Regulation without Representation
What You Should Know to Protect Yourself, Your Community, Your State, Our Liberties and Our Republic

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Thomas Jefferson

“The two enemies of the people are criminals and government, so let us tie the second down with the chains of the constitution so that the second will not become the legalized version of the first.”

“When we must wait for Washington to tell us when to sow and when to reap, we shall soon want bread.”
Financial Situation as of October 19, 2016

- Federal Government Debt – $ 19.706 trillion
  - $ 19.433 trillion (8/23/2016)
  - $ 18.403 trillion (9/29/15)
  - $ 16.9 trillion dollars (08/16/13)
    - Increased almost $ 3 trillion in last 3 years
- $ 60,685 per citizen
- $ 165,073 per taxpayer
  - Increases around $ 3.5 billion every day
- Source: U.S. Debt Clock
Financial Climate 10/19/2016

- Total U.S. Debt: $66,513,500,000,000
  - $204,825 per citizen
  - $806,740 per family

As of 9/29/2015
- Total U.S. Debt: $65,224,022,000,000
  - $202,662 per citizen
  - $800,678 per family

As of June 23, 2015
- Total U.S. Debt: $61,127,832,000,000
  - $190,365 per citizen
  - $752,822 per family
Spending Spree

- 110th Congress (01/07 to 01/09) increased debt by $1.957 trillion to the overall debt
  - The Debt was $9.4 trillion as of December, 2010
- 111th Congress (01/09 to 01/11) added $3.22 trillion to the overall debt.
  - More than the first 100 Congresses combined.
- 112th Congress (01/11 to 01/13) added almost $4 trillion to the overall debt
- 113th Congress (01/13 to 01/15) added almost $2 trillion to the overall debt
  - Significant events: sequestration reduced gov’t spending; end of payroll tax holiday (raising revenue)
- December, 2015 – Congress approved a $1.1 trillion dollar spending package – the “omnibus spending bill”
- Debt has increased over $9 trillion since 2009
Spending Spree cont. (and cont. and cont. and cont. and cont.)

- President Obama’s federal budget proposal for FY 2013 - $3.803 trillion in discretionary, entitlement and interest spending
- President Obama’s federal budget proposal for FY 2014 - $3.901 trillion in discretionary, entitlement and interest spending
- President Obama’s federal budget proposal for FY 2015 and 2016 - $4.0 trillion each year in discretionary, entitlement and interest spending
Long-Term Spending Forecast

- We have entered the era of $4 trillion in annual federal spending.
- CBO projects that deficits each year will exceed $1 trillion by FY 2022.
- Total annual spending is estimated to be $5.8 trillion in 2024.
- The CBO projects that the country will borrow another $9.6 trillion in the next ten years (between now and 2026).
The California Example (water infrastructure and the “drought”) 
- California has essentially the same major water infrastructure today (pop. 40 million) that it did in the 1960’s (pop 16 million).
- California has the nation’s largest tax base.
- “California’s government, like the federal government and most other state and local governments, spends its money on salaries, benefits, pensions, and other forms of employee compensation.” *Id.*
- “[I]t is estimated that something between half [50%] and 80 percent of California’s state and local spending ultimately goes to employee compensation.” *Id.*
- The Air Force has nearly as many civilian employees as it does guardsmen and reserves combined. *Id.*
Three Branches of Government

- Executive (President, Governor)
- Legislative (Congress, State Legislatures)
- Judicial
- Federal and State Agencies
- What happens once the legislation is passed?
Statutes vs. Regulations – A Primer

- Statutes – Legislative Branch
  - Endangered Species Act
  - National Environmental Policy Act
  - Clean Air Act
  - Clean Water Act

- Regulations – Executive Branch (President, Governors)
  - Developed by the agencies
The “Real Governing Class”

- In 2009, Congress passed 125 bills; over 3,500 Regs adopted by Fed Agencies
- In 2010, Congress passed 217 bills; 3,573 Regs adopted by Fed Agencies
- In 2011, Congress passed 81 bills; 3,807 Regs adopted by Fed Agencies (6.5% increase over 2010)
- In 2012, Congress passed 127 bills; 3,708 Regs adopted by Fed Agencies
- In 2013, Congress passed 72 new laws; 3,659 new Regs (51 Regs for every law; a new rule every 2 ½ hours)
- 113th Congress (2013-2014) - passed 296 new laws; 3,541 new Regs; Obama admin had pushed through over 21,000 Regs by end of 2014.
- 114th Congress (2015) – passed 114 new laws; 3,410 new Regs (30 rules for every law enacted)
Legislature/Congress v. Agencies

- Agencies do not answer to voters, so the unelected end up doing the majority of the lawmaking.
- Our elected officials are allowed to avoid making difficult decisions.
  - Legislative Malpractice
  - Avoid accountability for government
- Agencies are incentivized to expand their jurisdiction, authority, oversight, involvement, _____, _____, _____, _____ (power, budgets, etc.)
  - Job protection
- No accountability (nearly impossible to fire federal employees)
- Self-funding (avoiding any Congressional oversight) – PROTECTING EMPLOYEES AND SALARIES
  - USBR
  - Corps of Engineers
  - EPA
  - Increase power
  - Every financial incentive to delay, delay, delay
Redundant Redundancy

- EPA (federal); DEQ (state)
- Dept of Transportation (federal and state)
- Dept of Education (federal and state)
- Dept of Labor (federal and state)
- Dept of Agriculture (federal and state)
Regulations – Costly and Contradictory Redundancy

- Federal Regulations - Examples
  - Clean Water Act
  - Endangered Species Act
  - National Forest Management

- State Regulations
  - Enforcement of the Clean Water Act
  - Game and Fish Regulations
  - Management of State Forest Lands

- What else is happening?
  - State agencies view themselves as branches of the federal government
    - Lack of independence
    - No protection for State’s citizens
Announced in January, 2011: “A government-wide review of the rules already on the books to remove outdated regs that stifle job creation and make our economy less competitive.”
Regulatory Burden 2011 – A Summary

- Pages of regulations published in the Federal Register (2011)
  - 75,770 as of 12/2/11
- Million hours of annual paperwork burden
  - 119.4 million hours as of 12/2/11
- Zero economically significant rules repealed in 2011
Regulatory Burden 2012 – A Summary

- January 27, 2012: 374 days since Executive Order on Regulations
  - $ 7.7 Billion – cost of regulatory burdens from new rules in first 27 days of 2012
  - 4456 pages in the Federal Register in first 27 days of the year
  - 25.3 million hours of annual paperwork burden imposed in first 27 days of the year

- June 22, 2012:
  - 521 days since President’s Executive Order
  - 1 rule repealed – spilled milk is no longer considered an “oil spill.”
Regulatory Expansion

- Federal Cost to administer and police the regulatory enterprise: Over $63 billion dollars per year (2015)
- Number of federal regulatory employees: over 300,000; increased 17% under President Obama from 2009 through 2012.
- U.S. Population: 324,256,157 (08/23/16)
  - U.S. Workforce: 151,702,898 (47%)
    - Private Sector: 120,177,748
    - Government Empl. 23,707,561 (20% of private)
Agency “interpretation” of Statutes

- EPA interpretation as described by U.S. Supreme Court in *Rapanos v. U.S.*
- Health-care law – power of Secretary of Health and Human Services
  - Obamacare law – 2700 pages
  - Lawyers drafted over 20,000 pages of regulations for implementation (13,000+ pages in December, 2012)
  - In excess of 180 boards, commissions, and bureaus
  - 18 pages in Fed.Reg. to define “full-time” employee (now reduced to 30 hours per week)
  - IRS Estimate: it will take 79,229,503 hours for families and businesses to comply with Obamacare Taxes (80 million hours – seriously)
Greenwire 1/23/2014: “Joe Goffman is the U.S. EPA’s law whisperer. His specialty is teaching an old law to do new tricks.”

“Goffman is gearing up the 1970 Clean Air Act to be the vehicle for curbing power plants’ greenhouse gas emissions.”

But with no congressional action likely anytime soon to address climate change, Goffman’s back at EPA to help shape a new rule for working power plant fleets under a rarely used section of the Clean Air Act.”

“Goffman has a sense of vocation to the Clean Air Act. He has been working on the law and its associated regulations for 30 years, often focusing on problems that were not envisioned in the original law and thus require ‘new tools.’”
United States Supreme Court

“An agency may not confer power upon itself. To permit an agency to expand its power in the face of a congressional limitation on jurisdiction would be to grant to the agency power to override Congress. This we are both unwilling and unable to do.” *Louisiana PSC v. FCC*, 476 U.S. 355, 374-375 (1986)

“Agencies must always ‘give effect to the unambiguously expressed intent of Congress.’ (Citation omitted). The power to execute the laws does not include the power to revise clear statutory terms that turn out not to work in practice.” *Utility Air Regulatory Group v. EPA*, 573 U.S. ____ (2014) (Syllabus)
Examples of Regulatory Overreach – have we gone crazy?

- Pythagorean Theorem ........................................ 24 words
- First Amendment to the U.S. Const........... 45 words
- Lord’s Prayer .................................................. 66 words
- Archimedes’ Principle ................................. 67 words
- 10 Commandments ................................. 179 words
- Gettysburg Address ................................. 286 words
Have We Gone Crazy cont.

- Declaration of Independence .................. 1300 words
- U.S. Govt. Regs on Cabbage Crop Insurance ........................................ 3500 words
- U.S. Constitution (w/ 27 Amend) .......... 7,818 words
- U.S. Govt. Regs on Special Rules for Experimental Populations of T and E Wildlife and Plants .......... over 36,000 words
The federal worker-safety laws include some 4,000 rules dictating precisely what equipment shall be used and how facilities are built.

- **Stairways shall be lit by “natural or artificial illumination.”**

Under a recent federal directive, the number of health-care reimbursement categories will soon increase from 18,000 to 140,000

- Includes 21 separate categories for “spacecraft accidents” and 12 for bee stings.

There are over 100,000,000 words of binding federal statutes and regulations, and states and municipalities add billions more.
We are crazy

HHS Regulation:

“Administrative Simplification: Adoption of Authoring Organizations for Operating Rules and Adoption of Operating Rules for Eligibility and Claims Status”
Hidden (indirect) Costs and Regulatory Burdens: The Real Definition of a Crises

- 1992-Regulation Costs: $ 400 billion
- 2001-Regulation Costs: $ 843 billion
- 2005-Regulation Costs: $ 1.1 trillion
- 2008- Regulation Costs: $1.75 trillion

These costs do not include:

- Obamacare
- Dodd/Frank financial “reform”
- Recent EPA Regulations

Total cost of FEDERAL regulations (as of 2015)
- $ 1.948 trillion dollars
Regulatory Costs cont.

- 2012 income taxes – Over $1.1 trillion
- 2015 – Income tax receipts over $3.1 trillion (63% increase since 2000)
- 2016 – Income tax receipts as of 10/19/16: $3.283 trillion
- Income tax rate must be disclosed
- No similar requirement for costs of regulations
  - Unless have an “impact” of $100,000,000.00 or more (defined as “economically significant”)
    - Self-calculated, defined and reported
    - Agencies typically underestimate costs by 40%
Regulatory Costs cont.

- The estimated cost of regulation is equivalent to $\frac{1}{2}$ of federal spending ($3.687$ trillion in 2015).
- Regulatory costs amount to $11\%$ of the U.S. GDP (which was $17.9$ trillion in 2015).
- In absolute terms, the U.S. Gov’t is the largest government on planet earth.
- Regulations and deficits each exceed $1$ trillion per year.
- Regulatory costs rival corporate pretax profits of $2.208$ trillion.
Regulatory Costs, cont.

- Combined with $3.6+ trillion of federal spending, Washington, D.C.’s share of the economy now reaches over 31.1%.
  - This does not include state and local spending and regulation.
- In 2014, if U.S. regulations were a country, they would have been the 10th largest economy, ranked b/w India and Italy
- In 2015, if U.S. regulations were a country, they would have been the 9th largest economy, ranked b/w India and ahead of Russia
- House of Representatives has passed almost 40 bills to control regulatory expansion; Senate has refused to hear them.
Regulatory Costs, cont.

- Regulatory costs amount to an average of $14,842 per household – 22% of the average household income of $66,877.
  - This exceeds every item of the household budget except for housing.

- Small businesses pay more per employee regulatory costs.
  - Firms with fewer than 20 employees pay over $10,000 per employee;
  - Firms with more than 500 employees pay over $7,000 per employee.
Manufacturing Impacts and Costs

- Regulatory compliance costs per employee per year for manufacturers, 2012 (2014 Dollars)
  - $19,564 average for all manufacturers
  - $34,671 (small manufacturers < 50 employees)
  - $18,243 (medium manufacturers 50-99 employees)
  - $13,750 (large manufacturers 100+ employees)
Regulatory Costs – Future Costs of Current Agenda

- This Administration averaged 81 “economically significant” each year from 2009 to 2015
  - As of August 9, 2016 – the total number was a record-breaking 600 (in 7½ years)
  - The federal government is open approx. 250 days/year
    - Equates to one major fed. regulation every 3 days, 2 per week.
  - Total cost of at least $743 billion (larger than the GDP of Norway and Israel combined)
  - 194 million hours of additional paperwork (agency self-reported)
  - It would take 97,429 employees working full-time (2,000 hours per year) to comply with these new federal requirements.

- Of the 3,297 rules in the pipeline as of the fall of 2015, 218 were economically significant – potential of at least $21.8 billion in future off-budget regulatory effects
Six Most Active Rulemaking Agencies

- Department of Treasury (includes IRS)
- Department of Interior
- Commerce
- Health and Human Services
- Department of Transportation
- Environmental Protection Agency (finalized EPA regulations up by 44% in Obama’s first term)

They account for 46% of all federal rules

Please note: The EPA has refused to share with Congress the data upon which it bases its claims of hundreds of billions of dollars in health benefits from recent regulations. Tip of the Costberg at 21 (Competitive Enterprise Institute)
Recent Activities

- Definition of the “waters of the U.S.” under the CWA
  - Judge in N.D. has issued a preliminary injunction
  - Most actions consolidated in 6th Circuit Court of Appeals
  - Largest land and water grab in history?
- Greenhouse Gas Rules (including the Clean Power Plan)
- Ozone Rule (2015)
  - Reduce GDP by $140 billion per year
  - Reduce GDP by 1.7 trillion from 2017 to 2024
  - Result in 1.4 million fewer job equivalents on average through 2040
  - Cost the average U.S. household $830 per year in lost consumption
- Standard would be the most expensive regulation in U.S. history
EPA Regulation of Carbon

- Destroy 1.4 million U.S. jobs and cost the economy up to $141 billion by 2014
- 200,000 American manufacturers could lose their jobs
- 2015 to 2026 average annual impact of carbon regulation would be more than 500,000 jobs, and by 2029 the total economy-wide cost would be close to $7 trillion (roughly ½ of America’s current GDP)
EPA Regulation of Carbon

“No significant impact on reducing global GHG emission growth”

(American Council for Capital Formation)
Obama Administration Destroys Peabody Energy

- Largest Coal Company
- Filed for bankruptcy Spring of 2016
- Its demise would cost 125,000 jobs; $650 billion in economic activity (over next 10 yrs)
- According to the *American Action Forum*: Obama, Dept. of Interior, and EPA have added $312 billion in costs, along w/ 30 million hours of additional paperwork to keep up w/ regulations
- Cross-State Pollution Rule and MATS (mercury and air toxics standards), would impose $20 billion in ANNUAL regulatory costs
- S.Ct. has issued a stay against the power plant regs.
Before the End of the Year

- Greenhouse gas standards for heavy-duty trucks (proposed cost $31 billion)
- Federal policy for the protection of human subjects (proposed cost $13.3 billion)
- Efficiency standards for manufactured housing (proposed cost $4.1 billion)
The So-Called “Clean Power Plan”

- The first direct regulation of greenhouse gas emissions for power plants
- At a cost of $7.2 billion a year (with critics claiming it will be much higher)
- “Despite the costs, the plan will do nothing to mitigate global warming.” Daily Signal, May 23, 2016
The EPA published the Utility MACT (Maximum Achievable Control Technology) rule on Thursday, February 16, 2012. **EPA estimated the costs of Utility MACT to be $9.6 billion**

- The cost of the rule exceeds the benefits by between 1,600 and 19,200 to 1.
- According to the EPA: It is “its most expensive rule ever.”
Electrical Rates to Skyrocket

- 2015 Capacity Auction (occurred in May, 2012)
  - $136 per megawatt
    - 8 times higher than the price for 2012 ($16 per megawatt)
  - Mid-Atlantic Region - $167 per megawatt
  - Northern Ohio - $357 per megawatt

- According to PJM Interconnection (electric grid operator for 13 States): “Capacity prices were higher than last year’s because of retirement of existing coal-fired generation resulting largely from environmental regulations which go into effect in 2015.”

- These are not estimates, projections or computer models; they were actual prices that electrical distributors agreed to pay.
Europe’s Folly – Why follow such nonsense?

- Opportunity cost for the UK’s subsidy system for renewables estimated to be 10,000 jobs b/w 2009 and 2010
- Planned offshore wind farm estimated to cost $8972 per household
  - Cost of conventional energy – 5% of that amount ($ 448.60)
- Spain’s subsidies for renewable energy (which increased 5-fold b/w 2004 and 2010) led to the loss of 110,500 jobs
Europe’s Folly cont.

- Great Britain could be facing blackouts and extremely expensive electricity this winter.
  - A report published in June, 2016 estimates that the price of electricity could be more than 12 times higher than usual.
  - Wholesale prices predicted to rise from $85.28/MWH to $3,553.37/MWH.
  - Insufficient electricity on windless and cloudy days.
- Gov’t intends to close remaining coal power plants over the next 10-15 years.
  - Taking 24,830 MW of generational capacity off the grid (20.2%).
- UK residents paid 54% more for electricity than Americans in 2014.
- UK Gov’t estimates that green energy taxes attached to electricity bills costs residents and businesses $6.1 billion annually.
The Cost of Saving the World from “Global Warming”

- Even if every nation in the world adhered to its claim change commitments by 2030, the only difference in “global warming” by the end of this Century will be to reduce the world’s temperature by 0.048 degrees C (0.086 degrees F).
  - That is 1/20th of a degree Celsius.
  - Estimated cost? $ 1.5 trillion dollars
  - Not counting premature deaths killed by fuel poverty, birds sliced and diced by windmills or burnt to a crisp by solar panels, assault on economic progress, etc.
The Endangered Species Act and “Critical Habitat” Designations

- Data associated with the designation of critical habitat for 159 species:
  - Total economic impact: $ 10.7 billion
  - Annual economic impact: $ 1.3 billion
  - Regulatory burdens effecting 60,169,546 acres of land (11,261,054 acres of private), 83,376 miles of streams/creeks/rivers, and 68,846,720 acres of lakes/oceans/estuaries
  - Designations in 37 States and two territories

- “[A] number of studies have found that critical habitat designations has no discernible influence on whether a species’ status is declining, stable, or improving” Reason Foundation June 7, 2016.
The Endangered Species Act and “Critical Habitat” Designations; They Don’t Work

According to the USFWS: “In 30 years of implementing the Act, the Service found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service’s present system … provides little real conservation benefit….” 70 Fed.Reg. 46924 (Aug. 11, 2015), as quoted in Reason Foundation June 7, 2016.
Federal Register – Just a Glance

- 2015 Federal Register: 80,260 pages (the third highest in history)
  - FR pages devoted solely to final rules: 26,694 (a record high)
- 2014 Federal Register: 78,978 pages
- 2013 Federal Register: 79,311 pages (the fourth highest in history)
  - FR pages devoted solely to final rules: 26,417 -- a record high at that point (24,690 pages in 2012)
- 2012 Federal Register: 78,961 pages
- 2010 Federal Register: 81,405 pages (the all-time high)
- 2011 Federal Register: 81,247 pages
- Among the 7 all-time-high Federal Register page counts, 6 have occurred under Pres. Obama
Costs of Overregulation – Not Just Monetary

- Destruction of our National Forests
  - 2001 Roadless Rule
  - GAO Reports
    - Risk of catastrophic forest fires
    - Risk of beetle outbreak
      - Routt National Forest – ground zero
- August, 2016: USFS warns that it is at a “tipping point” of a crisis dealing w/ escalating wildfires and diseases.
  - 10.1 million acres torched last year.
  - Blame everything on “global warming” rather than own failed policies
    - Refuse to acknowledge that federal policy prohibits the use of proper thinning and other techniques, too many trees competing for a limited water supply, etc.
- Pleads for more funding from Congress
  - Because money fixes everything
  - Remember: The increased funding often goes to salaries and benefits – not fixing the problem.
Additional Impacts of Overregulation – The Ag Industry is in Their Sights

- Selective Enforcement
  - Dept. of Labor’s effort to ban anyone under 16 from working on farms/ranches
    - A true “war” on agriculture
    - An effort to force importation of more laborers?

- EPA clean water act actions (ignoring exemptions to 404 permitting requirements)

- Fees imposed on cattle (for methane releases)

- EPA “scientific analysis” – claims that the CWA allows it to regulate water “quantity” because of impacts to water “quality”
Congressional Incentive – to Turn a Blind Eye

“Mounting pressures to restrain spending budgets can incentivize lawmakers to impose off-budget regulations on the private sector rather than add to unpopular deficit spending. Unlike on-budget spending, the regulatory costs remain largely hidden from public view, a feature that can make regulation overly attractive to lawmakers.” 2016 Ten Thousand Commandments at 4 (Competitive Enterprise Institute)

“Rather than pay directly and book expenses for new initiatives, federal regulations can compel the private sector, as well as state and local governments, to bear the costs of federal initiatives.” Id. at 5.
Real Crisis – remains largely unrecognized

- Regulatory burden at local, state and federal level
- Regulatory burdens are creating “fuel poverty”
  - Destroying our economic freedoms and the ability for our next generation to prosper
- Our ability to protect our environment is dependent upon our economic prosperity
- If we destroy our economy we cannot educate our young people, provide necessary services, etc.
Balanced Approach is Critical

- When the government directs its resources to doing things it should not be doing, it becomes incapable of doing those things that it should
  - Ebola outbreak
  - National Defense
- A government that is closest to the governed is more responsive and accountable to the people that it was established to serve
  - Converse is also true
  - Regulation w/out representation cannot work
Solutions – Some Ideas

- There must be an immediate moratorium placed on new regulations
- There must a comprehensive analysis of the ones already on the books
- Regulations must clearly state that the statutory language controls
- Regulations and the regulatory process must be simplified
Additional Solutions

- Congress and State Legislatures must prevent “legislative malpractice”
  - Do not delegate entire authority for lawmaking to the agencies
- Reverse the “top down approach” that we have been moving towards since the new deal
  - President and Congress must be willing to return power to the States
    - Concentrating power in Washington D.C. does not and cannot work
  - Tax reform is critical (and our leaders don’t talk about it enough)
Additional Solutions

- Change the timing of when regulations are drafted and become effective
- Ensure Congressional and Legislative oversight for proposed regulations (mandatory review before they become effective)
- Require Congressional/Legislative approval before any regulation costing in excess of $_______ be implemented
- NEVER PAY A REGULATOR BY THE HOUR
Additional Solutions

- Mandatory sunsets
- Small entities must be regulated differently
- Individual accountability must replace bureaucratic micromanagement
  - We must trust our fellow men and women
EPA Specific Solutions

- Abolish “administrative courts”
- Prohibit EPA from seizing or destroying private property
- Rules and Regs, and “Guidance” documents must be completely rewritten and simplified
- Must be barred from regulating CO2
- Penalties must be dramatically reduced
- Agency’s extra-constitutional activities must be barred
Congressional Accountability

- Make Congress directly answerable to the voters for the costs that agencies impose on the public.
- Congress should vote on agencies’ final rules before they become binding on the public.
- Pass the REINS Act (H.R. 367)
  - Requires Congress to pass and the President to sign a joint resolution of approval before a new major regulation issued by an agency may take effect.
What can you do?

- We must develop and implement a Legislative and Congressional Solution
  - State Legislators must fix this at the State level
  - Congress must fix this at the Federal level

- Participate in the process – have your voices heard – you cannot rely upon “someone else” to fight these battles
Our Future as a Nation of Laws Depends on Us

“IF YOU HAVE TEN THOUSAND REGULATIONS YOU DESTROY ALL RESPECT FOR THE LAW.”

Winston Churchill
QUESTIONS OR COMMENTS?

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