Growth STRATEGIES

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IN THIS ISSUE: THE HIGH COST OF FEDERAL REGULATIONS

The tide of red tape that threatens to drown US consumers and businesses surged yet again in 2015, according to a Heritage Foundation study. More than $22 billion per year in new regulatory costs were imposed on Americans last year, pushing the total burden for the Obama years to exceed $100 billion annually.

The Obama rule-making frenzy is one reason Americans are angered by a lack of jobs and raises, writes Holman Jenkins in the *Wall Street Journal*: "America's salvation has been a dynamic that, over time, creates more good jobs than it destroys. As much as anything, damage to this dynamic explains this election year. It explains the coalition forming around Donald Trump."

1 – WHAT HAPPENED TO THE FUTURE?

A 2013 study from economists John Dawson of Appalachian State University and John Seater of North Carolina State University, Federal Regulation and Aggregate Economic Growth, estimates that the past 50 years of federal regulations have reduced real GDP by roughly two percentage points a year, or nearly $40 trillion.

Instead of the US economy growing by just over 3% a year since World War Two, it would have grown by over 5% a year. "That is, GDP at the end of 2011 would have been $53.9 trillion instead of $15.1 trillion if regulation had remained at its 1949 level," the authors conclude. (And by the way, the study does not attempt to quantify the costs of the Affordable Care Act or Dodd-Frank financial regulation.)

Imagine a US economy four times as big – four times as wealthy – as the one today. Basically, we would have the US economy of 2080 right now.

If Dawson and Seater are correct, the cumulative impact of decades of post-New Deal regulation is also why US productivity growth and innovation downshifted in the 1970s, a phenomenon still a topic of much debate among academic economists. Indeed, an important channel for regulation impact is decreased innovation, rather than just compliance costs.

2 – REGULATIONS ARE A REALLY BIG DRAG ON U.S. GROWTH

In a 22-industry study released in April by the Mercatus Center at George Mason University, a group of researchers found that federal regulations created an economic drag on the US economy amounting to an average annual reduction in GDP growth of 0.8%. What is unique about this study is that it evaluates the cumulative costs of regulation over a long time period and examines the effect of federal regulations by considering a counterfactual experiment: What would have happened if federal regulations had been "frozen" at the levels that prevailed in 1980?

The study's authors posit that the cumulative buildup of federal regulations over time leads to duplicative, obsolete, conflicting and even contradictory rules, and that the multiplicity of such regulatory constraints complicates and distorts executive decision-making concerning a firm's planning for research and development, business expansion, investments in new equipment, and updating manufacturing processes.

Thus, because of the importance of innovation and productivity growth to the US economy, these distortions have negative consequences for long-term economic growth in the US. The Mercatus research team calculated that the 0.8% annual drag on real GDP growth since 1980 due to the cumulative effects of regulation can be extrapolated into a 25% reduction in the size of the US economy in 2012, or an economy that was $4 trillion smaller (nearly $13,000 per American) than it would have been in the absence of regulatory growth.

3 — AMERICA'S ECONOMIC PROBLEM IS REGULATION, NOT TRADE

Clyde Wayne Crews of the Competitive Enterprise Institute has devoted much of his working life to assessing the impact of regulation. In his working paper last year entitled "Tip of the Costberg," he figured the total price of regulation to be $1.88 trillion. At $399 billion, economic regulation had the biggest impact, closely followed by environmental controls, which cost $386 billion. Tax compliance finished third at $316 billion, followed by health care at "only" $190 billion. Communications, labor, financial, transportation, and others added smaller amounts.

However, these figures almost certainly are too low. …

Regulatory costs play out in many ways. One aspect is what an individual or company spends to comply with government dictates. Far harder to measure is what does not occur as a result of arbitrary and expensive rules. What products are not launched, what enterprises are not started, what jobs are not created? …

Overall how much have we lost from excessive, unnecessary regulation? A lot, according to economists John W. Dawson and John J. Seater. They considered the cumulative impact of losing a couple percent of economic growth year in and year out from 1949 through 2005: "That reduction in the growth rate has led to an accumulated reduction in GDP of about $38.8 trillion as of the end of 2011. That is, GDP at the end of 2011 would have been $53.9 trillion instead of $15.1 trillion if regulation had remained at its 1949 level." Imagine a nearly four-fold increase in per capita income and wealth.

4 — LIBERTY'S NEMESIS: THE UNCHECKED EXPANSION OF THE STATE

Whether they realize it or not, Americans are subject to the soft despotism of administrative law. The common-law system of ordered liberty and evolutionary correction that the United States inherited from England is hardly recognizable in our current legal system. Bureaucratic administrative agencies that are unaccountable to voters now determine many of the rules and regulations that have palpable effects on the everyday lives of ordinary citizens.

In many important respects, we no longer live in a constitutional republic – we're subject to the rule of an unaccountable administrative state. This is the problem confronted in *Liberty's Nemesis: The Unchecked Expansion of the State*, edited by Dean Reuter and John Yoo.

Although the US Constitution does not expressly endow them with legislative prerogative, or even contemplate their current form and function, administrative agencies issue and enforce binding rules. They arrogate to themselves powers nowhere authorized by the Constitution or validated by historical Anglo-American experience. These agencies, moreover, govern quotidian activities once left to local communities and small businesses – everything from managing hospital beds to issuing permits to liquefied petroleum gas dealers. On both the state and federal level, administrative agencies have intruded upon local customs and practices and have imposed burdensome regulations on resistant groups, trades, neighborhoods, and civic associations. …

Although the composition and character of the US Supreme Court is undoubtedly the most important issue in the 2016 election because of the president's power to appoint a successor to Justice Scalia – and possibly other justices nearing retirement – voters must also bear in mind the rapid and steady expansion of the administrative managerial state under President Obama. Conservatives now populate state legislatures in vast numbers; state attorneys general collaboratively have begun pushing back against federal agencies; state supreme courts have welcomed traditionalist jurisprudents who revere their state constitutions and the federalist system envisioned by the American Founders. …

It will take a new kind of president to roll back the administrative state altogether. State resistance alone is no longer enough. Without any pressure from the executive branch, Congress will remain content to pass off touchy political decisions to administrative agencies, which, unlike politicians, cannot be voted out of power. Congress, in turn, can blame the agencies for any negative political consequences of those choices.

We may never recover the framework of ordered liberty that the Founding generation celebrated and enjoyed. But for the sake of our future, and to secure the hope of freedom for our sons and daughters, our grandchildren and their children, we must expose and undo the regulatory regime of administrative agencies. It's our duty to do so.

5 – THE HIDDEN TAX THAT COSTS HOUSEHOLDS UP TO $1600 A YEAR

A rising tide of regulation has covered almost a third of the US labor market. Workers who previously could find a job on the strength of their experience and talent now need their state government's permission before taking a job. The "permission slip" in this case is an occupational license or required certification.

Occupational licenses act as a barrier to potential new workers in an occupation. The costs and delay associated with obtaining a license convinces many potential workers to not even try. As a result of the decreased competition among workers, customers end up paying more, either directly or through their state and local taxes.

6 – HOME BUILDERS SQUEEZED BY RISING COMPLIANCE COSTS

The average cost for home builders to comply with regulations for new home construction has increased by nearly 30% over the last five years, according to new research from the National Association of Home Builders.

Regulatory costs such as local impact fees, storm-water discharge permits and new construction codes, which have risen at roughly the same rate as the average price for new homes, make it increasingly difficult for builders to pursue affordable single-family construction projects, the group argues.

The cost of regulation imposed during the land development and construction process on average represented $84,671 of the cost of the average new single-family home in March. That is up from $65,224 in 2011, the last time the home-building industry group conducted a similar survey on regulatory costs. …

Other recent surveys have also suggested that builders are contending with steeper costs than they have in the past. A study this week from housing research firm Zelman & Associates found that local infrastructure "impact fees" have increased by 45% on average since 2005 in 37 key home building markets across the country, to about $21,000 per home.

7 – THIS LEGISLATION WILL CURB THE POWER OF UNACCOUNTABLE BUREAUCRACY

The Constitution could not be clearer: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." However, it seems that someone forgot to tell federal regulators about that.

Each year, regulators impose thousands of rules on the American people – over 20,000 during the Obama administration's tenure alone. The cost is staggering: According to an upcoming Heritage study, the cost of Obama's new rules alone is over $100 billion each year, and that only counts the biggest regulations.

There is a solution: make Congress approve new regulations before they become effective. That would shift responsibility back to where it belongs – in Congress. Regulators would no longer be able to legislate though rule-making without congressional action, and Congress would no longer be able to evade accountability for the rules that are imposed.

The REINS ("Regulations from the Executive in Need of Scrutiny") Act would implement just such a system, requiring congressional approval for the hundred or so "major" rules each year that cost $100 million or more. Yet, that bill – first introduced seven years ago – has been stalled in Congress. While approved by the House multiple times, it failed to gain any traction in the Senate.

Part of the reason for the stalemate is critics' concerns over how the system would work in practice. That's where Lee's amendment comes in. He would impose REINS Act requirements solely on major rules from the Department of Energy.

This department certainly could use some scrutiny. Last year, the Department of Energy was responsible for six new major rules imposing new energy conservation standards on everything from ceiling fans to icemakers. The total cost: $1.6 billion each year for American consumers. And more is in store, with 10 more major rules on the agenda. Under the Lee amendment, each of these new rules would need explicit congressional approval to take effect.

The Lee approach provides a good toe in the water for broader implementation of REINS, providing a real life test of Congress' ability to handle the expected new workload, and to identify any unexpected difficulties in implementation.