



Message from the President: The Future of CEI



As most of you know, I founded the Competitive Enterprise Institute in 1984 and have been President for almost 30 years now. My goal has always been to find a more positive answer to the challenge Joseph Schumpeter laid down in his essay, “Can Capitalism Survive?” CEI’s core mission was—and is—to find ways to advance economic liberty, to ensure that capitalism will survive.

While I plan to never retire from this fight, I have decided to begin the formal search for a successor. I love this work and remain healthy (save my knees). However, I want to ensure that CEI’s work continues well beyond my tenure.

Of course, heading CEI is hardly an ordinary job.

*Free Market Think Tank
President wanted: Long hours;
Low pay; Enthusiasm for
challenging statistics; Stubborn
refusal to appease; In-depth
knowledge of our political*

economy and ability to apply its insights to current and emerging issues; Demonstrated ability to herd a creative but diverse band of CEI cats; Ability to play a leadership role in the broader free market movement; and, most essentially, Capacity to expand the logistical support needed for CEI to grow and thrive.

Let me outline the succession plan, the role that CEI has played—and will continue to play—in the freedom movement, and finally, my post-presidency plans.

THE SUCCESSION PLAN

Over the past year, I have interviewed leaders of policy groups that have gone through, or are anticipating, succession in the near term. I also have reviewed the literature on corporate transitions. I quickly realized that there are no road maps in this process. Each organization must tailor its plan to meet its specific needs. CEI, I believe, has paved a good path toward that goal.

We have enlisted the help of Claire Kittle, Executive Director of Talent Market,

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YOUNG: NO TO BROCCOLI MANDATE, YES TO HEALTH INSURANCE MANDATE?



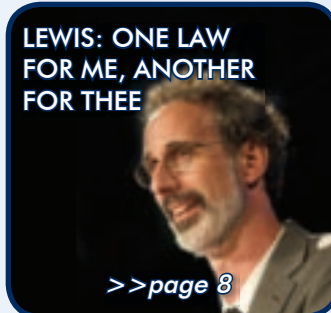
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Civil Rights or Dues: The Truth Behind the UAW Protests of H.B. 56

BY F. VINCENT VERNUCCIO AND ALEX NOWRASTEH

In March, the United Auto Workers (UAW) bussed out-of-state activists into Alabama to protest what they describe as several car companies' insufficiently strong opposition to the state's new anti-immigration law (H.B. 56). The UAW is using H.B. 56 as a political club to force foreign car manufacturers to take away the secret ballot.

UAW President Bob King wrote in *The Detroit News* that his union was "marching for justice and calling on Alabama businesses and major foreign investors—such as Daimler, Hyundai and Honda—to support repeal of H.B. 56."

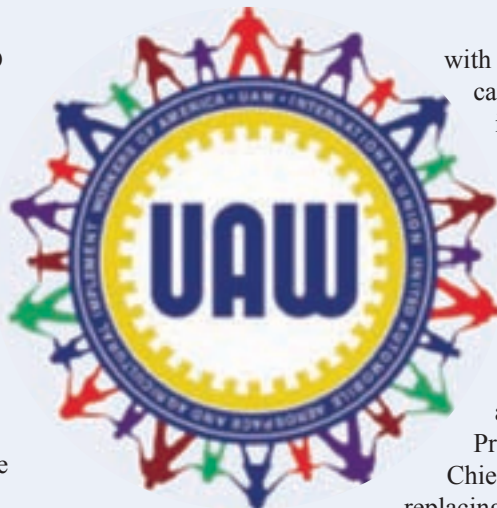
Besides being underhanded, there is a lot of irony in the UAW's campaign. First, while King talks about "justice," his union is trying to take a fundamental right away from Alabama workers: the secret ballot. King is targeting these companies because the UAW has been unable to organize workers at their plants through the normal secret ballot process.

Second, the UAW is trying to pin blame for H.B. 56 on companies that had nothing to do with its passage. The UAW claims it is targeting a law hostile to foreigners by going after some foreign car companies that never even supported H.B. 56.

Third, the UAW is blaming the victim. Daimler and Honda executives have been detained or ticketed under the law's enforcement provisions. Last November, a German Mercedes-Benz executive visiting the automaker's plant in Tuscaloosa was arrested by police for failing to have proper identification during a traffic stop. Only 12 days later, a Honda executive—one of roughly 100 Japanese managers and executives in Alabama at any given time—was ticketed for running afoul of H.B. 56.

Last year the UAW launched a sophisticated public relations campaign to tarnish foreign-owned car companies to pressure them into unionizing.

Attacking H.B. 56 is just camouflaging the UAW's own effort to deprive American workers of the secret ballot. The UAW is coordinating this attack strategy



with allied organizations in order to camouflage its self-interest. (This is why UAW is teaming up with groups such as the Center for Community Change, the Center for American Progress, NAACP, and the Southern Poverty Law Center.)

As part of its public relations campaign (known as a corporate campaign) against the automakers, UAW unveiled its Principles for Fair Union Elections.

Chief among the Principles is replacing the secret ballot in unionization elections with a process known as card check, whereby union organizers collect employee signatures on union cards out in the open, thus exposing workers to strong-arm tactics and intimidation.

Companies that seek to protect their workers' privacy by refusing to agree to the Principles become targets of the UAW's attacks. Last year, King said that if a company resists his union's organizing efforts, the UAW "will launch a global campaign to brand that company a human rights violator." Now the UAW is expanding its attacks to brand companies as civil rights violators, including those that did not openly oppose H.B. 56.

If the UAW seems desperate in its tactics, that is because it is. The union's total membership has dropped to 377,000, down from a high of about 1.5 million in 1979. Since 2004, its membership has precipitously declined by 42 percent. As King himself has bluntly stated, "If we don't organize these transnationals, I don't think there's a long-term future for the UAW—I really don't."

The UAW's real goal is to add more dues-paying members to their ranks. For this, it is cynically using H.B. 56 as a weapon in its assault on the car companies it is targeting. Alabamans—and the nation's car buyers—should not fall for such a transparent ploy.

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**CEI
PLANET**

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The CEI Planet is produced by the Competitive Enterprise Institute, a pro-market public interest group dedicated to free enterprise and limited government.

CEI is a non-partisan, non-profit organization incorporated in the District of Columbia and is classified by the IRS as a 501 (c)(3) charity. CEI relies upon contributions from foundations, corporations and individuals for its support. Articles may be reprinted provided they are attributed to CEI.

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ISSN#: 1086-3036

The Future of CEI, *continued from page 1*

who specializes in executive searches within the free market movement. Our Executive Search Committee comprises a handful of current and former CEI staff members and a few noteworthy other friends who are dedicated to advancing our mission. This group will help us vet candidates before we turn to CEI’s Board of Directors, who will choose among the finalists.

Once the Board selects a candidate, that person and I will work in tandem for a transitional period, acquainting him or her with CEI’s operations and meeting with many of you to outline our plans and to seek your input on future priorities and opportunities.

After the transition, in order to allow the new President to fully assume the leadership role, I plan a six-month national and international outreach venture, to explore ways of expanding the global free market alliance and moving it in a more activist direction. Following that, I look forward to returning to celebrate CEI’s 30th anniversary in 2014 as the Director of CEI’s Center for Advancing Capitalism, a new role that will give me an opportunity to pursue my current policy interests.

CEI’S ROLE AND HISTORY

A successful candidate will need to understand and embrace CEI’s unique market niche. I founded CEI to address what I saw as an unexplored opportunity. My prior coalition work alongside environmental groups gave me an appreciation for their ability to move policy ideas into reality. That ability, I came to believe, stems to a large extent from the way organizations on the left are structured.

Most left-of-center groups were organized vertically around a core set of issues. Most right-of-center groups, on the other hand, specialized in one task level—scholarly research, grassroots activism, or litigation, for example—while leaving other tasks to different groups. We had excellent think tanks, as well as media, litigation, and advocacy groups, but no “full service” operation combining all skill sets under one roof. That vertical

issue management approach became CEI’s *modus operandi*.

In the 28 years since CEI’s founding, I believe we’ve filled an important niche with our vertically integrated approach and our focus on regulation. Our regulatory state is the keystone achievement of the Progressives, who vigorously promoted policies based on their belief that we could depoliticize politics by using “experts” freed from constitutional accountability to better advance the public good. Today’s regulatory leviathan is the result. CEI’s fight to bring transparency and accountability to this process has become increasingly critical, as federal and state bureaucracies have grown ever larger.

We both plan strategically for long battles and strike at tactical targets of opportunity. For issues that are “frozen”—where prospects for reform are slight and the road ahead difficult—we lay the groundwork by developing the intellectual ammunition for the fight ahead. When an issue becomes “fluid,” we move quickly to enter the fray—to deploy that intellectual ammunition on the battlefield.

MY POST-SUCCESSION ROLE AS DIRECTOR OF THE CENTER FOR ADVANCING CAPITALISM

For all the progress we’ve made, we still have a lot of work to do. Left-liberals continue to market their bad ideas better than we market our good ones. We have too few strategic allies in the business world. And, even as free market policy organizations proliferate in America, statist advocates around the world operate almost unchallenged. Thus, just as I sought to advance neglected opportunities with the formation of CEI, I will work on these challenges post-succession as Director of CEI’s Center for Advancing Capitalism.

The goals of the Center for Advancing Capitalism are based on my evaluation of how to counter the threats to economic liberty foreseen by Schumpeter. His analysis presumed that intellectuals would find statism in their class interest, while business leaders would fail to adequately defend themselves. These claims have proven largely true. However, Schumpeter failed to realize that some intellectuals

would resist that statist virus. This immune group now constitutes a healthy—even if still small—movement.

But free market policy organizations need business allies, and the assault on entrepreneurial America gives us ever greater opportunities to enlist them. My goal is to help create an effective counterreformation force to balance the now-dominant statist alliance of rent-seeking economic groups, power-grabbing politicians, and anti-business ideologues.

A second focus of the Center for Advancing Capitalism will be to explore creative ways of communicating the virtues and the values of markets, capitalism, and entrepreneurship—a critical step to legitimize economic liberty. Capitalism has made the world freer, safer, and fairer. Communicating this clearly to liberals and conservatives will be our goal.

My first effort to advance these goals post-succession will be a series of short-term “residencies” at allied policy groups. I hope to identify a cadre of policy leaders, entrepreneurial businessmen, and politicians who can form the core of a global activist movement to implement economic liberal reforms. That work will continue when I return to CEI.

We all wish we could find a silver bullet that could vanquish Leviathan forever, but that happy prospect is not imminent. CEI’s activist policy orientation remains highly relevant and as important now as the day I founded the organization. I am confident that our Search Committee and Board of Directors will find a strong, principled, and respected President to lead the organization in its mission to promote a freer, more prosperous world.

I want to thank you for being a loyal supporter and ally of CEI’s work and of our movement. Now, more than ever, I hope we can count on you to continue your support as we prepare for a new era.

Sincerely,



Fred L. Smith, Jr.



Chemical Law Is Not Broken, Doesn't Need To Be "Fixed"

BY ANGELA LOGOMASINI

Environmental activists and some industry groups seem to agree that the nation's chemical law is broken. Their drumbeat calling for "modernization" of the Toxic Substances Control Act (TSCA), follows band leader Sen. Frank Lautenberg (D-N.J.), who proposed "repairs" in the form of the so-called Safe Chemicals Act (S. 846). But as the beat grows louder, the underlying premises continue to be wrong.

The Big Greens' main premise is that TSCA's risk standard is too weak. Yet TSCA's risk standard protects consumers from ill-conceived regulations that could harm public health and well-being.

Here's how it works. The EPA may regulate an existing chemical (the agency has stricter rules for "new" chemicals) when it finds that the chemical may pose an "unreasonable risk of injury to health or the environment."

This standard involves weighing the risks of the chemical against the risks of the regulatory action. That sounds like a good idea. After all doesn't it make sense to demand that regulations don't do more harm than good?

Still, activists at SaferChemicals.org complain that TSCA's risk standard "prevented the EPA from restricting asbestos, a known human carcinogen." They fail to note that a federal court struck the standard down in 1991 because it could have killed people.

The court explained: "EPA failed to study the effect of non-asbestos brakes on automotive safety, despite credible evidence that non-asbestos brakes could increase significantly the number of highway fatalities, and that the EPA failed to evaluate the toxicity of likely brake substitutes... substitute products actually might increase fatalities."

In fact the risks of the asbestos products currently on the market are very low. The EPA attempted to ban chrysotile asbestos fibers. These fibers are enclosed inside products—preventing consumer exposure.

Chrysotile fibers also present relatively low risks to workers exposed to higher levels. Numerous studies on workers exposed to chrysotile asbestos in friction-control industries—such as workers for brake manufacturers and automotive brake repair workers—failed to detect significant cancer risks. Of course, protective work practices remain important in preventing any dangerous exposure levels.

Amphibole fibers, on the other hand, are a more serious concern because they are long, thin and easily embed in human tissue and persist for a long time. But they were not in the products the EPA wanted to regulate. Nonetheless, Big Green advocates want TSCA reform to allow bans on chrysotile asbestos—never mind how many people might die as a result.

Some industry players join them in making the next faulty premise, which is the claim that TSCA's data collection mandates are insufficient. Supposedly, the EPA could better understand risks if it forced industry to submit reams of data on every chemical in commerce. But under the current law, the agency has collected data on thousands of "new" chemicals, issuing thousands of rules and consent decrees that regulate uses.

Despite claims to the contrary, the EPA also has some very clear options for collecting data on chemicals that have been used for decades in commerce.

And finally, the agency has collected data on thousands of chemicals under voluntary agreements with industry.

The Big Greens would rather have it all: mandating a massive data dump and forcing industry to reveal confidential

business secrets in the process.

This is not only a way to discourage innovation; it's a waste of time and money. Such data collection efforts should be strategic and thus targeted toward likely risks, which is what TSCA's existing legislative language requires.

That brings us to yet another wrongheaded idea—the suggestion that a "stronger" law will better protect public health. Human exposure to the trace chemicals TSCA regulates is simply too low to matter.

The best research indicates that most cancers—the main concern about chemicals—result from lifestyle choices, such as overeating, poor dietary choices, and smoking. There is little evidence of any cancers from trace chemicals used in consumer products. If environmental activists are truly concerned about cancer risks, they should focus on educating consumers about making better choices.

Berkeley scientists Bruce Ames and Lois Swirsky Gold underscore the importance of a good diet, for example, by pointing out that the quarter of the population eating the fewest fruits and vegetables had double the cancer incidence than those eating the most. They explain: "There is no convincing evidence that synthetic chemical pollutants are important as a cause of human cancer."

Still, the beat goes on. Should it conclude with a "modernized" law, we can be sure that we will have more bureaucracy, less innovation, and a potentially more dangerous world as the EPA begins banning valuable products.

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No to *Broccoli* Mandate, Yes to Health Insurance Mandate?

BY RYAN YOUNG

The results of a Reason-Rupe poll that was released in March are more interesting than the pollsters may have intended. Two of the questions they asked rely on the same basic principle: whether or not the government should be able to force you to purchase a certain product. The answers were wildly different.

In one question, the mandatory product was broccoli. Eighty-seven percent of respondents said this would be unconstitutional, 8 percent said it would be constitutional, and 5 percent did not know.

In the other question, the mandatory product was health insurance. Sixty-two percent said this would be unconstitutional, 30 percent said it would be constitutional, and 8 percent did not know.

That is a 25-percent difference in how many people thought the different product mandates were unconstitutional, even though the principle at hand—the power to mandate—is exactly the same.

There are many ways to interpret this. One is that a lot of the respondents have better things to do with their lives than study public policy, so they simply aren't aware of the basic principle at hand. Most people prefer to spend their time on their careers, kids, hobbies, you name it. Economists call this rational ignorance. People aren't stupid about politics because they're stupid, they're stupid about politics because they're smart. People know how to prioritize their time.

Two other factors are what psychologists call priming, and the ugly reality of political partisanship. The health insurance mandate is at the heart of a headline-dominating Supreme Court case, while the broccoli mandate is pure speculation. Insurance is on the brain, and a certain delicious vegetable is not. Or in psychology lingo, health insurance is primed. Broccoli is not.

That should explain some of the difference. But it does not explain the direction of the difference. Even people who are rationally ignorant have probably heard about the health insurance mandate debate on television or the Internet. It is everywhere, so most people have formed some opinion on it. But opinion-forming takes time and effort. It is a lot easier to just take the same position as one's preferred political party.

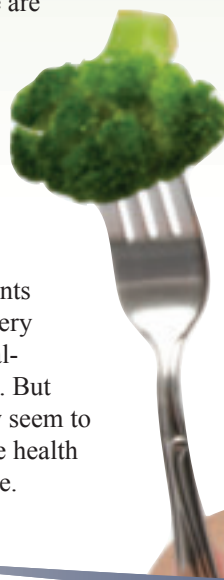
That would explain why the 25-point swing favors the health insurance mandate being constitutional, instead of moving more against it. The Red Team opposes it, so its partisans mostly remain against it. The Blue Team favors it, so most of their partisans will change their broccoli mandate-no vote to health insurance mandate-yes. For partisans on both sides, this mental shortcut sure beats thinking about it.

But the GOP—thankfully—commands far less than 62 percent of the vote. Only 28 percent of the Reason-Rupe poll respondents self-identified as Republicans. That leaves independents, who made up 37 percent of respondents, to make up most of the gap. They are a fairly heterogeneous bunch. Some are libertarians, some are centrists. Others are so far to the right or the left that they outflank their natural party, and reject it. In other words, independents occupy almost every point of the liberal-illiberal spectrum. But by and large, they seem to be skeptical of the health insurance mandate.

Public opinion has precisely nothing to do with whether a policy is a good idea or not; anyone who thinks otherwise would do well to read Shirley Jackson's famous short story, "The Lottery." But since I do not believe that government should have the power to mandate that people buy certain products—think of the lobbying and rent-seeking by companies that stand to benefit!—it is heartening that the majority of Americans think the same way as I do about broccoli. And, to a lesser extent, health insurance.

More importantly, we will soon find out how the Supreme Court polls on the broccoli mandate issue. Sorry, health insurance mandate. Same principle.

Ryan Young (ryoung@cei.org) is a Fellow in Regulatory Studies in CEI's Center for Technology and Innovation. A version of this article originally appeared in The Daily Caller.



New IRS Rule Benefits Only Foreign Dictators



BY IAIN MURRAY

Since when is it the U.S. government's job to report on the financial activities of foreign nationals to their home governments? It is now. The IRS has rolled out a new rule that will force deposit institutions, such as banks and credit unions, to report how much interest nonresident aliens have earned on their U.S.-held accounts to the IRS, who will then report it to their home country governments.

The rule isn't tailored to accommodate special circumstances, which means U.S. banks might be forced to report the earnings of foreign dissidents made in the U.S. to their home regime. The IRS and the rule's supporters say this fear is baseless. But even if it were tailored to prevent disclosures to certain "unfriendly" regimes, it's worth remembering how quickly friends become adversaries. Libya's Muammar Gaddafi went from friend to foe almost overnight. If the rule had been in place a few years ago, Syria's Bashar

The IRS wants to discourage foreigners from investing in the American economy by imposing extra costs on the fragile banking system, to the benefit of no one—except dictators.

Assad might now have a wealth of data about his opponents' finances.

Why is the U.S. government subsidizing the tax collection efforts of foreign regimes? Because the U.S. wants other governments to do the same for it. The IRS taxes Americans globally, and through the Foreign Account Tax Compliance Act (FATCA) of 2010, wants to require any transnational financial companies to report account information on U.S. clients. The IRS claims that it's only fair to require U.S.

banks to fulfill a similar requirement.

But the FATCA is already an extraterritorial power grab of doubtful legitimacy. In December 2011, the United States led the charge at the United Nations against the attempt by Eritrea to impose a diaspora tax on its citizens abroad. The Security Council resolution was passed on the grounds that it violated human rights. The U.S. has not imposed a diaspora tax on its citizens. They are free to leave the country as they wish—unless they happen to earn more than \$9,350 abroad, at which point they are subject to significant punishment from the IRS for failing to file a tax return.

The FATCA was passed and new IRS regulations were proposed with hardly any foreign consultation. Foreign governments are furious, and for good reason. The head of Canada's banking association has said the FATCA is "conscripting financial institutions around the world to be arms of U.S. tax authorities." Implementing the law would even violate privacy laws in places such as Singapore and Hong Kong. Nonetheless, the IRS wants to impose a 30 percent tax on any U.S.

assets held by firms that fail to comply. It's hard to think of a better way to scare foreign investment away from our shores.

The IRS doesn't tax foreigners' interest on U.S. deposits, but this new reporting rule would actually be worse than if it did. Conservative estimates of a previous version of the rule, which affected just 15 countries, found that it will suck at least \$87 billion out of the economy. This is because foreigners often invest in the U.S. because their money is protected from their home government. Consider that as much as one third of all bank deposits in Florida are owned by foreigners, which might be surprising until you look immediately south, to Cuba, Venezuela, and beyond. Many Florida banks could go under if this rule goes ahead.

These costs are also a problem for the IRS. Executive Order 12866 requires that any regulation with "an annual effect on the economy of \$100 million or more" to be subject to a cost-benefit analysis. Yet the IRS hasn't performed any such analysis for its proposed rule. It is easy to see why. The costs, as we have already seen, are likely to be huge. The benefits? They amount to some goodwill from the few legitimate foreign governments that take an interest in offshore holdings of their citizens (most, like the United Kingdom, do not), and a lot of goodwill from dictators who will use this information to monitor and punish dissidents.

This rule's timing couldn't be worse. The unfolding European debt crisis could send capital flooding into the U.S. Yet rather than let the money roll in, the IRS wants to discourage foreigners from investing in the American economy, by imposing extra costs on the fragile banking system, to the benefit of no one—except dictators.

If IRS officials think that is prudent policy, Congress should ask them to explain why. It is high time for reform of this agency, before it impoverishes us all.

Iain Murray (imurray@cei.org) is Vice President for Strategy and Director of CEI's Center for Economic Freedom. A version of this article originally appeared in The American Spectator.

Marketing Free Markets from the Madness of Crowds to the Mad Men of Advertising



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One Law for Me... Another for Thee

BY MARLO LEWIS, JR.

The controversy over the Gleick affair and the legal fight over the Environmental Protection Agency's (EPA) greenhouse gas regulations are related by more than just general subject matter—climate change—or the happenstance that both are in the news. The root cause of both controversies is a by-any-means-necessary mindset, a “one law for thee, another for me” mentality that is inimical to democracy and scientific integrity alike.

Climate scientist Peter Gleick, an expert in scientific ethics, stole fundraising and budget documents from the free market Heartland Institute under false pretenses and very likely forged the phony “confidential climate strategy memo” touted by DeSmogBlog and other blogs as exposing a Koch-funded “doubt is our product” “denial machine.”

Gleick still denies he authored the strategy memo, but you don't have to be a climate skeptic to distrust the self-serving plea of a confessed liar and thief. DeSmogBlog still claims the memo is genuine, despite several lines of evidence to the contrary:

(1) The digital footprint shows that the memo was created in the Pacific time zone, where Gleick lives, rather than in the Central time zone, where all the bona fide Heartland documents (except the IRS 1099 form) were created.

(2) The strategy memo contains an allegedly incriminating phrase, “anti-climate,” often used by warmists to describe skeptics but never by skeptics to describe themselves.

(3) The strategy memo doesn't pass the laugh test. The memo proposes to keep “Peter Gleick” and other “opposing voices” out of Forbes magazine. How on Earth could Heartland pull that one off? Is Heartland the think tank-tail that wags the financial empire-dog? The strategy memo implies that when Heartland President Joe Bast says “jump,” Steve Forbes says “how high?”



(4) The memo proposes to pay Dr. David Wojcik \$100,000 to develop a K-12 global warming curriculum. Why? To show that, “climate change is controversial and uncertain—two key points that are effective at dissuading teachers from teaching science.” In other words, Heartland wants to spend \$100,000 to develop curricular materials so that—teachers won’t use them! To believe this, you also have to believe that Heartland produces phone book-sized assessments of the peer-reviewed scientific literature so that people won’t read them.

(5) The ersatz strategy memo boasts that Koch-funded Heartland’s climate science program to the tune of \$200,000 in 2011. In reality, as Heartland’s 2012 Fund Raising Plan shows, Koch donated \$25,000, not \$200,000, in 2011 and that was for Heartland’s health care program, not its climate science program. Heartland seeks a \$200,000 donation from Koch in 2012 for its health care program, not its climate program. Heartland sent its fundraising plan to all members of the organization’s board. Why would Heartland also send board members a memo that gets the amount, type, and year of Koch’s past and projected contributions stunningly wrong? It makes no sense.

Rather than condemn Gleick for behavior beyond the pale, DeSmogBlog lauds him as a whistleblower. Gleick tries to blame the victim, claiming he acted out of “frustration” at Heartland’s efforts to “prevent this debate.” Yet we now know Heartland invited Gleick to debate climate change and Gleick declined—weeks before he published the stolen documents. James Garvey argues that the righteousness of Gleick’s cause—damaging Heartland’s reputation and funding—should be considered an extenuating circumstance. In the 17th century, religious partisans invoked the “no faith with heretics” doctrine to justify lying and worse. Gleick and his apologists preach a “no faith with skeptics” doctrine. Medievalism lurks not far beneath the surface of these would-be defenders of science.

Michael Mann, of “hockey stick” fame, and six colleagues suggest that Heartland merely got its comeuppance for cheering the release of the Climate Research Unit (CRU) emails that sparked the Climategate

controversy. That, too, is nonsense.

The CRU is a tax-funded organization; thus, its research and work-related emails are subject to freedom of information laws. Heartland is a privately funded organization; thus, its planning documents are not subject to such laws. As we know from the Climategate emails, CRU scientists stonewalled requests under the UK’s freedom of information law for years to prevent independent researchers from checking their data and methods. That was a bona fide scandal, not only because evading FOIA is unlawful, but also because scientists who deny independent researchers the opportunity to reproduce—and potentially invalidate—their results attack the very heart of the scientific enterprise.

Leaking the CRU emails—for all we know the work of a genuine whistleblower—was the only way to (a) produce documents responsive to valid FOIA requests, (b) expose CRU’s willful evasion of FOIA, and (c) subject CRU research products to the indispensable scientific test of reproducibility.

Fakegate and Climategate are profoundly similar in one respect: Both expose scandalous behavior by prominent members of the climate science establishment. As atmospheric scientist Judith Curry observes, “There is the common theme of climate scientists compromising personal and professional ethics, integrity, and responsibility, all in the interests of a ‘cause.’”

The by-any-means-necessary mentality animating Gleick and the Climategate schemers is also at the heart of the litigation that became *Massachusetts v. EPA*, the Court’s decision in the case, and the Obama administration’s climate policy and fuel-economy power grabs.

Whatever the outcome of *Coalition for Responsible Regulation v. EPA*, the following facts are hard to dispute. First, the EPA and the California Air Resources Board’s (CARB) motor vehicle greenhouse gas emission standards implicitly regulate fuel economy.

Second, under the statutory scheme Congress created, one agency—the National Highway Traffic Safety Administration (NHTSA)—regulates fuel economy through one set of rules—

Corporate Average Fuel Economy—pursuant to one statute—the Energy Policy Conservation Act (EPCA). Today, three agencies—the EPA, NHTSA, and CARB—regulate fuel economy through three sets of rules pursuant to three statutes—the Clean Air Act (CAA), EPCA, and California Assembly Bill 1943.

Third, the CAA provides no authority for fuel economy regulation, and EPCA specifically prohibits states from adopting laws or regulations “related to” fuel economy.

Fourth, Congress never intentionally authorized the EPA to de-carbonize the U.S. economy.

The last point deserves further comment. Congress declined to give the EPA explicit authority to regulate greenhouse gases in 2010, when Senate leaders pulled the plug on cap-and-trade legislation. That was after nearly two decades of global warming advocacy. Note that a key selling point of the Waxman-Markey bill was that it would preempt EPA regulation of greenhouse gases under several CAA provisions.

If instead of introducing a cap-and-trade bill, Reps. Henry Waxman (D-Calif.) and Ed Markey (D-Mass.) had introduced legislation authorizing the EPA to do exactly what it is doing now—trying to regulate greenhouse gases via the CAA as it sees fit—the bill would have been dead on arrival. The notion that Congress gave the EPA such expansive authority when it enacted the CAA in 1970, years before global warming was even a gleam in Al Gore’s eye, defies both history and logic.

It is unrealistic to hope that the D.C. Circuit Court of Appeals will undo the damage that judicial and regulatory activists have done to our constitutional system of separated powers and democratic accountability. Congress can restore the balance of powers but only if it has the will to do so. Only one chamber of Congress has the will today. That may change in November.

Marlo Lewis, Jr. (mlewis@cei.org) is a Senior Fellow in CEI’s Center for Energy and Environment. A version of this article originally appeared in National Journal.



THE GOOD

Supreme Court Rules against EPA in Property Rights Case

Rejecting the arguments of the Obama administration, the Supreme Court held on March 21 in a 9-0 decision in *Sackett v. EPA* that Environmental Protection Agency “compliance orders” can be challenged in court if they are arbitrary and capricious—for example, if they are based on an erroneous bureaucratic interpretation of what a “wetland” is, that results in dry land improperly being declared an unusable wetland. In his concurring opinion, Justice Samuel Alito explained one reason why such judicial review is needed: The EPA uses vague, inconsistent standards when it declares seemingly-dry land to be a wetland. As he pointed out, citing CEI’s amicus brief, “far from providing clarity and predictability, the agency’s latest informal guidance advises property owners that many jurisdictional determinations concerning wetlands can only be made on a case-by-case basis by EPA field staff. See Brief for Competitive Enterprise Institute as Amicus Curiae 7-13.”

THE BAD

OIRA Guidance on Cost of Federal Regulation Inadequate

On March 20, the Office of Information and Regulatory Affairs (OIRA) within the White House Office of Management and Budget released guidance to agencies on “Cumulative Effects of Regulations” with an emphasis on enhancing net benefits. CEI Vice President for Policy Wayne Crews was unimpressed, saying, “There’s a clash of visions that undermines OIRA’s premise.” Crews argued that the radically different worldviews held by pro-central planning regulators and pro-market analysts and activists rendered the whole exercise rather pointless. “Needed more urgently, then, is more rapid harnessing of regulation at large, such as via a bipartisan Regulatory Reduction Commission that lessens the scope of future cumulative OIRA analyses,” said Crews. “Something big has to happen to make this guidance more tractable.”

THE UGLY

Senate Passes Big Government Highway Bill

On March 14, after some tense debate over several controversial amendments, the Senate passed the Moving Ahead for Progress in the 21st Century Act (MAP-21) which seeks to reauthorize federal surface transportation programs for 18 months. CEI was quick to denounce MAP-21, urging the House to reject reckless funding provisions that flout the constitutional authority of the House to originate all revenue bills. “MAP-21 continues to fund low-value, high-cost mass transit monument projects at the current wasteful levels that are paid for by drivers’ fuel tax payments,” said CEI Land-use and Transportation Policy Analyst Marc Scribner. “The Senate’s bill thumbs its nose at looming Highway Trust Fund insolvency and merely kicks the can further down the road. For that reason, the House should reject the Senate’s smoke-and-mirror reauthorization and work to craft real reform legislation.”

Media MENTIONS

Compiled by Nicole Ciandella



General Counsel **Sam Kazman** slams regulators for restricting Americans' automobility:

The notion of \$2.50 gasoline would not only be a “veritable policy revolution” domestically (“Newt Is Right About Gas Prices” by Holman W. Jenkins, Jr., *Business World*, March 10), it would be a gutsy display of American exceptionalism for the rest of the world. This is not because Americans are divinely entitled to federally subsidized fuel (they’re not), but because they do have a right to gas prices that aren’t artificially jacked up by government drilling restrictions and taxes.

Americans aren’t the only ones. As booming car ownership in India and China demonstrates, automobility satisfies some pretty basic human needs and desires. Unfortunately for central planners around the world, there’s nothing worse than a technology that lets people go where they want to, when they want to. For an American leader of whatever party to take the lead in shedding gasoline’s sin-product status would be downright revolutionary.

-March 19, 2012, *The Wall Street Journal*

Labor Policy Counsel **Vincent Vernuccio** argues that the right of workers not to join a union is as vital as the right to join one:

Richard D. Kahlenberg and Moshe Z. Marvit argue that unionization should be legally recognized as a civil right. They are correct that freedom of association is a civil right. But that right also includes freedom *from* association. Just as workers should have the right to join a union, they should also have the right not to be forced into one.

This right is reflected in the country’s 23 right to work states, where workers may not be forced to pay union dues to keep their jobs.

-March 1, 2012, *The New York Times*

Policy Analyst **Marc Scribner** breaks down the pros and cons of the proposed House highway bill:

The American Energy and Infrastructure Jobs Act has the distinction of being the first highway bill to be hated by almost everybody. Fiscal conservatives, progressives, budget hawks, transit advocates, and environmental activists have all called for its defeat.

The bill does have some positive elements. It would halt the harmful decades-long practice of diverting up to 20 percent of federal fuel tax revenue to mass transit, effectively ending the driver-to-transit-rider transfer. While transit may be important to urban residents and commuters in a handful of large cities, it has nothing to do with a national transportation program, which should presumably focus on promoting interstate commerce.

-February 26, 2012, *The Sacramento Bee* and *The St. Paul Pioneer Press*

Policy Analyst **Ivan Osorio** explains why taxpayers should be concerned about the Pension Benefit Guaranty Corporation:

On February 1, American Airlines—which declared bankruptcy last November—announced plans to end defined benefit pensions as part of its Chapter 11 restructuring plan. If approved by bankruptcy court, the airline would turn over its defined benefit pension plans to the Pension Benefit Guaranty Corporation (PBGC), a federally chartered agency that insures private sector pensions.

Offloading pension liabilities would help American Airlines’ restructuring efforts, but it would place enormous strain on the PBGC, which last year reported a \$26 billion deficit. If the agency takes on American Airlines’ pensions, that deficit could grow to \$35 billion, according to recent congressional testimony by PBGC Director Joshua Gotbaum.

The PBGC is funded through premiums

paid by insured companies, not by federal dollars. But taxpayers should still worry; while they aren’t directly on the hook for the PBGC’s unfunded liabilities, that could well change. The agency’s massive, mounting deficit makes for a very likely target for a federal bailout.

-February 22, 2012, *Forbes*

Senior Fellow **John Berlau** celebrates George Washington’s entrepreneurial spirit on the first president’s birthday:

Washington’s first step to becoming an entrepreneur was to abandon the most common cash crop of his native Virginia. That would be the now-dreaded tobacco. But it was not for health reasons that Washington stopped planting it. It was because of taxes and duties that reduced his profits and the fact that the tobacco crop was hurting Mount Vernon’s soil. As Mount Vernon Director of Restoration Dennis J. Pogue writes in another paper, “By 1766 the disappointingly low prices that he was receiving in return for his tobacco harvest convinced Washington that he would be better off devoting the labor of his workers to producing other commodities that had a more dependable payoff.”

Washington grew hundreds of crops, many of which were imported from Europe. (And yes, he did grow hemp, but not very much and not for very long.) For his main cash crop, he chose wheat. But he didn’t stop fulfilling the market need with the growing of this wheat. He became a manufacturer of two products that contained his crop: flour and distilled whiskey.

-February 22, 2012, *Real Clear Markets*



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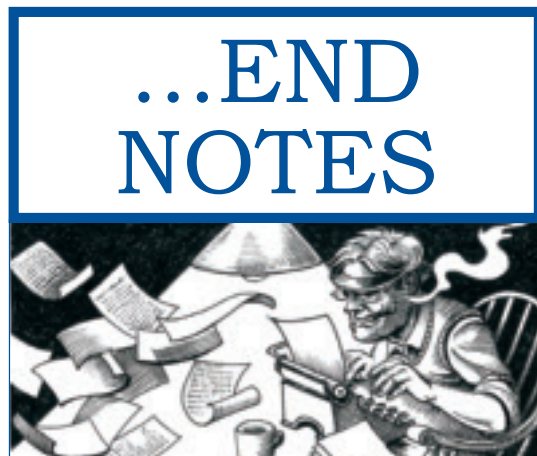
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When Death is Outlawed, Only Outlaws Will Die

Falciano del Massico, a small town in Italy, has banned its 4,000 residents from dying because the local cemetery is completely full. Mayor Giulio Cesare Fava’s ordinance reads, in part, “It is forbidden for residents to go beyond the boundaries of earthly life, and go into the afterlife.” An ongoing feud with a neighboring town has made it difficult to fix the problem. Interviewed by the BBC, Mayor Fava pleaded with a straight face: “Citizens, while we await the construction of the new cemetery, I order you not to die, so we don’t have any problems.” At press time, the mayor was still attempting to gain the proper permits for a new cemetery.

Scientists: People Do Right without Top-Down Rules

Adding support to the Hayekian notion of voluntary spontaneous order championed by free marketers, scientists who studied millions of human interactions across an online game platform called Pardus found that only 2 percent were aggressive. The vast majority of players trade, communicate, and move about peacefully even without rules preventing them from, say, blowing up another’s spaceship, according to research published in the journal *PLoS One*. The researchers also found that the online social network of Pardus broadly holds with Dunbar’s number, which suggests there is a cognitive limit to the number of stable relationships people can have—generally said to be about 150—and that this closely mimics real life.



UK Censors Target “Obscene” Furniture Store Ads

The Sofa King, a Northampton, England, discount furniture store, has for nine years used the slogan, “Where the Prices are Sofa King Low.” If you don’t get it, read the slogan aloud a few times. This highest-brow comedic bit was used by *Saturday Night Live* in 2007, where it was actually spoken and broadcast over the airwaves in the United States. No big deal, right? Wrong. After a few humorless prudes saw the slogan *printed* in a local newspaper, they complained to the Advertising Standards Authority (ASA), which is Britain’s technically private ad standards bureau,

but in practice an agency that can easily bring the wrath of the national government. The ASA ruled the slogan was “offensive and unsuitable for general display ... because the phrase could have been interpreted as a derivative of a swear word” and ordered The Sofa King to drop it—which they did. There is no word yet from ASA regarding the ubiquitous French Connection UK t-shirts that bear the simple lettered design of “FCUK.”

Your Party Is Over There

Dan Dolan is an Iowa Republican running for Congress and recently spoke before a Monroe County party convention at the courthouse in Albia, Iowa. Unbeknownst to Dolan, both parties were holding conventions in the building and his stump speech was accidentally delivered to a crowd of Iowa Democratic activists. Dolan told the *Quad-City Times* that when he finished his remarks, “a guy raises his hand and says, ‘I think you want to talk to the Republicans.’” According to the candidate, the crowd was nice about the whole mix-up, but he is now asking audiences, “Is this the Republican convention?” before speaking.