the highest gasoline taxed state in the Southeast.



TAXATION

cigarette tax

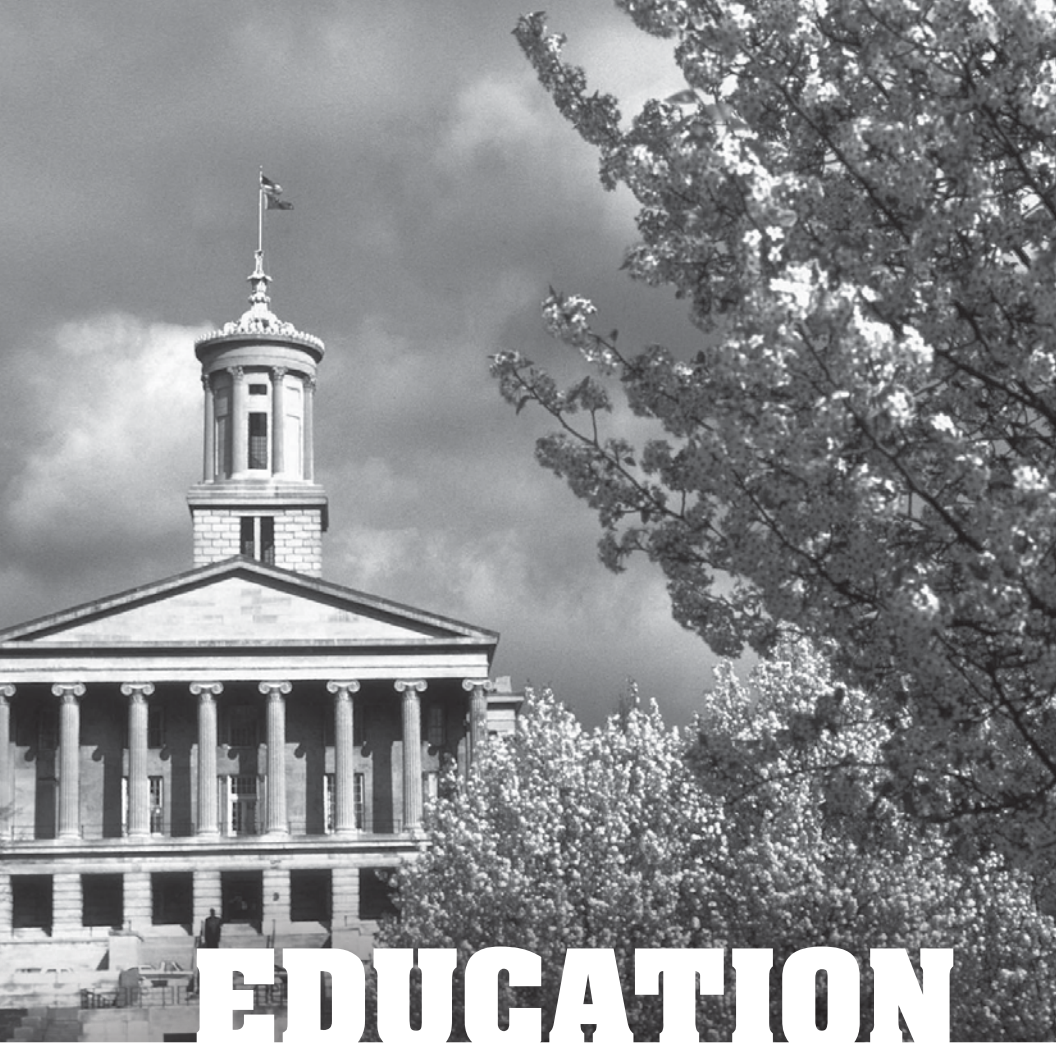
★ *Lower the cigarette tax to generate more revenue.*

THE PROBLEM

In 2007, the General Assembly increased the state cigarette tax to 62 cents per pack.²⁰ While this figure is less than what all but 12 states charge, it is high compared to the tax imposed by surrounding states. The disproportionate tax rate drives Tennessee residents to neighboring states to purchase cigarettes and discourages non-Tennesseans from making purchases in Tennessee. Both of these situations reduce revenue that could be generated with a more reasonable cigarette tax. Of the eight states that border Tennessee, the Volunteer State currently has the sixth highest cigarette tax. Only Arkansas and Mississippi have higher tax rates.²¹

OUR SOLUTION

The General Assembly should lower the cigarette tax in order to compete with surrounding states for cigarette tax revenue. This will give Tennesseans and residents from other states an incentive to purchase cigarettes within Tennessee's borders, all while generating an increase in revenue.



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EDUCATION

special needs scholarships



Provide scholarships to children with special needs, permitting them to attend the school of their parents' choice.

THE PROBLEM

More than 106,000 public school children receive special education services in Tennessee.²² The current public school system fails to meet the unique needs of these children, as well as the needs of their parents. Rather, these special needs children are caged inside a one-size-fits-all model. The proof of schools' inability to provide for these students' needs lies in the fact that nearly 13 percent of them spend more than half their day learning in a setting other than the school in which they are zoned.²³ This shows that state policy has failed to address this growing problem by giving special needs children the opportunity to thrive in the environment that best serves their needs.

OUR SOLUTION

The General Assembly should follow the lead of states like Florida, which allows parents of special needs children to choose a school that can adequately care for their child's needs. By allowing the money to follow the student, special needs children could finally obtain the education they deserve—one that addresses their particular needs. At the same time, those schools that currently attempt to educate special needs children without the expertise or resources to do so will be alleviated from that burden.



EDUCATION

foster care scholarships

- ★ *Provide scholarships to children in foster care, permitting them to attend the school of their guardians' choice.*

THE PROBLEM

There are nearly 7,000 children in foster care across the state of Tennessee.²⁴ Due to the issues and instability faced by these children, they are more likely to become unemployed and even homeless once they reach adulthood. Fortunately, research suggests that these problems can be mitigated by a high quality education. Foster parents, however, have very little say in what school their child attends. Furthermore, as foster children move from home to home, they must also often change schools due to zoning issues, even if the school they currently attend adequately meets their needs. This problem even affects children in foster care for a short period of time. Nearly one-third of students in foster care for less than one year move at least three times within that single year.²⁵ This creates instability for thousands of Tennessee children.

OUR SOLUTION

The General Assembly should provide foster parents with the opportunity to choose the school that is best for their child, simply allowing the per-pupil funding to follow the student. This will allow guardians to seek out the school—whether public or private—that best meets their foster child's needs. Further, this scholarship program could provide much needed stability by allowing the child to remain in the same school year after year, even if that child must uproot and move from one home to another.

EDUCATION

Digital Learning

- ★ *Permit charter schools to offer online education to K-12 students. For traditional public schools' digital learning, enact a performance-based funding system to move away from seat-time restrictions.*

THE PROBLEM

Digital learning is blossoming as an alternative to traditional in-class settings for public education. Nationwide, three million students take online courses, and 27 percent of high school students took an online course in 2009.²⁶ Tennessee began offering online courses through its Effective Engaging E-learning Environment for Tennessee (e⁴TN) program in 2006. Since then, it has grown from serving students in one school district to 64 school districts.²⁷ However, digital learning is still very limited in Tennessee. Funding is based on grants administered by the Department of Education, and the program is limited to traditional public schools. State law prohibits the establishment of cyber schools operated under the charter school model.²⁸ Further, the state ties digital learning funding to the traditional “seat-time” model, which provides per-pupil funding based on the amount of time they are in front of a computer, rather than a performance-based funding model that provides funding based on results.

OUR SOLUTION

The General Assembly should authorize cyber charter schools. Charter schools have enabled thousands of students to obtain a quality education throughout the nation and in Tennessee. Charter schools are independently run and have more flexibility with curriculum, breaking away from the status quo that has plagued much of the state's public school system. Cyber charter schools would offer this same benefit, but would also bring innovated courses to students who might otherwise lack the resources. For instance, an academically gifted student in a small, rural community could attend classes online, giving her access to challenging college-level courses. This option is not currently available for many Tennessee students.

The General Assembly should also move from seat-time to performance-based funding for digital learning. As Florida has witnessed, performance-based funding enables schools to escape the restrictions and inefficiencies imposed by the seat-time approach, instead funding schools whose students actually complete and pass their courses.

EDUCATION

early childhood education

- ★ *Replace the state's Pre-Kindergarten program with grants allowing at-risk children to attend a quality pre-school program.*

THE PROBLEM

Since it was enacted in 2005 as a targeted, voluntary program, the state's Pre-Kindergarten program has expanded significantly at a tremendous cost to taxpayers. Known as Pre-K, the program costs taxpayers \$83 million a year, most of which comes from state funding, with a portion coming from lottery revenues.²⁹ In total, the program costs more than \$4,600 per student annually.

Despite the high costs, numerous studies have shown the program to be wholly ineffective. One study was even conducted on behalf of the state Comptroller of the Treasury at taxpayer expense. That study concluded that those students who attended Pre-K were statistically no better off by second grade than those who did not attend the program.³⁰ In reality, the Pre-K program is less about educating four-year-olds and more about benefiting the powerful teachers' union, which receives more dues from teachers as the Pre-K program expands.

OUR SOLUTION

The General Assembly should stop forcing taxpayers to foot such a hefty bill for a program that consistently fails to produce results. A more flexible and fiscally responsible approach would be to extend early education grants to at-risk children. This approach would allow those at-risk students to potentially receive a positive impact from the pre-school education, while saving taxpayers millions of dollars each year.

RESOURCES

Drew Johnson, "Failure of Pre-K Proves Politics Comes Before Kids." Tennessee Center for Policy Research. September 13, 2008.

<http://www.tennesseepolicy.org/2008/09/failure-of-pre-k-proves-politics-come-before-kids/>



EDUCATION

teacher merit pay



Eliminate the standard pay scales for teachers and allow schools to increase pay for their most effective educators.

THE PROBLEM

School administrators find themselves unable to compensate their best teachers due to the rigid pay scales in place throughout Tennessee. Because school age children spend the majority of their days with teachers, it is in the best interests of the state to hire and maintain the most effective educators. Pay scales remove incentives for teachers to go “above and beyond” their minimum requirements and try innovative teaching methods that could lead to increased student achievement.

According to the Tennessee Value-Added Assessment System (TVAAS), students with more effective teachers achieved 50 percent more than students with less effective teachers in just three years.³¹ Along with parental involvement, teachers are the most effective indicators of student success. Despite the importance of teachers, public schools in Tennessee have difficulty attracting high quality candidates.

Principals should have the ability to reward the most effective teachers and provide incentives to encourage student achievement. Tennessee principals currently have little control over budgetary matters at their schools, often resulting in poor spending and overall lack of accountability.

OUR SOLUTION

The General Assembly should give teachers the ability to opt out of the school district pay scales and negotiate pay directly with their principals. Principals should be allowed to remove their schools from the district pay scales so they have the freedom to reward their effective educators. Principals should also be allowed to use the TVAAS data during these negotiations, which will place a stronger emphasis on teacher effectiveness.



EDUCATION

home school athletics

- ★ *Allow students homeschooled in the state of Tennessee to participate in sports at their local public school.*

THE PROBLEM

Tim Tebow and Venus and Serena Williams were all homeschooled and allowed to participate—and excel—in sports at their local public school. However, Tennessee students who are homeschooled are not permitted to participate in sports with local schools. The Tennessee Education Association, Tennessee School Athletic Association, and the Tennessee School Boards Association all oppose homeschooled students participating in school athletics, arguing that school activities are not a right, and simply paying taxes does not give them a right to be involved in public school athletic programs.

While many cities have recreational sports leagues that offer athletic opportunities for children, they are rarely as competitive as varsity athletics at public high schools. Homeschooled students are allowed to participate in sports with local schools in 24 states, with additional legislation currently proposed in Alabama, Louisiana, North Carolina, and South Carolina. Tennessee should follow this trend and not discriminate against students whose parents choose to educate their children at home.

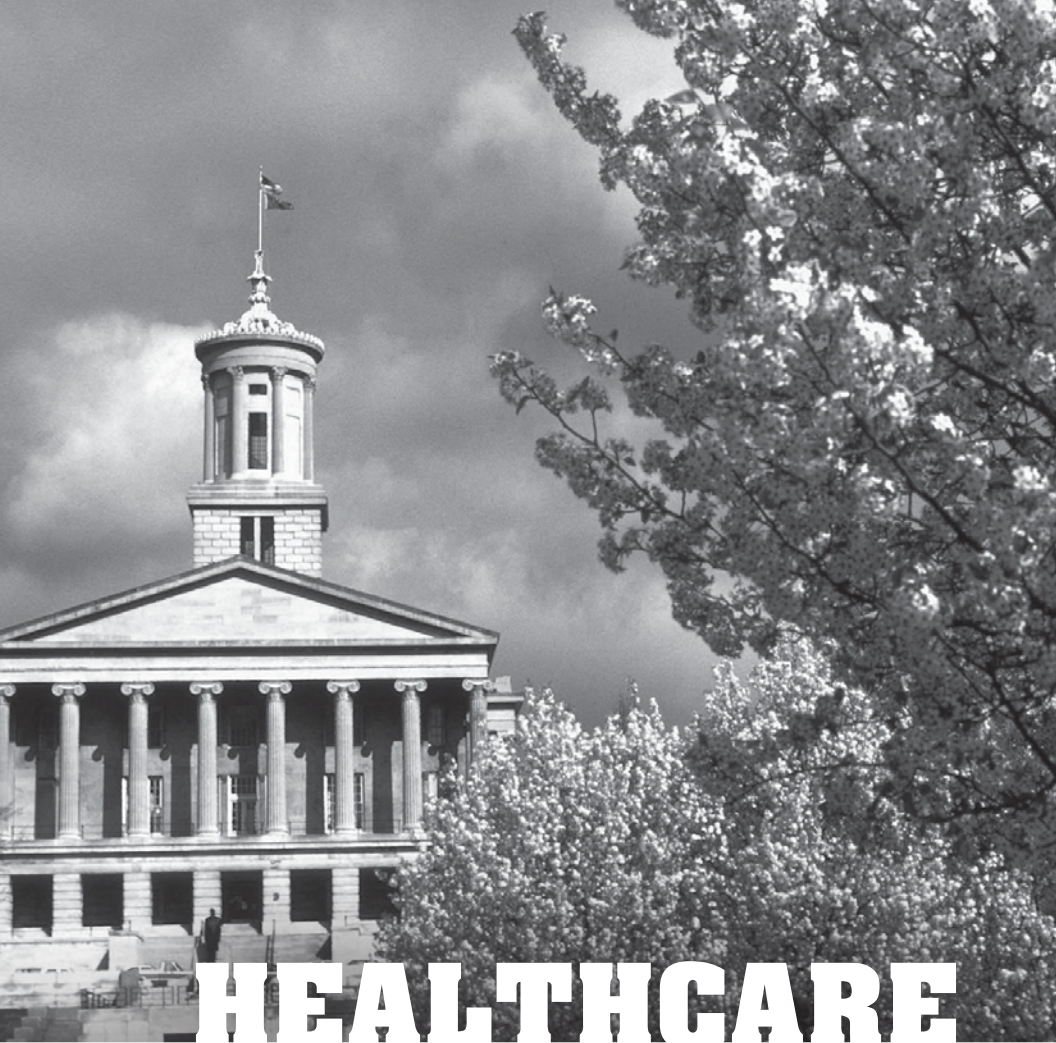
OUR SOLUTION

The General Assembly should pass legislation allowing students educated at home to participate in sports at their local school. Homeschooling parents should be allowed to use the facilities at local schools that their taxes are already funding.

RESOURCES

Rebecca Wright, “Homeschooled Students Belong in School Sports.” *The Jackson Sun*. July 27, 2009.

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HEALTHCARE

health freedom act

★ *Enact a Health Freedom Act to protect Tennesseans from the unconstitutional federal healthcare reform legislation passed in 2010.*

THE PROBLEM

Healthcare reform has long been needed throughout the United States. However, the Patient Protection and Affordable Care Act, along with the Health Care and Education Reconciliation Act, which were signed by President Obama in March 2010, took massive steps in the wrong direction. Not only is the mandate that all Tennesseans purchase health insurance likely unconstitutional, but the reform will fail to drive down costs or make insurance and healthcare itself more affordable for Tennesseans. In fact, it will mean fewer choices and higher costs for most state residents and force the “mother of all unfunded mandates” upon state governments due to the Medicaid expansion provisions.³²

OUR SOLUTION

The General Assembly should enact a “Health Freedom Act” like those proposed in 38 states and already enacted in six.³³ Two states—Arizona and Oklahoma—have even opted for state constitutional amendments to protect their citizens. The act should protect the rights of Tennesseans to participate or not in any healthcare system and prohibit the government from imposing fines or penalties on that person’s decision. It should protect the rights of individuals to purchase, and the rights of doctors to provide, lawful medical services without government penalty. Coupled with additional free market healthcare reforms, such an act would be a significant step forward in protecting Tennesseans’ healthcare rights.

RESOURCES

Justin Owen, “Interview on Health Freedom Act.” TNReport.com.

<http://www.tennesseepolicy.org/2010/03/justin-owen-discusses-the-health-freedom-act/>



HEALTHCARE

tenncare eligibility expansion

- ★ *Reject the federal government's attempt to expand TennCare eligibility, which will potentially devastate the state budget for years to come.*

THE PROBLEM

One of the most controversial aspects of the Patient Protection and Affordable Care Act is a provision requiring states to make Medicaid available to residents who earn up to 133 percent of the federal poverty level. This could lead to a 25 percent increase in the number of people on TennCare, our state's Medicaid system.³⁴ As a result, three in 10 Tennesseans could become eligible for the government-run insurance before the end of this decade. This could cost Tennesseans an additional \$700 million if not prevented before the requirement takes effect in 2014.³⁵

OUR SOLUTION

The General Assembly should take proactive measures to combat this drastic, unsustainable increase to the state budget. Lawmakers should convene public hearings and demand that Department of Health and Human Services officials testify and explain the impact of these new requirements, seek elimination of or waiver from the Department's maintenance-of-effort requirements, and press for additional flexibility in how the state's program is implemented. Keeping these options on the table is imperative if the General Assembly is to adequately defend Tennesseans against the crippling costs that the new Medicaid requirements will impose on the state budget. Lawmakers should also urge their congressional delegation to pursue block funding in lieu of the current Medicaid scheme, similar to the successful welfare reform efforts in the 1990s.

RESOURCES

Justin Owen and Cole Garrett, "The Oncoming Tsunami of TennCare Costs: How Healthcare 'Reform' Could devastate Tennessee's Budget for Years to Come." Tennessee Center for Policy Research. No. 08-09, December 2009. http://tcpr.temp.lexi.net/wp-content/uploads/Tsunami_Healthcare_Costs.pdf



HEALTHCARE

mandate light plans

- ★ *Allow young adults to forego some or all of the 41 state coverage mandates when purchasing a health insurance plan.*

THE PROBLEM

State law requires insurance companies to provide coverage for 41 different treatments, regardless of a person's lifestyle or risk factors. These mandates include such treatments as alcohol and substance abuse, autism, breast reconstruction, cervical cancer, Chlamydia, and prostate cancer screening.³⁶ Research shows that each mandate adds an average of one-half to one percent to the cost of a health insurance plan, and some tack on as much as four percent.³⁷ In all, these mandates drive Tennesseans' health insurance up by more than 20 percent over market rates.

Young adults are less likely to need or utilize these various treatments, as younger adults they tend to have above-average health. At the same time, young adults are far less likely to carry any health insurance at all. Nearly 30 percent of those between ages 19 and 24 are uninsured, while 26 percent of those between ages 25 and 34 lack insurance.³⁸

OUR SOLUTION

The General Assembly should make a mandate light or mandate free health insurance option available for young adults between the ages of 19 and 34. This would significantly reduce their insurance costs, compelling many of these young adults who currently lack insurance to obtain coverage. Such a simple step would ensure that thousands of young Tennesseans who currently lack coverage would obtain some form of health insurance.

RESOURCES

Justin Owen, "Implementing State-Based Healthcare Reform in Tennessee." Tennessee Center for Policy Research. No. 06-09, September 2009.
<http://www.tennesseepolicy.org/2009/09/tcpr-offers-five-innovative-healthcare-solutions-for-tennessee/>



HEALTHCARE

medical licensing laws

- ★ *Reform medical licensing laws to encourage competition and give Tennesseans more choices when seeking healthcare services.*

THE PROBLEM

Tennessee has very stringent medical licensing laws intended to protect patients and consumers. These laws actually harm those very consumers by driving up costs and limiting the options of those seeking treatment. Non-physician practitioners, including nurse practitioners, midwives, and physician assistants, receive a high degree of education and experience, yet they are severely limited as to what services they can offer patients. Further, physicians themselves are required to comply with onerous and bureaucratic licensing laws in every state in which they practice. If doctors move from state to state, they must incur enormous expenses meeting these requirements, which they will inevitably pass on to their patients in the form of higher costs.

OUR SOLUTION

The General Assembly should reform medical licensing laws, allowing non-physician practitioners to offer more services to their patients. If patients are comfortable seeking the services of a nurse practitioner rather than a doctor, or would prefer to have a midwife carry them through childbirth, they should be allowed to save the money from lower-cost services while still receiving safe, quality care. The General Assembly should also recognize the licenses of other states' doctors and healthcare professionals. This would encourage medical professionals to move into Tennessee, while preventing patients from bearing the additional costs of the medical licensing process. The additional competition caused by new doctors would further lower costs and increase Tennesseans' access to care.

RESOURCES

Justin Owen, "Implementing State-Based Healthcare Reform in Tennessee." Tennessee Center for Policy Research. No. 06-09, September 2009.
<http://www.tennesseepolicy.org/2009/09/tcpr-offers-five-innovative-healthcare-solutions-for-tennessee/>



HEALTHCARE

public employee health insurance



Allow state employees to choose from a consumer-driven health plan with a health savings account in addition to their current options.

THE PROBLEM

Consumer-driven health plans (CDHPs) with health savings accounts (HSAs) are becoming more popular every day in the United States. More than eight million Americans use these insurance plans, which have a lower monthly premium and higher deductible. The attached HSA is an interest-bearing account from which the individual can pay for healthcare expenses up to the deductible, after which the insurance plan kicks in to cover additional expenses. HSAs are also portable, allowing individuals to take the funds with them when they change jobs.

The state expects to spend \$885 million on state employee health insurance for the current fiscal year.³⁹ Other states have minimized the cost of state employee insurance merely by providing a CDHP option with an attached HSA. While most states experience a smaller population of state employees opting for the plan, Indiana has witnessed 70 percent of its state employees choosing the CDHP, saving millions of dollars for both the state and the employees.⁴⁰

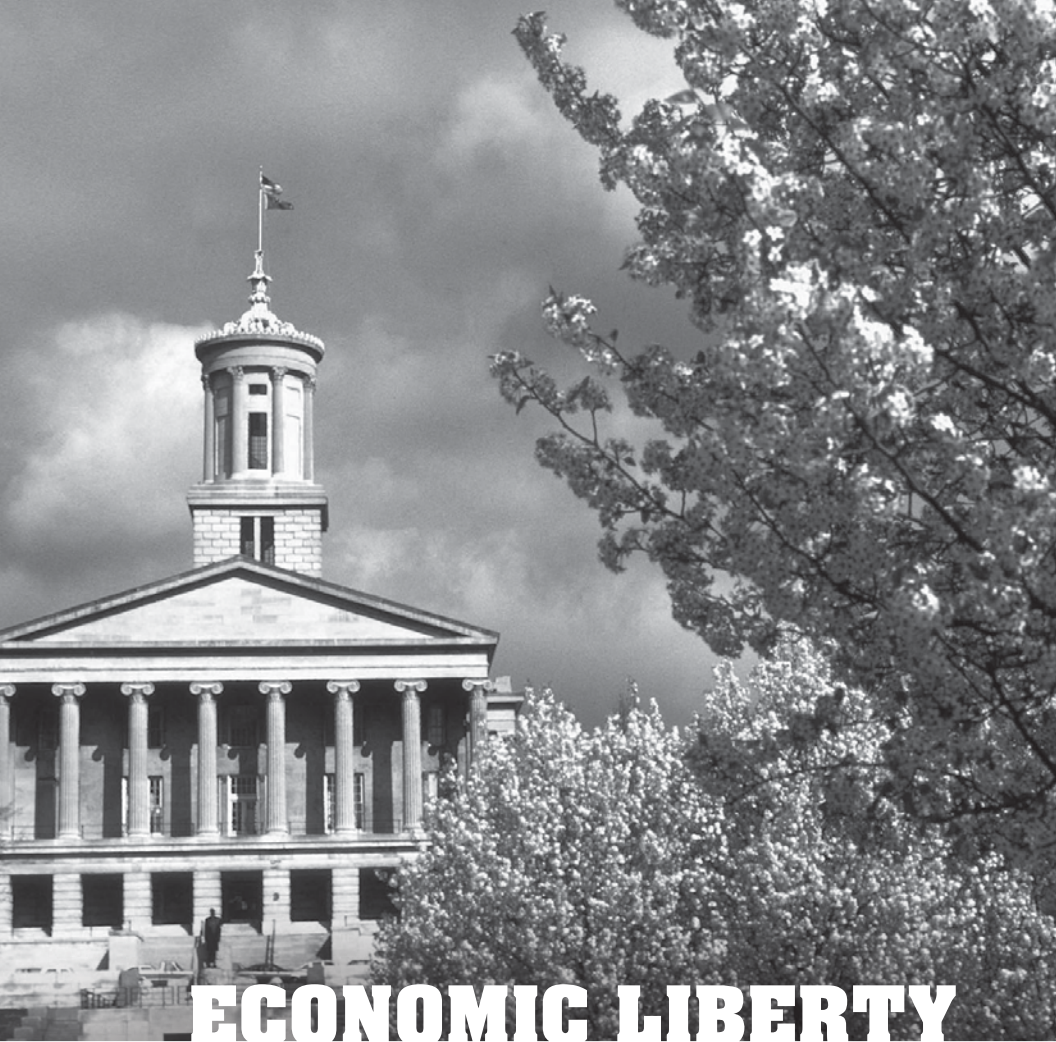
OUR SOLUTION

The General Assembly should provide state employees with a CDHP-HSA alternative to their current health insurance plans. If just a fraction of state employees opted for the CDHP, it would save millions of dollars. The state could save \$2.7 million if just 2 percent of state employees utilized CDHPs, while it would save nearly \$16 million if 10 percent used the plans. State employees—who pay a portion of their monthly premium—could also save money by reducing the amount withdrawn from their paychecks to pay the monthly health insurance premium, instead retaining more money in the HSA account.

RESOURCES

Justin Owen, “Implementing State-Based Healthcare Reform in Tennessee.” Tennessee Center for Policy Research. No. 06-09, September 2009.

<http://www.tennesseepolicy.org/2009/09/tcpr-offers-five-innovative-healthcare-solutions-for-tennessee/>



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Tennessee Center for Policy Research



ECONOMIC LIBERTY

economic liberty act



Enact an “Economic Liberty Act” that would require occupational regulations to serve a necessary health, safety, or welfare objective.

THE PROBLEM

Tennessee imposes burdensome licensing and other regulations on professionals. These regulations stifle job growth and drive up the cost of doing business. Many of these laws fail to address any health, safety, or welfare concerns, thus rendering them unnecessary. In total, it is estimated that these restrictions imposed by various state governments decrease job growth by 20 percent and cost nearly \$42 billion nationwide each year.⁴¹

OUR SOLUTION

The General Assembly should enact an “Economic Liberty Act.” The act should require that any new occupational regulations serve a specific health, safety, or welfare objective. The act should also require that the legislature review existing regulations to determine whether they comply with this same standard. Finally, in order to truly protect Tennesseans’ right to earn a living, the act should allow citizens to file suit in state court if a licensing law or other occupational regulation fails to serve a specific health, safety, or welfare objective. These measures would protect the right to work of Tennesseans and spur much-needed economic growth.

RESOURCES

Justin Owen, “Testimony in Support of an Economic Civil Rights Act.” House State Government Subcommittee. February 9, 2010.

<http://www.tennesseepolicy.org/wp-content/uploads/TESTIMONY-on-Economic-Civil-Rights-Act-House.pdf>



ECONOMIC LIBERTY

title restrictions



Make it unlawful for the state to hold a monopoly on occupational titles, which results in job-killing regulations.

THE PROBLEM

In an effort to give the state more control over various professions, state law contains “titling acts” that prohibit the use of certain titles without meeting a number of requirements. This effectively gives the state a monopoly on occupational titles, requiring citizens to obtain permission from the government before they can practice a given trade or profession. It also severely restricts the free speech rights of Tennesseans by preventing them from using certain titles to advertise their skill set. Like full-blown licensing laws, these acts are frequently designed and lobbied for by professionals who are themselves seeking to limit their competition. For instance, no one in Tennessee can claim to be a “registered interior designer” without first obtaining permission from the state.⁴² This law was ushered into place by a limited group of interior designers seeking to prevent their competition from practicing their trade. They imposed standards that only certain existing interior designers could meet, creating a wall of job-killing, protectionist regulations.

OUR SOLUTION

The General Assembly should eliminate existing titling acts, such as the “Interior Designers Title Registration Act,” as well as take affirmative steps to prevent similar acts from becoming law in the future. A state law prohibiting the use of titling acts would take a step further toward protecting Tennesseans’ right to work and freedom of speech, while also introducing competition into the market. In the end, more jobs will be created without these unnecessary titling acts.

RESOURCES

Shaka Mitchell and Justin Owen, “Illegal by Design: How Interior Design Laws Put Designers Out of Business and Endanger Consumers.” Faces of Freedom, Volume I, Issue 2.

http://www.tennesseepolicy.org/wp-content/uploads/Illegal_by_Design_WEB.pdf



ECONOMIC LIBERTY

licensing barriers



Roll back or eliminate many of the 111 occupational licensing laws imposed by the state.

THE PROBLEM

In Tennessee, 111 different occupations require a license. Only nine states impose more stringent requirements on their citizens. Those professions requiring a license include barbers, cosmetologists, dental assistants, nutritionists, magazine salesmen, street vendors, geologists, and manicurists. Proponents of these licensing requirements claim that they protect the health and safety of citizens, but the real motivation lies in limiting the practice of these trades to a select few, thus reducing competition. As a result, thousands of Tennesseans cannot perform a job for which they are well suited. Furthermore, consumers bear the burden of the higher cost of doing business created by these licensing laws.

OUR SOLUTION

The General Assembly should analyze each of the 111 occupational licensing laws, eliminating those that merely serve as protectionist measures to benefit a select few while purporting to protect all Tennesseans. If a license is not absolutely necessary to protect the health and safety of citizens, then the General Assembly should eliminate any such requirement for that occupation. Addressing licensing barriers would create jobs and reduce costs to consumers at a time when Tennessee needs an economic boost.

RESOURCES

Shaka Mitchell and Justin Owen, "Illegal by Design: How Interior Design Laws Put Designers Out of Business and Endanger Consumers." Faces of Freedom, Volume I, Issue 2.

http://www.tennesseepolicy.org/wp-content/uploads/Illegal_by_Design_WEB.pdf



ECONOMIC LIBERTY

wine in grocery stores



Eliminate the liquor distributors' monopoly on wine by allowing grocery stores to sell the product.

THE PROBLEM

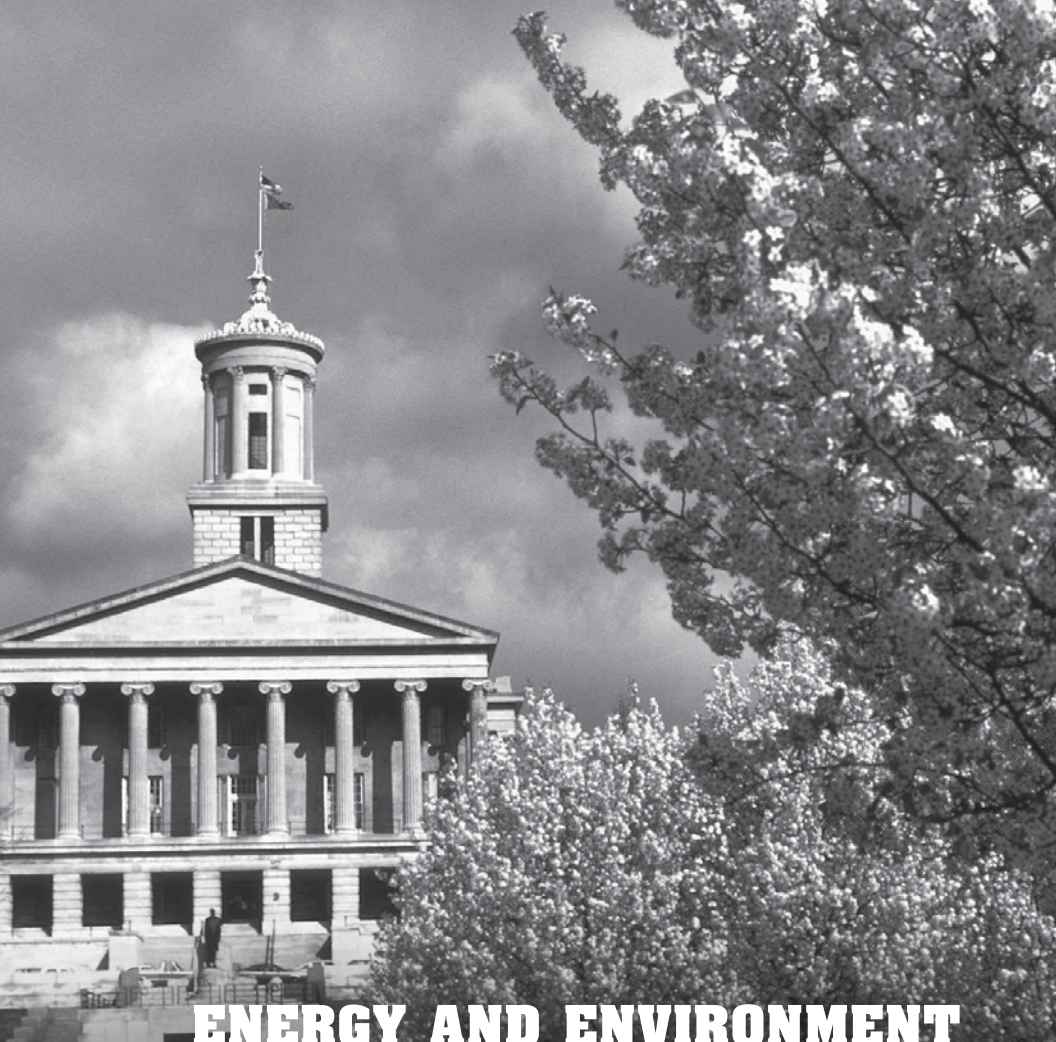
Tennessee has some of the most restrictive wine laws in the nation, resembling Prohibition-era regulations that benefit special interests and ignore consumer demand. Currently, grocery stores are prohibited from selling wine throughout the state. It was only recently that consumers could even have wine shipped directly to them—yet this newfound consumer choice has not resulted in dire consequences, such as job loss due to competition, teenage binge drinking, and unruly citizen behavior, as the opponents of more friendly wine laws have insinuated. Furthermore, none of those same dire predictions will become a reality if wine is allowed to be sold in grocery stores. Thirty-three states already allow grocery stores to sell wine, and these states experience lower wine costs to consumers, fewer youth arrests for driving under the influence and liquor violations, and their liquor store industry continues to thrive.⁴³

OUR SOLUTION

The General Assembly should heed the call of the 62 percent of Tennesseans who support putting wine in grocery stores. Not only would this move give consumers more choice, it could eventually allow grocery store owners to create more jobs and increase the pay of their current employees.

RESOURCES

Shaka Mitchell and Justin Owen, “Drunk with Power: How Liquor Lobbyists and Distributors Control Tennessee’s Wine Laws.” Faces of Freedom, Volume I, Issue 1. Tennessee Center for Policy Research.
<http://tcpr.temp.lexi.net/wp-content/uploads/drunkwithpower.pdf>



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Tennessee Center for Policy Research



ENERGY AND ENVIRONMENT

green energy subsidies

★ *Remove all taxpayer subsidies for “green technologies.”*

THE PROBLEM

Each year, the federal and state governments shell out billions of dollars to companies under the guise of economic development. In reality, this practice amounts to corporate welfare. Rarely mentioned are the costs to taxpayers, as well as the costs faced by competitors to favored businesses who themselves do not receive equal treatment. Across the state of Tennessee, residents and businesses are struggling to stay afloat in this economic crunch. However, rather than attempting to draw new businesses to the state with business-friendly policies, the state is paying companies to relocate to Tennessee through taxpayer handouts. For instance, “certified green energy supply chain manufacturers” are granted up to a \$1.5 million tax credit per year. A company could also receive an emerged industry tax credit, where for a minimum of a \$100 million capital investment and the creation of 50 full-time jobs in the “green sector,” it would see its sales and use tax slashed from seven percent to a mere 0.5 percent.⁴⁴ There are also subsidies available to existing Tennessee companies, but they require capital investments in pollution control equipment or clean energy technologies, including geothermal, hydrogen, solar, and wind sources.

OUR SOLUTION

The General Assembly should end the practice of providing corporate welfare to green industry companies. Clearly, these green energy sources would not be able to compete in the free market, so they instead rely on government subsidies to survive. So-called green industries should not be given any special advantages, as they distort the market system and put more traditional industries at a government-sanctioned disadvantage.

RESOURCES

Justin Owen interview with Nashville News Channel 5, “Bredesen: Solar Investment ‘Perfectly Appropriate.’”

<http://www.newschannel5.com/Global/story.asp?S=13453089>



ENERGY AND ENVIRONMENT

biofuels grant program



Remove all subsidies on ethanol and biodiesel and allow the market to decide the level of availability in the state.

THE PROBLEM

Most vehicles on the road today can only run with a maximum of 10 percent ethanol in their fuel. Vehicles that use E85, where ethanol makes up a higher percentage of the fuel, have been available for several years. However, these vehicles are far more expensive than traditional vehicles and require E85 fuel that is not readily available. A similar story can be told for vehicles that run on 20 percent biodiesel (B20). As of September 2010, there were only 33 E85 pumps and 29 B20 pumps throughout the entire state of Tennessee. This clearly speaks to the low demand for ethanol and biodiesel fuels. Additionally, there is no conclusive evidence that ethanol-based vehicles are cheaper or more environmentally friendly than traditional vehicles. Even the National Academy of Science has reservations about viability of ethanol as a gasoline alternative.

Despite this lack of demand or evidence of ethanol's usefulness, the Tennessee Department of Transportation has offered grants since 2006 that cover up to 80 percent of the cost for the installation of ethanol or biodiesel pumps, or up to \$45,000 per pump.⁴⁵

OUR SOLUTION

The General Assembly should cut funding for this program and prevent any similar attempts in the future to subsidize private businesses. If the demand is high enough in an area for ethanol or biodiesel fuels, gas station owners will invest in this technology for the long-term health of their businesses without the need for government intervention.

RESOURCES

Allyn K. Milojevich, "Cap & Trade: A Lame (Duck) Proposal: How Proposed Energy Regulations Would Cool Tennessee's Economy." Tennessee Center for Policy Research. No. 10-05, October 4, 2010.

<http://www.tennesseeepolicy.org/wp-content/uploads/Cap-Trade-A-Lame-Duck-Proposal.pdf>



ENERGY AND ENVIRONMENT

energy-efficient appliance rebates

- ★ *Stop implementing the federal government's Energy Star rebate plan and return the allocation to pay off the general debt of the United States.*

THE PROBLEM

Through the American Recovery and Reinvestment Act, Tennessee received \$5.96 million to distribute rebates of up to \$250 for households that purchase Energy Star heat pumps, air conditioners, and gas furnaces.⁴⁶ This program distorts market practices by favoring manufacturers who paid for the Energy Star label for their products. Energy Star products are also significantly more expensive than non-labeled home appliances, so this rebate is redistribution from the general tax pool to those wealthy enough to afford the initial investment in the first place.

OUR SOLUTION

The General Assembly should stop favoring certain manufacturers and allow the free market to determine the winners and losers in the home appliance field. By refusing to serve as a pass-through for the federal government's tax incentive program, the General Assembly could save taxpayers nearly \$6 million. Further, Tennessee would no longer consent to the federal government's practice of growing the national debt with ineffective schemes such as the Energy Star program, serving instead as a prime example of federalism at work.

RESOURCES

Allyn K. Milojevich, "Cap & Trade: A Lame Duck Proposal." Tennessee Center for Policy Research. No. 10-05, October 4, 2010.

<http://www.tennesseepolicy.org/wp-content/uploads/Cap-Trade-A-Lame-Duck-Proposal.pdf>



ENERGY AND ENVIRONMENT

bottle deposit tax

★ *Do not consider legislation that places a tax on beverage containers.*

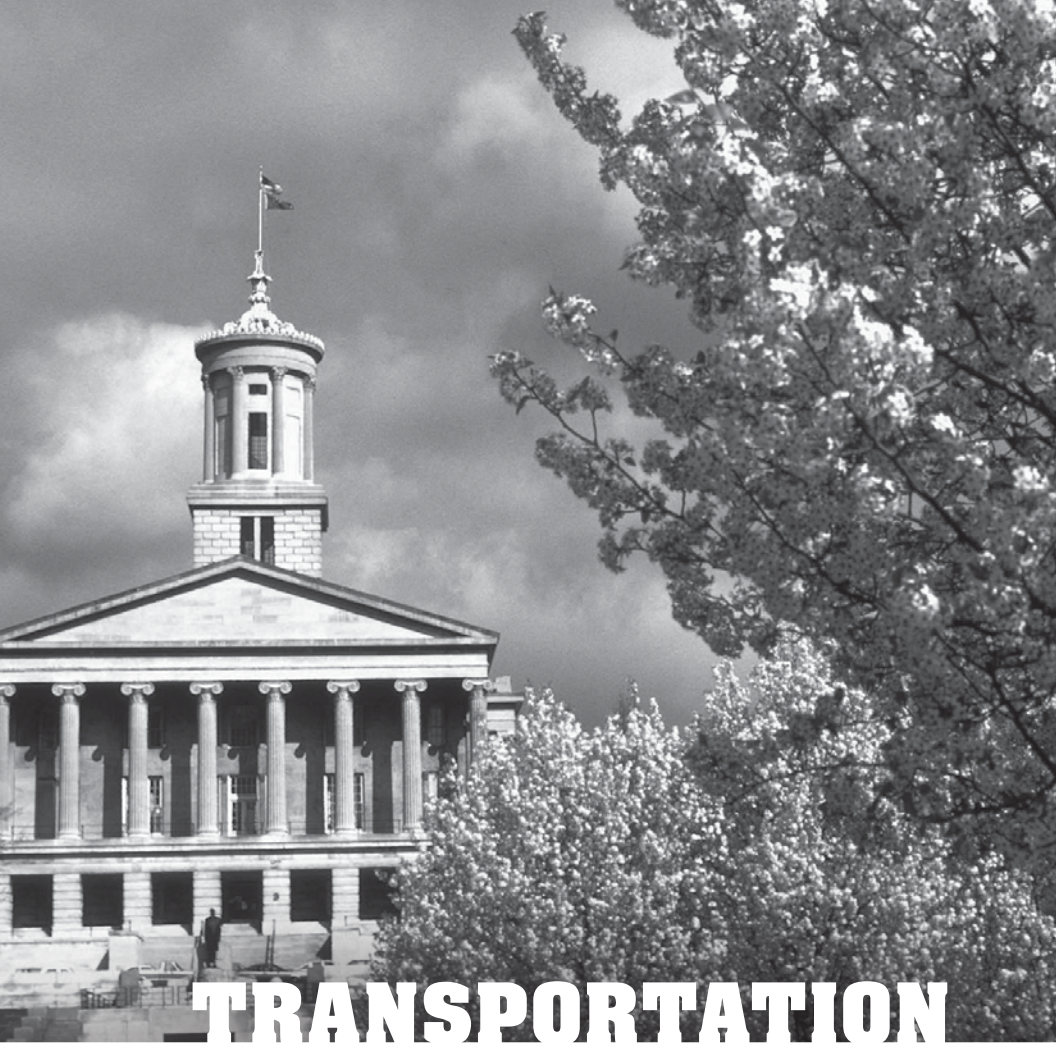
THE PROBLEM

Currently, recycling levels in Tennessee hover around 10 percent. To address this problem, special interest groups are pushing to enact a bottle deposit bill similar to that in other states where a five cent deposit is added to every beverage bottle sold.⁴⁷ These bottles would be returned to individually-run “redemption centers” that would profit as scrap metal centers, including a one cent per container handling fee. The hope is that this program would raise Tennessee’s recycling rates to as high as 80 percent.

The problem is that for almost all materials (except aluminum), recycling creates pollution and uses more energy than simply creating new bottles. And contrary to popular belief, landfills are not running out of space. In fact, many experts have testified that we have more than enough landfill space to last thousands of years. In addition, most landfills are repurposed into beautiful parks and golf courses once full. Thus, a bottle deposit tax would only serve to drive up costs for average Tennesseans while failing to achieve any of its stated environmental goals.

OUR SOLUTION

The General Assembly should not pursue a bottle deposit tax. In this economy, Tennessee families do not need another tax tacked on their grocery bills each month. Despite its tremendous costs, such legislation would ultimately fail to achieve its objective of increasing the state’s recycling rate.



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Tennessee Center for Policy Research



TRANSPORTATION

high occupancy toll lanes



Utilize high occupancy toll (HOT) instead of HOV lanes when expanding existing highways or launching new projects, and replace current HOV lanes with HOT lanes.

THE PROBLEM

The urban areas of the state utilize high occupancy vehicle (HOV) lanes to encourage carpooling and to reduce traffic congestion. However, these lanes are themselves inefficient and underutilized. A more effective alternative is high occupancy toll (HOT) lanes, which combine the traditional HOV concept with a system whereby solo drivers are allowed to drive in the lanes for a small fee. Unlike HOV lanes, HOT lanes are self-regulating. When congestion in regular lanes becomes too high, many solo drivers have an incentive to pay a fee to drive in a less-congested HOT lane, disbursing traffic more efficiently. Further, the HOT lanes' price changes instantly depending on demand. This ensures that both the HOT lanes and the regular lanes always remain efficiently utilized.

OUR SOLUTION

The General Assembly should replace existing HOV lanes with HOT lanes and install HOT lanes when expanding road projects. The cost to install HOT lanes is “practically negligible when compared with the costs of constructing” HOV lanes.⁴⁸ The revenue generated from HOT lanes (which does not occur with existing HOV lanes) can even fund other transportation projects currently funded by vehicle and gasoline taxes.

RESOURCES

Justin Owen, “If You build it, They Still Won’t Come.” *The Tennessean*. June 1, 2010.

<http://www.tennesseepolicy.org/2010/06/if-you-build-it-they-still-wont-come/>



TRANSPORTATION

mass transit



Oppose the use of state taxpayer funding of mass transit projects like that currently proposed for the Nashville area.

THE PROBLEM

Efforts are under way to spend \$5 billion over the next 25 years to expand mass transit in Middle Tennessee. While these attempts are noble, they will cost taxpayers significant sums of money. It is estimated that only one-quarter of these costs will be borne by mass transit riders themselves, leaving taxpayers to foot the remaining bill. This is nothing new. In 2008, Tennesseans paid \$112 million to fund the gap between the cost of mass transit systems and the amount actually collected from riders.⁴⁹

Further, the current Music City Star commuter train operated by the Metropolitan (Nashville) Transit Authority is woefully inefficient and extraordinarily costly. Since launching in 2008, it has failed to gain the projected daily ridership of 1,500 passengers, leaving taxpayers to bail out the fledgling train line. In fact, taxpayers could buy every Star rider a brand new Toyota Prius every year for the next 30 years with the amount they spend to subsidize the train.

OUR SOLUTION

The General Assembly should protect taxpayers from heavily subsidizing mass transit efforts in major urban areas. Rather, local governments should focus on more efficient transportation solutions that do not require significant taxpayer bailouts to function properly.

RESOURCES

Randal O'Toole, "Tackling Public Transit in Tennessee: Why We're on the Road of Higher Emissions and Greater Inefficiency." Tennessee Center for Policy Research. No. 10-04, June 3, 2010.

<http://www.tennesseepolicy.org/wp-content/uploads/Tacking-Public-Transit-in-Tennessee.pdf>



TRANSPORTATION

public-private partnerships



Authorize the Department of Transportation to use public-private partnerships to develop, operate, and maintain transportation facilities.

THE PROBLEM

Public-private partnerships (PPPs) allow the private sector to team up with government to provide for transportation needs. Roughly half the states currently authorize PPPs for the construction, operation, and maintenance of transportation projects. PPPs are beneficial because they “combine the capital and expertise of the private sector with the management and oversight of the government to provide public services.”⁵⁰ In addition, taxpayer costs and risks are minimized because they are partially shifted to private companies that are more consumer-friendly and less susceptible to political pressures. With the infusion of private capital, PPPs have led to the financing of sizeable projects in states like Texas, Virginia, and Illinois that would have otherwise failed to receive the public funding necessary to complete the project.

OUR SOLUTION

The General Assembly should follow the lead of other states by permitting PPPs in transportation. These partnerships would provide additional funding for transportation projects, while protecting taxpayers by shifting the risks and costs to private companies and reducing the tax burden associated with transportation needs.



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Tennessee Center for Policy Research



TECHNOLOGY

broadband internet access



Prohibit taxpayer money from being used to provide general Internet access.

THE PROBLEM

Many cities and states subscribe to the notion that everyone is entitled to Internet access. Cities in particular are diverting taxes to Wireless Fidelity Internet protocol (Wi-Fi) and promoting the activity as “free” Internet to its citizens. Government involvement in Internet access decreases competition and inhibits private investment in the market. Furthermore, 21st century technology becomes obsolete very quickly. Governments are unable to react to these technological changes as quickly as private companies, leading to significant loss of taxpayer dollars. For example, the city of Triton, Georgia, spent \$1,800 per resident on its city Wi-Fi, far more than any private company would invest in the technology.⁵¹

Government control of Internet access also opens the door to censorship of Internet content. States that are concerned with the free speech rights of their citizens should be wary of government-run Internet access. It is far more difficult for the government to control content online when it is provided by a private company (as opposed to when the government itself provides that content).

OUR SOLUTION

The General Assembly should recognize that sufficient competition exists among private companies to provide affordable Internet access to Tennesseans. The General Assembly should recognize that providing sophisticated telecommunications and Internet service is not a core function of government. The state should instead allow private companies the freedom to compete in an open market without government interference.

RESOURCES

Justin Owen and Tom Schatz, Letter to the Tennessee State Senate in Opposition to the Advanced Broadband Infrastructure Act of 2010. Tennessee Center for Policy Research and Citizens Against Government Waste. May 17, 2010.

<http://www.tennesseepolicy.org/wp-content/uploads/5-17-10-TN-municipal-overbuild-letter.pdf>



TECHNOLOGY

telecommunications regulation



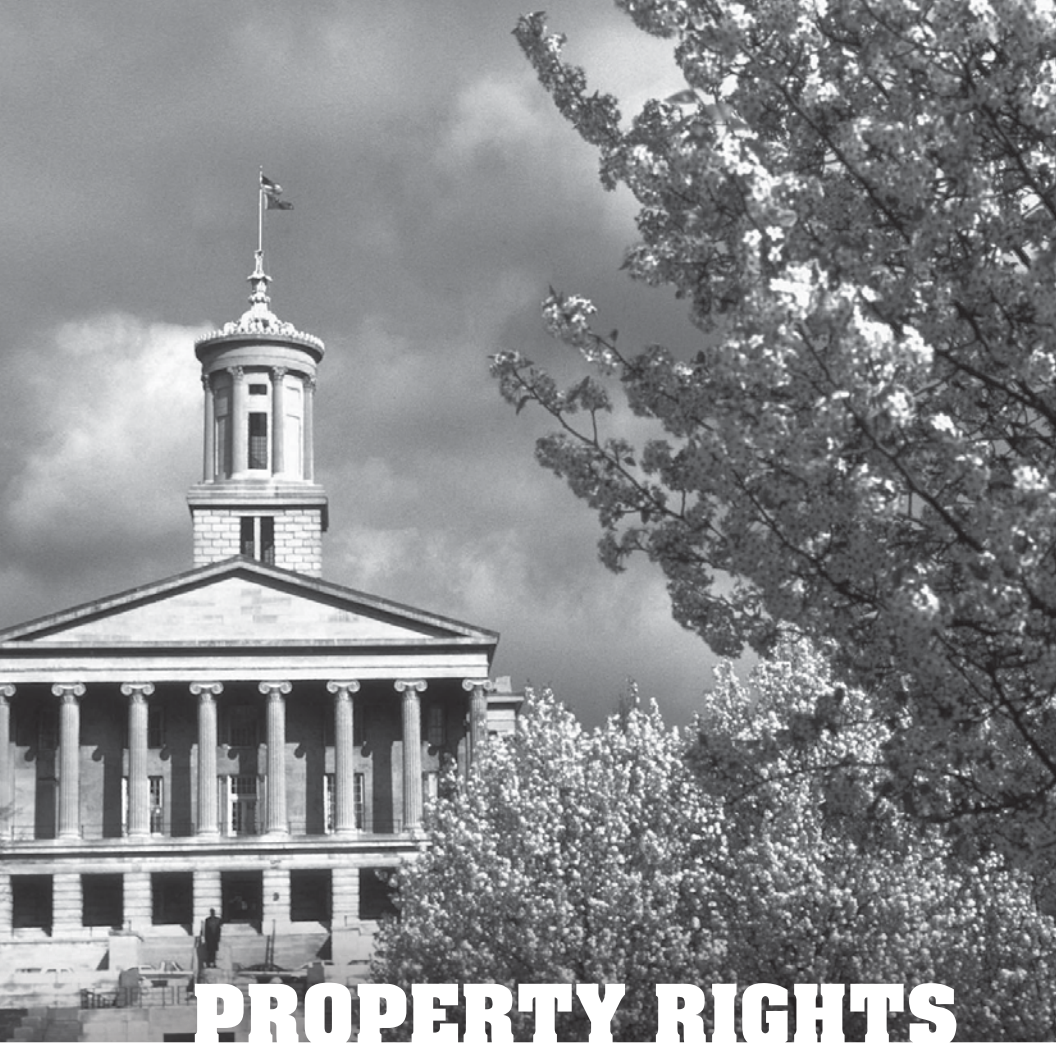
Avoid expanding regulation and taxation to new telecommunications technologies such as Voice over Internet Protocol.

THE PROBLEM

Voice over Internet Protocol (VoIP) technology is an “application [that] uses software instead of traditional circuit switching to allow telephone calls and other messages to be sent over computer networks.”⁵² The technology has been around since the 1990s, but lately its use has become much more widespread. One common state action involves bringing VoIP under the umbrella of “regulations that apply to traditional phone companies, such as state certification requirements.”⁵³ State and federal taxes on telecommunications services are already extensive, because policymakers raise revenue through shrouded fees imposed on the use of the service. “In an era of rapidly-growing technology . . . the high tax burden runs the risk of stifling innovation and slowing affordable access [to these technologies].”

OUR SOLUTION

The General Assembly should prevent imposing additional taxes and fees on advancing telecommunications services. Legislators should avoid using technology as a revenue source and instead allow the market to supply Tennesseans with the newest technologies at the cheapest rates possible. The General Assembly should also recognize that reduced regulatory burdens lead to advancements in technology. Great technological advancements will happen more quickly if and when government officials: (1) resist imposing new taxes and regulations, and (2) scale back the taxes and regulations that already exist.



PROPERTY RIGHTS

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Tennessee Center for Policy Research



PROPERTY RIGHTS

eminent domain

- ★ *Forbid any governmental entity from taking private property and transferring it from one property owner to another.*

THE PROBLEM

Eminent domain abuse has been an ongoing problem in Tennessee, particularly in large areas like Memphis and Nashville. Although the General Assembly passed eminent domain reform legislation after the 2005 *Kelo v. New London* Supreme Court decision, the legislation does not fully protect the rights of property owners. Without the protection of their property rights, people are often unwilling to invest time and resources into their property. Similarly, lenders are hesitant to allow borrowers to use property as collateral, severely limiting the formation of capital and stalling economic growth. As George Mason University economics professor Dr. Peter Boettke has noted, “The threat of confiscation, by either private individuals or public officials, undermines confidence in market activity and limits investment possibilities.”⁵⁴

In 2007, the Castle Coalition, a project of the nonprofit Institute for Justice, conducted a “Fifty State Report Card” on post-*Kelo* eminent domain reforms. Tennessee received a “D–” because “of all the possible eminent domain reform bills to choose from, the General Assembly ended up selecting the two that did very little to improve the protection of property rights in [the] state.”⁵⁵ States that received an “A” on the report card placed strict limitations or outright prohibitions on private-to-private eminent domain transfers.

OUR SOLUTION

The General Assembly should explicitly prohibit the taking of property through eminent domain to be transferred to another private property owner. Tennessee should follow the lead of states such as South Dakota, which prohibits all private-to-private property transfers via eminent domain. With such action, Tennessee could become a leader in the protection of private property rights.



PROPERTY RIGHTS

blight designations

- ★ *Change the statutory “blight” definitions so they cannot be used to foster abusive eminent domain practices.*

THE PROBLEM

The most abusive eminent domain practices occur under the guise of “blight” designations. Local governments often seek out certain land for potential redevelopment, or developers approach city leaders with redevelopment plans. Private property rights are placed in jeopardy once city officials and politically-connected developers set eyes on an area. Under current law, it is very easy for local governments to simply declare property blighted to invoke condemnation proceedings and take the land.

Although the General Assembly previously passed legislation prohibiting the use of eminent domain to further economic development, the law still contains several loopholes. One such loophole is “the acquisition of property by a housing authority or community development agency to implement an urban renewal or redevelopment plan in a blighted area.”⁵⁶ Housing and community development agencies have the most expansive authority under the state’s eminent domain laws. It is these very agencies, such as the Nashville Metropolitan Development and Housing Agency, which are the most hostile to private property rights. Not only can these agencies acquire property considered blighted under a general “redevelopment plan,” they can also take property simply to remove, prevent or reduce blight, blighting factors, or the causes of blight.⁵⁷ These loopholes provide wide discretion to unelected, unaccountable housing agencies to take private property.

OUR SOLUTION

The General Assembly should strictly limit the use of blight designations to condemn private property. The General Assembly should also explicitly declare that property cannot be condemned as blighted solely on the basis that other property in the area is also blighted. Property should also not be condemnable to prevent possible future blight or to advance purported redevelopment purposes.



PROPERTY RIGHTS

regulatory takings



Permit private property owners to receive compensation when a land use regulation is enacted that diminishes the value of their property.

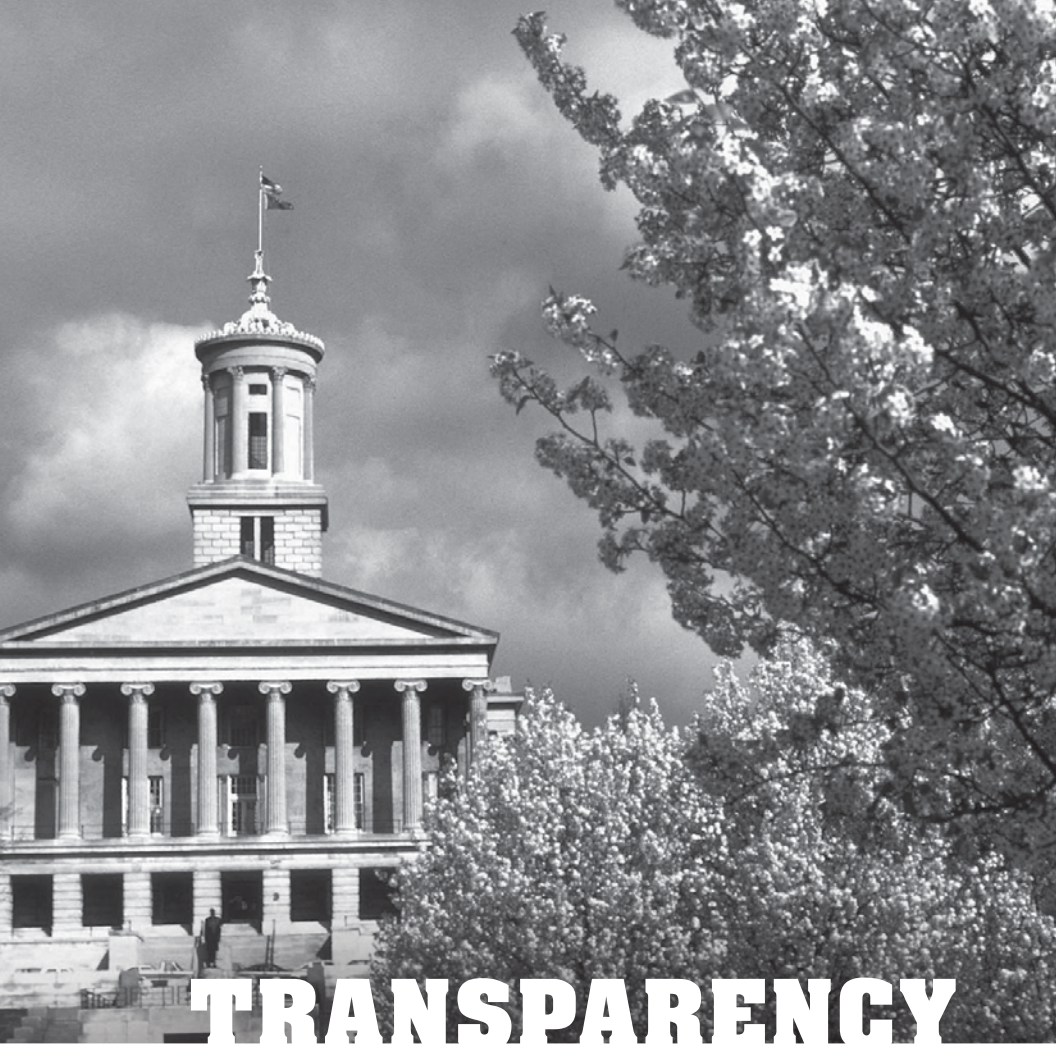
THE PROBLEM

Similar to the issue of eminent domain is that of regulatory takings, where government enacts land use regulations limiting the use of private property. As U.S. Supreme Court Justice Oliver Wendell Holmes once noted, “While property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.”⁵⁸ This “taking” invokes certain constitutional protections. The problem, however, lies in weak case law relating to regulatory takings, inadequately protecting property owners against regulations that greatly reduce the value of their property. Full compensation is only awarded if the regulation deprives the property of its entire economic value.⁵⁹ As a result, individual property owners often bear the cost of regulations intended to benefit the citizenry as a whole. If less than the entire economic value of property is at stake, a multifactor test is used. As Vanderbilt Law Professor James Ely notes, this test’s “intermediate factors provide little guidance to individuals and, in practice, are heavily balanced in favor of the government and against compensation.”⁶⁰

OUR SOLUTION

The General Assembly should acknowledge that land use regulations that devalue property are takings, invoking property rights under the Fifth Amendment to the U.S. Constitution, as well as Article I, Section 21 of the Tennessee Constitution. Property owners should have redress when land use regulations diminish their property value.

The General Assembly should compel governmental entities promulgating land use regulations to either compensate property owners for reductions in land value or modify their regulations so the value of the property is not affected. This will allow state and local governments to regulate when necessary, but will shift the burden of the regulations to the government and not the individual property owners. Individual property owners should not be required to bear the costs of regulations meant to benefit society as a whole.



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Tennessee Center for Policy Research



TRANSPARENCY

public records rules

- ★ *Remove the labor cost rule imposed by the Office of Open Records Counsel, and require records custodians to disclose in writing all costs associated with a public records request.*

THE PROBLEM

After its creation by the General Assembly in 2008, the Office of Open Records Counsel (OORC) immediately began authorizing local governments to impose excessive costs on public records requests. The most problematic rule promulgated by the OORC is one allowing local governments to charge citizens for “labor costs” associated with a request, despite the fact that records custodians are already paid by taxpayers to provide records to which the public is entitled. This labor cost rule has given records custodians power to limit access to public information, contrary to the intent of the Public Records Act. In fact, the more inefficient and disorganized a government office is, the more costly it will be for members of the public to obtain records, forcing citizens to bear the burden of an office’s disorganization.

Further, custodians are not required to outline the charges imposed for records, allowing them to arbitrarily charge a high fee for requested records without explanation. In many cases, a costly charge for obtaining records will deter average citizens from making public records requests.

OUR SOLUTION

The General Assembly should override the OORC’s ability to implement these rules that frustrate the intent of the Public Records Act. Because public employees are already paid by taxpayers, those taxpayers should not be “doubly taxed” when attempting to obtain public records to which they are entitled. Also, when local governments or state agencies charge citizens for public records, the requester should be permitted to obtain a breakdown of the costs associated with the request. This would serve as a check against potential abuse of power by records custodians. These two changes would advance the purpose of the Public Records Act, which is “to give the fullest possible public access to public records.”⁶¹



TRANSPARENCY

taxpayer-funded lobbying

- ★ *Prohibit local governments from using tax dollars to lobby the General Assembly, and prevent state agencies from lobbying the federal government.*

THE PROBLEM

Local governments—counties, cities, school boards, and others—spend nearly \$2 million a year to lobby the General Assembly and members of Congress. While most taxpayers consistently oppose higher taxes and bigger government, their hard-earned money is used by their local governments to fight to increase taxes and expand the scope of their authority. On the federal level, earmarks rose at nearly an identical pace to the amount of tax dollars spent on lobbying between 1998 and 2006.⁶² The amount of tax dollars used to lobby at the state level continues to increase as well.

OUR SOLUTION

The General Assembly should rein in the lobbying efforts by local governments and state agencies. This is one of the quickest ways to curb excessive spending. Not only can the General Assembly limit the ability of local government lobbyists to press for more spending and taxation, but it can also prevent state agencies from doing the same in Washington, D.C. The General Assembly should outright ban the practice of using tax dollars to hire lobbyists to act on behalf of local governments and state agencies. As Thomas Jefferson once said, “To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical.” Forcing taxpayers to fund lobbyists who are not looking out for their best interests is a glaring example of what Jefferson warned against.

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Tennessee Center for Policy Research



GOVERNMENT REFORM

state sovereignty



Resist efforts by the federal government to usurp the governing authority of the state of Tennessee.

THE PROBLEM

The federal government has consistently eroded the state sovereignty of the several states, particularly over the past few years. From attaching strings to federal funding for numerous purposes, to the recent healthcare reform law, to attempts to limit carbon emissions, the federal government frequently exceeds its authority under the U.S. Constitution. According to the Tenth Amendment, the “powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”⁶³ The balance of powers—not only between the three branches of the federal government, but also the dual sovereignty between the states and the federal government—are extremely important to a free society. Unfortunately, the state of Tennessee has lost significant control over its fiscal affairs, and Tennesseans’ liberty has been undermined by the erosion of this founding principle.

OUR SOLUTION

The General Assembly should resist any further attempts by Congress or federal agencies to strip its state sovereignty. Whether this occurs via federal funding for education, healthcare, transportation, or any other issue, the General Assembly should roundly reject the tradeoff of federal money in exchange for authority. Further, to protect the fiscal well-being of the state and the liberty of its citizens, the General Assembly should rebuff efforts by the federal government to impose costly and potentially unconstitutional requirements on the state. The General Assembly should find ways to fulfill its obligations without the need for extensive federal funding, further securing the state’s autonomy.



GOVERNMENT REFORM

corporate welfare



Eliminate the FastTrack Infrastructure Development and Job Training Assistance Programs and make it unlawful for public funds to be given to private businesses.

THE PROBLEM

Tennessee has two primary methods of distributing tax dollars to private companies, both managed by the Tennessee Department of Economic and Community Development (ECD). The FastTrack Infrastructure Development Program permits companies to apply for grants that fund infrastructure improvements. The FastTrack Job Training Assistance Program allows new or expanding companies to receive reimbursements from the state for the cost of implementing new employee training programs. ECD claims that these programs provide incentives for businesses “to locate or expand in the state and to create or retain jobs for Tennesseans.”⁶⁴ The state recommended \$34.5 million for fiscal year 2010-2011 for these two programs, after doling out \$55.6 million during the previous fiscal year.⁶⁵ An internal audit by the Comptroller of the Treasury in 2005 indicated that “it is unclear whether these programs have been successful in encouraging job creation and retention or encouraging businesses to locate or expand in the state.”⁶⁶ Instead of boosting the state’s economy, these programs force Tennesseans to subsidize private enterprise.

OUR SOLUTION

The General Assembly should put an end to the practice of corporate welfare by prohibiting the use of tax dollars to fund special treatment of businesses. These costs should be borne by the companies, not taxpayers or competitors of the recipient companies. Rather than handing out “economic development” grant money, the General Assembly should create a business environment favorable to economic growth by lowering tax and regulatory burdens. This will allow in-state businesses to invest and create more jobs, and would attract additional businesses to Tennessee.



GOVERNMENT REFORM

lawsuit abuse reform



Enact broad-based lawsuit abuse reform, spurring economic growth and job creation across the state.

THE PROBLEM

While Tennessee is not yet considered a “judicial hellhole,” as states across the nation reform their tort systems, Tennessee falls further behind. As this occurs, plaintiff’s attorneys have begun moving their businesses to Tennessee in an effort to prey off our state’s faulty system. The nursing home and trucking industries in particular have become prime targets of multi-million dollar judgments, which could soon become the norm for a vast array of Tennessee industries without significant reform. Failure to curb lawsuit abuse costs jobs and does significant economic damage to the state.

OUR SOLUTION

The General Assembly should address broad-based lawsuit abuse reform, following the lead of states like Texas. As a result of reform efforts in Texas, the state’s economy has prospered. The reforms implemented since 1995 have brought about an additional \$112 billion in spending each year and have added 499,000 new jobs to the state. At least 3,000 more physicians are now practicing in Texas because of the reforms. In August 2004, the Texas Hospital Association reported a 70 percent reduction in the number of lawsuits filed against hospitals, which has driven down the cost of healthcare expenses for millions of Texans and has made health insurance affordable for more than 400,000 previously uninsured Texans.⁶⁷ The state government also brings in an additional \$2.6 billion in revenue as a result of the reduced waste associated with lawsuit abuse. At a time when Tennessee’s economy could use an additional boost, lawsuit abuse reform is one way to bring about substantial positive results.



GOVERNMENT REFORM

third party ballot access



Protect Tennesseans' First Amendment rights by allowing the judicial ruling that struck down the third party ballot access law to stand.

THE PROBLEM

Since 1961, Tennessee has imposed stringent requirements on candidates seeking to represent political parties on the ballot. Third party candidates are nearly always forced to run as “independent” candidates, even when they have been formally chosen as the candidate for a political party, such as the Constitution Party, Green Party, or Libertarian Party. In practice, this has protected incumbents, as well as the two-party system of Democrats and Republicans, to the disadvantage to all other political parties. In September 2010, a federal judge ruled that provisions of this law were unconstitutional. The judge referred to the restrictions as “an invasion of the voter’s privacy.”⁶⁸

OUR SOLUTION

In order to protect Tennesseans’ First Amendment rights, as well as to preserve fair and open elections, the General Assembly should correct the state law insofar as to comport with the recent ruling allowing third party candidates to gain ballot access. The General Assembly should not attempt to rewrite the law in a way that would potentially pass constitutional muster yet still restrict ballot access for third party candidates.

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GOVERNMENT REFORM

judicial selection



Permit the election of judges, as the Tennessee Constitution requires, or implement a new selection method via constitutional amendment.

THE PROBLEM

In 1994, the General Assembly enacted the “Tennessee Plan for Judicial Selection and Evaluation.” With the act’s passage, members of the state Supreme Court are no longer elected by the voters as they had been since 1853. Rather, they joined the intermediate appellate courts with a “merit selection” process. Under the process, a nominating panel recommends three candidates to the governor, who appoints one of the candidates to fill a judicial vacancy. Every eight years thereafter, each judge faces a “retention election” whereby his or her name is on the ballot along with “Shall (*Name of Candidate*) be retained or replaced in office as a Judge of the (*Name of the Court*)?”⁶⁹ This process has been subject to much litigation, particularly because the Tennessee Constitution states that judges shall be “elected by the qualified voters” of the state or their respective district.⁷⁰

OUR SOLUTION

The General Assembly should terminate the judicial nominating commission and permit the direct election of judges in accordance with the state Constitution. If members of the General Assembly do not prefer the direct election of judges (there has been significant debate over the preferred method for selecting independent, yet accountable judges), then the Constitution should be amended to reflect the will of Tennesseans.

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LEGISLATORS'

guide to the issues

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Tennessee Center for Policy Research



107th Tennessee General Assembly

LEGISLATORS'

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