

HAS THE UNITED STATES REACHED A TIPPING POINT?

*William J. Carney**

“That government is best which governs least.” Henry David Thoreau¹

I. INTRODUCTION

This Article examines the negative economic consequences of the increasing size of government and national debt upon the future of the United States economy. Increased national debt will allow space for more federal spending, at least in the short run, but, more importantly, increase interest payments on the debt to creditors, and either force higher rates of taxation or reduce spending on essentials such as national defense. The United States is witnessing remarkable growth in at least two categories: the volume of federal regulation and the magnitude of its national debt. Neither one shows signs of slowing, although the economy may do so as a result. If political forces require increased spending and debt, inflation will rise, although the United States may witness “stagflation.” This will, as seen in other countries, cause a devaluation of the dollar and rising costs for all imports. This portends a grim future for the United States.²

This Article traces the sources of demand for new regulations and enlarged government to bureaucratic demands for increasing budgets, often justified by new regulations. Political resistance to such expenditures is biased by a strong majority of voters paying no income taxes, so that increased transfer payments are a free good. Increased regulation imposes new costs on businesses, including their ability to hire new employees. Our economy becomes more sclerotic with increasingly restrictive regulations and taxes that divert resources from private investments in economic growth.

* Charles Howard Candler Professor Emeritus, Emory University Law School.

1. This is attributed to Thoreau, but scholars have found that it was not an original thought, although perhaps a felicitous formulation. Eugene Volokh, *Who First Said, ‘The Best Government is that Which Governs Least’? Not Thoreau.*, WASH. POST (Sept. 6, 2017, 1:27 PM), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/09/06/who-first-said-the-best-government-is-that-which-governs-least-not-thoreau/>.

2. Ben Popken, *Only 37 Percent of Americans Think Their Kids Will Be Better Off*, NBC NEWS (June 6, 2017, 10:37 AM), <https://www.nbcnews.com/business/consumer/only-37-percent-americans-think-their-kids-will-be-better-n768706#> (“Just 37% of Americans think that children in the United States will grow up to be better off financially than their parents, according to a [2017] study by the Pew Research Center, a nonpartisan, nonprofit think tank.”).

The Article concludes the United States has passed the tipping point where increased government debt is larger than gross domestic product, which demands sufficient diversion of resources from private investment to servicing the interest payments on the national debt.³

II. REGULATIONS TO STRANGLE FREE ENTERPRISE AND FREEDOM

It has long been recognized that our government has limited powers, restricted to those expressly granted in the Constitution.⁴ That may come as a surprise to many of today's citizens as they witness the growth and power of the federal government. Memories are short, but scholars at the Center for the Study of American Business at Washington University found in 1900 there were only six major federal regulatory agencies. Between the turn of the century and 1930 eight more were added. In the New Deal decade of the 1930s, ten agencies were legislated into existence, and subsequently, the overall number of agencies remained relatively stable until the 1960s. In that decade, seven more agencies were created, including influential ones such as the Equal Employment Opportunity Commission ("EEOC") and Department of Transportation ("DOT"). It was the next decade, however, that saw the most dramatic increase in regulatory agencies: "Between 1970 and 1979 twenty-one new agencies were formed and two others became offshoots to an older agency."⁵

While this author has not attempted to update this study, we can look at the results of a proliferation of federal agencies and the expansion of their activities and budgets. As a "small" sample, federal tax laws and regulations are now over ten million words long.⁶ The entire Code of Federal Regulations was 185,894 pages in 2019.⁷ One study estimated that if one read the Code at 300 words per minute, it would take nearly three years to get through the 2012 version,⁸ which leaves no time for food, sleep, or other necessities. One can safely conclude no human being can know all the rules and regulations that might apply to one's life and activities. One study reported over one million restrictive words in the Code

3. See *What Is the National Debt?*, FISCAL DATA, <https://fiscaldata.treasury.gov/americas-finance-guide/national-debt/> (last visited Oct. 11, 2024) (stating the "Debt to GDP" ratio for fiscal year 2024 as 124%).

4. See generally *Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. 518 (1819) (holding the parties' contractual obligations could not be impaired without violating the Constitution); *Rhode Island v. Massachusetts*, 37 U.S. 657, 720 (1838).

5. Richard R. West, *Commentary* to B. PETER PASHIGIAN, *THE CHANGING ROLE OF THE CORPORATE ATTORNEY* 59, 61 (William J. Carney ed., 1982) (quoting *Directory of Federal Regulatory Agencies*, compiled by Ronald J. Penoyer (1980 ed.)).

6. Scott Greenberg, *Federal Tax Laws and Regulations Are Now over 10 Million Words Long*, TAX FOUND. (Oct. 8, 2015), <https://taxfoundation.org/blog/federal-tax-laws-and-regulations-are-now-over-10-million-words-long>.

7. Clyde Wayne Crews, Jr., *Tens of Thousands of Pages and Rules in the Federal Register*, TEN THOUSAND COMMANDMENTS, 2020, at 44, 48.

8. Patrick McLaughlin, *The Code of Federal Regulations: The Ultimate Longread*, MERCATUS CTR. (Apr. 1, 2015), <https://www.mercatus.org/research/data-visualizations/code-federal-regulations-ultimate-longread>.

of Federal Regulations, an increase from about 400,000 in 1970.⁹ God only created eight of ten commandments as restrictive, and apparently thought that was enough for a good life.¹⁰

Why have we witnessed such a massive explosion? Bureaucrats are described as seeking to maximize their budgets, which encourages increases in regulations, and a justification for seeking more funding for their agencies.¹¹ One can speculate about legislators' incentives, but at least they appear to have been responsive to regulators' demands for more. Recently, Congress had generously funded the Internal Revenue Service, which claims to have been understaffed given the massive size and complexity of tax regulations.¹² Since federal tax laws and regulations exceed ten million words, it is hardly surprising more employees are required.¹³ The process of change and increasing complexity has grown with time. The Tax Reform Act of 1969, which was the first major overhaul of the Internal Revenue Code of 1954, affected 271 subsections of the Code, but six major bills that followed affected 5,815 Code subsections.¹⁴ Authors Richard Doernberg and Fred McChesney concluded tax changes seemed unrelated to government financing needs.¹⁵ Rather, they observed politicians have a product to sell—legislation.¹⁶ This may involve creating benefits for an interest group or imposing costs on competitors.¹⁷ The politicians who sponsor and support such legislation can expect campaign contributions and perhaps other benefits such as speaker fees from the beneficiaries. Lobbyists spend huge amounts on influencing legislation, including the benefits mentioned.¹⁸ I have said that as long as Congress sits, there will be an increasing demand for lawyers, especially those dealing with regula-

9. Patrick McLaughlin & Oliver Sherouse, *Regulatory Accumulation Since 1970*, MERCATUS CTR. (Aug. 31, 2017), <https://www.mercatus.org/research/data-visualizations/regulatory-accumulation-1970>; see also *Regulatory Growth and Accumulation*, QUANTGOV, <https://www.quantgov.org/federal-regulatory-growth> (last visited Oct. 11, 2024).

10. The fourth and fifth commandments ordered believers to honor their fathers and mothers, and to observe the sabbath.

11. William A. Niskanen, *Nonmarket Decision Making: The Peculiar Economics of Bureaucracy*, 58 AM. ECON. REV. 293, 293-94 (1968).

12. H.R. 2471, 117th Cong. (2022). This allocated approximately \$12.6 billion to the IRS during fiscal year 2022, and a total of \$80 billion over the next decade. More than half of this amount (about \$45.6 billion) goes to strengthening enforcement activity. Katie Lobosco, *The IRS Is Set to Get Billions for Audit Enforcement. Here's What it Means for Taxpayers*, CNN POL., <https://www.cnn.com/2022/08/11/politics/irs-inflation-act-funding-audit-enforcement/index.html> (Aug. 11, 2022, 2:53 PM). This will enable the IRS to hire up to 80,000 new agents and auditors. Steve Forbes & Stephen Moore, *The Inflation Reduction Act Would Double IRS Agents and Audits—But the Superrich Aren't the Real Targets*, N.Y. POST (Aug. 5, 2022, 7:54 PM), <https://nypost.com/2022/08/05/the-inflation-reduction-act-would-double-irs-agents-and-audits-but-superrich-arent-real-targets/>.

13. Greenberg, *supra* note 6.

14. Richard L. Doernberg & Fred S. McChesney, *On the Accelerating Rate and Decreasing Durability of Tax Reform*, 71 MINN. L. REV. 913, 922 (1987).

15. *Id.* at 923-25.

16. *Id.* at 933.

17. *Id.* at 929-33.

18. *Id.* at 936-41.

tions. Shakespeare's suggestion that "[t]he first thing we do is, let's kill all the lawyers" will never occur, as the demand increases professional growth.¹⁹

While this account of tax legislation's growth and change is only one part of the explanation for the growth of the Code of Federal Regulations, interest groups continue to hold importance in virtually all kinds of legislative activity.²⁰ As in the case of taxes, pressures for change are constant from a wide variety of interest groups, to which both Congress and federal agencies are responsive. Complex codes lead to larger bureaucracies to administer them—witness the 50% increase in spending by the Internal Revenue Service authorized in the 2022 budget.²¹ When regulations become more complex,

there is an incentive for ingenious lawyers and others to find ways of getting around the regulations or ways of profiting from them in unexpected ways. The interests behind the regulations and the officials who administer the regulations will often amend or extend the regulation to close the loophole and prevent the unexpected use of the regulation, but this will make the regulation still more complex.²²

As Rahm Emanuel once said: "You never let a serious crisis go to waste. And what I mean by that is an opportunity to do things you think you could not do before."²³ Other politicians have expressed similar thoughts, but many have used climate change to create a crisis where none existed. And politicians jumped at the opportunity to control human activity and become "masters of the universe," although there was no evidence that altering human behavior would change the climate. Indeed, the current warming trend began in the late seventeenth century, well before use of carbon-based fuels.²⁴ The claim of a crisis is making a mountain out of a molehill. A 2017 report using accurate satellite data found an average warming of 0.10°C per decade since 1979, which suggests it would take a century to rise 1.0°C.²⁵

Climate change has been the subject of much discussion and regulatory action. Politicians have such short time frames that they are unaware climate change is a regular phenomenon, one not necessarily caused by human activity.²⁶ They are also unaware that carbon dioxide is a lagging indicator of global warming, an effect rather than a cause.²⁷ Recent pressures for curtailing emissions

19. WILLIAM SHAKESPEARE, *HENRY VI*, PART II act 4, sc. 2, l. 77-78.

20. JAMES M. BUCHANAN & GORDON TULLOCK, *THE CALCULUS OF CONSENT* 283-95 (1962).

21. Lobosco, *supra* note 12.

22. MANCUR OLSON, *THE RISE AND DECLINE OF NATIONS* 70 (1982).

23. Rahm Emanuel, *Quotable Quote*, GOODREADS, <https://www.goodreads.com/quotes/717228-you-never-want-a-serious-crisis-to-go-to-waste> (last visited Oct. 12, 2024).

24. GREGORY WRIGHTSTONE, *INCONVENIENT FACTS: THE SCIENCE THAT AL GORE DOESN'T WANT YOU TO KNOW* 24 (2017).

25. John R. Christy & Richard T. McNider, *Satellite Bulk Tropospheric Temperatures as a Metric for Climate Sensitivity*, 53 *ASIA-PAC. J. OF ATMOSPHERIC SCIS.* 511, 511 (2017).

26. *See generally* S. FRED SINGER & DENNIS T. AVERY, *UNSTOPPABLE GLOBAL WARMING: EVERY 1500 YEARS* (2007).

27. *Id.* at 108.

are adding to our costs.²⁸ Federal spending on a climate change “crisis” has exploded in recent years. In 2017, the General Accounting Office reported federal spending on climate change was a mere \$13.2 billion.²⁹ In 2021, the House passed legislation authorizing expenditures of \$555 billion on climate change.³⁰ Spending accelerated massively in 2022, under three separate legislative acts, and is predicted to more than triple the 2009-2017 expenditures in the years 2022-2027.³¹ One study reports U.S. commitments under the Paris Climate Agreement would have hit roughly \$50 billion per year in 2030.³² Deputy Energy Secretary David Turk, in response to a question from Senator John Kennedy about these costs, where Kennedy said Turk had referred earlier in his testimony that he had estimated an all-in cost of \$50 trillion, nodded his head and made no attempt to dispute the number, replying, “[i]t’s gonna cost trillions of dollars, there’s no doubt about it.”³³

Even larger costs are being imposed by emissions restrictions on harmless gases such as carbon dioxide, where the Biden Administration is proposing new, stricter requirements that will cause two-thirds of all new automobiles to be electric within a few years.³⁴ Holman Jenkins reports that this costly requirement would reduce lifetime global emissions by a minuscule 0.18%.³⁵ China’s emissions have more than tripled, to the point where it accounts for 30% of world emissions.³⁶ The Kyoto Protocol called for signing members to reduce their greenhouse gas emissions to 5.2% below their 1990 levels, which even supporters concede would reduce global temperatures by a non-detectable 0.05% by 2050.³⁷ This frantic push to reduce a harmless and useful gas needed for plant growth could add to food

28. William J. Carney, *The SEC’s False Premise for Emissions Disclosure Requirements*, SEC. REGUL. L. J., Summer 2023.

29. *Climate Change: Analysis of Reported Federal Funding*, U.S. GOV’T ACCOUNTABILITY OFF. 1 (Apr. 30, 2018), <https://www.gao.gov/assets/700/692561.pdf>.

30. Coral Davenport, *House Passes the Largest Expenditure on Climate in U.S. History*, N.Y. TIMES (Nov. 19, 2021), <https://www.nytimes.com/2021/11/19/climate/climate-change-bill.html>.

31. Victoria Masterson, *Three Laws Will Triple U.S. Climate Change Spending Over the Next Decade*, WORLD ECON. F. (Sept. 14, 2022), <https://www.weforum.org/agenda/2022/09/us-climate-change-tech-spending>.

32. Bjorn Lomborg, *Biden’s Climate Ambitions Are Too Costly for Voters*, WALL ST. J. (Oct. 14, 2021, 4:55 AM), <https://www.wsj.com/articles/climate-change-cost-economy-emissions-tax-per-person-net-zero-joe-biden-11634159179>.

33. David Blackmon, *Sen. John Kennedy Debunked Biden’s Climate Agenda in Epic Fashion*, DAILY CALLER (May 4, 2023, 7:40 PM), <https://dailycaller.com/2023/05/04/opinion-sen-john-kennedy-debunked-bidens-climate-agenda-in-epic-fashion.-david-blackmon/>.

34. Breanne Deppisch, *Biden Proposes Strict Auto Emissions Rules Meant to Boost EVs to Two-Thirds of Sales*, WASH. EXAM’R (Apr. 12, 2023, 9:00 AM), <https://www.washingtonexaminer.com/news/2582804/biden-proposes-strict-auto-emissions-rules-meant-to-boost-evs-to-two-thirds-of-sales/>.

35. Holman W. Jenkins, Jr., *Biden and the Media Are Electric-Vehicle Grifters*, WALL ST. J. (Apr. 18, 2023, 6:23 PM), <https://www.wsj.com/articles/joe-biden-and-the-media-are-ev-grifters-car-bon-tax-emissions-fossil-fuels-subsidies-3c6d6a21>.

36. Lawrence A. Cunningham et al., *Proposal on Climate-Related Disclosures for Investors*, SEC. & EXCH. COMM’N 16 (Apr. 25, 2022), <https://www.sec.gov/comments/s7-10-22/s71022-20126528-287180.pdf>.

37. SINGER & AVERY, *supra* note 26, at 227.

costs over time.³⁸ Further, the availability of materials for batteries is limited, and prices for lithium have risen from approximately \$10,000 to \$20,000 per ton in from 2016 to 2018 for lithium carbonate and lithium hydroxide respectively, to over \$70,000 by 2022.³⁹ Bjorn Lomborg of the Hoover Institute reports that a 95% reduction in carbon emissions by 2050 will annually cost 11.9% of gross domestic product.⁴⁰ These calculations do not include additional consumer spending, as the cost of electric vehicles rises above already high vehicle prices.

Some regulations are designed to shut down entire industries. “The primary use of coal in the U.S. is for electricity generation, and the main environmental law affecting coal combustion for electricity generation is the Clean Air Act of 1970, signed into law by Richard Nixon. The law imposed significant restrictions on sulfur emissions from new coal-fired power plants,” whether high-sulfur or low-sulfur.⁴¹ In 2016, the Interior Department announced a moratorium on coal leasing.⁴² Four days later, “lawyers for the federal government declined to defend the Obama administration’s 2016 coal moratorium, which [President] Trump lifted two months after taking office.”⁴³

Oil and gas have seen similar restrictions. Three states—New York, Vermont, and Maryland—have banned fracking altogether, although natural gas has the cleanest emissions of any carbon fuel.⁴⁴ The United States has increased the royalty rate for drilling companies by 50% from the traditional and widespread 12.5% to 18.75%.⁴⁵ Federal oil and gas leases have declined from 116,985 in 1985 to 37,496 in 2020—a drop of 68%.⁴⁶ Construction of pipelines has stopped, largely

38. S. FRED SINGER, *HOT TALK, COLD SCIENCE: GLOBAL WARMING’S UNFINISHED DEBATE* 153-60 (3d ed. 2021); WRIGHTSTONE, *supra* note 24, at 74-79.

39. Graham Evans, *S&P Global Mobility Special Report: A Reckoning for EV Battery Raw Materials*, S&P GLOBAL MOBILITY (Oct. 31, 2022), <https://press.spglobal.com/2022-10-31-S-P-Global-Mobility-Special-Report-A-reckoning-for-EV-battery-raw-materials>.

40. Lomborg, *supra* note 32.

41. Charles D. Kolstad, *What is Killing the US Coal Industry?*, STAN. INST. FOR ECON. POL’Y RSCH. 3 (Mar. 2017), <https://siepr.stanford.edu/publications/policy-brief/what-killing-us-coal-industry>. The universal application of this rule to low-sulfur western coal suppressed its competitive advantage over high-sulfur eastern coal.

42. Elizabeth Shogren, *Feds Announce Moratorium on New Coal Leases*, HIGH COUNTRY NEWS (Jan. 16, 2016), <https://www.hcn.org/articles/feds-announce-moratorium-on-new-coal-leases/>. There were other causes of coal’s decline, such as less costly natural gas from fracking. See Charles Kolstad, *What’s Really Killing Coal?*, STAN. INST. FOR ECON. POL’Y RSCH. (March 29, 2019), <https://siepr.stanford.edu/news/whats-really-killing-coal>.

43. Anna Phillips, *Biden Outpaces Trump in Issuing Drilling Permits on Public Lands*, WASH. POST, <https://www.washingtonpost.com/climate-environment/2022/01/27/oil-gas-leasing-biden-climate/> (Jan. 27, 2022, 7:39 PM).

44. Case Adams, *Three States Have Banned Fracking Practice*, HEAL NATURALLY, <https://www.realnaturally.org/three-states-ban-fracking/> (last visited Oct. 12, 2024).

45. *Biden Increases Oil Royalty Rate and Scales Back Lease Sales on Federal Land*, NPR (Apr. 16, 2022, 9:44 AM), <https://www.npr.org/2022/04/16/1093195479/biden-federal-oil-leases-royalties>.

46. *Oil and Natural Gas Extraction on Federal Land*, BALLOTPEDIA, https://ballotpedia.org/Oil_and_natural_gas_extraction_on_federal_land#cite_note-oil_and_gas_stats-19 (last visited Oct. 12, 2024); *Report on the Federal Oil and Gas Leasing Program*, U.S. DEP’T OF THE INTERIOR 4 (Nov.

because of hostility from environmental groups. The Keystone pipeline, which would have brought crude oil from Canada to parts of the United States, was denied permission to extend its line to the Gulf Coast refineries. On February 24, 2015, President Obama vetoed a bill approving the construction of the Keystone XL Pipeline, saying the approval decision should rest with the Executive Branch.⁴⁷ This was not approved under President Obama, and President Biden revoked President Trump's approval of the pipeline hours after he was sworn into office.⁴⁸ One result could be a considerable increase in heating bills.⁴⁹ Some areas are beginning to join the madness by banning gas stoves.⁵⁰

The Securities Exchange Commission ("SEC") has seized on this frenetic response to false claims of a crisis with its own rule-making proposal to require public companies not only to report their emissions, but also those of any outside suppliers.⁵¹ One commissioner, Heather Pierce, in dissenting from this proposal, commented: "We are not the Securities and Environment Commission – At Least Not Yet."⁵² Implicit in her comment is that this exceeds the statutory authority of the SEC, and is thus not a valid subject. Twenty-two law professors, including this author, sent the SEC a comment letter entitled *The SEC's Misguided Climate Disclosure Rule Proposal*, which, *inter alia*, noted that the proposed rules exceeded the SEC's authority and were not supported by any showing of investor interest in the subject.⁵³ The SEC has withdrawn the proposed rules, but it is indicative of the ambitious scope of regulators to maximize their powers of control and their budgets. And no one knows what will be next in government growth or restrictions. It is clear that government officials don't know nearly as much as markets do.

2021), <https://www.doi.gov/sites/default/files/report-on-the-federal-oil-and-gas-leasing-program-doi-co-14008.pdf>.

47. *Keystone Pipeline*, WIKIPEDIA, https://en.wikipedia.org/wiki/Keystone_Pipeline (last visited Oct. 12, 2024) (see material at notes 62-64).

48. Adam Edelman, *Biden Reversed Trump on the Keystone XL Pipeline. Native American Groups Want More*, NBC NEWS (Apr. 29, 2021, 10:33 AM), <https://www.nbcnews.com/politics/joe-biden/biden-reversed-trump-keystone-xl-pipeline-native-american-groups-want-n1265025>.

49. Jinjoo Lee, *Heating Bills to Send Chill Through American's Finances*, WALL ST. J. (Nov. 30, 2022, 12:30 PM), <https://www.wsj.com/articles/heating-bills-to-send-chill-through-americans-finances-11669829408> (reporting that the U.S. Energy Administration predicted natural gas heating costs rising by 25% for the winter, while heating oil costs would rise by 45%).

50. Liam Stack, *New York to Ban Natural Gas, Including Stoves, in New Buildings*, N.Y. TIMES (Apr. 28, 2023), <https://www.nytimes.com/2023/04/28/nyregion/gas-stove-ban-ny.html>; see also Alix Martichoux, *Are Gas Stove Bans Going into Place?*, THE HILL (Sept. 17, 2023, 9:03 AM), https://thehill.com/homenews/nexstar_media_wire/4199783-hold-are-gas-stove-bans-going-into-place/ (listing San Francisco, Seattle, and New York as areas that have moved toward banning gas stoves in new buildings).

51. 17 C.F.R. §§ 210.8-01, 210.14-01, 210.14-02, 229.1500-.1508, 229.601, 230.436, 232.405, 239.11, 239.13, 239.18, 239.25, 239.22, 239.34, 249.210, 249.220f, 249.308a, 249.310 (2024).

52. Amy Antonioli et al., *Five Initial Takeaways from the SEC's Proposed Rules Requiring Companies to Disclose Climate Risk and GHG Emissions Data*, NAT'L L. REV. (Mar. 23, 2022), <https://natlawreview.com/article/five-initial-takeaways-sec-s-proposed-rules-requiring-companies-to-disclose-climate>.

53. See generally Stephen Bainbridge et al., *The SEC's Misguided Climate Disclosure Rule Proposal*, BANKING & FIN. SERVS. POL'Y REP., Oct. 2022, at 1.

Anticompetitive restrictions do not occur only at the federal level. States are capable of similar restrictions. A recent local study found that federal, state, and local regulations increased the cost of multifamily housing by 23.4%.⁵⁴ As the Supreme Court has noted, “a standard-setting organization... can be rife with opportunities for anticompetitive activity.”⁵⁵ George and William Shepherd traced the role of the American Bar Association in setting restrictive standards for accrediting law schools, with the effect of requiring more extensive preparatory education and destroying more open law schools, such as those run by YMCA organizations, to provide additional opportunities for students unable to qualify for or finance an education at more elite law schools.⁵⁶ Virtually all state bars and supreme courts observe the accreditation requirement for admission.

This is hardly the extent of restrictive licensing, as described in the case *Patel v. Texas Department of Licensing and Regulation*:

State licensing impacts our lives from head to toe. Literally. Starting at the top, where does hair end and the beard begin? Texas law has been quite finicky on the matter, leading Texas barbers and cosmetologists to spend years splitting legal hairs and clogging Texas courts. Both of these state-licensed professionals may cut hair, but until 2013 only barbers, not cosmetologists, had state permission to wield a razor blade to shave facial hair. Before 2013, if you wanted your beard shaved, you had to visit a barber (probably a man) and not a cosmetologist (probably a woman). And what is a “beard” anyway? Why, it’s the facial hair below the “line of demarcation” as defined in the Administrative Code. Even the Attorney General of Texas got all shook up wondering whether Elvis’s famous sideburns “were hair which a cosmetologist might trim, or a partial beard which could be serviced only [by] a barber.”

At the other bodily extreme, what’s the demarcation between the foot (which podiatrists can treat) and the ankle (which they can’t)? These are high-stakes disputes, and sometimes the licensing bodies have jurisdictional spats with each other, usually over “scope of practice” issues. So where does the foot end and the ankle begin? In 2010, this Court ended a nearly ten-year legal battle between, in one corner, the Texas Medical Association and Texas Orthopedic Association, and in the other, the Texas State Board of Podiatric Medical Examiners and Texas Podiatric Medical Association.

According to the academic literature, the real-world effects of steroidal regulation are everywhere: increased consumer cost; decreased consumer choice; increased practitioner income; decreased practitioner mobility—plus shrunk economic prospects for lower income, would-be entrepreneurs. Thomas Edison, with little

54. J. Thomas Perdue, *How Do Government Regulations Affect the Cost of Multifamily Housing?*, GA. PUB. POL’Y FOUND. (Apr. 7, 2023), <https://georgiapolicy.org/news/how-do-government-regulations-affect-the-cost-of-multifamily-housing>.

55. *Am. Soc’y of Mech. Eng’rs, Inc. v. Hydroleve Corp.*, 456 U.S. 556, 571 (1982).

56. George B. Shepherd & William G. Shepherd, *Scholarly Restraints? ABA Accreditation and Legal Education*, 19 CARDOZO L. REV. 2091, 2135-37 (1998).

formal schooling, likely could not be a licensed engineer today, nor could Frank Lloyd Wright be a licensed architect.”⁵⁷

Texas is not alone:

Research to date – on occupations as diverse as school teachers, interior designers, mortgage brokers, dentists, physicians and others – provides little evidence that government licenses protect public health and safety or improve the quality of products or services.

....

In Georgia, the Secretary of State administers licensing for over 40 occupations. This office licenses 10% of Georgia’s workforce, and 489,000 Georgians are directly impacted by occupational licensing each year.⁵⁸

III. THE COSTS OF GOVERNMENT GROWTH AND CONTROL

A. *Introduction*

In the 1940s, my father made the comment that all Democrats wanted to do was tax and spend. He couldn’t foresee the reverse: spending would eventually exceed the taxes. The current Democratic Agenda is clear: deficit spending, with wealth transfers from working taxpayers to non-working welfare recipients. This will leave us with huge interest payments on a national debt we are unable to pay, rising inflation, a weakened economy, bloated government, and an inability to finance the rising levels of spending needed to keep up our national defense. As a senior citizen, I will depart before all these disasters mature. But I don’t believe this will hold for my daughters, granddaughter, and great-granddaughter.

B. *The Ugly Details*

1. *Deficit Spending, with Wealth Transfers from Working Taxpayers to Non-Working Welfare Recipients*

Congress likes to spend, but is reluctant to raise taxes enough to pay for the spending. In the ninety-two years since 1929, the U.S. has had a budget surplus only thirteen times.⁵⁹ The most recent surplus years were from 1998-2001, when President Clinton was President, but Republicans controlled the House under Speakers Newt Gingrich and Dennis Hastert.⁶⁰

Budget deficits, stated in billions, were in single digits until the onset of World War II and thereafter returned to single digits until 1968, when President

57. *Patel v. Tex. Dep’t of Licensing & Regul.*, 469 S.W.3d 69, 108-09 (Tex. 2015) (Willett, J., concurring).

58. *Occupational Licensing*, GA. PUB. POL’Y FOUND., <https://www.georgiapolicy.org/publications/2020-guide-to-the-issues/occupational-licensing/> (last visited Oct. 12, 2024).

59. Kimberly Amadeo, *U.S. Budget Deficit by Year*, THE BALANCE, <https://www.thebalancemon ey.com/us-deficit-by-year-3306306> (May 16, 2024).

60. *Id.*

Johnson was in office.⁶¹ Thereafter, from 1967 until 1981 it remained in double digits with three exceptions.⁶² From 1982 until 2008 it was mainly in three digits,⁶³ when it ballooned to four digits from 2009 to 2012.⁶⁴ It returned to four digits in 2020, until the deficit of \$3.1 trillion in 2020 and just under \$1.7 trillion in 2023.⁶⁵ Note that this moves us into trillions, not mere billions. That understates the magnitude of the deficits: there are nine zeros after the number one in billion. As the late Senator Everett Dirksen was reported to have said, “[a] billion here, a billion there, and pretty soon you’re talking about real money.”⁶⁶ The good senator had not encountered a trillion dollars yet—with twelve zeroes after the number one.

2. *Huge Growth in the National Debt*

Growth in deficits is huge, but it doesn’t begin to identify the magnitude of the problem. The money to finance all this spending came only partly from taxes.⁶⁷ The deficits were the amounts exceeding tax and other revenues. They were financed with the sale of government bonds (and raiding the Social Security Trust Fund).⁶⁸ Who bought the bonds? During the recent pandemic, the Federal Reserve was a major purchaser⁶⁹ (at interest rates it had manipulated lower and with freshly printed currency). In 2023, the federal government owned about \$7 trillion of nearly \$34 trillion in outstanding debt, or 21%.⁷⁰ Imagine how much higher the interest rates might have been without that manipulation!⁷¹

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *What Is the National Deficit?*, U.S. TREASURY, <https://fiscaldata.treasury.gov/americas-finance-guide/national-deficit/> (last visited Oct. 12, 2024).

66. *A Billion Here, a Billion There*, DIRKSEN CONG. CTR., <https://www.dirksencenter.org/collections/dirksen/record/a-billion-here-a-billion-there/> (last visited Sept. 28, 2024).

67. Lisa Smith, *5 Ways Governments Reduce National Debt*, INVESTOPEDIA, <https://www.investopedia.com/articles/economics/11/successful-ways-government-reduces-debt.asp> (Oct. 4, 2024).

68. *Id.*; see also *Strengthening Social Security for Future Generations*, WHITE HOUSE PRESIDENT GEORGE W. BUSH, <https://georgewbush-whitehouse.archives.gov/infocus/social-security/youth> (last visited Oct. 12, 2024) (“The Government Has Borrowed \$1.7 Trillion From The Social Security Trust Fund.”).

69. *See The Federal Reserve Will Begin Reducing Its Holdings of Treasury Notes and Bonds*, PETER G. PETERSON FOUND. (June 14, 2022), <https://www.pgpf.org/blog/2022/06/the-federal-reserve-will-begin-reducing-its-holdings-of-treasury-notes-and-bonds>.

70. *The Federal Government Has Borrowed Trillions, but Who Owns All That Debt?*, PETER G. PETERSON FOUND. (Aug. 6, 2024), <https://www.pgpf.org/blog/2022/09/the-federal-government-has-borrowed-trillions-but-who-owns-all-that-debt>.

71. *What Is the National Debt?*, U.S. TREASURY, <https://fiscaldata.treasury.gov/americas-finance-guide/national-debt/> (last visited Aug. 31, 2024). The debt load of the U.S. is growing at a quicker clip in recent months, increasing about \$1 trillion nearly every 100 days. Michelle Fox, *The U.S. National Debt Is Rising by \$1 Trillion About Every 100 Days*, CNBC, <https://www.cnbc.com/2024/03/01/the-us-national-debt-is-rising-by-1-trillion-about-every-100-days.html> (Mar. 4, 2024, 11:58 AM).

It's obvious that most prudent investors might not have been willing to purchase all that debt, which is \$105,880 per person, or approximately \$423,500 per family of four.⁷² The rating of U.S. bonds has fallen.⁷³ Banning such purchases in the future might impose some small amount of discipline upon Congress. There is no sign that this will stop growing, as government deficits have been incurred annually and in increasing amounts since 2001.

Where is the tipping point? Debt to gross domestic product ("GDP") ratio gives an insight into the financial health of a country. Debt to GDP ratio is the highest for Japan at 232%, followed by Lebanon at 215%, Singapore at 147%, Sudan at 140%, Greece at 125%, and the United States at 125%.⁷⁴ The United States "is already on a path to spending more on interest costs than its spending on education, research and development, and infrastructure combined."⁷⁵ Debt service now exceeds the U.S. national defense budget in a time of increasing international tensions.⁷⁶ Economists have found that ratios in excess of 90% result in declines in real economic growth.⁷⁷ A World Bank study found the tipping point for developed nations was a 77% ratio of debt to GDP.⁷⁸ As national debt grows, it will consume more and more of the federal budget, leading either to massive tax increases on productive activity or severe reductions in other parts of the budget.⁷⁹

The Congressional Budget Office has calculated expected growth in Federal Debt using various assumptions and predicts that by 2053 federal debt held by the public could exceed 250% in certain scenarios.⁸⁰ The U.S. debt number doesn't include underfunded social security and Medicare net expenses of \$116.5 trillion, which according to a study by the University of Denver's Daniels College of

72. *What Is the National Debt Today?*, PETER G. PETERSON FOUND., <https://www.pgpf.org/national-debt-clock> (last visited Oct. 12, 2024). Note these figures are continuously updated and will likely be different after this Article has been published.

73. Mitchell Martin, *U.S. Loses Second Triple-A Bond Rating but Retains Its 'License to be Irresponsible'*, FORBES (Sept. 6, 2023, 4:10 PM), <https://www.forbes.com/sites/mitchellmartin/2023/08/04/us-loses-second-triple-a-bond-rating-but-retains-its-license-to-be-irresponsible/?sh=2c08878c3b8d> (reporting a rating reduction from AAA to AA by Fitch, following Standard & Poor's earlier downgrade).

74. *Debt-to-GDP Ratio by Size*, WORLD ECON., <https://www.worldeconomics.com/Debt/> (last visited Oct. 12, 2024).

75. *What Are Interest Costs on the National Debt?*, PETER G. PETERSON FOUND. (Apr. 4, 2024), <https://www.pgpf.org/budget-basics/what-are-interest-costs-on-the-national-debt> [hereinafter *Interest Costs National Debt*].

76. Avik Roy, *CBO: Federal Interest Payments Now Exceed Defense Spending*, FORBES, <https://www.forbes.com/sites/theapothecary/2024/02/07/cbo-federal-interest-payments-now-exceed-defense-spending/?sh=7157738349d3> (Feb. 7, 2024, 7:53 PM).

77. Mehmet Caner et al., *Finding the Tipping Point: When Sovereign Debt Turns Bad*, in *SOVEREIGN DEBT AND THE FINANCIAL CRISIS* 63, 63 (Carlos A. Primo Braga & Gallina A. Vincelette eds., 2011).

78. *Id.* at 71.

79. Roy, *supra* note 76 (discussing how as of 2024, interest payments on the debt exceeded the budget for national defense).

80. Damir Cosic et al., *The Long-Term Budget Outlook Under Alternative Scenarios for the Economy and the Budget*, CONG. BUDGET OFF. (July 2023), <https://www.cbo.gov/system/files/2023-07/59233-scenarios.pdf>.

Business, raises the total debt to over \$159 trillion,⁸¹ not much less than the most recent United States household wealth data.⁸² The current gross domestic product for 2024 is just over \$29 trillion.⁸³ That means our real debt to GDP ratio is 584%!⁸⁴ The Social Security Trust Fund will run out of funds in 2035, thereafter being able to pay based on current tax revenue.⁸⁵ A Ponzi scheme at work!

3. *The Disastrous Results of Huge Debt*

The chickens will, of course, come home to roost. Because there is little or no hope that such debt will ever be retired, it will need to be refinanced, probably at higher and higher interest rates, as more risk is associated with it. On August 1, 2023, Fitch Ratings downgraded U.S. government debt from AAA to AA.⁸⁶ The yield on the ten-year Treasury Note rose to 4.07% as a result.⁸⁷ More funds will need to be diverted from current spending to interest payments. Of the current 2024 federal expenditures, \$882 billion is to be spent on net interest payments, exceeding current national defense expenditures of \$874 billion.⁸⁸ Fifty percent of expenditures have been spent on entitlement programs, such as Social Security and Medicare (where the trust funds will run short), income security, and veterans benefits and services.⁸⁹ Entitlement spending will continue to increase. As the average age of Americans increases, more funding is needed to support entitlement programs like Social Security, Medicare, and retirement and disability services for

81. *2024 Financial State of the Union*, TRUTH IN ACCT. (Mar. 2024), <https://www.truthinaccounting.org/library/doclib/Financial-State-of-the-Union-2024.pdf>.

82. *See US Household Wealth Rises in Q2 Record \$163.8 Trln*, REUTERS (Sept. 12, 2024, 1:14 PM), <https://www.reuters.com/markets/us/us-household-wealth-hits-record-1638-trln-real-estate-gains-2024-09-12/>.

83. *Gross Domestic Product (Third Estimate), Corporate Profits (Preliminary Estimates), Second Quarter 2024*, BUREAU OF ECON. ANALYSIS (Sept. 26, 2024, 8:30 AM), <https://www.bea.gov/news/2024/gross-domestic-product-third-estimate-corporate-profits-revised-estimate-and-gdp-0>.

84. This number is calculated by dividing the relevant U.S. debt number (\$159 trillion) by the contemporaneous GDP (\$29 trillion). $159/29 = 5.482$ (or 584%).

85. Trina Paul, *Will Social Security Run Out? Here's What Could Happen to Your Benefits*, CNBC, <https://www.cnbc.com/select/will-social-security-run-out-heres-what-you-need-to-know> (Oct. 31, 2024) ("The trust fund reserves used to pay beneficiaries are projected to become insolvent in 2035.... Social Security will still exist after 2035, according to the trustees' findings, but retirees will only receive 83% of their full benefits.").

86. *Fitch Downgrades the United States' Long-Term Ratings to 'AA+' from 'AAA'; Outlook Stable*, FITCH RATINGS (Aug. 1, 2023, 5:13 PM), <https://www.fitchratings.com/research/sovereigns/fitch-downgrades-united-states-long-term-ratings-to-aa-from-aaa-outlook-stable-01-08-2023>. This rating was retained in 2024. *See Fitch Affirms the United States of America at 'AA+'; Outlook Stable*, FITCH RATINGS (Aug. 29, 2024, 12:54 PM), <https://www.fitchratings.com/research/sovereigns/fitch-affirms-united-states-of-america-at-aa-outlook-stable-29-08-2024>.

87. Gunjan Banerji, *Downgrade of U.S. Sparks Market Selloff in Stocks and Bonds*, WALL ST. J. (Aug. 2, 2023, 4:40 PM), <https://www.wsj.com/articles/global-stocks-markets-dow-news-08-02-2023-3059ed48>.

88. *How Much Has the U.S. Government Spent This Year?*, FISCAL DATA, <https://fiscaldata.treasury.gov/americas-finance-guide/federal-spending/> (last visited Nov. 13, 2024). All cited data from this source was last updated on September 30, 2024.

89. *Id.*

both military and civil servants, or benefits will have to be reduced. Meanwhile, current data shows only 13% of federal expenditures have gone to national defense.⁹⁰

The demand for these “free” entitlements will continue to increase. According to the Tax Policy Center, 61% of citizens owed no federal income taxes in 2020,⁹¹ while the top 20% of earners paid 78% and the top 1% paid 28%.⁹² This means the constituency for more entitlement payments (and more debt) is now a substantial majority of all voters. Like any Ponzi scheme, this one will eventually collapse. We’ve witnessed government defaults in twenty-nine nations since 2000, including Greece, Argentina (several times), and Venezuela.⁹³ In 2010 Greece was bailed out by the International Monetary Fund and the European Central bank,⁹⁴ and now has some restructured debt due as late as 2042.⁹⁵ China, which has been on a spending binge, is now watching the number of older welfare recipients increase while the number of working income earners is declining.⁹⁶ The United States is on the same path, but the huge size of its debt will preclude a bail-out by other nations. Interest rates on debt will increase to reflect the higher risk of default and the reduced value of the dollar and will consume an even larger proportion of the government’s budget. Benefits, usually called “entitlements” because of their stickiness, will necessarily drop. If taxes also increase, that will cripple our economy further, reducing incentives to work and the amount of savings available for investments. I mourn for my great-granddaughter, who will live in a much poorer country.

There is no free lunch. The World Bank study found when national debt rises above the tipping point, economic growth is reduced by 0.017% for each percentage of debt above the 77% tipping point.⁹⁷ A common result of this kind of debt level is inflating the currency to fund the debt payments.⁹⁸ While the United States

90. *Id.*

91. Howard Gleckman, *The COVID-19 Pandemic Drove a Huge, but Temporary, Increase in Households That Did Not Pay Federal Income Tax*, TAX POL’Y CTR. (Aug. 18, 2021), https://www.taxpolicycenter.org/taxvox/covid-19-pandemic-drove-huge-temporary-increase-households-did-not-pay-federal-income-tax?utm_medium=twitter&utm_source=tpc_social.

92. Robert Frank, *61% of Americans Paid No Federal Income Taxes in 2020*, Tax Policy Center Says, CNBC (Aug. 18, 2021, 5:21 PM), <https://www.cnbc.com/2021/08/18/61percent-of-americans-paid-no-federal-income-taxes-in-2020-tax-policy-center-says.html>.

93. *List of Sovereign Debt Crises*, WIKIPEDIA, https://en.wikipedia.org/wiki/List_of_sovereign_debt_crises (Oct. 27, 2024, 9:35 AM).

94. *IMF Survey: Europe and IMF Agree €110 Billion Financing Plan with Greece*, INT’L MONETARY FUND (May 2, 2010), <https://www.imf.org/en/News/Articles/2015/09/28/04/53/socar050210a>.

95. Yannis Manuelides, *Overview: Restructuring of Greek Sovereign Debt*, GLOB. RESTRUCTURING REV. (Mar. 10, 2017), <https://globalrestructuringreview.com/review/europe-middle-east-and-africa-restructuring-review/2017/article/overview-restructuring-of-greek-sovereign-debt>.

96. Steven Lee Myers & Alexandra Stevenson, *China’s Births Hit Historical Low, a Political Problem for Beijing*, N.Y. TIMES (Jan. 17, 2022), <https://www.nytimes.com/2022/01/17/world/asia/china-births-demographic-crisis.html>.

97. Caner et al., *supra* note 77, at 67.

98. *What Does It Mean for the Government to Inflate Away Debt?*, PMT WEALTH MGMT. (June 26, 2023), <https://ptmwealth.com/articles/what-does-it-mean-for-the-government-to-inflate-away-debt>.

has seen rapid inflation in 2021 and 2022, it did not reach disastrous levels. Inflation has real costs as the value of the dollar declines. My wife and I witnessed this in Argentina, where several imported goods were simply no longer available, as suppliers declined to accept a constantly depreciating currency. With an inflation rate that has soared above one million percent in recent years, Venezuela has the highest inflation rate in the world. “At times, prices in Venezuela have changed so rapidly that stores stopped putting price tags on merchandise and instructed customers to simply ask employees what each item cost that day.”⁹⁹ In 2021, the annual inflation rate was 1,588%.¹⁰⁰ In 2019, the average income in Venezuela was \$0.72 USD per day.¹⁰¹ Based purely on income, the report says, 96% of Venezuelans live in poverty and 70% live in extreme poverty.¹⁰² It is little wonder that Venezuelans are exiting their country in vast numbers.¹⁰³

4. *The Cure Will Be Unpleasant*

There is a cure. It is commonly called austerity, where we all must live with lower government benefits, and recessions are a common feature of this remedy. While this would be painful, it would only be worse with more debt-caused inflation. Do the American people have the will to undertake this? Recent riots in France protesting a financially necessary increase in the retirement age from sixty-two to sixty-four suggest this would not be pleasant.¹⁰⁴ Taking medicine is never fun, but diseases require it. And the U.S. economy is currently diseased. Will the nation have the leadership necessary to prevent its spread?

99. *Inflation Rate by Country 2024*, WORLD POPULATION REV. (2024), <https://worldpopulationreview.com/country-rankings/inflation-rate-by-country>.

100. *List of Countries by Inflation Rate*, WIKIPEDIA, https://en.wikipedia.org/wiki/List_of_countries_by_inflation_rate (Aug. 29, 2024).

101. Noelani Kirschner, *Under Maduro, Nearly All Venezuelans Live in Poverty*, DIALOGO AMS. (Sept. 2, 2020), <https://www.dialogo-americas.com/articles/under-maduro-nearly-all-venezuelans-live-in-poverty/>.

102. *Id.*

103. Sevil Omer, *Venezuela Crisis: Facts, FAQs, and How to Help*, WORLD VISION (Aug. 14, 2024), <https://www.worldvision.org/disaster-relief-news-stories/venezuela-crisis-facts> (“Driven by ongoing turmoil, as of June 2024, over 7.7 million Venezuelans have left the country since 2014.”).

104. Oleg Cetinic & Angela Charlton, *Protests in France as Unions Make Last-Ditch Bid to Resist Higher Retirement Age*, ASSOCIATED PRESS (June 7, 2023, 12:07 AM), <https://apnews.com/article/france-protests-retirement-age-macron-strikes-1abb098b104f2b7094e51e650218771d>.