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Obama Wastes Yucca Mountain

BY IAIN MURRAY AND DENNIS GRABOWSKI

The crisis in Japan has focused minds on nuclear safety, and rightly so. As America's nuclear power stations begin to show their age, the problem of what to do with all their waste has become much more pressing. We have the prospect of a long-term solution in the geologic disposal site of Yucca Mountain, but courts and the Obama administration have thrown up needless roadblocks. It is time for Congress to untangle this mess and open Yucca Mountain now.

About 69,000 tons of used nuclear fuel has built up around the nation in the past four decades, with more than 2,500 tons of additional waste generated annually, according to the Nuclear Energy Institute. Nuclear facilities are built with on-site storage facilities—large, steel-lined vaults filled with water—intended to hold nuclear waste products until the federal government disposes of them. But these were only created as a temporary measure. By law, the deadline for the government to begin accepting used fuel from these nuclear sites was back in 1998.

It should come as no surprise, then, that 61 of the nation's 104 nuclear facilities have already used up all of their available storage space, with seven more scheduled to run out of space this year. In addition, the federal government's breach of contract has led to nuclear companies receiving hundreds of millions of dollars of taxpayer money in compensation. More lawsuits are on the way.

Lacking other options, nuclear plants are storing radioactive waste in "dry casks," large above-ground concrete structures. Rods of nuclear waste each emit 1 millirem of radiation per hour, heating the concrete walls of the dry casks to 90 degrees Fahrenheit. "They're essentially out in the air," admits Nuclear Regulatory Commission (NRC) spokesman David McIntyre.

As the oldest dry casks enter their third decade of use, NRC's response has been simply to loosen the legal safety standards that prohibit their long-term operation. In December, the agency doubled the amount of time that nuclear rods can be stored on-site from 30 years to 60. The underlying justification for the decision was that, according to McIntyre, the casks have been "working really well." In essence, the federal government is trying to turn what should be a short-term solution into a long-term one.

New York, Connecticut, and Vermont filed suit on February 15, objecting to this ruling, claiming that the NRC had violated federal laws mandating site-by-site reviews of health, safety, and environmental hazards. According to New York

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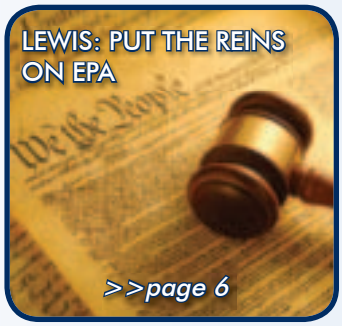

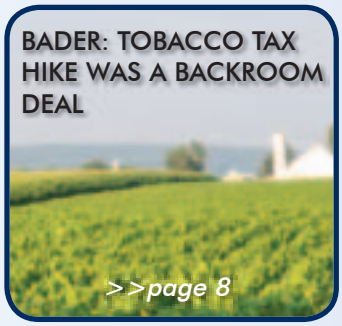

ALSO INSIDE:

>>FROM THE VICE PRESIDENT FOR POLICY

What Congress Can Do for the Technology Sector

By Wayne Crews

Telecommunications, the Internet, gawk-worthy consumer electronics, and frontier technologies like biotech and nanotechnology face challenges fending off predatory regulations like those that slammed health care, energy, and financial services in 2010. The new Congress that was sworn in earlier this year should in turn swear to fend off the assault.

The list of tech-bashing antics is long: antitrust adventurism, net neutrality mandates; a National Broadband Plan (why not a National Elevator Plan instead?), schemes to regulate online behavioral advertising; technology subsidies with federal chains attached, compulsory licensing, costly environmental restrictions (on everything from Edison's incandescent bulb to cellphone "e-waste" to cheap energy), and complexity in employer access to skilled foreign workers.

Meanwhile, the past decade's wave of financial regulations makes it harder to raise capital. The latest insults? Thanks to Dodd-Frank, banks are passing regulatory fees along to corporate borrowers, and the Securities and Exchange Commission is going to "define" what "venture capital" is. Hello, paperwork!

Washington leaves hardly anything alone, yet politicians blame free enterprise when anything goes wrong and they seek to enact even more regulations on top of the old.

House Republicans' promises of new pro-Constitution rules changes are a good sign. Emphasizing enumerated powers and that whole "necessary-and-proper" thing before legislating would be a welcome reform. But subsequent reforms to deliberately limit regulators' ability to intervene in markets are also needed—such as requiring a congressional vote on all $100 million-plus agency regulations before they are binding on the private sector.

Even the Internet, despite its freewheeling reputation, has faced regulatory threats throughout its history. These have included efforts to curb porn, spam, marketing to children, and Internet gambling, as well as mandates dealing with online privacy, mandatory copy protection technology, and cybersecurity.

America's technology sector needs a "deregulatory stimulus"—one that would freeze regulations and purge several decades' worth of old ones. What technology firms and consumers need is not regulation and subsidies, but to be left alone. Rejecting the current manias threatening the industry will best serve consumer electronics—and consumer everything else.

> *America's technology sector needs a "deregulatory stimulus"—one that would freeze regulations and purge several decades' worth of old ones. What technology firms and consumers need is not regulation and subsidies, but to be left alone.*

Even more than that, America's wealth-creating sector needs the renewed certainty that can only come from stricter, more formal limitations on Washington's future ability to manipulate technology and enterprise with unchecked regulation. That's where the new Congress comes in. Knowing that one's business ventures aren't going to be upended out of the blue by some transitory politician or unaccountable bureaucracy is the foundation of a wealthier, healthier America.

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Yucca, *continued from page 1*

Attorney General Eric Schneiderman, any studies that the organization conducted "don't comply with federal laws that govern environmental impact statements." He added that, by NRC standards, "I could say I conducted a study by wandering around the plant."

High-level nuclear waste needs to go somewhere. The only question is where, although this need not be a question at all—the Obama administration has politicized its way out of a sound answer that's already consumed $13 billion in ratepayer funds.

Yucca Mountain would consolidate the nuclear waste from 104 short-term storage sites into one highly secure location. The evidence in favor of the Yucca Mountain site is overwhelming: The desolate location is arid, volcanically inert, and not prone to seismic activity. The Environmental Protection Agency imposed a 10,000-year safety standard on radiation containment at the proposed facility, and it has passed every test relating to that standard. A November 2004 article in the Journal of the National Cancer Institute found that Yucca Mountain "performs brilliantly in thousands of hypothetical situations, always coming out below the limits set for radiation exposure."

However, that same year, a federal appeals court replaced this standard with one of its own crafting —1 million years—and the Obama administration, exhibiting an anti-nuclear bias, used this decision to mothball Yucca Mountain. Then, on February 17, a suppressed NRC report came to light showing that Yucca Mountain fulfilled the million-year radiation standard as well. (NRC administrators had removed the executive summary conclusions, which likely contain statements that are inconsistent with Obama administration policies.)

The president's new budget completely cuts out funding for the Yucca Mountain facility, which puts us back at square one in the search for a long-term nuclear-waste solution. Meanwhile, across the Atlantic, Finland, Germany, and Sweden are developing deep geologic reserve programs with great success, and the United Kingdom is exploring a similar idea.

If Congress is serious about nuclear energy forming part of an "all-of-the-above" plan for energy in the future, Yucca Mountain has to be part of the mix. Lawmakers should demand the release of the full NRC report and tell the president to stop dithering on safely storing the nation's nuclear waste.

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ABOUT THE NEW TONE

Words are used as weapons—focus on the argument, not the messenger

BY RYAN YOUNG

There is a lot of talk these days about the tone of political debate. People think political arguments are nastier than they used to be. They are certainly nasty, but people are actually more civil now than at any other time in the nation's history.

Consider a famous event in 1856. That year, Rep. Preston Brooks and Sen. Charles Sumner had a disagreement about slavery. After Sumner said some unpleasant things about Brooks's cousin in a speech, Brooks beat him with a heavy cane, right on the Senate floor. Sumner ducked under a desk that was bolted to the floor. Brooks ripped the desk from its moorings and kept attacking. Sumner, covered in blood, soon collapsed. Brooks continued to bludgeon Sumner's limp, unconscious body until his cane broke. Over the following weeks, Brooks's constituents sent him dozens of new canes in the mail. One was inscribed, "Good job." He also won reelection that year.

Things are different now. Words are the only weapons in today's political fights. Mean and hurtful words, yes, but no canes. So we've made some progress there, but the level of discussion is still very low.

For example, many partisan Democrats argue as follows: "Corporations and/or the Koch brothers are making this argument. Therefore, it is invalid." In similar fashion, many partisan Republicans argue: "Labor unions and/or George Soros are making this argument. Therefore, it is invalid."

This is weak reasoning. It doesn't matter who makes an argument or why. The argument should be judged as either right or wrong on its merits. Many partisans, however, simply attack the messenger. As Plato wrote in *Phaedo*, "The partisan, when he is engaged in a dispute, cares nothing about the rights of the question, but is anxious only to convince his hearers of his own assertions." Scoring political points trumps all. Truth matters less than the next election.

Human beings have an ingrained impulse to affirm their in-group, and to vilify those outside of it. This had evolutionary benefits in the hunter-gatherer era, when outsiders posed a genuine survival threat. Today, strangers don't steal your food and your mate, but DNA changes more slowly than culture, so the pattern persists.

The great economist Joseph Schumpeter understood this problem. In his *History of Economic Analysis,* he urges the reader to ignore the person making an argument, and concentrate instead on the argument itself. "[A]ny arguments of a scientific character produced by 'special pleaders'—whether they are paid or not for producing them—are for us just as good or bad as those of 'detached philosophers,' if the latter species does indeed exist," he wrote. "[O]ccasionally, it may be an interesting question to ask why a man says what he says; but whatever the answer, it does not tell us anything about whether what he says is true or false."

The Kochs, Soros, and all the other partisan bugbears are mere distractions. Anyone genuinely interested in setting a new tone should treat them that way.

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A version of this article originally appeared in The Daily Caller.

Yes, Vivian, Defunding NPR Will Reduce the Deficit

BY JOHN BERLAU

Defenders of National Public Radio (NPR) have taken to arguing that Congress should drop its plans to defund the network because it only gets a teeny tiny portion of its budget from the federal government. Yet at a time when deficits are a paramount public concern, should we continue to fund a network that could, according to its supporters, stand on its own?

Supporters of federal funding for NPR say that it symbolizes a commitment to what they consider public education. In defending the president's proposed $31 million increase in annual funding—from $420 million to $451 million—for NPR's parent, the Corporation for Public Broadcasting (CPB), White House Press Secretary Jay Carney said that NPR and CPB "are worthwhile and important priorities" to the White House.

NPR boosters also claim that eliminating funding for public broadcasting won't make a dent in the deficit. This argument was rejected by none other than the president's own deficit reduction commission. Noting that, "The current CPB funding level is the highest it has ever been," the commission estimates that eliminating funding to public broadcasting would save $500 million a year. That's $5 billion over 10 years. That won't close the deficit on its own, but it's a good start.

Then there is the argument that funding from the federal government opens the door to private funding. This is to some extent true, but it is all the more reason for defunding NPR and public broadcasting. On March 7, two days before the NPR board accepted her resignation as CEO, Vivian Schiller made some revealing statements in a speech to the National Press Club.

"Modest as it is, government funding is critical because it allows taxpayers to leverage a small investment into a very large one," she said. "It is seed money. Station managers tell me that 10 percent plays a critical role in generating the other 90 percent that makes their broadcasts possible."

Interestingly, Schiller's language echoes that of conservative writer Seth Lipsky, who wrote in *The Wall Street Journal* in October, "Whatever the scale, seed capital from a credible investor is an enormous help to any effort."

Yet what Lipsky pointed out and Schiller overlooked is that when the government uses "seed capital" to pick winners, it inevitably picks losers, as competitors are crowded out by a subsidized player. Lipsky adds, "More than once I have been interrupted, while singing the song of quality journalism to a potential investor, to be asked, 'Isn't this already being done by public broadcasting?'"

As the great French economics writer Frederic Bastiat pointed out in the 19th century, government actions always leave some production undone that could potentially improve a country's standard of living. However, because it is undone, it is also unseen, so people remain unaware of the forsaken opportunity. Who knows how many media innovations are unseen because funding for public broadcasting has tilted the media playing field?

As Sen. Jim DeMint (R-S.C.), a leader in the battle against many types of wasteful spending, put it recently, "Big Bird doesn't need the taxpayers to help him compete against the Nickelodeon cable channel's Dora the Explorer."

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Put the REINS on EPA

BY MARLO LEWIS

The Environmental Protection Agency (EPA) is trying to hijack climate policy via the backdoor of Clean Air Act regulations. This is an end-run around democracy that is meeting stiff resistance on Capitol Hill, as it should.

The House Energy and Commerce Committee has already held a hearing on the Energy Tax Prevention Act, which would overturn the EPA's Endangerment Rule, as well as an assortment of related rules imposing Clean Air Act permitting requirements on power plants, refineries, and other emitters of greenhouse gases. Passing the bill—sponsored by Sen. James Inhofe (R-Okla.) and Reps. Fred Upton (R-Mich.) and Ed Whitfield (R-Ky.)—is reportedly a top priority of House Speaker John Boehner (R-Ohio).

Sen. John Barrasso (R-Wyo.) and Rep. Tim Walberg (R-Mich.) have also introduced the Defending America's Affordable Energy and Jobs Act, which would prohibit all agencies from "legislating" climate policy under any existing statute, none of which was ever designed or intended for that purpose.

Not so long ago, cap-and-trade advocates, such as Rep. Ed Markey (D-Mass.), warned that if Congress did not enact "comprehensive energy and climate legislation," opponents would end up with something they liked even less—a cascade of Clean Air Act climate regulations promulgated by the EPA. The implication was that using the Act as a framework for climate policy would be worse for the economy—even less efficient, less predictable, and more costly. They tried to scare industry, Republicans, and coal-state Democrats into supporting cap-and-trade as a lesser evil.

However, this just means that if the EPA's climate regulations were put to a vote, they would have even less chance of passing now than they did in the previous Congress. It also means that non-elected bureaucrats are trying to impose an economically riskier version of the same agenda that Congress recently rejected.

As noted, Congress may put the kibosh on the EPA's power grab, but things should never have gotten to the point where supporters of affordable energy on Capitol Hill have to hold hearings, build coalitions, and endure vicious calumny just to stop EPA from implementing policies Congress never voted on or approved.

This is only one egregious example of a more pervasive disorder threatening our Constitution and endangering our prosperity. Americans live under a regime of regulation without representation. Under the modern regulatory state, elected officials enact broad regulatory statutes, such as the Clean Air Act, the Occupational Health and Safety Act, or the Telecommunications Act. However, Congress and the president then delegate the tasks of developing, proposing, and enacting the implementing rules to unelected bureaucrats.

Administrative agencies end up wielding powers that the Constitution reserves to Congress. Agencies have no constitutional authority to make law or raise taxes, yet they issue thousands of regulations each year, all having the force and effect of law, and many functioning as implicit taxes that increase the cost of goods and services.

None of this is to say that Congress should not create regulatory agencies. Obviously, laws cannot anticipate all the circumstances to which they apply, and

specialized knowledge is often required to apply laws even to specific circumstances. It is also obvious that Congress cannot review all the thousands of rules that scores of agencies promulgate each year. Nonetheless, when an agency issues a rule with major potential impact on society, or when it issues a rule that would initiate a major change in public policy, the people's representatives should have to approve the rule before it takes effect. Otherwise, we are no longer a self-governing people but a people ruled by bureaucratic elites.

Congress' excessive delegation of lawmaking authority to agencies not only undermines the separation of powers, it is also a root cause of big, costly, activist government. When Congress and the president deputize agencies to legislate, elected officials escape responsibility for the compliance costs and economic impacts of the laws they enact. "We only approved the statute, not the regulation; don't blame us!" Those who bear the costs of regulation—ultimately, all of us—are unable to reward or punish anyone at the ballot box for good or bad regulatory decisions.

When elected officials take no responsibility for regulatory decisions, they have little incentive to consider costs when drafting regulatory statutes, and almost none to insist that regulators develop economically sensible rules.

Excessive delegation also enables politicians to talk out of both sides of their mouths. They can tout their support for regulatory statutes when addressing corporate rent-seekers and anti-market activists, and castigate out-of-control bureaucrats when addressing businesses squeezed by red tape and mandates—and then collect campaign contributions from both groups!

The good news is that Congress is considering a real solution, the Regulations from the Executive in Need of Scrutiny (REINS) Act, introduced by Sen. Rand Paul and Rep. Geoff Davis, both Kentucky Republicans. The Act would require Congress to pass, and the president to sign, a joint resolution before a major agency rule can take effect. If either chamber of Congress votes down or the president vetoes the resolution, then the regulation may not take effect.

> ***"Things should never have gotten to the point where supporters of affordable energy on Capitol Hill have to hold hearings, build coalitions, and endure vicious calumny just to stop EPA from implementing policies Congress never voted on or approved."***

Not all limited-government advocates support the REINS Act. Some worry that making Congress accountable for regulations would preclude judicial review of agency actions and preempt litigation to overturn or modify defective rules. New laws trump old laws. These critics warn that if Congress enacts not only the regulatory statute but also the implementing rules, then any rule Congress approves must be legal even if the agency's actions were arbitrary or otherwise not in accordance with law. The REINS Act, they fear, would legalize agency lawlessness.

This concern is worth debating but I find it unfounded. A joint resolution of approval would simply lift the Act's pre-existing prohibition on agencies issuing major rules. The resolution would not negate or suspend any statutory requirements under which the rule might be challenged in court. Section 802 (g) of the REINS Act is quite clear on this point:

> The enactment of a resolution of approval does not serve as a grant or modification of statutory authority by Congress for the promulgation of a rule, does not extinguish or affect any claim, whether substantive or procedural, against any alleged defect in a rule, and shall not form part of the record before the court in any judicial proceeding concerning a rule.

The concluding words would seem to settle the matter: The joint resolution allowing a rule to take effect "shall not form part of the record" judges may consider when reviewing that regulation.

The EPA's greenhouse gas regulatory surge is an extreme case of regulation without representation. Stopping it will not be easy, because to succeed, opponents must assemble legislative majorities and, perhaps, veto-proof majorities. It's time to un-stack the deck. Executive branch administrative agencies should not be able to make the big policy decisions that "We, the People" elect Congress and the president to make.

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Tobacco Tax Hike Was a Backroom Deal

BY HANS BADER

Every year, a massive transfer of wealth occurs across the country—between states and from smokers to state governments and wealthy trial lawyers. This is made possible by the largest legal settlement in history: the 1998 tobacco Master Settlement Agreement. A small tobacco company challenged that settlement in a petition which CEI filed with the Supreme Court (*S&M Brands v. Caldwell*). On March 7, the court declined to hear the case—and the unholy alliance between trial lawyers and state attorneys general remains intact.

This multibillion-dollar deal was drafted behind closed doors by a small group of lawyers representing states and Big Tobacco back in 1998. In exchange for state attorneys general dropping their lawsuits against the four major tobacco companies, those same tobacco companies agreed to pay the states more than $240 billion. In addition, trial lawyers involved in the settlement received over $15 billion.

As part of the deal, the states agreed to pass laws protecting the four biggest tobacco companies against competition from smaller and newer companies that had never been sued and had never lied about the dangers of smoking. That would enable the big tobacco companies to raise prices in unison and pass them on to smokers. Essentially, the states became Big Tobacco's partner in a nationwide cigarette cartel.

The deal was falsely sold to the public as a way of making Big Tobacco pay for lying about the dangers of smoking. But the costs of the settlement are paid for not by Big Tobacco, but by smokers, the supposed "victims." Tobacco companies simply passed along settlement costs by raising cigarette prices. Smokers could not escape those settlement costs even by switching to competing brands, because Big Tobacco's competitors—who were not part of the backroom deal—were forced to make payments under laws adopted by the states as a condition for receiving their share of the loot.

The deal is not only unjust, it is also unconstitutional. It is an agreement among 46 states—an interstate compact that regulates an entire national industry, yet was entered into without the consent of Congress (which had already rejected a similar proposed settlement). The Compact Clause of the Constitution provides that, "No State shall, without the Consent of Congress … enter into any Agreement or Compact with another State."

The tobacco deal undermines a core purpose of the Compact Clause—preventing states from ganging up on other states. Several states got together and negotiated the agreement with the major tobacco companies, then forced it on other states, which had seven days to decide whether to join. As former Alabama Attorney General William Pryor pointed out, states had little choice but to join, since smokers in every state would be paying for it, no matter what. By refusing to join, a state would have forfeited all the agreement's benefits, while still bearing its costs, since the deal is paid for through price increases across the country.

The tobacco deal is also an enormous transfer of wealth from growing states to states with stagnant populations. The percentage of revenue that each state receives is fixed forever and does not match either its population or the percentage of cigarettes sold in that state. Arizona and Nevada have 50 percent more people than they did in 1998, while Rhode Island's population has scarcely changed. But each of those states gets the same share of the tobacco deal now as they did back in 1998. Nevada gets less than Rhode Island, even though it now has more than twice as many people. Small wonder, then, that in 2005, Colorado state Treasurer Mark Hillman came out in support of our legal challenge to it. His rapidly growing state is shortchanged more with each passing year by its small, unchanging share of the agreement.

But in a sense, everyone was shortchanged. The tobacco in effect imposed a national sales tax on cigarettes. Not a single elected legislator, at any level of government, ever voted for this tax increase. This lack of accountability is fundamentally contrary to our system of government.

The Supreme Court had a chance to take a strong stand on behalf of constitutional restraints against runaway government power. By deferring to the wisdom of power-grabbing state attorneys general, the court has allowed a major national sales tax on cigarettes that was never approved by any legislator to stand.

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In March 2009, a YouTube clip of his speech to Gordon Brown in the European Parliament attracted 1.4 million hits within 72 hours making it by far the most watched political clip in British history.

Daniel was educated at Marlborough and Oriel College, Oxford. He worked as a speechwriter for William Hague and Michael Howard. He speaks French and Spanish, and is married with two young children.

For tickets and more information, visit www.CEI.org/CEIDinner

THE GOOD

CEI Launches Labor Policy Congressional Scorecard

As states across the country battle budget deficits and are forced to reexamine unsustainable government employee collective bargaining agreements, CEI launched its brand new Labor Policy Congressional Scorecard. The scorecard will rate members of both the House and the Senate based on their votes related to key labor legislation. "Citizens should be able to quickly learn how their elected federal officials voted on key workplace bills," said CEI Labor Policy Counsel F. Vincent Vernuccio. "Politicians will finally have to answer to their constituents if they support anti-worker union-backed legislation." Currently, the scorecard grades members of the House based on the following pro-worker votes: defunding the National Labor Relations Board, prohibiting funding of project labor agreements, and prohibiting the use of "prevailing wage" standards. The House portion scorecard was released on March 15, 2011, and can be viewed at WorkplaceChoice.org.

THE BAD

Regulators Propose Burdensome Restrictions on Truckers' Work Hours

After multiple lawsuits were filed by the Ralph Nader-founded Public Citizen and the Teamsters union, the Federal Motor Carrier Safety Administration (FMCSA)—the agency that regulates commercial trucking and motor coaches—has issued a proposed rule that would limit the hours of service of truckers. The FMCSA proposes cutting the number of permitted daily work hours from 11 to 10, a move harshly criticized by CEI. Adding insult to injury, a health researcher whose data were used by the agency to manufacture a net benefit finding in the proposed rule's Regulatory Impact Analysis, claimed his research "[does] not support the conclusions" reached by the FMCSA. This shoddy analysis was earlier attacked by CEI Land-use and Transportation Policy Analyst Marc Scribner in his February 17 comments submitted to the agency. "[The FMCSA] does not properly establish the need for revised hours-of-service limitations proposed in the HOS Rule," Scribner wrote. "It has repeatedly obfuscated the core issue by relying on non-safety health impact benefits calculated under a dubious methodology to force a non-negative net benefit finding."

THE UGLY

FTC Report Advocates Compulsory "Do Not Track" List

A recent staff report from the Federal Trade Commission proposes implementing a federal "Do Not Track" mechanism. Under the guise of protecting consumer privacy, the Commission supports creating a massive Internet marketing regulatory regime. CEI Vice President for Policy Wayne Crews argues that government should get its own house in order rather than regulating voluntary market transactions. "In this era of TSA body imaging, mass surveillance, the push for National ID, and ill-defined protections from governmental access to our mobile devices and cloud-stored data, what we really need isn't for Washington to try and protect our privacy—we need Washington to allow it in the first place," said Crews. "Rather than Do Not Track, a 'Do Not Regulate' stance remains appropriate, for the sake of improved privacy."

MediaMENTIONS

Compiled by **Lee Doren**

General Counsel Sam Kazman explains how government regulation destroyed your washing machine:

It might not have been the most stylish, but for decades the top-loading laundry machine was the most affordable and dependable. Now it's ruined—and Americans have politics to thank.

In 1996, top-loaders were pretty much the only type of washer around, and they were uniformly high quality. When *Consumer Reports* tested 18 models, 13 were "excellent" and five were "very good." By 2007, though, not one was excellent and seven out of 21 were "fair" or "poor." This month came the death knell: *Consumer Reports* simply dismissed all conventional top-loaders as "often mediocre or worse."

How's that for progress?

The culprit is the federal government's obsession with energy efficiency. Efficiency standards for washing machines aren't as well-known as those for light bulbs, which will effectively prohibit 100-watt incandescent bulbs next year. Nor are they the butt of jokes as low-flow toilets are. But in their quiet destruction of a highly affordable, perfectly satisfactory appliance, washer standards demonstrate the harmfulness of the ever-growing body of efficiency mandates.

–March 17, *The Wall Street Journal*

Senior Fellow Chris Horner argues against the light bulb mandates:

Why can't Senator Rand Paul and others be more like Europeans, so much better—we're told—at accepting "encouragement" from the state?

But in August 2009, when Europe's ban on old-style light bulbs began, Europeans resisted too. The new regulations left British shoppers, for example, "angry and confused." Sound familiar?

The rebellion of Senator Paul and other legislators was also seen in Europe. "President of European Parliament Industry Committee calls for 'immediate end' to EU's ban on light bulbs," said a December 2010 summary of German news media coverage.

So it's not just Americans who balk at government campaigns to encourage energy-efficient behavior. The simple truth is that people don't like bans and mandates that force them to use products they don't want to use for reasons that, to them, make perfect sense.

–March 17, *The New York Times* "Room for Debate"

Vice President for Policy Wayne Crews argues against big government solutions to create cyber security:

It seems always the same default when we get worried: national strategies; cybersecurity coordinators, agencies, and programs; public/private partnerships; millions in cyber research grants and to steer students toward cybersecurity research (the Langevin bill, for its part, calls them Cyber Challenge Programs).

In truly national defense, no one that I know of argues there's no government role. But the wrong cyber-laws can mean government locking in inferior security technologies and procedures. For example, disclosure and reporting techniques can be appropriate—or they might do more harm than good. Besides, the really bad guys, apart from commercial interests that need to perform, won't obey the law anyway, and are probably overseas….

Some proposals have entailed a formal readiness mandate on the private sector that would parallel some disclosures required during the Y2K transition. But if a CEO certifies a security report, following the letter of the law, and there's a breach, what happens? One suspects that the hammer would fall on companies blamed in the event of a cyber attack; but who can doubt that Homeland Security officials will gain even more power if an attack happens under one of their own "green light" advisories?

–March 16, Forbes.com

Vice President for Strategy Iain Murray argues that as the Japan crisis unfolded, Energy Secretary Steven Chu failed the nuclear and leadership test:

At first glance, the events at Fukushima seem like a perfect illustration of Murphy's Law—"If something can go wrong, it will." First the plant was hit by an earthquake seven times stronger than it was designed to withstand, but withstand it did. Control rods were immediately lowered into the core and the chain reaction stopped. Backup power kicked in.

Then a massive tsunami hit the plant, reportedly demolishing several key installations and knocking out the backup power. The plant continued to run on emergency power.

When the emergency power ran out, the backup emergency power didn't work (due to backup facilities using the wrong plugs, according to some reports). Hydrogen buildup from the rapidly heating core caused explosions in the shell (which is designed to keep the elements out, not radiation in). Attempts to cool the reactor with seawater started too late, leading to the fuel rods being exposed rather than covered in coolant.

Fortunately, even Murphy's Law has its exceptions. Despite all these problems, the reactor—at this writing—was damaged but not yet in meltdown. No one had been exposed to dangerous amounts of radiation and no dangerous material had been released into the surrounding environment. In other words, despite virtually everything going wrong in unforeseeable ways, the reactor has as yet caused no wider harm to people.

–March 15, FoxNews.com

Senior Attorney and Counsel for Special Projects Hans Bader argues that a mortgage bailout would rip off pension funds:

Back before the election, intellectuals with ties to the Obama administration proposed a trillion-dollar bailout for some (but not all) underwater mortgage borrowers, as a way to increase consumer spending.

Now, *The Washington Post* reports that bureaucrats at the newly-created Consumer Financial Protection Bureau (CFPB) want to do something similar on a smaller scale. Their proposal would require banks to write off part of the mortgages of certain (but not all) mortgage borrowers who owe more on their mortgage than their house is worth. Worse, they would require mortgage servicers to write off loan principal on loans owned by other institutions, like pension funds, violating their property rights.

Virtually all of America's pension funds own mortgage-backed securities. Pension funds that millions of people rely on for their retirements would lose billions of dollars due to reduced mortgage value. These demands are contained in a 27-page proposed settlement sent to the banks by the CFPB, the Justice Department, and state attorneys general who sued the banks over their recent foreclosure documentation lapses. Such demands flout court rulings like *Louisville Joint Stock Land Bank v. Radford* (1935), which overturned a federal law that wiped out mortgage value.

–March 10, *The Washington Examiner*

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...END NOTES

Is Our Children Learning about Biotech?

The United States government generally takes a more sensible approach to regulating genetically engineered crops than, say, the European Union, which has all but concluded that advanced techniques developed by scientists over the past several decades are the blackest of black magic. But the U.S. regulatory regime is far from ideal. Genetically engineered plants must be "proven" safe, while plants bred using far more risky techniques—such as radiation mutation breeding—are essentially unregulated. A new survey may shed some light on this strange regulatory disconnect from reality. According to a recent poll, 49 percent of Americans believe that conventionally bred tomatoes do not have genes, but genetically engineered varieties do possess genetic material. At least they're half right.

Health Care Delivery Innovation Deemed Too Innovative

Jay Parkinson, a doctor who completed his residency in 2007 at Johns Hopkins University in Baltimore, moved back to New York City to start his practice. Noticing that few consumers had access to on-demand home health care services, Dr. Parkinson invested $1,500 to launch a Web interface that would allow patients to check his schedule, request a home appointment, and instantly contact him via his iPhone. Business was doing well for six months, with overhead a fraction of what typical medical practices spend on administration and office space, until Parkinson received a letter from the New York State Office of Professional Conduct (OPC). The agency, acting on a tip from a competitor, claimed it had reason to believe he was writing fraudulent prescriptions. After spending thousands of dollars, the OPC admitted it had no case, but the damage was done. Parkinson, fearing continued regulatory assaults, hasn't practiced medicine in over three years.

Portlandia: Where Body Odor is Not a Scent

Portland is often lampooned as a smaller, northern San Francisco. From "green" development regulations that price low-income residents out of housing to holding vigils for the unemployed in front of City Hall, Portlanders have worked hard over the past two decades to remake their city into Moscow on the Willamette. Exemplifying this fashionable-leftism-to-the-point-of-absurdity culture is a new regulation, adopted by the City Council in late February, that imposes a "Fragrance Free" policy on city employees. Government workers will be prohibited from wearing perfume, aftershave, "strongly-scented powder," hairspray, scented lotion, and deodorant—ostensibly to protect workers suffering from asthma and allergies.

Congressman: End Poverty by Making it Illegal

Virtually everyone wants to reduce poverty. The question we often try to answer is how best to do it. Economic liberals typically emphasize individual liberty, pro-market policies, and sound institutions, whereas social democrats typically support a mix of government protectionism and wealth redistribution. Rep. Jesse Jackson, Jr. (D-Ill.) has a novel plan: make poverty illegal. After calling for amending the Constitution to guarantee a right to "a decent home," Jackson asked: "What would that do for home construction in this nation? What would that do for millions of unemployed people?" He did not explain which houses would qualify as "decent" or how he intended to pay for these homes. He then called for "providing every student with an iPod and a laptop."