REMARKS BY SECRETARY EUGENE SCALIA

HERITAGE FOUNDATION
NATIONAL CORONAVIRUS RECOVERY COMMISSION
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As Prepared For Delivery

Thank you for that introduction, Kay, and it's a pleasure to join you as the Heritage Foundation releases the thoughtful final report of its Recovery Commission.

At the start of this year, Americans enjoyed a record-setting economy—though it wasn't the economy the Congressional Budget Office had predicted back in the summer of 2016. Back then, the CBO said that by February of this year, we'd have an unemployment rate of 5% and we'd have created 1.9 million jobs.

In fact, in February unemployment was 3.5% and our economy had created not 1.9 million jobs, but 7 million jobs since January 2017. Wage growth had been at or above 3% for 19 straight months.

And as President Trump said in his State of the Union address, this was a "blue collar boom." Workers in the bottom 10% of income saw higher average wage growth than those in the top 10%. By January 2020, low income earners had seen a 15 percent pay increase since the President took office.

In his State of the Union speech, President Trump explained how we got there: "From the instant I took office, I moved rapidly to revive the U.S. economy—slashing a record number of job-killing regulations, enacting historic and record-setting tax cuts, and fighting for fair and reciprocal trade agreements." President Trump's policy decisions led to a vibrant, prosperous economy—one we all enjoyed until a few months ago.

Then, in a matter of days, life changed completely. The coronavirus sent the nation into hibernation. Shops and factories closed, freeways and airports were emptied, society itself was halted—bars and restaurants, concert halls, sports stadiums, even places of worship fell silent. Many thousands of American lives were lost. In a little over two months, more than 40 million unemployment claims were filed.

The President was right to recognize that as a nation, we'd been plunged into an experience comparable to war. Like the First or Second World War, combatting the virus required a nationwide mobilization of government and of the ingenuity, know-how, and productive capacity of American industry. There has been a front line—in our hospitals and nursing homes—and a "home front," as men, women, and children across the country stayed home to protect fellow Americans. As during war, we have pulled together to achieve national objectives, and we have had occasion to consider what makes this nation great and distinct from others—such as China.

This institution—the Heritage Foundation—is dedicated to preserving American exceptionalism and the principles on which it rests, including limited government, individual freedom, and free enterprise. I still recall, during the Reagan Administration, being a speechwriter for a future Heritage Distinguished Fellow named William Bennett, and coming to your new building on Massachusetts Avenue to hear from speakers on topics of the day. I even recall a particular panel discussing who President Reagan might nominate if he got a second Supreme Court appointment after Sandra Day O'Connor (I heard some terrific prospects mentioned). Today, I'm grateful to have been invited by Kay James to join your on-going discussion about America's heritage and its future.

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I said a moment ago that in our battle with the coronavirus we've pulled together to achieve national objectives. That's true. We are seen as living in highly partisan times. But in March President Trump and Congress shaped three major pieces of legislation that reflected a broad, deep plan for contending with the impacts of the virus.

- This included paid sick leave for small business employees with coronavirus, so they would leave the workplace without hesitation to help slow the spread—and that leave was fully reimbursed to the employer through tax credits.
- It included the Paycheck Protection Program: forgivable loans to small businesses to help them cover rent, utilities, and importantly, payroll. The program has kept millions of workers on payroll and attached to their employer, so they—and the company—are poised to stand up quickly and get back to work as the country re-opens.
- That same legislation—the CARES Act—provided Economic Impact Payments of $1200 to American taxpayers, plus $500 for dependent children.
- And it included substantial unemployment benefits—$600-a-week on top of what the States pay for unemployment, as well as benefits for independent contractors and the self-employed, who ordinarily don't receive unemployment compensation.

Partly as a result of these programs, Americans are in a very different position today than in our last economic downturn: The personal saving rate was 33% in April, by far the highest ever recorded since at least 1959, and many times higher than the 6.7% rate at the end of the Great Recession in June 2009. As we re-open, those savings will help revitalize our vast economy.

And we *are* re-opening, and our economic re-opening has started well. The Labor Department issued an extraordinary jobs report 10 days ago. It showed that in May, unemployment dropped nearly a point-and-a-half and we added 2.5 million jobs.

That report came as a great surprise to many observers. And frankly, some of them were annoyed. Many of these people work for our major media, and for some of them, good news can be bad. This condition they have gets especially severe in election years. For this crowd, millions of Americans going back to work is perilous—as in the *New York Times* headline saying: "Falling Jobless Rate Could *Imperil* Aid Underpinning the Recovery." You and I think it's good when the number of coronavirus cases drops, but at the *New York Times*, that's *also risky*, as in this headline from the lead story in a recent Sunday edition: "New Cases in U.S. Slow, Posing *Risk* of Complacency." The *Washington Post* the next day found what they called "a new problem": For weeks they'd been complaining there weren't enough coronavirus tests, but now in the headline to their lead story they said, "As coronavirus testing *expands*, *a new problem* arises: *Not enough people* to test."

In fairness, the mainstream media can also find good news where most people would think it's bad. Like this report from the BBC: "*Twenty-seven* police officers injured during largely *peaceful* anti-racism protests in London."

I hope you'll forgive that digression. While the May jobs report was unexpected, in a very important sense it was not a surprise. We came into our current economic difficulty by a completely different path than prior downturns: It was self-imposed, and purposely short-term. It did not result from an economic weakness—the economy had been very strong. The comparisons to the Great Depression have always been misplaced—our circumstance is different.

Now, the more promptly and safely we re-open, the better our prospects of regaining the economy we had until March. That is reflected in the numerous surveys showing that 85 to 90 percent of Americans put out of work believe their job loss is temporary. In a sense, many of these jobs weren't lost at all; many of the jobs were still there, waiting for economies to re-open and workers to return.

What the May jobs report shows is that this re-opening began earlier, and more robustly, than expected. And critically, the survey period for that report was in mid-May; we know that many, many jobs have been re-filled since then.

So in the month of May, we turned the corner against the virus. Now, as we look ahead, allow me to identify some principles that should guide us.

For starters, we know our job is not done. Millions of Americans remain out of work, with the unemployment rate at 13.3 percent in May. The Department of Labor will continue to work with the States to help them get unemployment payments to workers who are entitled to them.

Likewise, the virus is not gone, and continued precautions are essential to continued re-opening. These past months, we have learned volumes about the virus and how to contain it—we must keep practicing those lessons, including hygiene and often, distancing and masks. Our discipline since March won us the ability to re-open—it didn't win us the ability to jettison all discipline with giddy abandon. The increase in cases we've seen in some locations results from several factors, including increased testing—it does not indicate we re-opened too early. But it does confirm we must remain vigilant.

That includes in the workplace. The Department's Occupational Safety and Health Administration—OSHA—has been helping workers and employers prepare for coronavirus since January. To date the Agency has issued 17 different guidance documents for specific industries, plus general guidance for all employers and workers. The industry-specific guidance covers workplaces ranging from nursing homes and meatpacking plants to construction and curbside pickup—each document is tailored to particular risks and precautions for that work environment.

From my discussions with employers, it's clear that business leaders have never been as focused on worker safety as they are now. That said, we know there are always some businesses or managers who give safety short shrift. We have existing regulations and statutory authority to deal with that; we are fielding and investigating worker complaints, including complaints of retaliation for raising safety concerns. We will not hesitate to bring enforcement action where necessary.

What we won't do at this time is adopt an unnecessary emergency rule specific to infectious diseases or coronavirus. Last week, the federal court of appeals here in Washington rejected a lawsuit by the AFL-CIO trying to force us to do that. OSHA, in its history, has never been as focused on a single workplace risk as it is now on coronavirus—the amount of guidance we are providing and our investigative activity in the field are unprecedented. But we do not believe that for every new challenge, there must be a new federal rule. Rather, we believe we already possess the enforcement authority we need and that our current approach is the best means to protect workers and give employers guidance and confidence in the steps to be taken to provide a safe workplace and satisfy their obligations. We're pleased the court of appeals unanimously agreed that our approach is "reasonable."

As businesses re-open safely, we're also focused on helping workers make the transition from unemployment back to work. The additional $600 in unemployment benefits provided in the CARES Act was an important measure to support workers who in many cases were being denied—by government order—the ability to earn a living. In the Great Recession of 2008-2009, the additional federal unemployment benefit was $25 a week, not $600.

Concern has been voiced by many, including the Heritage Foundation's Recovery Commission, that the $600 benefit—when combined with the unemployment benefit paid by the States—will deter Americans from returning to work as jobs becomes available. A worker receiving the $600 plus-up on top of state unemployment benefits receives an income that annualizes at between $50,000 and $55,000. In Massachusetts, this means a worker on unemployment currently has an annualized income of as much as $74,000. In several states, that figure is $60,000 or higher. A University of Chicago study found that 68% of workers are receiving unemployment benefits greater than the weekly wages they received prior to layoff.

I believe that most workers want work, not an unemployment check. And if a worker refuses suitable work, including an offer to safely return to his prior job, he's ineligible to receive further benefits. The Labor Department has been reinforcing these requirements with the States, including in a letter I sent to Governors earlier this month.

That said, when Congress wrote the CARES Act in March, it scheduled the $600 plus-up to end July 31, a point by which we expect the economy to be deep into the process of re-opening. Congress recognized that in an opening economy, with millions of jobs becoming available, that measure would no longer be called for.

The CARES Act is an admirable piece of legislation, and its enhanced unemployment benefit has provided valuable support to millions of Americans. But the extraordinary circumstances that called for the $600 benefit in March will no longer be present come August. Different policies will be called for.

At the heart of those policies should be recognition that the single best thing for American workers is creating conditions for a vibrant economy. We don't have to look far to see that's true, and to see what those policies are. We just have to look back to February of this year.

Four months ago, unemployment was at 3.5 percent, wages were rising, and were rising faster for lower-wage workers. Since 2018, there had been more vacant jobs than Americans looking for jobs: In February, there were 1.2 million more vacancies than workers looking for jobs. When I spoke to businesspeople, the concern they mentioned most often was finding skilled workers they could hire to sustain growth. The labor market was a seller's market. It was a worker's market.

Many good things came from that. Perhaps the best—and I know the President joins me in this—was it provided more opportunity for Americans who historically had less. African-American unemployment was at an all-time low in the Trump economy, and the poverty rate among African-Americans was the lowest ever recorded, in records going back to the 1960s. In the words of a *Wall Street Journal* news story last week, pre-coronavirus we had "the best African-American job market on record." We also saw record-low unemployment for Hispanic-Americans, Asian-Americans, and for workers who don't have a high school degree. Unemployment for adult women hit a 67-year record low.

In this Trump economy, employers were making stepped-up efforts to hire men and women who'd served in our armed forces, and stepped-up efforts to hire men and women who had served their time in the criminal justice system. Helping men and women re-enter the workforce from the criminal justice system was a focus not just of the President and his First Step Act; it was an interest of employers, too, who were growing their businesses and giving second chances to workers that, in a different economy, they would not have.

This Trump economy is also one where businesses wanted to help train workers. Frustrated by the lack of vocational education in high schools and the often dubious value-add at four-year colleges, businesses were charging forward on their own, or in collaboration with community colleges, establishing apprenticeships and other training programs that conferred needed, practical skills that workers could use to succeed in that workplace and the labor market at large. Businesses know better than government what skills are and will be needed in the workplace; in the tight job market of the Trump economy, they were leading the way.

States were responding too, as a demand for workers pressed against unnecessary obstacles to their livelihood—like occupational licensing laws that impede competition, make it harder fill vacancies, and make it especially hard for military spouses to find work as our soldiers are re-stationed from one base to another. In red States and blue, a demand for workers was lowering these barriers.

This was the story in workplaces across the country when I became Labor Secretary last September. And as Labor Secretary, one of the most painful aspects of the coronavirus has been watching it up-end that labor market, a labor market that had so incentivized American businesses to extend jobs, benefits, and opportunity to men and women who hadn't had enough opportunities in the past.

That is the economy President Trump built, and it's the economy we'll bring back. We'll do so through the principles and policies that delivered that economy the first time. That includes tax relief and vigilance against unnecessary regulatory burdens, so that American businesses can flourish and create the jobs that were providing unprecedented opportunities to so many Americans just a few months ago.

That's why, at our Cabinet Meeting last month, President Trump signed his Executive Order on Regulatory Relief to Support Economic Recovery, ordering agencies to take additional steps to ensure regulatory fairness and ease regulatory burdens. And it's why the President has been discussing a reduction in the payroll tax and other tax relief to incentivize the job growth that can make our job market a seller's market again.

These are principles we're already pursuing at the Labor Department. In the same week as the President's Order, we took four notable regulatory actions. One of those by itself will result in $3.2 billion in savings. How? Simply by letting employers give workers information about their retirement accounts online, rather than by mail. Workers and retirees who want to get plan information by mail can still do so, by opting out. But millions more will find it convenient to have the information on line—and that will save a lot of money, as well, by the way, as a lot of trees.

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The last three months have been a period of exceptional and essential government intervention. With the Families First Coronavirus Response Act and the CARES Act, President Trump and the Congress enacted a swift, sweeping, bi-partisan plan for protecting American workers and our economy from the measures necessitated by the coronavirus. There is now discussion of a possible final bill later this summer.

The Senate Minority Leader has described his ambitions for an additional bill as "Rooseveltian." For me, the statement called to mind two monumental statues from the New Deal outside the Federal Trade Commission. On each, a powerfully-built horse is straining to charge forward, but is being held back by a giant, musclebound man. The statues are titled "Man Controlling Trade." I still recall, as a boy, driving by with my father and him commenting, ruefully, that the statues showed, in his words, "government restraining the beast of free trade." I was young, but understood my father to be expressing some skepticism that trade is actually such a terrible beast. Now, with hindsight and understanding the view of the Constitution of the man who became Justice Scalia, I appreciate that there was more to his comment: The Founders of this country were principally concerned to restrain government, not with creating a hulking government to restrain free enterprise.

The genius of our Constitution is the autonomy it allows the people, and the ways it checks and limits government so that private individuals and institutions may thrive. A number of restraints by the government are essential, of course; so are government relief programs. But for all we've been forced to ask the government to do recently, we must not mistake government programs for the economic growth and opportunity that come only from the private sector. And we must not forget that it was limiting government, not expanding it, that delivered the extraordinary prosperity we enjoyed so recently, and to which we all want to return.