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The Economic Freedom Amendment A States-Based Response to Nationalization and Bailouts

Proposed Amendment to the Kansas Constitution:

“Any transfer to the United States, or any entity controlled by the United States, of any ownership interest in any entity formed pursuant to the laws of this state shall be prohibited, provided, the foregoing prohibition shall not apply to any investments through pension funds operated by the United States or any entity controlled by the United States.”

The Problem: The 2008 financial crisis and federal bailout led to the de facto nationalization of several state-incorporated companies. Starting with the September 2008 bailout of insurance giant AIG, the federal government acquired stock in a multitude of private companies, *including several Kansas financial companies*, and became the controlling shareholder in some of the nation’s largest auto manufacturing and financial companies (i.e. Chrysler, Citigroup, etc.). In its newfound role as controlling shareholder of private enterprise, the federal government pressured these companies to take actions that are not intended to maximize shareholder value. Moreover, the federal government’s sovereign immunity prevents minority shareholders from suing the government in shareholder suits. As a result, it will be more difficult for minority shareholders in these circumstances to protect their investment. This level of entanglement between the federal government and private industry is unprecedented in the United States.

The Solution: The overall policy of the amendment proposed above is based on fostering state and national markets in which clear rules of law govern the conduct of competing entities. A state ban on the transfer of stock in companies to the federal government would slow the nationalizing and market-distorting effects of the bailout policies of the federal government during the past several years. The proposed amendment would protect non-government shareholders in these companies from being exposed to the unique risks created when the federal government becomes a controlling shareholder of private companies. The proposed amendment will not prevent all types of future market intervention by the federal government, but it will prevent the most egregious form of market intervention— federal acquisition of equity stakes in state-incorporated companies. As a result, the proposed amendment realigns state and federal economic policies with our founding principles by limiting the federal government to its proper role as a neutral regulator rather than a vested owner of private enterprise.

Other Resources: Aaron Jack, *The Economic Freedom Amendment: A States-Based Response to the Nationalizing Effects of Bailouts and Federal Ownership of Corporate Stock*, Engage Vol. 12, Iss. 2 (Federalist Society, July 2012), available at ksc.ks.gov/efa.

Senate Commerce Committee
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