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Sarbanes-Oxley
Reform Gathers Momentum

BY JOHN BERLAU

In lamenting the lack of economic growth during the past decade, *New York Times* columnist Paul Krugman pointed the finger at a typical culprit: the supposed deregulation that occurred during the Bush administration. "As for the Republicans, now that their policies of tax cuts and deregulation have led us into an economic quagmire, their prescription for recovery is—tax cuts and deregulation." Krugman called the 2000s "the decade in which we achieved nothing and learned nothing."

But a glance at what really happened in the first decade of the new millennium shows that it is Krugman and liberals of his ilk who have learned nothing. They continue to insist that the financial crisis was caused by deregulation, even though so much government intervention in housing—from the subsidies to Fannie Mae and Freddie Mac to the reckless lending encouraged by Community Reinvestment Act—contributed to the mortgage meltdown. And then there's Sarbanes-Oxley.

As Rep. Ron Paul (R-TX) recently pointed out, "[T]he last decade saw the enactment of the Sarbanes-Oxley Act, the largest piece of financial regulatory legislation" in decades. Rushed through Congress and signed by President Bush in the wake of the Enron and WorldCom scandals in 2002, Sarbanes-Oxley—known as Sarbox for short—has quadrupled audit costs and achieved few tangible results in preventing fraud. University of Minnesota researcher Ivy Zhang has calculated that Sarbox has cost the economy $1.4 trillion in direct and indirect costs. And new research from economist Kenneth Lehn of the University of Pittsburgh shows that such costs reduce firms' research and development spending and business investment, two important prerequisites for job growth.

Yet there is some good news. In December 2009, prospects for substantial Sarbanes-Oxley relief or repeal grew both in Congress and in a constitutional challenge before the Supreme Court. CEI has been involved heavily in both efforts. CEI attorneys are serving as co-counsel to the Supreme Court case.

On December 1, CEI hosted an event on Capitol Hill, "Sarbanes-Oxley, the Supreme Court, and America's Economic Future," which was well attended by staffers of both Republican and Democratic members of Congress. A highlight of the event was a

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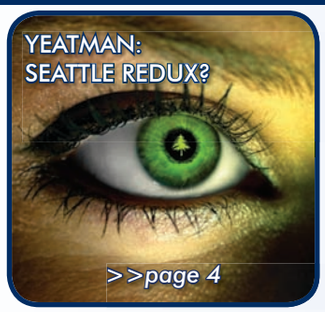


ALSO INSIDE:

>>FROM THE VICE PRESIDENT FOR POLICY

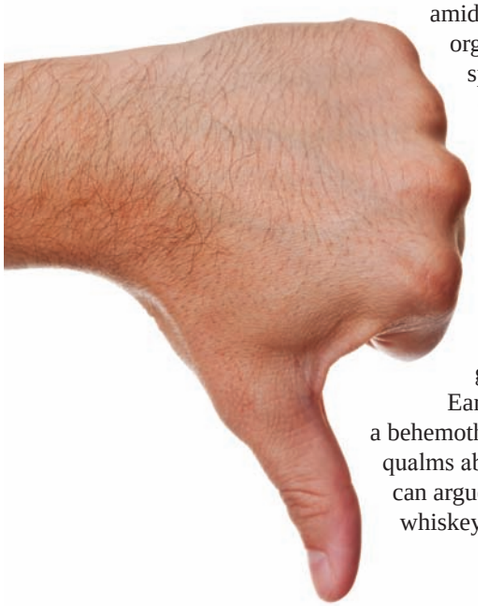
Year-One Report Card—Treasury Gets a "D"

BY WAYNE CREWS

In a libertarian world of civil—rather than political—society, the U.S. Treasury Department would pay the modest bills of a constitutionally limited government. It's true that Congress holds the purse strings. But during an economic and financial crisis rooted in an already gargantuan government that—whatever news reports say—has regulated money, credit, and interest rates for a century, a sane Treasury's vision for recovery would rule out seducing Congress with yet more elaborate and larger purses.

Indeed, the purse has elastic seams. This Treasury Department has compounded the "NASCAR" bailouts, helped inflate a silly "green energy" bubble, and stands on the sidelines cheerleading the idea of regulating private sector salaries—in addition to other heavy-handed interventions in one formerly free endeavor after another. But creating fictitious economies through political means is nothing new—today, it is government's key function.

I wanted to give Treasury a grade of "F" for standing by as the 2009 deficit topped an incomprehensible $1.6 trillion amid a self-serving orgy of political spending that will do nothing to aid economic recovery. However, this Treasury gets only a "D" because it inherited from President Bush what was already the largest government on Earth ($3 trillion), a behemoth it has had few qualms about financing. We can argue it 'till the whiskey's gone, but there is no question that under President Obama, Treasury has been instrumental in extending and "customizing" a Stimulus to Nowhere that is already making a beeline for the cliff's edge.



Federal interventions are so extensive that civil, voluntary society may never quite recover. But I'm sure there will always be an America—it just might be somewhere else if other nations decide to abandon the collectivism which the United States has embraced of late. Indeed, in the latest plunge into statism, medicine has become a public policy issue. So, mommas, don't let your babies grow up to be doctors or insurers; let 'em be veterinarians or a cash-only "Dr. 90210."

> *"Treasury's leadership is only valuable when it prioritizes wise and honest alternatives to spending yet more stimulus money that it doesn't have."*

Since it insists upon doing more than keeping the books, to get an "A," the Treasury Department must take a leadership role in removing obstacles to corporate and small business innovation. It can take a leading role in expanding ideas like privatization, liberalizing America's network industries like electricity and telecommunications, simplifying taxes, and much more. Treasury's leadership is only valuable when it prioritizes wise and honest alternatives to spending yet more stimulus money that it doesn't have. The U.S. federal government buys us far too much misery with the $4 trillion it now spends annually. Freedom and liberty cost less than this, America.

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Publisher
Fred L. Smith, Jr.

Editor
Marc Scribner

Editorial Director
Ivan G. Osorio

Contributing Editor
Richard Morrison

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Phone:
(202) 331-1010

Fax:
(202) 331-0640

E-mail:
info@cei.org

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Sarbanes-Oxley, *continued from page 1*

letter to the conference from Rep. John Adler (D-N.J.), who had sponsored the amendment to the financial regulation bill that would exempt smaller public companies—those with market valuations of no more than $75 million—from the particularly onerous "internal control" audits mandated by Sarbox's Section 404 (b). He wrote:

> *404(b) of the Sarbanes-Oxley Act was never intended to be such a burden on small and medium-sized businesses struggling to grow and create jobs. … If small companies are dissuaded from going public, and are restrained in their paths to growth, we may never know whether they could have been the next successful American business. In an economy where we need to create jobs, it is my goal to fix problems interfering with our small businesses ability to grow and create jobs.*

Speakers at the conference included Rep. Scott Garrett (R-N.J.), a co-sponsor of the Adler amendment; financial consultant and commentator Mallory Factor; author and former regulatory official Stephen A. Boyko; and CEI Senior Attorney Hans Bader, who is co-counsel to the plaintiffs in the Supreme Court challenge.

Among the points raised were that the law's process can significantly delay initial public offerings (IPOs) even for a company as large as Google. Indeed, as technology journalist John Battelle chronicles in his book, The Search, Google "made its money literally pennies at a time, from millions upon millions of microtransactions," so it "had to significantly restructure its advertising reporting system from the ground up." If Sarbanes-Oxley imposes this type of burden on a company like Google, which had a market valuation of more than $1 billion before it went public, imagine the burden for smaller companies trying to raise capital. This helps explain why in the years following passage of Sarbanes-Oxley, IPOs slowed dramatically in the U.S.

Moreover, Sarbanes-Oxley has achieved very little in preventing fraud. In 2007, the Institute of Internal Auditors praised Countrywide Financial for its Sarbanes-Oxley controls. Two years and many scandals later, its former executives have been charged with securities fraud. And certainly, overall transparency doesn't increase when companies go private or delay going public, as many have chosen to do because of the law's costs.

Because of all the high-paying work it creates for auditors in helping firms comply with the law, Sarbanes-Oxley has been called "a boon for bean counters" and the Accountants Full Employment Act. Now many economists, policy makers, and members of Congress from both parties are questioning whether what is good for the Big Four accounting firms is good for America.

Despite the opposition of powerful House Financial Services Committee Chairman Barney Frank (D-Mass.), 101 Democrats joined all but one Republican to retain the relief from the law in the final financial bill that passed the House.

In the meantime, on December 7, the U.S. Supreme Court heard our case on Sarbanes-Oxley. This could lead to the gutting of a substantial part of the law, which would have a major positive impact on the U.S. capital markets. Bader, CEI General Counsel Sam Kazman, and other prominent attorneys on the case argue that the structure of the Public Company Accounting Oversight Board (PCAOB)—a regulatory body created under Sarbox that has set burdensome accounting rules that have cost the economy billions—lacks constitutional accountability because its structure bypasses presidential appointment, Senate confirmation, and the Executive Branch's power to remove officers. (You can see all the case documents at ControlAbuseofPower.org/PCAOB.)

Sarbanes-Oxley is a significant burden that is holding back job growth and a stronger recovery. If it is repealed or scaled back, the 2010s could see real prosperity as American entrepreneurial energies are once again unleashed, as the Microsofts and Googles of the future go public in ever greater numbers.

John Berlau (jberlau@cei.org) *is Director of the Center for Investors and Entrepreneurs at CEI.*

Seattle Redux?

Green Woodstock, More Like

BY WILLIAM YEATMAN

Don't be fooled by the considerable media attention that the raucous anti-globalization types at the 15th Conference of the Parties (COP-15) to the United National Framework Convention on Climate Change (UNFCCC) in Copenhagen, Denmark. I saw only scant traces of them.

Rather than Seattle 1999—when massive rioting disrupted a World Trade Organization meeting—COP-15 was more like a green Woodstock. Thousands of naive young environmentalists went to Copenhagen to revel in their vision of eco-harmony.

The UNFCCC classifies participants to the COP-15 into three categories: observers, media and negotiators. Of the three, observers are by far the largest group, and most of them fit a similar profile. They are younger than 30, they work in the nonprofit sector in the United States or Western Europe, and they passionately believe the world needs to fight global warming.

Yet dedication to the cause isn't the only reason they traveled to Copenhagen. They also came for the vibe. Concerts went on continuously in the huge temporary soundstage erected in city square. At the end of the first week, seemingly everyone was excited for the "NGO Party" on Saturday at Vega, Copenhagen's foremost nightclub. The party flier screamed in bold, "Free Entrance/Conference Badge Required!" According to the hash peddlers in Freetown Christiania, an anything-goes commune in the northern part of the city, business has been brisk during the Copenhagen conference.

Now, I don't begrudge anyone for having a good time, and I admire these young people's passion for their chosen cause. My main problem with this Generation Green is that not very many of them seem to have thought things through. When encountered by the nuances of competing national interests or the compromises inherent to democratic politics, they revert to slogans and chants. Like most idealists, they are all too readily mugged by reality.

It is also true that this green corps isn't interested much in intellectual consistency. Outside the COP-15 Saturday night, a vigil marked the end of a march from the Danish Parliament building. The crowd cheered when a British rocker called for a "revolution," and also cheered five minutes later when an Indian academic urged support for China's rejection of emissions targets. Never mind the incoherence of these two stances, or that global emissions targets are the main goal of the entire UNFCCC exercise.

Generation Green doesn't recognize the trade-offs between costs and benefits. Indeed, they don't seem to recognize costs at all. Politicians in Western countries are partly to blame. Consider President Obama, who refuses to acknowledge that his renewable-energy policies are expensive energy policies, because renewable energy costs more than conventional energy. Instead, he trumpets the creation of some fuzzily defined "green jobs." The president pretends that his energy policies are all gain and no pain. Maybe he knows better. The problem is that many people listen to him, and they believe him.

Perhaps the biggest indictment of the young idealists who descended upon Denmark is the mere fact that they came. The Copenhagen climate conference was supposed to have been the deadline for a legally binding, multilateral treaty to fight global warming, but world leaders conceded that COP-15 would be a failure a month before it even started.

> *"After two years of intense negotiations, diplomats have made zero progress in answering the all-important question: Who is going to pay the $45 trillion that the International Energy Agency says it would cost to cure the climate of its supposed ills?"*

After two years of intense negotiations, diplomats have made zero progress in answering the all-important question: Who is going to pay the $45 trillion that the International Energy Agency says it would cost to cure the climate of its supposed ills? Developed countries refuse to pay without significant participation from developing countries, which refuse to pay anything.

In the face of this diplomatic gridlock, world leaders announced at November's Asian Pacific Economic Conference Summit that COP-15 would fail to produce a treaty. Even so, thousands of young people spewed untold tons of greenhouse gases flying to and living in Copenhagen for a pointless climate conference. By participating in the Copenhagen climate confab, Generation Green engaged in the same sort of mindless consumption that they came to protest. The only lasting impact of COP-15 will be its huge carbon footprint!

During my time in Copenhagen, I kept thinking about the opportunity cost of Generation Green's quixotic dedication to "doing something" about global warming. What if they cared this much about homelessness? Or mental illness? Or breast cancer? For a decade, temperatures on Earth have remained the same, but human beings still suffer much the same as they always have. Generation Green's passion is commendable. Its priorities, however, are abominable.

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*William Yeatman (*wyeatman@cei.org*) is an Energy Policy Analyst at CEI. A version of this article appeared in* The Washington Times.

Let Immigrants Power America's Scientific Prowess

BY ALEX NOWRASTEH

The melee surrounding President Barack Obama's Nobel Peace Prize distracted everyone from another potential Nobel controversy. Of the eight American citizens who received Nobel Prizes in the science categories, five are immigrants to the United States. This fact got little attention, which is unfortunate. In the immigration debate, the contributions of highly educated and skilled immigrants to American technology and science are often ignored.

Those contributions cannot be overestimated. One-quarter of American Nobel Prize winners since 1901 have been immigrants. Today, a third of all the scientists and engineers in Silicon Valley are immigrants or foreign-born, and 40 percent of the Ph.D. scientists working in the United States are foreign-born. Our immigration laws ignore these facts, to our detriment.

The driver of economic growth in the modern world is knowledge. Scientific discoveries spill over into related fields to fuel further discoveries. Scientists working in research teams can quickly share insights with each other, allowing greater output. Scientists and engineers working closely together increase the speed and scope of their research. When this brain power is concentrated geographically, it boosts economic growth and technological development.

America's immigration laws artificially limit our capacity for technological advancement by putting up roadblocks in this process. The engineers and Ph.D.s driving much of the technological innovation in Silicon Valley are overwhelmingly Indian. A growing number of them are here illegally. According to the Department of Homeland Security's Office of Immigration Statistics, there are almost 300,000 illegal Indian immigrants in the United States. Many of them arrived here on H-1B or student visas and overstayed their legal residency in the hope of getting a green card.

Indian immigrant workers are generally highly skilled and enjoy high incomes. Average Indian-American households have an income 62 percent greater than average. The skills, work ethic, and entrepreneurial spirit that make Indian immigrants such a successful group are remarkably constant throughout the community, regardless of legal status. Instead of making them jump through bureaucratic hoops, we should encourage them to live here peacefully and contribute to American society.

Foreign graduate students also contribute to America's ongoing technological success. A 2005 World Bank study found that foreign graduate students working in the United States file an enormous number of patents. Additionally, a quarter of international patents filed from the United States in 2006 named a non-U.S. citizen working in the United States as the inventor or co-inventor. Many of those immigrants whom our immigration bureaucracy refuses to recognize are responsible for the rapid technological advancement of recent decades.

Highly skilled immigration benefits the American economy. Counting just the value of patents, scientific discoveries, and firms started by immigrants, it is clear that their arrival has paid off handsomely for the United States. And rather than take jobs away from Americans, more people with wider skills and greater experience increase employment opportunities. The non-partisan National Foundation for American Policy reports that for every H-1B visa issued, U.S. technology firms increase their employment by five workers. Every day that nearly 300,000 Indian immigrants spend in legal limbo represents a gargantuan waste of creativity.

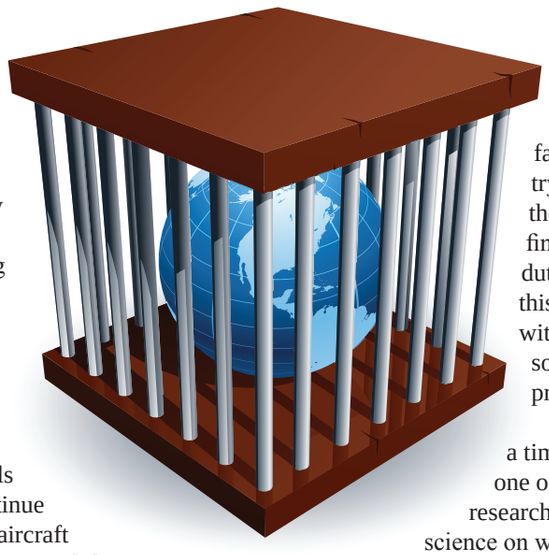
And that doesn't even count the millions of highly skilled individuals from China, Europe, and elsewhere who would come seeking greater opportunity if the law would only let them. Immigrant innovators come from America from around the world. The five immigrant Nobel Prize winners came from Britain, Canada, Australia, China, and India.

The number of potential Nobel Prize winners who have lost their opportunity to do research in this country is unknown. What is known is that the U.S. government is keeping out millions of the most inventive, brilliant and entrepreneurial people in the world for no good reason.

Alex Nowrasteh (anowrasteh@cei.org) *is a Policy Analyst at CEI. A version of this article originally appeared on* RealClearMarkets.com.

EPA's Latest Power Grab

BY IAIN MURRAY AND MARLO LEWIS, JR.



Environmental Protection Agency (EPA) Administrator Lisa Jackson recently announced that the agency has determined that global warming, allegedly caused by mankind's burning of fossil fuels, endangers public health. The finding paves the way for a huge power grab by EPA bureaucrats—indeed, more power than even they think they can handle. The likely regulatory cascade will end up with the EPA having complete control over the nation's energy supply and its use.

Large apartment buildings and hospitals would need EPA operating permits to continue running their furnaces. Lawnmowers and aircraft would be regulated for fuel economy like automobiles. And as the EPA orders a retooling or even closure of the nation's power plants, electricity prices would skyrocket, and blackouts would become common. If you wanted to design an anti-stimulus package, you'd be hard-pressed to top this.

The EPA already holds massive power to stop energy projects. It has used its regulatory powers to hold up the construction of new coal, gas, nuclear, and even renewable-power plants and electricity-transmission lines around the country. The U.S. Chamber of Commerce's Project No Project website details hundreds of energy projects that could be providing many thousands of good jobs, but are now held up by regulatory delay (typically due to legal challenges initiated by environmental groups).

The agency's new finding will greatly expand those powers. It will trigger a regulatory avalanche that vastly expand the number of activities that require EPA permitting—fast-food franchises, apartment buildings, and hospitals will all have to face the same crushing federal bureaucracy that has bedeviled energy firms for years.

Essentially, the EPA's claim that it is obliged to regulate carbon dioxide (CO_2) as a pollutant will oblige it to impose costly, time-consuming permitting requirements on tens of thousands of previously unregulated small businesses—under the Clean Air Act's Prevention of Significant Deterioration (PSD) pre-construction permitting program—and on millions of previously unregulated entities—under the Title V operating permits program.

The EPA recognizes the danger. It has issued a "tailoring rule" that warns that if PSD and Title V are applied "literally" to CO_2 emissions, the permitting programs will crash under their own weight, construction activity will grind to a screeching halt—and millions of firms will find themselves operating in legal limbo.

Realizing that this would still produce a thunderous political backlash, the EPA wrote the "tailoring rule" to limit its regulation of CO_2 to facilities emitting 25,000 tons of gases a year—even though the Clean Air Act requires it to cover facilities emitting just 250 tons. EPA is trying to split hairs. It wants to acquire the extra powers from the endangerment finding, while avoiding the accompanying duty of regulating small businesses. But this invented exception is unlikely to withstand legal challenge. The EPA will soon be blocking every new construction project you can think of.

The endangerment finding comes at a time when a batch of emails leaked from one of the most important climate-science research units in Britain has put the underlying science on which the finding is based under increased scrutiny. The "Climategate" emails indicate likely manipulation of data, a concerted effort to prevent publication of skeptical views in the academic literature, and an effort to hide data and methods in order to prevent outside researchers from checking the British scientists' results—never mind that such checking is the real test of knowledge in science.

The emails do not disprove that the world has been warming, or that fossil fuels have something to do with it—but they do cast doubt on whether the current warming is in any way unusual. That is an important consideration in deciding whether the current warming endangers human health and welfare. EPA's decision to simply ignore this and press forward with its endangerment finding represents a premature rush to judgment. Thus, the finding is a purely political move.

That is why we at the Competitive Enterprise Institute announced that we will file suit in federal court to overturn the endangerment finding on the grounds that the EPA has ignored major scientific issues, including, but not limited to, those raised recently in the Climategate scandal.

But lawmakers shouldn't rely on CEI to save America from the EPA's power grab. Congress should enact legislation, such as that offered by Rep. Marsha Blackburn (R-Tenn.), to make it plain that the Clean Air Act applies to emissions that directly threaten human health—not ones that might be tied to climate change.

If Congress doesn't act, the EPA's recent finding will destroy any hope of economic recovery. Millions of jobless Americans will have the federal government to thank for their misery.

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*Iain Murray (*imurray@cei.org*) is Director of Projects and Analysis and a Senior Fellow in Energy, Science, and Technology at CEI. Marlo Lewis, Jr.* (mlewis@cei.org*) is a Senior Fellow at CEI. A version of this article originally appeared in* The New York Post.

Congress, Tobacco, and a President Who Lights Up

BY SAM KAZMAN

It may be hard to remember now, but candidate Barack Obama actually made this promise during his campaign: "I can make a firm pledge. Under my plan, no family making less than $250,000 a year will see any form of tax increase. Not your income tax, not your payroll tax, not your capital gains taxes, not any of your taxes…except tobacco taxes."

Did I get you? Those last three words were not part of Obama's pledge. He promised not to raise any of your taxes—period. Nonetheless, Obama hadn't been president for even a month before he broke that promise with a law expanding subsidies for children's health insurance, conveniently funded by a hike in the federal cigarette tax of over 100 percent.

Only a product whose legitimacy had been totally destroyed could so quickly become a revenue doormat for the new administration. And if you think tobacco is addictive, wait till you see the addictiveness of tobacco revenues.

Four months after the tobacco tax hike came the Family Smoking Prevention and Tobacco Control Act (H.R. 1256, S.982)—also known as Kennedy-Waxman for its two major congressional sponsors. This is a totally different law than the health insurance bill. Tax increases tend to be relatively easy for the public to figure out, which is why politicians avoid making them blatant.

True to that spirit, Kennedy-Waxman was an incredibly complex regulatory bill. It bestowed an entirely new power on one of the country's largest government agencies, it chipped away even further at First Amendment protections for advertising, and it triggered a major battle within Big Tobacco. In all likelihood, it will do little to advance public health, but it does have a nice name.

The New Food and Drug and Tobacco Administration

The Food and Drug Administration (FDA) has vast regulatory power over food and over medical drugs and devices. Tobacco has long been off-limits to the agency, but in 1995, under Commissioner David Kessler, the agency tried to bestow power on itself over tobacco. It declared that cigarettes were "nicotine-delivery systems," and thus fell within the FDA's medical jurisdiction. This claim was ingenious but it was also illegal, and the agency was slapped down by the Supreme Court five years later. The court ruled that Congress had never given the FDA power over tobacco—a fact buttressed by tobacco's lack of similarity to pharmaceuticals. If tobacco was a medicine, then what disease did it treat?

However, under Kennedy-Waxman, the FDA now has clear power from Congress, and that power is massive. The FDA will set and enforce new standards for labels and warnings. It will also enforce mandatory ingredient listings, and control certain selling and advertising methods. Added flavors, other than menthol, will be banned. "New tobacco products" will now have to be approved by the FDA before they can be marketed, as will "modified risk products," which attempt to reduce the hazards of tobacco use. The FDA can also set limits on nicotine levels. However, there are certain things the FDA cannot do, such as categorically ban cigarettes, cigars, or existing products, and it cannot totally eliminate nicotine.

These last provisions were undoubtedly intended to calm the fears of the industry and smokers that the law eventually would lead to a total ban. There were similar fears when the FDA had unveiled its 1995 proposal, but both the FDA itself and anti-tobacco activists dismissed these fears as absurd overreactions at the time. In his 2001 book, *A Question of Intent*, which details his time as head of the FDA, Kessler derides these predictions of a new Prohibition as feeding "the peculiarly American distrust of government." But, as that book makes clear, Kessler and his aides themselves thought that tobacco regulation might well lead to a total ban on smoking. And, despite the new law's

(continued on next page)

exclusion of categorical bans of cigarettes or cigars, those who fear Prohibition might still turn out to be right.

What Agencies Want: A Civics Lesson

Government agencies covet power. More power means bigger budgets, larger staffs, higher profiles, and an increased chance to do good. Well, hold off on that last point; in the case of cigarettes, is there an adult with a pulse in this country who does not know that smoking is a very risky activity?

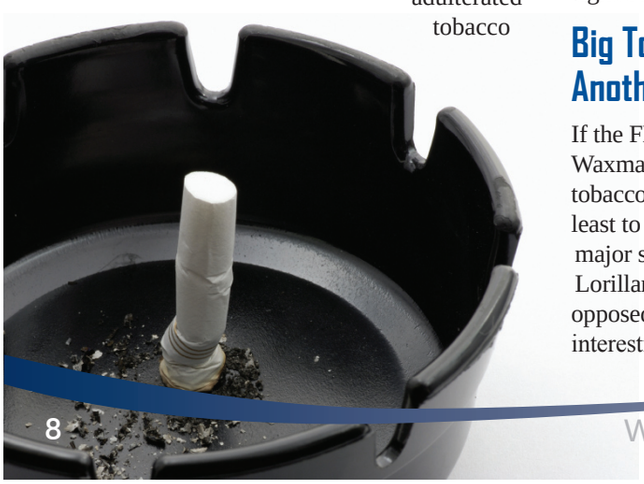
Prohibiting cigarette sales to minors is a valid government function, but sales to minors are already illegal and have been for decades. Did those laws need to be strengthened? Perhaps, though smoking among high-school students is at a historic low. And what did that have to do with the huge new regulatory apparatus that the Family Protection Act established within the FDA? If adults know the risks of something, why shouldn't they be able to take those risks—just as they take the risks of skiing, hang gliding, and overeating?

Under the Bush administration, the FDA had taken a far different view. In 2007, its head, Dr. Andrew C. Von Eschenbach, did something practically unheard of for an agency chief: He opposed expanding the power of his agency. In his view, FDA regulation of tobacco would undercut the agency's public health role. The agency could assure the safety and effectiveness of medical drugs, but it could hardly do that for a product that it viewed as inherently unhealthy.

For example, the bill would ban what it defined as "adulterated" tobacco products—those that contained substances that were "filthy, putrid, or decomposed" or "injurious to health." Von Eschenbach didn't quibble with those first three criteria, but he didn't see how the last one could make sense if tobacco was unhealthy by its very nature. He also believed that formal approval by the FDA of new tobacco products (as required under the bill) would give the public a false sense of safety. Finally, he thought that FDA knew little about tobacco, and that it would cost the agency a bundle to gain the necessary expertise—all this at a time when the agency was under fire for a wide range of alleged safety lapses, especially regarding imported foods and drugs.

Not unexpectedly, the bill's supporters disagreed. Representative Henry Waxman declared that he was "surprised," "distressed," "dismayed," and "alarmed." Dr. Von Eschenbach resigned once the Obama administration came in. His successor at the FDA shared none of Von Eschenbach's concerns and instead proclaimed that the agency "welcomes the authority given to us by Congress." Kennedy-Waxman was passed by Congress last spring, and was signed into law on June 22.

"Industries generally oppose government regulation. ...But, in some cases, regulations can give certain companies big advantages over their competitors."



Big Tobacco's Cat Fight: Another Civics Lesson

If the FDA's initial opposition to Kennedy-Waxman was a big surprise, so was the tobacco industry's split over the bill—at least to outsiders. Philip Morris was a major supporter, while R.J. Reynolds and Lorillard, its two smaller competitors, opposed it. Their split sheds some interesting light on the corporate infighting that can accompany, and sometimes even trigger, government regulation.

Industries generally oppose government regulation. They have products to sell, and bureaucratic rules get in the way. But, in some cases, regulations can give certain companies big advantages over their competitors. For example, testing and reporting requirements can impose sizable costs, but companies with larger market shares can aborb and spread those costs more widely. Their smaller competitors, on the other hand, don't have that ability. They will have to raise their prices more than the larger companies, or take a bigger loss per unit. With their competition hamstrung, larger companies can end up benefiting overall, despite the fact that regulatory compliance costs have gone up.

Or take a case where one company has a lock on certain new technologies. If new regulations end up mandating the use of those technologies, that company will have a major advantage. Its competitors may have to pay huge licensing fees for the technology, embark on expensive crash programs to develop their own competing technology, or drop out of the market entirely.

Similarly, restrictions on new products and advertising can help lock in a large company's dominance by making it more difficult for smaller firms to create and advertise new products. Existing products get off easy because they're usually "grandfathered"—that is, exempted from the new rules. In fact, a *Wall Street Journal* editorial dubbed Kennedy-Waxman the "Marlboro Preservation Act."

Of course, these are not the arguments that a pro-regulation company would put forth publicly. Instead, its arguments would be cast in terms of serving the public interest.

Protecting Us?

So, just what will the Family Smoking Prevention Act do to protect our health? There's good reason to think it won't do anything at all and that, in fact, it will actually be unhealthy. Consider these allegedly pro-health provisions of the law:

Nicotine standards. As previously explained, the FDA could set a near-zero standard as a backdoor means of banning cigarettes, but is unlikely to try that in

the near-term because it would face both public opposition (even from nonsmokers) and heavy litigation. But even if the FDA just lowers nicotine levels moderately, this could have some bad health consequences for smokers. Nicotine is what smokers crave in their cigarettes, while tar is what hurts them. The less nicotine a cigarette has, the more tar most smokers will inhale in order to get their fix. For this reason, low-nicotine cigarettes may well be the unhealthiest ones for many smokers.

Mandatory Smokeless Tobacco Warnings

The Act mandates a set of warnings about addictiveness and disease that smokeless tobacco products, such as snuff and chewing tobacco, must carry in rotation, including the statement: "This product is not a safe alternative to cigarettes." However, while smokeless tobacco does carry medical risks, it clearly is safer than smoking cigarettes. By some estimates, the health risks of cigarettes are 50 times greater than those of smokeless. In Sweden, for example, the growing switch by smokers to snus, a form of smokeless tobacco, has greatly reduced that country's tobacco-related death rate. As even an American Cancer Society spokesman has acknowledged, "[S]witching to spit tobacco and quitting tobacco altogether are both far less lethal than continuing to smoke."

In the United States, most smokers know next to nothing about the comparative health risks of smokeless tobacco and cigarettes. But the new law's warning mandates, coupled with its advertising restrictions, make it far more likely that those people will stay in the dark.

Approval Requirements for New and "Reduced Risk" Tobacco Products

The Act also prohibits new tobacco products that are substantially different than those currently available, or that claim to be less risky than current products unless FDA approves them. One outlandish factor that will go into that approval process is a "for the good of society" standard. Imagine a smokeless cigarette that actually tastes good—it might be both safer and better than any cigarette out there today. But if the FDA decides that this great new product might entice nonsmokers to start smoking, or that it might keep smokers from quitting, it could ban it on that basis alone, regardless of the benefits it would offer to smokers who have no intention of quitting.

It's for this reason that American Enterprise Institute scholar John E. Calfee calls the Act "one of the worst public health laws ever conceived." He and other analysts see such restrictions as "severely undermining" the incentives of anyone to develop better or safer products. Similarly, Boston University public health professor Michael Siegel, a longstanding anti-tobacco activist, asks, "Why would Congress want to ban potentially safer products and continue to allow the deadliest nicotine product (conventional cigarettes) to remain on the market?"

Part of the answer lies in the fact that most anti-tobacco forces view safer cigarettes as a threat to their cause. The less risky smoking is, the more attractive it might become. To which, I suspect, many might respond, "What's wrong with that?" What is wrong with giving people better options? Shouldn't adults be able to make their own decisions on matters like this? Which brings us to one adult in particular.

Back to the Smoker in the Rose Garden

So what are we to think of President Obama sneaking off, out of the public eye, to grab a puff? In one sense, he isn't all that different from those smokers standing outside building entrances; they all have to scurry away from where they normally would be in order to light up. On the other hand, he's the prez; for him, finding a safe place to smoke is a lot easier.

Let's turn to the wise words of the co-father of the new law, Rep. Henry Waxman (D-Calif.), whose comment on Obama was, "He's an adult and knows the dangers." Too bad Mr. Waxman and his colleagues, including Obama himself, don't have the same respect for the rest of us adults.

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*Sam Kazman (*skazman@cei.org*) is General Counsel at CEI. A version of this article originally appeared in* Cigar Magazine.

The Good

Harmful Internet Gambling Regulations on Hold…for Now

The past few years have not been good to fans of online gambling. After finally getting legal recognition by some state legislatures and a positive interpretation of the 1961 Wire Act in the courts, Internet gambling businesses were targeted once again. Since Congress passed it in 2006, the Unlawful Internet Gambling Enforcement Act (UIGEA) has prohibited transfers from financial institutions to online gambling websites—a death blow to many industry players. However, the new financial regulations under the Act have been so onerous that the Treasury Department and Federal Reserve have intervened to delay implementation of the enforcement mechanisms. "Internet gambling in the United States is going to continue, with or without a regime, and regardless of any attempt to ban the activity," says CEI Director of Insurance Studies Michelle Minton. "While the best way to regulate Internet gaming, if it should be regulated at all, will continue to hotly debated by members of Congress, the first step should be to recognize that UIGEA is simply a bad law and a strain on financial institutions, and should be overturned permanently."

The Bad

Bureaucrats Target Intel's Innovative Practices

A month after New York Attorney General Andrew Cuomo filed an antitrust lawsuit against Intel, the Federal Trade Commission, in a separate lawsuit, accused the chip maker of violating Section 5 of the Federal Trade Commission Act of 1914. The allegations are mostly coming from competitors who view Intel's continued success in the PC CPU market as "anti-competitive." In fact, the microprocessor market is as vibrant and competitive as ever, and consumers have seen rapid speed increases and falling prices. "The FTC suit is just the latest illustration of how antitrust laws are often hijacked by regulators and used to promote a government industrial policy," states CEI Associate Director of Technology Studies Ryan Radia. "Struggling competitors turn to Washington or Brussels to get ahead, and regulators are all too willing to get involved in the name of 'consumer welfare.'"

The Ugly

Millions of Jobs Threatened by EPA Petition

In early December, environmental groups petitioned the Environmental Protection Agency (EPA) to set economically disastrous greenhouse gas regulations under the Clean Air Act. In their petition, the Center for Biological Diversity and 350.org asked the agency to set a National Ambient Air Quality Standard (NAAQS) for carbon dioxide under the Clean Air Act. Their demanded cap is 350 parts per million. "Stabilizing carbon dioxide levels at 350 parts per million as demanded by the petition, when atmospheric levels are already above 385 ppm and rising, would require the equivalent of a global economic depression sustained over several decades," says CEI Senior Fellow Marlo Lewis. "Tens of millions of jobs have thus been put at stake by EPA's decision to use the Clean Air Act to regulate carbon dioxide emissions." Unfortunately, federal courts appear increasingly likely to require that the EPA set a NAAQS for carbon dioxide.

MediaMENTIONS

Compiled by Richard Morrison

General Counsel Sam Kazman reflects on a year of big anniversaries:

The 1989 fall of the Berlin Wall was widely remembered this past November, the 20th anniversary of one of the most momentous events in the history of human liberation. But as this year draws to a close, bear in mind that 2009 is the 20th anniversary of something even grander in the saga of Communism's collapse: the culmination of a remarkable series of Soviet Bloc revolutions, all unexpected, all surprisingly peaceful, and all amazingly swift. A popular joke at the time summed up the length of those revolutions this way: Poland—10 years; Hungary—10 months; East Germany—10 weeks; Czechoslovakia—10 days; Romania—10 hours.

– *The Washington Examiner,* December 30, 2009

Editorial Director Ivan Osorio details SEIU President Andy Stern's plans for big labor:

Under Andrew Stern, the Service Employees International Union has not only stemmed the membership decline affecting most private sector unions but it has experienced dramatic growth. SEIU focuses on parts of the work force most private sector unions previously ignored—unskilled, low-wage, and immigrant workers—and it also organizes workers in the public sector. Stern believes SEIU is organized labor's best hope for revival, and he is positioning the union to stay on the offensive.

To date, Stern's tactics have yielded mixed results. In some ways, SEIU works as a supercharged version of old-style unionism, with some of its worst characteristics—from heavy-handed union bosses to lax prosecution of internal corruption. Despite SEIU's claims to greater sophistication in union-management relations, Stern's centralizing efforts betray an authoritarian management style that has alienated some of the union's own members and officers. And some of his associations with unsavory characters like Rod Blagojevich and ACORN have been public relations disasters.

– *Labor Watch,* January 2010

Energy Policy Analyst William Yeatman boldly contradicts the president's claims of climate change progress:

President Barack Obama has declared that the outcome of the recent United Nations climate confab in Copenhagen—a/k/a the 15th Conference of the Parties to the U.N. Framework Convention on Climate Change—was "unprecedented" and "meaningful." I was in Copenhagen, and I can assure you that the results were mundane and insignificant, quite contrary to the president's spin.

For two years, this conference was considered the deadline for a legally binding, multilateral climate change mitigation treaty, but the agreement reached in Copenhagen was nonbinding, and was further watered down by the international community's decision to merely "take note" of its existence, rather than adopt it.

Indeed, this is what happens at every single one of these glamorous climate ceremonies. Celebrities strut (for example, the Backstreet Boys lent their inconsiderable fame to the cause), Al Gore alarms (warned Gore, "We have only seven years"), and negotiators, after much haggling, agree to meet again.

– *The Richmond Times-Dispatch,* January 3

President Fred L. Smith outlines a plan of political change we can believe in:

The past year alone has brought full-on assaults from the left in the form of efforts to nationalize health care, impose crushing energy taxes, and bail out failing industries. It illustrates all too well Thomas Jefferson's dire warning that the natural tendency is for the state to advance and for liberty to retreat. But there is a new sort of hope and change under way.

Anti-statist forces are likely to be ascendant in 2010. The Europeanization of America has long been a goal of Chattering Class Intellectuals but their message isn't selling. After all, we, like our statist opponents, favor change; we too seek a fairer, more secure, freer world. But, unlike our opponents, we favor empowering individuals, rather than restrictive regulations, as the better path to these goals. Even in this first year of the Obama administration, there is growing resistance to the forced march toward ever-larger government.

To restore crucial freedoms and rights in this country, we need to advance a reform agenda, starting this New Year. To stimulate, we must first liberate.

– *The Washington Times,* January 4

Research Associate Dan Compton exposes the motives behind New York City's war on salt:

The New York guidelines are voluntary—for now. But the city's ban on trans fats started that way, too. And the federal Food and Drug Administration has also been looking to get in on the action—it may classify it as a "food additive," subject to regulation, sometime this year.

But this campaign isn't about public health—it's about grandstanding on a pseudo-issue ginned up by activists, when science clearly shows that there's neither a crisis nor a way for the government to actually alter our salt intake.

All these initiatives do is win headlines for ambitious policy makers (New York's last health commissioner parlayed his trans-fat activism into a promotion to FDA chief), while making food slightly more costly and leaving a bad taste in the mouths of consumers—literally.

– *The New York Post,* January 13

Competitive Enterprise Institute
1899 L Street, NW, 12th Floor
Washington, DC 20036

...END NOTES

What Part of "Anonymous" Don't You Understand?

In mid-November, *St. Louis Post-Dispatch* Director of Social Media Kurt Greenbaum posed a seemingly benign (albeit loaded) question for readers on the newspaper's website. When one anonymous reader attempted to re-post a vulgar comment that had already been rejected, Greenbaum, rather than simply deleting it, decided to alert the reader's employer. The action, likely in violation of the *Post-Dispatch*'s own privacy policy, wound up costing the commenter his job. But it doesn't end there. Greenbaum then published a moralizing, condescending account of the ordeal. Internet users from around the world were outraged that a newspaper employee and former reporter violated a cardinal rule of the Web: Anonymous means anonymous. The paper was flooded with calls and emails demanding that Greenbaum be fired. KurtGreenbaum.com was purchased by one enterprising individual and redirected to an unflattering report on the controversy. Greenbaum's home phone number and address were soon posted—although Greenbaum himself had posted these on his personal website—along with his employer's contact information. Greenbaum could have avoided a great deal of anguish and humiliation had he simply clicked "Delete."

Cricket for Climate

On the eve of the Copenhagen climate summit, there was much talk on the eco-left regarding the specific changes that all us humans should be forced to make in our lifestyles in order to save us from ourselves. Dr. Rajendra Pachauri, the chair of the Intergovernmental Panel on Climate Change (IPCC), touted "sustainability" measures, such as monitoring hotel guests' electricity usage, introducing a massive tax on air travel to deter—the less wealthy—people from flying, and curtailing ice water consumption at restaurants. However, in 2007 and half of 2008, Pachauri logged 443,243 flying miles while on IPCC business. Dr. Pachauri also happens to be very active in India's corporate cricket league—so active, in fact, that he left a seminar in New York City in order to attend team practice in Delhi, India, before flying back to New York the next day.

Congressman's Complaint Proves Critic Right

Rep. Alan Grayson (D-Fla.) is no stranger to controversy. The freshman congressman has already made a name for himself by comparing the present health care system to the Holocaust, using obscene language to publicly denounce critics, and taking on conservative talk radio hosts. Among progressive Democratic circles, Grayson is something of a folk hero. But the tough-as-nails leftist from Orlando apparently has a very thin skin when it comes to someone daring to criticize him using similar rhetoric. On December 15, Grayson filed a complaint with Attorney General Eric Holder, demanding a criminal investigation, and seeking a fine and five years imprisonment of the treasurer of MyCongressmanIsNuts.com, an anti-Grayson, FEC-registered political action committee. Grayson takes specific issue with the PAC's name, a pun on his own CongressmanWithGuts.com, and incorporation type. A review of the PAC's filing statement makes Grayson's allegations appear to be completely groundless. The complaint is so unhinged that it seems to support the assertion in the PAC's name.