LEGISLATORS' GUIDE *to the issues*

108TH TENNESSEE GENERAL ASSEMBLY

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FISCAL RESPONSIBILITY
TAXATION
EDUCATION
HEALTHCARE
ECONOMIC LIBERTY
ENERGY & ENVIRONMENT
TRANSPORTATION
PROPERTY RIGHTS
TRANSPARENCY
GOVERNMENT REFORM

By Justin Owen, Trey Moore, Donna Barrett, Richard Grant, and Allyn Milojevich

Design by Jason Keisling

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The Beacon Center of Tennessee is proud to publish the third edition of our *Legislators' Guide to the Issues*. Upon the inauguration of each Tennessee General Assembly, the Center presents every senator and representative with a summarized analysis of various public policy issues facing the state of Tennessee. The 108th General Assembly's *Guide to the Issues* provides detailed free market policy recommendations on dozens of issues that will confront legislators in the coming two years. 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 outlined in this guide, do not hesitate to contact us. The Beacon Center of Tennessee 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 108th General Assembly, as you and your fellow legislators conduct the people's business. On behalf of our board of directors, senior fellows, and staff, thank you for your service and your commitment to a freer, more prosperous Tennessee.

Sincerely,

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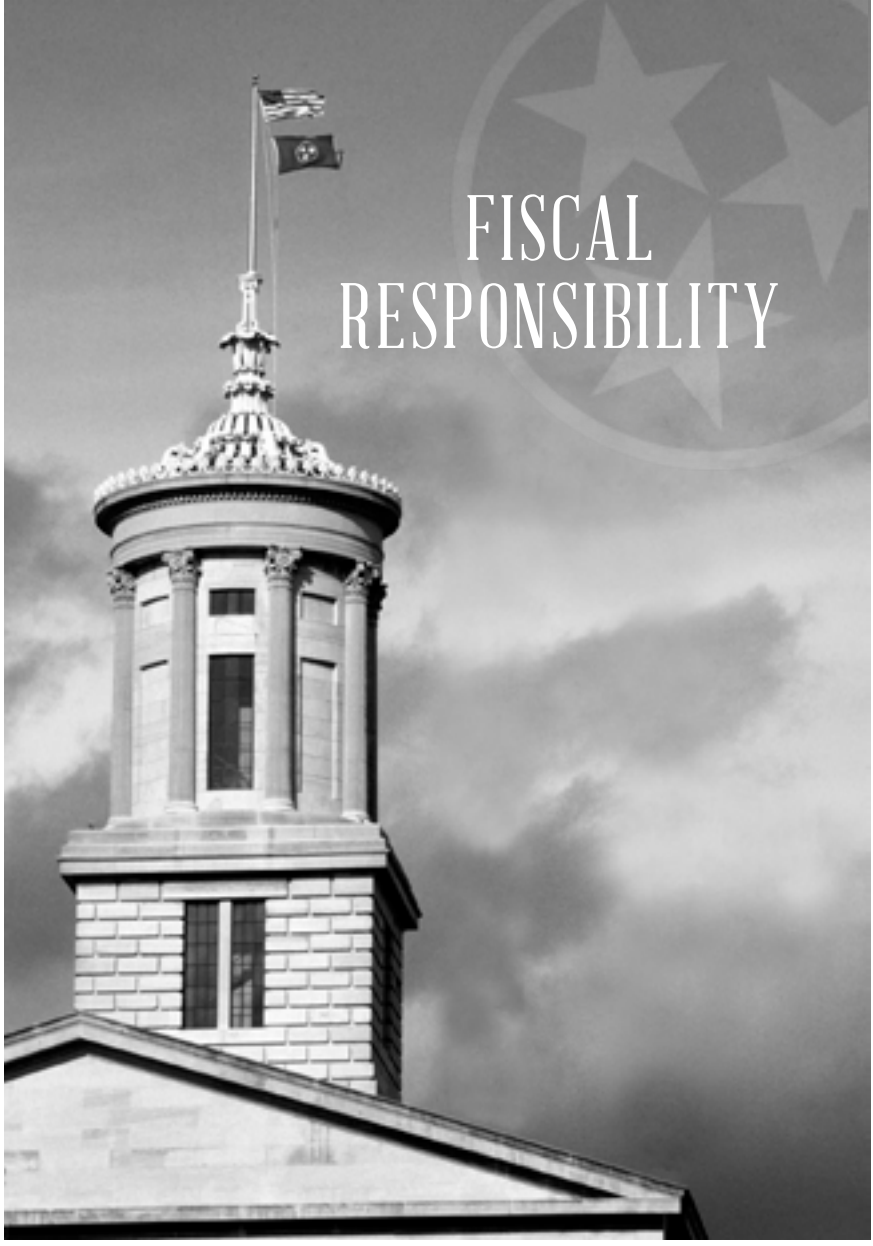

FISCAL RESPONSIBILITY

FISCAL RESPONSIBILITY

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

The Problem

In order to serve as good stewards of taxpayer money, 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 these duties. Further, when appropriations or revenue-related bills are moved quickly through the legislative process, taxpayers themselves are afforded little time to learn about the legislation and weigh in on the matter. This can lead to uninformed decisions 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 or amendment to a 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 state's bottom line. A 72-hour budget review period would bring about much-needed transparency and fiscal responsibility to the state legislature, while also affording taxpayers greater opportunity to engage in the legislative process.

★ *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.

The Copeland Cap can be overridden by a simple majority vote of each legislative chamber, rendering it practically ineffective. As a result, the cap has been exceeded 16 times since its enactment, costing taxpayers billions of dollars that could have been prevented with a stronger spending cap.[1] Further, the spending cap is based off personal income growth, which allows government to spend significantly more when the economy is growing.

Our Solution

The General Assembly should amend the Tennessee Constitution and state law to strengthen the state spending cap. First, the Constitution should require a supermajority vote of the legislature to override the Copeland Cap. This would allow lawmakers to curb spending, while still preserving their ability to raise needed funds in times of emergency or disaster. Second, the calculation of the cap should be changed statutorily. Currently, state spending is tied to personal income growth. A more fiscally responsible approach would be to base spending increases off population growth plus inflation. This calculation would reflect the fact that if the size of government is to grow automatically, it should only expand due to inflation and an increase in the number of Tennessee residents, not increase in conjunction with Tennesseans' economic progress.

Resource

Justin Owen, Christopher Butler, and Ryan Turbeville, "2012 Tennessee Pork Report." Beacon Center of Tennessee. p. 24. http://www.beacontn.org/wp-content/uploads/2012-Pork-Report.pdf.

FISCAL RESPONSIBILITY KICKER LAW

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

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 $5,600. 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, squandering that money rather than returning it to taxpayers where it rightfully belongs.

Our Solution

The General Assembly should enact a "kicker law." 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, such as removing the sales tax on groceries for as long as the surplus allows. To even better safeguard taxpayers' money, this kicker law should be placed in the state Constitution along with language strengthening the Copeland Cap.

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.

Resource

Justin Owen, Christopher Butler, and Ryan Turbeville, "2012 Tennessee Pork Report." Beacon Center of Tennessee. p. 24. http://www.beacontn.org/wp-content/uploads/2012-Pork-Report.pdf.

★ *Institute an independent commission to regularly review all state spending and offer meaningful cuts to reduce government waste.*

The Problem

The need for an ongoing review of state programs, expenditures, contracts, etc., is abundantly clear, as wasteful government spending continues. One way to identify and combat this is to establish a truly independent commission tasked with eliminating waste, fraud, and abuse.

During the fiscal crisis resulting from TennCare in the early 1990s when enrollment doubled and expenditures tripled, Governor Ned McWherter established a Blue Ribbon Task Force to review the structure of the program and make recommendations for improvements and stability. The committee, consisting of area businessmen, provided fiscally sound recommendations for the long-term success of the TennCare program.

Similarly, in early 2002, when the General Assembly faced a push for a state income tax, a dedicated bipartisan group of lawmakers was given two weeks to identify spending reductions. The commission was hugely successful in identifying many cost reductions that maintained state services within the existing tax structure, thus avoiding the need to implement a state income tax.

Regrettably, in spite of the success of these task forces, their duration was limited.

Our Solution

The General Assembly should establish a permanent independent commission charged with reviewing every line item in the state budget, offering recommendations to reform, combine, or outright eliminate those programs that pose unnecessary costs or waste to taxpayers. Only then can state leaders be expected to reign in spending and protect taxpayers' hard-earned money.

Citations

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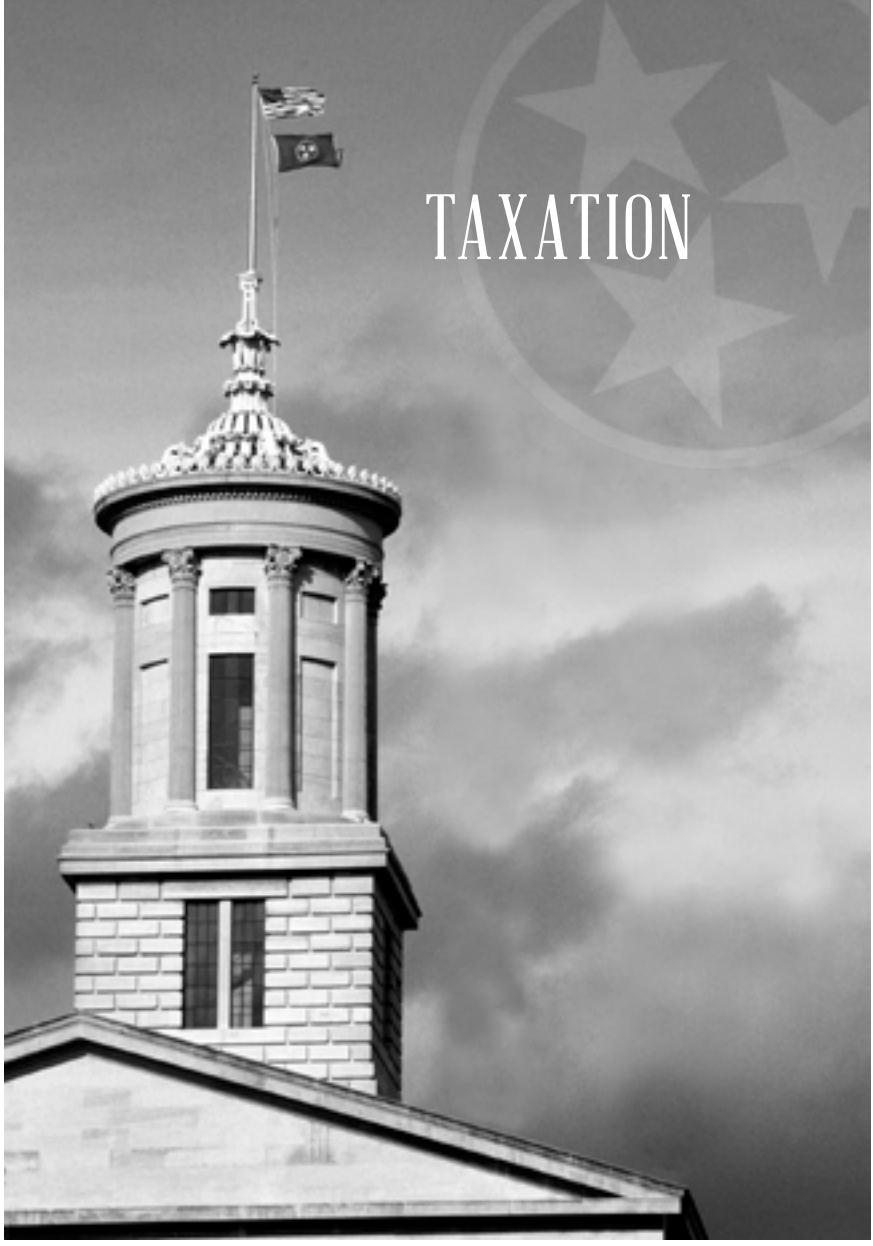

TAXATION

★ *Continue the process to amend the Tennessee Constitution to clarify that an income tax on labor is unconstitutional.*

The Problem

The Tennessee Supreme Court has on three occasions addressed whether the state has the authority to tax income. Each time, the Court ruled that a tax on income must be limited to income derived from stocks and bonds. Therefore, 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 various members of the General Assembly have frequently proposed an income tax since that time. Further, a former state attorney general has opined that, if properly worded, the legislature could indeed impose an income tax on Tennesseans.[1] For these reasons, the 107th General Assembly passed a resolution clarifying that an income tax on labor is unconstitutional. To amend the state Constitution, the resolution must also pass by a two-thirds majority during the 108th General Assembly and then be placed on the ballot during the 2014 general election. If it receives a majority of the votes cast in the race for governor, the amendment will be inserted in the state Constitution.

Our Solution

The General Assembly should continue the constitutional amendment process to reaffirm 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.[2] Since 1967, states that tax income have seen a 42 percent increase in government spending and a 64 percent decrease in personal income growth.[3] 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 both necessary and prudent to clarify the language of the Tennessee Constitution.

Resource

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. August 6, 2009. http://www.beacontn.org/wp-content/uploads/20090806_all_caught_up.pdf.

★ *Repeal the Hall Income Tax on stocks and bonds.*

The Problem

While Tennessee does not impose an income tax on labor, the state has collected a tax on interest from bonds, notes, and stock dividends since 1929.[4] The tax is referred to as the Hall Income Tax. It raises very little revenue in comparison to the state budget as a whole, but it nonetheless makes Tennessee an unwelcoming place for investors. The tax is projected to generate approximately $215 million in revenue for fiscal year 2012-2013, representing merely 1.7 percent of total state revenue.[5] Although its contribution to state coffers is relatively insignificant, it has serious negative consequences. Because it only targets interests and dividends from stocks, bonds, and notes, it is essentially a tax on investors and retirees. Levying the tax discourages senior citizens and the wealthy—the groups who invest most often—from relocating to Tennessee. It also results in fewer investments by existing Tennessee residents, while encouraging them to relocate elsewhere to avoid the sizeable six percent tax rate.[6] Furthermore, the tax disproportionately impacts lower-income elderly Tennesseans, who rely more heavily on dividend income than other residents.

Our Solution

The General Assembly should repeal the Hall Income Tax because it suppresses savings and investment in our state economy, while simultaneously harming lower-income elderly Tennesseans. Eliminating the Hall Income Tax would follow on the repeal of the state death tax by encouraging investment in Tennessee, luring retirees from other states or keep existing retirees in the state, and relieving low-income elderly residents from a significant tax burden.

★ *Repeal or scale back the sales tax on food items, offsetting the lost revenue with equal or greater spending cuts.*

The Problem

Tennessee currently imposes a 5.25 percent tax on groceries. Despite a 0.25 percent reduction of the statewide food tax that went into effect on July 1, 2012, Tennessee's sales tax on food remains the fourth highest in the nation.[7]

While many Tennessee families affected by a distressed economy try to cope with smaller budgets by eliminating the purchase of discretionary items, the sales tax on groceries is inescapable. Food is an essential element to survival. In this way, a tax on food is among the most insidious of government impositions.

Additionally, the tax puts Tennessee grocers at a competitive disadvantage. Of the eight states that border Tennessee, seven impose a lower tax or no tax on groceries.[8] Thus, residents of border communities have the incentive to purchase groceries in those other states and avoid Tennessee's food tax. The effect is that citizens in communities farther from the state line are unfairly subjected to the food tax relative to residents of border areas.

Our Solution

The General Assembly should alleviate the tax burden on all Tennesseans, eliminating or significantly reducing the sales tax on food, offsetting the cuts with equal or greater spending reductions. While, on principle, government should never impose a tax on items of necessity, this is especially true in times of economic strife. With many families operating on reduced budgets, the elimination or significant reduction of the food tax would provide many Tennessee families with much needed relief.

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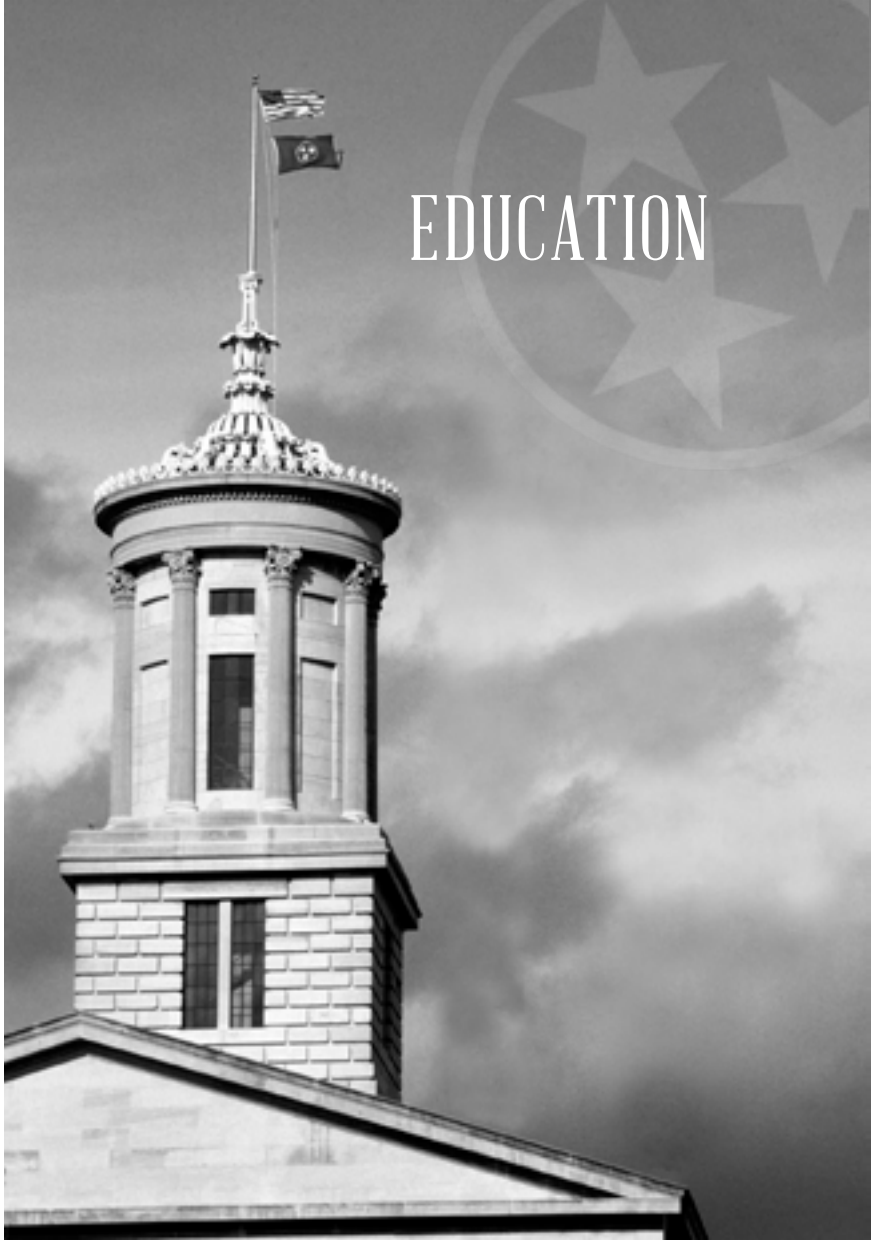

EDUCATION

EDUCATION

★ *Provide opportunity scholarships to Tennessee families so that they can choose the schools that are best for their children.*

The Problem

Many Tennessee families lack the ability to place their children in a school that meets their unique needs. While almost everyone agrees that each child is different, Tennessee has a one-size-fits-all education model. Only those families who can afford private school tuition or have the resources to uproot and move to a better school district have veritable choice.

Parents are in the best position to choose the schools that are best for their children. ZIP Codes and local politicians, however, currently dictate the fate of most Tennessee children. Opportunity scholarships would provide families with the flexibility to select their child's school, whether it is a public, private, charter, online, or home school. Put simply, a portion of the funding already spent on each child's education would follow that child to the school of his or her parents' choice.

This approach has made a measurable impact in other states. Not only do children who participate in an opportunity scholarship program fare better, but those who remain in the public schools improve as well. Nineteen out of 20 empirical studies prove that the remaining public school students in schools subject to competition by opportunity scholarships perform better. Only one study shows no measureable difference; no study has ever shown that the students who do not utilize opportunity scholarships perform worse than before.[1] Opportunity scholarships represent a rising tide that lifts all boats.

Our Solution

The General Assembly should enact a statewide opportunity scholarship program, whereby all families, regardless of geographic location or socioeconomic status, are able to choose the school that best serves their child's needs. The result is an education system that works to serve every child according to his or her unique needs regardless of his or her means.

Resource

Matthew Ladner, "Lessons for Tennessee from Florida's Education Revolution." Friedman Foundation for Educational Choice and Tennessee Center for Policy Research. February 2011. http://www.edchoice.org/CMSModules/EdChoice/FileLibrary/641/Lessons-for-Tennessee-from-Floridas-Education-Revolution.pdf.

★ *Grade public schools with a simple A, B, C, D, and F grading system.*

The Problem

Tennessee's definition of a failing school is complex and confusing. The result is that few parents know whether their child's school falls within this definition. Parents, however, clearly understand the grades their children receive, as students' report cards often identify their grades based on an A, B, C, D, or F scale. Public schools should be subject to these same clearly-defined standards, making it easy for parents to understand how their child's school is performing.

Other states have witnessed rapid performance improvement among schools with an A-F grading system. Florida began grading its public schools with these labels in 1999. In that year, 677 Florida public schools received a D or F grade, while just 515 schools obtained an A or B. The transparency created by this process drove immediate and noticeable change. In just one year, the number of D or F schools fell to 401 (a 41 percent decline), while 845 schools scored an A or B (64 percent increase). Over the next decade, the gap between achieving and failing schools continued to grow. In 2009, there were 2,317 A and B schools and just 217 schools that received a D or F.[2] During this period, Florida raised—not lowered—academic standards three times. Thus, the gap between achieving and failing schools grew in spite of, not because of, testing standards.

Our Solution

The General Assembly should implement an A, B, C, D, and F grading system for all public schools in the state. This system would provide much needed transparency and accountability, allowing parents readily to determine whether their child's school is performing at an acceptable level. A grading system would also place pressure on failing (D and F) schools to improve, evidenced by the Florida experience.

Resource

Matthew Ladner, "Lessons for Tennessee from Florida's Education Revolution." The Foundation for Educational Choice and Tennessee Center for Policy Research. February 2011. http://www.edchoice.org/CMSModules/EdChoice/FileLibrary/641/Lessons-for-Tennessee-from-Floridas-Education-Revolution.pdf.

★ *Refuse to expand Pre-K, which has failed to provide long-term demonstrable gains among student participants; focus Pre-K on at risk, not all, children.*

The Problem

Since its 2005 enactment, Tennessee's Pre-Kindergarten program has expanded at an annual rate of 22 percent. This represents an increase of roughly $52 million over just seven years. The program now costs over $86 million annually with state taxpayers picking up a majority of the tab.[3]

Not only is Pre-K costly, it has proven to be wholly ineffective. Substantial funding increases have occurred despite numerous studies—the most recent by the state Comptroller in 2011—that reveal Pre-K students are statistically no better off by second grade than non-Pre-K students, even when controlling for various socioeconomic factors.[4]

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 receive, potentially, a positive impact from the pre-school education, while saving taxpayers millions of dollars each year.

★ *Provide for a non-traditional path to teacher certification for experts in given fields who wish to enter the teaching field from another profession.*

The Problem

Study after study shows that quality teachers have the biggest impact on student achievement. Too often, however, the traditional teacher certification process prevents professionals successful in other fields from entering the classroom.

Research indicates that students taught by alternatively certified teachers perform just as well as their peers under teachers with traditional certification.[5] Other studies prove that students in states with genuine alternative certification gained more on the National Assessment of Educational Progress (NAEP) between 2003 and 2007 than students in states with more restrictive certification requirements.[6]

Despite this evidence of success, Tennessee does not offer any alternative certification routes to obtain a full teaching license. As a result, many students across the state are denied the opportunity to have a quality teacher in their classroom, particularly one who has a wealth of experience in a given field.

Our Solution

The General Assembly should provide professionals with an alternative path toward teacher certification by granting initial certification based on professional experience in other fields. The General Assembly should also allow these teachers to complete any additional subject-area expertise requirements throughout the year rather than prior to entering the classroom.

This will encourage professionals from other fields to enter the teaching profession, particularly in areas of existing weakness for Tennessee children, such as science, technology, engineering, and math.

★ *Permit principals to reject the transfer of teachers who have been removed from other schools in the district due to poor performance.*

The Problem

Tennessee teacher tenure laws require principals to guarantee interviews, and often positions, for tenured teachers who have been removed from other schools within the district. This is true even when a principal has identified a non-tenured teacher as the most appropriate candidate for the job. Too often, principals are saddled with tenured teachers who have a history of poor performance. Such teachers are identified and removed by their current school through various personnel management loopholes like excess staffing claims.

The result is that these teachers move frequently from one school to the next, as schools find ways to remove them and force them into the school system's revolving door.

Our Solution

The General Assembly should give principals more autonomy in the hiring process by removing the hiring restrictions that ultimately work to serve the poorest performing teachers within the district to the detriment of higher performing teachers and promising prospects. Lawmakers should also allow non-tenured applicants to compete equally with tenured applicants who have been removed from their prior school for new job openings.

★ *Remove roadblocks to online learning opportunities that provide flexibility and tailored assistance to children of various backgrounds.*

The Problem

With the rise in technology, more children are embracing alterative options to obtain a quality education, including online learning. This trend will only continue as more parents discover the benefits of a more customized educational experience, so long as states do not stand in the way. Many state regulations and rules inhibit the growth or outright prohibit the expansion of online learning. And while Tennessee enacted the Virtual Public Schools Act in 2011, critics have fought hard to prove its ineffectiveness. Recent poor test results are used as proof of this failure, despite the fact that more than half of the students attending the new Tennessee Virtual Academy have been in the school for less than one full year and only a quarter of all children were measured.[7] This criticism fails to take into consideration each student's academic growth over time, which is far more important than merely comparing one student's current performance to that of another.

While Tennessee has begun to move in the right direction, there are several state laws that limit the growth of these opportunities for families. State law expressly forbids online charter schools, and the existing program is very limited in scope. This severely restricts both full- and part-time options for students with a variety of backgrounds who would benefit from these learning opportunities.

Our Solution

In order to provide children across the state with meaningful online education opportunities, the General Assembly should remove existing barriers to online learning programs' growth, including the law that bans online charter schools. An expansive, robust online learning community will help thousands of students where the current educational structure falls short. It will also potentially save taxpayers money. While the national average per pupil spending in traditional schools is $10,000, blended-learning models that mix online and traditional programs spend $8,900, and fully online learning models spend just $6,400 per child.[8] For many children, this translates to a quality education geared toward their specific needs at a fraction of the cost taxpayers spend on traditional learning environments.

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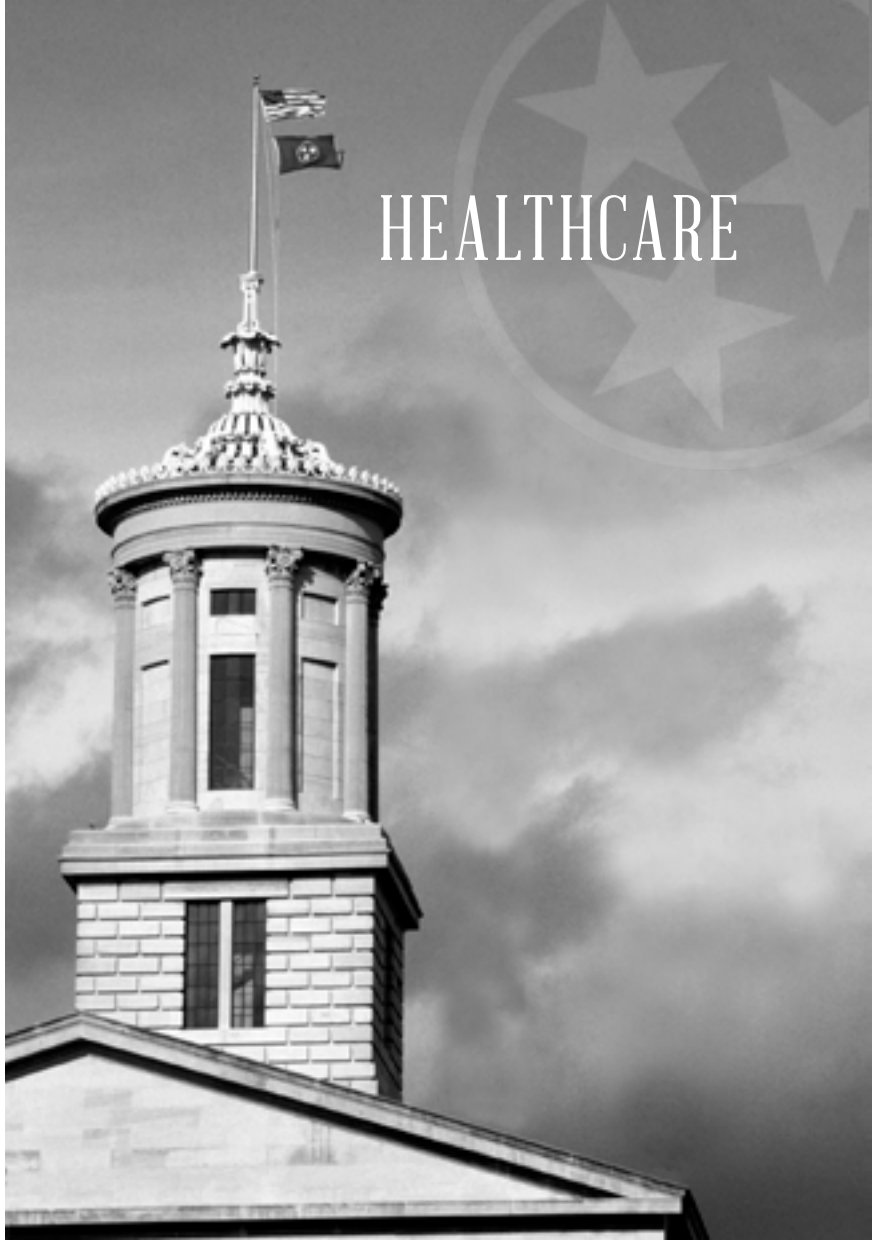

HEALTHCARE

HEALTHCARE

★ *Refuse to expand Medicaid as requested under the Patient Protection and Affordable Care Act.*

The Problem

The Patient Protection and Affordable Care Act (PPACA) encourages states to expand Medicaid, a government-run health insurance program for the poor, to cover those making up to 133 percent of the federal poverty level. This expansion could lead to at least 300,000 new enrollees in Tennessee's Medicaid program, TennCare, almost immediately.[1] As many as 660,000 new Tennesseans could enroll in the program by 2014, representing a 65 percent increase over five years.[2] As an unsustainable and unaffordable model, this could lead to the removal of many of those enrollees from the program at a later date. Thus, it is fiscally and morally unwise to expand Medicaid in lieu of meaningful reforms to the program that make it effective for current enrollees and affordable for taxpayers.

Our Solution

The General Assembly should flatly reject an expansion of Medicaid as contemplated by PPACA. Rather, state officials should work with the federal government to seek reforms to the entitlement program that will provide higher quality care for current enrollees. At the same time, the legislature should seek to reduce the cost of private health insurance through other reforms to make it more affordable and accessible for Tennesseans that would otherwise qualify for TennCare under the PPACA expansion.

Resource

Justin Owen, Trey Moore, and Christina Weber, "A Cure for What Ails Us: State-Led Healthcare Solutions to Fix Washington's Botches." Beacon Center of Tennessee. October 2012. http://www.beacontn.org/wp-content/uploads/A-Cure-For-What-Ails-Us_web.pdf/.

★ *Promote a move away from employer-based health insurance.*

The Problem

There are three main reasons to press for a move away from employer-based health insurance. First, employees have become quite complacent and expectant of the fringe benefit of employer-sponsored health insurance. A major shortcoming of employer-based insurance is that it is only temporary. It is tied to a particular job in a particular company, and it is lost with that job.

Second, because patients don't pay for their healthcare directly, they are insensitive to the cost of services. The group health insurance premiums employers pay to private insurers are experience rated over that employer's group of employees. This means that the premium, including any employee incurred portion, is based on the health of the other employees within the company. This process causes a healthy individual to be penalized and for small employers it can mean that if serious illness befalls one or several employees in the group, it can drastically and unpredictably drive up the premium for every employee in the group.

Finally, with the looming implementation of the Patient Protection and Affordable Care Act, business owners are now forced to provide services to which they may have a moral aversion.

Our Solution

The General Assembly should recognize the lack of portability, the costs, and the moral concerns that come with our current system of health insurance, which strongly favors employer-based insurance over individualized plans. Lawmakers should urge Congress to eliminate the favoritism bestowed upon employer-based plans in the federal tax code, while also working to eliminate barriers to individual insurance plans in state law. In addition to moving away from employer-based health insurance, lawmakers need to repeal laws and regulations that promote family plans over individual plans, moving in a direction that is structured much like auto and life insurance policies.

Resource

Justin Owen, Trey Moore, and Christina Weber, "A Cure for What Ails Us: State-Led Healthcare Solutions to Fix Washington's Botches." Beacon Center of Tennessee. October 2012. http://www.beacontn.org/wp-content/uploads/A-Cure-For-What-Ails-Us_web.pdf/.

★ *Allow Tennesseans to purchase health insurance in other states.*

The Problem

State licensing of health insurance limits the selection of products and companies available to insurance customers. Although other states have different sets of mandates, some of which might better serve the needs of many consumers in Tennessee, regulatory restrictions prevent Tennesseans from choosing those products.

Segmenting insurance markets by state also arbitrarily limits the size of insurance pools, thereby preventing the cost savings that would be available through nationwide pooling.

Finally, state licensing requirements limit consumer choice, which prevents them from escaping the unnecessarily high costs imposed by state-level mandates that often require unneeded and unwanted types of insurance coverage.

Our Solution

The General Assembly should permit Tennesseans to purchase health insurance from companies in other states. This is analogous to other forms of insurance products, including life and auto insurance, which are not limited to Tennessee-based companies. The change would open up the market, providing Tennesseans with more affordable health insurance options. It would also place pressure on other states to follow suit, thereby reducing state licensing requirements nationwide.

Resource

Justin Owen, Trey Moore, and Christina Weber, "A Cure for What Ails Us: State-Led Healthcare Solutions to Fix Washington's Botches." Beacon Center of Tennessee. October 2012. http://www.beacontn.org/wp-content/uploads/A-Cure-For-What-Ails-Us_web.pdf/.

★ *Reduce the number of coverage mandates imposed on health insurance consumers.*

The Problem

State law is riddled with coverage mandates, whereby insurance companies are required to provide coverage for specific treatments. As of 2011, there were 41 different coverage mandates on the books in Tennessee.[4] The costs of these mandates are passed on to consumers in the form of higher premiums, each resulting in at least one half of one percentage increase in premiums, and some tacking on up to 10 percent to an insurance plan.[5]

Young adults are hit hardest by these costly mandates. Young adults between the ages of 18 and 34 are far more likely to be uninsured, with nearly 30 percent of this age bracket living without insurance.[6] Coverage mandates imposed on health insurance plans regardless of lifestyle or risk factors price many young adults out of the market. Thus, they forego coverage altogether since no affordable, appropriate product exists to serve their needs.

Our Solution

Thirty states have passed legislation requiring that a mandate's cost be determined before implementation. Further, 10 states now offer mandate-free or mandate-lite plans for young adults, waiving some or all coverage mandates for those ages 18 to 34.[7] The General Assembly should pursue both of these options, attempting to curb the impact of coverage mandates, while offering young adults lower-cost health insurance options.

Resource

Justin Owen, Trey Moore, and Christina Weber, "A Cure for What Ails Us: State-Led Healthcare Solutions to Fix Washington's Botches." Beacon Center of Tennessee. October 2012. http://www.beacontn.org/wp-content/uploads/A-Cure-For-What-Ails-Us_web.pdf/.

★ *Reform medical licensing and scope of practice laws to encourage competition and provide Tennesseans more quality choices when seeking healthcare services.*

The Problem

Tennessee has a woeful shortage of doctors. The federal Health Resources and Services Administration recently acknowledged that 55 counties in the state do not have enough physicians to meet the needs of residents.[8] A recent study by Blue Cross and Blue Shield of Tennessee suggested that Tennessee's access to care problems in the wake of the Patient Protection and Affordable Care Act "will be worse than the those of the nation at large."[9]

While medical licensing laws are intended to protect consumers, these laws actually harm them by inflating costs and limiting options of those seeking treatment. Non-physician practitioners, including nurse practitioners, certified registered nurse anesthetists, physician assistants, and midwives receive a high degree of education and experience, yet are significantly limited as to what services they can offer consumers.

Furthermore, licensing laws subject physicians to onerous bureaucratic restrictions that obstruct the provision of care both in-state and across state lines. These restrictions create additional expenses for physicians, which are passed on to patients in the form of higher costs.

Our Solution

The General Assembly should reform medical licensing laws to allow both physicians and non-physician practitioners more freedom in the provision of healthcare services. This would create more providers and services from which consumers could choose healthcare services based on quality and cost.

Resource

Justin Owen, Trey Moore, and Christina Weber, "A Cure for What Ails Us: State-Led Healthcare Solutions to Fix Washington's Botches." Beacon Center of Tennessee. October 2012. http://www.beacontn.org/wp-content/uploads/A-Cure-For-What-Ails-Us_web.pdf/.

★ *Repeal state Certificate of Need laws and abolish the Tennessee Health Services and Development Agency to foster competition among healthcare provider facilities.*

The Problem

Tennessee's Certificate of Need (CON) program requires hospitals and other healthcare facilities to obtain permission from the Tennessee Health Services and Development Agency before establishing a new facility. Further, permission must be granted before an established facility can invest capital in new buildings, upgrade facilities, equipment, or services.

CON programs were established in the 1970s at the behest of the federal government. The idea was that states could control rising healthcare costs by restricting the supply of healthcare services and facilities.[10] Of course, this flies in the face of basic economics, in which a decrease in the supply of goods actually increases prices.

Additionally, CON programs are fundamentally flawed (and antiquated) in that they were founded under the assumption that each healthcare facility's consumer base is limited to the immediate surrounding community. The recent and dramatic rise in "medical tourism" suggests that a world-class facility in Tennessee could serve patients from across the Southeast and, indeed, across the globe.

Tennessee's CON program represents failed policy based on fatally flawed economics. The program has done nothing to curb rising healthcare costs in Tennessee—the express purpose of the program—but it has continued to curb capital investment in new and improved healthcare facilities across the state.

Our Solution

The General Assembly should repeal Tennessee's archaic CON statutes to allow more capital investment within the state for healthcare facilities. In doing so, the state could eliminate the Health Services and Development Agency and its associated administrative costs. By becoming the only state in the Southeast without a restrictive CON program, Tennessee would attract capital investment to new and existing healthcare facilities, resulting in increased economic development and competition and leading to greater access and lower prices for healthcare consumers.

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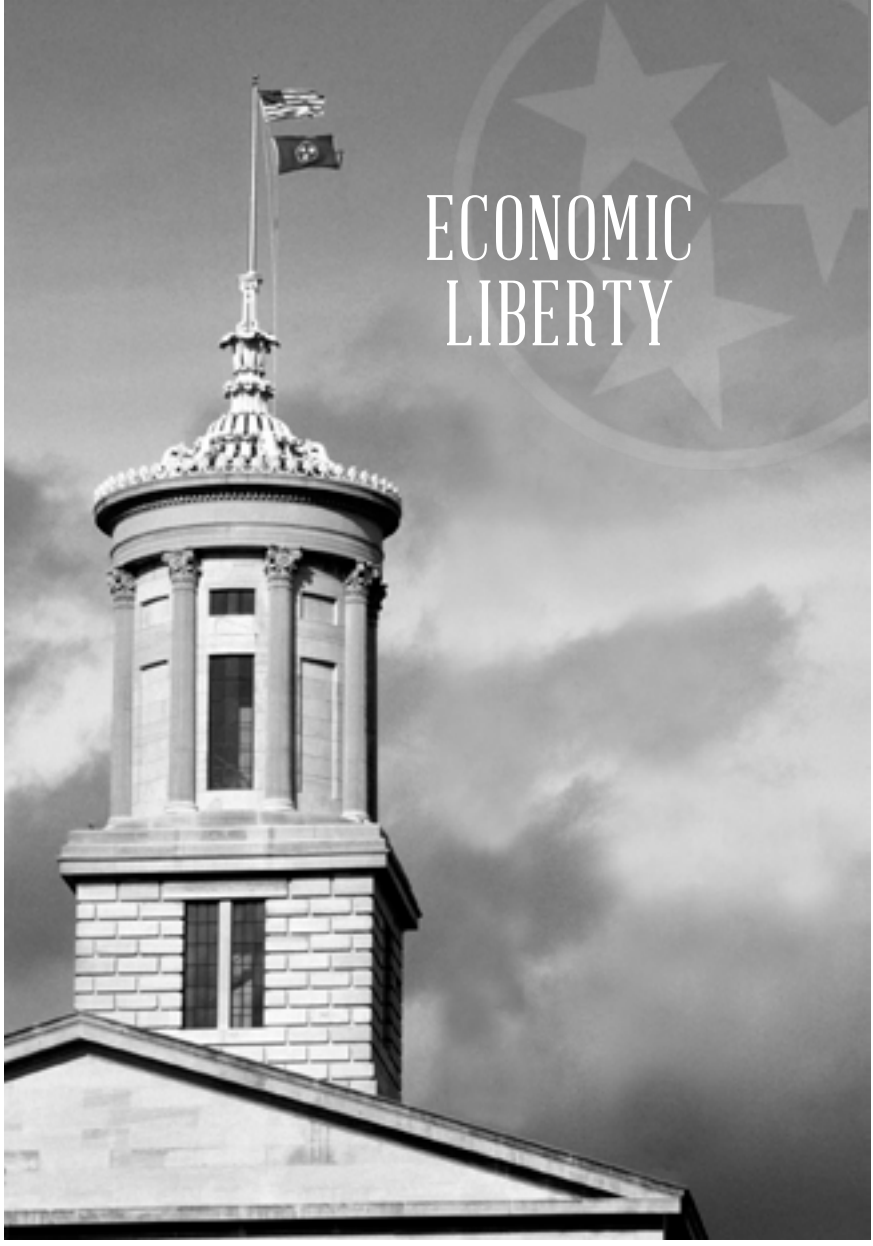

ECONOMIC LIBERTY

★ *Roll back or eliminate many of the occupational licensing laws imposed by the state, which total more than 100.*

The Problem

In Tennessee, 111 different occupations require a license. Only nine states impose more stringent requirements on their citizens.[1] Among those licensed in the state are barbers, cosmetologists, dental assistants, nutritionists, magazine salesmen, street vendors, geologists, and manicurists. Proponents of these regulations claim 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. These licensing schemes hit lower-income Tennesseans the hardest. A report by the Institute for Justice uncovered that, of the 102 low- and moderate-income occupations it studied, Tennessee requires a license for 53.[2]

Our Solution

The General Assembly should analyze each of the 111 occupational licensing laws on the books, eliminating those that merely serve as protectionist measures to benefit a select few while purporting to protect all Tennesseans. If a license is not imperative in order to protect the health and safety of citizens, then the General Assembly should eliminate any such requirement for that occupation. Lawmakers should pay particular attention to the low- and moderate-income occupations that require a license, freeing these Tennesseans from unnecessary regulations and barriers to entry during these difficult economic times. This would create jobs and reduce costs to consumers at a time when Tennessee needs an economic boost.

Resource

Shaka Mitchell and Justin Owen, "Illegal by Design: How Interior Design Laws Put Designers Out of Business and Endanger Consumers." Tennessee Center for Policy Research. Faces of Freedom, Volume I, Issue 2. April 2009. http://www.beacontn.org/wp-content/uploads/Illegal_by_Design_WEB.pdf.

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

The Problem

Tennessee imposes more burdensome licensing and regulations on professionals than 40 other states. 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. Instead, special interest groups seeking to shield themselves from competition successfully lobby the General Assembly to put these laws in place. Quite simply, as protectionist measures rather than true safety or welfare regulations, they have a chilling effect on job creation. In total, it is estimated that licensing laws decrease job growth by 20 percent and cost nearly $42 billion nationwide each year.[3] These laws particularly harm lower-income workers by making it unaffordable for those Tennesseans to enter the occupations of their choice. Additionally, such laws artificially inflate the prices of goods and services produced by those in protected occupations, further hindering economic participation.

Our Solution

The General Assembly should enact an "Economic Liberty Act." The act should require that any new occupational regulations—including but not limited to licensing laws—serve a specific health, safety, or welfare objective. The act should also require that the legislature regularly 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, particularly for lower-income Tennesseans.

Resource

Justin Owen, "Testimony in Support of an Economic Civil Rights Act." State Government Subcommittee, State and Local Committee, Tennessee House of Representatives. February 9, 2010. http://www.beacontn.org/wp-content/uploads/TESTIMONY-on-Economic-Civil-Rights-Act-House.pdf.

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

The Problem

As if requiring government permission for 111 different occupations is not enough, Tennessee law also provides a monopoly over the use of certain occupational titles. In an effort to give the state more control over various professions, these "titling acts" prohibit the use of certain titles without meeting a number of requirements. Effectively, this requires 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 licensing laws, titling 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.[4] Ushered into place by a limited group of interior designers, the law seeks to restrict their competition from practicing the trade. By imposing arbitrary standards that only certain existing interior designers could meet, proponents of this particular titling act created a wall of job killing, protectionist regulations.

Our Solution

The General Assembly should eliminate all existing titling acts, 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 protect Tennesseans' right to work and freedom of speech, introducing competition into the market and creating jobs in our state.

Resource

Shaka Mitchell and Justin Owen, "Illegal by Design: How Interior Design Laws Put Designers Out of Business and Endanger Consumers." Tennessee Center for Policy Research. Faces of Freedom, Volume I, Issue 2. April 2009. http://www.beacontn.org/wp-content/uploads/Illegal_by_Design_WEB.pdf.

★ *Allow grocery stores and supermarkets to sell wine pursuant to local referendum on the matter.*

The Problem

Tennessee's Prohibition-era wine regulations are among the most restrictive in the nation. For decades, powerful special interest groups have fought to keep the antiquated and anti-competitive laws on the books. This unfairly serves a select group of businesses at the expense of consumers and other businesses.

Among the most egregious is a law that gives liquor stores exclusive rights over the sale of wine. A 2011 survey indicated that 69 percent of Tennesseans favor the sale of wine in grocery stores.[5] Despite overwhelming public support for a change in the law, liquor industry lobbyists have kept the unfair practice in place through aggressive lobbying campaigns. The result is that Tennessee consumers pay inflated prices or travel across state lines for more competitive deals on wine.

Additionally, the law hinders economic development. One major development in the Chattanooga area was erected just miles across the state line in Georgia. As one of the nation's leading wine retailers, the company likely found Tennessee's restrictive wine laws a deal-breaker.[6]

Our Solution

The General Assembly should remove the ban on the sale of wine in grocery stores, allowing businesses to compete for consumers. This would not only represent a matter of convenience for wine consumers, but would also be a pro-job move, allowing grocers across the state to pay higher wages and add employees.

Resource

Shaka Mitchell and Justin Owen, "Drunk with Power: How Liquor Lobbyists and Distributors Control Tennessee's Wine Laws." Tennessee Center for Policy Research. Faces of Freedom, Vol. 1, Issue 1. April 2009. http://www.beacontn.org/wp-content/uploads/drunkwithpower.pdf.

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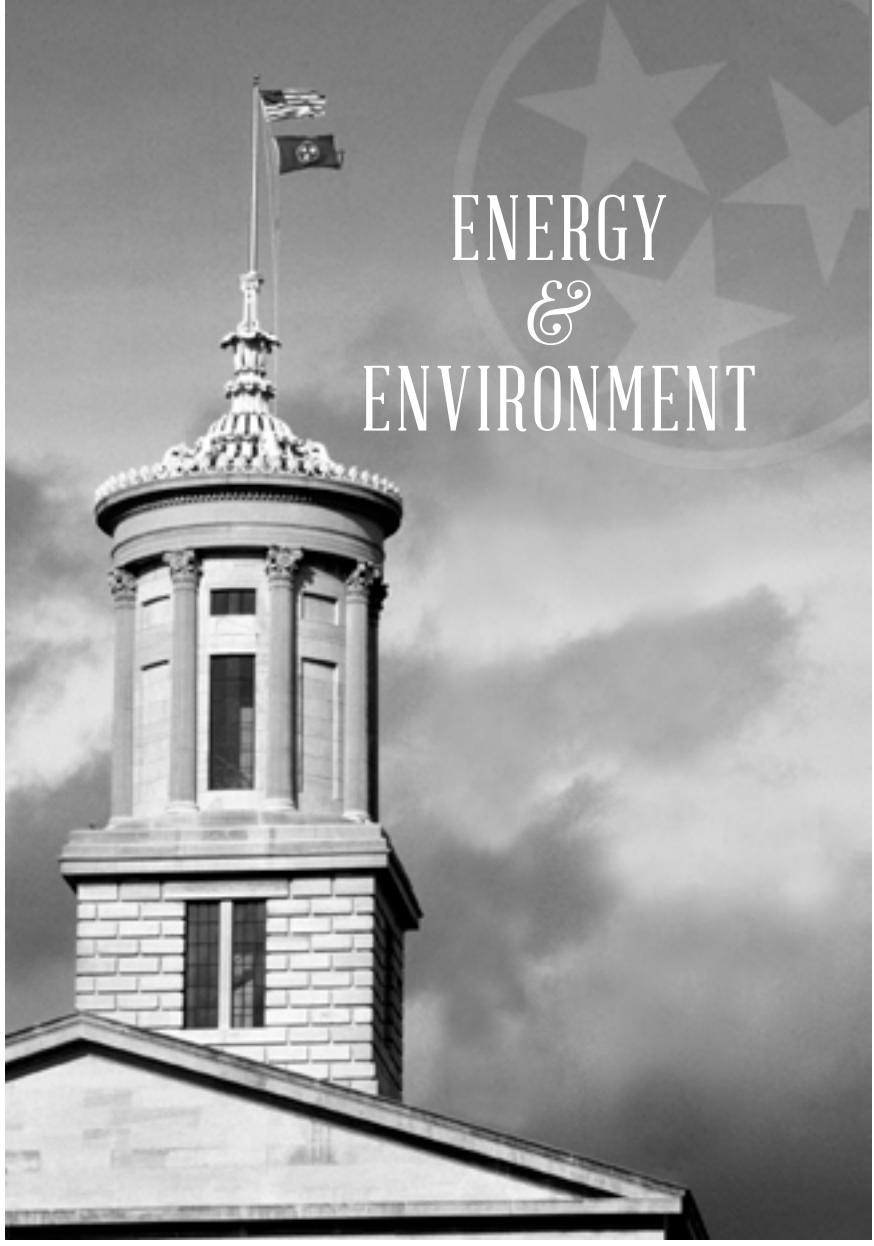

ENERGY & ENVIRONMENT

★ *Push back against one-size-fits-all EPA regulations that harm business growth.*

The Problem

Since its creation in 1970, the Environmental Protection Agency (EPA) has increased the number of regulations on companies each year. From 2009 to 2012, the Obama administration approved regulations at an especially high speed.[1] It has been estimated that EPA rules that are set to take effect in the next three years alone could cost upwards of $1 billion and destroy thousands of jobs. It has also been suggested that new EPA regulations could decrease the country's overall energy production rate by eight percent, increasing energy prices by artificially inhibiting energy markets.

Energy regulations, including subsidies that often accompany "green" technologies, perversely constrain innovation in both energy production and environmental protection. Expanding property rights would pave the way for a cleaner environment than exists now by protecting individuals' rights to a clean environment. The free market also has the ability to adapt more quickly to environmental problems than the cumbersome government rulemaking and regulatory process in place with the EPA.

Our Solution

The General Assembly should push back against top-down EPA regulations that infringe upon the state's autonomy. Rather than allow a single federal agency to dictate environmental rules, the General Assembly should instead rely on the legal system to hold environmentally harmful companies accountable by allowing private individuals or groups to assert their constitutionally protected property rights as a means to reduce and avoid environmental damage. By allowing individuals and groups to assert their private property rights in court, environmental problems can be rectified more quickly than the cumbersome, misguided federal regulatory process allows.

Resource

Allyn K. Milojevich, "Cap & Trade: A Lame (Duck) Proposal. How Proposed Energy Regulations Would Cool Tennessee's Economy." Tennessee Center for Policy Research. October 4, 2010. http://www.beacontn.org/wp-content/uploads/Cap-Trade-A-Lame-Duck-Proposal.pdf.

★ *End all subsidies to alternative energy that distort market conditions and put taxpayer money at risk.*

The Problem

Each year, governments spend billions of dollars supporting new "green" technologies. In reality, this amounts to nothing more than corporate welfare, with most of the money going to established corporations and institutions. In Tennessee, "certified green energy supply chain manufacturers" are awarded $1.5 million each year to relocate to the state.[2] There are also subsidies available to existing Tennessee companies that invest in pollution control equipment or clean energy technologies. Significant preferential treatment is also given to solar companies through a variety of programs. These tax credits and subsidies artificially distort markets and encourage companies to invest in "green" technologies, where otherwise it is not in their corporate interest to do so.

In addition to corporate handouts supporting "green" technologies, the Tennessee Department of Transportation (TDOT) invests in E85 and biodiesel availability, despite a significant lack of demand. As of May 2012, there were only 31 gas stations throughout the state offering E85 fuel and 29 gas stations offering B20 fuel.[3] Despite the absence of evidence proving ethanol's usefulness and notwithstanding the lack of demand in Tennessee, TDOT has offered grants since 2006 that cover up to 80 percent of the cost to install ethanol or biodiesel pumps.[4]

Our Solution

The General Assembly should end the practice of green industry welfare. These "green" companies and technologies would clearly not be able to operate in a free market, leaving them to rely on government subsidies. Green companies should compete on a level playing field in the energy market. This includes gas station owners, who would voluntarily invest capital in E85 and biodiesel pumps if sufficient demand existed in their market.

Resource

Allyn K. Milojevich, "Cap & Trade: A Lame (Duck) Proposal. How Proposed Energy Regulations Would Cool Tennessee's Economy." Tennessee Center for Policy Research. October 4, 2010. http://www.beacontn.org/wp-content/uploads/Cap-Trade-A-Lame-Duck-Proposal.pdf.

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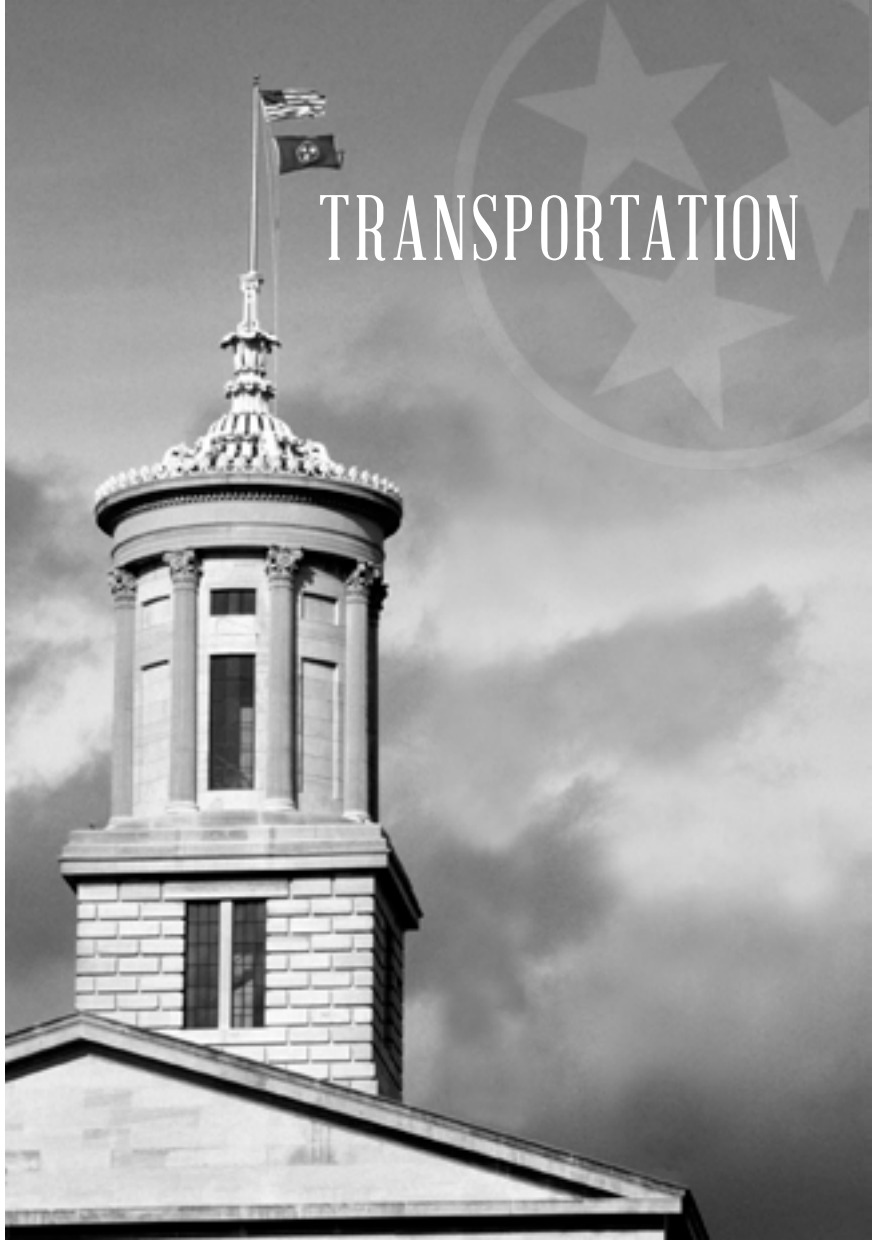

TRANSPORTATION

TRANSPORTATION

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

The Problem

Since the first high occupancy vehicle (HOV) lane was constructed in Tennessee in 1993, the state has installed 106.4 miles of the lanes in the Nashville metro area and 22.4 miles in Memphis.[1] HOV lanes, which permit only vehicles containing two or more persons in the designated lane, were constructed to promote carpooling and reduce emissions. However, these lanes have not caused many drivers to rethink their transportation arrangements, leaving most HOV lanes empty and underused.

The underuse of HOV lanes led the Tennessee Department of Transportation (TDOT) to allow single occupancy vehicles to utilize the lanes, provided that those drivers apply for a pass. Currently, only approved hybrid vehicles are eligible for a pass at no cost.[2] While a step in the right direction, this move has failed to increase the efficiency of HOV lanes.

Our Solution

The General Assembly should instruct TDOT to pursue a system of High Occupancy Toll (HOT) lanes on new construction, while also encouraging TDOT to convert existing HOV lanes to HOT lanes. In order for single-passenger vehicles to use a HOT lane, drivers would have to pay a small fee, which would alleviate the traffic problems caused by unused lanes and generate additional revenue for the state. The cost to drive in the lane could also fluctuate in real time based on traffic congestion, ensuring that the lanes are efficiently used by drivers at all times, rather than just during peak driving periods.

Resource

Paul Stumb, Ph.D., Kaleigh Walker, and Alexandria Wood, "There's More Than One Way to Pave a Road." Beacon Center of Tennessee. Policy Report No. 12-02. September 26, 2012. http://www.beacontn.org/wp-content/uploads/Theres-More-than-One-Way-to-Pave-a-Road.pdf.

★ *Promote public-private partnerships that will generate private funding to expand transportation infrastructure.*

The Problem

As transportation infrastructure costs rise, so too does the burden on taxpayers. Rather than increase gas taxes to fund future transportation needs, there are alternatives that could raise the necessary revenue without tax increases. Public-private partnerships (PPPs) allow the private sector to assist government in the development, operation, and maintenance of transportation projects. Currently, 29 states utilize PPPs for their transportation needs; another six use the partnerships at the local level. PPPs are beneficial because they "combine the capital and expertise of the private sector with the management and oversight of the government…"[3] Due to the private sector involvement associated with PPP projects, taxpayer costs and risks are minimized, while susceptibility to political pressures also declines. The infusion of private capital has led to the financing of several transportation projects in numerous states that would not have otherwise occurred but for the existence of PPPs.

Our Solution

The General Assembly should permit the use of public-private partnerships in order to increase funding and efficiency in Tennessee's transportation system. PPPs would bring about additional funding for transportation projects, reduce taxpayers' costs and risks, and lower the political pressures often involved in transportation project decisions.

Resource

Paul Stumb, Ph.D., Kaleigh Walker, and Alexandria Wood, "There's More Than One Way to Pave a Road." Beacon Center of Tennessee. Policy Report No. 12-02. September 26, 2012. http://www.beacontn.org/wp-content/uploads/Theres-More-than-One-Way-to-Pave-a-Road.pdf.

★ *Replace the gas tax with a vehicle miles traveled (VMT) tax as a more equitable and efficient source of transportation revenue.*

The Problem

Historically, Tennessee has boasted a reputation as having some of the United States' finest roads. CNBC ranks Tennessee fourth in the nation in this area, and among the handful of states that fund transportation and infrastructure without debt, Tennessee ranks highest.[4] Since Tennessee's roads are funded exclusive through a tax on gasoline sales, its reputation as a transportation leader is in jeopardy.

As the number of drivers in Tennessee continues to increase, revenues generated by the gas tax fail to keep pace. This is due to a number of factors, not least of which is the increased demand for hybrid and electric vehicles, in addition to a more general move by consumers to more fuel efficient vehicles.

In order for Tennessee to continue leading the nation in transportation and infrastructure, the state needs to adapt its funding sources to the changing landscape in the automotive market. A simple increase in the existing tax will address only those shortfalls in the immediate future, failing to offer a long-term solution.

Our Solution

The General Assembly should repeal and replace the current gas tax with a vehicle miles traveled (VMT) tax that adequately addresses any privacy concern surrounding the imposition of the tax. A VMT offers a method that charges a tax based on miles traveled, directly tethering the funding sources to the use of roads rather than the amount of fuel consumed. This method puts the focus on road consumption, which is both more efficient and equitable. Additionally, a VMT protects against declining revenues that are the result of those vehicles that consume less or no gasoline, but still travel frequently on Tennessee's roadways.

Resource

Paul Stumb, Ph.D., Kaleigh Walker, and Alexandria Wood, "There's More Than One Way to Pave a Road." Beacon Center of Tennessee. Policy Report No. 12-02. September 26, 2012. http://www.beacontn.org/wp-content/uploads/Theres-More-than-One-Way-to-Pave-a-Road.pdf.

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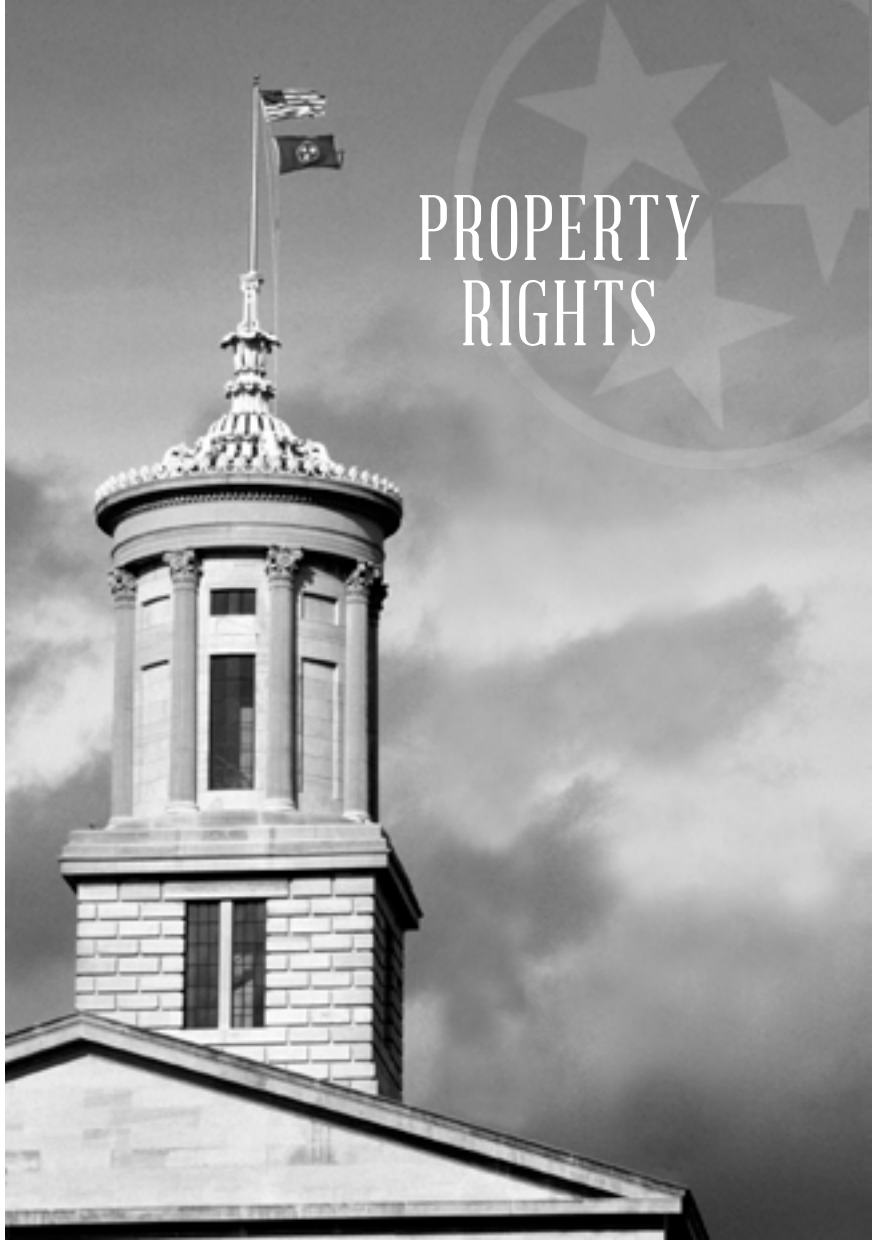

PROPERTY RIGHTS

★ *Strengthen private property rights by prohibiting private-to-private transfers of property seized via eminent domain.*

The Problem

Eminent domain abuse has been an ongoing problem in Tennessee, particularly in large cities like Memphis and Nashville. Although the General Assembly passed eminent domain reform legislation after the infamous 2005 *Kelo v. New London* Supreme Court decision, such protections are insufficient. Without adequate protection of property, owners are less willing to invest resources, while lenders hesitate to accept property as collateral. This has a "snowball effect" that ultimately obstructs the formation of capital and 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."[1]

In 2008, the Castle Coalition, a project of the nonprofit Institute for Justice, released an updated version of its "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."[2] Only six states have done less to protect their citizens from eminent domain abuse, according to the report. Alternatively, 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 under the guise of economic development. 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, limiting the use of eminent domain to truly public endeavors.

★ *Strengthen the statutory blight definitions and curtail the authority of housing agencies to prevent abusive eminent domain practices.*

The Problem

The most abusive eminent domain practices occur under the pretext of "blight" designations. Local governments and housing agencies often seek out certain land for potential redevelopment, or developers approach city leaders with redevelopment plans for plots that are in many cases privately owned. Private property rights are placed in jeopardy once city officials and politically connected developers set their sights on those areas. Under current state law, it is very easy for local governments to simply declare desirable property blighted to invoke condemnation proceedings and take the land through eminent domain.

State law contains numerous loopholes that threaten private property. 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."[3] Housing and community development agencies have the most expansive authority under the state's eminent domain laws. Property owners are victimized at the hands of these housing agencies, such as the Nashville Metropolitan Development and Housing Agency, more often than any other governmental entity. Not only can these agencies confiscate property considered blighted under a much too broad "redevelopment plan" provision, they can also take property simply to remove, prevent or reduce blight, blighting factors, or the causes of blight.[4] These loopholes provide vast discretion to unelected, unaccountable housing agencies to take private property. These agencies can often use these broad blight definitions to seize private property without any oversight by elected officials.

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 blighted. Property should also not be condemnable to prevent possible future blight or to advance purported redevelopment purposes. Finally, the General Assembly should curtail the expansive authority of unelected, unaccountable housing agencies by requiring that an elected legislative body, such as the local county commission or city council, first authorize all eminent domain proceedings.

★ *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. A regulatory taking occurs when a federal, state, or local government enacts land use regulations that effectively limit the use of private property. As former U.S. Supreme Court Justice Oliver Wendell Holmes noted, "While property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking."[5] This "taking" invokes certain constitutional protections. A problem, however, lies in weak case law related 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.[6] 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 to determine the harm done to the property's value. 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."[7]

Our Solution

The General Assembly should recognize property devaluation through regulation as takings, giving property owners 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 that the value of the property is not affected. This will allow state and local governments to regulate when necessary, but it will shift the burden of the regulatory costs to the government where it belongs rather than the individual property owners. Government should not require property owners to bear the costs of regulations meant to benefit society as a whole.

★ *Prohibit local law enforcement agencies from seizing citizens' personal property or money without proof that it is connected to a crime.*

The Problem

Policing for profit has exploded across the nation. The practice, officially known as civil asset forfeiture, allows law enforcement agencies to seize personal property, such as cars, money, and other assets, merely because officers "suspect" that the property is related to a crime. Unlike criminal law, which requires probable cause for arrest, followed by proof of guilt beyond a reasonable doubt for conviction, civil forfeiture allows law enforcement to seize property based merely on a lesser preponderance of the evidence standard. Further, "with civil asset forfeiture, property owners are effectively guilty until proven innocent."[8] Tennessee law also protects local law enforcement from reporting requirements, meaning that little is known about how much money and property is actually seized and used by police in the state. It is known, however, that the federal government's civil asset forfeiture fund has grown from just $94 million in 1986 to an astounding $1 billion in 2010.[9]

Recent investigations by the Institute for Justice and Nashville's News Channel 5 uncovered that policing for profit has led to questionable law enforcement activity. One judicial district, for example, now patrols highways and interstate stretches in a county more than 70 miles away from its jurisdiction, offering the local law enforcement agency a cut of any money or property seized. Another newly created agency frequently gets into "turf wars" with its local law enforcement agency, both trying to claim their slice of the civil asset pie to fund their operations. As these investigations have shown, incentivizing police officers to fund their own pay, equipment, and other operations through civil asset forfeiture sets a dangerous precedent for abuse of citizens' property rights.

Our Solution

The General Assembly should outright ban the practice of civil asset forfeiture in Tennessee. Only if law enforcement can meet the criminal standards applied to arrests should they be able to seize personal property. Prosecutors should then be required to prove beyond a reasonable doubt that the property was related to or used in furtherance of a crime; otherwise they should be required to return the property to its rightful owner.

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6. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

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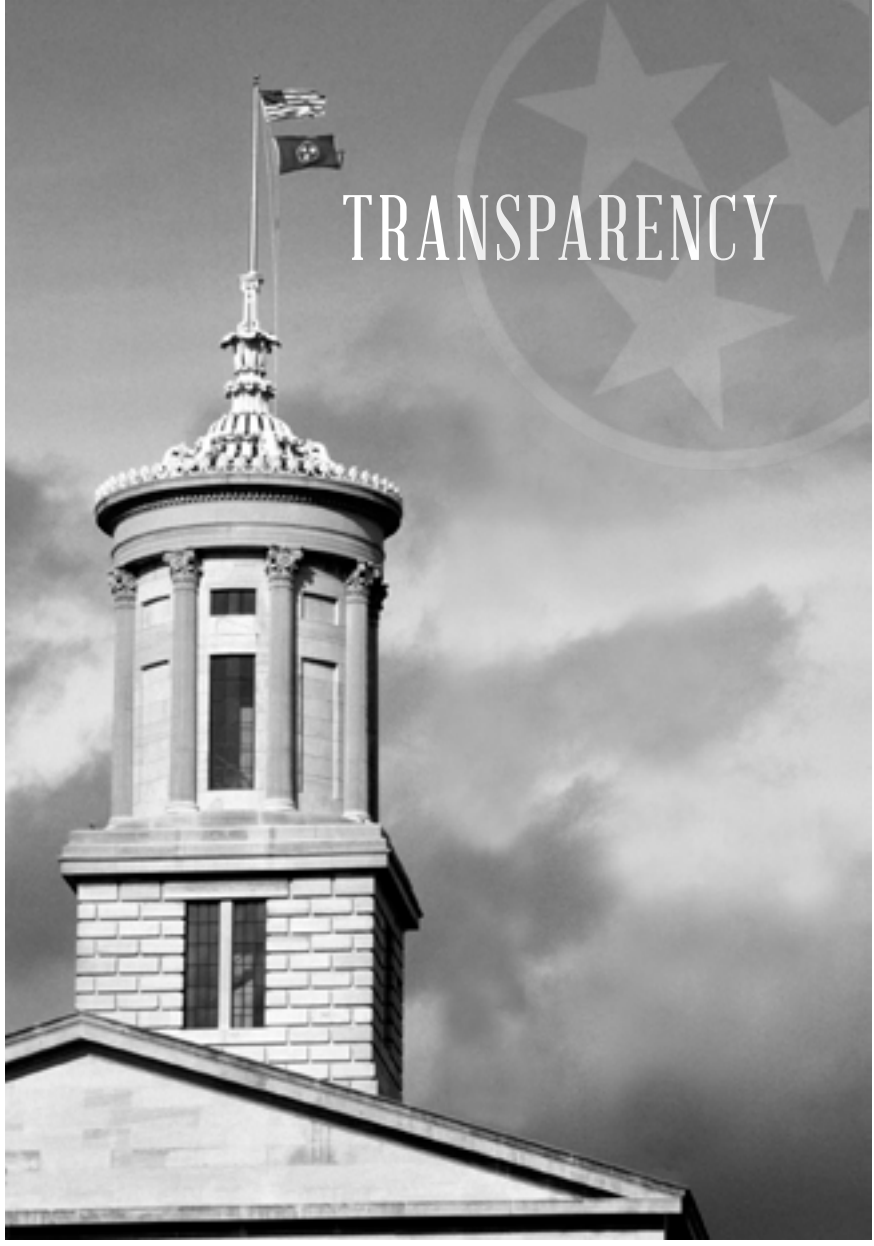

TRANSPARENCY

TRANSPARENCY

★ *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 requesters. 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 rule's effect has allowed records custodians 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 poor management.

Further, custodians are not required to itemize the charges imposed for records, allowing them to arbitrarily charge a high fee for requested records without explanation. In many cases, simply providing a citizen with a high cost estimate to obtain requested records will deter that citizen from further seeking those records or making future public records requests. Consequently, this undermines the express purpose of the Public Records Act.

Our Solution

The General Assembly should override the OORC's ability to implement such rules that subvert 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. Only the actual cost to provide public records should be charged to the citizen.

Also, when local governments or state agencies charge citizens for public records, the responding entity should provide the requester with an itemized schedule of costs associated with the request. This would curb 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."[1]

★ *Ban the use of tax dollars by local governments to lobby the state.*

The Problem

For years, local governments across the state have directed tax dollars to lobbyists to influence state and federal lawmakers. In fact, a Beacon Center study found that between 2007 and 2009, local governments across the state spent $5.3 million to lobby Congress and the Tennessee General Assembly.[2]

Often, these lobbyists are employed to expand policies that taxpayers typically oppose—higher taxes and bigger government. Additionally, the exact purpose of local government lobbying contracts are typically undisclosed, leaving taxpayers in the dark about how and for what purpose their tax dollars are being used.

Our Solution

The General Assembly should prohibit the use of taxpayer dollars to pay lobbyists at the state and federal level. At the very least, lawmakers should require local governments to disclose the exact amount of tax dollars spent on lobbying and the purpose for which the lobbying services were retained. Only then will taxpayers have the information necessary to hold their local governments accountable.

Resource

Justin Owen, "The Dangerous Cycle of Taxpayer-Funded Lobbying." Tennessee Center for Policy Research. September 2009. http://www.docstoc.com/docs/25912502/The-Dangerous-Cycle-of-Taxpayer-Funded-Lobbying.

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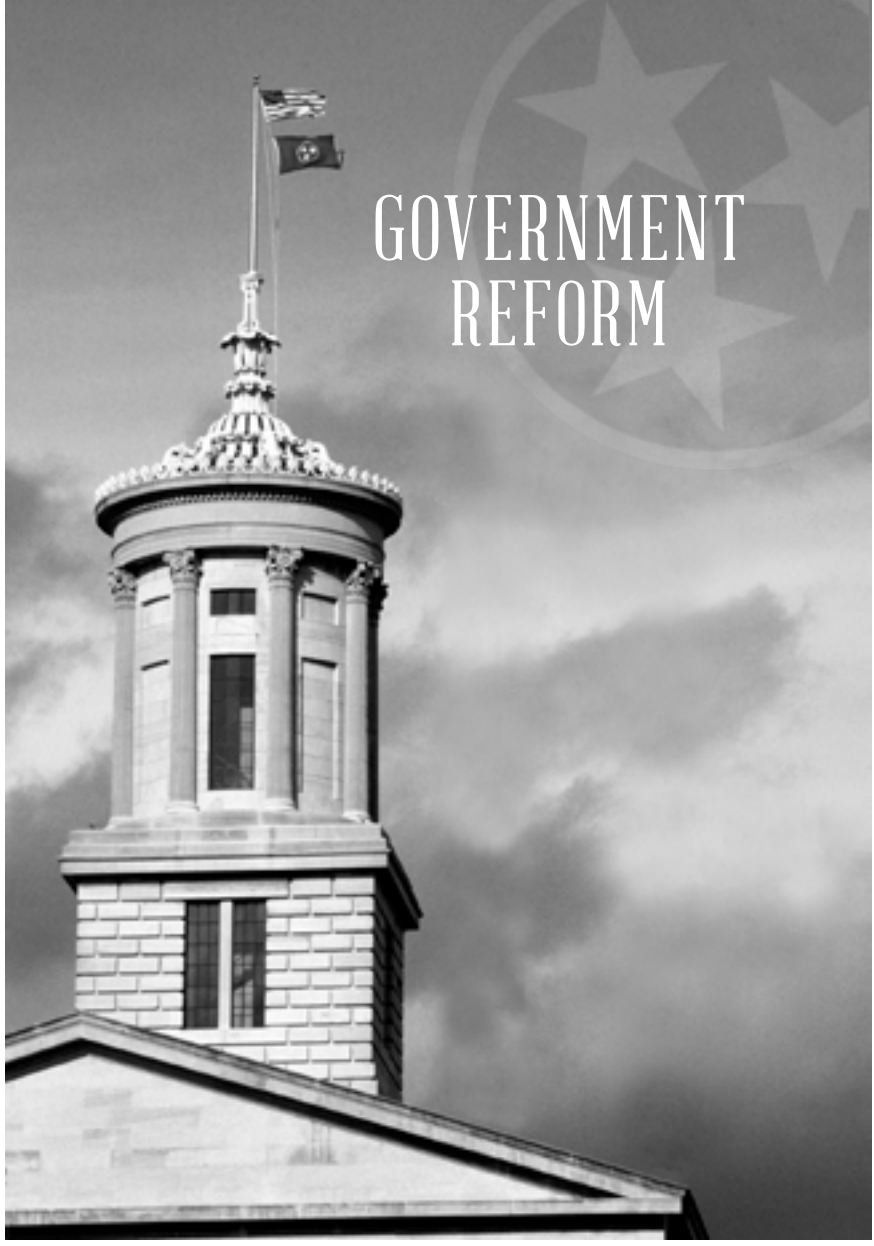

GOVERNMENT REFORM

GOVERNMENT REFORM

★ *Reform the state's system for selecting judges by eliminating the current unconstitutional process and replacing it with a model whereby the governor nominates judges, who are then confirmed by the legislature.*

The Problem

In 1994, the General Assembly enacted the "Tennessee Plan for Judicial Selection and Evaluation." The act's passage meant Tennessee voters would no longer elect members of the state Supreme Court, as they had since 1853. As a result, 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)?"[1]

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.[2] The best solution for selecting judges is not to elect them as the Constitution demands, nor to leave the decision to a select few political appointees as the current plan outlines. To balance the competing goals of judicial independence and accountability, a third approach should be considered. The process for selecting federal judges adequately balances these competing interests, and a similar model should be implemented at the state level.

Our Solution

The General Assembly should take steps to amend the Tennessee Constitution to reflect a new method for choosing state judges. The amendment should allow the governor to appoint judges to the bench, who will then be subject to confirmation by the legislature, similar to the approach for selecting federal judges. However, unlike federal judges who have life tenure, state judges should be term-limited under this revised approach. Such a revised federal model would ensure that judges remain neutral and independent while maintaining accountability in the judicial system.

Resource

Justin Owen, "The current plan on judges is ridiculous." *Tennessean*. May 13, 2009. http://www.beacontn.org/2009/05/the-current-plan-on-judges-is-ridiculous/.

★ *End the practice of picking business winners and losers through grants and tax credits to favored companies at taxpayers' expense.*

The Problem

When the state gives favorable tax and regulatory treatment to a particular company or industry, it does so at the expense of all other existing and potential businesses. This effect is compounded when direct subsidies are offered. Resources are shifted into business activities that might not be sustainable without continued favorable treatment, thereby trapping the state in the politicized dilemma of choosing between providing life support or allowing the business or industry to fail.

Businesses that do not receive preferential treatment bear comparatively high tax and regulatory burdens. Many such businesses are more likely to fail or are encouraged to move to other states, and many will simply never come into existence. Those businesses that do continue their operations subsidize those in favored industries and will be less able to compete for available resources.

The favorable treatment of companies is often contingent on their commitment to create or retain a defined number of jobs in Tennessee. There is also a bias in favor of companies involved in the manufacture of products for export. Such state policy biases necessarily place job creation ahead of customer service, and the export bias gives precedence to the service of customers outside Tennessee.

Our Solution

The General Assembly should, both on principle and as a practical matter, eliminate the practice of promoting any particular industry or business through subsidization or special tax and regulatory treatment. The elimination of corporate welfare should be part of a broader policy of treating all businesses and individuals equitably and fairly, thereby allowing a sustainable pattern of economic development that fits with the needs of Tennesseans and the availability of real resources.

★ *Prohibit public utilities from using ratepayer or taxpayer money to compete with the private sector in the Internet business.*

The Problem

Cities across the United States are subscribing to the mindset that all of their citizens deserve free wireless Internet access. Government involvement in Internet discourages enterprises from investing in Wi-Fi infrastructure, curtailing choices available to citizens by artificially skewing markets in cities. Government Owned Networks are also extraordinarily costly. The city of Trion, Georgia, spent nearly $1,800 per resident on citywide Wi-Fi access, far more than any private entity would spend on this service.[3] Municipal Wi-Fi also leads to the redistribution of tax dollars, in many cases from poorer taxpayers to wealthier ones. Only those able to afford devices that access wireless Internet can take advantage of these services, yet all taxpayers or ratepayers pay for them. In many cases, when an electric utility, for example, seeks to enter the Internet business, it uses its electricity ratepayers' money to cover that expansion. Many of those electricity ratepayers cannot afford or have no interest in the Internet venture.

Government involvement in the Internet business may also potentially lead to censorship of the Internet, resulting in free speech infringements that would not occur in the private market. It is incredibly difficult for the government to control content or monitor usage when it is being provided by a private corporation, another benefit to banning government from directly providing Internet service in competition with the free market.

Our Solution

The General Assembly should recognize that there is sufficient competition among private Internet providers, barring public utilities from providing their own Internet services. The private sector has the capabilities and incentives to expand Internet service. Government involvement in this area exposes ratepayers and taxpayers to unnecessary risk, will hamper future market growth, and also opens the door to possible censorship and other side effects.

Resource

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. May 17, 2010. http://www.beacontn.org/wp-content/uploads/5-17-10-TN-municipal-overbuild-letter.pdf.

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