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The Libertarian State of the Union: Bad news and more bad news

We're overregulated, spied on, taxed to death and headed for bankruptcy.

These were the thoughts that dominated during a Friday event at the Rayburn House building, where the Cato Institute played host to their third annual Libertarian State of the Union. In what was in many ways a foil to the president's State of the Union address, which will be delivered on Tuesday evening, four Cato experts provided reports on areas like health reform, federal spending and domestic surveillance.

The event made no promise of optimism, and things played out much like a restrained version of Howard's Beale's "mad as hell" monologue from *The Network*. Instead of the wide-eyed presidential wish lists that have characterized recent SOTU addresses, attendees received sobering realism and hard analyses of problems facing our country.

The Constitution

Ilya Shapiro, a senior fellow in constitutional studies, gave perhaps the most optimistic offering by looking at coming court cases.

"We have President Obama to thank for bringing the Constitution back into the conversation," he said.

It turns out that showing a general disregard for the rule of law — as the President has shown with the Affordable Care Act, immigration and his recess appointments — is a good way get people talking about it.

Shapiro pointed to several promising opportunities for the judiciary to reassert a principle of constitutionality in the coming year. Among them: *McCutcheon v. FEC*, a case contesting select campaign spend limits as a violation of the First Amendment; *National Labor Relations Board v. Canning*, the case disputing Obama's "recess" appointments; and *Sebelius v. Hobby Lobby Stores*, which could be more interesting after Justice Sonia Sotomayor's recent intervention on behalf of the Little Sisters of the Poor. While none of these will unilaterally shut down the "We Can't Wait" train, Shapiro presented them as signs that constitutionality is making a comeback in the public discourse.

The National Security Agency

Julian Sanchez, a research fellow specializing in national security and intelligence surveillance, said the state of the union is, simply, “Watched.”

Sanchez, looking at the NSA programs that have received popular attention due, in large part, to the leaks supplied by expatriate Edward Snowden, finds that “the shift to wholesale surveillance is not amendable to oversight.”

Sanchez pointed to a major report issued on Thursday by the Privacy and Civil Liberties Oversight Board (PCLOB) which found that the NSA’s bulk collection of metadata was ineffectual and illegal and ought to end. The president snubbed PCLOB last week by giving his speech on NSA reforms prior to the formal publication of its report — possibly due to the inconvenience of their findings.

Sanchez continued to point out the difficulty of fact checking abuses of programs that operate in secret, saying that they are “not amendable to oversight.” Despite assurances, he said, history teaches us such abuses tend not to be discovered until long after they’ve occurred.

Obamacare

Michael Tanner, a researcher with emphasis on health care reform, put it simply: “The law really isn’t covering anybody.”

Tanner proceeded to dissect the “official” number provided by the Department of Health and Human Services. While the department claims 2.2 million Americans have signed on to the exchanges, that figure has several problems. First, it includes those who have picked a plan, but not paid for it.

“This is sort of like Amazon counting as a sale everything someone puts in their shopping cart,” Tanner said.

Secondly, it doesn’t differentiate between those who were previously uninsured and those who were insured but lost their plan due to new requirements imposed by the law. Add to that “the roughly 500,000 Americans who, by the White House’s own count, lost insurance coverage because of Obamacare and have not yet found new coverage,” and one gets a very bad situation.

Taxes and spending

Chris Edwards, Cato’s director of tax policy studies, closed up by talking about “bad news” and “more bad news,” or, put another way, taxes and spending.

Edwards highlighted several especially troubling tax rates by comparing them to averages from the Organisation for Economic Cooperation and Development, an organization of 34 countries, most of which are developed and Western. He pointed to a 47 percent average top tax rate on personal income, compared to an OECD average of 43 percent. He also highlighted a 28 percent top capital gains tax rate, compared to the OECD rate of 16 percent, and a corporate tax rate of approximately 40 percent, which far outpaces much of the developed world.

For spending, he warned against the share of GDP taken up by federal spending: up from 18 percent to 24 percent between 2001 and 2011. While this may be a blip, Edwards advised that bringing spending back under control would require targeting specific programs for cuts and reforms — not just standing by figurative ‘spending caps’ that are broken as soon as they become inconvenient.