CAN GOVERNMENT PROGRAMS STAY WITHIN BUDGET?

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from North Carolina (Ms. FOXX) is recognized for 5 minutes.

Ms. FOXX. Mr. Speaker, today, the House rushed through a bill that provides an additional $2 billion for the so-called Cash for Clunkers program. Apparently, the lure of free money from Uncle Sam provoked such a tsunami of clunkers that the program is already broke.

Mr. Speaker, everyone loves ''free money.'' The bailed-out banks loved their $700 billion last fall. The bailed-out automakers loved their $86 billion. So it's not a surprise that the initial funding for Cash for Clunkers dried up in a matter of days.

So the question is: If the government so underestimated the cost of this program, and if the backlog of requests from dealers is already so huge, what does this tell us about these types of government programs—that maybe they don't always function as they were predicted to, and that sometimes they cost taxpayers much more than was estimated?

One large dealership group in Utah had this to say about the hoops they had to jump through to avoid the fines for noncompliance: The auto dealer said, ''Dealers are being asked to be compliant with several rules that are often confusing and unrealistic . . . it is apparent that those writing the rules don't understand how a car deal actually happens.''

This dealer went on to say that the government agency in charge of the Cash for Clunkers program has ''threatened large fines for noncompliance. We are a top-10 dealer group in the country, and have gone to great lengths to be compliant, but it is even confusing to us. It will be a nightmare for the many smaller dealerships around the country.''

So far, we've learned several things from this Cash for Clunkers program. Lesson 1: Businesses and consumers really love free money—except when they're the ones paying for someone else's free money. Lesson 2: The government is abysmal at predicting how much programs will cost. Lesson 3: Complying with Federal mandates is a nightmare.

Of course, we should not overlook the fact that there may very well be some unintended consequences of this program. For instance, The New York Times reported in April that France had a similar program from 1994 to 1996. Guess what? It worked. Well, kind of. There were lots of auto sales initially, but the program was followed by a severe drop in auto sales in 1997 and in 1998. Isn't that interesting? It turns out the program was simply shifting demand forward. What is keeping the U.S. Cash for Clunkers program from doing the same thing? Nothing.

Let's return to Lesson 2: Congress' inability to accurately estimate the cost or the effect of new government programs.

Based on research from Congress' Joint Economic Committee over the years, congressional estimates of the cost of health care programs have been extremely unreliable. For example, when Congress was considering Medicare part A, the hospital insurance component, Congress estimated it would cost $9 billion by 1990. The actual cost in 1990 was $67 billion, 7 times more than Congress estimated. The 1967 estimate for the entire Medicare program in 1990 was $12 billion. The actual cost? $111 billion. It was almost 10 times the original estimate.

Later, in 1987, Congress estimated that Medicaid's disproportionate share of hospital payments to States would cost less than $1 billion in 1992. Five years later, the results were in. It was $17 billion, which is an incomprehensible 17-fold increase over the estimate from just 5 years earlier. You get the idea.

Today's Cash for Clunkers example is just the latest in a long line of programs that turned out to be dramatically more expensive than anyone predicted, not to mention notoriously difficult to comply with or to figure out. Perhaps the most amazing part of this example is that it reminds me of the ongoing discussion over health care reform.

Here we've got a health system that is in need of reform, and some people are pushing a bill that amounts to a government takeover of health care. They like to call it a ''public option.'' The Congressional Budget Office already has said it would add $239 billion to the deficit over 10 years, but as we've just seen, government programs have a tendency to take on a life of their own and cost taxpayers way more than was originally estimated or envisioned.

While I'm willing to allow for some margin of error in estimated costs—they are estimates after all—what concerns me is that, today, we're starting out with estimates for huge deficits with this health care plan. At the same time, we're paying for it out of the pockets of America's job creators—small businesses.

If the current proposal becomes law, are we going to be coming back to these small businesses with another tax increase in 5 or 10 years? With our track record on programs like Cash for Clunkers, that wouldn't surprise me one bit.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. LINDA T. SÁNCHEZ) is recognized for 5 minutes.

(Ms. LINDA T. SÁNCHEZ of California addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BURTON) is recognized for 5 minutes.

(Mr. BURTON of Indiana addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. GOHMERT) is recognized for 5 minutes.

(Mr. GOHMERT addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Texas (Ms. JACKSON LEE) is recognized for 5 minutes.

Ms. JACKSON-LEE of Texas addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kansas (Mr. MORAN) is recognized for 5 minutes.

(Mr. MORAN of Kansas addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Minnesota (Mrs. BACHMANN) is recognized for 5 minutes.

(Mrs. BACHMANN addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. PAUL) is recognized for 5 minutes.

(Mr. PAUL addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

REFILE THE VOTER INTIMIDATION CASE AGAINST THE NEW BLACK PANTHER PARTY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Virginia (Mr. WOLF) is recognized for 5 minutes.

Mr. WOLF. Mr. Speaker, earlier today, I sent a letter to Attorney General Eric Holder, which I submit for the RECORD, imploring him to refile the voter intimidation case against the New Black Panther Party that was inexplicably dismissed in May.

This case was brought in January by career attorneys in the department's Civil Rights Division against the party and several of its members for deploying uniformed men to a polling station in Philadelphia on election day last November to harass and intimidate voters—one of whom brandished a nightstick to the voters.

The public can view video of the incident as well as other examples of their intimidation in a January 2009 National Geographic Channel documentary that is posted on the Web at www.electionjournal.org.

One of the witnesses of the election day incident, Bartle Bull—a veteran civil rights activist who served as Bobby Kennedy's New York campaign manager in 1968—has publicly called this ''the most blatant form of voter intimidation'' he has ever seen. He also reminded us that Martin Luther King did not die to have people in jackboots with billy clubs block doors of polling places. Neither did Robert Kennedy. It's an absolute disgrace.

In 1981, I was the only member of the Virginia delegation in the House to vote for the Voting Rights Act, and I was harshly criticized by the editorial page of the Richmond Times Dispatch. When I supported the act's reauthorization in 2006, I was again criticized by editorial pages. My commitment to voting rights is unquestioned.

Given my consistent support for voting rights, I was deeply troubled by a report in yesterday's Washington Times, which I also submit for the RECORD, indicating that improper political influence by Associate Attorney General Thomas Perrelli led to the dismissal of this case—over the objections of justice career attorneys on the trial team.

I am troubled, but unfortunately not surprised, to learn of the existence of this guidance from the chief of the department's Appellate Division, which recommended that the department proceed with the case and obtain default judgment. Despite a congressionally directed request, the guidance was not previously shared with Members of Congress.

According to a summary of the Appellate Division guidance reported in The Washington Times, ''Appellate Chief Diana K. Flynn said in a May 13 memo obtained by The Times that the appropriate action was to pursue the default judgment unless the department had evidence the court ruling was based on unethical conduct by the government.''

She goes on to say many other things, which I'll submit for the RECORD, but she ends by saying that the complaint appeared to be sufficient to support the injunctions sought by the career employee, stating, ''The government's predominant interest is preventing intimidation, threats and coercion against voters.''

Just last week, Eric Holder declared that the department's Civil Rights Division is ''back and open for business.'' I question Eric Holder's commitment to voting rights, and I question Eric Holder's judgment. Yet where are the other Members of this Congress—Republican or Democrat—who want to even look at this issue?

Given that both the department's trial team and the Appellate Division argued strongly in favor of proceeding with the case, I can only conclude that the decision to overrule the career attorneys, Associate Attorney General Thomas Perrelli or other administration officials was politically motivated.

HOUSE OF REPRESENTATIVES,
Washington, DC, July 31, 2009.

Hon. ERIC H. HOLDER, JR.,
Attorney General, Department of Justice, Washington, DC.

DEAR ATTORNEY GENERAL HOLDER: In light of the troubling reports of political influence in the enclosed article from yesterday's Washington Times, as well as the many unanswered questions to members of Congress, I implore you to re-file the voter intimidation case against the New Black Panther Party and other defendants so that impartial judges—not political benefactors—may rule on the merits of this case. Given your declaration on July 22 that the department's Civil Rights Division is ''back and open for business,'' I would urge you to demonstrate your commitment to enforcing the law above political interests by re-filing.

My commitment to voting rights is unquestioned. In 1981, I was the only member—Republican or Democrat—of the Virginia delegation in the House to vote for the Voting Rights Act and was harshly criticized by the editorial page of the Richmond Times Dispatch, and when I supported the act's reauthorization in 2006, I was again criticized by editorial pages.

Given my consistent support for voting rights throughout my public service, I hope you can understand why I am particularly troubled by the dismissal of this case. The video evidence of the defendants' behavior on Election Day, as well as a January National Geographic Channel documentary, ''Inside: The New Black Panther Party,'' should leave no question of the defendants' desire to intimidate or incite violence.

The ramifications of the dismissal of this case were serious and immediate. Defendant Jerry Jackson received a new poll watcher certificate, a copy of which I have enclosed, on May 19, 2009, immediately after the case was dismissed. Mr. Jackson faced no consequences for his blatant intimidation and promptly involved himself in the next election. Is that justice served?

As you will read in the enclosed memorandum of opinion from the Congressional Research Service's American Law Division, there is no legal impediment that would prevent you from re-filing this case. Unlike a criminal case, a civil case seeking an injunction against the other defendants could be brought again at any time. According to the memo provided to me, ''It appears likely that the Double Jeopardy Clause would not bar a subsequent civil action against the [New Black Panther] Party or most of its members,'' and ''second, because the United States voluntarily dismissed its suit against the Party and two of the three individual members before those defendents had filed an answer or motion to dismiss the suit, the previous action had not moved sufficiently beyond preliminary steps so as to implicate the Double Jeopardy Clause.''

I was surprised to learn from The Washington Times report of the existence of the enclosed correspondence from the chief of the department's Appellate Division recommending that the department proceed with the case and the default judgment. These opinions were never disclosed to me or other members of Congress by the department in its previous responses to questions regarding the dismissal of the case. According to the report:

''Appellate Chief Diana K. Flynn said in a May 13 memo obtained by The Times that the appropriate action was to pursue the default judgment unless the department had evidence the court ruling was based on unethical conduct by the government.

''She said the complaint was aimed at preventing the 'paramilitary style intimidation of voters at polling places elsewhere' and Justice could make a 'reasonable argument in favor of default relief against all defendants and probably should.' She noted that the complaint's purpose was to 'prevent the paramilitary style intimidation of voters while leaving open 'ample opportunity for political expression.'

''An accompanying memo by Appellate Section lawyer Marie K. McElderry said the charges not only included bringing the weapon to the polling place, but creating an intimidating atmosphere by the uniforms, the military-type stance and the threatening language used. She said the complaint appeared to be 'sufficient to support the injunctions' sought by the career lawyers.

''The government's predominant interest is preventing intimidation, threats and coercion against voters or persons urging or aiding persons to vote or attempt to vote, she said.''

Given that both the department's trial team and the Appellate Division argued strongly in favor of proceeding with the case, I can only conclude that the decision to overrule the career attorneys Associate Attorney General Thomas Perrelli, or other administration officials, was politically motivated. This report further confirms my suspicions that the Department of Justice under your watch is becoming increasingly political.

It is imperative that we protect all Americans right to vote. This is a sacrosanct and inalienable right of any democracy. The career attorneys and Appellate Division within the department sought to demonstrate the federal government's commitment to protecting this right by vigorously prosecuting any individual or group that seeks to undermine this right. The only legitimate course of action is to allow the trial team to bring the case again and allow the our nation's justice system to work as it was intended—impartially and without bias.

Sincerely,

FRANK R. WOLF,
Member of Congress.

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, July 30, 2009.

Memorandum

To: Hon. Frank Wolf, Attention: Thomas Culligan.
From: Anna Henning, Legislative Attorney.
Subject: Application of the U.S. Constitution's Double Jeopardy Clause to Civil Suits.

This memorandum responds to your request for an analysis of the application of the Double Jeopardy Clause to successive civil suits in federal courts. In particular, it examines the clause's potential application in the context of a civil suit brought against the New Black Panther Party for Self-Defense or its members, against whom the United States had previously brought an action for injunctive relief. In sum, it appears likely that the Double Jeopardy Clause would not bar a subsequent civil action against the Party or most of its members.

DOUBLE JEOPARDY CLAUSE: APPLICATION TO CIVIL PENALTIES

The Double Jeopardy Clause provides that no ''person [shall] be subject for the same offence to be twice put in jeopardy of life or limb.'' It has been interpreted as prohibiting only successive punishments or prosecutions that are criminal in nature. However, some penalties designated as ''civil'' by statute have been found to be sufficiently ''criminal'' to implicate double jeopardy concerns. In other words, whether a particular punishment is criminal or civil may require an interpretation of congressional intent and the extent to which the penalty can be characterized as penal in nature.

Factors that courts consider when determining whether a penalty is criminal in nature include: (1) ''whether the sanction involves an affirmative disability or restraint''; (2) ''whether it has historically been regarded as a punishment''; (3) ''whether it comes into play only on a finding of scienter''; (4) ''whether its operation will promote the traditional aims of punishment—retribution and deterrence''; (5) ''whether the behavior to which it applies is already a crime''; (6) ''whether an alternative purpose to which it may rationally be connected is assignable for it''; and (7) ''whether it appears excessive in relation to the alternative purpose assigned.'' However, Congress' designation of a penalty as ''civil'' creates a presumption which must be overcome by clear evidence to the contrary. Thus, civil penalties are not typically found to be criminal in nature. For example, in Hudson v. United States, the U.S. Supreme Court held that monetary assessments and an occupational debarment order did not implicate the Double Jeopardy Clause, because neither type of penalty constituted a ''criminal punishment.''

Regardless of the nature of the penalty sought, the Double Jeopardy Clause does not bar a subsequent action if no more than preliminary proceedings commenced in the prior action. Typically, an action must have reached at least the stage where jury members have been sworn (in a jury trial) or where the first evidence has been presented to the judge (in a bench trial).

APPLICATION TO A SUBSEQUENT SUIT AGAINST THE NEW BLACK PANTHER PARTY FOR SELF-DEFENSE OR ITS MEMBERS

In January 2009, the U.S. Department of Justice filed a civil suit in a U.S. district court against the New Black Panther Party for Self-Defense and three of its members. The suit was brought by the Department's Civil Rights Division pursuant to the Voting Rights Act of 1965, 42 U.S.C. §1973 et. seq., which prohibits intimidation of ''any person for voting or attempting to vote'' and authorizes the Attorney General to bring civil actions to obtain declaratory judgment or injunctive relief to prohibit such actions. The Department alleged that members of the Party had intimidated voters and those aiding them during the November 2008 general election and sought an injunction banning the Party from deploying or displaying weapons near entrances to polling places in future elections. However, after the Department obtained an injunction barring one member's future use of weapons near polling places, it voluntarily dismissed its suit against the Party and the other members.

For two reasons, it appears likely that the Double Jeopardy Clause would not prohibit the Justice Department from bringing a similar suit on the same or similar grounds against at least the Party and the individual members for whom the previous suit was dismissed. First, it is likely that a court would find that the injunctive relief sought in the previous action constitutes a civil, rather than criminal, punishment.

Although Congress' designation of the injunctive relief actions as a civil penalty is not ultimately dispositive, it is unlikely, based on the seven factors noted previously, that injunctive relief sought by the Justice Department would be viewed as sufficiently criminal in nature so as to overcome the presumption in favor of accepting Congress' characterization. Most importantly, the injunctions seem to have been primarily designed to prohibit the use of guns at polling places for the purpose of implementing the purposes of the Voting Rights Act, rather than to impose punishment on the defendants.

Second, because the United States voluntarily dismissed its suits against the Party and two of the three individual members before those defendants had filed an answer or motion to dismiss the suit, the previous action had not moved sufficiently beyond preliminary steps so as to implicate the Double Jeopardy Clause. With respect to the one member against whom an injunction was obtained, this second factor would not apply. However, due to the likely characterization of the injunction as a civil penalty, it remains unlikely that a subsequent action would be barred.

□ 1445

It is imperative that we protect all Americans' right to vote. This is sacrosanct on an inalienable right of any democracy. The career attorneys and the appellate division within the Department sought to demonstrate the Federal Government's commitment to protecting this right by vigorously prosecuting any individual or group who seeks to undermine this right. The only legitimate course of action for the trial team is to bring the case again and allow our Nation's justice system to work as it was intended.

And to see it again, look for it in your own eyes. Look at www.electionjournal.org.

IMAC, NOT THE SILVER BULLET IT WAS PROMISED TO BE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia (Mr. PRICE) is recognized for 5 minutes.

Mr. PRICE of Georgia. Mr. Speaker, before I came to Congress I spent 20-plus years as a physician taking care of folks in the north Atlanta area, so this whole debate about the health care bill, there are many aspects of it that give me great concern. And the fact of the matter is, Mr. Speaker, there are many aspects of it that give the Nation great concern.

So whether it's the government-run program or the takeover of health care or whether it's the potential for huge mandates from the Federal Government, many aspects point to areas of different concern for the American people. And one of them is the issue of rationing, the issue of whether or not the Federal Government should be deciding to what extent which Americans receive medical care.

So earlier this year when there was a proposal that was passed in this House and in the Senate signed by the President for something called the Comparative Effectiveness Research Council, fancy name for a potential rationing board, many people voiced concerns about that, as did I.

And what we heard from the other side of the aisle, the majority party, the Democrats, they said, Don't worry about that. There will be congressional oversight. Congress will be able to hold their feet to the fire. Well, Mr. Speaker, what's now come out is that may not be the case.

The IMAC program, or the Independent Medicare Advisory Council, is a proposal that is being added to the current health care bill that would create a new Presidentially appointed board empowered to make recommendations on cost savings proposals. These are very, very personal medical decisions that we're talking about here, and cost savings proposals oftentimes means rationing.

This proposal in the health care bill right now would eliminate all congressional oversight of the Medicare program and put it in the hands of, you guessed it, the White House and the President. It creates a new executive branch agency with unelected board members appointed by the President to make recommendations on the reductions in Medicare payment levels, reimbursement for providers, potentially refusing to pay for services or care prescribed by doctors as they are deemed not to be ''cost efficient.'' That's the language, Mr. Speaker.

The bill says that the reforms must ''either improve the quality of medical care received by the beneficiaries of the Medicare program or,'' not and, ''improve the efficiency of the Medicare program's operation.''

Mr. Speaker, this is extremely concerning. This Congress has created the Comparative Effectiveness Resources Board that will have the power to ration care based on cost or quality. It would make the board's recommendations binding in the absence of action by Congress within 30 days if the President approved the recommendation.

Now, many Members of Congress are concerned about payment rates in rural parts of the country, yet this board eliminates State and community input into the Medicare program by rendering irrelevant the influence of local Medicare Carrier Advisory Communities, or MCACs, to develop and implement policies expressly applicable to their patient population.

Further, it would reduce the availability of patient advocacy groups to implement new policies that would improve the health care of our Nation's seniors.

The real concern as a physician is that nonmedical people will be making medical decisions. It's a terrible idea. It's not what the American people want, and they are actually waking up to the proposal that's before Congress right now. And that's why you see the numbers of support across this land decreasing.

Let's move in a positive direction. There is a positive direction, and that is to allow quality decisions, medical decisions to be made between patients and their families and caring and compassionate physicians. It's a simple way to do it, not put it in the hands of a bureaucrat, not put it in the hands of the White House, not put it in the hands of the President. Let patients and doctors decide.

Mr. Speaker, that's the right way. Mr. Speaker, that's the American way.