

as Barack Obama hopes, or hold back the economy, as John McCain fears? Or both?

Mr. Hauser uncovered the means to answer these questions definitively. On this page in 1993, he stated that "No matter what the tax rates have been, in postwar America tax revenues have remained at about 19.5% of GDP." What a pity that his discovery has not been more widely disseminated.

The chart, updating the evidence to 2007, confirms Hauser's Law. The federal tax "yield" (revenues divided by GDP) has remained close to 19.5%, even as the top tax bracket was brought down from 91% to the present 35%. This is what scientists call an "independence theorem," and it cuts the Gordian Knot of tax policy debate.

The data show that the tax yield has been independent of marginal tax rates over this period, but tax revenue is directly proportional to GDP. So if we want to increase tax revenue, we need to increase GDP.

What happens if we instead raise tax rates? Economists of all persuasions accept that a tax rate hike will reduce GDP, in which case Hauser's Law says it will also lower tax revenue. That's a highly inconvenient truth for redistributive tax policy, and it flies in the face of deeply felt beliefs about social justice. It would surely be unpopular today with those presidential candidates who plan to raise tax rates on the rich—if they knew about it.

Although Hauser's Law sounds like a restatement of the Laffer Curve (and Mr. Hauser did cite Arthur Laffer in his original article), it has independent validity. Because Mr. Laffer's curve is a theoretical insight, theoreticians find it easy to quibble with. Test cases, where the economy responds to a tax change, always lend themselves to many alternative explanations. Conventional economists, despite immense publicity, have yet to swallow the Laffer Curve. When it is mentioned at all by critics, it is often as an object of scorn.

Because Mr. Hauser's horizontal straight line is a simple fact, it is ultimately far more compelling. It also presents a major opportunity. It seems likely that the tax system could maintain a 19.5% yield with a top bracket even lower than 35%.

What makes Hauser's Law work? For supply-siders there is no mystery. As Mr. Hauser said: "Raising taxes encourages taxpayers to shift, hide and underreport income. . . . Higher taxes reduce the incentives to work, produce, invest and save, thereby dampening overall economic activity and job creation."

Putting it a different way, capital migrates away from regimes in which it is treated harshly, and toward regimes in which it is free to be invested profitably and safely. In this regard, the capital controlled by our richest citizens is especially tax-intolerant.

The economics of taxation will be moribund until economists accept and explain Hauser's Law. For progress to be made, they will have to face up to it, reconcile it with other facts, and incorporate it within the body of accepted knowledge. And if this requires overturning existing doctrine, then so be it.

Presidential candidates, instead of disputing how much more tax to impose on whom, would be better advised to come up with plans for increasing GDP while ridding the tax system of its wearying complexity. That would be a formula for success.

Mr. KYL. Mr. President, I urge my colleagues to review the op-ed and apply it to the lessons we have today. In fact, the legislation we will be taking up today increases taxes—increases the tax rate—by applying a 0.5-cent surcharge or surtax on the top mar-

ginal rate. This is going to be very destructive. Over 80 percent of the people who report that top marginal rate, report small business income. So we are going to be hurting the small businesses of this country, not the big businesses or the wealthy that the surcharge is intended to hit, and we will end up not increasing Federal revenues but actually decreasing them and hurting the economy in the process.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Utah is recognized.

#### JUDICIAL CONFIRMATIONS

Mr. HATCH. Mr. President, yesterday on the Senate floor the distinguished majority leader mentioned my name and repeated a claim about my service as chairman of the Judiciary Committee, which I once again am compelled to correct. He said: "Sixty of President Clinton's nominees were denied hearings."

In a letter to the distinguished minority leader and the distinguished ranking member of the Judiciary Committee dated April 30, 2008, he similarly stated that:

Senator HATCH exercised the chairman's prerogatives freely during the years in which more than 60 of President Clinton's nominees were denied hearings or floor consideration.

The claim—and it has been repeated in various forms by others—is that all these nominees could have been confirmed but were not because I simply blocked them.

What is not mentioned is President Clinton came within seven of setting an all-time judicial appointment record while I was chairman. He was treated fairly. I had hearings and moved people to the floor that many on our side had real qualms about. It is true that approximately 60 of his judicial nominees were not confirmed, not in 1 year, as the distinguished majority leader said yesterday, but in all 8 years. They were not confirmed for a host of different reasons, most having nothing to do with the chairman's prerogatives.

President Clinton, for example, withdrew a dozen of those nominees himself—actually withdrew them. That was not my prerogative as chairman; it was his prerogative as President. These withdrawn nominees included a nominee to the U.S. District Court whose record as a State court judge in criminal cases was so troubling that prosecutors in her own State, led by a Democrat, opposed her. Instead of certain defeat on the Senate floor, the Republican leader at the time allowed President Clinton to withdraw her nomination. She was not denied a hearing; she had a hearing and was reported to the floor. She was not denied floor consideration; she was spared floor defeat.

The unconfirmed Clinton nominees included an appeals court nominee who, though he had raised millions for the Democratic Party, admitted in his

hearing that he knew virtually nothing about such basic areas as criminal or constitutional law. President Clinton wisely withdrew him. These unconfirmed nominees included an appeals court nominee who had lied about his background, making claims that were politically potent but patently false. President Clinton withdrew him. Was he unconfirmed? Yes. Was he blocked by Republicans? No. These and others like them were not what some on the other side of the aisle have called pocket filibusters. They were not, as the distinguished majority leader has said, simply denied consideration at the chairman's prerogative.

The unconfirmed Clinton nominees include many who did not have the support of their home State Senators. Nominees in this situation did not receive hearings under the chairmen before me as well as those who succeeded me, including the current Democrat chairman who will not call them up if a home State Senator opposes them. That is the policy and tradition of the Judiciary Committee, not simply the chairman's prerogative. Nor is it a pocket filibuster. That is a phony term. Yet, these nominees were unconfirmed and are, therefore, lumped into this category. So are nominees who were not confirmed in the Congress during which they were nominated and President Clinton chose not to renominate. That was his choice, not mine. For these and other reasons, the vast majority of President Clinton's unconfirmed nominees did not make it all the way through the confirmation process for reasons having nothing to do with my chairmanship of the committee.

Now, there are always, at the end of every Presidency, those nominees who are put up too late, where you could not get the FBI work done or you could not get the investigatory work done or you couldn't get the ABA report done or there were nominees who had problems in their FBI reports. There were further reasons nominees could not make it at the end of President Clinton's term. I might add that is true of every Presidential term that I recall in my 32 years in the Senate. It is also true that I put through nominees that my side had a lot of angst over because I believed, as I always did in my chairmanship, the President had the power of nomination. We had the power to vote, up or down, against those nominees. So I brought up people who caused a lot of angst on our side because I believed the President deserved that—unlike some on our side who have been very badly mistreated. I will cite Peter Keisler as a perfect illustration.

So I had to come here and set the record straight once again. Some judicial nominees of every President are not eventually confirmed. My friends on the other side of the aisle returned more than 50 unconfirmed judicial nominees to President Bush at the

close of the 102nd Congress. But when the reasons nominees are not confirmed are accurately considered, the claim that some 60 Clinton nominees were simply pocket filibustered or were blocked at the chairman's prerogative is simply not true.

I believe it to be a gross misrepresentation. I don't blame the majority leader. He is a personal friend of mine. He read from a staff-prepared speech. Nevertheless, that speech was wrong.

Let me give you an illustration. These are people sitting right now on the calendar. Peter Keisler has been waiting 691 days for a vote in the Judiciary Committee. By any measure, he is highly competent, decent, and honorable. He has the highest rating from the American Bar Association. Judge Robert Conrad has been waiting 308 days for a Judiciary Committee hearing. He also has the highest ABA rating. This body confirmed him just three years, without a dissenting vote, to the district court, where he is now chief judge. Steve Matthews has been waiting 257 days for a hearing. He too has first-rate qualifications and a positive ABA rating. Many others are still awaiting a vote, as we have been sitting in the Senate not doing very much regarding judicial nominees.

#### ELDER JUSTICE ACT

Mr. HATCH. Mr. President, since May is a month to honor and recognize older Americans, I would like to take a few minutes to talk about my strong commitment to having the Elder Justice Act, S. 1070, approved by Congress and signed into law before the conclusion of the 110th Congress.

Emily Dickinson once said, old age comes on suddenly, and not gradually as is thought. As someone who just celebrated a birthday a few months ago, this statement has never seemed more accurate!

Approximately 44 million people in this country are age 60 and above which tells me that caring for older Americans must be a high priority of future Congresses.

In fact, U.S. citizens 60 years of age and above will increase dramatically over the next 30 years more than 76 million baby boomers will be approaching retirement and old age over the next three decades. Let me say that one more time—more than 76 million baby boomers will be approaching retirement and old age over the next three decades.

Earlier this Congress, Senators LINCOLN, SMITH, KOHL and I introduced the Elder Justice Act. Congressmen RAHM EMANUEL and PETER KING introduced a nearly identical bill in the House. Currently, the Senate bill has 28 cosponsors and the House bill has 113 cosponsors.

One person who really deserves a lot of the credit for this bill is our former colleague from Louisiana, Senator John Breaux. He got the ball rolling over here in the Senate. I will never forget him coming to me way back in the 107th Congress and telling me that

I needed to work with him on the Elder Justice Act because it would make a tremendous difference for older Americans throughout the country. He and I introduced the Elder Justice Act back in the 107th Congress and ever since then, the bill has been reintroduced each subsequent Congress.

I also want to acknowledge the fine work of the Elder Justice Coalition, led by Bob Blancato, its national coordinator.

To date, the Elder Justice Coalition has close to 550 members and has done an incredible job advocating for the passage of this legislation.

This Congress, for the first time, the Elder Justice Act has been seriously considered by the House. Last week, the House Judiciary Committee considered the Elder Justice Act and it appears that it will be voted out of that committee this week. In the Senate, the legislation has been reported unanimously by the Finance Committee in both the 109th and 108th Congress; however, it has never been approved by the full Senate. As far as I am concerned, this year is going to be different. I will do everything in my power to ensure that this legislation will pass the Senate and be signed into law before the 110th Congress adjourns.

Senator LINCOLN and I are going to work with Finance Committee Chairman MAX BAUCUS and Ranking Member CHUCK GRASSLEY to schedule a markup on this bill sometime this summer.

Over the past couple of years, I worked very closely with Health and Human Services Secretary Mike Leavitt and his staff to address the concerns that the administration has raised regarding our bill. Last Congress, I felt like we had some fruitful discussions and progress was made. Secretary Leavitt is a good friend of mine and he knows how important it is to me, Senator LINCOLN and senior citizens across the country to have this legislation signed into law. The Secretary assured me that he and his staff would continue to work with us on this bill.

So I intend to initiate discussions with the administration once again in the hope that we will be able to come to agreement. And I think we are very close.

I have had many ask why does there appear to be such a dramatic increase in elder abuse in the United States. Because there is so little data on elder abuse, it is difficult to know the answer to that question.

Quite honestly, I believe that more and more people are taking notice.

In the past, there has been no data collection of elder abuse—I find that quite disturbing. The purpose of our legislation is to make changes in the law so we have more precise numbers on how many seniors are being exploited financially, being neglected or being physically or mentally abused.

Findings from the often cited National Elder Abuse Incidence Study suggest that more than 500,000 Americans aged 60 and above were victims of domestic abuse in 1996. Studies show

the amount of Federal dollars spent on abuse and neglect of elders is substantially smaller than that spent on child and domestic abuse.

Elder abuse is a profoundly personal tragedy for its victims—let me cite a case from my home state of Utah. In Utah and across the country, elderly Americans are being exploited and essentially being swindled out of thousands of dollars. A local news station in Salt Lake recently had a story that discussed check scams and how seniors are typically the target of these questionable operations.

In Utah alone, the money that people have lost due to these types of scams has quadrupled over the last 3 years. And while many of these operations have addresses in the U.S., they typically originate overseas.

For example, a check has been made out to a Salt Lake City senior for close to \$4,000. The senior is told that he has been chosen to be a secret shopper and has the chance to win thousands of dollars. He is told that he may keep \$500, no strings attached, but he must wire more than \$3,000 back to them in order to get the \$500. Because this senior sees the chance to win \$500, he sends the check for \$3,000 and loses all of his money.

According to the postal inspector, once a person responds to these scams, he or she is put on what is called a sucker's list and continues to be promised that hundreds and even thousands of dollars could be gained if a check is sent. In Utah, 6 to 700 checks are reported to be sent to these organizations each month.

The Elder Justice Act would help the Federal Government collect data on how many senior citizens are being financially exploited, mentally and physically abused and neglected.

This chart illustrates the dramatic difference in dollars spent on elder abuse compared to child abuse and domestic abuse.

Ninety-one percent, or \$6.7 billion, is spent on child abuse, 7 percent, or \$520 million on domestic abuse and only 2 percent, or \$153.5 million, is spent on elder abuse. Considering the high numbers of the population above age 60, it astounds me the small percentage the Government is willing to dedicate to ending elder abuse.

The Elder Justice Act aims to address this serious problem.

Our bill would provide Federal resources to support State and community efforts on the front lines dedicated to fighting elder abuse with scarce resources and fragmented systems.

It directs the Federal Government to provide leadership to the States and takes an important first step by calling on the Federal Government to create an appropriate way to collect relevant data on elder abuse so we have a better handle on how prevalent elder abuse is among our neighbors, our friends, and our relatives.

It assures adequate public-private infrastructure and resources to prevent,