Multiple Subcommittees

Stop Paying Federal Employees Who Work for Outside Organizations on the Clock

RECOMMENDATION

Congress should stop allowing federal employees to work for labor unions while on the clock as federal employees, and should charge unions for space they use within federal buildings. This proposal saves $156 million in FY 2018.

RATIONALE

Federal law requires federal agencies to negotiate "official time" with federal labor unions. This allows federal employees to work for their labor union while on the clock as a federal employee. Taxpayers pay for federal unions to negotiate collective bargaining agreements, file grievances, and to lobby the federal government. Most agencies also provide unions with free "official space" in federal buildings to conduct union work. These practices provide no public benefit and directly subsidize the operations of government unions

The government should require union officers to clock out when they are doing union work. The government should also charge unions fair-market value for the office space they use. These changes would save over $150 million a year.

ADDITIONAL READING

- James Sherk, "Official Time: Good Value for the Taxpayer?" testimony before the Oversight and Government Reform Committee, U.S. House of Representatives, June 3, 2011.

CALCULATIONS

The Office of Personnel Management estimates that the federal government gave federal unions $156 million in official time in 2012, the most recent year for which data are available. Office of Personnel Management, "Labor–Management Relations in the Executive Branch," October 2014. Absent more recent data, Heritage assumes the same figure of $156 million for FY 2018. Although charging unions for their use of federal office space would generate savings, Heritage does not have any reliable estimates of those savings and thus does not include any in this proposal.

Repeal the Davis–Bacon Act

RECOMMENDATION

Congress should repeal the Davis–Bacon Act and prevent states from imposing prevailing-wage restrictions on federally funded construction projects. This proposal saves $7.791 billion in FY 2018.

RATIONALE

The Davis–Bacon Act requires federally financed construction projects to pay "prevailing wages." In theory, these should reflect going market rates for construction labor in that area. However, the GAO and Inspector General have repeatedly criticized the Labor Department for using self-selected statistically unrepresentative samples to calculate the prevailing-wage rates. Consequently, actual Davis–Bacon rates usually reflect union rates that average 22 percent above actual market wages.

The Davis–Bacon Act requires taxpayers to overpay for construction labor. Construction unions lobby heavily to maintain this restriction—it reduces the cost advantage of their non-union competitors. But it needlessly inflates the total cost of building infrastructure and other federally funded construction by 10 percent.

The CBO has estimated that the Davis–Bacon Act applies to a third of all government construction—many state and local projects are partially or wholly funded with federal dollars. Without prevailing-wage restrictions, these projects would cost substantially less. Congress should repeal the Davis–Bacon Act and prohibit states from imposing separate prevailing-wage restrictions on federally funded construction projects. Doing so would save taxpayers billions of dollars every year.

ADDITIONAL READING

- James Sherk, "Examining the Department of Labor's Implementation of the Davis–Bacon Act," testimony before the Committee on Education and the Workforce, U.S. House of Representatives, April 14, 2011.
- James Sherk, "Labor Department Can Create Jobs by Calculating Davis–Bacon Rates More Accurately," Heritage Foundation *Backgrounder* No. 3185, January 21, 2017.

CALCULATIONS

Savings are expressed as budget authority and were calculated by comparing current public construction spending of $270.3 billion annually (as found in U.S. Census Bureau, "Construction Spending: Value of Construction Put in Place at a Glance September 2016") to spending levels in the absence of Davis–Bacon. Davis–Bacon increases construction costs by 9.9 percent, as documented in Sarah Glassman et al., "The Federal Davis–Bacon Act: The Prevailing Mismeasure of Wages," The Beacon Hill Institute, February 2008. The CBO estimates that Davis–Bacon covers 32 percent of all public construction spending—$86.496 billion in 2016. In the absence of Davis–Bacon's 9.9 percent increase in costs, that spending would cost only $78.704 billion. Assuming that public construction spending remains constant between 2016 and FY 2018, and federal taxpayers capture all the value of the savings from eliminating Davis–Bacon, this proposal saves $7.791 billion in FY 2018.

Maintain Existing Definition of "Fill Material" and "Discharge of Fill Material" Under Clean Water Act Regulations

RECOMMENDATION

Congress should maintain the existing definition of "fill material" and "discharge of fill material" under Clean Water Act (CWA) regulations. This proposal has no savings in FY 2018.

RATIONALE

Under the CWA, permits may be required for certain activities that could impact waters across the United States. The Army Corps of Engineers and the Environmental Protection Agency may redefine "fill material" and "discharge of fill material" in a manner that would require mining companies to secure Section 402 permits (as opposed to Section 404 permits) for various mining activities.[1] While there are certainly obstacles to securing Section 404 permits, Section 402 permits are even more stringent, and industry groups have argued that they would effectively prohibit numerous mining activities.[2] Existing regulations provide ample environmental protection without imposing unnecessary restrictions that could harm the mining industry and the communities that benefit from mining operations.[3]

ADDITIONAL READING

- Robert Gordon and Diane Katz, *Environmental Policy Guide: 167 Recommendations for Environmental Policy Reform* (Washington, DC: The Heritage Foundation, 2015).
- John Gray, Nicolas Loris, and Daren Bakst, "FY 2016 House Interior and Environment Appropriations Bill: Right on Regulations, Wrong on Spending," Heritage Foundation *Issue Brief* No. 4226, June 26, 2015.

Limit Application of the Recapture Provision for Dredge-and-Fill Permits

RECOMMENDATION

Congress should limit application of the recapture provision for dredge-and-fill permits. This proposal has no savings in FY 2018.

RATIONALE

Under the CWA, Section 404 permits are not required for normal farming activities, construction of stock ponds, and other related activities. However, there are exceptions, including under what is referred to as the "recapture" provision.[4] In recent testimony, a member of the American Farm Bureau Federation explained this provision:

> [W]here discharges of dredged or fill material are used to bring land into a new use (e.g. making wetlands amenable to farming) and *impair the reach or reduce the scope of* jurisdictional waters, those discharges are not exempt. The Agencies have broadly interpreted the "recapture" provision to apply even when the "new use" is simply a change from one crop to another crop.[5]

By limiting the application of the recapture provision, Congress can help to prevent the weakening of the exemptions that are critical for farmers and ranchers.

ADDITIONAL READING

- Robert Gordon and Diane Katz, *Environmental Policy Guide: 167 Recommendations for Environmental Policy Reform* (Washington, DC: The Heritage Foundation, 2015).
- John Gray, Nicolas Loris, and Daren Bakst, "FY 2016 House Interior and Environment Appropriations Bill: Right on Regulations, Wrong on Spending," Heritage Foundation *Issue Brief* No. 4226, June 26, 2015.

Eliminate Federal Funding for Sanctuary Cities

RECOMMENDATION

Congress should eliminate federal funding to sanctuary cities. Although this proposal could generate budgetary savings, those savings are uncertain and Heritage does not include any savings for FY 2018.

RATIONALE

Congress should prohibit the Department of Homeland Security and the Department of Justice from providing grant money to sanctuary cities—cities that resist the enforcement of immigration law. Federalism gives local governments some latitude in choosing to oppose federal government policies on immigration, but the federal government does not have to reward or pay for the results of such policies. 8 U.S. Code §1373 prohibits state or local governments from restricting city officials from exchanging information with the federal government on the citizenship status of any individual.

ADDITIONAL READING

- Hans A. von Spakovsky, "Sanctuary Cities Put Law-Abiding Citizens at Risk," Heritage Foundation *Commentary*, December 9, 2015.

Prohibit Government Discrimination in Tax Policy, Grants, Contracting, and Accreditation

RECOMMENDATION

Congress should prohibit government discrimination against any person or group in tax policy, grants, contracting, and accreditation, simply because they speak or act on the belief that marriage is the union of one man and one woman. This proposal has no savings in FY 2018.

RATIONALE

In June 2015, the Supreme Court redefined marriage throughout America by mandating government entities to treat same-sex relationships as marriages. The court, however, did not say that private schools, charities, businesses, or individuals must also do so. Indeed, there is no justification for the government to force these entities or people to violate beliefs about marriage that, as even Justice Anthony Kennedy noted in his majority opinion recognizing gay marriage, are held "in good faith by reasonable and sincere people here and throughout the world."

Already state and local governments have penalized counselors, adoption agencies, doctors, and small-business owners who declined to act against their convictions concerning sex and marriage. There are signs that the federal government will do the same: In oral arguments before the Supreme Court in *Obergefell* (the case redefining marriage), Justice Samuel Alito asked Solicitor General Donald Verrilli whether a university or college might lose its nonprofit tax status because of its conviction that marriage is the union of one man and one woman. Verrilli's response: "It's certainly going to be an issue."

The Sunday after the Supreme Court's ruling in *Obergefell*, *New York Times* religion columnist Mark Oppenheimer wrote a column for *Time* magazine headlined: "Now's the Time to End Tax Exemptions for Religious Institutions." Oppenheimer argued, "Rather than try to rescue tax-exempt status for organizations that dissent from settled public policy on matters of race or sexuality, we need to take a more radical step. It's time to abolish, or greatly diminish, their tax-exempt statuses." As Americans have long understood, the power to tax is the power to destroy.

Respect for freedom after the Supreme Court's ruling takes several forms. Charities, schools, and other organizations that interact with the government should be held to the same standards of competence as everyone else, but their view that marriage is the union of a man and a woman should never disqualify them from government programs.

Educational institutions, for example, should be eligible for government contracts, student loans, and other forms of support as long as they meet the relevant *educational* criteria. Adoption and foster care organizations that meet the substantive requirements of child welfare agencies should be eligible for government contracts without having to abandon the religious values that led them to help orphaned children in the first place.

Congress should prohibit government discrimination in tax policy, grants, contracts, licensing, or accreditation based on an individual's or group's belief that marriage is the union of one man and one woman, or that sexual relations are reserved for such a marriage.[6]

This proposal has no savings in FY 2018, but will ensure that otherwise well-qualified organizations are not penalized because of their beliefs about marriage.

ADDITIONAL READING

- Ryan T. Anderson, "First Amendment Defense Act Protects Freedom and Pluralism after Marriage Redefinition," Heritage Foundation *Issue Brief* No. 4490, November 25, 2015.
- "People of Faith Deserve Protection from Government Discrimination in the Marriage Debate," Heritage Foundation *Factsheet* No. 160, July 2, 2015.

Prohibit Any Agency from Regulating Greenhouse Gas Emissions

RECOMMENDATION

Congress should prohibit any agency from regulating greenhouse gas emissions. This proposal has no estimated savings in FY 2018.

RATIONALE

The Obama Administration has proposed and implemented a series of climate change regulations, pushing to reduce greenhouse gas emissions from vehicles, heavy-duty trucks, airplanes, hydraulic fracturing, and new and existing power plants. More than 80 percent of America's energy needs are met through conventional carbon-based fuels. Restricting opportunities for Americans to use such an abundant, affordable energy source will only bring economic pain to households and businesses—with no climate or environmental benefit to show for it. The cumulative economic loss will be hundreds of thousands of jobs and trillions of dollars of gross domestic product.

ADDITIONAL READING

- Nicolas D. Loris, "Congress Should Stop Regulations of Greenhouse Gases," Heritage Foundation *Issue Brief* No. 4053, September 23, 2013.
- Nicolas D. Loris, "The Many Problems of the EPA's Clean Power Plan and Climate Regulations: A Primer," Heritage Foundation *Backgrounder* No. 3025, July 7, 2015.
- Nicolas D. Loris, "Methane Regulations Add to the Price Tag of the Administration's Climate Plan," Heritage Foundation *Issue Brief* No. 4341, February 3, 2015.

Prohibit Funding for the "Waters of the United States" (WOTUS) Rule

RECOMMENDATION

Congress should prohibit funding for the "Waters of the United States" (WOTUS) rule. This proposal has no savings in FY 2018.

RATIONALE

The EPA and Army Corps' controversial WOTUS rule would greatly expand the types of waters that could be covered under the Clean Water Act—from certain man-made ditches to so-called waters that are dry land most of the time. Absent congressional action, this attack on property rights and state power could soon move forward. Fortunately, the Sixth Circuit Court issued a stay,[7] blocking implementation of the rule, but this stay is only temporary. If the rule overcomes legal battles, Congress should block funding for its implementation.

ADDITIONAL READING

- Daren Bakst, "EPA and the Corps Ignoring Sound Science on Critical Clean Water Act Regulations," Heritage Foundation *Issue Brief* No. 4122, January 8, 2014.
- Daren Bakst, "The EPA's Water Power Grab: Lawmakers Can Use the Appropriations Process to Stop It," The Daily Signal, December 4, 2015.
- Daren Bakst, "What You Need to Know About the EPA/Corps Water Rule: It's a Power Grab and an Attack on Property Rights," Heritage Foundation *Backgrounder* No. 3012, April 29, 2015.

Enforce Data-Quality Standards

RECOMMENDATION

Congress should pass laws to enforce data-quality standards. This proposal has no savings in FY 2018.

RATIONALE

No funds should be used for any grant for which the recipient does not agree to make all data produced under the grant publicly available in a manner consistent with the Data Access Act (Title III, OMB, of Public Law 105–277), as well as in compliance with the standards of the Information Quality Act (44 U.S. Code 3516 note). The Data Access Act requires federal agencies to ensure that data produced under grants to and agreements with universities, hospitals, and nonprofit organizations are available to the public. The Information Quality Act requires the Office of Management and Budget with respect to agencies to "issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency."[8]

However, the Office of Management and Budget has unduly restricted the Data Access Act, and there is little accountability that could ensure agency compliance with the Information Quality Act. Credible science and transparency are necessary elements of sound policy.[9] Standards must be codified—guidelines are insufficient.

ADDITIONAL READING

- Robert Gordon and Diane Katz, *Environmental Policy Guide: 167 Recommendations for Environmental Policy Reform* (Washington, DC: The Heritage Foundation, 2015).
- Diane Katz, "An Environmental Policy Primer for the Next President," Heritage Foundation *Backgrounder* No. 3079, December 14, 2015.

Withhold Grants for Seizure of Private Property

RECOMMENDATION

Congress should withhold grants for seizure of private property. Although this proposal could generate savings, those savings are unknown and Heritage does not include any estimated savings for FY 2018.

RATIONALE

On June 23, 2005, the United States Supreme Court held in *Kelo v. City of New London* that the government may seize private property and transfer it to another private party for economic development. This type of taking was deemed to be for a "public use" and allowed under the Fifth Amendment of the United States Constitution. Congress has failed to take meaningful action in the decade since this landmark decision and should, to the extent it is within the power of Congress, provide property owners in all states necessary protection from economic development and closely related takings, such as blight-related takings.

Since there is a subjective element to determining whether a taking is for economic development, the condemnor should be required to establish that a taking would not have occurred but for the economic-development reason. Local governments often use broad definitions of "blight" to seize private property, including seizing non-blighted property that is located in an allegedly blighted area. Only property that itself is legitimately blighted, such as posing a concrete harm to health and safety, should be allowed to be seized. Congress should withhold grants for infrastructure development to states or other jurisdictions that invoke eminent domain to (1) seize private property for economic development, unless the condemnor can demonstrate that the taking would have occurred but for economic development and is for a public use, or (2) address blight, unless the property itself poses a concrete harm to health and safety.[10]

ADDITIONAL READING

- Daren Bakst, "A Decade After *Kelo*: Time for Congress to Protect American Property Owners," Heritage Foundation *Backgrounder* No. 3026, June 22, 2015.

ENDNOTES

1. Laura Barron-Lopez, "COP Omnibus Rider Keeps Administration from Tightening Mining Rule," *The Hill*, January 16, 2014, http://thehill.com/policy/energy-environment/195621-gop-rider-in-omnibus-bill-would-tighten-rules-on-waste (accessed April 28, 2015). See also Kate Sheppard, "Appropriations Bill Would Block New Mountain Removal Fill Rules," *The Huffington Post*, January 14, 2014, http://www.huffingtonpost.com/2014/01/14/omnibus-coal-mining_n_4598628.html (accessed April 28, 2015).
2. Claudia Copeland, "Controversies over Redefining 'Fill Material' Under the Clean Water Act," Congressional Research Service *Report for Congress*, August 21, 2013, http://www.fas.org/sgp/crs/misc/RL31411.pdf (accessed April 28, 2015).
3. Robert Gordon and Diane Katz, *Environmental Policy Guide: 167 Recommendations for Environmental Policy Reform* (Washington, DC: The Heritage Foundation, 2015).
4. Specifically: "Any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced." 33 U.S. Code § 1344 (f)(2), https://www.law.cornell.edu/uscode/text/33/1344 (accessed April 30, 2015).
5. Ellen Steen, "Statement of the American Farm Bureau Federation Regarding: The Definition of 'Waters of the United States' Proposed Rule and Its Impact on Rural America," testimony before the Subcommittee on Conservation, Energy, and Forestry, Committee on Agriculture, U.S. House of Representatives, March 3, 2015, http://agriculture.house.gov/sites/republicans.agriculture.house.gov/files/images/Steen%20Testimony.pdf (accessed April 29, 2015). (Emphasis in original.)
6. "People of Faith Deserve Protection from Government Discrimination in the Marriage Debate," Heritage Foundation *Factsheet* No. 160, July 2, 2015, http://www.heritage.org/research/reports/2015/07/people-of-faith-deserve-protection-from-government-discrimination-inthe-marriage-debate.
7. *State of Ohio et al. v. U.S. Army Corps of Eng'rs et al.*, Nos. 15-3799/3822/3853/3887, Order of Stay (6th Cir. 2015), http://www.ca6.uscourts.gov/opinions.pdf/15a0246p-06.pdf (accessed November 18, 2015).
8. Consolidated Appropriations Act of 2001, Public Law 106–554, §515.
9. Gordon and Katz, *Environmental Policy Guide: 167 Recommendations for Environmental Policy Reform*.
10. Daren Bakst, "A Decade After *Kelo*: Time for Congress to Protect American Property Owners," Heritage Foundation *Backgrounder* No. 3026, June 22, 2015, http://www.heritage.org/research/reports/2015/06/a-decade-after-kelo-time-for-congress-to-protect-american-propertyowners#_ftn1.