

New Slate, Old Chalk

VOTER PARTICIPATION in our representative democracy ebbs and flows, at least at the federal level, largely along two currents: war and economic concerns. Less is known about voters' interest in other significant positions taken by the candidates. But no matter what finally swayed voters, the task at hand for the 44th president of the United States, the 109th Congress, and the 11 newly elected governors and their state legislatures is to govern and to legislate.

In political debate, the old saying goes, politicians typically add heat to an argument and very little light. The Academy is positioned to provide illumination on a host of burning issues, many of which failed to get consensus in the past two years. On a few of these

Now with the election behind us, the Academy will further seek to raise the level of understanding on these and other significant issues. Space limitations prevent me from covering them all, but here are a few of the most persistent.

Social Security Solvency

The 2004 trustees' report projects that, based on the trustees' intermediate assumptions, benefits and administrative expenses will begin to exceed tax income in 2018, the amount needed from trust fund assets to continue full payment of benefits and administrative expenses will exceed interest on the assets in 2028, and the Social Security trust funds will become exhausted and tax income alone will be insufficient to pay benefits in full by 2042. An actuarial deficit of 1.89 percent of taxable payroll is projected for the long-range 75-year period, 2004–78.

Because Social Security is the third rail of politics (touch it and you die), future prospects for action remain cloudy. It's not indifference that relegated the recommendations of President Bush's commission on Social Security to oblivion. Rather, the successful "message strategy" by the opponents of the commission's work convinced proponents they needed to be silent on the matter, at least until the next election had passed them by.

Medicare Solvency

The Medicare trust funds face increasing financial pressures. The Hospital Insurance (HI) trust fund expenditures were projected by the 2004 Medicare Trustees' Report to exceed HI payroll taxes beginning this year. And beginning in 2010, HI expenditures are projected to exceed all HI income, including interest.

By 2019, when trust fund assets are projected to be depleted, payroll tax revenues will cover only about 80 percent of program costs, and the share covered by payroll taxes is projected to decrease further thereafter. The

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issues the Academy bravely entered the political debate even during the campaign, offering three election guides for candidates, reporters, and the public that analyzed Social Security, Medicare, and health care for the uninsured.

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Supplementary Medical Insurance (SMI) trust fund costs are growing faster than HI costs, meaning that continuing the current funding arrangements will result in greater general revenues financing (almost tripling over the next 10 years) from the federal budget, during a time of already unprecedented budget deficits.

In addition, the debate over the new Medicare Modernization Act continues, and legislation correcting for either its technical lapses or for an unforeseen political backlash is not out of the question. Given the Bush administration's unfortunate response to congressional requests for the estimates of the chief actuary of the Centers for Medicare and Medicaid Services (CMS) before the law's passage, expect a great deal of scrutiny in its regulatory implementation phase.

Health Care Coverage for the Uninsured

The Census Bureau has estimated that more than 43 million non-elderly Americans did not have health insurance in 2002, an increase of more than 2 million from 2001. The Census Bureau has estimated that 45 million non-elderly Americans did not have health insurance in 2003, an increase of more than 1.4 million from 2002. Other estimates have placed that figure even higher. CMS estimates the United States spent \$1.6 trillion on health care in 2002 (14.9 percent of GDP) and projects spending to increase to \$3.4 trillion (18 percent of GDP) by 2013.

Because rising health expenditures have contributed to making insurance less affordable and less available, managing the growth in health care costs is a key to long-term solutions for reducing the number of uninsured. Medical malpractice reform, better contract negotiations with health care providers, and more consumer awareness of the cost of health care are among the ways suggested to stem this growth. An effective federal government program or policy to counter the trend has, so far, been elusive.

Asbestos Reform

During the past two years, the Senate has struggled with a bill establishing a fed-

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eral fund for asbestos-related injury payments. The fund was to be capitalized by defendant companies that made asbestos or used it in their products, insurers, and funds from existing bankruptcy trusts. The legislation would have established a U.S. Court of Asbestos, permitting anyone who had suffered eligible conditions related to asbestos exposure to file a claim.

Despite efforts by Sen. Orrin Hatch (R-Utah), chairman of the Senate Judiciary Committee, the bill was reported out of committee by a narrow party-line vote. Lacking the bipartisan consensus needed to overcome procedural tactics on the floor of the Senate, attempts were made to broker bipartisan negotiations, but key Democrats who were willing to support the framework of the legislation required a higher level to be placed in the fund.

An effort by Senate Majority Leader Bill Frist (R-Tenn.) to broker agreement between defendant companies and insurers on a funding plan reduced the size of the fund, increasing the opposition from unions and Senate Democrats. A vote by the full Senate to proceed to the bill failed to get the requisite votes.

Medical Malpractice Reform

The growing problem of unaffordable medical malpractice insurance or loss of coverage has hit some areas of the country hard, and the 108th Congress debated it extensively. The Academy testified three times before congressional committees, submitted written testimony a fourth time, and issued comment letters to all members of Congress on two occasions before key votes on the issue.

The House twice passed legislation modeled after California's long-standing

MICRA law that would allow patients to recover for economic damages such as future medical expenses and loss of future earnings while establishing a \$250,000 cap on non-economic damages, such as pain and suffering. The bill would also have allocated damages in proportion to a party's degree of fault and limited the number of years a plaintiff has to file a health care liability claim.

The Senate failed to achieve the requisite number of votes to proceed on the legislation and subsequently also failed to take up two bills that would have applied the reforms to a limited number of specialty practices (obstetrics, gynecology). In the absence of federal action, many states have had to take action on their own.

Pension Funding Reform

One of the Academy's key priorities in the past two years was to craft an extension of a law passed in 2002 that temporarily fixed the discount rate for calculating minimum pension contributions under federal law.

The underlying rules currently mandate that Treasury bond rates be used for determining pension liabilities and PBGC premiums. Discontinuance of the 30-year Treasury bond in 2001, and the unusually low rate that resulted, meant dramatically increased minimum pension contributions at a time when employers were least able to afford them—a consequence that went far beyond the original intent of Congress.

Legislation enacted this spring allows employers temporarily to use a blend of long-term corporate bonds as a benchmark in calculating their pension liabilities in 2004 and 2005 instead of the 30-year Treasury bond rate.

Now the task is to make the fix permanent. Over the past two years, the Academy has testified before congressional committees five times on pension funding issues. The Academy's Pension Practice Council is currently discussing comprehensive pension funding reform recommendations to address a full range of problems that pension practitioners face with the current funding rules. The

framework for funding reform emphasizes the following six principles: solvency, predictability, transparency, flexibility, simplicity, and transition.

Terrorism Risk

In the aftermath of 9/11, Congress passed the Terrorism Risk Insurance Act (TRIA) to deal with new exposures seldom considered before. The key features of the act include making the federal government the reinsurer for certified terrorism events (certification is contingent on whether a foreign interest attempting to politically coerce the United States causes in excess of \$5 million in insured losses); coverage is for property/casualty commercial lines only; the act expires Dec. 31, 2005; commercial insurers are required to participate in the federal Terrorism Risk Insurance Program (TRIP) by offering coverage for certified acts of terrorism. Coverage

can be excluded or limited only upon rejection by the insured; the maximum payment by the insurance industry for certified terrorism losses was \$10 billion in 2003, \$12.5 billion in 2004, and \$15 billion in 2005. Losses to the government are capped at \$100 billion.

TRIA's "hard ending" in 2005 poses serious operational issues for insurers, apart from the obvious issues relating to marketplace capacity. TRIA's expiration on a particular date doesn't coincide with the expiration of individual insurance contracts, thus the term "hard ending."

The decision to extend TRIA will be made some time after the conclusion of a Treasury study in June 2005, too late for evaluating insurance contracts that will be underwritten in late 2004 and become effective in 2005, with policy periods ending in 2006. In addition to examining issues in a recent monograph regarding TRIA, the Academy has asked

the Department of the Treasury to include group life insurers in the act.

Federal Regulation of Insurance

Ongoing discussions in Congress over whether to federalize some aspects of insurance oversight and regulation have continued to draw the attention of the Academy, industry, and state regulators. The Academy has produced two successful Hill briefings on different aspects of a newly federalized system in order to raise the level of understanding of policy-makers. Because there remains disagreement among key stakeholders, a consensus has remained unattainable.

Corporate Governance Reform, Round 2

With the new Sarbanes-Oxley law still being implemented, the Academy continues to monitor further regulatory and/or legislative efforts to expand its scope. ●

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