

SEVEN STEPS TO TRULY REFORM THE TAX CODE AND ENGENDER SOCIO-ECONOMIC MOBILITY

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ABSTRACT

The election of President Trump was a backlash against the socio-economic immobility felt by the vast majority of Americans that a true tax reform would have addressed. His recently enacted tax reform, the Tax Cuts and Jobs Act of 2017,¹ was described by conservatives as a needed tax reform that will spur economic growth.² The problem for the U.S. economy, however, has not been the lack of growth per se, but that the benefits of this growth are skewed in favor of the highest income earners such that the middle and working classes have seen their living standards stagnate.³ The Tax Cuts and Jobs Act of 2017, however, was not such a reform. Rather, it was a

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¹ To provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 151-97, 131 Stat. 2054 (2017) [hereinafter Tax Cuts and Jobs Act of 2017]. This article will refer to the Act by its popular name, the Tax Cuts and Job Act of 2017. See Joseph Lawler, *Republicans Forced to Give Tax Bill Outrageous New Name After Running Afoul of Senate Rules*, WASH. EXAMINER (Dec. 19, 2017), <https://www.washingtonexaminer.com/republicans-forced-to-give-tax-bill-outrageous-new-name-after-running-afoul-of-senate-rules>. The renaming of the bill to include the word "reconciliation" allows Congress to expedite the passage of tax laws and other mandatory spending programs on a "fast-track" basis, which requires only a simple majority for passage. See *id.*; BILL HENIFF, JR., CONG. RES. SERV., RL30862, THE BUDGET RECONCILIATION PROCESS: THE SENATE'S "BYRD RULE" 1, 18 (2016).

² See Patricia Cohen, *A Tax Cut that Lifts the Economy? Opinions Are Split*, N.Y. TIMES (Nov. 2, 2017), <https://www.nytimes.com/2017/11/02/business/economy/corporate-tax-economists.html>.

³ See Jay Shambaugh & Ray Nunn, *Why Wages Aren't Growing in America*, HARV. BUS. REV. (Oct. 24, 2017), <https://hbr.org/2017/10/why-wages-arent-growing-in-america>; Chad Stone et al., *A Guide to Statistics on Historical Trends in Income Inequality*, CTR. ON BUDGET & POL'Y PRIORITIES 11 fig. 2 (2018), https://www.cbpp.org/sites/default/files/atoms/files/11-28-11pov_0.pdf; *United States—Nominal Gross Domestic Product*, MOODY'S ANALYTICS, <https://www.economy.com/united-states/nominal-gross-domestic-product> (last visited Sept. 28, 2018).

paradigmatic “supply-side” income and corporate tax cut⁴ that will increase the nation’s debt load and exacerbate the nation’s wealth and income inequality problems. This is because the Act’s complete failure to reduce payroll taxes⁵ means the federal government will be even more reliant, going forward, on this highly regressive exaction that acts as a disincentive to either job creation or income growth.

My view is that it is not too late for the President. Recognizing the Trump tax cuts have not addressed the issue of economic stagnation felt by the majority of Americans, he should use his political capital to implement a true tax reform that addresses his supporters’ legitimate concern about socio-economic immobility. A true tax reform should:

1. Eliminate the federal payroll tax on all earned income. This would be an immediate \$1 trillion per year tax cut for all Americans.⁶ It will generate employment and increase take home pay for working poor and middle-class households and mark the end of the nation’s most regressive tax;
2. Recoup this money by broadening the estate tax from one that currently applies to only the richest .2% of households to one that applies to the top 5% of households as measured by wealth.⁷ This would most likely raise approximately \$85 billion a year and, more importantly, have the salutary effect of reducing income and wealth inequality;⁸
3. Adjust the existing tax laws so that recipients of bequests no longer receive automatically stepped up

⁴ See CHYE-CHING HUANG ET AL., JCT ESTIMATES: FINAL GOP TAX BILL SKEWED TO TOP, HURTS MANY LOW- AND MIDDLE-INCOME AMERICANS 1 (2017), <https://www.cbpp.org/sites/default/files/atoms/files/12-19-17tax.pdf>; FARROKH K. LANGDANA, MACROECONOMIC POLICY: DEMYSTIFYING MONETARY AND FISCAL POLICY 230 (3d ed., Springer Int’l Pub. Switz. 2016); Christian E. Weller, *The Data Do Not Support Supply-Side Economics*, CTR. AM. PROGRESS (June 21, 2018), <https://www.americanprogress.org/issues/economy/news/2018/06/21/452605/data-not-support-supply-side-economics/>.

⁵ See Tax Cuts and Jobs Act of 2017.

⁶ See NORTON FRANCIS ET AL., TAX POLICY CTR., BRIEFING BOOK: A CITIZEN’S GUIDE TO THE FASCINATING (THOUGH OFTEN COMPLEX) ELEMENTS OF THE FEDERAL TAX SYSTEM 294 (2016), https://www.taxpolicycenter.org/sites/default/files/briefing-book/tpc-briefing-book_0.pdf.

⁷ See Paul L. Caron, *The One-Hundredth Anniversary of the Federal Estate Tax: It’s Time to Renew Our Vows*, 57 BOS. COL. L. REV. 823, 826 (2016); Chye-Ching Huang & Chloe Cho, *Ten Facts You Should Know About the Federal Estate Tax*, CTR. ON BUDGET & POL’Y PRIORITIES 2 (Oct. 30, 2017), <https://www.cbpp.org/sites/default/files/atoms/files/1-8-15tax.pdf>.

⁸ See Isabel V. Sawhill & Eleanor Krause, *American Workers Need a Pay Raise—The Estate Tax Could Help*, BROOKINGS (Nov. 2, 2017), <https://www.brookings.edu/blog/social-mobility-memos/2017/11/02/american-workers-need-a-pay-raise-the-estate-tax-could-help/>.

basis to avoid tax liability.⁹ This would raise an additional \$50 billion a year in tax revenue, encourage maximal property use and facilitate a reduction in income and wealth inequality;¹⁰

4. Implement a \$1 per gallon gas tax on all petroleum sales nationwide. This will generate \$100 billion per year, engender more efficient energy usage, and incentivize liberalization and democratization in oil exporting countries;¹¹
5. End the mortgage interest tax deduction, which will progressively generate \$71 billion in annual revenue and encourage fiscal responsibility in home buying;¹²
6. Introduce an 8% nationwide sales tax that will generate approximately \$620 billion a year in trust fund revenue and encourage savings and fiscal responsibility by households nationwide;¹³ and
7. Implement a trigger feature to the tax reform such that if the revenue generated by the proposed taxes and tax expenditure eliminations outlined above is insufficient to fund the nation's entitlement programs, they are to be automatically readjusted upward for the following year to ensure the entitlement trust funds remain budget neutral. If the tax reform generates excess revenue, the trigger will insure the tax take is readjusted downward the following year. The advantage of the trigger is that it will account for the public's distrust in the national government by ensuring that revenues generated from the new taxes are spent only on entitlement programs.¹⁴

⁹ See Karen C. Burke & Grayson M. P. McCouch, *The Moving Target of Tax Reform*, 93 N.C. L. REV. 649, 659 (2015).

¹⁰ See *id.*

¹¹ See N. Gregory Mankiw, *Raise the Gas Tax*, WALL ST. J., Oct. 20, 2006, at A12; cf. Frederic Leder & Judith N. Shapiro, *This Time It's Different: An Inevitable Decline in World Petroleum Production Will Keep Oil Product Prices High, Causing Military Conflicts and Shifting Wealth and Power from Democracies to Authoritarian Regimes*, 36 ENERGY POL'Y 2850, 2852 (2008) ("[Russia's] retreat from democracy has only gained momentum as oil revenues have soared. Venezuela and Nigeria are following a similar path.").

¹² Derek Thompson, *The Shame of the Mortgage-Interest Deduction*, ATLANTIC (May 14, 2017), <https://www.theatlantic.com/business/archive/2017/05/shame-mortgage-interest-deduction/526635/>.

¹³ See *infra* note 154 and accompanying text.

¹⁴ See Jared Walczak, *Designing Tax Triggers: Lessons from the States*, TAX FOUND. 1 (2016), <https://files.taxfoundation.org/legacy/docs/TaxFoundation-FF526.pdf>; Christopher H.

I. INTRODUCTION

As a relatively young law professor, I often head to my local YMCA during lunchbreaks, which is one of the few places where all segments of Knoxville society gather and socialize. While there recently, I had a lengthy discussion with a friend who, notwithstanding the fact he is one of the wealthiest people in all of eastern Tennessee, maintains a punishing work schedule. I asked him why he continued to work so hard, especially since he could never possibly spend his accumulated earnings. His response was that he does so because his compensation is extremely high and beyond anything his children or grandchildren could possibly ever earn. As such, his plan was to continue working in order to accumulate an even larger estate that would not only ensure his own financial security, but that of his children and grandchildren. Shortly after this discussion at the YMCA, my wife and I filed our nanny taxes with the IRS. The amount was startlingly high and was a significant factor in our decision to shift to daycare, *i.e.* though the decision to shift to daycare was based on many factors, including our desire to socialize our daughter, I cannot dispute that avoiding payroll reporting and tax obligations was a significant factor in our decision. These two very personal examples are sobering in that they encapsulate why so many Americans suffer from socio-economic immobility.

My friend's decision to remain in the labor force was motivated largely by a benevolent desire to support his family. The fact that he does so, however, means that his organization is spending an inordinate amount of money on his salary, which means that it is deprived of resources to provide more generous pay packages to other workers or hire new employees. His decision is in his own family's material interest, but in conflict with that of either his organization or the broader east Tennessee community. It is, in the end, facilitated by the U.S.'s low income and estate tax paradigm, first ushered in during the Reagan Revolution.¹⁵ Similarly, my decision to send our

Schroeder, *Causes of the Recent Turn in Constitutional Interpretation*, 51 Duke L.J. 307, 346 (2001).

¹⁵ See Pamela F. Olson, *And Then Cnut Told Reagan . . . Lessons from the Tax Reform Act of 1986*, 38 OHIO N. UNIV. L. REV. 1, 2 (2011); Eric B. Dick, *Modern Estate Tax and Its Development in Reagan Era*, AVVO (Oct. 10, 2010), <https://www.avvo.com/legal-guides/ugc/modern-estate-tax-and-its-development-in-reagan-era-1>; Tyler Fisher, *How Past Income Tax Rate Cuts on the Wealthy Affected the Economy*, POLITICO (Sept. 27, 2017), <https://www.politico.com/interactives/2017/gop-tax-rate-cut-wealthy/>.

daughter to daycare is partly attributable to a payroll tax paradigm that punishes low income earners and their employers.¹⁶ These examples illustrate that the tax code, which is ostensibly designed to incentivize economic growth, employment and socio-economic progress, was inadvertently encouraging the well positioned to push for ever-larger pay packages in a manner destructive to the economy's overall health and harming the ability of less skilled workers to find or retain work.¹⁷ At the very least, the tax code hampers employment and socio-economic advancement.¹⁸

President Trump's appeal is largely to white voters who feel the effects of socio-economic stagnation and an inability to accumulate wealth.¹⁹ As such, one might have expected the President to have proposed a legislative agenda focused on remediating the overall trends toward wealth concentration, income inequality and an overall lowering of socio-economic mobility. Instead, the President's focus on repealing the Patient Protection and Affordable Care Act, and his recently enacted Tax Cuts and Jobs Act of 2017 evidences a chief executive whose policy priorities have been hijacked by Congressional Republicans and belie both his campaign themes and his voting base's economic interests. The Act's corporate and income tax cuts will result in massive increases in take home pay for the most highly remunerated Americans which, in turn, means that those best positioned to negotiate high compensation packages in their favor will have a stronger incentive to do so.²⁰ This will, of course, exacerbate income inequality. The Trump tax cuts' additional failure to raise the inheritance tax furthers this problem in view of

¹⁶ See Linda Sugin, *Class in America: Payroll Taxes, Mythology, and Fairness*, 51 HARV. J. ON LEGIS. 113, 119 (2014).

¹⁷ See THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY 509–10 (Arthur Goldhammer trans., 2014) (explaining that lower income tax rates incentivize executives to negotiate higher compensation packages); Stephen Plass, *Wage Compression as a Democratic Ideal*, 25 CORNELL J. L. & PUB. POL'Y 601, 642 (2016); Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 20, 2017, 6:32 AM), <https://twitter.com/realdonaldtrump/status/943489378462130176?lang=en>.

¹⁸ See Frances Coppola, *American Public Sector Workers Will Pay for Trump's Tax Cuts*, FORBES (Aug. 31, 2018), <https://www.forbes.com/sites/francescoppola/2018/08/31/american-public-sector-workers-will-pay-for-trumps-tax-cuts/#701368594673>.

¹⁹ See Neil Irwin & Josh Katz, *The Geography of Trumpism*, N.Y. TIMES (Mar. 12, 2016), <https://www.nytimes.com/2016/03/13/upshot/the-geography-of-trumpism.html>; Michael M. Phillips, *Anxiety Fuels Donald Trump's Supporters: White Working-Class Voters Resentful over the Economy and Washington Flock to the Billionaire*, WALL ST. J. (Jan. 26, 2016), <https://www.wsj.com/articles/anxiety-fuels-donald-trumps-supporters-1453854519>.

²⁰ Cf. PIKETTY, *supra* note 17, at 509–10 (explaining that lower income tax rates incentivize executives to negotiate higher compensation packages); Binyamin Appelbaum, *Trump Tax Plan Benefits Wealthy, Including Trump*, N.Y. TIMES (Sept. 27, 2017), <https://www.nytimes.com/2017/09/27/us/politics/trump-tax-plan-wealthy-middle-class-poor.html>.

the fact that more than half of the wealth held in the U.S. is inherited, and this inequality depresses overall economic growth and productivity.²¹ In short, the best evidence demonstrates that wealth concentration depresses a nation's overall economic performance and engenders socio-economic immobility.²²

To illustrate the extent of the problem, the wealth and income gaps between the top one percent and the rest of the population are at an historic high, such that the top one percent of the nation's income earners have seen their income grow by more than 200 percent in the last generation as compared to a mere 40 percent for the bottom 20 percent of the nation's income earners.²³ The most comprehensive measure of a society's income inequality, the Gini Coefficient, evidences that the U.S. has, by far, the highest level of income and wealth inequality among mature democracies.²⁴ Much of the fault for this lies with the U.S. tax code, which is a direct consequence of a political system that facilitates rent seeking by the wealthy and well-positioned. This was evidenced during the Reagan and second Bush Administrations, which saw massive reductions in income and estate tax rates in conjunction with an increase in payroll taxes.²⁵ The

²¹ See James R. Repetti, *Democracy, Taxes and Wealth*, 76 N.Y.U. L. REV. 825, 873 (2001).

²² See *id.*; Isabel V. Sawhill & Edward Rodrigue, *Wealth, Inheritance and Social Mobility*, BROOKINGS (Jan. 30, 2015), <https://www.brookings.edu/blog/social-mobility-memos/2015/01/30/wealth-inheritance-and-social-mobility/>.

²³ See Stone et al., *supra* note 3, at 11.

²⁴ See JAMES FOSTER ET AL., A UNIFIED APPROACH TO MEASURING POVERTY AND INEQUALITY: THEORY AND PRACTICE 13 (2013), <https://openknowledge.worldbank.org/bitstream/handle/10986/13731/9780821384619.pdf?sequence=1&isAllowed=y>; *The World Factbook: Country Comparison: Distribution of Family Income—Gini Index*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2172rank.html> (last visited Oct. 4, 2018); *Full Dataset for the 2016 Ranking*, GLOB. DEMOCRACY RANKING, <http://democracyranking.org/wordpress/2016-full-dataset/> (last updated Jan 23, 2017). The Gini Coefficient, named after the Fascist-era Italian economist Corrado Gini, measures the level of income inequality within a society. See FOSTER ET AL., *supra* at 93. The Gini Coefficient lies between 0 and 1. *Id.* at 94. A measure of 1 would be complete inequality, whereby all income would go to one person, whereas a measure of 0 would be complete equality, whereby all income was equally divided. See *id.* at 94, 120. By way of example, according to the CIA World Factbook, the United States has a Gini Coefficient of .450, Canada's Gini Coefficient is .321, and Sweden's is .249. CENT. INTELLIGENCE AGENCY, *supra*. "The Gini coefficient is the most commonly used measure of inequality. It measures the average or expected difference between pairs of incomes in the distribution, relative to the distribution size . . ." FOSTER ET AL., *supra*, at 13. "When every household in a region has the same per capita expenditure, then the Gini coefficient is 0." *Id.* at 278.

²⁵ See William G. Gale & Peter R. Orszag, *An Economic Assessment of Tax Policy in the Bush Administration, 2001-2004*, 45 B.C. L. REV. 1157, 1157 (2004); Tracey M. Roberts, *Brackets: A Historical Perspective*, 108 N.W. U. L. REV. 925, 937-38, 943-44 (2014); Dick, *supra* note 15; *Payroll Tax Rates*, TAX POL'Y CTR., <https://www.taxpolicycenter.org/statistics/payroll-tax-rates> (last visited Oct. 13, 2018). By this I am referring to tax cuts that reduced the marginal income tax rate from a high of 79% during World War II, to a high of 35% at the end of the second Bush Administration. Roberts, *supra*, at 943-44.

result was a massive increase in public indebtedness and an apparently inexorable increase in income and wealth inequality.²⁶

This inequality and socio-economic immobility explains the authoritarianism and illiberalism that bedevils the developed world.²⁷ Indeed, the rich world's overall recalcitrant response to the plight of economic migrants and refugees,²⁸ demonstrates how the world's most advanced democracies, including the U.S., are teetering and risk losing their democratic norms of pluralism and openness because of this stagnation, which, in turn has led the public to lose confidence in both elites and civil nationalism.²⁹ This loss in confidence reflects what the journalist and public intellectual, George Packer, has named the "Unwinding" in that institutions are increasingly incapable of addressing its people's problems and concerns, such as access to living wage jobs, quality public schools, affordable higher education and health insurance.³⁰ The public's election of the authoritarian and illiberal Trump Administration, its indifference towards Syrian and other refugees fleeing civil war and failed states, and its apparent willingness to reconsider the U.S.'s traditional leadership role within in a multilateral international community, are all symptoms of this problem.³¹

²⁶ See Roberts, *supra* note 25, at 937–38; THOMAS L. HUNGERFORD, CONG. RES. SERV., R.42729, TAXES AND THE ECONOMY: AN ECONOMIC ANALYSIS OF THE TOP TAX RATES SINCE 1945 16 (2012); Jeanne Sahadi, *Taxes: What People Forget About Reagan*, CNN MONEY (Sept. 12, 2010), https://money.cnn.com/2010/09/08/news/economy/reagan_years_taxes/index.htm.

²⁷ See MADELEINE ALBRIGHT, FASCISM: A WARNING 172 (2018). As manifest by President Trump's election as U.S. President; the U.K's inauspicious decision to leave the E.U. without any plausible alternative in sight; France's near-election of the far-right Marine Le Pen as French President; the collapse of Germany's Social Democratic Party in conjunction with the rise of the far-right Alternative for Germany; and, of course, the rise of far-right parties in Italy, Hungary and Poland. See *id.* at 5, 181; Rory Mulholland, et al., *French Election Results: Emmanuel Macron Says France Facing 'Immense Task' to Rebuild European Unity as He Defeats Marine Le Pen*, TELEGRAPH (May 8, 2017), <https://www.telegraph.co.uk/news/2017/05/07/french-election-live-marine-le-pen-emmanuel-macron-presidency/>; Matthew Karnitsching, *Who Killed European Social Democracy?*, POLITICO (Mar. 2, 2018), <https://www.politico.eu/article/matteo-renzi-martin-schulz-italy-germany-who-killed-european-social-democracy/>; Jonah Shepp, *The Far Right Aims to Take Control of the European Union Next Year*, N.Y. MAG.: INTELLIGENCER (Aug. 3, 2018), <http://nymag.com/daily/intelligencer/2018/08/far-right-aims-take-over-european-union.html>.

²⁸ See, e.g., ALBRIGHT, *supra* note 27, at 181; Deborah Amos, *The U.S. Has Accepted Only 11 Syrian Refugees This Year*, NAT'L PUB. RADIO (Apr. 12, 2018), <https://www.npr.org/sections/parallels/2018/04/12/602022877/the-u-s-has-welcomed-only-11-syrian-refugees-this-year>.

²⁹ See RONALD F. INGLEHART & PIPPA NORRIS, TRUMP, BREXIT, AND THE RISE OF POPULISM: ECONOMIC HAVE-NOTS AND CULTURAL BACKLASH 10 (2016); Elena Holodny, *The U.S. Has Been Downgraded to a 'Flawed Democracy'*, BUS. INSIDER (Jan. 25, 2017), <https://www.businessinsider.com/economist-intelligence-unit-downgrades-united-states-to-flawed-democracy-2017-1>.

³⁰ See GEORGE PACKER, THE UNWINDING: AN INNER HISTORY OF THE NEW AMERICA 3 (2013).

³¹ See ALBRIGHT, *supra* note 27, at 5; Amos, *supra* note 28; Alyssa Ayres, *Role Reversal: As the United States Steps Back from Global Leadership, India Steps Up*, COUNCIL FOREIGN REL.

My proposal adumbrates a bipartisan solution to this unravelling by actually reforming the nation's tax code to provide the federal government with sufficient fiscal resources to progressively address the public's needs in a manner that not only addresses its skepticism toward the federal government, but actually reduces income and wealth inequality and incentivizes wage growth, employment and conservation. The proposal would eliminate the payroll tax that regressively raises \$1 trillion each year to pay for Social Security, Medicare, and federal unemployment to incentivize employment and raise take home pay.³² However, rather than stop there or simply eliminate or cut either Social Security or Medicare, my proposal would strengthen them both by altering their funding source to incentivize socio-economic mobility and conservation by means of a restructured tax code. My proposal leaves the entitlement programs in place because both Social Security and Medicare are a vital component of the U.S.'s threadbare safety net.³³ Indeed, both are especially important in view of the scarcity of defined benefit pension plans and how stagnant wages make it difficult for workers to save for retirement via individual retirement accounts.³⁴ My proposal is to alter Social Security and Medicare's funding scheme by replacing the payroll tax, which generates more than \$1 trillion in annual revenue, or 6% of U.S. income,³⁵ with a fairer and more advantageous means of revenue collection and deal with the public's institutional distrust of the federal government by means of triggers to assure the public that the new exactions will generate no more revenue than necessary to replace the regressive payroll tax.³⁶ This will, over time, greatly enhance American living standards in a manner consistent with the country's values.

A. *Social Security, Medicare and Payroll Taxes*

The history of Social Security and Medicare date back to the New Deal and Great Society eras, respectively.³⁷ Social Security, which

(June 27, 2017), <https://www.cfr.org/blog/role-reversal-united-states-steps-back-global-leaders-hip-india-steps>.

³² See FRANCIS ET AL., *supra* note 6, at 294.

³³ See *What Are the Major Federal Safety Net Programs in the U.S.?*, CTR. FOR POVERTY RES., <https://poverty.ucdavis.edu/article/war-poverty-and-todays-safety-net-0> (last visited Oct. 19, 2018).

³⁴ See Julie Roin, *Planning Past Pensions*, 46 Loy. U. Chi. L. J. 747, 794–97 (2015).

³⁵ See FRANCIS ET AL., *supra* note 6, at 294.

³⁶ See Schroeder, *supra* note 14, at 346.

³⁷ See LARRY DEWITT, U.S. SOC. SEC. ADMIN., 70 SOCIAL SECURITY BULLETIN, NO. 3, THE DEVELOPMENT OF SOCIAL SECURITY IN AMERICA 4 (2010); Woody R. Clermont, *A Brief*

provides public income security for seniors and disability insurance for all covered workers, imposes a 12.4% tax on all American workers up to the first \$128,400 in earned income.³⁸ Although this tax obligation is shared with employers, for a growing percentage of American workers who are designated as self-employed, the full 12.4% must be paid directly by them to the government.³⁹ Medicare, which is the public provision of health insurance to the elderly, is funded based on an additional 2.9% payroll tax on all earned income with a .9% surcharge imposed on high-income households as part of the Affordable Care Act.⁴⁰ Like with Social Security, the payroll component of the Medicare tax is shared with employers, but is fully paid by workers who are designated as self-employed.⁴¹ On top of this, employers must pay a Federal Unemployment Tax of .6% on employee incomes up to \$7,000, while the self-employed are not eligible for unemployment benefits.⁴² In all, payroll taxes are highly regressive in that they impose far greater tax burdens on the poor than the wealthy because they are imposed on the first dollar of earned income with no exemption amount.⁴³

The payroll tax also imposes regulatory payroll burdens on employers who must remit 7.65% of employee wages directly to the IRS.⁴⁴ To illustrate the payroll tax's regressivity, low- and moderate-income taxpayers pay more of their incomes in payroll tax than high-income earners because high-income earners see their payroll tax obligations dramatically reduced on all incomes above \$128,400.⁴⁵

Introduction to Medicare and the Office of Medicare Hearings and Appeals, 5 PITT. J. ENVTL. PUB. HEALTH L. 103, 104 (2011).

³⁸ BARRY F. HUSTON, CONG. RES. SERV., R42035, SOCIAL SECURITY PRIMER 1 (2018).

³⁹ See *id.*; SOC. SEC. ADMIN., IF YOU ARE SELF-EMPLOYED 1 (2018), <https://www.ssa.gov/pubs/EN-05-10022.pdf>; Valerio De Stefano, *The Rise of the "Just-in-Time Workforce": On-Demand Work, Crowdsourcing, and Labor Protection in the "Gig-Economy"*, 37 COMP. LAB. L. & POL'Y J. 471, 478–79 (2016).

⁴⁰ 26 U.S.C. § 1401 (2012); see *Additional 0.9% Medicare Tax on Earned Income*, THE TAX ADVISOR (Nov. 1, 2013), <https://www.thetaxadviser.com/issues/2013/nov/casestudy-nov2013.html>.

⁴¹ See SOC. SEC. ADMIN., *supra* note 39.

⁴² See Jean Murray, *What Is the Federal Unemployment Tax (FUTA)?*, THE BALANCE SMALL BUS., <https://www.thebalance.com/what-is-the-federal-unemployment-tax-futa-397959> (last updated Aug. 15, 2018); Jean Murray, *Difference Between Self-Employment and Employment Tax*, THE BALANCE SMALL BUS., <https://www.thebalancesmb.com/what-is-the-federal-unemployment-tax-futa-397959> (last updated Aug. 26, 2018).

⁴³ See Sugin, *supra* note 16, at 119.

⁴⁴ See *Payroll Tax 101*, PAYCOR (Apr. 10, 2018), <https://www.paycor.com/resource-center/payroll-tax-101>.

⁴⁵ See Sugin, *supra* note 16, at 119; Sean Williams, *Social Security's Payroll Tax Can't Touch \$1.2 Trillion in Annual Earnings*, MOTLEY FOOL (Feb. 26, 2018), <https://www.fool.com/retirement/2018/02/26/social-securitys-payroll-tax-cant-touch-12-trillion.aspx>.

The Tax Policy Center estimates that the bottom fifth of households paid an average of 6.6% of their incomes in payroll tax in 2014, while the top fifth paid 5.9% and the top 1 percent of households paid just 2.3%.⁴⁶ Although Social Security and Medicare are progressive programs in that they inordinately benefit lower income households, the means of funding them depresses low-income workers' take home pay and reduces overall employment by raising employment costs.⁴⁷ This is especially so for less skilled workers because of the Social Security cap.⁴⁸ In all, payroll taxes make the U.S. tax system far less progressive and act as a disincentive to employment and social mobility by raising employment costs and lowering take home pay, respectively.⁴⁹

B. Plan for a Payroll Tax Elimination that Protects the Safety Net with Public Support

The complete elimination of all federal payroll taxes would amount to a \$1 trillion annual tax cut for the working poor because payroll taxes generate more than one-third of all federal revenue.⁵⁰ My plan for its elimination in a manner that protects the safety net would recoup the foregone revenue by: 1) reducing the estate tax exemption from the current \$5.49 million⁵¹ to \$2 million per person, which would generate \$85 billion in annual revenue and engender wealth and income equalization by breaking up the largest estates;⁵² 2) ending the IRS's forgiveness of income tax on unrealized property appreciation at death, which would end an improper restraint on alienation⁵³ and generate \$50 billion annually;⁵⁴ 3) introducing a

⁴⁶ *Policy Basics: Federal Payroll Taxes*, CTR. ON BUDGET AND POL'Y PRIORITIES 2 (Mar. 23, 2016), <https://www.cbpp.org/sites/default/files/atoms/files/10-17-12tax.pdf>.

⁴⁷ See Francine J. Lipman, *The "Illegal" Tax*, 11 CONN. PUB. INT. L.J. 93, 103–04 (2011); Alan Schenk, *Value Added Tax: Does This Consumption Tax Have a Place in the Federal Tax System?*, 7 VA. TAX REV. 207, 266–67 (1987); Adriana Kugler & Maurice Kugler, *Effects of Payroll Taxes on Employment and Wages: Evidence from the Colombian Social Security Reform* 17 (Stanford Ctr. for Int'l Dev., Working Paper No. 134, 2001), <https://globalpoverty.stanford.edu/sites/default/files/publications/134wp.pdf>.

⁴⁸ See Kugler & Kugler, *supra* note 47, at 5; Williams, *supra* note 45.

⁴⁹ See Schenk, *supra* note 47, at 266–67; Sugin, *supra* note 16, at 119–20; Kugler & Kugler, *supra* note 47, at 17.

⁵⁰ See FRANCIS ET AL., *supra* note 6, at 4, 294.

⁵¹ See Huang & Cho, *supra* note 7, at 1.

⁵² See Repetti, *supra* note 21, at 851–52; cf. Sawhill & Krause, *supra* note 8 (arguing that if the estate tax operated now as it did in 1972, it would generate about \$1 trillion in federal tax revenue over ten years).

⁵³ See 61 AM. JUR. 2D *Perpetuities and Restraints on Alienation* § 88 (2012); Burke & McCouch, *supra* note 9, at 658–59.

⁵⁴ See Burke & McCouch, *supra* note 9, at 659.

nationwide \$1 per gallon gas tax, which would generate \$100 billion per year in tax revenue,⁵⁵ reduce gasoline consumption and, in turn, encourage liberal democracy in authoritarian petroleum exporting countries; 4) ending the mortgage interest tax deduction, which is a regressive tax that deprives the U.S. Treasury of about \$80 billion annually;⁵⁶ and 5) implementing an 8% national sales tax, which would generate an additional \$620 billion per year in revenue, reduce consumption and increase savings.⁵⁷ The aggregate revenue generated would be \$1 trillion, which would fully replace the lost payroll tax revenue and help to fund the entitlement programs, which are, of course, cornerstones of the American safety net.⁵⁸ I would, however, go one step further and engender support for my proposal by addressing the public's skepticism toward government by requiring triggers in any proposed legislation such that should the new revenue sources prove insufficient or excessive to fully fund the entitlement programs, the tax and expenditure rates would automatically readjust to make up the revenue shortfall or excess for the next fiscal year. This trigger feature is necessary because it would engender support for the tax reform by precluding the government from "raiding" the entitlement trust funds. It would legitimize the tax reform by assuring the electorate that the revenue generated will be used exclusively to fund entitlement programs and fully eliminate the nation's regressive payroll taxes.⁵⁹

C. *The U.S. Tax System – A Very Short Primer*

The Trump tax cuts of 2017 were marketed as tax reform by a man who won the presidency by speaking to voters' concerns regarding the U.S.'s high level of income inequality and socio-economic immobility.⁶⁰ In actuality, the tax cuts are not so much a reform as

⁵⁵ Mankiw, *supra* note 11, at A12.

⁵⁶ See STAFF OF THE JOINT COMM. ON TAXATION, 115TH CONG., JCX-3-17, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2016–2020, at 32 (Comm. Print 2017); Thompson, *supra* note 12.

⁵⁷ See Len Burman & William G. Gale, *The Pros and Cons of a Consumption Tax*, BROOKINGS (Mar. 3, 2005), <https://www.brookings.edu/on-the-record/the-pros-and-cons-of-a-consumption-tax/>; *infra* note 155 and accompanying text.

⁵⁸ See FRANCIS ET AL., *supra* note 6, at 294; *What Are the Major Federal Safety Net Programs in the U.S.?*, *supra* note 33.

⁵⁹ Cf. JOHN HALPIN ET AL., CTR. FOR AM. PROGRESS, TRUST IN GOVERNMENT IN THE TRUMP ERA 27–28 (2018) (finding 58 percent of survey participants think the "[g]overnment spends too much and wastes too much money").

⁶⁰ See Donald Trump, Remarks at the New York Economic Club in Manhattan (Sept. 15, 2016), in Tessa Berenson, *Read Donald Trump's Speech on Jobs and the Economy*, TIME (Sept. 15, 2016), <http://time.com/4495507/donald-trump-economy-speech-transcript/>; *Out with the*

a massive lowering of tax rates for high income earners and businesses in a manner that will dramatically increase the federal budget deficit and therefore undermine political support for the nation's entitlement programs.⁶¹ To illustrate, the Tax Cuts and Jobs Act reduces the corporate tax rate from 35% to 21% and the top marginal income tax rate for individuals from 39.6% to 37% and has this high rate kick in at \$500,000 as opposed to the previous \$418,000.⁶² In addition, the Trump tax law substantially increases the standard deduction and increases the scope of pass-through income for small business owners and partnerships.⁶³ The Trump tax cuts, however, remediate a problem not needing reform, i.e., the problem facing the U.S. economy is neither high marginal income nor corporate tax rates per se, but the government's overall lack of revenue sources and provision of costly but politically popular tax expenditures that starve it of resources and undermine the safety net. Indeed, Americans, who pay 25.9% of their income in taxes, are taxed at far lower rates than other rich country residents⁶⁴ with the U.S. government relegated to raising revenue from two main sources, namely the income and payroll tax, which act in conjunction to disincentivize employment and productivity.⁶⁵ For fiscal year 2016, the federal government spent \$3.9 trillion and raised \$3.3 trillion, with the difference being a federal deficit of nearly \$600 billion.⁶⁶ Nearly half of the federal government's revenue (47%) comes from

Old, In with the New: Tax Cuts and Reforms that Look Out for Hardworking Taxpayers, WHITE HOUSE (Apr. 17, 2018), <https://www.whitehouse.gov/briefings-statements/old-new-tax-cuts-ref-orms-look-hardworking-taxpayers/>.

⁶¹ See Letter from Keith Hall, Director of the Cong. Budget Office, to Rep. Richard Neal, Ranking Member, H. Comm. Ways and Means (Nov. 8, 2017), <https://www.cbo.gov/system/files?file=115th-congress-2017-2018/costestimate/hr1deficitsanddebt.pdf>; Tara Golshan, *4 Winners and 4 Losers from the Republican Tax Bill*, VOX (Dec. 22, 2017), <https://www.vox.com/2017/12/20/16790040/gop-tax-bill-winners>; Derek Thompson, *Why the GOP Tax Cut Will Make Wealth Inequality So Much Worse*, ATLANTIC (Dec. 19, 2017), <https://www.theatlantic.com/business/archive/2017/12/gop-tax-bill-inequality/548726/>. Increasing the deficit will lead the government to be even more reliant on raiding the Social Security trust fund and therefore place pressure on Congress to "reform" public pensions by cutting benefits. See Michael Hiltzik, *A Sly Plan to Cut Worker Safety Nets*, L.A. TIMES, Dec. 3, 2017, at C1.

⁶² See WILLIAM G. GALE ET AL., TAX POLICY CTR., EFFECTS OF THE TAX CUTS AND JOBS ACT: A PRELIMINARY ANALYSIS 2, 5 (2018); John Maull, *2018 Tax Rate Changes: Whose Taxes Go Up or Down?*, MEDIUM (Feb. 9, 2018), <https://medium.com/@johnmaull/2018-tax-rate-changes-who-se-taxes-go-up-or-down-b5033ff1c3ff>.

⁶³ See GALE ET AL., *supra* note 62, at 3–4, 17–18.

⁶⁴ See Jonathan Kay, *Why Canada Is Able to Do Things Better*, ATLANTIC (July 17, 2017), <https://www.theatlantic.com/business/archive/2017/07/canada-america-taxes/533847/>.

⁶⁵ FRANCIS ET AL., *supra* note 6, at 43; *Policy Basics: Where Do Federal Tax Revenues Come From?*, CTR. ON BUDGET & POL'Y PRIORITIES 1 (Sept. 5, 2017), https://www.cbpp.org/sites/default/files/atoms/files/PolicyBasics_WhereDoFederalTaxRevsComeFrom_08-20-12.pdf.

⁶⁶ *Policy Basics: Where Do Federal Tax Revenues Come From?*, *supra* note 65, at 1.

the federal income tax, one third (34%) comes from the payroll tax, which pays for Social Security, Medicare, health care subsidies, and federal unemployment insurance, 9% comes from corporate income taxes, and only 9% comes from excise, estate, and other taxes.⁶⁷ Indeed, the excise tax on fuel, alcohol, and tobacco accounts for only 3% of federal revenues and the estate tax accounts for less than 1% of federal revenues.⁶⁸ In short, the U.S., unlike other rich countries, lacks either a national sales or robust energy tax to raise revenue and is, therefore, over-reliant on income and payroll taxes to fund its obligations.⁶⁹

In contrast, Canada, which has seen greater socio-economic mobility and wage growth since the 1990s, raises 12% of its revenue from Canada's national sales tax, known as the Goods and Services Tax, 14% of its revenue from the corporate income tax and 4% of revenue from excise and energy taxes.⁷⁰ Because Canada has these additional revenue sources, it has taken steps in recent years to minimize its payroll tax, which accounts for less than 10% of Canada's total revenue.⁷¹ This is certainly a factor in making

⁶⁷ *Id.* at 1–2.

⁶⁸ *Id.* at 2.

⁶⁹ See FRANCIS ET AL., *supra* note 6, at 16; Charles E. McLure, Jr., *Taxation of Electronic Commerce: Economic Objectives, Technological Constraints, and Tax Laws*, 52 TAX L. REV. 269, 366 (1997); Brad Plumer, *The U.S. Has Some of the Lowest Energy Taxes in the Developed World*, WASH. POST: WONKBLOG (Jan. 31, 2013), https://www.washingtonpost.com/news/wonk/wp/2013/01/31/how-the-world-taxes-fossil-fuels-in-three-charts/?utm_term=.f930b1940505.

⁷⁰ See 1 PUBLIC ACCOUNTS OF CANADA 2017, GOV'T OF CAN. 1.7 (2017), <https://www.tpsgc-pwgsc.gc.ca/reggen/cpc-pac/2017/pdf/2017-vol1-eng.pdf>; RENÉ MORISSETTE ET AL., STATISTICS CAN., 11F0019M NO. 347, THE EVOLUTION OF CANADIAN WAGES OVER THE LAST THREE DECADES 12 (2013), <https://www150.statcan.gc.ca/n1/en/pub/11f0019m/11f0019m2013347-eng.pdf?st=zrewEcGF>; Alana Abramson, *Want to Achieve the 'American Dream'? You Might Have Better Luck in Canada*, FORTUNE (Mar. 10, 2017), <http://fortune.com/2017/03/10/american-dream-canada-easier/>; Charles Lammam and Hugh MacIntyre, *Opinion: Social Mobility Alive and Well in Canada*, VANCOUVER SUN (June 15, 2015), <http://www.vancouversun.com/opinion/social-mobility-alive-well-canada/11138532/story.html>; Cyndee Todgham Cherniak, *Canada's Sales Tax Rates as at July 1, 2017*, CAN.-U.S. BLOG (July 12, 2017), <https://www.canadablog.com/2017/07/12/canadas-sales-tax-rates-as-at-july-1-2017/>; William Watson, *Canada's 21st Century Wage Miracle*, FRASER INST. (July 14, 2017), <https://www.fraserinstitute.org/blogs/canada-s-21st-century-wage-miracle/>.

⁷¹ See *EI Premium Rates and Maximums*, GOV'T OF CAN., <https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/payroll/payroll-deductions-contributions/employment-insurance-ei/ei-premium-rates-maximums.html> (last updated Nov. 16, 2017); *CPP Contribution Rates, Maximums and Exemptions* GOV'T OF CAN., <https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/payroll/payroll-deductions-contributions/canada-pension-plan-cpp/cpp-contribution-rates-maximums-exemptions.html> (last updated Mar. 3, 2018); Press Release, Dep't of Fin. Can., Statement on the Employment Insurance Premium Rate Change for 2019 by the Minister of Finance and the Minister of Families, Children and Social Development (2018), <https://www.fin.gc.ca/n18/18-078-eng.asp>; *Social Security Contributions in Canada: Revenue, Rates and Rationale*, LIBRARY OF PARLIAMENT (Mar. 24, 2017), <https://hillnotes.ca/2017/03/24/social-security-contributions-in-canada-revenue-rates-an>

Canada's tax code more progressive and may explain Canada's lower GINI coefficient and greater rate of socio-economic mobility.⁷²

1. Failed Attempts to Generate Economic Growth by Income Tax Reductions

The U.S., which had a largely progressive tax paradigm, compared to other rich countries, first enacted massive income tax cuts during the Reagan Administration.⁷³ Among other things, the Reagan tax cuts, officially known as the Economic Recovery Tax Act of 1981, cut marginal income tax rates from a high of 70% to 50%, indexed the individual tax brackets to prevent against inflation-based "bracket creep," increased the estate tax exemption from \$175,625 to \$600,000, and allowed all working taxpayers to establish Individual Retirement Accounts, or IRAs.⁷⁴

The idea behind the Reagan tax cuts was to incentivize supply-side economic growth in a budget neutral manner.⁷⁵ Although a strong economic expansion ensued, the evidence does not demonstrate that the tax cuts were a substantial reason for the expansion and the federal debt ballooned to Brobdingnagian proportions.⁷⁶ Notwithstanding the fact that the tax cuts were anything but self-financing, the cuts were furthered in 1986 when the top marginal tax income rates were reduced to 28%.⁷⁷

While dramatically lowering marginal income tax rates, the Reagan Administration purported to implement a bipartisan fix to Social Security by regressively raising payroll taxes by requiring the self-employed to pay both the employer and employee portions of the tax.⁷⁸

d-rationale/; *Revenue Statistics - OECD countries: Comparative Tables*, OECD.STAT, <https://stats.oecd.org/Index.aspx?DataSetCode=REV> (last updated Nov. 23, 2017).

⁷² See CENT. INTELLIGENCE AGENCY, *supra* note 24; Abramson, *supra* note 70.

⁷³ By this I mean the first of Ronald Reagan's two major tax cuts. See *The Second American Revolution: Reaganomics*, RONALD REAGAN PRESIDENTIAL FOUND. & INST., <https://www.reaganfoundation.org/ronald-reagan/the-presidency/economic-policy/> (last visited Sept. 21, 2018).

⁷⁴ Jerry Tempalski, *Revenue Effects of Major Tax Bills* 12 (U.S. Dep't of Treasury, Working Paper No. 81, 2006); Stephen J. Entin, *Tax Indexing Turns 30*, TAX FOUND. (Mar. 11, 2015), <https://taxfoundation.org/tax-indexing-turns-30/>.

⁷⁵ See N. Gregory Mankiw, *A Tax Cut Might Be Nice. But remember the Deficit*, N.Y. TIMES (June 2, 2017), <https://www.nytimes.com/2017/06/02/upshot/a-tax-cut-might-be-nice-but-remember-the-deficit.html>.

⁷⁶ See Martin Anderson, *The Reagan Boom - Greatest Ever*, N.Y. TIMES, Jan. 17, 1990, at A25; Sahadi, *supra* note 26.

⁷⁷ Sahadi, *supra* note 26.

⁷⁸ See *Social Security Programs in the Reagan Presidency*, N.Y. TIMES, Nov. 16, 1988, at A28; Sahadi, *supra* note 26.

The consequence of the income tax cuts and payroll tax increase was a massive increase in government indebtedness and a marked increase in socio-economic inequality.⁷⁹ To illustrate, after Reagan's first year in office, the budget deficit was 2.6% of GDP.⁸⁰ This number went up to 6% in 1983 and remained about 5% for the duration of his first term.⁸¹ With respect to socio-economic inequality, "the Congressional Budget Office reports that for the period 1979 to 2009, after-tax inflation-adjusted household income of the top 1% of households grew 155%, the next 19% grew 58%, the middle 60% grew 37%, and the bottom 20% grew 45%."⁸² Furthermore, a full 60% of a person's income in the U.S. is attributable to that of their parents' relative income, which is the third highest correlation in the developed world.⁸³ The comparable figure in Canada is less than 20%.⁸⁴

When President Clinton assumed office in January 1993, it became clear that the U.S. government's debt, which had accumulated under the Reagan and George H. W. Bush Presidencies, had grown to an unsustainable level such that the first Democratic President since Jimmy Carter would feel obliged to revisit a campaign promise to implement an industrial policy and instead pursue deficit reduction by way of income tax increases and spending cuts.⁸⁵ The Omnibus Budget Reconciliation Act of 1993 raised marginal income tax rates for the top income earners from 31% to 39.6% and increased corporate income tax rates from 34% to 35%.⁸⁶ Notwithstanding criticism that

⁷⁹ See Robert D. Plotnick, *Changes in Poverty, Income Inequality and the Standard of Living During the Reagan Years*, 19 J. SOC. & SOC. WELFARE 29, 42 (1992); Sahadi, *supra* note 26.

⁸⁰ Sahadi, *supra* note 26.

⁸¹ *Id.*

⁸² Paul L. Caron & James R. Repetti, *Occupy the Tax Code: Using the Estate Tax to Reduce Inequality and Spur Economic Growth*, 40 PEPP. L. REV. 1255, 1257 (2013).

⁸³ See *id.* at 1262–63; ORG. FOR ECON. CO-OPERATION & DEV., ECONOMIC POLICY REFORMS: GOING FOR GROWTH 187 (2010), https://read.oecd-ilibrary.org/economics/economic-policy-reforms-2010_growth-2010-en#page185.

⁸⁴ ORG. FOR ECON. CO-OPERATION AND DEV., *supra* note 83, at 187.

⁸⁵ 2 MURRIN ET AL., LIBERTY, EQUALITY, POWER: A HISTORY OF THE AMERICAN PEOPLE 768 (6th ed. 2014); see Micheal J. Graetz, *Tax Policy at the Beginning of the Clinton Administration*, 10 YALE J. ON REG. 561, 561–62 (1993); Gwen Ifill, *Clinton's Economic Plan: The Spending Cuts; A Wide Swath, on Earth and in the Sky*, N.Y. TIMES (Feb. 18, 1993), <https://www.nytimes.com/1993/02/18/us/clinton-s-economic-plan-the-spending-cuts-a-wide-swath-on-earth-and-in-the-sky.html>; Steve Lohr, *The 1992 Campaign: Economic Policy; Clinton Proposals Seek Political Middle Ground*, N.Y. TIMES (Apr. 18, 1992), <https://www.nytimes.com/1992/04/18/us/the-1992-campaign-economic-policy-clinton-proposals-see-political-middle-ground.html>.

⁸⁶ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, sec. 13202, § 1(a), sec. 13221, § 11(b), 107 Stat. 312; Charles Kadlec, *The Dangerous Myth About the Bill Clinton Tax Increase*, FORBES (July 16, 2012), <https://www.forbes.com/sites/charleskadlec/2012/07/16/the-dangerous-myth-about-the-bill-clinton-tax-increase/#430456fe6e8a>.

the tax increases would cripple a nascent economic recovery, the U.S., during the 1990s, had perhaps its best performing decade since World War II, a period characterized as a “Goldilocks economy” because it ushered in high levels of economic growth, full employment, dramatically increasing stock market indices, low inflation, high wage and productivity growth, and increased levels socio-economic equality.⁸⁷ When the Clinton Administration left office, the federal government’s budget was back in the black for the first time in a generation and the Congressional Budget Office estimated budget surpluses totaling \$5.61 trillion over the next decade.⁸⁸

This high rate of economic and wage growth began to taper off when President George W. Bush took office in 2001.⁸⁹ The Bush Administration proposed across-the-board tax cuts as a means of returning surplus government revenue to the American people and emphasized that the tax cuts would stimulate the economy in a manner that would avoid a return to federal budget deficits.⁹⁰ The Bush Administration rejected the advice of its incoming Treasury Secretary, Paul O’Neill, who recommended triggers be introduced into the proposed legislation that would adjust tax rates automatically upward in the event the tax cuts led to a reoccurrence of federal budget deficits.⁹¹ Vice-President Dick Cheney, who wrongly believed the tax cuts would be a self-financing antidote to

⁸⁷ SEBASTIAN MALLABY, *THE MAN WHO KNEW: THE LIFE AND TIMES OF ALAN GREENSPAN* 463 (2016). See Neil Irwin, *Is This a Mid-1990s Moment for the Economy? Three Reasons for Optimism*, N.Y. TIMES (Sept. 8, 2018), <https://www.nytimes.com/2018/09/08/upshot/economic-parallels-to-the-1990s.html>; Tim Mullaney, *Sign of Spring on Pay: Real Wage Growth*, N.Y. TIMES (Apr. 4, 2014), <https://www.nytimes.com/2014/04/05/business/economy/sign-of-spring-for-pay-real-wage-growth-in-some-places.html>; Matthew Phillips, *Bull Market Hits a Milestone: 3,453 Days. Most Americans Aren’t at the Party*, N.Y. TIMES (Aug. 22, 2018), <https://www.nytimes.com/2018/08/22/business/bull-market-stocks.html>; Lara Merling, *What the Late 90s Should Have Taught Us: Inflation Does Not Necessarily Accelerate When Unemployment Is Low*, CTR. FOR ECON. POL’Y & RES. BLOG (Dec. 20, 2016), <http://cepr.net/blogs/cepr-blog/what-the-late-90s-should-have-taught-us-inflation-does-not-necessarily-accelerate-when-unemployment-is-low>.

⁸⁸ See 2 MURRIN ET AL., *supra* note 85, at 768; Katharine Q. Seelye, *Fiscal Year Ends with U.S. Surplus, First in 3 Decades*, N.Y. TIMES (Oct. 1, 1998), <https://www.nytimes.com/1998/10/01/us/fiscal-year-ends-with-us-surplus-first-in-3-decades.html>; Richard W. Stevenson, *Surplus Estimate Hits \$5.6 Trillion*, N.Y. TIMES (Jan. 31, 2001), <http://www.nytimes.com/2001/01/31/us/surplus-estimate-hits-5.6-trillion.html>.

⁸⁹ See MALLABY, *supra* note 87, at 580–81; 2 MURRIN ET AL., *supra* note 85, at 772.

⁹⁰ See MALLABY, *supra* note 87, at 575; Emily Horton, *The Legacy of the 2001 and 2003 “Bush” Tax Cuts*, CTR. ON BUDGET & POL’Y PRIORITIES 1 (Oct. 23, 2017), <https://www.cbpp.org/sites/default/files/atoms/files/3-31-17tax.pdf>.

⁹¹ See Edmund L. Andrews, *Economic View; O’Neill Says Bush Was Set on Cutting Taxes, Too*, N.Y. TIMES (Jan. 18, 2004), <https://www.nytimes.com/2004/01/18/business/economic-view-o-neill-says-bush-was-set-on-cutting-taxes-too.html>. See also MALLABY, *supra* note 87, at 575 (“Cheney’s new stance was bad news for the Greenspan-O’Neill triggers plan.”).

budget deficits, rejected this advice.⁹²

The Bush Administration cut marginal income tax rates from a high of 39.6% to 35% for incomes above \$374,000, from 36% to 33% for incomes between \$209,000 to \$374,000 and 31% to 28% for incomes between \$137,000 and \$209,000.⁹³ The tax cuts, however, were not self-financing, and the anticipated \$5.61 trillion in accumulated budget surpluses ended up becoming \$6.307–\$10.627 trillion in deficits, largely attributable to the tax cuts, lower than anticipated economic growth, the Bush Administration's costly response to the 9/11 terrorist attacks, a recession that the tax cuts failed to remediate, and a financial crisis in the Administration's final year.⁹⁴ Indeed, the Bush Administration's deficit numbers are even worse than the official figures suggest because the budget deficit for fiscal year 2009, which ran from October 1, 2008 to September 30, 2009, and based on budgetary appropriations approved by President Bush and not his successor, totaled a whopping \$1.4 trillion, or 10% of gross domestic product.⁹⁵ The Center for Budget Priorities estimates that the Bush tax cuts cost the federal government \$5.6 trillion in forgone revenue between the years 2001 and 2008, amounting to a staggering one-third of the aggregate accumulated federal debt.⁹⁶ To illustrate the regressivity of this policy choice, the fully phased in tax cuts meant that the top one percent of taxpayers saw their after tax income grow by 6.7% annually, while that of the bottom twenty percent saw their after tax incomes increase by only

⁹² See Nina Easton, *Questions for Vice President Dick Cheney*, FORTUNE (Nov. 26, 2007), http://archive.fortune.com/2007/11/25/magazines/fortune/cheney_transcript.fortune/index.htm. See also MALLABY, *supra* note 87, at 575 (“According to the vice president’s logic, if the economy slowed even more sharply and the budget deficit returned with a vengeance, that would be all the more reason to press ahead with tax cuts.”).

⁹³ Horton, *supra* note 90, at 1.

⁹⁴ See Horton, *supra* note 90, at 3; Kathy Ruffing & Joel Friedman, *Economic Downturn and Legacy of Bush Policies Continue to Drive Large Deficit*, CTR. ON BUDGET & POLY PRIORITIES 1–2 (Feb. 28, 2013), <https://www.cbpp.org/sites/default/files/atoms/files/10-10-12bud.pdf>; Louis Jacobson, *Steny Hoyer Says George W. Bush Inherited \$5.6 Trillion Surplus From Bill Clinton*, POLITIFACT (June 2, 2011), <http://www.politifact.com/truth-o-meter/statements/2011/jun/02/steny-hoyer/steny-hoyer-says-george-w-bush-inherited-56-trilli/> (“according to the Treasury Department, the level of debt when Bush left office on Jan. 20, 2009, was either \$6.307 trillion (the amount of debt held by the public) or \$10.627 trillion (the amount of publicly held debt plus debt held by the government, including the Social Security and Medicare trust funds)”); Martin Kettle et al., *What Impact Did 9/11 Have on America?*, GUARDIAN (Sept. 6, 2011), <https://www.theguardian.com/commentisfree/cifamerica/2011/sep/06/impact-9-11-america>.

⁹⁵ See Jackie Calmes, *\$1.4 Trillion Deficit Complicates Stimulus Plans*, N.Y. TIMES (Oct. 16, 2009), <https://www.nytimes.com/2009/10/17/us/17deficit.html>; Kimberly Amadeo, *What Is a Fiscal Year? Examples Using the Federal Budget*, BALANCE (July 10, 2018), <https://www.thebalance.com/fiscal-year-definition-federal-budget-examples-3305794>.

⁹⁶ Horton, *supra* note 90, at 3.

1%,⁹⁷ *e.g.*, between 2004 and 2012, the top one percent of households saw tax savings of \$570,000 due to the Bush tax cuts⁹⁸ and government indebtedness dramatically increased.⁹⁹ The Center for Budget and Policy Priorities writes as follows:

Policymakers enacted the 2001 and 2003 tax cuts with the promise that they would “pay for themselves” by delivering increased economic growth, which would generate higher tax revenues. But even President Bush’s Treasury Department estimated that under the most optimistic scenario, the tax cuts would at best pay for less than 10 percent of their long-term cost with increased growth.

Evidence suggests that the tax cuts — particularly those for high-income households — did not improve economic growth or pay for themselves, but instead ballooned deficits and debt and contributed to a rise in income inequality.

In fact, the economic expansion that lasted from 2001 to 2007 was weaker than average. A review of economic evidence on the tax cuts by Brookings Institution economist William Gale and Dartmouth professor Andrew Samwick, former chief economist on George W. Bush’s Council of Economic Advisers, found that “a cursory look at growth between 2001 and 2007 (before the onset of the Great Recession) suggests that overall growth rate was . . . mediocre” and that “there is, in short, no first-order evidence in the aggregate data that these tax cuts generated growth.”

In comparison, the economic expansion of the early 1990s—which followed considerable tax increases—produced a much faster rate of job growth and somewhat faster GDP growth than the expansion of the early 2000s. An analysis of business activity between 1996 and 2008 found that even the sharp cut in dividend tax rates in 2003, which proponents claimed would spur immediate business growth, had no significant impact on business investment or employee compensation after 2003.

And, when the tax cuts were scheduled to expire at the end of 2012, extending the high-income tax cuts in particular was projected to have almost no effect on economic growth. The Congressional Budget Office (CBO) estimated in 2012 that

⁹⁷ *Id.* at 3–4.

⁹⁸ *Id.* at 1.

⁹⁹ *See id.*

extending the high-income tax cuts would have boosted GDP by just 0.1 percent in 2013. Indeed, allowing the high-income tax cuts to expire after 2012 does not appear to have had any substantial negative impacts on economic growth, as proponents of the tax cuts had claimed, and the economy has continued to grow steadily since then. This is consistent with the broader empirical literature about taxes on high-income people and economic growth. As one comprehensive review of the empirical literature by three leading tax economists found, “there is no compelling evidence to date of real responses of upper income taxpayers to changes in tax rates.”¹⁰⁰

The Bush Administration left office after formulating the government’s initial response to the financial crisis of 2008 that was continued by the Obama Administration.¹⁰¹ The Obama Administration reduced the employee paid-for portion of the Social Security payroll tax from 6.2% to 4.2% as part of its fiscal stimulus in response to the financial crisis.¹⁰² For the two years this policy was in effect, it had the effect of increasing annual take home pay by \$996 for the median American household.¹⁰³ Although the Obama Administration did implement the individual mandate and raised the Medicare component of the payroll tax for high-income individuals from 2.9% to 3.8% as part of the Patient Protection and Affordable Care Act, it was forced to leave in place the Bush tax cuts as part of the Fiscal Cliff budget compromise in 2013.¹⁰⁴ Accordingly, the

¹⁰⁰ *Id.* at 4–5 (emphasis added).

¹⁰¹ See Cheryl D. Block, *Measuring the True Cost of Government Bailout*, 88 WASH. U. L. REV. 149, 157–59 (2010). The Bush Administration oversaw the bailout of Bear Stearns, chose not to extend a lifeline to Lehman Brothers and sought the Troubled Asset Relief Program (“TARP”) financial lifeline to distressed financial institutions from Congress. See *id.* at 157–59, 167–68. The Obama Administration expanded the TARP and obtained a \$787 billion financial stimulus to avert a complete collapse in demand. *Id.* at 157–59. Both Administration’s endeavors were supported by the Federal Reserve’s actions to stimulate demand. *Id.* at 175–77.

¹⁰² See Louis Jacobson, *Barack Obama Says Payroll Tax Cut Has Boosted Average Family Income by \$1,000*, POLITIFACT (Sept. 6, 2011), <http://www.politifact.com/truth-o-meter/statements/2011/sep/06/barack-obama/barack-obama-says-payroll-tax-cut-has-boosted-aver/>.

¹⁰³ See *id.*; *Payroll Tax Cut*, PAYWIZARD, <https://paywizard.org/salary/incometax/pay-roll-tax> (last visited October 11, 2018).

¹⁰⁴ See Louis Jacobson & Molly Moorhead, *Extend the Bush Tax Cuts for Lower Incomes*, POLITIFACT (Jan. 2, 2013), <https://www.politifact.com/truth-o-meter/promises/obameter/promises/37/extend-the-bush-tax-cuts-for-lower-incomes/>; Chye-Ching Huang, *Budget Deal Makes Permanent 82 Percent of President Bush’s Tax Cuts*, CTR. ON BUDGET AND POL’Y PRIORITIES 1 (Jan. 3, 2013), <https://www.cbpp.org/sites/default/files/atoms/files/1-3-13tax.pdf>; Albert B. Ellentuck, *Additional 0.9% Medicare Tax on Earned Income*, THE TAX ADVISOR (Nov. 1, 2013), <https://www.thetaxadviser.com/issues/2013/nov/casestudy-nov2013.html>.

Obama Administration's tax legacy was largely duplicative of that of the second Bush Administration and explains the country's continued trajectory toward socio-economic immobility and indebtedness.¹⁰⁵

Using income tax cuts as a means of fiscal stimulus is both fiscally irresponsible and regressive, *i.e.*, it inordinately benefits the top one percent of income earners and deprives the government of necessary resources to adequately fund programs that benefit the poor and working class.¹⁰⁶ As such, President Trump's Tax Cuts and Jobs Act will not only increase the federal government's indebtedness, but worsen the nation's problem of socio-economic inequality and immobility. As set forth more fully below, the President should have been advised to abjure the Act's tax cuts and instead focus on a true tax reform that addresses the problem of socio-economic stagnation.

2. The Natural Tendency Towards Wealth and Income Inequality

As Thomas Piketty has demonstrated, the neo-liberal economic policies first implemented by the Reagan Administration worsened the problem of wealth inequality for the simple reason that the rate of return on wealth tends to outpace economic growth.¹⁰⁷ Because high-income earners tend to save more than the working class, their wealth tends to grow in a manner that exacerbates wealth inequality.¹⁰⁸ This dynamic is exacerbated by income tax rate reductions and the near elimination of the estate tax because they work in conjunction to motivate high income earners to push for even bigger pay packages that deprive organizations of resources to either increase worker pay or hire new workers.¹⁰⁹

With the empirical evidence in place demonstrating the regressive and deficit increasing nature of income tax cuts,¹¹⁰ why has supply-side ideology not only endured, but become preponderant within the Republican Party¹¹¹ and why have Democrats and Progressives been

¹⁰⁵ See Ian Salisbury, *What Really Happened to Your Taxes While Obama Was President*, MONEY (Jan. 19, 2017), <http://time.com/money/4630346/president-obama-taxes-increase-obam-acare/>.

¹⁰⁶ See PIKETTY, *supra* note 17, at 255; Letter from Keith Hall, *supra* note 61; Thompson, *supra* note 61.

¹⁰⁷ See PIKETTY, *supra* note 17, at 353; Clara Dewey, *How Neoliberalism Has Caused Income Inequality*, MEDIUM (June 21, 2017), <https://medium.com/of-course-global/how-neoliberalism-has-caused-income-inequality-9eclfcaacb>.

¹⁰⁸ See PIKETTY, *supra* note 17, at 353, 400.

¹⁰⁹ See *id.* at 512.

¹¹⁰ See Letter from Keith Hall, *supra* note 61; Thompson, *supra* note 61.

¹¹¹ See Isaac Martin, *How Republicans Learned to Sell Tax Cuts for the Rich*, N.Y. TIMES (Dec. 18, 2017), <https://www.nytimes.com/2017/12/18/opinion/republicans-tax-cuts-rich.html>.

incapable of demonstrating to the public that such tax cuts benefit the very wealthy at the working and middle class's expense?¹¹² The evidence demonstrates that Republicans have been very supportive of supply-side tax cuts because its donor class of very wealthy individuals and corporations sees such cuts as aligned with the national interest.¹¹³ Congressional Republicans consistently support deficit and inequality-increasing tax cuts for very high income earners because they are supported by campaign donors and lobbyists, even though such tax cuts benefit very few of their constituents.¹¹⁴ Democrats, in turn, have failed to successfully argue against irresponsible tax cut proposals because large segments of the public do not trust the federal government to effectively manage public finances and fail to see the correlation between government spending and living standards.¹¹⁵ The most recent manifestation of this is the Trump Tax Cuts and Jobs Act, which is estimated to regressively increase the deficit by an additional \$1.455 trillion over the next ten years.¹¹⁶ My recommendation for those concerned about inequality and immobility is to acknowledge the public's distrust of the federal government and therefore recommend that any tax proposals be specifically targeted to fund the entitlement programs.¹¹⁷ This will, of course, be facilitated by implementing a true tax reform that eliminates payroll taxes in conjunction with the use of triggers to assure the public of the tax reform's legitimacy.

¹¹² See Ronald Brownstein, *Democrats' Biggest Threat in 2018*, ATLANTIC (Mar. 1, 2018), <https://www.theatlantic.com/politics/archive/2018/03/democrats-tax-plan-2018/554561/>.

¹¹³ See Nicole Goodkind, *Trump Officials Say Trickle-Down Economics Will Work for Tax Plan—Here's Why That's Wrong*, NEWSWEEK (Nov. 9, 2017), <https://www.newsweek.com/wealthy-tax-cuts-gary-cohn-donald-trump-trickle-down-707226>; Jim Tankersley & Michael Tackett, *Trump Tax Cut Unlocks Millions for a Republican Election Blitz*, N.Y. TIMES (Aug. 18, 2018), <https://www.nytimes.com/2018/08/18/us/politics/tax-cuts-republicans-donors.html>.

¹¹⁴ See Tankersley & Tackett, *supra* note 113; Vanessa Williamson, *How Tax Cuts for the Wealthy Became Republican Orthodoxy*, WASH. POST (DEC. 21, 2017), https://www.washingtonpost.com/news/monkey-cage/wp/2017/12/21/how-tax-cuts-for-the-wealthy-became-republican-orthodoxy/?utm_term=.6f825a61cea7.

¹¹⁵ See HALPIN ET AL., *supra* note 59, at 27–28; Brownstein, *supra* note 112; Schroeder, *supra* note 14, at 346; Jordan Weissmann, *Americans Haven't Noticed Trump's Tax Cut in Their Paychecks. That's Probably Because There Isn't Much to Notice*, SLATE (Feb. 21, 2018), <https://slate.com/business/2018/02/americans-arent-noticing-trumps-tax-cut-in-their-paychecks.html>.

¹¹⁶ See *Cost Estimate for the Conference Agreement on H.R. 1*, CONG. BUDGET OFFICE (Dec. 15, 2017), <https://www.cbo.gov/publication/53415>.

¹¹⁷ See generally Derek Thompson, *7 Facts About Government Benefits and Who Gets Them*, ATLANTIC (Dec. 18, 2012), <https://www.theatlantic.com/business/archive/2012/12/7-facts-about-government-benefits-and-who-gets-them/266428/> (explaining that a majority of Americans receive assistance from these entitlement programs and would thus benefit from greater tax funding).

II. THE FEDERAL GOVERNMENT'S POWER TO TAX AND SPEND FOR THE GENERAL WELFARE

Article I, Section 8 of the U.S. Constitution provides that “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.”¹¹⁸ This provision, known as the Taxing and Spending Clause, has been interpreted by the federal courts to be the broadest federal government power such that it supports Congressional imposition of nationwide payroll taxes to fund entitlement programs,¹¹⁹ intrusion into areas of typical state prerogative,¹²⁰ and implementation of the Patient Protection of Affordable Care Act’s individual mandate tax penalty for individuals who remain uninsured.¹²¹ The Supreme Court has held that the only powers the federal government lacks under the Taxing and Spending Clause is those of coercing state governments to implement federal regulatory programs or commandeering state executive officials. This is because these are state prerogatives protected by the Tenth Amendment.¹²² Because my tax proposal does not affect state sovereignty in any way, it is, including its use of triggers, fully authorized by the Taxing and Spending Clause. As already stated, the first part of the proposal is to fully repeal federal payroll taxes, which regressively generates a third of all federal revenues,¹²³ depresses employment and acts as a barrier to socio-economic mobility. To eliminate the payroll tax and still protect the country’s safety net, the following tax reforms are needed.

A. *The Inheritance Tax Revitalization*

The inheritance tax needs to be revitalized to both engender needed revenue to fund the entitlement programs and to help narrow the growing problem of income and wealth inequality. The

¹¹⁸ U.S. CONST. art. I, § 8.

¹¹⁹ See *Steward Mach. Co. v. Davis*, 301 U.S. 548, 574, 578 (1937); Ruth Mason, *Federalism and the Taxing Power*, 99 CALIF. L. REV. 975, 994–95, 997 (2011).

¹²⁰ See *Sabri v. United States*, 541 U.S. 600, 604–05 (2004); *South Dakota v. Dole*, 483 U.S. 203, 210–11 (1987).

¹²¹ See *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 530–31, 537, 588 (2012).

¹²² See *id.* at 578 (citing *New York v. United States*, 505 U.S. 144, 188 (1992)); *Printz v. United States*, 521 U.S. 898, 907–09, 919, 933 (1997); *New York*, 505 U.S. at 188.

¹²³ See FRANCIS ET AL., *supra* note 6, at 4.

inheritance tax, which dates back to the Progressive Era,¹²⁴ has come under attack as an illegitimate death tax from conservative groups, who have largely succeeded in undermining this exaction based on the public's distrust of the federal government.¹²⁵ The weakening of the estate tax, in conjunction with the systematic lowering of income tax rates, began in the Reagan era and has increased the U.S. tax code's regressivity.¹²⁶ Although, at one time, it raised up to 10% of federal revenues, it now applies to only the richest .2% of deaths and raises only .6% of revenue as the exemption for estate tax liability has been raised from \$675,000 per person in 2001 to \$5.49 million per person today with a spousal exemption such that it only applies to estates that purport to convey more than \$10.98 million.¹²⁷ Reducing the tax exemption would both raise needed revenue to partially make up for the payroll tax elimination and promote intergenerational equity by reducing the amount of money the richest Americans can devise to their children on a tax-exempt basis.¹²⁸ It would also, per the example of my YMCA friend, incentivize wage growth and job creation by having a salutary effect on workers who are currently well-positioned to improperly negotiate high salaries to accumulate and devise their wealth.¹²⁹ This will ideally leave additional resources for organizations and businesses to better compensate lower skilled and entry-level workers.¹³⁰ Most importantly, by not allowing the estate tax revenues to be discretionarily spent by the government, and instead be set aside for purposes of payroll tax abatement, it will address the public's distrust of the federal government and opposition to what conservatives have successfully characterized as an illegitimate "death tax."¹³¹

Another advantage of the inheritance tax is its laudable effect on reducing intergenerational inequality.¹³² Although an effective inheritance tax will increase the likelihood that the top .2% will use

¹²⁴ See Carolyn C. Jones, *The Moral Hazard of the Estate Tax*, 48 CLEV. ST. L. REV. 729, 729 (2000).

¹²⁵ See Sawhill & Krause, *supra* note 8; Jeremy Scott, *The Unpopular Tax That Almost No One Pays*, FORBES (Feb. 22, 2017), <https://www.forbes.com/sites/taxanalysts/2017/02/22/the-unpopular-tax-that-almost-no-one-pays/#632559df4050>.

¹²⁶ See Plotnick, *supra* note 79, at 42; Dick, *supra* note 15; Fisher, *supra* note 15.

¹²⁷ See Caron, *supra* note 7, at 823, 827 tbl.1; Huang & Cho, *supra* note 7, at 1.

¹²⁸ See Caron, *supra* note 7, at 827 tbl.1; Caron & Repetti, *supra* note 82, at 1256.

¹²⁹ See PIKETTY, *supra* note 17, at 509–10.

¹³⁰ See *id.* See, e.g., Jody Heymann et al., *How Businesses Can Profit from Raising Compensation at the Bottom*, IVY BUS. J. (Nov./Dec. 2010), <https://iveybusinessjournal.com/publication/how-businesses-can-profit-from-raising-compensation-at-the-bottom/> (explaining case studies of successful businesses that increased employee compensation).

¹³¹ See Sawhill & Krause, *supra* note 8; Scott, *supra* note 125.

¹³² See Caron & Repetti, *supra* note 82, at 1256.

trusts and other vehicles to avoid estate tax liability, its reinstatement will still raise revenue and make it more likely that the U.S. will reverse the trend towards greater income and wealth inequality.¹³³ This supposition is confirmed by the fact that between 1993 and 2014, during which the estate tax has been dramatically reduced, 55% of income gains went to the top 1% of income earners, who experienced an 80% income growth compared to only a 10.8% wage growth for the bottom 99%.¹³⁴ This inequality is even more manifest with respect to wealth.

Economic data and sociological analyses have in recent decades generated a more complete portrait of wealth distribution in the United States than was historically available. Several characteristics of this portrait are noteworthy. To start, wealth inequality in the United States is significantly greater than income inequality. In 2004-2005, for example, the top 20% of the income distribution received 47.7% of total income but held 84.4% of total wealth. That same year, the bottom 20% received 4.2% of total income and held 0% of total wealth.¹³⁵

This wealth inequality manifests dramatically on racial lines, with white households, on average, ten times wealthier than black families.¹³⁶ To illustrate:

The Black-White gap in median wealth is greater than the gap in mean wealth. “This result reflects a greater inequality in wealth among blacks than whites.” “More than one in four African-American households now have no positive wealth at all, in contrast to one in seven white households.” These data reveal a divide between a Black middle class with net worth in the form of home equity (though depressed due to lingering effects of past discriminatory practices) but with little net financial worth and a Black poorer class with little wealth in

¹³³ See PIKETTY, *supra* note 17, at 497; Editorial Board, ‘Only Morons Pay the Estate Tax’, N.Y. TIMES (Nov. 20, 2017), <https://www.nytimes.com/2017/11/20/opinion/estate-tax-trump-republicans.html>.

¹³⁴ Caron, *supra* note 7, at 823, 827 tbl.1, 835 tbl.2.

¹³⁵ Palma Joy Strand, *Inheriting Inequality: Wealth, Race, and the Laws of Succession*, 89 OR. L. REV. 453, 459 (2010).

¹³⁶ The Associated Press, *U.S. White Families 10 Times Wealthier than Black Families, Federal Reserve Finds*, CBC NEWS (Sept. 27, 2017), <https://www.cbc.ca/news/business/federal-reserve-wealth-survey-1.4309933>.

any form whatsoever.¹³⁷

Whites, on average, receive inheritances that are 5.46 times that of Black families, and this reinforces racial and socio-economic inequality.¹³⁸ Socio-economic inequality is even more pronounced among Blacks than among Whites.¹³⁹

Sociologist Dalton Conley offered a different perspective on racial wealth, with a focus on the tangible results of wealth disparities and, more specifically, on the degree to which social outcomes correlated to race and/or class. Conley's data were striking.

Conley found, for example, statistically significant differences in wealth holdings between Blacks and Whites, even after controlling for individual characteristics such as level of education, age, gender, and previous income. But he also found that, when class measures of the respondents' parents were equalized, the racial differences disappeared. Further, parental net worth (wealth)—not parental education, occupational prestige, or income—was the variable that mattered, though the type of wealth was not predictive. In other words, when Black and White parents had the same net worth, racial wealth disparities in the next generation did not appear. Conley concluded that the locus of black-white wealth inequality lies in the realm of class relations rather than reflecting racial differences *per se*. Race and class mirror each other with respect to the wealth distribution; however, in the end, it may be the economically disadvantaged family backgrounds of young African-Americans more than the color of their skin that hurts their efforts to accumulate wealth.¹⁴⁰

It is clear that raising the estate tax would laudably engender socio-economic equality and employment. At what rate, however, should it be set? I would advocate setting the estate tax such that it applies to all estates above \$2 million and apply at the current 40% tax rate. Although it is hard to accurately predict the revenue generated from such a tax, studies evidence that it should raise at least \$85 billion in annual revenue to the federal government.¹⁴¹ It will also have the salutary effect of equalizing income and wealth and therefore narrow the country's racial polarization. Recognizing the estate tax is highly unpopular and has been effectively characterized

¹³⁷ Strand, *supra* note 135, at 463.

¹³⁸ *See id.* at 467.

¹³⁹ *See id.* at 468–69.

¹⁴⁰ *Id.* at 469–70.

¹⁴¹ *See* Sawhill & Krause, *supra* note 8.

as an illegitimate “death tax,”¹⁴² my supposition is that its revitalization will find political support if is reintroduced as part of a payroll tax elimination. Indeed, under my plan, the estate tax revenues will be directed toward only supporting the entitlement trust funds. This will engender support for what is a necessary tax, both to partially offset the payroll tax repeal and prevent against income and wealth inequality.

B. Ending Stepped Up Basis for Bequests

Another tax amendment that will progressively aid the government in eliminating the payroll tax would be to preclude devisees and heirs from artificially receiving automatically stepped up basis when inheriting property at its full market value. This tax expenditure, which results in devisees and heirs not paying tax on appreciated property, skews heavily in favor of the wealthy with 65% of benefits going to the top 20% of the income distribution, including 21% to the top 1%, and deprives the Treasury of approximately \$50 billion annually.¹⁴³ It also undermines economic efficiency by encouraging the elderly to hold onto their asset portfolio until death rather than sell during life, thereby effectively constituting a restraint on alienation.¹⁴⁴ Changing this exemption will, of course, further socio-economic mobility because it will disincentivize avarice and wealth concentration in the hands of a few.¹⁴⁵ Finally, the ending of stepped-up basis will be politically feasible because the revenue generated will be specifically targeted to pay for the payroll tax elimination.

C. Implementation of a National Sales Tax

Sales and Energy Taxes would have the laudable effect of raising revenue, minimizing consumption, encouraging energy efficiency and lowering carbon emissions.¹⁴⁶ Most economists see a national sales

¹⁴² *See id.*

¹⁴³ *See* Burke & McCouch, *supra* note 9, at 659.

¹⁴⁴ *See id.*

¹⁴⁵ The French economist Thomas Piketty has noted that market economies grow more unequal over time because capital return rates typically outpace that of overall economic growth. PIKETTY, *supra* note 17, at 571. Accordingly, policies that disincentivize strong accumulations of wealth further socioeconomic mobility between generations. *Cf.* Burke & McCouch, *supra* note 9, at 658–59 (finding that the current estate tax incentivizes accumulation of wealth).

¹⁴⁶ *See* Burman & Gale, *supra* note 57; Fred Dews, *10 Things You Should Know About the Carbon Tax*, BROOKINGS (May 4, 2016), <https://www.brookings.edu/blog/brookings-now/2016/0>

tax as a far superior tax than either an income or payroll exaction because it neither depresses savings, nor employment, and is an easier and more stable source of revenue collection.¹⁴⁷ Indeed, the evidence demonstrates that countries that rely on sales, as opposed to payroll taxes, have achieved superior outcomes with respect to socio-economic mobility and living standard growth.¹⁴⁸ Canada, for example, has been able to reduce its reliance on payroll taxes partly because it instituted the Goods and Services Tax (“GST”) in 1991.¹⁴⁹ Not coincidentally, this reliance on consumption, as opposed to payroll taxes, explains the overall better predicament of the Canadian middle class, especially since the year 2000.¹⁵⁰ Although a 30 percent sales tax would more than fully replace the income tax,¹⁵¹ my proposal is not to replace the income tax via a national sales tax, but to only partially pay for a complete repeal of the payroll tax. Canada has found that each percentage point of its national sales tax, the GST, is worth approximately \$7 billion per year in government revenue.¹⁵² This could well mean that an 8% federal sales tax in the U.S. could raise more than \$620 billion a year in revenue because the U.S. economy is approximately twelve times larger than that of its northern neighbor.¹⁵³ Recognizing sales taxes are regressive because

5/04/9-things-you-should-know-about-the-carbon-tax-2/.

¹⁴⁷ See Burman & Gale, *supra* note 57; Marty Nemko, *The Best Fix for Our Tax System? Replace Income Taxes with Sales Taxes*, ATLANTIC (Jan. 30, 2012), <https://www.theatlantic.com/business/archive/2012/01/the-best-fix-for-our-tax-system-replace-income-taxes-with-sales-taxes/252211/>.

¹⁴⁸ See ROBERT D. BROWN & JACK MINTZ, TAX POLICY IN CANADA 1:15 (2012), http://www.ctf.ca/CTFWEB/Documents/PDF/2012/TaxPolicy_Chapter1.pdf; JULIA B. ISAACS ET AL., BROOKINGS, GETTING AHEAD OR LOSING GROUND: ECONOMIC MOBILITY IN AMERICA 39 (2008).

¹⁴⁹ See BROWN & MINTZ, *supra* note 148, at 1:13; JASON CLEMENS ET AL., FRASER INST., TAX EFFICIENCY: NOT ALL TAXES ARE CREATED EQUAL 28 (2007).

¹⁵⁰ See BROWN & MINTZ, *supra* note 148, at 1:33; David Leonhardt & Kevin Quealy, *The American Middle Class Is No Longer the World's Richest*, N.Y. TIMES (Apr. 22, 2014), https://www.nytimes.com/2014/04/23/upshot/the-american-middle-class-is-no-longer-the-worlds-richest.html?hp&_r=1.

¹⁵¹ Merrill Matthews, *Should We Replace the Federal Income Tax with a National Sales Tax?*, INST. FOR POLY INNOVATION (Oct. 2, 2015), https://www.ipi.org/ipi_issues/detail/should-we-replace-the-federal-income-tax-with-a-national-sales-tax.

¹⁵² See Barrie McKenna, *Canada Lost When Ottawa Cut the GST*, GLOBE & MAIL (Mar. 24, 2013), <https://www.theglobeandmail.com/report-on-business/economy/canada-lost-when-ottawa-a-cut-the-gst/article10271589/>.

¹⁵³ The U.S. economy is roughly 11 times larger than that of Canada. See *The World Factbook: Country Comparison :: GDP (Purchasing Power Parity)*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2001rank.html> (last visited Oct. 22, 2018). Because both countries have relatively similar median household incomes, it can be concluded that because a percentage point in GST tax in Canada generates roughly \$7 billion per year, the same percentage would generate \$77 billion in the U.S. Accordingly, an 8% sales tax should generate approximately \$616 billion in the U.S. This is likely an underestimate because it will be implemented in conjunction with a repeal of payroll

lower income households spend a higher proportion of their income on consumption, my proposal has the U.S. emulate Canada and exempt groceries from the sales tax and directly send money to low-income households to remediate for the sales tax's regressivity.¹⁵⁴ The sales tax would have a further benefit of encouraging household savings and, over time, lessening the problem of household debt accumulation, which is a major stressor for American households.¹⁵⁵

Implementation of an 8% national sales tax that exempts groceries and provides direct cash subsidies should generate approximately \$620 billion a year in revenue to offset the payroll tax elimination.¹⁵⁶ In other words, it would fund nearly two-thirds of the payroll tax repeal.¹⁵⁷ With respect to the potential unpopularity of requiring U.S. households to pay a national sales tax,¹⁵⁸ my proposal helps with implementation because it is done in conjunction with a payroll tax repeal and the money is directed solely towards the entitlement trust funds. This way, the public can be assured the tax is not an illegitimate "cash grab" by an institution it distrusts, namely the federal government.¹⁵⁹

D. Raising the Gas Tax

Unlike other developed countries that raise substantial revenues from petroleum taxes,¹⁶⁰ the U.S. raises a token amount. To

taxes, meaning that take home pay and employment should increase, which, in turn, means that consumer spending may well increase. Further, the estimates will vary as the values are in Canadian dollars.

¹⁵⁴ See CAN. REVENUE AGENCY, RC4210(E) REV. 18, GST/HST CREDIT: INCLUDING RELATED PROVINCIAL CREDITS AND BENEFITS FOR THE PERIOD FROM JULY 2018 TO JUNE 2019, at 5 (2018), <https://www.canada.ca/content/dam/cra-arc/formspubs/pub/rc4210/rc4210-18e.pdf>; CAN. REVENUE AGENCY, 4.3, BASIC GROCERIES (Jan. 2007), <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/4-3/basic-groceries.html>; *Household Expenditures and Income*, PEW TR. (Mar. 30, 2016), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/03/household-expenditures-and-income>.

¹⁵⁵ See Burman & Gale, *supra* note 57; Michael Corkery & Stacy Cowley, *Household Debt Makes a Comeback in the U.S.*, N.Y. TIMES (May 17, 2017), <https://www.nytimes.com/2017/05/17/business/dealbook/household-debt-united-states.html>.

¹⁵⁶ See *The World Factbook: Country Comparison :: GDP (Purchasing Power Parity)*, *supra* note 153; FRANCIS ET AL., *supra* note 6, at 294.

¹⁵⁷ See *The World Factbook: Country Comparison :: GDP (Purchasing Power Parity)*, *supra* note 153; FRANCIS ET AL., *supra* note 6, at 294.

¹⁵⁸ See PARK WILDE, FOOD POLICY IN THE UNITED STATES: AN INTRODUCTION 51 (2013); *How a National Sales Tax Could Solve America's Inequality Problem*, FORTUNE (Feb. 18, 2014), <http://fortune.com/2014/02/18/how-a-national-sales-tax-could-solve-americas-inequality-problem/>.

¹⁵⁹ See *Public Trust in Government: 1958-2017*, PEW RES. CTR. (Dec. 14, 2017), <http://www.people-press.org/2017/05/03/public-trust-in-government-1958-2017/>.

¹⁶⁰ See MARY CRAIGHEAD & JILL MANZO, MIDWEST ECON. POLICY INST., GAS TAXES IN THE UNITED STATES AND GLOBALLY: FAILING TO ADDRESS TRANSPORTATION INFRASTRUCTURE 6

illustrate, the U.S. collects \$35.1 billion a year based on a federal gas tax of 18.4 cents per gallon for gasoline and 24.4 cents per gallon for diesel.¹⁶¹ The average state rates are 28.62 cents and 30.21 cents per gallon, respectively.¹⁶² Canada raises on average \$20 billion per year on gas taxes, which means that Canada collects roughly five times more in gasoline taxes per capita than the U.S.¹⁶³ Moreover, unlike the U.S., which directs its gasoline tax revenue directly toward the highway trust fund, Canada uses its petroleum tax revenue to fund general government obligations including social services.¹⁶⁴ The highly regarded economist, Greg Mankiw, believes a \$1 per gallon gas tax will raise \$100 billion per year in revenue, which means that such a tax will fund roughly one-tenth of the payroll tax repeal and act as a disincentive to excess gasoline consumption.¹⁶⁵ Indeed, even though the U.S. is currently a net petroleum exporter, its demand for petroleum is a key factor in setting world petroleum prices,¹⁶⁶ which, in turn, means that if U.S. consumption is reduced, illiberal and undemocratic petroleum exporting nations will see a reduction in their oil revenues because of lower world energy prices.¹⁶⁷ This means that undemocratic states that see their national interests as antithetical to that of the U.S., including Russia, Iran and Venezuela will be encouraged to undertake democratic reforms and undergo a process of liberalization to maintain their legitimacy.¹⁶⁸ Accordingly,

(2016), <https://midwestepi.files.wordpress.com/2016/12/gas-tax-final.pdf>.

¹⁶¹ See *Status of the Federal Highway Trust Fund*, U.S. DEP'T. OF TRANSP. FED. HIGHWAY ADMIN. 1 (Dec. 18, 2015), <https://www.fhwa.dot.gov/policyinformation/statistics/2014/pdf/fe10.pdf>; *How Much Tax Do We Pay on a Gallon of Gasoline and a Gallon of Diesel Fuel?*, U.S. ENERGY INFO. ADMIN. (Sept. 7, 2018), <https://www.eia.gov/tools/faqs/faq.php?id=10&t=10>.

¹⁶² *How Much Tax Do We Pay on a Gallon of Gasoline and a Gallon of Diesel Fuel?*, *supra* note 161.

¹⁶³ See JEFF BOWES, CANADIAN TAXPAYERS FED'N, 18TH ANNUAL GAS TAX HONESTY REPORT 5 (2016) <https://www.taxpayer.com/media/2016-GTHD-EN.pdf>; *Status of the Federal Highway Trust Fund*, *supra* note 161, at 1; *The World Factbook: Country Comparisons :: Population*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2119rank.html> (last visited Oct. 14, 2018).

¹⁶⁴ See FRANCIS ET AL., *supra* note 6, at 311; *Taxes on Fuel*, U.N. DEVEL. PROGRAMME, <http://www.undp.org/content/sdfinance/en/home/solutions/fuel-tax.html> (last visited Oct. 13, 2018).

¹⁶⁵ See FRANCIS ET AL., *supra* note 6, at 294; Mankiw, *supra* note 11, at A12; Erich Muehlegger et al., *Gasoline Taxes and Consumer Behavior*, BELFER CTR. (July 2012), <https://www.belfercenter.org/publication/gasoline-taxes-and-consumer-behavior>.

¹⁶⁶ See *Net Petroleum Product Exports Continue to Increase*, U.S. ENERGY INFO. ADMIN. (July 8, 2015), <https://www.eia.gov/todayinenergy/detail.php?id=21972>; Kimberly Amadeo, *What Affects Oil Prices? Three Critical Factors*, BALANCE (Sept. 1, 2018), <https://www.thebalance.com/how-are-oil-prices-determined-3305650>.

¹⁶⁷ See generally Roy Matthew, *Effect of Declining Oil Prices on Oil Exporting Countries*, STAN. UNIV., https://web.stanford.edu/class/e297c/trade_environment/energy/heffect.html (last visited Oct. 13, 2018) (assessing the actual effect of declining oil prices on various exporting countries due to varying historical factors).

¹⁶⁸ Cf. Leder & Shapiro, *supra* note 11 (“[Russia’s] retreat from democracy has only gained

implementation of a nationwide gas tax will not only raise needed government revenue to partially offset a payroll tax repeal, but it would engender energy conservation and further U.S. national security by defunding authoritarian and undemocratic regimes that are hostile to U.S. interests. It would therefore, over time, enable the U.S. to reduce defense spending, spend more on needed domestic initiatives such as infrastructure, health care and education and demonstrate to allies that the U.S. is serious about remediating climate change. Although some might dismiss the likelihood of this tax reform because petroleum taxes tend to be very unpopular,¹⁶⁹ my argument is that it would be wrong to dismiss this likelihood because the tax's revenues would be directly targeted towards the entitlement trust funds in furtherance of a complete payroll tax repeal and because it can effectively be presented to both conservative and liberal members of the political class as a means of protecting U.S. national security and the environment, respectively.¹⁷⁰

E. Ending the Mortgage Interest Tax Deduction

Another aspect of my proposal is to end the mortgage interest tax deduction, which disproportionately benefits the wealthiest households, encourages housing overconsumption and explains much of the country's wealth inequality problem.¹⁷¹ To illustrate:

Federal housing policy transfers lots of money to rich homeowners, a bit less to middle-class homeowners, and practically nothing to poor renters. Half of all poor American families who rent spend more than 50 percent of their income on housing costs. In May, rental income as a share of GDP hit *an all-time high*. Meanwhile, in 2015, the federal government spent \$71 billion on the MID, and households earning more than \$100,000 receive almost 90 percent of the benefits. Since the value of the deduction rises as the cost of one's mortgage increases, the policy essentially pays upper-middle-class and rich households to buy larger and more

momentum as oil revenues have soared. Venezuela and Nigeria are following a similar path.”).

¹⁶⁹ See WILDE, *supra* note 158, at 51.

¹⁷⁰ See Dews, *supra* note 146; Robert Rapier, *In Defense of Higher Gas Taxes*, FORBES (Feb. 16, 2018), <https://www.forbes.com/sites/rrapier/2018/02/16/in-defense-of-higher-gas-taxes/#5d1be3aa21ec>.

¹⁷¹ See Rebecca N. Morrow, *Billions of Tax Dollars Spent Inflating the Housing Bubble: How and Why the Mortgage Interest Deduction Failed*, 17 FORDHAM J. CORP. & FIN. L. 751, 769 (2012); Thompson, *supra* note 12.

expensive homes. At the same time, because national housing policy's benefits don't accumulate as much to renters, it makes it harder for poor renters to join the class of homeowners.¹⁷²

Indeed, the Tax and Jobs Act's doubling of the standardized deduction means that the mortgage interest deduction will go from being a subsidy for the upper middle class and wealthy to one that solely benefits the highest income earners.¹⁷³ As the highly regarded financial journalist, Sebastian Mallaby has written, the policy behind the mortgage interest deduction is absurd because affluent families tend to own their homes anyway, and U.S. home ownership rates are no higher than those of Australia or Britain, notwithstanding the fact these countries lack a government mortgage subsidy.¹⁷⁴

My proposal would eliminate the mortgage interest tax deduction expenditure, which is a regressive subsidy to the highest income earners, a major cause of nationwide wealth inequality, and deprives the federal government of \$71 billion a year in revenue.¹⁷⁵ Although wealthy taxpayers and the real estate industry would oppose elimination of this tax expenditure, my proposal becomes politically feasible because it would be in furtherance of a stipended payroll tax repeal.

F. The Importance of Triggers

After the second Bush Administration assumed office in January 2001, the incoming Treasury Secretary, Paul O'Neill, and the then Federal Reserve Board Chairman, Alan Greenspan, supported the idea of tax cuts as a proper means of stimulating what was then a slowing economy and returning money to taxpayers based on the CBO's projection of \$5.61 trillion in accumulated budget surpluses over the next ten years.¹⁷⁶ They did so, however, based on the idea that the cuts would only return projected budget surpluses to taxpayers and never supported the idea that the tax cuts would be

¹⁷² Thompson, *supra* note 12.

¹⁷³ *See id.*

¹⁷⁴ Sebastian Mallaby, *Attacking Inequality*, WASH. POST (Sept. 4, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/09/03/AR2006090300741.html>.

¹⁷⁵ *See* Daniel Hemel & Kyle Rozema, *Inequality and the Mortgage Interest Deduction*, 70 *Tax L. Rev.* 667, 705 (2017); Thompson, *supra* note 12.

¹⁷⁶ *See* MALLABY, *supra* note 87, at 575; Andrews, *supra* note 91; Stevenson, *supra* note 88. This number represents the CBO's estimate of future budget surpluses at the end of the Clinton Administration based on the tax rates in effect when Clinton left office. MALLABY, *supra* note 87, at 573; Stevenson, *supra* note 88.

self-financing or the idea of deficit spending.¹⁷⁷ They therefore initially advocated that the tax cuts would be implemented with triggers such that they would be immediately repealed should the government's budget balance move into the red.¹⁷⁸ The Bush Administration never advocated such a feature and the two Bush tax cuts ended up being a major factor in the reversal of what was an auspicious budgetary outlook, *e.g.*, the anticipated \$5.61 trillion in anticipated surpluses never materialized and ended up becoming an aggregated \$6.1 trillion in deficits, largely due to the two Bush tax cuts, lower than anticipated economic growth, the Bush Administration's costly response to the 9/11 terrorist attacks, two recessions and a financial crisis that overwhelmed Bush's final year in office.¹⁷⁹ The Bush Administration's economic legacy is therefore one of fiscal irresponsibility born of the President's failure to take his incoming Treasury Secretary's advice and implement triggers with the tax cuts.¹⁸⁰ My proposal learns from history and insists upon triggers for two reasons. First, the U.S. government is already hugely in debt with a debt to GDP ratio nearly 80%, excluding state and local government debt loads and intragovernmental obligations.¹⁸¹ This means that the current level of public indebtedness is very high such that borrowing costs risk dramatically increasing in the near term should the payroll tax elimination not be self-financing.¹⁸² Second, triggers are key to maintaining support for the tax plan because the public will be ensured that the new taxes will be used solely to pay for the payroll tax elimination and support the entitlement trust funds. The way triggers would work is as follows:

1. If the revenue generated from the taxes and tax expenditure eliminations are insufficient to fully fund the entitlement programs, the Treasury would fund

¹⁷⁷ See MALLABY, *supra* note 87, at 575, 580. By this I mean the idea among supply side advocates that tax cuts stimulate the economy sufficiently to be budget neutral or self-financing.

¹⁷⁸ See MALLABY, *supra* note 87, at 574.

¹⁷⁹ See MALLABY, *supra* note 87, at 580; Andrews, *supra* note 91; Horton, *supra* note 90, at 1; Jacobson, *supra* note 94; Pema Levy, *Did 9/11 Cause the Financial Crisis?*, AM. PROSPECT (Sept. 10, 2011), <http://prospect.org/article/did-911-cause-financial-crisis>; *Chart Book: The Legacy of the Great Recession*, CTR. ON BUDGET AND POL'Y PRIORITIES (Oct. 5, 2018), <https://www.cbpp.org/research/economy/chart-book-the-legacy-of-the-great-recession>.

¹⁸⁰ See MALLABY, *supra* note 87, at page 575; Andrews, *supra* note 91.

¹⁸¹ See *The World Factbook: North America :: United States*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html> (last visited Oct. 11, 2018).

¹⁸² See Romina Boccia, *How the United States' High Debt Will Weaken the Economy and Hurt Americans*, HERITAGE FOUND. 1 (Feb. 12, 2013), http://thf_media.s3.amazonaws.com/2013/pdf/bg2768.pdf.

the programs with general revenue, but the trust funds accordingly would be indebted in that amount to the Treasury.¹⁸³

2. The debt would be paid off the next fiscal year because my proposal's new taxes would be adjusted upward to both fully fund the entitlement programs and repay the Treasury.¹⁸⁴

To illustrate, suppose in year one that the taxes raised under my proposal were \$50 billion short of the amount required to fully fund the entitlement programs. The Treasury would step in and lend the entitlement trust funds the necessary \$50 billion. Accordingly, the tax rates would be adjusted upward \$100 billion for year two, i.e. \$50 billion to repay the Treasury and an additional \$50 billion to satisfy the entitlement programs' needs for the next year. This \$100 billion could be raised by increasing the sales tax by one percentage point to 9% and raising the gas tax by an additional 20 cents.¹⁸⁵ Of course, the reverse would apply if the taxes generate more money than necessary. Implementing my plan's proposed taxes with triggers enhances its viability because it assures the public that the funds will be spent as promised. In the end, triggers are necessary because public distrust in government has facilitated the irresponsible tax cutting¹⁸⁶ that has rendered the U.S. government largely incapable of improving living standards since the 1990s.¹⁸⁷ My hope is that the trigger will prove workable and popular with the public such that they can be implemented to fund other areas of government to reduce inequality.

III. CONCLUSION

The U.S. remains the world's most powerful country, with the largest economy and most powerful military in the world.¹⁸⁸ Its

¹⁸³ The congressional action I am advocating for would have the Treasury pay these benefits and require the trust funds to pay the Treasury back.

¹⁸⁴ My proposal would be a higher tax to ensure the entitlement programs are fully funded and the Treasury is paid back from the previous year.

¹⁸⁵ See Mankiw, *supra* note 11; *supra* note 153.

¹⁸⁶ See generally MALLABY, *supra* note 87, at page 575 ("Bush had advocated the tax cut mostly on the ground that . . . if the proceeds of the surplus were not returned to the people, Congress would lavish the money on big-government programs.")

¹⁸⁷ See Horton, *supra* note 90, at 3; David Leonhardt, *Upward Mobility Has Not Declined, Study Says*, N.Y. TIMES (Jan. 23, 2014), https://www.nytimes.com/2014/01/23/business/upward-mobility-has-not-declined-study-says.html?hpw&rref=business&_r=0.

¹⁸⁸ See *Biggest Economies*, ECONOMIST (2016), <https://worldinfutures.com/rankings/topic/8;> 2018 MILITARY STRENGTH RANKING, GLOB. FIREPOWER, <https://www.globalfirepower.com/count>

citizens, however, increasingly question the country's traditional leadership role within an open international system¹⁸⁹ and in President Trump, they have elected a man who is openly contemptuous of both liberal democracy and the international order created by the U.S. after World War II.¹⁹⁰ As manifest by President Trump's imposition of tariffs to protect domestic industry and workers from foreign competition, the U.S. electorate increasingly favors authoritarianism, unilateralism, mercantilism and protectionism.¹⁹¹ These "isms" were manifest in the political culture during the Clinton, second Bush, and Obama Administrations.¹⁹² Indeed, it was the Obama Administration that adumbrated the President's current policy of international disengagement when it chose to "lead from behind" in Libya¹⁹³ and abjured intervention to prevent a genocide in the Syrian Civil War.¹⁹⁴ Candidate Hillary Clinton disregarded American's traditional leadership role when she disavowed the Trans-Pacific Partnership during the 2016 general election.¹⁹⁵ Although there are many explanations for these phenomena, much of the impetus behind this benighted approach to governance and international affairs is a political response to the

ries-listing.asp (last visited Sept. 24, 2018).

¹⁸⁹ See Richard C. Eichenberg, *Public Opinion on Foreign Policy Issues*, in OXFORD RESEARCH ENCYCLOPEDIA OF POLITICS (Apr. 2016), <http://politics.oxfordre.com/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-78>.

¹⁹⁰ See Carol Morello, *U.S. Withdraws from U.N. Human Rights Council Over Perceived Bias Against Israel*, WASH. POST (June 19, 2018), https://www.washingtonpost.com/world/national-security/us-expected-to-back-away-from-un-human-rights-council/2018/06/19/a49c2d0c-733c-11e8-b4b7-308400242c2e_story.html?utm_term=.d181c994a489; Tony Walker, *Why the World Should Be Worried About the Rise of Strongman Politics*, CONVERSATION (July 23, 2018), <https://theconversation.com/why-the-world-should-be-worried-about-the-rise-of-strongman-politics-100165>; *Trump Threatens to Pull U.S. Out of World Trade Organization*, BBC NEWS (Aug. 31, 2018), <https://www.bbc.com/news/world-us-canada-45364150>.

¹⁹¹ See Brian Bradley, *Trump Signs off on Steep Steel, Aluminum Tariffs*, AM. SHIPPER, Mar. 9, 2018 (Factiva); Jim Tankersley & Keith Bradsher, *Trump Hits China with Tariffs on \$200 Billion in Goods, Escalating Trade War*, N.Y. TIMES (Sept. 17, 2018), <https://www.nytimes.com/2018/09/17/us/politics/trump-china-tariffs-trade.html>.

¹⁹² See Curtis A. Bradley & Jack L. Goldsmith, *Presidential Control over International Law*, 131 HARV. L. REV. 1201, 1210–11, 1214–15 (2018); Jacqueline J. Ferber, *The U.S. Foreign Direct Investment Policy: The Quest for Uniformity*, 76 MARQ. L. REV. 805, 806–07, 808–09 (1993); Benjamin A. Tisdell, Note, "Steeling" the World: Economic and Antitrust Implications of Steel Industry Cartels as Alternatives to Trade Protectionism, 97 NW. U. L. REV. 473, 473–74 (2002).

¹⁹³ See Saikrishna Bangalore Prakash, *Military Force and Violence, But Neither War nor Hostilities*, 64 DRAKE L. REV. 995, 997 (2016); Ryan Lizza, *Leading from Behind*, NEW YORKER (Apr. 26, 2011), <https://www.newyorker.com/news/news-desk/leading-from-behind>.

¹⁹⁴ See Amos N. Guiora, *Humanitarian Intervention and Sovereignty Under the Umbrella of Geo-Politics*, 34 U. PA. J. INT'L L. 411, 418 (2013).

¹⁹⁵ See *Clinton Speaks Out Against New TTP Trade Deal*, VOICE OF AM. NEWS (Oct. 7, 2015), <https://www.voanews.com/a/clinton-speaks-out-against-trans-pacific-partnership-trade-deal/2995954.html>.

socio-economic immobility felt by many Americans, who suffer stagnant wages, punishing levels of debt and increasingly unaffordable health care.¹⁹⁶ Although unilateralism and protectionism are understandable consequences of these pressures, they are, in the end, shortsighted chimera that will harm U.S. strategic interests and make U.S. households poorer over the long-term.¹⁹⁷ A far better solution would be to reform the tax code to incentivize economic growth, socio-economic mobility and employment. This can be done by eliminating the regressive payroll tax and replacing it with a mixture of progressive taxes and tax expenditure eliminations. Although my proposal will be difficult to implement in view of the importance of payroll taxes in funding the nation's imperative entitlement programs,¹⁹⁸ it adumbrates a potential solution by way of triggers, which are imperative in view of public distrust in government.

President Kennedy's inaugural address moved the world when he said that the U.S. would "pay any price, bear any burden, meet any hardship, support any friend, oppose any foe to assure the survival and the success of liberty."¹⁹⁹ It must be remembered, however, that President Kennedy's New Frontier was facilitated by a then-booming economy that dramatically increased nationwide living standards.²⁰⁰ President Trump or his successor would do well to remember this and seek a true tax reform that would address the public's concern about stagnant living standards.²⁰¹ This would improve our democracy and further the U.S. role as the international system's indispensable nation. Doing otherwise would, to paraphrase Talleyrand, be worse than a crime, it would be a blunder.²⁰²

¹⁹⁶ See Thomas Bodenheimer, *High and Rising Health Care Costs. Part 1: Seeking an Explanation*, ANNALS OF INTERNAL MED. (May 17, 2005), <http://annals.org/aim/fullarticle/718406>; Lauren Leatherby, *Five Charts Show Why Millennials Are Worse off than Their Parents*, FIN. TIMES (Aug. 29, 2017), <https://www.ft.com/content/e5246526-8c2c-11e7-a352-e46f43c5825d>; Shambaugh & Nunn, *supra* note 3.

¹⁹⁷ See Eric Engle, *Trump's Foreign Policy: Realist Economic Nationalism*, 14 LOY. U. CHI. INT'L L. REV. 91, 99, 117 (2016).

¹⁹⁸ See *Policy Basics: Federal Payroll Taxes*, *supra* note 46.

¹⁹⁹ John F. Kennedy, President of the United States, Inaugural Address (Jan. 20, 1961), <http://www.jfklibrary.org/Research/Research-Aids/Ready-Reference/JFK-Quotations/Inaugural-Address.aspx>.

²⁰⁰ See Marilyn Geewax, *JFK's Lasting Economic Legacy: Lower Tax Rates*, NAT'L PUB. RADIO (Nov. 14, 2013), <https://www.npr.org/2013/11/12/244772593/jfks-lasting-economic-legacy-lower-tax-rates>.

²⁰¹ See Shambaugh & Nunn, *supra* note 3.

²⁰² See Henrik Bering, *The Indispensable Talleyrand*, HOOVER INST. (Jan. 29, 2008), <https://www.hoover.org/research/indispensable-talleyrand>.