THE FED'S DUAL MANDATE: ONE TOO MANY?

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I. The Fed's Dual Mandate: Controlling Inflation and Unemployment

As the United States' central bank, the Federal Reserve System ("Federal Reserve" or "Fed") has several key functions: steering the nation's monetary policy, maintaining the stability of the financial system and containing systemic risks, supervising and regulating financial institutions, and providing certain financial services.[1] With regard to monetary policy, Congress charged the Federal Reserve with promoting "the goals of maximum employment, stable prices and moderate long-term interest rates."[2] This charge is often characterized as the Fed's "dual mandate"[3] to control the rate of inflation and the rate of unemployment in the United States.[4] According to the Board of Governors of the Federal Reserve's website:

> In setting monetary policy, the [Federal Open Market] Committee seeks to mitigate deviations of inflation from its longer-run goal and deviations of employment from the Committee's assessments of its maximum level. These objectives are generally complementary. However, under circumstances in

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[1] FEDERAL RESERVE SYSTEM, ROLES AND RESPONSIBILITIES OF FEDERAL RESERVE DIRECTORS 11 (9th ed. June 2005) (on file with author) [hereinafter ROLES AND RESPONSIBILITIES], *available at* http://www.federalreserve.gov/aboutthefed/directors/pdf/roles_responsibilities_FINAL web013013.pdf.

[2] *The Federal Reserve's Dual Mandate,* FED. RESERVE BANK OF CHI., http://www.chicagofed.org/webpages/publications/speeches/our_dual_mandate_background.cfm (last visited Jan. 11, 2014).

[3] Although there are technically three goals in the Fed's mandate—maximum employment, stable prices, and moderate long-term interest rates, it is generally called the "dual mandate," referring only to maximum employment and stable prices. MARC LABONTE, CONG. RESEARCH SERV., R41656, CHANGING THE FEDERAL RESERVE'S MANDATE: AN ECONOMIC ANALYSIS 1 (2012).

[4] *Id.*; *see also What Does It Mean that the Federal Reserve is "Independent Within the Government"?*, BD. OF GOVERNORS OF THE FED. RESERVE SYS. (Aug. 2, 2013), http://www.federalreserve.gov/faqs/about_12799.htm [hereinafter *What Does It Mean?*] ("Congress establishes maximum employment and stable price as the key macroeconomic objectives for the Federal Reserve in its conduct of monetary policy.").

> which the Committee judges that the objectives are not complementary, it follows a balanced approach in promoting them, taking into account the magnitude of the deviations and the potentially different time horizons over which employment and inflation are projected to return to levels judged consistent with its mandate.[5]

This charge has made the Federal Reserve the subject of perpetual legislative proposals and contentious debate over how it should implement these objectives.[6] Since the Recession of 2008,[7] the argument has refocused on whether the Federal Reserve should even have both objectives at all, rather than focusing solely on inflation.[8] The question is politically charged, and the consequences of any change or stagnancy are both risky and unclear.

This note outlines the history of the Federal Reserve's dual mandate, the parameters of this long-standing debate and proposed solutions, and the challenges the country faces in reaching a suitable conclusion. Part II details the history of the mandate through the major legislation that shaped it. Part III explains the current state of the mandate in the legislature. Part IV demonstrates the core arguments for and against a dual mandate during the 20th century. Part V demonstrates the core arguments during the 21st century. Finally, Part VI concludes that the debate may not be as polarized as

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[5] *What Are the Federal Reserve's Objectives in Conducting Monetary Policy?*, BD. OF GOVERNORS OF THE FED. RESERVE SYS. (Sept. 26, 2013), http://www.federalreserve.gov/faqs/money_12848.htm.

[6] *See infra* Parts II and III (legislation); *see also* Parts IV and V (debate).

[7] According to the Business Cycle Dating Committee of the National Bureau of Economic Research, the committee responsible for tracking the business cycle, the "decline in economic activity in 2008 met the standard for a recession." To meet this standard, there must be "a significant decline in economic activity spread across the economy, lasting more than a few months, normally visible in production, employment, real income, and other indicators." *Determination of the December 2007 Peak in Economic Activity,* NAT'L BUREAU OF ECON. RESEARCH (Dec. 11, 2008), http://www.nber.org/dec2008.html. For a look at the origin of the use of the term "The Great Recession" to refer to this period of time, see Catherine Rampell, *'Great Recession': A Brief Etymology*, NYTIMES.COM (Mar. 11, 2009, 5:39 PM), http://economix.blogs.nytimes.com/2009/03/11/great-recession-a-brief-etymology/.

[8] *See infra* Parts V.A and VI.B.

the parties to it argue, and recommends a compromise based on the parties' common goals.

II. History of the Dual Mandate

The history of the Federal Reserve's dual mandate is long, expansive, and often repetitive.[9] The current Federal Reserve System was created when President Woodrow Wilson signed the Federal Reserve Act into law on December 23, 1913.[10] The original purposes of the Act were "to provide for the establishment of Federal reserve banks, to furnish an elastic currency, to afford means of rediscounting commercial paper, to establish a more effective supervision of banking in the United States, and for other purposes."[11] The Act followed a series of financial panics, bank failures, and business bankruptcies during the late nineteenth and early twentieth century,[12] which led to proposals for the creation of an institution that would help prevent and contain future crises.[13] The Federal Reserve Reform Act amended the Federal Reserve Act in 1977, explicitly stating Congress's conception of the Fed's general policy:

> The Board of Governors of the Federal Reserve System and the Federal Open Market Committee shall maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates.[14]

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[9] *See infra* Part II.

[10] PUBL'NS COMM., BD. OF GOVERNORS OF THE FED. RESERVE SYS., THE FEDERAL RESERVE SYSTEM: PURPOSES AND FUNCTIONS 2 (9th ed. 2005) [hereinafter PURPOSES AND FUNCTIONS], *available at* http://www.federalreserve.gov/pf/pdf/pf_1.pdf#page=4.

[11] Federal Reserve Act, Pub. L. No. 63-43, 38 Stat. 251–75 (1913) (codified as amended in scattered sections of 12 U.S.C.).

[12] PURPOSES AND FUNCTIONS, *supra* note 10, at 1–2. Economic concerns were reinforced by the Panic of 1907, which further encouraged demand for legislative change. *Id.*

[13] *Id.*

[14] Federal Reserve Reform Act, Pub. L. 95-188, 91 Stat. 1387–91 (1977) (codified as amended in scattered sections of 12 U.S.C.).

Since its creation, legislation has continued to build upon and refine the Fed's role in the national economy and monetary policy.[15] Two acts in particular have sparked debate regarding the current definition of the Fed's primary objectives for national economic policy: the Employment Act of 1946 and the Full Employment and Balanced Growth Act of 1978.[16]

A. The Employment Act of 1946

The Employment Act of 1946 was a response to the Great Depression of the 1930s and the ensuing fear of a repeated depression upon the end of World War II and the return of demobilized war veterans to the workforce.[17] The legislation reflected its sponsors' position that full employment would not be attainable if left to the forces of private enterprise and thus the federal government would need to intervene.[18]

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[15] LABONTE, *supra* note 3, at 1 (explaining key changes made to the Federal Reserve mandates in the past two decades, including the Federal Reserve Single Mandate Act, the Sound Dollar Act, and the Federal Reserve Modernization Act).

[16] *Id.*; Helen Lachs Ginsburg, *Historical Amnesia: The Humphrey-Hawkins Act, Full Employment and Employment as a Right*, REV. BLACK POLIT. ECON. (2011) (exploring some of the New Deal job-creation efforts and the effects of two major attempts to secure full employment through legislation).

[17] G.J. SANTONI, THE EMPLOYMENT ACT OF 1946: SOME HISTORY NOTES 6 (Fed. Reserve Bank of St. Louis, 1986) (detailing the history of the Employment Act of 1946).

[18] *Id.* at 9. Of course, prior to the Employment Act, there had already been a long tradition of legislation aimed at employment problems. *See* David Ziskind, *U.S. Legislation Toward Full Employment*, 2 COMP. LAB. L. 147 (1977). "Responsibility for assistance to the unemployed shifted from state and local governments to the Federal government (never to return)" in the 1930s with New Deal programs "designed primarily to afford personal relief, although they were also conceived as pump priming for the total economy." *Id*. at 150. Since then "[t]here have been and are numerous statutory provisions for work relief, fiscal and monetary controls, the creation of new jobs, recruitment and placement, education, auxiliary aids and financial assistance to develop and promote employability, special programs for target groups and the prohibition of employment restrictions." *Id.* at 170. According to Ziskind,

The Full Employment Bill of 1945 proposed, among other things, that all Americans be "entitled to an opportunity for useful, remunerative, regular, and full-time employment," that the Federal Government has the responsibility to "assure continuing full employment" through the existence at all times of sufficient employment opportunities for all Americans, and that the Federal Government shall "provide such volume of Federal investment and expenditure as may be needed, . . . to assure continuing full employment."[19] The proposal required the government to achieve these objectives through a formula referred to as "compensatory finance."[20]

> [t]he U.S. legislation toward full employment has been a complex of laws enacted largely in response to national crisis or political expediencies. They have moved to alleviate employment problems, without attaining full employment. Work relief and public works laws have helped weather depressions and recessions. Fiscal and monetary laws have provided a legal basis for stimulating or restraining investment, consumer purchases and economic growth. More recent job creating laws have given some employment to special groups and distressed areas. Equal employment opportunity laws have set standards for individual court suits and some affirmative action programs to reduce employment discrimination. Training and education laws, apprenticeship laws, and veteran aid laws have offered facilities to improve employability. Financial assistance laws have smoothed over cyclical fluctuations and helped maintain employability. Underneath these, the public employment service laws have provided agencies for recruitment and placement. . . . The statistics of unemployment (and inflation) attest to the insufficiency of the undertaken measures; but the legislative record demonstrates a recurrent or continuous series of efforts to move toward full employment.

Id. at 175.

[19] SANTONI, *supra* note 17, at 12.

[20] *Id.* ("The formula required the President of the United States to submit a national budget to Congress at the beginning of each regular session. The budget was to contain a forecast of both the level of output necessary to generate full employment over the next year and the level of output that was likely to result if the government did not intervene. If the projected level of output was less than the level necessary for full employment, the President

The original Full Employment Bill was extremely controversial.[21] While supporters viewed the legislation as "a great Magna Carta of government planning for full employment,"[22] opponents declared it "utterly alien to America and her institutions."[23] The sponsors believed in the Keynesian theory that unemployment results from deficiencies in aggregate demand relative to "the full employment supply of output,"[24] and thus advocated for compensatory spending to combat the cycle.[25] In contrast, opponents to the bill believed that cyclical fluctuations in aggregate demand and employment were inevitable, and economic forces would result in full employment eventually without government intervention.[26] Opponents further argued that, even if

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was required to recommend legislation that would produce a big enough deficit in the federal government's budget to raise output to the full employment level. If the relationship between the two output forecasts were reversed, the President was required to recommend legislation that would result in a budget surplus big enough to reduce output to the full employment level.").

[21] *See infra* notes 22–31.

[22] SANTONI, *supra* note 17, at 5 (quoting Alvin H. Hansen, *The Reports Prepared Under the Employment Act,* The Employment Act Past and Future 97 (Nat'l Planning Assoc., 1956)).

[23] *Id.* (quoting *Full Employment Act of 1945*, Hearings Before a Subcommittee of the Committee of Banking and Currency, U.S. Senate, 79 Cong., 1 Sess. 1138 (Government Printing Office, Sept. 1945)).

[24] *Id.* at 7.

[25] *Id.* at 10 ("The congressional debates and hearings are filled with assertions that 'the history of employment and production in the United States is a record of boom and bust. It is a record of brief periods of growth and development culminating in peaks of prosperity that gave way to disastrous collapse;' or that 'private enterprise, left to its own devices, cannot provide full employment and cannot eliminate periodic mass unemployment and economic depressions.'").

[26] *Id.* at 10 ("The opponents thought business cycles were inevitable, and their consequences, in the form of temporarily reduced employment, could not be legislated away. They argued that business cycles were symptoms of the adjustment process to, say, a major change in consumer demand in favor of some goods but against others, a change that causes production costs to rise for some goods but fall for others, or a change in aggregate supply like an unusually good or bad harvest. Any of these changes results in a movement of resources (including labor) from one job to another. The adjustment takes time to complete and, in the interim, unemployment increases.").

government spending reduced unemployment in the short-term, such intervention would result in higher inflation and unemployment in the long-term.[27] In response, proponents argued that the cost of temporarily increased inflation would be worth lowering high levels of unemployment and avoiding "the social unrest that would [otherwise] inevitably follow in its wake."[28] Moreover, the two sides battled over the language of the legislation.[29] The original bill proposed a goal of full employment as a right to which all Americans were entitled.[30] While proponents explained that the exercise of this right would simply entail citizens' involvement in the democratic process, opponents argued that such a provision would lead people to "expect more than the government could ever be willing or able to deliver."[31]

Ultimately Congress passed the Employment Act of 1946 with significant changes from the initial bill proposed the previous year.[32] Watered down, the Act did not provide a "right" to employment, did not require the government to "assure continuing full employment," and eliminated the "requirement to submit a budget based on the principle of compensatory finance."[33] The Act also reflected compromise with regard to economic policy, allowing for discretionary trade-offs in focus between employment and price stability.[34] The final text read: "The Congress hereby declares that it is the continuing policy and responsibility of the Federal

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[27] *Id.* at 10–11 ("While the opponents conceded that 'Government spending can for awhile create full employment as it did during the war', they objected to the policy because it reduces unemployment in the short run by moving it to the long run and does so at the cost of higher inflation.").
[28] *Id.* at 11.
[29] *Id.* at 11–12 (explaining key differences in wording between "the bill as it was initially reported and the legislation that was finally enacted by Congress").
[30] *Id.*
[31] *Id.* at 11. Opponents also argued that such a provision was "socialistic and alien to the basic principles of the United States." *Id.*
[32] *Id.* at 11–12 (explaining key differences in wording between "the bill as it was initially reported and the legislation that was finally enacted by Congress").
[33] *Id.*
[34] *Id.* at 12 ("[I]t indicates that the government is concerned about more than just the level of employment; on occasion, the government may wish to pursue an economic policy that results in less than full employment but greater price stability, for example.").

Government . . . to promote maximum employment, production, and purchasing power."[35]

B. The Full Employment and Balanced Growth Act

The Full Employment and Balanced Growth Act, otherwise known as the Humphrey-Hawkins Act, was passed in 1978.[36] Following rising levels of unemployment and inflation in the early 1970s, some Congressmen sought to amend the Employment Act of 1946 in order to clarify ambiguity regarding the country's economic policy on employment issues.[37]

The Full Employment and Balanced Growth Bill, which was proposed in 1976, was essentially "a carbon copy of the initially proposed Full Employment Bill of 1945."[38] The bill proposed "the right of all adult Americans able, willing, and seeking work to opportunities for useful paid employment at fair rates of compensation."[39] The bill proposed the creation of an Advisory Committee on Full Employment and Economic Growth, which would advise the Council of Economic Advisers regarding "the views and opinions of broad segments of the public on matters involved in the formulation and implementation of goals and policies for full employment and balanced growth."[40] The proposal also required the President to establish "annual numerical goals for employment, production, and purchasing power" and submit a budget including the "level and composition of Federal expenditures, measured against estimated capabilities at full employment and production, necessary to support the annual economic goals . . . and to support the Full Employment and Balanced Growth Plan."[41] The bill also provided for "the coordination of monetary and fiscal policies, economy in government, anti-inflation policy, regional

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[35] *Id.* Notably, the title of the Act was changed from the "Full Employment Act" to the "Employment Act." *See id.*

[36] *See* Full Employment and Balanced Growth Act of 1978, Pub. L. No. 95-523, 92 Stat. 1887 (codified as amended in scattered sections of 15 U.S.C.).

[37] SANTONI, *supra* note 17, at 12–13.

[38] *Id.* at 13.

[39] *Id.*

[40] *Id.*; Full Employment and Balanced Growth Act of 1976 § 109, S. 50, 94th Cong. (as reported by S. Comm. on Labor & Pub. Welfare, 1976).

[41] SANTONI, *supra* note 17, at 13 (citing *Full Employment and Balanced Growth Act of 1976*, S. 50, 94th Cong. (as reported by S. Comm. on Labor & Pub. Welfare, 1976)).

employment policy, youth employment policy and income maintenance."[42]

The legislation received resounding support from "labor, civil rights, liberal, religious, and women's groups."[43] House majority leader at the time, Jim Wright, expressed the sentiments of these supporters when he stated, "What this bill says is not that America owes everybody a living. No. But America owes every American an opportunity to earn a living. This bill is an embodiment of what America stands for."[44] Similar to the response to similar legislation in 1945, however, there were vehement dissenters as well, with one critical congressional representative "remark[ing] that the seedling of the unemployment goal had grown into an 'unmanageable Christmas tree,' an 'unworkable monster' that deserved to be chopped down."[45] The debate split largely along party lines, with Democrats in favor of the bill and Republicans against.[46] A New York Times article from 1978 explained the divide.[47] Democrats, as part of their efforts to make unemployment a major issue in the upcoming congressional election, argued that opponents to the bill were "by definition opposed to full employment and thereby opposed to jobs."[48] Republicans, on the other hand, insisted the bill would lead to inflation, that attempts to fulfill "a numerical goal for full employment would start the nation down a perilous path leading to Government planning of the entire economy," and that the bill's goals could not be realized by the means laid out in the legislation.[49]

Opponents feared that the means employed by the government to reduce unemployment would turn out to be inflationary because the closer the economy comes to fulfilling maximum employment, the tighter the job market becomes for "prime age workers."[50] This in turn would produce a bottleneck

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[42] *Id.*
[43] Philip Shabecoff, *Humphrey-Hawkins Bill is Voted in House by Tally of 257 to 152*, N.Y. TIMES, Mar. 17, 1978.
[44] *Id.*
[45] SANTONI, *supra* note 17, at 13.
[46] Shabecoff, *supra* note 43.
[47] *Id*.
[48] *Id.*
[49] *Id.*
[50] DENNIS ROTH, CONG. RESEARCH SERV., 78-31E, THE REVISED HUMPHREY-HAWKINS BILL (H.R.50 AND S.50, 95TH CONG., THE FULL

effect and raise labor costs, which are "transmitted almost inevitably into the price structure."[51] A statement from the Council of Economic Adviser's report in 1975 recognized this possibility, announcing: "Our goals should be to reduce unemployment whenever this can be done by means which are not more costly than the unemployment itself," and that policies "must prevent a rise in inflation but must also continue to mitigate the hardships associated with unemployment."[52]

After two years of debate, Congress finally negotiated a compromise and President Jimmy Carter signed the bill into law in October 1978.[53] The final text of the Humphrey-Hawkins Act stated its purpose as:

> To translate into practical reality the right of all Americans who are able, willing, and seeking to work to full opportunity for useful paid employment at fair rates of compensation; to assert the responsibility of the Federal Government to use all practicable programs and policies to promote full employment, production, and real income, balanced growth, adequate productivity growth, proper attention to national priorities, and reasonable price stability; to require the President each year to set forth explicit short-term and medium-term economic goals; to achieve a better integration of general and structural economic policies; and to improve the coordination of economic policymaking within the Federal Government.[54]

In essence, the Act declared a national policy of promoting full employment and price stability and mandated that the Fed

EMPLOYMENT AND BALANCED GROWTH ACT OF 1977): SUMMARY, MAJOR ISSUES, AND CONTENDING ARGUMENTS 18–20 (1978).

[51] *Id.*

[52] Ziskind, *supra* note 18, at 166.

[53] SANTONI, *supra* note 17, at 13.

[54] Full Employment and Balanced Growth Act of 1978, Pub. L. No. 95-523, 92 Stat. 1887 (codified as amended in scattered sections of 15 U.S.C.).

establish monetary policy accordingly.[55] Under the legislation, the federal government would primarily rely on the private sector to achieve the outlined economic goals, but the President could create "reservoirs of public employment" if the prevailing policy was failing to reach the full employment target.[56] The Act also "[e]ncourage[d] the adoption of fiscal policy that would reduce federal spending."[57]Additionally, the Act required the President to set numerical budgetary goals designed to reduce unemployment and inflation rates, such that the Fed must implement its policies with those numbers in mind.[58]

Though the numerical budgetary targets have changed over the years since the Humphrey-Hawkins Act, Congress has not made any substantial changes to the Fed's mandate.[59] Accordingly, the Fed continues to operate under the aforementioned intentions to the present day, even though critics and supporters of the dual mandate have yet to come to an agreement.[60]

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[55] SANTONI, *supra* note 17, at 14 (explaining that the Act "[r]equires the Federal Reserve Board to report to the Congress twice a year on its monetary policies and their relationship to the goals of the act").
[56] *Id.*
[57] *Id.*
[58] *Id.* The budgetary goals were meant to achieve "an employment rate of not more than 3 percent among persons aged 20 and over, and 4 percent for persons 16 and over by 1983"; and reduce "the rate of inflation to 3 percent by 1983," though the inflation rate goal would be changed to zero percent by 1988 once the desired unemployment rate was achieved. *Id.*
[59] *Compare* ROTH, *supra* note 50, at 7 (declaring, in 1978, the "key element" of the Humphrey Hawkins Act as "the establishment of full employment with reasonable price stability as the primary goals") *with* LABONTE, *supra* note 3, at 1 (explaining, in 2012, that the Fed's dual mandate consists of "maximum employment and stable prices"). For an interesting discussion involving use of the terms "maximum employment" and "full employment" with regards to the dual mandate, see Daniel L. Thornton, *The Dual Mandate: Has the Fed Changed its Objective?*, 94 FED. RESERVE BANK OF ST. LOUIS REV. 117, 117–34 (Mar./Apr. 2012).
[60] *See What Are the Federal Reserve's Objectives in Conducting Monetary Policy?*, *supra* note 5.

III. The Federal Reserve and Its Dual Mandate Today

A. Components of the Federal Reserve System and Its Policy-Making

The current objectives of the Federal Reserve are "to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates."[61] Since its creation, the Fed has adapted to the complexities of the modern economic environment and embraced increased collaboration and coordination among the Board of Governors, Federal Reserve branches, and the Federal Open Market Committee ("FOMC").[62] Technically, monetary policy is set by the FOMC, who is "charged under law with overseeing open market operations, the principal tool of national monetary policy."[63] The FOMC sets the federal funds rate, to which changes, or even expectations of changes, "can set off a chain of events that will affect other short-term interest rates, longer-term interest rates, the foreign exchange value of the dollar, and stock prices."[64] In turn, changes in these variables impact spending decisions for households and businesses alike, thereby affecting aggregate demand and the economy as a whole.[65] The

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[61] PURPOSES AND FUNCTIONS, *supra* note 10, at 15.

[62] ROLES AND RESPONSIBILITIES, *supra* note 1, at 6 ("As the nation's economy became more integrated and more complex . . . the Federal Reserve realized that effective monetary policymaking required increased collaboration and coordination throughout the System. This was accomplished in part through revisions to the Federal Reserve Act in 1933 and 1935 that together created the modern-day FOMC."). These are considered the "three key components of the Federal Reserve System," which interact to accomplish the Fed's goals in setting monetary policy. *Id.* at 1.

[63] PURPOSES AND FUNCTIONS, *supra* note 10, at 15. "The FOMC is composed of seven members of the Board of Governors and five of the twelve Reserve Bank presidents. The president of the Federal Reserve Bank of New York is a permanent member; the other presidents serve one-year terms on a rotating basis. All the presidents participate in FOMC discussions, contributing to the committee's assessment of the economy and of policy options, but only the five presidents who are committee members vote on policy decisions." *Id.* at 11–12.

[64] *Id.* at 16.

[65] *Id.* ("In turn, changes in these variables will affect households' and businesses' spending decisions, thereby affecting growth in aggregate demand and the economy.").

interaction between the wealth of businesses and individuals and the FOMC's decisions thus leads to a cycle in which the Fed's objectives become interlinked with the economic cycle.[66] These objectives become easier to achieve as the public better understands the goals and believes the Fed will be able to effectively achieve them.[67] In other words, a self-fulfilling prophecy emerges: when the public believes in the Fed's ability to fulfill its mandate and protect the economy, they don't make panicked decisions (such as cutting spending or raising prices), and the Fed's goals become easier to achieve, resulting in quicker results and greater predictability, and thus rewarding and reinforcing public confidence in the system.[68]

In January 2012, the FOMC released a statement explaining the principles applied in their policy-making decisions.[69] In acknowledging its commitment to fulfilling the Congressional mandate of "promoting maximum employment, stable prices, and moderate long-term interest rates," the FOMC stresses the importance of clarity of communication with the public.[70] The

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[66] *See id.* at 15–20 ("If the economy slows and employment softens, policy makers will be inclined to ease monetary policy to stimulate aggregate demand. When growth in aggregate demand is boosted above growth in the economy's potential to produce, slack in the economy will be absorbed and employment will return to a more sustainable path. In contrast, if the economy is showing signs of overheating and inflation pressures are building, the Federal Reserve will be inclined to counter these pressures by tightening monetary policy—to bring growth in aggregate demand below that of the economy's potential to produce—for as long as necessary to defuse the inflationary pressures and put the economy on a path to sustainable expansion.").

[67] PURPOSES AND FUNCTIONS, *supra* note 10, at 20.

[68] *See id.* ("[I]f the Federal Reserve responds to a negative demand shock to the economy with an aggressive and transparent easing of policy, businesses and consumers may believe that these actions will restore the economy to full employment" and because of this, "they may be less inclined to pull back on spending because of concern that demand may not be strong enough to warrant new business investment.").

[69] Press Release, Bd. of Governors of the Fed. Reserve Sys. (Jan. 25, 2012) [hereinafter Press Release], *available at* http://www.federalreserve.gov/newsevents/press/monetary/20120125c.htm ("Following careful deliberations at its recent meetings, the Federal Open Market Committee (FOMC) has reached broad agreement on the following principles regarding its longer-run goals and monetary policy strategy.").

[70] *Id.* ("Such clarity facilitates well-informed decisionmaking by households and businesses, reduces economic and financial uncertainty, increases the

FOMC explains how this transparency works with monetary policy actions to impact economic activity, how these actions promote the dual mandate, and how the relative success with regard to achieving its objectives influences such policy decisions.[71] The FOMC also explains that due to the lag between policy action and economic effect, its policy decisions necessarily "reflect its longer-run goals, its medium-term outlook, and its assessments of the balance of risks, including risks to the financial system that could impede the attainment of the [FOMC]'s goals."[72] The assumption is that if the public knows what to expect from the Fed, they make more stable economic decisions; if the public makes more predictable decisions, the Fed can more easily assess market conditions and make ongoing policy decisions based on the public.[73]

The FOMC can stipulate its "longer-run goal[s] for inflation," because long-run inflation is "primarily determined by monetary policy."[74] In describing the factors used in its policy-making decisions, the FOMC explains:

> The Committee judges that inflation at the rate of 2 percent, as measured by the annual change in the price index for personal consumption expenditures, is most consistent over the longer run with the Federal Reserve's statutory mandate. Communicating this inflation goal clearly to the public helps keep longer-term inflation expectations firmly anchored, thereby fostering price stability and moderate long-term interest rates and enhancing the Committee's ability to promote maximum employment in the face of significant economic disturbances.[75]

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effectiveness of monetary policy, and enhances transparency and accountability, which are essential in a democratic society.").

[71] *See id.* (stating that the "FOMC is firmly committed to fulfilling its statutory mandate from the Congress" and "seeks to explain its monetary policy decisions to the public as clearly as possible" because "clarity facilitates well-informed decisionmaking by households and businesses, reduces economic and financial uncertainty, increases the effectiveness of monetary policy, and enhances transparency and accountability").

[72] *Id.*

[73] *See id.*

[74] *Id.*

[75] *Id.*

The "maximum" level of employment, on the other hand, "is largely determined by nonmonetary factors that affect the structure and dynamics of the labor market."[76] In setting employment policy, the FOMC references assessments of the maximum level of employment based on complex nonmonetary factors that fluctuate over time and, in some cases, cannot be measured.[77] Given the uncertain nature of such measurements, the FOMC does not specify a fixed employment goal and instead uses its members' estimates of growth and unemployment rates, which are reassessed several times a year.[78] While these "assessments are necessarily uncertain and subject to revision," in recent years FOMC members' "estimates of the longer-run normal rate of unemployment had a central tendency of 5.2 percent to 6.0 percent."[79]

The FOMC members make their long-term projections based on information available at the time of the meeting and under assumed conditions of "appropriate monetary policy" and a relatively stable economy.[80] Although these projections reflect a general consensus as to what the results of ideal conditions under the dual mandate would look like,[81] there is less conformity regarding individual ideas of how the dual mandate should be implemented.

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[76] *Id.*
[77] *Id.*
[78] *See id.* "Information about Committee participants' estimates of the longer-run normal rates of output growth and unemployment is published four times per year in the FOMC's Summary of Economic Projections." *Id.*
[79] *Id.* Although this statement is from 2012, the latest Summary of Economic Projections, done in June 2013, had the same long-term unemployment rate projection. The 2012 projections are "substantially higher than the corresponding interval several years earlier." Press Release, *supra* note 69; *Minutes of the Federal Open Market Committee*, BD. OF GOVERNORS OF THE FED. RESERVE SYS. (June 18–19, 2013), http://www.federalreserve.gov/monetarypolicy/fomcminutes20130619ep.htm.
[80] *Minutes of the Federal Open Market Committee*, *supra* note 79. "'Appropriate monetary policy' is defined as the future path of policy that each participant deems most likely to foster outcomes for economic activity and inflation that best satisfy his or her individual interpretation of the Federal Reserve's objectives of maximum employment and stable prices." *Id.*
[81] *See id.*

B. Proposed Legislation

Recent legislation has reflected discontent with the Fed's performance in recent years and an interest, in particular, in changing the Fed's dual mandate.[82] The 112th Congress proposed two different bills that would strike the employment half of the mandate; one of the bills also required the Fed to adopt an "inflation target."[83] The 113th Congress has proposed several bills addressing the dual mandate as well, including bills that would eliminate the employment mandate and require studies meant to improve the information needed for monetary policy-making, though none have yet to make it out of committee.[84]

Once again, there is a debate over the best course of action with regard to monetary policy.[85] Those in favor of a single mandate of price stability argue that such a policy would "ensure that inflation [is] low and stable; increase predictability of monetary policy for financial markets; narrow the potential to pursue monetary policies with short-term political benefits but long-term costs; remove statutory goals that the Fed has no control over in the long run; limit policy discretion; and increase transparency, oversight, accountability and credibility."[86] Those in favor of maintaining the dual mandate argue that "the Fed has already delivered low and stable inflation for the past two decades, unemployment is a valid

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[82] *See generally* LABONTE, *supra* note 3, at 12. Many people hold the Fed responsible for "the depth and length of the recession," despite the fact that "[s]ome of the criticisms, including lax regulation of banks and mortgages and 'bailouts' of 'too big to fail' firms, were authorized by statute unrelated to the Fed's monetary policy mandate." *Id.* at Summary.
[83] *Id.*
[84] *See* Focusing the Fed on the Currency of the United States Act of 2013, H.R. 492, 113th Cong. (2013) ("To amend the Federal Reserve Act to remove the mandate on the Board of Governors of the Federal Reserve System and the Federal Open Market Committee to focus on maximum employment."); *see also* Federal Reserve Single Mandate Act of 2013, S. 215, 113th Cong. (2013) ("To ensure that the Federal Reserve conducts its policies to ensure long-term price stability and a low rate of inflation."); Centennial Monetary Commission Act of 2013, H.R. 1176, 113th Cong. (2013) ("To establish a commission to examine the United States monetary policy, evaluate alternative monetary regimes, and recommend a course for monetary policy going forward.").
[85] *See* LABONTE, *supra* note 3, at Summary.
[86] *Id.*

statutory goal since it is influenced by monetary policy in the short run, and discretion is desirable to respond to unforeseen economic shocks."[87] Neither option, however, may be an end to the problems the critics from each side raise. As one opponent to the employment mandate suggests, "changing the mandate alone would not significantly alter policymaking, because Fed discretion, transparency, oversight, and credibility are mostly influenced by other factors, such as the Fed's political independence."[88]

C. The Fed's Interaction with Congress and Courts

As an agency of the federal government, the Federal Reserve reports directly to Congress.[89] Despite certain interactions with executive and legislative officials, however, the Federal Reserve makes its policy decisions independently of the other branches, and without their approval.[90] In fact, the Fed is often described as "independent within the government."[91] The Fed is not funded through the congressional budget; rather, financing comes primarily from interest earned on government securities acquired through its own monetary policy actions.[92] Members of the Board of Governors are subject to staggered fourteen-year terms; the Chairman is subject to four-year terms.[93] All members are appointed to their positions and cannot be elected officials or members of the Executive Branch.[94] The purpose of such independence is to ensure that monetary policy decisions are not susceptible to "political pressures

[87] *Id.*
[88] *Id.*
[89] ROLES AND RESPONSIBILITIES, *supra* note 1, at 7 ("The Reserve Banks are supervised by the Board of Governors . . . which reports to and is directly accountable to the Congress.").
[90] *Id.* at 8.
[91] *What Does It Mean?*, *supra* note 4.
[92] ROLES AND RESPONSIBILITIES, *supra* note 1, at 8; *see also What Does It Mean?*, *supra* note 4 ("Other sources of income are the interest on foreign currency investments held by the Federal Reserve System; fees received for services provided to depository institutions, such as check clearing, funds transfers, and automated clearinghouse operations; and interest on loans to depository institutions.").
[93] *What Does it Mean?*, *supra* note 4.
[94] *Id.*

that could lead to undesirable outcomes."[95] This is not a new concern. During the debate prior to enactment of the legislation establishing the Federal Reserve System, one of the main concerns was avoiding a political institution:

> Of all the questions that ought to be exempt from party bias, it is the money question—the banking question. The chief purpose of a banking plan is the creation of a system of credit and the maintenance of the same. If 95 per cent of the business of the country is done on a credit basis, the better the system. No system of credit that is made the football of politics can be safe. Credit is confidence. Lack of confidence is due to uncertainty. Partisan control is uncertain. No system of credit can stand uncertainty. No matter how good the system of credit is, it can not be maintained under a policy of uncertainty due to the whims of party leaders and the contingencies of political campaigns.[96]

In this statement, S.D. Fess seems to have foreseen an additional problem with the debate over the dual mandate.[97] So long as politics may undermine sound monetary policy decisions, the public will have less confidence in those decisions, which in turn affects the reliability of assessments of output information upon which the Fed makes future policy decisions.[98] Ideally, the Fed would operate independent of any particular political views.[99]

Judicial review of the Fed's discretion has typically resulted in courts deferring to the Fed.[100] For example, in *Bd. of Governors of*

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[95] *Id.* The Act's diversity requirement likely was meant to accomplish a similar goal. *See* 12 U.S.C. § 241 ("In selecting the members of the Board, not more than one of whom shall be selected from any one Federal Reserve district, the President shall have due regard to a fair representation of the financial, agricultural, industrial, and commercial interests, and geographical divisions of the country.").

[96] 50 CONG. REC. app. 284–85 (Sept. 16, 1913) (Extensions of Remarks of Hon. S. D. Fess).

[97] *Id*.

[98] *See id.*

[99] *See id.*

[100] *See* Bd. of Governors of Fed. Reserve Sys. v. First Lincolnwood Corp., 439 U.S. 234, 243 (1978) (finding that the statute's language "supports the

Fed. Reserve Sys. v. First Lincolnwood Corp., the Fed sought review of a Seventh Circuit Court of Appeals rehearing en banc decision that "set aside" an order of the Fed denying First Lincolnwood Corp.'s application to become a bank holding company pursuant to the Bank Holding Company Act of 1956.[101] The Supreme Court reversed the appeals court's decision, finding that the Fed acted within the authority conferred to it by Congress, specifically under the Bank Company Holding Act, and more broadly under its statutory mandate.[102] According to the court, "the [Fed]'s authority is bolstered by reference to the principle that an agency's long-standing construction of its statutory mandate is entitled to great respect, 'especially when Congress has refused to alter the administrative construction.'"[103]

Of course, agency regulations are entitled to substantial deference under the *Chevron* doctrine, and so is statutory interpretation under the Administrative Procedure Act.[104] In fact, some courts have concluded that certain Federal Reserve actions are

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Board's interpretation of § 3 (c) as an authorization to deny applications on grounds of financial and managerial unsoundness even in the absence of any anticompetitive impact"); Bd. of Governors of Fed. Reserve Sys. v. Inv. Co. Inst., 450 U.S. 46, 78 (1981) (holding that because the court "concluded that the Board's decision to permit bank holding companies to act as investment advisers for closed-end investment companies is consistent with the language of the Bank Holding Company Act, and because such services are not prohibited by the Glass-Steagall Act" the court "hold[s] that the amendment to Regulation Y does not exceed the Board's statutory authority").

[101] *First Lincolnwood Corp.*, 439 U.S. at 235, 241–42.

[102] *Id.* at 242–48.

[103] *Id.* at 248 (citing Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367, 381 (1969); Zemel v. Rusk, 381 U.S. 1, 11–12 (1965); Udall v. Tallman, 380 U.S. 1, 16 (1965)).

[104] Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837, 844–45 (1984) ("We have long recognized that considerable weight should be accorded to an executive department's construction of statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations has been consistently followed by this Court whenever decision as to the meaning or reach of a statute has involved reconciling policies, and a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations.") (internal citations and quotation marks omitted); 5 U.S.C. § 706.

categorically beyond the scope of judicial review.[105] Furthermore, in *First Lincolnwood*, the court noted that discretionary deference is reinforced when Congress is aware of an agency practice, has reviewed legislation aimed at changing that practice, and yet has not changed its statutory charge to the agency.[106] Congress is obviously aware of the ways in which the Fed is carrying out its dual mandate and has often revisited the issue through legislative proposals, but has yet to make any statutory changes to the mandates.[107] Therefore, despite the perpetual debate, until such time as Congress actually changes the law, the Fed will continue to operate under its own and sole discretion in fulfilling the dual mandate.

IV. The Debate—Part I—The 20th Century

In his 1977 article entitled *U.S. Legislation Toward Full Employment*, David Ziskind detailed the history of employment-promoting legislation prior to the Humphrey-Hawkins Act, which was signed into law a year later in 1978.[108] There was "great controversy over the effectiveness of such monetary and fiscal policies," though there was agreement on both sides of the need to refine "[t]he tools of fiscal and monetary manipulation. . . ."[109] Ziskind expounded on the public calls at the time for new legislation:

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[105] *See, e.g.*, Robbins v. Reagan, 780 F.2d 37, 45 (1985); Cardoza v. Commodity Futures Trading Comm'n, 768 F.2d 1542, 49 (1985) (discussing Heckler v. Chaney, 470 U.S. 821 (1985)).

[106] Bd. of Governors of Fed. Reserve Sys. v. First Lincolnwood Corp., 439 U.S. 234, 248 (citing Saxbe v. Bustos, 419 U.S. 65, 74 (1974)) (finding support for upholding the Board's actions where "Congress has been made aware of this practice, yet four times has 'revisited the Act and left the practice untouched.'"); *accord* United States v. Rutherford, 442 U.S. 544, 553–54 (1979) ("As this Court has often recognized, the construction of a statute by those charged with its administration is entitled to substantial deference. Such deference is particularly appropriate where . . . an agency's interpretation involves an issue of considerable public controversy, and Congress has not acted to correct any misperception of its statutory objectives. Unless and until Congress does so, we are reluctant to disturb a longstanding administrative policy that comports with the plain language, history, and prophylactic purpose of the Act.").

[107] *See supra* Parts II and III.B.

[108] Ziskind, *supra* note 18, at 167–68.

[109] *Id.* at 152–53.

> Dissatisfaction with monetary and fiscal controls as an assurance of constant economic growth has been expressed not only because they are too crude and uncertain but also because the attainable levels of 4 to 5% of unemployment (with much higher rates for Blacks, Latins, youth and persons in depressed areas) are humanly and morally unacceptable. The unchecked rise in unemployment above that level after 1970 and the accompaniment of unemployment with inflation have brought new challenges to the adequacy of monetary and fiscal controls.[110]

As of the 1970s, whenever full employment levels have been attained, forces outside of the government policies meant to accomplish the increased levels of employment have influenced the result.[111] According to Ziskind, periods of full employment have always been preceded and explained by non-legislative occurrences, such as a favorable market or a war; therefore, it is unclear whether the government even has the capability to affect unemployment through legislation.[112] The questions raised during the debate surrounding the Humphrey-Hawkins bill included: whether the bill sought more employment "than is needed or attainable," whether a numerical target for employment was valid or useful, whether the creation of public jobs for this purpose would hurt the private sector, and whether the means used to accomplish the employment goal would actually be inflationary.[113]

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[110] *Id.* at 153.

[111] *Id.* at 167 ("In 1943–45 (when official statistics accounted for under 2% unemployment), World War II created an exceptional shortage of labor and unprecedented responses in the labor market. In 1951–53 (when unemployment was reported at 3.3 to 2.9%), the Korean War exerted an abnormal force on employment. . . . In the relatively prosperous period of 1955–57, unemployment . . . averaged 4% of the labor force. . . . The apparent and discouraging fact is that the U.S. has not achieved full employment under normal market conditions with the laws and government policies in effect.").

[112] *Id.* ("It is clear that legislation has not produced anything like full employment in the U.S.").

[113] *Id.* at 169

A. Against a Full Employment Mandate

Some economists and politicians were zealously opposed to the Fed's mandate to seek full employment.[114] One of the biggest concerns voiced by opponents is the risk of increased inflationary pressures.[115] Then Chairman of the Council of Economic Advisers Charles Schultze "emphasized that '[t]he stumbling block to low unemployment is inflation; the supporter of a full employment policy must of necessity become a searcher for ways to reduce the inflation that accompanies full employment.'"[116] Citing "the postwar experience of tight labor markets," opponents argue that when unemployment drops, inflation increases.[117]

Opponents of the full employment mandate also criticized the difficulties posed by "political pressures and market uncertainties" in implementing proper policy and achieving the desired results.[118] There is also the possible implication of social imbalance though increased spending, and the possibility that "economic growth, without differentiation [sic] may promote technological improvements and labor saving devices that increase unemployment."[119] Others have argued that "increasing the public budget for full employment projects would increase market demand and drive prices and public debt completely out of control."[120]

In the larger sense, opponents to the Humphrey-Hawkins Act argued that government control would necessarily impact the private sector, in effect giving an inordinate amount of power to economic planners.[121] These opponents believed the Act "would become a forerunner of an entire system of centralized planning and would directly interfere with the traditional U.S. system of free enterprise."[122]

Lastly, opponents believed the goals of the Act were just too lofty, arguing "that the Act promises too much and ignores the difficulty involved in achieving the numerical goals as well as

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[114] ROTH, *supra* note 51, at 18.
[115] *Id.*
[116] *Id.* at 19.
[117] *Id.* at 18–19.
[118] Ziskind, *supra* note 18, at 151.
[119] *Id*.
[120] *Id.* at 169–70.
[121] ROTH, *supra* note 50, at 26.
[122] *Id*.

implementing the necessary policies and programs for achieving full employment."[123] As campaigning Republicans more boldly stated: "the legislation held an empty promise to the American people."[124] Furthermore, they argue that the available data and methods of economic forecasting are too dynamic and insufficiently accurate to achieve the goals of the Act.[125]

B. For a Full Employment Mandate

Many proponents of maximum employment policies lay their arguments on the persuasiveness of American ideals.[126] It makes sense, then, that among the idealistic and zealous advocates of economic legislation aimed at decreasing unemployment stood several prominent figures of the mid-20th century.[127] President Franklin D. Roosevelt proposed an economic "Second Bill of Rights" that included the right to "useful and remunerative jobs" for all.[128] Revered civil rights leader Dr. Martin Luther King echoed the President's sentiments, calling for a guarantee of jobs to all who want to work, and specifically, that the government should act as "an employer of last resort."[129] Augustus Hawkins, one of the sponsors of the aptly-named Humphrey-Hawkins Act, has been described as "[d]eeply committed to equality for all people and to a broad interpretation of full employment as a human right."[130] This view of full employment has two goals: "provide jobs for all and . . . fulfill unmet social and human needs."[131]

The concept of economic equality, however, was not solely a theoretical moral ideal. In fact, the negative consequences of

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123 *Id.* at 30.
124 Shabecoff, *supra* note 43.
125 ROTH, *supra* note 50, at 30.
126 *See generally* Ginsburg, *supra* note 16.
127 *See id.* at 7, 9.
128 *Id.* at 7.
129 *Id.* at 9 (citing Forstater M., "Jobs for All": Another Dream of the Rev. Dr. Martin Luther King, Jr., Forum for Social Economics, (2002) Spring 3l(2)).
130 *Id.* at 11.
131 *Id.* The final version of the Full and Employment and Balanced Growth Act had more modest goals, its stated purpose being "to translate into practical reality the right of all Americans who are able, willing and seeking to work to full opportunity for useful paid employment at fair rates of compensation." *Id.* at 13–14.

unemployment and underemployment came to a head in the late 1960s, when a commission to investigate the causes of civil disorder found that "depression-levels of unemployment, underemployment and poverty wages in the nation's ghettos were major causes" of widespread urban riots.[132] Given that high levels of unemployment have been linked to negative social implications, there are affirmative reasons to work toward lower levels of unemployment.[133] One argument is that "public expenditures would be offset or exceeded in the long run by an increase in the supply of services and goods for consumers, by a saving in welfare payments, unemployment benefits and the other social costs of unemployment, and by an increase in government revenue from taxes on an enriched economy."[134]

V. *The Debate—Part II—The 21st Century*

In the years since the Recession of 2008, the Fed has faced new criticism regarding its dual mandate.[135] The Fed set the numerical goals of its mandate as follows: the target rate for inflation is around 2%, and for unemployment 5-6%.[136] Currently, inflation is below its target rate, but unemployment is still too high, despite having recently fallen to around 7%.[137] Proponents and opponents of

[132] *Id.* at 10.
[133] *Id.*
[134] Ziskind, *supra* note 18, at 170.
[135] *See infra* Part V.A.
[136] Charles L. Evans, President and CEO, Federal Reserve Bank of Chicago, The Fed's Dual Mandate Responsibilities and Challenges Facing U.S. Monetary Policy, Address at the European Economics and Financial Centre Distinguished Speaker Seminar (Sept. 7, 2011), *available at* https://www.chicagofed.org/webpages/publications/speeches/2011/09_07_dual_mandate.cfm (explaining that "the most reasonable interpretation of [the] maximum employment objective is an employment rate near its natural rate"). *See also* Ben S. Bernanke, *The Federal Reserve: Looking Back, Looking Forward,* Speech at the Annual Meeting of the American Economic Association, Philadelphia, PA (Jan. 3, 2014), *available at* http://www.federalreserve.gov/newsevents/speech/bernanke20140103a.htm.
[137] *Id.* Unemployment peaked at 10% in Fall 2009. Though declining slowly, the rate is still considered unacceptably far from the target. According to Ben Bernanke, the unemployment threshold for policy actions is generally around 6.5%. *Looking Back, Looking Forward, supra* note 136 ("The number of long-term unemployed remains unusually high, and other

the dual mandate both agree that this rate of unemployment is unacceptable.[138] The views differ, however, on whether the onus should continue to fall on the Fed to reduce unemployment, which might require deviating from the presently fulfilled goal of inflation.[139]

A. Against a Full Employment Mandate

Many members of the public think the Fed would better serve the economy by focusing only on regulating inflation.[140] According to Daniel Thornton of the Federal Reserve Bank of St. Louis, most economists do not support legislation in favor of a dual mandate.[141] These opponents argue that "the long-run levels of output and employment are determined by economic fundamentals (productivity, technology, the saving rate, and so on), which are unaffected by monetary policy."[142] Moreover, "an increasing rate of inflation actually increases the rate of unemployment."[143] The theory is that increased inflation diminishes the purchasing power of most consumers, leading to less discretionary spending, less demand,

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measures of labor underutilization . . . have improved less than unemployment rate. Labor force participation has continued to decline . . . some of it likely [due to] potential workers' discouragement about job prospects.").

[138] *Monetary Policy Going Forward: Why a Sound Dollar Boosts Growth and Employment: Hearing Before the Joint Economic Committee,* 112th Cong. 2 (2012) (opening statement of Hon. Kevin Brady, Vice Chairman, U.S. Representative from Texas) ("Critics charge that eliminating the dual mandate means we don't care about jobs. They are wrong. The opposite is true. It's precisely because we care about jobs and growth that Congress should direct the Fed to . . . monetary policy [that] can achieve price stability, which is the foundation for creating the greatest number of jobs that last.").

[139] *See id.* at 2; *see infra* Part V.A.

[140] *See generally infra* notes 141–54 and accompanying text.

[141] Daniel L. Thornton, *What Does the Change in the FOMC's Statement of Objectives Mean?*, 1 ECONOMIC SYNOPSES 1, 1 (2011).

[142] *Id.*

[143] Michael Pento, *The Dual Mandates of the Federal Reserve,* DAILY RECKONING (Oct. 24, 2011), http://dailyreckoning.com/the-dual-mandates-of-the-federal-reserve/. Michael Pento is a Senior Economist at Euro Pacific Capital and economic blogger. *Id*.

increased layoffs and thus increased unemployment.[144] Based on these considerations, the conclusion of the argument seems clear: "the Fed needs to uphold only one mandate . . . keeping in check the growth of money supply."[145] One opponent to the employment mandate declares that doing so "is the only way to ensure our economy displays full employment and maximum economic growth."[146]

John B. Taylor, a professor of economics at Stanford University, agrees that focus on price stability (and not maximum employment) is the superior policy in his aptly titled editorial *End the Fed's Dual Mandate and Focus on Prices*.[147] Taylor blames the continued increase in unemployment rates since the recession on the Fed's recent discretionary actions, especially quantitative easing, under the guise of fulfilling the dual mandate.[148] Taylor suggests that the Fed itself has undergone a change in focus over the past twenty years.[149] According to Taylor, during the 1980s and 1990s, even in times of similar unemployment woes, "Fed officials rarely referred to the dual mandate," only doing so "to make the point that achieving price stability was the surest way for monetary policy to keep unemployment down."[150] Taylor notes that Fed has increasingly referenced its mandate of "maximum employment" since 2008, each time as it embarked on new programs of "highly discretionary

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[144] *Id.* ("Each and every time the Fed has increased the money supply and sent prices rising, the rate of unemployment has risen, not decreased. The simple reason for this is that inflation diminishes the purchasing power of most consumers. Falling real wages means less discretionary purchases can be made. Falling demand leads to increased layoffs and the unemployment rises as economic growth falters.").

[145] *Id.*

[146] *Id.*

[147] John B. Taylor, *End the Fed's Dual Mandate and Focus on Prices,* BLOOMBERG (Sept. 16, 2011, 2:27 PM), http://www.bloomberg.com/news/2011-09-16/end-the-fed-s-dual-mandate-and-focus-on-prices-john-b-taylor.html.

[148] *Id.* ("Indeed, one of the reasons for the growing interest in removing the dual mandate is the extraordinary discretionary actions the Fed has taken in the past few years—including large-scale purchases of mortgage-backed securities and longer-term Treasuries, a strategy commonly called 'quantitative easing.' The Fed has explicitly used the dual mandate to justify these unusual interventions.").

[149] *Id.*

[150] *Id.*

monetary policy."[151] Taylor argues that the Fed's past attempts to lower unemployment (such as in the 1970s) through the trade-off of higher inflation ultimately led to further unemployment and "painful disinflation."[152] Taylor says this tradeoff between inflation and unemployment is "an outmoded concept," and that furthermore, "too many goals blur responsibility and accountability."[153] In sum, Taylor seems to believe that a focus on only one mandate would inadvertently achieve the goals of both, and foster public faith in the transparency and responsibility of the Fed.[154]

The Fed pursued a third round of quantitative easing[155] in September 2012, in the midst of the election fervor, eliciting further criticism of the dual mandate, and leading some to lobby, once again, for a legislative change to the Fed's objectives.[156] Some members of Federal Reserve branches are among these proponents of legislative change.[157] Richard Fisher, President of the Dallas Federal Reserve Bank, suggested that "[a] future Congress might restrict us to a single mandate—like other central banks operate under—focused solely on price stability."[158] James Bullard, President of the St. Louis Federal Reserve Bank, went even further, stating that he supports "restricting the dual mandate to a single inflation-fighting goal."[159] Bullard further expressed his wariness of the Fed's recent courses of action, arguing that "supporters of QE3 had placed too much emphasis on the Fed's ability to bring down employment," given that "monetary policy, in reality, could only have temporary effects on

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151 *Id.*
152 *Id.*
153 Taylor, *supra* note 147 ("The dual mandate goal enables politicians to lean on the Fed, and people often cite it as an excuse for unconventional policies.").
154 *Id.*
155 Greg Robb, *Fed's dual mandate on the table in the wake of QE3*, WALL ST. J. MARKET WATCH (Sept. 19, 2012), http://www.marketwatch.com/story/feds-dual-mandate-on-the-table-in-wake-of-qe3-2012-09-19.
Quantitative easing involves "unconventional asset purchases [meant] to bring down long-term interest rates and boost the economy." *Id.* QE3 involved the purchase of $40 billion per month in mortgage-backed securities, which were able to boost bank reserves by trillions of dollars. *Id.*
156 *Id.*
157 *Id.*
158 *Id.*
159 Robb, *supra* note 155.

the jobless rate."[160] Many Congressional Republicans agree, introducing and advocating for legislation to restrict the Fed's dual mandate.[161] For awhile, the Fed seemed to cave to the pressure to taper its quantitative easing,[162] but then surprised the public—most recently in September 2013—by announcing plans to continue the practice, buying $85 billion per month in bonds for up to another year.[163] Fed Chairman Ben Bernanke explained that the Fed is "avoiding a tightening until we can be comfortable that the economy is in fact growing the way that we want it to be growing."[164] Some analysts, however, are not convinced that this course of action is sound, arguing that, by sending "mixed messages," the Fed will inadvertently increase market volatility.[165] Meanwhile, political unrest regarding financial matters in Washington further threatens to undermine steady and predictable economic conditions.[166] Moreover, the Fed's massive—and growing—debt is an overbearing reminder of the consequences should the Fed be fallible. Prior to the Recession of 2008, the Fed's balance sheet was around $1 trillion; today, the Fed's balance sheet stands around $3.6 trillion.[167] This volatile

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[160] *Id.* For a brief description of QE3, see *supra* note 155.
[161] *Id.*
[162] Binyamin Appelbaum, *In Surprise, Fed Decides to Maintain Pace of Stimulus*, N.Y. TIMES (Sept. 18, 2013), http://www.nytimes.com/2013/09/19/business/economy/fed-in-surprise-move-postpones-retreat-from-stimulus-campaign.html?nl=todaysheadlines&emc=edit_th_20130919&_r=0 ("All summer, Federal Reserve officials said flattering things about the economy's performance: how strong it looked, how well it was recovering, how eager they were to step back and watch it walk on its own.").
[163] *Id.* Wynton Hall, *Fed Reserve to Continue $85 Billion a Month Quantitative Easing*, BREITBART (Sept. 18, 2013), http://www.breitbart.com/Big-Government/2013/09/18/Fed-Reserve-To-Continue-QE-Stimulus.
[164] Appelbaum, *In Surprise*, *supra* note 162.
[165] *Id.*
[166] Binyamin Appelbaum, *US Economy Improving, but Federal Reserve Still Fears a Turn for the Worse*, ECON. TIMES (Sept. 19, 2013), http://articles.economictimes.indiatimes.com/2013-09-19/news/42218142_1_federal-reserve-janet-yellen-ben-bernanke ("The Fed's concern . . . is that things could get worse, either because of new cuts in federal spending, a political impasse in Washington over fiscal matters that threatened to undermine the economy, or because the Fed pulled back prematurely.").
[167] Phil Izzo, *A Look Inside the Fed's Balance Sheet*, WALL ST. J. (Sept. 17, 2013, 7:12 PM), http://blogs.wsj.com/economics/2013/09/17/a-look-inside-the-feds-balance-sheet-16/.

environment makes policy decisions difficult and results of those decisions uncertain, thus impeding any successful legislative change under present conditions.

B. For a Full Employment Mandate

Former chairman Bernanke's second term ends in January 2014, leaving President Barak Obama to nominate the next chairman.[168] President Obama, for his part, supports the Fed's dual mandate, stating explicitly that the next head of the Fed needs to focus on both mandates.[169] The President explained his plans to nominate a new chairman "who understands the Fed has a dual mandate, that that's not just lip service," and who would implement the mandates to "promote those [goals] in service of the lives of ordinary Americans getting better."[170] With these criteria in mind, Obama nominated current Federal Reserve Vice Chair Janet Yellen in October 2013, and the Senate confirmed her appointment on January 6, 2014.[171] Yellen is an outspoken supporter of the

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[168] *See* Jim Puzzanghera, *Obama Explains What He Wants in Next Federal Reserve Chairman*, L.A. TIMES (July 29, 2013), http://articles.latimes.com/2013/jul/29/business/la-fi-mo-obama-federal-reserve-chair-janet-yellen-lawrence-summers-20130729.

[169] *Id.*

[170] *Id.*

[171] Rich Edson, *Obama to Announce Nomination of Yellen as Next Fed Chair,* FOXBUSINESS (Oct. 8, 2013), http://www.foxbusiness.com/government/2013/10/08/obama-to-announce-nomination-yellen-to-fed-chair/. Jeff Mason & Mark Felsenthal, *Obama picks Yellen for top Fed job, urges quick Senate approval*, REUTERS (Oct, 9, 2013, 6:04 PM), http://www.reuters.com/article/2013/10/09/us-usa-fed-idUSBRE99312G20131009. The Senate affirmed Yellen's appointment as Chairman of the Federal Reserve, despite continuing opposition from some Republicans, in a vote of 56-26. Ylan Q. Mui, *Janet Yellen confirmed as Federal Reserve chairman*, THE WASHINGTON POST (Jan. 6, 2014), http://www.washingtonpost.com/business/economy/janet-yellen-confirmed-as-next-fed-chief/2014/01/06/14b38582-76f2-11e3-8963-b4b654bcc9b2_story.html. In fact the vote on Yellen's confirmation followed a Senate rules change, which required only 51 votes to confirm presidential nominees, rather than the traditional 60—another reflection of the deep partisan divide regarding Fed actions. Binyamin Appelbaum & Jonathan Weisman, *Yellen's Fed Leadership Is an Almost-Done Deal*, N.Y. TIMES (Nov. 21, 2013), http://www.nytimes.com/2013/11/22/business/economy/senate-committee-approves-yellen-as-fed-chairwoman.html?_ r=1&.

employment mandate, and believes the Fed could, and should, be doing more to fulfill it.[172] During her nomination ceremony at the White House, she stated,

> While we have made progress, we have farther to go. The mandate of the Federal Reserve is to serve all the American people, and too many Americans still can't find a job and worry how they'll pay their bills and provide for their families . . . The Federal Reserve can help if it does its job effectively.[173]

Yellen is expected to continue Bernanke's aggressive stimulus actions aimed at boosting employment, but also recognizes the importance of keeping a watchful eye on inflation.[174] Yellen subscribes to James Tobin's "strong sense of morality and social responsibility," and follows in her economic mentor's belief that recessions are best mitigated through aggressive public spending.[175] Yellen further believes that long-term unemployment has negative consequences beyond the immediate personal economic impact.[176] Yellen's favoritism for the employment mandate will likely rub opponents to that mandate the wrong way, yet strong policy actions in *any* particular direction may provide new insight into how accurate policy-economy causation predictions of both proponents and opponents actually are.

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172 Mason & Felsenthal, *supra* note 171. According to Yellen, while inflation has been steady below the target 2%, and is expected to remain there for some time, the unemployment rate is still much too high, "reflecting a labor market and economy performing far short of their potential." Janet L. Yellen, Testimony before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, D.C., Confirmation Hearing (Nov. 14, 2013), *available at* http://www.federalreserve.gov/newsevents/testimony/yellen20131114a.htm.

173 Mason & Felsenthal, *supra* note 171.

174 *Id.*

175 *See* Sheelah Kolhatkar & Matthew Philips, *Who is Janet Yellen? A Look at the Front-Runner for the Next Fed Chairman*, BLOOMBERG BUSINESSWEEK (Sept. 19, 2013), http://www.businessweek.com/articles/2013-09-19/who-is-janet-yellen-a-look-at-the-front-runner-for-the-next-fed-chairman#p1.

176 *Id.*

Charles Evans, President and CEO of the Federal Reserve Bank of Chicago, favors a more moderate approach.[177] Evans is an advocate of policy compromises that would attain minimal deviation from the target rates of both inflation and employment.[178] Evans concedes that there is currently a conflict between the two goals; however, he believes the solution lies in "additional monetary policy accommodation."[179] Although these policy accommodations would entail a temporary period of inflation above the target rate, Evans argues that the 2% goal is not a cap, but rather a targeted average over time.[180] Sacrificing a strict inflation goal would allow policymakers to focus on bringing unemployment down toward the target, leaving both mandates fulfilled imperfectly, but with an overall smaller deviation collectively.[181] Operationally, the Fed would keep the federal funds rate "at extraordinarily low levels" until the unemployment falls to an acceptable rate.[182] Evans optimistically believes "the productive capacity and potential wealth of the U.S. have not been permanently damaged" and some productive resources remain untapped.[183] With this in mind, Evans argues that monetary policy should be focused on increasing aggregate demand, and that, "in this way, large social losses would be mitigated."[184]

Sacrificing low inflation rates for the possibility of increased employment is a sensitive risk that Evans admits may make many

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[177] Evans, Address at the European Economics and Financial Centre, *supra* note 136; Charles L. Evans, President and CEO, Federal Reserve Bank of Chicago, The Fed's Dual Mandate Responsibilities: Maintaining Credibility during a Time of Immense Economic Challenges, Address at the Michigan Council on Economic Education Michigan Economic Dinner (Oct. 17, 2011).

[178] Evans, Address at the European Economics and Financial Centre, *supra* note 136; Evans, Address at the Michigan Council on Economic Education, *supra* note 177.

[179] Evans, Address at the European Economics and Financial Centre, *supra* note 136.

[180] *Id.* ("To average 2%, inflation could be above 2% in some periods and below 2% in others. If a 2% goal was meant to be a cap on inflation, then policy would result in inflation averaging below 2% over time. I do not think this would be a good implementation of a 2% goal.").

[181] For a mathematical explanation, see *id.* at 5–7.

[182] *Id.* at 10.

[183] *Id.* at 9.

[184] *Id.*

people, especially those who remember the anti-inflation wars of the 1970s and 1980s, uncomfortable.[185] However, "once-in-a-75-year crisis calls for outside-the-box measures."[186]

VI. Where Do We Go From Here?

The long legislative history of the dual mandate suggests that Congress has, at the very least, a reluctance to do away with the Fed's statutory goals.[187] The debates accompanying each piece of legislation that affirmed the dual mandate gave Congress the chance to examine, time and again, the arguments for and against maintaining an employment goal, and Congress has consistently come out favoring the status quo.[188] The recurrence of this outcome may just be a part of the economic cycle driving the controversy: economic recession followed by public reaction, monetary policy decisions, and subsequent debate over these factors. The lack of consistent and reliable data exacerbates the disparity between opposing opinions, in part due to the variety of unknown and uncontrolled variables.[189] Regardless of the actual monetary policy, the economic landscape will continue to be shaped by public reactions and external environmental factors. Until there are more precise predictions regarding these interactions, it may be unwise to enact a legislative change.

The history of legislation promoting employment is substantial as well.[190] More importantly, while both sides of the dual mandate debate have unique ideas with regard to the appropriate policy for promoting employment, both agree on the importance of achieving a certain level of employment over time.[191] Proponents of the dual mandate believe that the best practice lies in government intervention, through discretionary trade-offs in policy focus

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[185] *Id.* at 11.
[186] *Id.* (quoting Kenneth Rogoff, *The Bullets Yet to Be Fired to Stop the Crisis*, FIN. TIMES, Aug. 8, 2011).
[187] *See supra* Parts II and III.B.
[188] *See id.*
[189] *See, e.g.*, *supra* notes 25–26 and accompanying text.
[190] *See supra* Parts II and III.B.
[191] *See, e.g.*, *supra* note 146 and accompanying text. Opponents to the dual mandate have never questioned the importance of reducing levels of unemployment; they disagree only about the means employed in doing so.

between employment and price stability.[192] Opponents to the dual mandate believe this kind of manipulative trade-off often results in increased inflation *and* unemployment, whereas a singular manipulation of inflation when necessary is actually the best way to keep both objectives in check.[193]

A. Is There a Compromise?

The crux of the debate, then, seems to lie in the best methods for achieving these two goals, rather than in whether these are admirable goals for which to strive.[194] The text of the Humphrey-Hawkins Act mandates the "promot[ion]" of these goals.[195] Oxford Dictionaries defines "promote" as to "further the progress of [something, especially a cause, venture, or aim]"; also to "support or actively encourage."[196] Therefore, the literal interpretation of the legislation indicates that passive support of the goals is not enough; rather, some sort of affirmative action must be applied to the furtherance of these goals. Some believe that such action should be directly in furtherance of each goal in order to constitute "promot[ion]" within the meaning of the statute.[197] However, if indirect action may achieve greater success toward a goal than direct action, indirect action might actually better promote the desired outcome.

If increasing rates of inflation actually increase rates of unemployment, as some economists have suggested, then it would follow that a focus on maintaining reasonable inflation rates would effectively control the unemployment rate.[198] As one economist boldly states, "keeping in check the growth of money supply . . . is the only way to ensure our economy displays full employment and maximum economic growth."[199] The answer is likely not quite so

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[192] SANTONI, *supra* note 17, at 15.
[193] *See* Pento, *supra* note 143.
[194] *See supra* note 192 and accompanying text.
[195] PURPOSES AND FUNCTIONS, *supra* note 10, at 15.
[196] *Promote*, OXFORD DICTIONARIES, http://www.oxforddictionaries.com/definition/english/promote (last visited Jan. 11, 2014).
[197] *See, e.g.*, *supra* note 175 and accompanying text.
[198] *See* Pento, *supra* note 143 ("In reality, the Fed needs to uphold only one mandate: that of stable prices. Fulfilling that mandate by keeping in check the growth of money supply is the only way to ensure our economy displays full employment . . ."); *see also* Taylor, *supra* note 147.
[199] *See* Pento, *supra* note 143.

simple, however. Because the economy is cyclical, the lag time between any policy action and a desired effect, especially an indirect effect, cannot clearly be known.[200] As Charles Evans explores in his speeches, how long is too long for one of the goals to go unmet?[201]

B. Keep the Objective; Drop the Mandate

The best solution may be to continue to require the Fed to promote the dual objectives. Perhaps, however, policy action should not focus exclusively on the employment mandate, particularly if doing so may negatively impact other efforts to support the economy. The Council of Economic Adviser's 1975 report provides a good standard, which called for direct action focused on reducing unemployment whenever it can be reduced "by means which are not more costly than the unemployment itself."[202]

The Fed itself has acknowledged that the inflation rate is determined primarily by monetary policy, while the unemployment rate is determined in large part by non-monetary factors.[203] Therefore, "monetary policy [may] be the wrong lever to promote job creation."[204] The main historical example used to support this statement is the Fed's failed attempt to use monetary policy to stimulate employment during the 1970s, resulting in both higher inflation and higher unemployment.[205] During a Congressional hearing on the Fed's mandate, Representative Kevin Brady explained the rationale for an affirmative focus on a single mandate that would result in fulfilling the dual objectives:

> It's precisely because we care about jobs and growth that Congress should direct the Fed to preserve the purchasing power of the dollar. Monetary policy cannot stimulate employment, except for short, temporary bursts. However, monetary policy can

[200] *See, e.g.*, Press Release, *supra* note 69.
[201] *See generally* Evans, Address at the European Economics and Financial Centre, *supra* note 136, *and* Evans, Address at the Michigan Council on Economic Education, *supra* note 177.
[202] Ziskind, *supra* note 18, at 166.
[203] Brady, *Hearing, supra* note 138, at 2.
[204] *Id.*
[205] *Id.*

> achieve price stability, which is the foundation for creating the greatest number of jobs that last.[206]

Another reason for the Fed to focus solely on the inflation rate also relates to the capability of monetary policy to influence it.[207] According to John B. Taylor, "there's plenty of evidence that the kind of policy that works well is a rules-based, predictable, systematic policy, and the kind of policies that don't work well are the more unpredictable discretionary policies."[208] In particular, recent critics of the dual mandate cite to the Fed's multiple rounds of quantitative easing as one of the worst of these discretionary policies. Quantitative easing has successfully aggravated negative public sentiment toward the policy, but the excessive amount borrowed and intrusive intervention by the Fed has done little to positively impact the economy or decrease unemployment.[209]

C. In Sum: Distinguishing the Means from the End

Based on current empirical knowledge regarding the effects of monetary policy, it is recognized that the Fed can, to a certain extent, control inflation; the extent to which the Fed is capable of affecting unemployment, however, remains unknown.[210] There is certainly nothing wrong with the goals espoused by the dual mandate; ideally, every American would have a job. Rather, the problem with the dual mandate arises in its implementation. Thus, Congress should maintain the goals with which it has charged the Fed. Then, in seeking to achieve these goals, the Fed should follow a general course of action that focuses on managing the rate of inflation. This singular focus, however, should be qualified by a certain standard of flexible targeting; the Fed should be able to target the unemployment rate so long as the negative effects of doing so do not exceed a certain degree.[211] If the Fed focuses less on affirmative actions and more on smoothing the transitions between various

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[206] *Id.*
[207] *See* Brady, *Hearing*, *supra* note 138, at 4 (statement of Hon. John B. Taylor, Ph.D, Mary and Robert Raymond Professor of Economics, Stanford University).
[208] *See id.* at 4.
[209] *See id.* at 5.
[210] *See supra* text accompanying note 203.
[211] *See supra* note 202 and accompanying text.

stages of the economic cycle, for example, through increased transparency and communication with the public, perhaps there would be less need for any radical action.

The goals espoused by the dual mandate are certainly worth preserving. The means by which the U.S. works to achieve these goals, however, are far from perfect. The debate regarding the best course of action for maintaining these goals has been reopened so often, it has been more or less integrated into the economic cycle itself.[212] There are perpetual fluctuations in the rates of inflation and unemployment, which are followed by monetary policy actions, which are followed by public reactions to the state of the economy and debate over the Fed's chosen course of action. A small change to the implementation of the Fed's mandate may be able to assuage the third step of this cycle. At the very least, such a change may encourage a slightly different debate the next time around that could better align the policies of the future with the goals of the dual mandate.

[212] Bernanke himself acknowledged the Fed's repetitious history in responding to economic crises. *Looking Back, Looking Forward*, *supra* note 136 ("[T]he global financial crisis and the deep recession that it triggered . . . bore a strong family resemblance to a classic financial panic, except that it took place in the complex environment of the 21st century global financial system. Likewise, the tools used to fight the panic, though adapted to the modern context, were analogous to those that would have been used a century ago . . . .").