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No Comfort and Joy Over Holiday Gas Prices

BY BEN LIEBERMAN

It wasn't a very merry Christmas for America's motorists, as pump prices averaged $3.00 per gallon nationwide for the first time since 2008. President Obama's holiday gift to car and truck owners—new proposals to clamp down on domestic oil drilling and ratchet up refining costs—will only make matters worse in the years ahead.

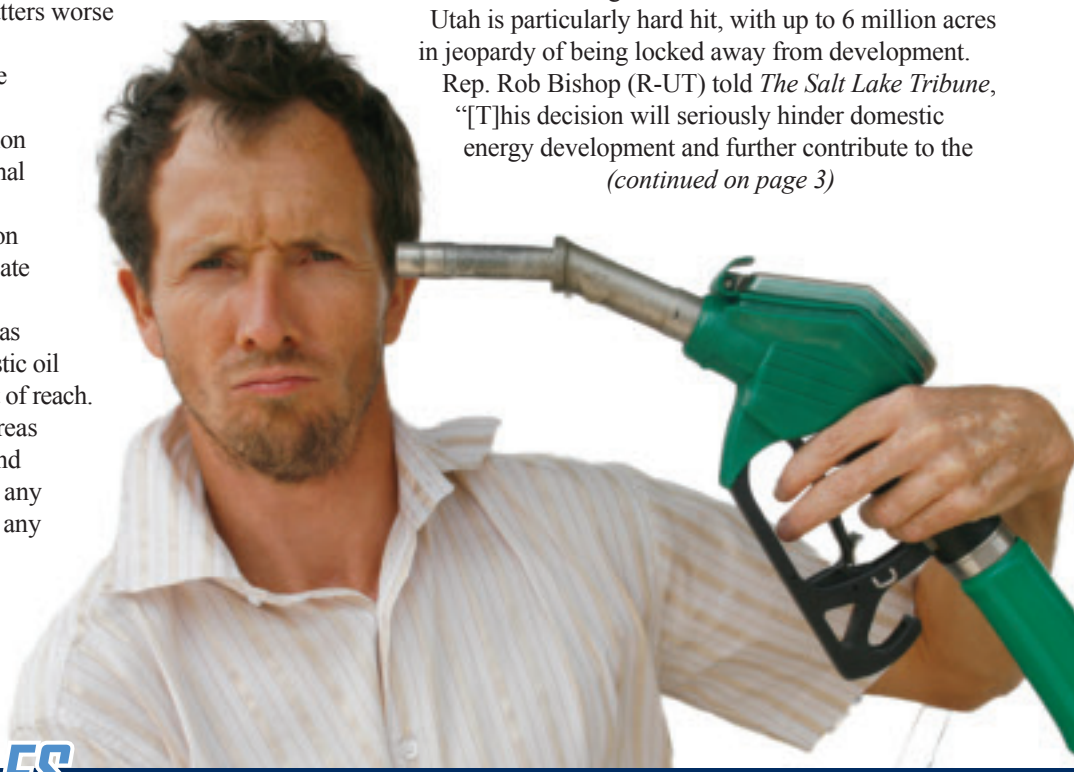
The days before big holiday weekends have become a busy time for Obama administration regulators, as they take advantage of the occasion to slip through unpopular measures with minimal public attention. Coming on the heels of a pre-Thanksgiving announcement that oil exploration and drilling in Alaska would be curtailed to create vast expanses of polar bear habitat, the Obama Department of the Interior made a pre-Christmas policy change that would further reduce domestic oil supplies by placing more energy-rich lands out of reach.

Designating federal lands as wilderness areas is supposed to require an act of Congress—and for good reason, as such a designation places any such lands off-limits to oil and gas leasing or any other economically beneficial use. Thanks to the December 23 announcement, Interior bureaucrats essentially will be able to make that determination on their own, reversing a George W. Bush-era policy that constrained this kind of unilateral agency action.

At issue are millions of acres throughout the West. Some of this land sits atop promising oil and natural-gas deposits. Indeed, wherever energy supplies lie below ground, environmental activists and bureaucrats hype whatever lies on the surface as some kind of treasure in need of being fenced off.

Utah is particularly hard hit, with up to 6 million acres in jeopardy of being locked away from development. Rep. Rob Bishop (R-UT) told *The Salt Lake Tribune*, "[T]his decision will seriously hinder domestic energy development and further contribute to the

(continued on page 3)



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Business Must Fight for Economic Freedom

By Fred L. Smith, Jr.

Capitalism is now under the most unrelenting series of attacks since the Muckraker era at the turn of the 20th century. Then it was Upton Sinclair; now it's Michael Moore. The anti-business rhetoric of Presidents Teddy Roosevelt and Woodrow Wilson are now echoed by President Obama.

The assault of a century ago has intensified and the result has been a steady expansion of government and a steady restriction of entrepreneurial freedoms. American business finds itself today on a melting sheet of ice. Many—perhaps some of you—are even thinking of moving abroad.

Business entrepreneurs cannot sit out this fight. Their voices are critical if this battle is to be won. Business must recognize that survival requires both remaining profitable in the private world and fending off political predation.

Business has done well in the marketplace—Joan Consumer likes her car—but it has done less well in the political sphere—Joan Citizen has increasing doubts about the societal benefits of the automobile. And the same doubts are increasingly raised about fast food and affordable energy. People are happy with their own market decisions but they feel somewhat guilty about the market itself.

The concept of "rational ignorance" helps to explain this. Most businessmen are familiar with the private, voluntary world. They are quite good at reaching Joan Consumer—they realize that consumers are self-interested, and thus, can be educated. Our product is a good buy!

Businessmen, being rational, assume the same informational approach can be used to reach Joan Citizen. Too often, they believe, As soon as people learn our side of the story, they'll agree with us!

But, in the political world, people have little reason to devote scarce time educating themselves about things about which they can do little. Survey after survey finds that most people have limited political knowledge. They rarely can name their legislators or the details of major policies. This should surprise no one. For most people, does it really matter whether their senator's name is Murkowski or Mikulski?

Many businessmen stay out of the fight, not wanting to "engage in politics." That "ignore it and it will go away" approach is naïve in today's world. Business has real enemies. Not everyone likes economic liberty. A war is going on, and anti-business forces are well-organized, creative, and unrelenting.

Electing free-market types without addressing anti-business public opinion may do little. The public policy race track today veers sharply to the left. For some, this has led to an attitude of fatalistic acceptance. Negotiating acceptable surrender terms might advantage some individual firms vis-à-vis their competitors, but it will harm all firms as it weakens the market. To respond defensively—or worse, to adopt a policy of slow capitulation—only encourages future attacks.

Examples are numerous. There are champions of "corporate social responsibility," greater political control of business, and "green subsidies," who hope that by bending a knee toward Chattering Class values, they will somehow gain an advantage. More brazen rent-seeking businesses, such as Enron, have created strong alliances with anti-business interest groups such as Naderite "public interest" groups, labor unions, and various "victims" groups.

Whether ignoring, responding defensively, or championing the latest environmental mantra, the result is the same. Business discredits itself by apologizing for doing business.

Capitalism wasn't needed to provide the royalty of Europe with silk stockings—they already had them. Rather, capitalism democratized those privileges, allowing the shop girls of England to similarly deck their equally lovely legs!

Business should express this when reaching out to Joan Citizen as well as to Joan Consumer. Most people don't care what you know, until they know you care. Businessmen must stop apologizing for wealth creation. In a world that is too poor, nothing is more moral. Stand strong and be proud. Businessmen of the world, unite; you have nothing to lose but your political chains!

This article was adapted from remarks given by Mr. Smith at the October 8, 2010, "Reviving Economic Freedom in America" Conference at the O'Neil Center for Global Markets and Freedom at Southern Methodist University in Dallas.

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Gas Prices, *continued from page 1*

uncertainty and economic distress that continues to prevent the creation of new jobs in a region that has unduly suffered from this administration's radical policies."

On the same day as Interior's anti-drilling announcement, the Environmental Protection Agency (EPA) went after America's refiners with a proposal to place limits on carbon-dioxide emissions from refineries. The details have yet to be determined, but the proposal almost certainly would increase the cost of turning oil into gasoline and thus raise retail prices.

It should be noted that these new measures do not explain the current spike to $3.00 per gallon, which appears to be the result of growing demand from a recovering global economy. But these and other anti-energy policies are likely to put more upward pressure on pump prices as they take effect in the years ahead.

Arctic Power, an organization funded by Alaska to promote its energy industry, was sharply critical of the polar bear decision as well as of other measures that have all but shut down oil exploration and drilling activities in the state. Adrian Herrera, head of Arctic Power's Washington office, describes such policies as "taking away the farmer's seeds" because today's exploration and drilling lead to tomorrow's production. Without new fields to replace the declining output from existing ones, future production will dwindle and prices will rise.

In sum, the Obama administration gave us a Thursday-before-Christmas present of lower future supplies and higher prices for oil and increased costs of refining that oil into gasoline. It did so at a time when pump prices have reached their highest level since Obama took office.

Last summer, during the height of the BP oil spill in the Gulf, a majority of the American people still supported expanded domestic drilling. Now that the spill is over (and wasn't nearly as bad as we were led to believe) and pump prices are reaching painful levels, that support is only likely to increase. It is little wonder the feds made the announcement when people were paying more attention to their holiday plans.

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A Spoonful of Sugar Will Soon Cost More

BY GREGORY CONKO AND HENRY I. MILLER

Despite many years of success with genetically modified plants, various environmentalists won't stop trying to obstruct biotech foodstuffs. First they tried to frighten consumers away from so-called "Frankenfoods." That hasn't worked, so now they're challenging the procedures which the government uses to approve genetically engineered crop varieties. Two recent lawsuits, involving alfalfa and sugar beets, illustrate the harm that this nuisance litigation can cause.

Federal agencies are required under the National Environmental Policy Act of 1970 to consider the effects that "major actions"—for instance, new regulations, the building of a highway with federal funds, or the approval of new agricultural technology—may have on the "human environment." If an agency concludes that the action will not have a significant impact, it will issue a relatively brief environmental assessment explaining the basis for its decision. If significant effects are likely, it must prepare a comprehensive Environmental Impact Statement that details every conceivable effect and requires thousands of bureaucrat-hours to prepare.

Thanks to previous prodding by environmentalists, courts have interpreted "human environment" to include not just tangible ecological harms to humans but also hypothetical impacts—economic, social, cultural, historic, or even aesthetic. Thus, if an agency fails to address some tangential or inconsequential issue, activists can take it to court, alleging that the environmental review was incomplete or its conclusions inadequately documented. That's what is now happening to the U.S. Department of Agriculture (USDA).

In 2005, the Department approved the sale and use of alfalfa and sugar beet seeds that have been genetically modified to be resistant to the herbicide glyphosate, the active ingredient in a product known as Roundup. In each case the approval was based on an environmental assessment. Similar biotech crops have been in use for 17 years with no hint of harm, but in 2006 and 2008 environmental organizations and organic farmers sued in federal court, demanding that the USDA prepare full environmental impact statements. These suits have been hugely disruptive for plant breeders, the seed industry, and especially farmers.

> ***"Because so many growers must now switch back to conventional seeds, there will be a shortfall for planting in 2011, and consumers will soon feel the pinch of sharply rising costs."***

Agriculture Department scientists evaluated data from hundreds of government-monitored field trials conducted over almost a decade, along with numerous other studies on the real-world effects of Roundup-resistant crops (marketed as "Roundup Ready"). The genetic trait introduced—resistance to the herbicide glyphosate—is harmless to humans and other animals. Several other Roundup Ready crop varieties such as corn and soybeans are already grown on more than 60 million acres each year in the U.S. alone. Thus the department concluded that an environmental assessment was all that was necessary.

Nevertheless, one federal judge revoked the department's approval of biotech alfalfa in February 2007, and another revoked the approval of biotech sugar beets this August, until the USDA prepared full-scale environmental impact statements.

Earlier this month the agency published its Environmental Impact Statement for alfalfa, and not surprisingly found no environmental harm.

Regulators have a few more hoops to jump through before they can reapprove the alfalfa variety—though probably not in time for the seeds to be planted in 2011. Fortunately, farmers who planted Roundup Ready alfalfa were permitted to continue growing and then harvest that initial crop, so the overall effect on them will be limited.

But the sugar-beet environmental impact statement could take a couple of years to complete, and growers (whose crop accounts for about half of the refined sugar consumed in the U.S.) are in a dire situation. An estimated 95 percent of the sugar beets grown in the U.S. are of the Roundup Ready variety.

Because so many growers must now switch back to conventional seeds, there will be a shortfall for planting in 2011, and consumers will soon feel the pinch of sharply rising costs. The wholesale commodity price of sugar shot up by 55 percent between August and November, largely as a result of the court's decision.

Ironically, seeds that are developed by conventional cross-breeding techniques are essentially exempt from regulation, even though the genetic changes introduced by this traditional practice are often numerous, complex, and poorly characterized. Only genetically engineered varieties, which are more precisely crafted and whose changes are more predictable, are subject to special scrutiny.

This illogical regulatory burden exists only because 25 years ago the Agriculture Department rejected the scientific community's consensus that no special regulations were needed for genetically engineered plants. Instead, it chose to require a mandatory pre-approval process, thereby spawning the "major actions" that trigger Environmental Impact Statements.

Lawsuits to obstruct demonstrably safe and ecologically beneficial technologies make a mockery of environmental law. The litigation and those responsible for it—not biotech crops—are the real nuisance.

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Not All Public-Private Partnerships...

...Are Created Equal

BY MARC SCRIBNER

In recent years, policy makers have taken to promoting public-private partnerships (PPPs) as somewhat of a silver bullet to various problems. They typically tout them as innovative improvements over the status quo, especially in the surface transportation and real estate sectors. Unfortunately, political opportunism has undermined the positive role that PPPs can play.

Successful PPPs are those in sectors previously dominated by government monopolies. Unsuccessful ones, on the other hand, are those that expand the role of government in the market.

Around the world over the past few decades, tens of billions of dollars have been spent on financing and managing infrastructure projects that were once the sole province of government. In America's surface transportation sector, turnpike management agreements between government and concessionaire firms, such as Australia's Transurban and Spain's Cintra, have saved taxpayers billions of dollars while improving infrastructure and service delivery.

In contrast, PPPs in the real estate sector have fared quite poorly. In northern New Jersey, the Meadowlands, a $2.3-billion megamall project previously known as Xanadu, was in part responsible for driving the original developer out of business. The project was recently foreclosed on by its senior lenders and now faces imminent collapse.

Across the state line in Brooklyn, N.Y., Atlantic Yards, a large, controversial, mixed-use development, is currently underway. The developer, Forest City Ratner, used the power of eminent domain granted by the local development agency, or the threat of it, extensively in order to assemble the parcels needed for the project. The city also offered Forest City Ratner hundreds of millions of dollars in tax breaks. Exposing taxpayers to additional risk is bad enough, but the sheer size of projects like these results in significant market distortions and wasted resources.

The real danger facing PPPs is expanding them to cover agreements beyond the financing and management of infrastructure projects that were previously—and often erroneously—conceived to be public goods. Form-based codes—particularly in the southeastern United States—have been gradually replacing exclusionary zoning regimes. Touted as improvements by many smart-growth developers, these are in reality far more dangerous. They tend to incentivize large-scale comprehensive redevelopment at the expense of dispersed, organic development. This opens doors for rent-seeking major developers like Forest City Ratner.

Urban renewal efforts in the 1950s and 1960s were disastrous, for both cities and for the people who live in them. Regulatory price controls on airlines, trucking, and freight rail drove prices higher, diminished mobility, and retarded industry innovation. Policy makers were guilty then of what Nobel laureate economist F.A. Hayek termed "the fatal conceit"—that they possessed information sufficient to design the world in which they wished to live.

In recent decades, American policy makers' post-war flirtation with grand central planning schemes has fallen out of favor, gradually being replaced by more market-oriented tools and concepts. Yet, while many planners now recognize the coordination problems inherent in attempting to direct entire industries, they still have yet to fully appreciate their own limitations when it comes to real estate.

In an open market, it would be practically impossible for the Meadowlands and Atlantic Yards scenarios to play out the way they did. It is important to remember that, absent government and interest group cheerleading, there is little evidence to suggest that either of these projects are meeting some sort of unmet consumer demand.

The risk of tarnishing public-private partnerships in the eyes of the public looms large. Policy makers should avoid injecting harmful political forces into competitive markets such as real estate development and appreciate the harm their well-intentioned meddling can cause.

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Six Painless Ways to Cut Federal Red Tape

BY WAYNE CREWS AND RYAN YOUNG

In this age of trillion-dollar budgets, deficits, and stimulus packages, taxes and spending get all the press. But while the $3.5-trillion federal budget and $1-trillion deficit are important, they don't tell the whole story of government's size and scope. To fill out the picture, we need to add another very important trillion: the $1.75-trillion cost of federal regulation.

President Barack Obama brought attention to that forgotten issue recently by signing an executive order, "Improving Regulation and Regulatory Review." It will initiate a "government-wide review of the rules already on the books to remove outdated regulations that stifle job creation and make our economy less competitive," he explained in *The Wall Street Journal*.

This is welcome news. But on closer inspection, Obama's reforms are left wanting. The growing federal regulatory burden is hampering economic recovery—and the executive order will do little to stem its growth.

Today, the Code of Federal Regulations is more than 157,000 pages long and growing. More than 4,200 new rules are in the pipeline right now. Of those, 224 are deemed "economically significant," which means they cost $100 million or more.

While Obama will require agencies to weigh both safety and economic costs in their rulemaking, that's already been the case for years—ever since President Bill Clinton's similar executive order—with little to show for it.

Meanwhile, from the health care bill to the Federal Communications Commission's push for net neutrality to the Environmental Protection Agency's carbon emission regulations, businesses in almost every sector of the economy will see their compliance burdens go up, not down. It's unlikely that the administration and Congress will put much effort into repealing these rules, considering how hard they worked to implement them in the first place.

What's more, executive orders lack the force of law. Agencies are not bound to obey them. Career bureaucrats have little incentive to repeal rules that justify their continued employment.

If President Obama's order does any good, it will be to get people talking about regulation. Reducing the cost of federal regulation by just 10 percent would put nearly $180 billion to more productive uses. In that spirit, we offer a number of suggestions for reform that will reduce the burden of obsolete or harmful rules:

- Appoint an annual bipartisan commission to comb through the books and suggest rules that deserve repeal. Congress would then vote up-or-down on the repeal package without amendment, to avoid back-room dealmaking.
- Require all new regulations to have built-in five-year sunset provisions. If Congress decides a rule is worth keeping, it can vote to extend it for another five years.
- Adopt Sen. Mark Warner's (D-Va.) "one in, one out" proposal, which holds that for every new rule that hits the books, an old one must be repealed.
- Let states take the lead, allowing 50 laboratories of democracy to continually discover more effective approaches through trial and error, subject to interstate competition.

Hold agencies to higher standards when it comes to quantifying regulatory costs. To the extent that agencies do calculate costs, they tend to lowball them while highballing benefits.

Keep small businesses better informed about new rules. Few have the money to pay staff in Washington to keep an eye on the *Federal Register*, so new rules often come as a surprise. Regulations hit small businesses especially hard. Businesses with fewer than 20 employees pay $10,585 per employee per year in compliance costs. Firms with over 500 employees pay $7,755 per employee per year.

President Obama's executive order will accomplish little, but he has performed an important public service by pushing regulation into the national conversation. The regulatory status quo is too expensive and is slowing economic recovery. Many reforms would do much good with a minimum of political pain. The ones listed above would make for a good start.

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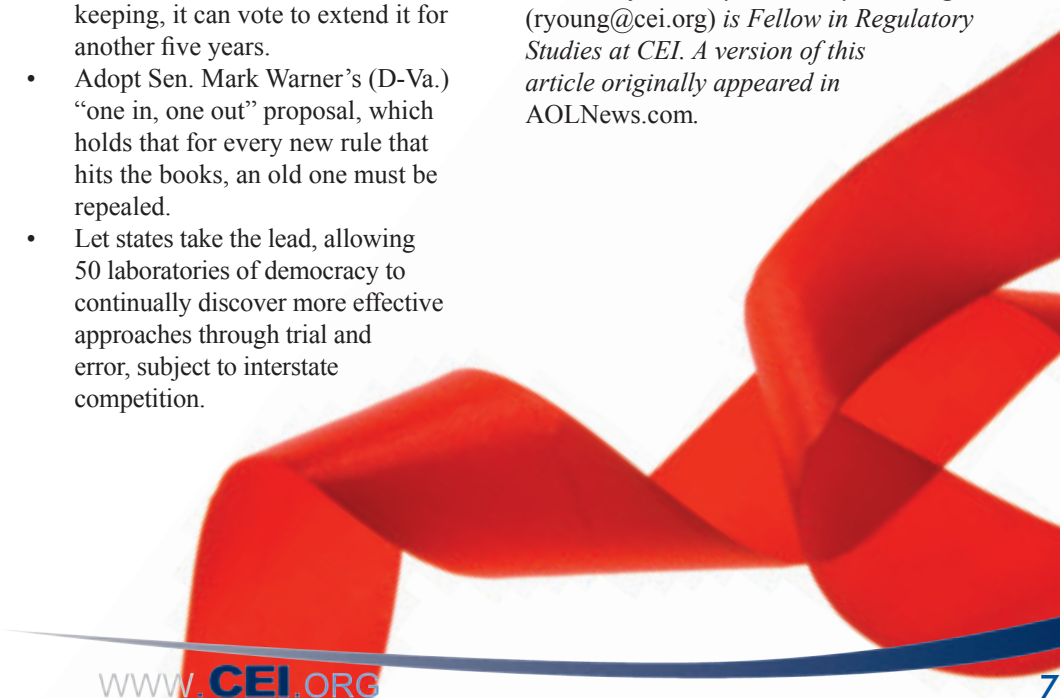

Choosing the Right State Insurance Commissioner Matters

BY MICHELLE MINTON

"And what manner of man dares to assume the post of insurance commissioner?" *LA Weekly* columnist Hillel Aron asked recently. It is an important question to consider. Early next year, 29 new governors will take office. Twenty-five of them have the authority—in some cases shared with other executive branch officials—to appoint insurance commissioners.

These new insurance commissioners can have a profound effect on the regulation of insurance and on their states' economic environment, because the ready availability of reasonably priced insurance is vital to a prosperous economy. Therefore, it is crucial for the new governors to determine how to appoint commissioners who are willing and able to enact policies that promote long-term economic development and consumer choice.

The incoming state insurance commissioners have an opportunity to encourage the development of a vibrant insurance market in which companies are allowed, but not guaranteed, to earn a profit—a market in which insurers are able to charge premiums that are sufficient to cover the risks they assume. This market will attract new entrants, increasing the competition that provides the best insurance protection for consumers.

To that end, insurance commissioners need to be able to understand the often complex issues they face, and have the people skills to work within the department, with other state and federal agencies, and with the private and non-profit sectors.

The regulatory responsibilities of the typical insurance commissioner are vast and involve a complex industry. The average state insurance code covers hundreds of pages, and is usually accompanied by myriad administrative rules. The number of insurance department employees ranges from a few score in smaller states to a thousand or more in large states.

Overregulation can pose a significant threat to a thriving insurance market. Politicians and the bureaucrats they appoint want to please constituents and lower their costs in the short term. However, overregulation of insurance—such as maximum premium rates or restrictions on the way insurers price policies—can result in higher premiums, less availability of insurance, or both.

The principal social benefit of insurance is the reduction of aggregate uncertainty. Policyholders pay premiums that are small relative to the pure risk—chance of loss—they transfer to insurers. If this benefit is missing or too small, entrepreneurs will reduce or avoid investing. Instead, they will hoard money in reserve in order to cover their potential losses from things like fire, liability, and employee injuries, for which insurance is not available, leaving less money for investing and hiring.

Those entrepreneurs will have to pay higher premiums, with resulting lower investments if poor regulation has driven rates too high. At the same time, consumers will have to allocate more expenditures to auto and home insurance, and fewer to the products of the entrepreneurs.

A new commissioner may see overregulation all around him, but he must enforce the law as it exists. He can exercise discretion where permissible, but many of his reform goals will require new legislation. Thus, experience in dealing with legislators is crucial.

A new insurance commissioner will need a sound insurance background, in order to make headway against the pleadings of entrenched regulatory agency bureaucrats, insurance company lobbyists, trial lawyers, and self-styled consumer advocates.

Many insurance department staffers tend to see regulation as a good thing. Therefore, the new state insurance commissioners will need to be most diligent within their own departments. New commissioners must be able to see the biases and the errors in the positions of their staff. They also must be willing to stand against them, while still retaining their cooperation in carrying out extensive statutory duties. If they lack insurance knowledge, their staff may overwhelm them.

This insurance background may come from legal, academic, regulatory, or insurance company experience, as well as from agency training.

Legislative experience and insurance knowledge also help to deal with influential organizations, such as the National Conference of Insurance Legislators, which often affects policies adopted at the state level.

Insurance knowledge is also essential for a commissioner to take part in the activities, and to influence the direction, of the National Association of Insurance Commissioners (NAIC), a valuable instrument in pooling technical regulatory expertise, that occasionally ventures into policy areas that may intrude on state regulatory preferences.

A competitive market needs protection against the use of force and fraud. It does not need experts to determine consumers' needs and preferences and to direct companies on how to meet those needs. Instead, regulators should focus their attention on areas in which consumer knowledge is insufficient, such as the financial condition of licensed insurers.

The challenge of finding state insurance commissioners committed to reform may be great, but this year presents many very good opportunities. The new governors should make the most of them.

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PROFILES IN PRO-FREEDOM ACTIVISM

BUREAU CRASH

In August 2010, Bureaucrash welcomed a new helmsman, Grant Babcock. Grant interned with Bureaucrash in the summer of 2009 and is glad to be back with Bureaucrash and CEI. Before his recent return, Grant was President of the University of Pittsburgh College Libertarians while he finished his undergraduate study—an experience that puts him in touch with the needs of student activists.

Bureaucrash has launched a video series that shines a spotlight on the best new projects in liberty activism. The series seeks to help activists learn from their peers how the events were planned and executed by hearing about the details firsthand.

The series is called "Profiles in Activism." The videos range from five to 15 minutes and include footage from videoconference interviews between Bureaucrash and the activists. These interview clips are interspersed with event photos and helpful narrations and commentaries aimed at showing how the experiences of the interviewee could be applied to another activist's goals and situation.

The series' design is consistent with Bureaucrash's larger approach to managing student activism. The limitations of a command-and-control approach are well known to liberty lovers. Instead, Bureaucrash focuses on cultivating horizontal integration among activists.

The first installment features Michelle Fields of Pepperdine University, who created a "free speech wall" on her campus in celebration of the First Amendment. Michelle's project garnered a lot of attention on campus with a relatively minor investment of time and resources.

The second features Casey Given of the University of California-Berkeley, who held a "4-20" rally against marijuana prohibition. Casey did a great job navigating the school's bureaucracy and involving other student groups and community members.

The forthcoming third installment will feature Mike Philips of the University of Wisconsin, whose group won Young Americans for Liberty's Constitution Day contest for the group's recruitment efforts. Mike's group developed excellent recruiting tactics, using techniques that are easy to replicate on any campus.

Grant Babcock, Bureaucrash Activism Coordinator

Students for Liberty Vice President Clark Ruper calls the videos "very valuable." The project was well received when presented to this winter's Student Outreach Summit, which was attended by leaders from D.C.-based pro-liberty activist groups. Grant is excited about the projects and hopes to compile a DVD for direct distribution to activists once more interviews have been completed.

All of the interviews are available on Bureaucrash's YouTube page, **www.YouTube.com/Bureaucrash**.

Take a look to see what university liberty activists are up to, and please share the videos with any student activist you think would be interested.

THE GOOD

Fiscal Discipline Prevails in Wisconsin and Ohio

Transportation Secretary Ray LaHood announced in early December that the Obama administration was pulling $1.2 billion in American Recovery and Reinvestment Act funds out of Wisconsin and Ohio rail projects. The money was redirected to other states that plan, at least at present, to continue building expensive, unpopular passenger rail lines. This move was largely in response to the thoughtful skepticism on the part of newly elected Governors John Kasich of Ohio and Scott Walker of Wisconsin. CEI experts have long noted that if there is a role for passenger rail in the 21st century, the private sector should take the lead in financing and building these projects. "Unfortunately, not only will the current lines proposed by the Obama administration depend on indefinite taxpayer support, most have been mislabeled as 'high-speed' when they are in fact little different than conventional American passenger rail," stated Marc Scribner, CEI land-use and transportation policy analyst.

THE BAD

Fed's Interchange Price Controls Will Harm Consumers and Innovation

On December 16, the Federal Reserve released draft rules to implement Dodd-Frank's Durbin Amendment, which places price controls on what banks and credit unions can charge retailers for interchange fees to process debit card transactions. CEI Director of the Center for Investors and Entrepreneurs John Berlau notes that the law encourages price controls that are below-cost, and merchants' trade associations are arguing that interchange fees they pay should be "at par" or zero. "Consumers have already seen the costs of this rule through the loss of free checking as a result of banks' anticipation of an estimated 60- to 80- percent loss of revenue from merchant fees," stated Berlau. "Moreover, the price controls and other provisions of the Durbin Amendment will likely reduce investment and innovation to counter emerging hacking and security threats to the payment system."

THE UGLY

EPA Ratchets Up Campaign to Destroy Jobs

CEI sharply criticized the Environmental Protection Agency's January 14 decision to revoke a Clean Water Act permit of an existing surface coal mine in Logan County, West Virginia, as an abuse of power that will drive away investment in future energy projects and destroy jobs. "The EPA's rationale for revoking the Clean Water Act permit for the Spruce Fork Mine is to protect an insect that lives for a day, and which isn't even an endangered species," explained William Yeatman, assistant director of CEI's Center for Energy and Environment. "In order to crack down on the Spruce Fork Mine, the EPA had to manufacture a new 'pollutant'—salinity. The problem is that any surface disturbance can increase salinity in nearby streams. As a result, environmental pressure groups and NIMBY activists have a powerful new weapon with which they can stifle job creation."

MediaMENTIONS

Compiled by Lee Doren

Associate Director of Technology Studies Ryan Radia explains why you should always encrypt your smartphone:

In 1973, the United States Supreme Court held in *US v. Robinson* that warrantless searches of arrestees' persons are presumptively reasonable and require "no additional justification" to be lawful. In 1974, the Court further held in *US v. Edwards* that objects found in an arrestee's "immediate possession" may be subject to delayed warrantless search at any time proximate to the arrest—even absent exigent circumstances.

In 1977, the Supreme Court clarified the search incident to arrest exception in *US v. Chadwick*, holding that the warrantless search of a footlocker found in the possession of criminal suspects violated the Fourth Amendment because the search took place after the suspects had been put into custody and the footlocker had been secured by police. In *Chadwick*, the Court held that while warrantless searches of objects found on arrestees' persons are presumptively lawful due to the "reduced expectations of privacy caused by the arrest," closed containers that are not "immediately associated with" arrestees' persons are not subject to a delayed warrantless search, barring exigent circumstances.

Based on these precedents, California's Supreme Court held in *Diaz* that mobile phones found on arrestees' persons may be searched without a warrant, even where there is no risk of the suspect destroying evidence. Therefore, under *Diaz,* if you're arrested while carrying a mobile phone on your person, police are free to rifle through your text messages, images, and any other files stored locally on your phone. Any incriminating evidence found on your phone can be used against you in court.

–January 17, *Ars Technica*

Director of the Center for Investors and Entrepreneurs John Berlau argues that Massachusetts is pushing a paternalistic rationale for its latest infringement on free speech:

In 2007, Massachusetts Secretary of the Commonwealth William Galvin sanctioned the hedge fund Bulldog Investors for making an illegal public "offering" under the state's securities laws. Under state (and federal) law, alternative investment vehicles such as hedge funds can generally offer their securities only to "accredited investors" who meet certain financial conditions such as having $1 million or more in net worth.

Massachusetts doesn't contend that Bulldog signed up any investor who didn't meet the law's definition of "accredited investor." Rather, it charges that Bulldog's "offering"—in the form of a website with information about the fund's performance and philosophy—"fail[ed] to properly restrict access by prospective investors."

The Bay State is not contending that any information on Bulldog's website was false or misleading. Instead, in echoes of the state's puritanical censors of the past, officials are trying to suppress truthful information because it "arouses" the public. The website, they say, "even though not couched in terms of a direct offer," may still "condition the public mind or arouse public interest in the particular securities."

–January 6, *The Wall Street Journal*

Senior Fellow Gregory Conko and Adjunct Fellow Henry I. Miller call for the dismissal of Agriculture Secretary Tom Vilsack:

Something is very wrong at the U.S. Department of Agriculture. The secretary, Tom Vilsack, is letting hypothetical claims by organic farmers—who produce less than 1 percent of the nation's farming output—cripple an important and environmentally beneficial technology, the genetic engineering of crop plants.

In December Vilsack announced that the USDA is considering geographic restrictions, as well as minimum separation distances from other crops, on the cultivation of genetically engineered alfalfa. This not only represents a reversal of previous policies; it also signals an abandonment of any claim to a scientific underpinning of regulation. Worse, it is a threat to an entire critical sector of American agriculture. Vilsack wants to let the organic tail wag the biotech dog.

–January 5, *Forbes*

Vice President for Strategy Iain Murray discusses TSA policy and pat downs:

John Pistole, the head of the Transportation Security Administration, recently told *The Atlantic* in an interview that "we'll never eliminate risk" of terrorist attacks on aviation.

He's right, which is why the TSA's policy of treating everyone as an equal risk is so misguided. It has led to the outrages of the past few weeks and the public backlash against the TSA. We need to scuttle the TSA's equal-risk policy in favor of one that concentrates on genuine potential risks.

–December 28, *Boston Herald*

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...END NOTES

KKK and Nazi Comparisons are the New Civility

On January 11, Rep. Steve Cohen (D-Tenn.), in an op-ed in *Roll Call*, condemned the "violent" political discourse in America and called on Americans to tone down their rhetoric. Cohen argued that metaphors used by politicians and talking heads somehow contributed to the shootings in Tucson, Arizona. "Reckless and hateful speech often has a terrible human cost," wrote Cohen. "If the horrific events in Arizona are not enough to modulate our public discourse, it is likely there will be more violence, more deaths." This is the same Rep. Cohen who compared Tea Partiers to Ku Klux Klan members during an April 2010 radio interview. But perhaps, some thought, Cohen has changed since then. Not quite. On January 18, Cohen took to the House floor in order to denounce those who claimed Obamacare was a government takeover of health care, comparing them to Nazi Propaganda Minister Joseph Goebbels. He said, "The Germans said enough about the Jews and people believed it—believed it and you have the Holocaust."

Maple Branding Keeps Vermonters Awake at Night

Food nannies in Vermont can chalk up another victory. In early January, officials at the Vermont Agency of Agriculture (VAA) contacted McDonald's over a violation of the state's "maple law." Apparently in Vermont, they take maple trees and maple syrup very seriously. McDonald's had been using maple flavoring in its Fruit and Maple Oatmeal, yet the state requires that any product using the word "maple" contain 100 percent maple sweetener. McDonald's and the state reached an agreement, and now McDonald's customers will be able to request authentic maple syrup to go with their oatmeal.

As bizarre as this sounds, it is not the first time Vermont's maple syrup cartel struck out at "deceptive" maple advertising. In September, Log Cabin syrup announced it was removing the product's caramel coloring after state politicians demanded that the FDA investigate the company's "natural" claim.

What's the Matter with Kansas?

Karla O'Malley of Overland Park, Kansas, stopped to comfort an Arkansas teenager who had been involved in a car accident. Upon learning of the boy's death, she was shocked to see degrading, mean-spirited comments posted on a memorial website. Consequently, O'Malley has been lobbying for federal legislation that would outlaw speech "with the intent to hurt or create a hostile environment." Her draft calls for "customary standards" to establish which speech is hurtful or hostile. Her congressman, Kevin Yoder (R), is currently looking into the issue. First Amendment attorneys from across the ideological spectrum are confident the draft bill would fail to survive a legal challenge were it to become law.

Lack of Self-Control a Preexisting Condition?

Dubbed by the U.K. media as "Britain's Fattest Man," Paul Mason announced his intent to file a lawsuit against the British government's National Health Service, claiming it did nothing to stop "letting me grow." He once weighed more than 900 lbs., but had gastric bypass surgery last year and now weighs approximately 520 lbs. According to conservative estimates, British taxpayers have spent $2 million caring for Mason over the past decade and a half. "I want to set a precedent so no one else has to get to the same size—and to put something back into society," Mason told *The Sun*.