A Bipartisan Agenda to Restore Limited Government and Revive America's Economy

COMPETITIVE ENTERPRISE INSTITUTE

Avoiding the Regulatory Cliff

A Bipartisan Agenda to Restore Limited Government and Revive America's Economy

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Competitive Enterprise Institute

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Introduction

By Lawson Bader

Whether you are new to Congress or have weathered many a political campaign welcome (back) to Washington. I too have recently taken on a new role as the president of the Competitive Enterprise Institute. I trust we are wise to remember, however, that our respective new (or renewed) roles are nothing more than a transfer of a precious intellectual inheritance. We all should be focused on implementing the legacy of centuries of ideas about how individual and economic liberty combined with limited public institutions improve human dignity, from Adam Smith to the U.S. Founders to Lord Acton to F. A. Hayek and many others.

To put ideas into action, CEI has always been more than "just a think tank." Instead, we take a full-service approach to public policy—combining rigorous policy work with an activist's ability to market, educate, and propagate our research findings and principles. We at CEI are always willing to explain, to anyone who will listen why economic liberty make us all better off, but we do not stop there. We are committed to being honest idea brokers. We are eager to engage, build coalitions, file Freedom of Information Act requests, broadcast our message near and far, and, when necessary, sue to ensure our economic future remains grounded in these timeless principles.

Many agree on the importance of free enterprise, but perceptions vary on what exactly it is. Some think it is a system about money and how to make it—a method for how to foresee the ups and downs of Wall Street, the movement of interest rates, or the right time to buy a house. These are woefully inadequate and shallow understandings of the idea, but unfortunately they are widespread. Thus, it is no surprise that many think "market perspectives" are of little help to policy makers as they wrestle with real and challenging problems.

CEI views markets not as an ideology or a set of specific policy prescriptions, but as a tool for understanding the world. Money does not need be involved to make a decision be "economic." The free enterprise way of thinking helps us to understand what happens whenever people make choices in pursuit of goals. When we apply it this way, it becomes very effective in exploring how the world works. A central insight we gain from free enterprise is that the world is enormously complex and interconnected. We believe that markets are a key form of this interconnectedness that is not only crucial to the functioning of a modern economy, but that enables us to understand what is not always obvious.

We are not naïve, however. We also understand that political discourse often focuses on

what is visible and immediate. This can create conflicts between the economically sensible and the politically fashionable. Consequently, I am pleased to present *Avoiding the Regulatory Cliff: A Bipartisan Agenda to Restore Limited Government and Revive America's Economy*. In this document, CEI policy experts have created concrete, achievable proposals to liberate the creative energies of American entrepreneurs, companies, and workers.

Our compendium highlights four important lessons.

The first is that *markets are dynamic*. Contrary to textbook models, real-world markets are not static, predictable, or perfectly efficient—like machines. Rather, they are dynamic, unpredictable, and self-organizing—like organisms.

The second lesson is that *markets encourage experimentation*, and through trial-and-error, innovations produce progress. Markets lead to economic progress because they encourage and test on-the-spot experimentation among millions of individuals. From this decentralized trial-and-error process come innovations and coordination that no single mind could have planned.

The third lesson is *when altering rules of the game, be aware of "unseen" consequences*. The institutions governing markets are crucial. Given that markets are so complex and ever changing, and given that people respond to incentives created by institutions, minor changes in market institutions can have far-reaching effects—both positive and negative—that are difficult to see and even harder to predict.

The fourth lesson is *act like market-growing gardeners, not blueprint-writing engineers*. Public policies that pick winners or prescribe one-best-way solutions will tend to freeze markets and reduce innovation. The better role for public policy is to ensure underlying rules of the game that (a) maintain the openness and dynamism of already-established markets; and (b) encourage the evolution of decentralized, self-organizing markets where they do not yet exist.

On a personal level, "Free enterprise" is just another phrase for what I call the "freedom to prosper." And, as Adam Smith knew well, material prosperity is only a means to an end. The question is: To what end? Some pursue wealth to stockpile villas and private planes. Some start charities to fight sex trafficking and cure AIDS. Along the way one creates new jobs for thousands, another soothes shattered souls. We who advocate economic liberty recognize these endeavors as the choices that free individuals make to realize their dreams and all are necessary to improving the human condition. And by doing so, we contribute to a more dynamic and innovated American economy.

Promoting this freedom to prosper should be Congress's top priority for the next four years—and beyond. CEI stands ready to be a resource to you to help make this a reality.

Avoiding All the Cliffs

By Fred Smith

The 113th Congress faces some of its greatest challenges since the Great Depression. We see the disasters imminent in Europe as market democracies there fail to address the steady erosion of their economic strength. Yet, to date, neither the President nor Congress has responded. They have avoided taking the decisive steps that are critical if we are to pull back from the brink of economic catastrophe.

As we at CEI have long argued, entrepreneurial creativity is endemic to the American spirit. Government should set it free. One does not need to teach the grass to grow. *Simply move the rocks off the lawn!* However, Congress and the administration have yet to accord economic liberalization the importance it merits.

Instead, policy makers in Washington merely seek ways to make government more "efficient," "streamlined," and less costly. But it is the hidden, off-budget, less transparent, less accountable nature of regulations that is the fundamental problem. And, unwilling to challenge powerful interest groups, Washington policy makers have turned increasingly to this less honest, less accountable form of government intervention.

In today's political environment, regulatory costs have been largely ignored inside the Beltway, despite many business surveys finding that regulations are a *more*—perhaps the most—significant factor in suppressing the economic growth that is critical if we are to surmount our current economic malaise.

It is not enough to stop enacting new regulations. We must find ways of reducing the current burden—to move rocks off our potentially creative economic lawn. That requires devoting far more attention to the burdens imposed by the modern regulatory state. It also requires greater realization of the ways in which regulatory authority has steadily found ways to expand through judicial deference, executive aggressiveness—Executive Orders, White House Czars—and the weakness of reform efforts in Congress.

Regulations are a particularly costly form of taxation. The burdens depend upon the skills of the firms covered in negotiating exemptions and agencies' decisions on the level and timing of enforcement (which allow agencies to lower resistance to their rules). Most importantly, the primary costs of regulation are not direct costs but rather opportunity costs—the foregone wealth creating activities foregone because of regulation. These can be massive. The 2012 edition of our annual survey of the federal regulatory state, *Ten Thousand Commandments*, found that the costs of federal regulations amounted to 48 percent of the total federal budget.

Economic growth is being crushed by regulatory and other interventionist policies. Yet, while Congress finally seems to be becoming aware of the unsustainability of our current tax, spending, and entitlement policy regime, the hidden and growing burdens of regulation have largely escaped attention. Regulatory reform is critical. We could resolve our tax, spending, and even entitlement problems, but if we let the regulatory Leviathan run loose, we would still face economic stagnation.

Regulations must receive the attention they have long deserved. Toward that goal, *Avoiding the Regulatory Cliff: A Bipartisan Agenda to Restore Limited Government and Revive America's Economy* details specific steps in that review process. We can only hope that both Congress and the administration move these reform ideas quickly to the forefront of their agenda.

Deregulate to Stimulate: An Economic Liberalization Agenda for the Future

When it comes to our economy, we face a crucial question: How did we get into this mess and how do we get back to sustained growth? The need to liberalize the nation's productive sector shouts at us, but no one in Washington seems to hear it.

Government spending is out of control, but when we fail to confront regulation, we are missing most of the story behind the expanding state. Even before the financial crisis, the subsequent huge bailouts and stimulus bills to supposedly address that crisis, government was already expanding to gargantuan levels.

Today, America's government is the largest that has ever existed. President George W. Bush's $3.1 trillion budget was the first ever to reach that level. His administration also produced the first-ever $2 trillion budget. President Obama has shown little inclination to reverse this trend.

Regulations on the private sector continue to mount alongside this spending spree. The latest edition of CEI's annual *Ten Thousand Commandments* report cites regulatory costs approximating $1.8 trillion—a hidden tax nearly half the size of the federal budget.

Yet regulatory costs draw much less public rebuke than taxes, because they are often concealed in the prices of the goods and services we buy, as businesses pass the added costs on to consumers in order to remain competitive. Thus, when politicians find it difficult to raise taxes to pay for their policy goals, they regulate. This is justified under the notion that government must help society manage risks. Yet the state does not provide the answer to every risk in society.

Instead, we must turn to the marketplace's disciplinary role in consumer protection, which boosts safety as a competitive feature. What we need is to improve competitive markets' ability to impose discipline in the form of reputation and disclosure.

Consider further that some of our most economically distressed industries have long been overwhelmingly directed by Washington regulators, rather than market forces. I do not know of a time over the past 100 years when the government did not regulate money, credit, and interest rates in America—yet markets always take the brunt of the blame for financial crises, as the recent Dodd-Frank financial reform bill indicates. Markets can deal with firms too big to fail—what we cannot afford is a government too big to succeed!

Until now, most regulatory reform efforts have amounted to going after Moby Dick with a rowboat and tartar sauce. What we need now is sweeping liberalization, to remove the impediments that today hobble wealth creation

and enterprise on an unprecedented scale. We need rational alternatives to state interventionism and to our regulatory nanny state. In short, we need to liberate to stimulate.

The issue is not whether industry has to be regulated, or "planned," but over who will do that planning, as the legendary Nobel Prize-winning economist F.A. Hayek put it so well. Consciously maintaining a sensible wall of separation between economy and state must guide the agenda to restore America's competitiveness and economic health.

The United States—now only 237 years old—became richer than the rest of the world in a historical blink of an eye. We need to keep in mind how that remarkable achievement occurred, and how it can be sustained as other nations embrace the institutions of liberty that allow competitive markets to flourish.

We need to hold the federal regulatory state's 60 agencies, thousands of annual rules, and *Federal Register* pages to at least the same standards of disclosure and accountability that apply to the federal budget.

Congress should implement a moratorium on non-essential new rulemaking. It also should implement a bipartisan regulatory reduction commission and task it to review the entire federal regulatory edifice and enact a comprehensive package of cuts, to be voted up or down by Congress.

Congress must end regulation without representation by requiring Congressional approval for major business regulations—those that impose $100 million or more in annual costs. In addition, Congress should make sunset provisions a permanent and automatic feature of all new rules, which should have an expiration date like a carton of milk.

Finally, Congress should create a Regulatory Report Card—possibly modeled on *Ten Thousand Commandments*—to accompany the Federal Budget, in order to shed light on the currently hidden tax of regulation.

Our economic downturns are not attributable to market failure but to the failure to have markets. The bold political action and genuine leadership needed in today's crisis is different from what has been seen in Washington to date. Indeed, the political price can be too high for election-bound lawmakers or career bureaucrats. Yet we must make every effort.

As Hayek pointed out, the politicians blamed during an inevitably bumpy transition to something closer to healthy free enterprise are usually the ones who unwind market-distorting regulations—not the ones who started the costly interventions years before.

Real stimulus requires comprehensive liberalization of a fettered economy. It requires politically difficult changes in what people expect from government. Leadership requires taking on that challenge.

Capitalism is one of the greatest democratizing innovations in human history, a way for individuals unknown to one another to work together to create unprecedented wealth. We need to defend it as the precious value it is. In that spirit, CEI is proud to lead this fight for capitalism's future.

Wayne Crews

Rein in the $1.8 Trillion Regulatory State

The federal government spends close to $4 trillion annually. Everyone knows it, and everyone frets about it. Less known is that federal regulations—environmental, energy, financial, labor and other mandates—cost the economy well over $1 trillion. Regulation is a hidden tax that has grown rapidly under both the Bush and Obama administrations, and the trajectory continues upward. Rules flowing from energy efficiency mandates, the Dodd-Frank financial law, and the Affordable Care Act are widely recognized looming burdens.

Regulations are frequently anti-competitive and anti-consumer. They cost consumers hundreds of billions of dollars every year. Policy makers still largely do not know the full benefits and costs of the regulatory enterprise. Meanwhile, regulatory agencies grow in power and budgets like feudal baronies. This situation must not go unchallenged.

From transportation to trade, from communications to banking and technology policy, policy makers of both parties have at times challenged the moral legitimacy, intellectual underpinnings, and economic rationality of federal regulatory intervention. Democrats helped spearhead transportation deregulation. Lawmakers from both parties rolled back unfunded mandates in the 1990s. The time is now ripe for a new round of reform.

There are many avenues for reform. Cost-benefit analysis, while informative, does not actually bring the largely unaccountable regulatory state under congressional control. Greater congressional accountability and cost disclosure matter most for regulatory reform.

Congress should vote on every major or controversial agency rule before it takes effect. Regulatory cost transparency, through such tools as improved annual cost and trend reporting, would help voters to better hold Congress responsible for the regulatory state. Reining in excessive delegation of power to federal agency bureaucrats would help close the breach between lawmaking and accountability, while forcing Congress to internalize the need to demonstrate regulatory benefits. Congress should:

- Establish a bipartisan Regulatory Reduction Commission to survey and purge existing rules.
- Develop a review and sunsetting schedule for new regulations and agencies.
- Explicitly approve major agency regulations with an up-or-down vote.
- Publish an annual Regulatory Report Card to accompany the federal budget.
- Require that agencies report costs (Congress itself must assess relative benefits and compare agency effectiveness).

- Have agencies and the Office of Management and Budget rank rules' effectiveness, and recommend rules for elimination.

Wayne Crews and Ryan Young

Reform U.S. Agriculture Programs

With America's economy struggling to roar back to strong growth and a deficit that has exceeded $1 trillion for four years, policy makers should take a hard look at reforming one of the most wasteful and egregious government programs—U.S. agricultural support programs.

The recently expired 2008 Farm Bill was a nearly $300-billion (over five years) boondoggle that paid off every special interest under the sun. Farmers got their direct payments, their countercyclical payments, their price support loan amounts, their disaster funds, and much more. Cities and towns got their nutrition programs and their food stamps. Environmentalists got their conservation programs, though not as many as they wanted. Energy producers got some biofuel monies.

Some producers who were not subsidized before—such as fruit, vegetable, and nut producers—received significant R&D money that opens the door to future subsidies.

The 2012 farm bills that were introduced, however, while repealing direct and countercyclical payments to farmers, left many subsidies intact and would expand other "entitlements," such as vastly increasing subsidies for crop insurance. The Senate bill passed, while the House bill had not yet come up for a vote.

Under the new bills, many agricultural producers will continue to enjoy subsidies and price supports, which cost taxpayers, increase food costs, and disproportionately impact low-income consumers who pay a larger percentage of their income for food. And many government agricultural programs continue to restrict imports of various products, such as sugar and ethanol, leading to higher costs for food and fuel. This must change.

The U.S. sugar program—one of the most egregious farm programs—needs drastic reform. The 2008 Farm Bill increased sugar price supports, provided incentives for using sugar for ethanol rather than food, further restricted imports of sugar, and may violate existing trade agreements.

With the current financial crisis and recession, policy makers should immediately look for ways to reduce large-scale government waste. A good place to start is to streamline a farm bill so that it deals specifically with agriculture, rather than with the myriad of issues that bloat such legislation and entrench special interests. Nutrition programs, for example, should be spliced off and dealt with separately. Energy issues also should be addressed through separate legislation. Policy makers should take a hard look at existing farm programs that waste taxpayer money, increase consumer costs, threaten U.S. credibility in promoting open trade, and harm developing countries' ability to compete in the world market.

Fran Smith

Recognize the Deadly Effects of Overregulation of Medicines and Medical Devices

Over the past century, American consumers have benefited from thousands of new pharmaceuticals and medical devices to help them combat disease, alleviate the symptoms of illness and infirmity, and improve their well being. However, the public often demands that such treatments meet a near-perfect level of safety at bargain basement prices. In turn, Congress and the federal Food and Drug Administration (FDA) have steadily raised the regulatory hurdles that medical product manufacturers must clear before marketing a new treatment. But, just as patients may be injured if the FDA approves a treatment that is later found to be unsafe, they are also harmed in a very real way when needed treatments are delayed by regulatory hurdles.

A strong dose of caution when the FDA approves new drugs and devices may sound like a virtue, but for patients in need of new treatments, regulatory *over*-caution can be deadly. Under the Food, Drug and Cosmetic Act, the FDA is tasked with ensuring that new drugs and devices are safe and effective. But no treatments are perfectly "safe" in the sense that they have no potentially negative side effects. For many products—especially drugs and devices used to treat serious life-threatening or disabling conditions—therapies may be considered safe enough even in the presence of substantial known risks. The FDA's challenge is not to prevent potentially risky products from making it to market, but to ensure that the expected benefits of approved products outweigh the expected harms.

For political reasons, however, the FDA is predominantly focused on risks rather than on maximizing benefits. Agency approval of a drug or device that turns out to be unsafe will lead to front-page headlines and congressional hearings, while delay or denial of a needed new treatment stirs little public notice. Patients may suffer or die as a result of FDA delays, without them or their families ever knowing that a possible treatment exists, let alone that it was blocked by the agency. As a result, the FDA is under constant pressure to assure the safety of new medical products, but under little pressure to speed up their availability.

In recent years, Congress has begun to recognize the importance of moving treatment options for the desperately ill from the laboratory to the pharmacy, and it has enacted some modest statutory changes intended to incrementally improve the FDA's review of innovative new treatments. However, none of these changes address the fundamental problems associated with the FDA's new drug approval regime, and it is becoming increasingly clear that the agency's drug development and approval model is outdated and has struggled to keep up with

the latest scientific advances. Its 1960s-era approach to drug development does not take full advantage of recent discoveries in genetics and physiology, the evolution of personalized medicine, or statistical models that allow for adaptability and fast-paced learning. In order to take advantage of this growing body of science, Congress and the FDA will need to radically reinvent the clinical testing and approval process for new medicines.

When making safety evaluations, the FDA is required by statute to determine the appropriate balance between patient safety and medical product effectiveness. Manufacturers must conduct three phases of progressively larger clinical trials, a process that takes an average of eight to 12 years. However, due to the FDA's growing demand for data, the length and complexity of trials has been rapidly increasing over the past decade—requiring more patients, studied over a longer period of time, and with many additional tests conducted per patient. These new hurdles have also made it more difficult to enroll patients in clinical trials and to keep them in the trials until completion.

In addition, heightened expectations regarding drug effectiveness, tightening concerns about rare but serious side effects, and uncertainty regarding which drugs might ultimately meet the FDA's shifting approval standards have caused many manufacturers to abandon projects long before a New Drug Application (NDA) is even submitted. Because only one in every five drugs that make it to market recovers its development costs, manufacturers have had to become far more selective about which products they move through the clinical trial and NDA process.

But more thorough study of drugs and devices during clinical trials has its own weaknesses.

First, even very large clinical trials generally cannot include enough subjects to detect rare side effects. So, the occurrence of a few individual adverse events after a drug or device has been approved does not necessarily mean that a product was tested or approved too hastily.

Second, large trials involve diverse populations with many subgroups that often are not easy to identify at the outset. But when a manufacturer identifies subpopulations within an ongoing trial who experience especially great benefit or risk, the FDA will generally reject individualized results for patient subgroups and force the manufacturer to conduct an entirely new trial covering only patients with the subgroup's characteristics. Such a requirement generates more statistically "clean" data, but it unnecessarily prolongs the testing process at tremendous expense.

Finally, longer, more complex clinical trials and a slower NDA review rarely results in safer products, but it does keep new treatment options out of the hands of patients who need them. Significant political pressure generally pushes the agency toward over-caution. The end result is fewer new drugs and devices, as well as greater loss of life due to what should be treatable illnesses.

Each patient is different from all others, both in physiology and in risk-level preference. Not only will a given drug or device affect each patient slightly differently, but each patient will place a different value on the product's benefits and the attendant risks associated with it. Therefore, treating the entire United States population as identical means the FDA inevitably makes regulatory decisions that will be too cautious for some and not cautious enough for others.

Those who view the FDA's approval process as too quick may freely choose to use only

products that have been on the market for several years, with a more well-established record of safety and efficacy. Unfortunately, those who seek access to medical products before the agency has fully approved them have little or no choice. Individual patients and their doctors are in a far better position than the FDA to balance the risks and benefits of individual new treatments.

To correct this imbalance, the FDA should focus on providing patients with information, rather than on restricting their choices. More must be done to move treatment choices out of the hands of the FDA and into those of patients and their doctors. And Congress should continue to adopt statutory changes intended to increase the pace at which the agency reviews new drug and device applications and to give patients access to treatments that the FDA has not yet approved.

Gregory Conko

Improve Food Safety and Quality Through Greater Information, Consumer Choice, and Legal Accountability

Few issues are as important to consumers as the safety and quality of their food—from microbial contaminants to pesticides, and from organics to obesity. Recent health scares—from salmonella-contaminated eggs and cantaloupes to E. coli-contaminated spinach and tomatoes—show just how fragile the food chain can be. Food-borne illnesses kill as many as 3,000 Americans each year and sicken millions more. But, while these tragic events have led to calls for greater government oversight of the food supply and new legislation enacted in 2011, the nature of these scares shows that additional regulations or inspections are likely to do little to improve food safety. Indeed, poorly conceived government regulation often does as much to compromise food safety, affordability, and choice as to promote it—especially when the regulatory framework is focused on a fear-driven activist agenda rather than on basic principles of science and genuine safety.

Following a massive egg recall in 2010, Congress enacted the Food Safety Modernization Act to increase Food and Drug Administration (FDA) inspections and require food processors and vegetable growers to adopt the risk-prevention controls that had been applied to meat, poultry, and seafood producers since the 1990s. The former will waste billions of taxpayer dollars doing little or nothing to improve food safety. The latter may have some benefits, but only if the regulations written to implement the statutory provisions allow for substantial flexibility.

Government inspections generally consist of outmoded visual examinations that are incapable of detecting microbial pathogens. The U.S. Department of Agriculture (USDA) has regulatory authority over meat, poultry, and certain egg products, while the FDA has authority over other foods, including fruits, vegetables, and seafood. Slaughterhouses must have a USDA inspector on the premises at all times they are in operation, while the FDA inspects food production facilities only once every few years. Nevertheless, meat and poultry account for about half of food-borne illness outbreaks in the United States because inspectors cannot see bacteria and other microorganisms. Therefore, a Food Safety Modernization Act requirement that the FDA increase its inspections from not less than once every decade to at least once every five years is likely to do nothing to increase food safety.

Risk-prevention control regulations, on the other hand, have done some good, though the food industry had been moving to adopt these practices voluntarily long before regulation forced them to do so. The Hazard Analysis and Critical Control Points (HACCP) risk man-

agement program requires firms to examine their production streams, identify points where pathogens or other hazards may enter the system, and take steps to make those processes safer. HACCP programs were first developed within the food industry and only imposed by regulation many years later. At the margin, HACCP has resulted in modest safety improvements for meat and poultry, but has had essentially no impact on seafood safety.

In part, this failure can be attributed to the way in which HACCP regulations have been drafted by regulators. As originally envisioned, the concept is highly flexible and lets producers tailor risk reduction efforts to their individual circumstances. As implemented by the FDA and USDA, however, the HACCP program tends to impose rigid, costly, and outdated practices that have not kept up with changes in the food industry. That rigidity also disincentivizes firms from developing innovative new processes and practices that could deliver real food safety improvements.

At the same time, heavy regulatory burdens on technologies such as food irradiation, agricultural biotechnologies, novel antiseptic practices and anti-microbial treatments, and veterinary medicines—which could cut the incidence of those pathogens by half or more—make it difficult for producers to introduce innovative safety practices. Policy makers should abandon the misguided notion that so-called “natural” products and established practices are inherently safe and new ones inherently dangerous. Rules that hold innovative technologies to higher safety standards than “natural” or “organic” practices, and those that mandate labeling to warn consumers about use of these technologies are based on a faulty understanding of science and are therefore bad public policy.

Rules governing what food producers may put on their products’ labels also have an impact on the safety and nutritional value of our food. Regulators control the content of food labels so stringently that sellers are often forbidden from informing consumers of many beneficial product attributes. Food safety and labeling regulations should be designed with maximum flexibility, to allow food producers to use the production methods and labeling information that best meet their customers’ demands. Government studies have shown that reduced labeling and advertising restrictions on food products actually lead producers to supply healthier and more nutritious products, increasing consumer well being, because food producers must compete for consumer dollars by making their products more attractive to purchasers. But rules that prevent food producers from telling consumers about health-enhancing product attributes make it less profitable to invest in health and nutrition improvements.

Americans consume nearly 1 billion meals every day, and microbial pathogens can be introduced at any stage in the food production and distribution system. Food companies should not be forced to adopt standardized, one-size-fits all rules. Instead, they should be allowed the flexibility to adopt technologies and practices that can cut the incidence of food-borne contaminants. And the legal system should punish producers and sellers who are negligent in the handling or purchasing of the foods we eat.

Gregory Conko

Reject the Precautionary Principle, a Threat to Technological Progress

During the past two decades, state and local governments in the United States and dozens of foreign governments have begun to adopt an environmental philosophy called the precautionary principle: the view that new technologies should not be introduced and new projects should not be undertaken when there is any chance they might pose risks for humans or the environment. Although this "better safe than sorry" attitude may seem like a reasonable approach to risk regulation, health and environmental risk issues are not so simple. Ironically, basing regulatory decisions on the precautionary principle could do more harm than good.

Nothing is totally without risk, and the reason for adopting new technologies in the first place is that they often improve our well being by protecting us from the risks of older, more established products and practices. Even very risky new technologies may often be better than alternatives. However, from industrial chemicals to consumer products and everything in between, advocates of precautionary regulation insist that the mere possibility of one increased risk should be sufficient to take useful products off the market or prevent them from ever being used.

New medicines protect us from diseases, even though there is always a risk of side effects. Automobile innovations, from airbags to antilock brakes, make traveling safer, even though they pose their own risks. And food and agricultural technologies—such as preservatives, pesticides, and bioengineered crops—help make our food supply safer and less expensive and lighten farming's impact on the environment. By demanding perfect safety, a precautionary regulatory philosophy can actually make our world less safe by denying society the benefits of new technologies. Regulation's proper goal should be to permit experimentation and the introduction of new technologies, while balancing the risk of moving too quickly into the future against the very real risk of lingering too long in the past.

Just as importantly, the precautionary principle too often is applied in a highly politicized manner to disadvantage technologies that are unpopular or viewed as controversial. Although many established practices—such as organic farming, "natural" and homeopathic remedies, and alternative energy sources—pose known risks that are often far greater than those posed by the new innovations that might supplant them, the precautionary principle has rarely been applied to rein in those risks.

If it were applied fairly, the precautionary principle would rule out new wind power and solar energy projects, organic agricultural

practices, waste recycling, and countless other so-called "green" activities, whether or not those activities are, on balance, beneficial for humans and the environment. As it is actually applied by governments, however, the principle is used only to stop politically unfavorable activities. Politicians get away with this because the precautionary principle contains no procedural protections for innovators, and it gives regulators nearly unbridled discretion to ban or burden technologies and practices they disfavor.

A better approach to risk regulation would be to more explicitly recognize the human health and environmental benefits that new products bring with them, while recognizing that existing practices are not risk-free. Where possible, regulatory authorities should be required to demonstrate with clear and convincing evidence that new products and practices will do more harm than good before they can be kept off the market.

Gregory Conko

Protect Incentives for Pharmaceutical Innovation

In recent years, Congress has faced mounting public pressure to "do something" about the rapidly rising prices of prescription drugs and to rein in what are believed to be excessive industry profits. Although prescription drug spending comprises just 10 percent of overall health care costs, it is one of the fastest growing components of health care spending—expected to rise by an average of more than 7 percent per year over the next decade, slightly higher than overall health expenditures, according to the Department of Health and Human Services.

Faced with this public pressure, as well as mounting federal and state government expenditures on drug purchases, members of Congress have proposed a variety of measures to cut the price of prescription drugs. These include reimportation of lower-priced drugs from foreign countries with price controls, direct negotiation of reduced drug prices by the Centers for Medicare and Medicaid Services, and direct restrictions on drug and medical device industry marketing and promotion practices.

More recently, would-be health care cost cutters have proposed integrating cost-benefit and comparative-benefit analysis into government-run health programs and in the FDA approval process. For example, the Patient Protection and Affordable Care Act created a new Patient Centered Outcomes Research Institute (PCORI) to study the comparative effectiveness of different treatment options with the expectation that drugs and other treatments that do not deliver sufficient "bang for the buck" will cease being prescribed.

Unfortunately, most advocates of such policies have a tunnel-vision dedication to reduce drug costs, with little concern for the effect that forced price reductions would have on industry incentives for innovation. Pharmaceutical prices are high because development is expensive, many new drugs treat relatively small patient populations, and most fail in laboratory tests or clinical trials before making it to market, where they can generate revenue to recoup R&D expenses.

A 2006 study by U.S. Federal Trade Commission economists concluded that the average cost to develop and test a new drug is between $839 and $868 million. Others have estimated that the true cost of bringing a new drug to market now tops $4 billion, due to the growing number of patients that must be included in clinical trials and the rising number of tests that must be conducted on each patient. Thus, policies such as reimportation and cost-benefit analysis would, in the short run, result in lower prices for drugs already on the market, but in the long run reduce both the number of treatment options available and the flow of new drugs entering the marketplace.

The primary argument for incorporating comparative-effectiveness or cost-benefit analysis into government purchasing and approval decisions is that many expensive new drugs offer little advantage over older drugs, but cost far more than the closest comparable older drugs. If government health programs paid for only the "best in class" medicine for each therapeutic category, the higher volume of purchases would justify significant price reductions. That would be bad for patients, however.

Although the "average" therapeutic benefit of various drugs in a particular class may be similar, individual patients will often respond quite differently—even to very similar drugs. Fewer than 70 percent of patients respond positively to any given cholesterol-lowering statin drug, for example. But nearly all patients do respond positively to at least one of the drugs in that class. So, while it is advisable for public programs to trim excessive costs, implementing cost-benefit or comparative-effectiveness analysis in purchasing or approval decisions could negatively affect patient care.

The Affordable Care Act stipulates that recommendations by the Patient Centered Outcomes Research Institute shall not be used as the basis for rationing care, but the Act also created a new Independent Payment Advisory Board for the purpose of reducing the growth rate in Medicare spending. That body is expected to rely, in part, on PCORI recommendations to evaluate physician and hospital quality, which means that PCORI recommendations will covertly be used as at least part of the basis for restricting available treatment options for patients. Even more pernicious is a proposal by the Centers for Medicare and Medicaid Services and the FDA to establish a parallel review process for medical products, which many fear could result in comparative-effectiveness or cost-benefit considerations being improperly introduced into the new drug and medical device approval process.

The argument for reimportation is no more convincing. Although the prices of off-patent and generic drugs—which comprise more than half of all prescriptions filled in the U.S.—are typically higher in other countries, the prices of the latest on-patent drugs are often much lower in countries that impose direct or indirect price controls. Consequently, reimportation advocates promise to relieve high drug costs by allowing American consumers to free-ride on other nations' price controls. But allowing reimportation would effectively import foreign price controls, resulting in less revenue for the industry and a reduction in the capital available to drug companies for continued research and innovation.

Finally, it is not true that drug industry profits are "excessive" by any honest measure. Industry critics often note that the brand name pharmaceutical industry is typically among the most profitable sector in the economy. However, as the Congressional Budget Office (CBO) notes, standard reporting tends to "misrepresent the industry's actual profits." Accounting measures overstate profitability for R&D-intensive industries by treating most research spending as an expense rather than as a capitalized investment that increases the company's value. "Not accounting for that value overstates a firm's true return on its assets," says the CBO.

Ultimately, high pharmaceutical retail prices reflect the vast expense of developing those products and getting them approved for sale. Without correspondingly high prices, few investors would be willing to take the risks inherent in supplying capital to the pharmaceutical industry. The result would be fewer and fewer lifesaving medicines.

Gregory Conko

Forge a Bipartisan Approach to End Corporate Welfare

Today, the U.S. government transfers large amounts of wealth from one pocket to another. Public debate over such transfers often focuses on welfare and poverty alleviation, but many are from taxpayers to wealthy corporations. Before the financial crisis and recession, these transfers were mainly known as corporate welfare. Since the downturn, they have gained many other names—stimulus, bailouts, or infrastructure investments. But a rose by any other name….

The federal budget contains more than $97 billion in corporate welfare, according to a 2012 study by the Cato Institute's Tad DeHaven. The money for these wealth transfers must come from somewhere. If current taxpayers do not pay the costs for such handouts, future taxpayers will. The economy pays a price, too. That $97 billion cannot be used for what its original owners might have preferred.

Direct payments are not the only transfer mechanism. Regulations are another. Price, entry, and antitrust regulations benefit politically favored firms at the expense of consumers and competitors that are less politically connected. Even innocuous-sounding health and safety regulations can benefit some firms at rivals' expense. The owner of a new plant might lobby for expensive regulations with which an older competitor may not be able to comply in a cost effective manner.

Similarly, entry barriers hit smaller companies especially hard, because additional costs which a large company can absorb can cripple its smaller competitors.

Corporate welfare, whether subsidies or competition-hampering regulations, creates distortions and inefficiencies, injures consumers, and undermines the evolving, competitive market process. Members of Congress who want to restrain the size of government should be vigilant, and often ask themselves: Are lobbyists seeking to reduce burdens on entrepreneurship and employment or do they seek to add burdens that benefit them and their clients at the expense of competitors? In short, are they seeking corporate welfare?

There is much Congress can do rein in its nearly $100 billion corporate welfare habit. The Export-Import Bank, which does nearly half of its business with Boeing alone, should be abolished outright, as should the Economic Development Administration. The Department of Agriculture spends $25 billion on giveaways to farmers. These should be zeroed out. According to 2010 census data, farmers have an average household income 25 percent higher than non-farmers. Federal handouts overwhelmingly go to large, politi-

cally connected agribusinesses, not to small family farms.

By transferring billions of dollars from poor and middle class to the rich and connected, corporate welfare is fundamentally regressive. Congress should put a stop to it.

Wayne Crews and Ryan Young

End Bailouts and Government Ownership in Fannie-Freddie, GM, AIG and Other Entities

The federal government's authority under the Troubled Asset Relief Program (TARP) officially expired on October 3, 2010. Rushed through amid fears of financial Armageddon in the wake of the financial crisis, the thrust of the program shifted several times—from buying "toxic" mortgage securities to ownership stakes in financial institutions and troubled automakers.

Supporters have hailed the program as a success, claiming that it calmed a panic and cost taxpayers "only" about $50 billion. But this figure does not include the $700 billion that many prominent economists say the taxpayers will have to spend to rescue the government-sponsored enterprises Fannie Mae and Freddie Mac, which were put into a government conservatorship a few weeks before TARP was enacted in 2008.

While it is true that many financial institutions paid the TARP money back with interest, many never wanted to take it in the first place. They were pressured into doing so by then-Treasury Secretary Henry Paulson or bank regulators, so that the truly troubled banks would not have to bear the stigma of being singled out for bailout.

TARP supporters claim that, had the plan not been enacted, unemployment would have skyrocketed to 20 percent. But it is also plausible that without TARP's channeling of money toward established financial institutions considered "too big to fail" by the government, other financial institutions would have emerged to get the economy moving faster. As Stanford University economist John Taylor wrote in his book, *Getting Off Track,* TARP's passage likely "increased risks and drove the markets down."

The remaining companies under government ownership continue to damage the American economy, and the harm is not confined to the spending of taxpayer money. Firms operating with government support create an uneven playing field for their competitors, hindering job growth and innovation. AIG has been accused of using its $183 billion in taxpayer funds to undercut its unsubsidized competitors by slashing premiums. General Motors—now derisively known as Government Motors—has used its $50 billion in taxpayer funds to buy subprime auto lender AmeriCredit, giving it a possible government-granted advantage over competitors, including Ford, Toyota, and other major automakers with plants in the U.S. And Fannie and Freddie are now virtually the only firms securitizing mortgages.

As important as it is to recover taxpayer money, it is even more important for the government to devlop an exit strategy out of these private firms before its involvement can do any

more damage to their private-sector competitors and to the economy as a whole. Congress should:

- **Set firm time limits for the bailouts for Fannie Mae and Freddie Mac, General Motors, American International Group, and other bailouts and require the government's shares in companies to be sold as of a date certain.** The U.S. government should not own banks or other firms. Permanent nationalization has not worked too well in places like Cuba or Venezuela in promoting stable and sustained economic growth. The fact that the government sold its first tranche of shares in GM at a considerable discount, and that GM's share price has fallen dramatically since, demonstrates that government ownership is bad for the company and for taxpayers.
- **Make the bailout deliberations transparent and make government-owned firms abide by the same rules as those in the private sector.** Insist on open meetings whenever possible, quick compliance with the Freedom of Information Act, and judicial review of the Federal Reserve Bank and Treasury Department's actions. The initial public offering to sell part of the government's stake in General Motors disturbingly stated that the government was shielded by sovereign immunity from laws against stock fraud and securities fraud lawsuits. Congress should enact legislation waiving this sovereign immunity for the government so that investors have the same protection from fraud committed by government-owned corporations as they do against those in the private sector.
- **Respect property rights and private contracts in financial and housing policies.** The government is one of many owners in the corporations participating in the TARP. It should not interfere with any firm's fiduciary duty to its shareholders to deliver profits by pushing it to achieve politically determined social goals. And it should not favor some creditors over others, as it did in the GM and Chrysler bankruptcies when unions were given disproportionate equity stakes in the reorganized firms at the expense of bondholders and secured creditors.

  Similarly, in trying to help families with foreclosures, the government should not require or encourage the abrogation of contracts to investors in mortgages. Congress should halt funding for President Obama's Home Affordable Modification Program and its variants, which subsidize mortgage-servicing banks to modify a borrower's loan but disregard the interests of the investors who own the mortgages. Many of these investors are also middle-class families, holding mortgage-backed securities in their 401(k) accounts and mutual funds.

John Berlau

Free Startups to Go Public by Rolling Back Burdensome Sarbanes-Oxley Accounting Rules

In past Agendas for Congress, we argued that smaller public companies should be exempt from Sarbanes-Oxley's Section 404. Substantial progress was made toward this goal in 2012 with the passage of the Jumpstart Our Business Startups (JOBS) Act, which exempts firms going public with a market cap of $700 million or less from the "internal control" mandates of Section 404, as well as burdensome rules from Dodd-Frank and other securities laws. This was a significant step, but Congress should go much further to permanently lift Sarbox barriers to business and job growth for all types of firms.

New firms, of all sizes, create the vast majority of net new jobs in the U.S., according to the Kauffman Foundation. But for these firms to expand and create more jobs, they need to be able to go public. And right now, Sarbox is one of the biggest barriers to small and midsize firms going public.

Sarbox was rushed through Congress in 2002 following the Enron and WorldCom scandals. In recent years, the law has come under criticism from all sides. Rep. Nancy Pelosi (D-Calif.) has said she supports revising the law to mitigate its "unintended consequences."

Moreover, these costly rules did virtually nothing to prevent the careless risks taken with mortgage securities that led to the financial crisis. "How can we have these levels of fictions in financials after Sarbanes-Oxley?" asks Jim Cramer, host of CNBC's "Mad Money." The answer is because Sarbanes-Oxley is actually counterproductive at ensuring financial transparency. As the *Financial Times* has noted, the inordinate amount of time boards of companies such as the former Bear Stearns spend on Sarbox compliance came at the expense of their scrutinizing overall business risk.

Sarbanes-Oxley's Section 404 requirement for accountants to sign off on vaguely defined "internal controls" is costing American companies $35 billion a year in direct compliance costs, according to the American Electronics Association. For the average public company, it adds $2.3 million in compliance costs, according to the Securities and Exchange Commission (SEC), and adds 35,000 extra man-hours, according to Financial Executives International. Congress should relieve this heavy regulatory burden by doing the following:

- **Expand the relief for smaller companies in the JOBS Act so that more firms are exempt from Sarbanes-Oxley's Section 404 and other SEC rules that act as a drag on the economy.** As seven Democratic members of the House Small Business Committee noted in a letter, senior managers at these smaller companies "now have to choose between spending their time on vital busi-

ness development functions or Section 404 compliance."

- **Repeal the "internal control" rules of Section 404 or make them voluntary.** The term "internal controls" is undefined in the statute and has been broadly defined by regulators. The SEC has found that internal control practices are seldom a tip-off to fraud. Let investors choose if they want the companies they own to pay this compliance cost or spend more of their resources creating new jobs and enhancing investor return
- **Abolish the unaccountable Public Company Accounting Oversight Board (PCAOB) and make accounting standard setters accountable to the President and Congress.** Although the Supreme Court put some limits on the authority of the PCAOB—it made the agency subject to at-will removal by the SEC—the PCAOB still wields tremendous power without accountability. It levies taxes on all public companies, it can discipline and fine auditors, and it is responsible for the broad interpretation of Section 404's "internal control" provision. And the PCAOB wields this power without any presidential supervision and minimal SEC oversight. Congress should abolish the Board—giving authority over accounting back to the presidential appointees at the SEC, where it was before Sarbanes-Oxley.

John Berlau

Make Accounting Regulators Accountable

Mark-to-market accounting, which requires financial instruments such as loans to be valued at the price of an ill-defined "market," has exacerbated the financial crisis by spreading the credit contagion from bad banks to good. Congress should require regulatory agencies to suspend mark-to-market accounting mandates such as Financial Accounting Standard 157 until better guidance is developed for illiquid markets.

In the spring of 2009, Congress came pretty close to doing just that. The Financial Accounting Standards Board (FASB) was hauled before Congressional hearings and members of both parties expressed concern that FAS 157 was exacerbating the crisis by causing banks to take huge paper losses and tighten lending unnecessarily. Sensing the threat of legislation, FASB announced a relaxation of the rule, an action that sent the Dow Jones Industrial Average soaring that day to above 8,000 for the first time in months. This simple change to accounting rules led to a stabilization of the economy that billions in bailouts had failed to achieve.

But now that the legislative focus on accounting rules has faded, FASB is trying to push through an expanded mark-to-market rule that would cover virtually all bank loans. Mark-to-market mandates have generated questions about their accuracy and their economic impact. They exaggerate losses by forcing financial institutions to write down performing loans based on another institution's fire sale even if the market for such loans is highly illiquid and the financial institution in question has no plans to sell the loans.

Underlying all these problems is the fact that there are relatively few checks on the accounting standards body that makes these rules. FASB is a private body, yet Congress requires public companies to support it through a type of tax, known as an accounting support fee. Moreover, federal regulatory agencies like the Securities and Exchange Commission and the Federal Deposit Insurance Corporation almost always defer to FASB in setting standards for everything from investor reports to solvency rules.

Starting in 2005, FASB greatly limited the use of employee stock options—which are very effective at creating wealth and giving more people access to it—by requiring companies to "expense"—that is, subtract the estimated value of stock options—from current earnings, even though stock options never result in a cash outflow. This policy has had little effect on levels of executive compensation, but has caused companies to greatly reduce stock options for rank-and-file workers. It has also resulted in misleading financial reports for in-

vestors of companies that utilize stock options, as companies are required to report phantom "losses" when there has been no money leaving the firm's coffers. Congress should:

- Require regulatory agencies to suspend any new mark-to-market accounting mandates from FASB until better guidance is developed for illiquid markets.
- Reverse the options expensing standard.
- Hold hearings to examine FASB's process of setting accounting standards and whether the agency should continue to have a de facto monopoly on setting those standards.

John Berlau

Encourage Innovation in Access to Credit

The abuses of the subprime crisis have made it all too easy to overlook the myriad benefits of consumer credit. Innovations in mortgages, credit cards, and unsecured loans such as payday advances, have made it possible for more people to borrow money they need for a variety of purposes—from starting a business to advancing one's education to catching up on bills. In the mid-1990s, a college student named Sergey Brin used personal credit cards to start the search engine business that would become Google, the revolutionary firm that has brought countless benefits to America and the world

In 2007, Austan Goolsbee, who became a top economic adviser to President Barack Obama, warned in *The New York Times* that, "regulators should be mindful of the potential downside in tightening too much." Such restrictions, he wrote, would hurt "someone with a low income now but who stands to earn much more in the future" with the help of access to credit.

The Obama administration and Congress have seemingly ignored this advice. The Credit Card Accountability, Responsibility and Disclosure (CARD) Act of 2009 limits the ability for card issuers to raise rates and impose penalty fees on high-risk borrowers. It has limited overall credit—working against other policies aimed at getting credit flowing—and caused overall rates to rise sharply for responsible card holders who pay on time or who pay their entire balance. Rules issued by the new Bureau of Consumer Financial Protection (CFPB) created by the Dodd-Frank Act of 2010 will likely have the similar effect of punishing the prudent with more costly credit as a result of paternalistically protecting the imprudent.

Government has a role in preventing fraudulent lending practices, but it should leave payment terms and interest rates up to the interested parties to negotiate. It should also reduce the paperwork burden of traditional lending institutions, which raises costs that are passed on to borrowers. It should lift the cap on business lending by credit unions and lift the moratorium on retailer-affiliated industrial lending companies to spur competition among credit providers. And it should create new federal charters to allow no-bank lenders to offer business and consumer loans across state lines

Congress should:

- **Reject attempts to put interest rate or price controls on credit vehicles**. Repeal most of the CARD Act and prevent the CFPB from imposing nanny-state prohibitions of innovative credit products.
- **Repeal or scale back a variety of regulations that impose myriad paperwork requirements on financial institutions.** Such regula-

tions—from Sarbanes-Oxley provisions to the Internet gambling ban—indirectly make services more expensive to borrowers and depositors at all income levels by adding to their overall costs. These rules hit small community banks and credit unions particularly hard.

- **Reduce "know your customer" requirements on banks and other financial institutions to investigate their customers' backgrounds**. These rules often overwhelm law enforcement with useless reports and have adverse impacts on the low-income "unbanked" population by making it more difficult to open a bank account.
- **Lift the cap on lending that credit unions can make to member businesses**. The cap currently stands at just 12.25 percent of a credit union's assets, keeping these institutions from competing to serve the small business lending market. The cap has only been in place since 1998, and no such caps exist for other types of loans, such as mortgages and car loans. From a safety and soundness perspective, there is nothing about business lending that is inherently more dangerous than other loans.
- **Create an optional federal charter for nonbank lenders issued by the Comptroller of the Currency to allow nonbank loans to be offered across state lines**
- Nonbank lenders—including pawn shops, payday loan providers, and title lenders—have picked up the slack in consumer and, to some extent, business lending as banks have reduced loan volume. And these nonbank entities have done so with their own capital and without any federal guarantee of a bailout. Yet they are stifled not just by the threat of federal regulation from the CFPB, but also by arcane state interest rate caps. Under the National Bank Act, banks have been able to offer credit products with a federal charter that are not subject to state interest caps. Congress should enact legislation to allow non-bank institutions to do the same.
- **Lift the moratorium on nonfinancial businesses forming limited-purpose banks, known as Industrial Lending Companies (ILCs).** This moratorium, first imposed by the Federal Deposit Insurance Corporation and then codified for two years by the Dodd-Frank Act, has led some of the nation's most well managed firms—including Walmart, Home Depot, and Berkshire Hathaway—to shelve plans to form ILCs to offer financial services to their customers. Consumers suffer from lack of competition in the banking sector—the kind that these businesses have brought to the retail sector. And it is absurd to argue that somehow these banks pose an inherent risk, given the risks that practices of traditional banks posed during the financial crisis.

John Berlau

Rethink Anti-Consumer Antitrust Regulation

Before the recent financial crisis and the massive surge in federal regulation, policy makers seemingly understood how economic regulation can harm consumers. During the latter decades of the 20th century, a pro-competitive mindset in Washington led to the liberalization of transportation, telecommunications, banking, electricity, and several other sectors. In market after market, consumers reaped the enormous benefits of deregulation, as prices fell and competition flourished.

Antitrust regulation, however, continues to enjoy broad support in the business community, in the media, and among policy makers. Yet, overzealous antitrust laws endanger successful, innovation businesses, and are at odds with job creation and economic growth. Recent targets of misguided antitrust interventions—or, in some cases, mere *threats* of intervention—include Google, Microsoft, AT&T, Apple, Intel, IBM, Dish Network, and SiriusXM. Each of these wealth-creating firms was stopped in its tracks either by the Department of Justice or the Federal Trade Commission for allegedly restraining trade.

But a growing body of economic evidence has demonstrated that mergers, acquisitions, and single-firm conduct—no matter the size or market power of the firm in question—are far more likely to stimulate competition than stifle it. And when big companies misbehave, as happens from time to time, they do not act in a vacuum. Investors, upstream rivals, and even consumers themselves stand ready to police conduct that endangers competition itself. Indeed, a core function of the marketplace is providing the necessary competitive responses to deter firms from choking off healthy competition.

Federal judges and antitrust enforcement rarely understand the markets they seek to regulate, especially when novel technologies are involved. It is no surprise that nearly every high-tech success story has met resistance from antitrust authorities, as outside observers and legal advisors often do not know what forms of conduct are likely to cause a firm to face antitrust scrutiny. As the FTC's recently-closed investigation of Google demonstrated, perhaps the only way a major firm can stay out of competition cops' crosshairs is by avoiding vigorous competition.

Antitrust laws often create perverse incentives and cause wealth to be misallocated from product development to lobbyists and lawyers. In this way, antitrust undermines efficient markets, and even thwarts the natural evolution of the marketplace and competition itself. Antitrust is increasingly seen by struggling firms as a competitive weapon against more nimble rivals. When antitrust complainants succeed in

persuading enforcement agencies to intervene, consumers are deprived of competitive marketplace responses to aggressive firms.

Reforming the antitrust laws to rein in unjustified litigation and free up companies to enjoy the advantage of scale should be a top priority for policy makers in today's competitive, dynamic, global marketplace.

Wayne Crews and Ryan Radia

Keep the Internet Free For Pricing Experimentation

Congress has never authorized the Federal Communications Commission (FCC) to regulate how broadband Internet Service Providers manage the flow of information on their networks. But in late 2010, the FCC nonetheless adopted so-called "network neutrality" rules, which bar most Internet providers from engaging in network discrimination—except when deemed "reasonable" by the FCC.

This net neutrality rule is currently being challenged on jurisdictional and constitutional grounds by several Internet providers before the Court of Appeals for the District of Columbia Circuit. In late 2013, many observers anticipate that the court will hold that the FCC exceeded its authority in promulgating its net neutrality rules. But whether or not the D.C. Circuit upholds the FCC's net neutrality rule, the battleground over Internet regulation is sure to shift to Congress in 2014—with advocates of net neutrality lining up on the offense if the rule is overturned, or on the defense if it is upheld.

Congress should reject calls to permit the FCC to mandate net neutrality. Such regulations would do little to preserve the "open Internet," which is alive and well thanks to market forces that drive providers to serve their users' needs. Rather, net neutrality obstructs creative methods by which Internet providers can price scarce network resources. Ultimately, this stifles the wealth creation in network industries by undermining property rights and turning pricing disputes into political battles.

The FCC points to a handful of incidents of Internet providers blocking traffic to show that regulation is necessary. But mistakes are inevitable in any competitive market, especially one as dynamic as the Internet. Policy makers should embrace the trial-and-error processes that drive the evolution of markets, not stifle them with overly burdensome regulation. As for Internet providers that meddle with their users' access to lawful content, the companies that maintain the Internet's rich platforms—including Google, Hulu, Facebook, and Microsoft—are well positioned to stand up against any Internet provider who would be so brazen as to unreasonably restrict access.

As the wireless Internet flourishes, and evolves into a viable substitute for traditional wire line broadband, competition among Internet providers will only intensify. Yet the few airwaves devoted to wireless broadband face increasing congestion, while less-congested wireline networks face tough questions about how to pay for costly infrastructure upgrades. From all-you-can-eat pricing to charging per megabyte, there is no "right" approach to charging users of Internet networks. Nor are consumers necessarily best served when the

government denies content companies the ability to contribute to the expansion of last-mile broadband networks.

Regardless of whether regulation of Internet providers' pricing policies benefits consumers, the First Amendment guarantees private property owners the freedom to refuse to express—or disseminate—views with which they disagree. Just as a newspaper generally cannot be forced by the government to run an essay contrary to the views of its editorial board, an Internet provider cannot be forced to make its network available for the distribution of all opinions—unless, that is, the government demonstrates such regulation is the least restrictive means of achieving a compelling governmental interest.

Unless the FCC or Congress can meet this high bar, net neutrality regulation amounts to bad public policy and an affront to constitutional rights. It should be rejected.

Wayne Crews and Ryan Radia

Limit Government Access to Data but Leave Web Entrepreneurs Free to Innovate

Internet privacy is an increasingly contentious issue in Washington, D.C. Among lawmakers in Congress, there is growing support for privacy legislation, while the Federal Trade Commission is playing a more active role in policing data collection and use. But most governmental "solutions" to privacy concerns would harm consumers by endangering beneficial personalized advertising and burdening innovative Web startups.

If Congress genuinely wishes to act in furtherance of privacy on the Internet, it should enact legislation curtailing the authority of law enforcement to compel companies to disclose their users' private information. Under existing law, the contents of user emails, photos, and documents stored in the "cloud" may in some cases be accessed by law enforcement without a warrant issued upon a showing of probable cause. And government officials routinely force wireless companies to hand over locational data derived from individuals' mobile devices. These present serious privacy threats, especially given the lackluster performance of governmental bodies in safeguarding private information from improper access.

Congress should also curtail the routine, mandatory collection by government agencies of sensitive personal information, such as individuals' income information, the DNA of arrestees, and photographs of drivers' license plates. Policy makers should also resist calls by some in law enforcement to mandate the inclusion of "backdoors" in Internet communications platforms or the retention of IP addresses by Internet service providers.

Congress should not grant the Federal Trade Commission the broad new powers it seeks to regulate Internet privacy, or enact legislation dictating how private companies may collect and use online data. Existing federal and state statutes that bar unfair and deceptive practices—along with longstanding common law principles such as contracts and torts—provide ample vehicles for government officials and injured parties to punish bad actors who engage in harmful practices that deprive individuals of their privacy.

Even if Congress were to determine that data collection merits legislation, lawmakers should remember that one-size-fits-all regulations that purport to increase privacy may chill experimentation in privacy-promoting technologies. The appropriate level of privacy and data security varies dramatically depending on the type of information in question and on the needs of each individual. No two consumers share the same set of privacy preferences. Flexible, voluntary private arrangements, bolstered by the competitive process, are well equipped to effec-

tively balance privacy concerns against other vital interests as technology evolves.

When companies violate user privacy, the best punishment is dished out not by lawsuits or regulators, but by the perennial gale of competitive discipline. Markets continuously reward businesses that tackle tough privacy problems, and punish companies that fail to deliver the privacy that users increasingly demand. Legislative or regulatory mandates on data security are more likely to stifle innovation and ossify technology standards than to truly protect our privacy.

Wayne Crews and Ryan Radia

Protect Free Speech by Rejecting Content Regulation

America's media industry is in a golden age. Cable, broadcast, and premium television channels offer an unprecedented array of content, from reality shows to children's programming to serial dramas. Video gaming on computers, consoles, and mobile devices has also experienced a rapid explosion in variety, quality, and realism.

Yet, many in government view this trend with a skeptical eye. Thanks in part to several recent high-profile massacres in schools and commercial venues, a growing number of advocates and politicians are blaming fictional representations of violence in the media for fueling acts of violence in the real world.

While the mass media may well influence how each of us thinks and behaves, there is simply no evidence that our society is becoming more violent due to television shows, movies, or video games. To the contrary, violent crime in the United States has held steady for several years after a period of prolonged decline. This is so despite the growing realism and popularity of violence in media.

Politicians should resist the temptation to scapegoat violent games and television shows as a primary factor in the incidence of violent crime. And while popular calls to restrict children's access to supposedly-inappropriate media may be well-intentioned, it is not the role of government to determine the messages and stories their children will witness. Rather, these decisions properly rest with parents, who in turn are free to base their decisions on expert commentary and other voluntary educational institutions.

As the U.S. Supreme Court recently recognized in *Brown v. Entertainment Merchants Association*, violent forms of media—including video games—enjoy the full protection of the First Amendment. Congress may not restrict objectionable content in the name of protecting children unless a compelling governmental interest is at stake and Congress formulates the least restrictive means of advancing this interest. Requiring that sellers of violent video games verify the ages of buyers has a chilling effect on the creation of such games, harming adults who lawfully enjoy these forms of media.

Wayne Crews and Ryan Radia

Resist New Burdens on the Transportation Sector

The transportation industries—airline, railroad, shipping, and trucking—are network industries. They rely on connectivity and involve both a flow and a grid. The flow element relates to what is being transported—such as airplanes and trains—and the grid is the physical infrastructure used to manage the flow—such as track and air traffic control. Some transportation industries have been freed of extensive federal regulation over both elements, including railroads and trucking. However, air travel had only its flow element—the airlines—economically liberalized under the 1978 Airline Deregulation Act.

The Federal Aviation Administration remains a command-and-control government agency that poorly manages air transport infrastructure to the detriment of consumers. Air traffic control services should be privatized, and landing slots and airport space should be allocated using market prices and new technology rather than through administrative fiat.

As air travel is a global industry, the U.S. must continue to open up international markets, especially by implementing a genuine "open skies" agreement with the European Union, and remove laws that restrict foreign investment in American airline companies.

- **Encourage private investment in freight rail.** Attempts to roll back the successful 1980 Staggers Act and re-regulate America's freight railroads must be resisted. The Staggers Act has enabled the operation of a genuine market in which the railroads are finally able to make a sustainable rate of return and invest in badly needed new infrastructure. Re-regulation would suffocate new infrastructure investment and lead to greater highway congestion. Rail also suffers in that its main infrastructural competition—the nation's highway system—is government-owned. Congress should consider tax reforms to make it easier to invest in rail infrastructure.
- **Privatize passenger rail.** Amtrak is an inefficient waste of taxpayer money. Congress should pursue privatization of Amtrak's routes and limited infrastructure, through such preliminary reforms as breaking up the network. Competition in passenger rail choices can only benefit travelers, although many routes are so underutilized that it is unlikely they could ever turn a profit. These should be eliminated.
- **Liberalize air travel.** Congress should reject attempts to tax airlines on environmental grounds, which would be extremely harmful to the industry. Congress should also revise, or repeal, outdated rules that forbid industry consolidation or foreign ownership.

Privatization and modernization of the air traffic control system not only would allow faster flights and less delay at airports but save up to 400,000 barrels of oil per day, and reduce greenhouse gas emissions accordingly. And there is no need to reinvent the wheel. Canada's successful air traffic control privatization offers a useful model.

Marc Scribner

Put Mobility First in Surface Transportation

Surface transportation policy has become less rational and more ideological in recent decades. Environmentalists, urban planners, and their political allies have succeeded in diverting resources from expanding highway capacity to mass transit, even as road congestion has dramatically increased—now imposing annually at least $160 billion in economic costs nationwide. Highway user-generated tax revenues are being diverted to fund mass transit, while transportation planners are choking off needed highway infrastructure upgrades by supporting politically favored but economically inefficient programs at the state and local levels.

When Congress passed and President Obama signed the most recent surface transportation reauthorization, Moving Ahead for Progress in the 21st Century Act (MAP-21) in summer 2012, they claimed the two-year, $109 billion legislation was forged on bipartisan grounds. While perhaps true, this did not translate into sensible transportation policy solutions.

MAP-21 relied on a $18.5 billion bailout of the ailing federal Highway Trust Fund and failed to address the core problem facing surface transportation programs—outlays exceeding receipts. In reality, Congress and the president merely kicked the can down the road to a time when existing problems will have worsened.

Congress should seek to enhance mobility by doing the following:

- **Eliminate the Highway Trust Fund's Mass Transit Account.** The Highway Trust Fund was established to fund highway maintenance and expansion. It captures revenue from excise taxes on products such as gasoline and diesel—in other words, from users of the highway system. The Mass Transit Account receives more than 15 percent of gasoline tax revenue (some in Congress propose increasing this to 20 percent), which subsidizes mass transit capital investment and users in the form of artificially low fares. If there is to be a Highway Trust Fund, revenue should be dedicated to projects that benefit those who pay the excise taxes to fund it.
- **Allow "free" highways to be converted to turnpikes.** Currently, 23 USC 129 prohibits the federal funding of turnpikes on the Interstate system, both construction and conversion. Striking subparagraph (a)(1)(D) would permit Interstate "free-road" conversion to toll roads, allow for fairer and more efficient user-generated revenue, and permit more innovative private-sector involvement in financing and management. Congress

should consider a longer-term phase-in period of tolled Interstate highway segments and the phase-out of "free" roads and the Highway Trust Fund. In addition, Congress should encourage the development of high-occupancy toll (HOT) lanes, rather than unpriced high-occupancy vehicle (HOV) lanes. At the very least, Congress should greatly expand the Interstate System Reconstruction and Rehabilitation Pilot Program from its current three slots (all currently filled) to at least 10 slots, as was proposed last year by Sen. Tom Carper (R-Del.).

- **Restore the "user-pays/user-benefits" highway funding principle.** The "user-pays" principle offers several advantages over "taxpayer-pays" funding. First, it is fair because highway users benefit directly from the payments they make. Second, it is proportional, as drivers who drive more pay more. Third, it allows for funding predictability because highway use—and with it highway-user revenue—does not fluctuate wildly in the short-run. Finally, it provides an important investment signal to transportation policy makers. In addition to ending the Highway Trust Fund's wasteful Mass Transit Account, Congress should end the "flexing" of highway funds to transit, bike trails, and other "livability" improvements. According to a recent Government Accountability Office analysis, more than 30 percent of revenue generated from highway users is now diverted to non-highway projects. This must end. Congress also must end its practice of bailout out the Highway Trust Fund. Revenue must either be raised honestly through fuel taxes and, preferably, expanded tolling, or outlays should be cut so that funding programs live within their means.
- **Promote innovative highway construction, financing, and management practices.** As states across the country continue to struggle with meeting their balanced-budget requirements, easing their transportation expenditure burdens through private-sector involvement should be welcomed and promoted. Congress should allow the Federal Highway Administration (FHWA) to greatly expand the SEP-14 and SEP-15 programs, which permits the FHWA administrator to waive project compliance obligations under Title 23 on a case-by-case basis, as well as vigorously promote the potential benefits to state transportation authorities. Several states have already implemented innovative contracting through the SEP-14 process and public-private partnerships through the SEP-15 process, which has saved taxpayers billions of dollars.

Marc Scribner

Reform or De-Nationalize Airport Security

Reform of the Transportation Security Administration (TSA) is long overdue—as the recent passenger backlash against both the TSA's illegal deployment of Alternative Imaging Technology (AIT) scanners and the enhanced pat-downs for those who opt out of the full-body scanners suggests. These new measures merely attempt to fight the last war rather than genuinely increase security for flyers. Meanwhile, long lines at airports impose a significant economic cost on the nation and force some people onto the roads, where they are more likely to die in traffic accidents. The agency has repeatedly failed to address legitimate concerns from members of Congress and the public, in violation of federal law.

The TSA is in the midst of an existential crisis. If the agency cannot be reformed, airport security should be de-nationalized, with full responsibility returning to airport managers. Congress should:

- **End the TSA's monopoly on airport screening.** The TSA should be removed from the direct screening business. Security screening responsibility should be returned to individual airports under a competitive contracting process. The TSA would then certify and oversee qualified private screening companies. Airports at the very least should be allowed to opt out of the federal system and hire their own screeners under a greatly expanded Screening Partnership Program (SPP). A 2011 study prepared by the House Transportation and Infrastructure Committee found that private screeners hired through SPP tend to be far more efficient, which means that screening can be carried out with a smaller workforce and at a lower cost. This follows a 2007 study commissioned by the TSA itself that came to similar conclusions. However, the TSA suppressed the report and was later censured by the Government Accountability Office.
- **Require comprehensive risk and cost-benefit assessments of TSA policy.** Security analysts have raised concerns that the TSA's screening practices likely fail to reduce risk, despite the great expense, and may actually reduce passenger safety and security. Professors John Mueller and Mark Stewart—who specialize in national security and civil engineering, respectively—have criticized a number of post-9/11 security practices and risk-reduction and cost-benefit grounds. A major target of their criticism is the deployment of AIT full-body scanners at U.S. airports. Mueller and Stewart estimate that even assuming the machines work as well as the TSA claims, their massive cost to taxpayers cannot be justified given that the risk

of a successful body-borne explosive terrorism event is so small. A thorough audit of TSA practices is necessary in order to determine the effectiveness of the U.S. air travel security regime.

- **Dissolve the TSO collective bargaining agreement and prohibit future agreements.** The American Federation of Government Employees (AFGE) currently represents 45,000 transportation security officers (TSOs). In addition to representing TSOs, AFGE has negotiated on issues such as TSO performance evaluation. This is unacceptable. Security experts have repeatedly warned that a TSA union with this power will restrict the agency's ability to hire qualified TSOs and fire incompetent ones, which puts travelers in increasing danger. Congress should dissolve the TSO collective bargaining agreement and prohibit all such agreements in the future.

Marc Scribner

Reject Attempts to Re-Regulate the Railroad Industry

In 1980, Congress passed the Staggers Rail Act, which deregulated railroads in the United States. Before this, rail rates and other business practices were determined not by market forces, but the now-abolished Interstate Commerce Commission (ICC) and the railroad industry nearly collapsed.

In the three decades since railroad deregulation, the United States has enjoyed a 55 percent decline in average inflation-adjusted rail rates, along with rail accident and rail employee injury rate declines of 77 percent and 82 percent, respectively. During this period, the railroads reinvested more than $500 billion of their own funds back into their networks.

Shippers and consumers have all benefited from America's healthy, profitable railroad industry, which is by far the most advanced and extensive in the world. But some shippers object to paying rates necessary to preserve their economic benefits. They claim they pay too much to use the special tracks railroads have built to support their operations and that the railroads have engaged in anticompetitive behavior.

The ICC's replacement agency, the Surface Transportation Board (STB), has investigated these claims and found no wrongdoing on the part of the railroads. However, that has not stopped members of Congress from repeating these myths and introducing legislation that aims to re-regulate the railroad industry by removing their limited antitrust exemptions.

This is as reckless as it is wrongheaded. America's deregulated railroad industry now generates more than $260 billion in annual economic activity, directly employs nearly 170,000 workers, and supports countless more jobs indirectly. Re-regulating the railroad industry would be a grave mistake that the United States cannot afford to make, particularly in our present era of economic uncertainty. Congress should reject any attempts to do so.

The STB is currently considering potential new regulations that would reciprocal switching. While the STB has in the past rejected such proposals as economically dangerous and legally specious, the current proceeding is too close for comfort. If the agency reverses its passed rulings and institutes mandatory reciprocal switching, Congress should intervene and void any such rules.

Marc Scribner

Deregulate to Enhance Auto Safety

Automotive safety is the primary mission of the National Highway Traffic Safety Administration (NHTSA). In recent decades, however, NHTSA's mission has increasingly become distorted by political correctness and environmental agendas. For example, in the past the agency focused on the alleged safety hazards of sport utility vehicles while paying little attention to the safety risks of subcompact cars.

One major NHTSA program actually increases traffic deaths by significantly reducing vehicle crashworthiness. The agency's auto fuel economy standards, known as CAFE (for corporate average fuel economy) and now operated in conjunction with the U.S. Environmental Protection Agency, force vehicles to be downsized in order to boost miles per gallon. Downsized vehicles have less mass to absorb collision forces and less interior space in which to safeguard passengers. As a result, CAFE causes several thousand additional traffic deaths per year in the name of saving gasoline. Several years ago, NHTSA reformed CAFE to reduce its downsizing incentive, but this reform has been overwhelmed as the Obama administration issues ever higher—and therefore potentially more lethal—fuel economy standards. The newest set of standards, unveiled in August 2012, requires that the combined passenger car and light truck fleet meet a 54.5 miles-per-gallon standard by model year 2025—more than twice the original target set for CAFE when Congress originally enacted the program.

Congress should halt any increases in CAFE standards. At a minimum, Congress should require NHTSA to undertake a comprehensive study of the deaths attributable to CAFE, both on a yearly basis and over its decades-long history.

Sam Kazman

Recognize the Elitist Nature of Anti-Sprawl Measures

For the greater part of the last century, many people have sought the American Dream by raising their families in single family detached homes, generally in the suburbs. But today, anti-sprawl activists blame the suburbs for a host of environmental and social ills, and push initiatives to limit housing growth to high-density patterns through mechanisms such as urban growth and service boundaries, transit-oriented development and corridors, and manipulation of zoning codes. In fact, the heads of the Environmental Protection Agency (EPA) and the Departments of Housing and Urban Development (HUD) and of Transportation (DOT) have jointly issued a set of "livability principles" for "sustainable communities" under their Partnership for Sustainable Communities.

Such initiatives often end up raising housing prices while exacerbating the very problems they claim to fix, such as traffic congestion and pollution. Their main effect is to make suburban, lower-density living affordable only for the well-to-do. It is no surprise that housing in metropolitan areas such as New York, San Francisco, Los Angeles, Boston, and Washington, D.C., is the most expensive in the nation. These cities' outlying portions suffer from restrictive anti-sprawl land-use regulation, which is largely responsible for the higher housing prices.

Federal programs that subsidize suburban development should be restricted or eliminated, but the same should be done to programs that boost urban development, whether via subsidies or outright coercion. The Partnership for Sustainable Communities should be discontinued, and the EPA's Office of Sustainable Communities, HUD's Office of Sustainable Housing and Communities, and DOT's various "livability" programs should all be abolished.

Sam Kazman and Marc Scribner

Oppose Illegal Efforts by the NLRB to Impose Pro-Union Rules

One of the American economy's greatest strengths is individuals' and businesses' ability to adapt to changing conditions. However, in the case of labor markets, many workers and employers remain subject to an array of obsolete New Deal-era labor regulations that discourage innovation and hamper flexibility. The old adversarial model of labor relations has little to offer to the 21st century workforce, which is characterized by horizontal company structures and greater job mobility—flexibility which employers and workers need to better ride out economic downturns.

The collective bargaining model that has predominated in the U.S. since the New Deal, when the 1935 National Labor Relations Act (NLRA) was enacted, has been one based on compulsory monopoly representation. Under this system, when employees at a given workplace vote on whether they want to be represented by a union, that union becomes the exclusive bargaining agents for all the workers there—including workers who did not vote to be represented by the union.

This violates workers' First Amendment rights to freedom of association and freedom of speech—by forcing them to join unions as a precondition of employment and to support, through the compulsory payment of union dues, political activity with which they may not agree. Abolishing unions' monopoly bargaining privilege, codified in the NLRA would end this anachronistic system.

Meanwhile, Congress should resist measures that would make the situation worse, such as the misleadingly named Employee Free Choice Act (EFCA), which would have allowed unions to circumvent secret ballot elections through "card check organizing. Having failed to enact EFCA into law, organized labor and the Obama administration have tried to make an end run around Congress by imposing similar pro-union schemes through the regulatory process, mainly through the National Labor Relations Board (NLRB). These include shortened election periods, which would give an employer very little time to respond to an organizing campaign. Congress should resist any efforts to impose parts of EFCA or other rules that tilt the playing field in favor of unions against employers, and employees who do not want union representation.

In addition, the NLRB has been operating without a quorum for months. On December 5, 2012, a federal court ruled invalid three "recess" appointments made by President Obama while the Senate was in pro-forma session. However, the NLRB has carried on business as usual as if the ruling had never happened. Therefore, it is crucial that Congress do its utmost to bring accountability to this rogue agency.

When Congress created the Board in 1935, it was intended to be made up solely of "three impartial Government members" to represent the public interest, not management or unions. For nearly 20 years, both establishment political parties resisted politicizing the NLRB until the Eisenhower administration appointed several management-bias individuals.

Before partisan appointees tainted the NLRB, it was recognized such persons could not rule fairly to both labor and management. In 1953 during a Senate Labor Committee debating the appointment of a longstanding management relations official, Congress of Industrial Organizations official James Carey's testimony argued it would be impossible for himself, a union official of over 20 years, to act impartially. Other legitimate concerns arose in the hearing. Some Democrats noted the revolving-door problem of union or management officials serving on the Board. After a short term of a few years, the NLRB member would seek reemployment in their prior field, which to secure future employment would depend on if their decisions favored their past constituents.

Since the Clinton administration past concerns of a partisan NLRB have come to fruition, now the Board acts in favor of either management or labor depending on which political party occupies the White House. The outcome: legal precedent in labor law (under the NLRB's jurisdiction) and workplace rules are in constant flux, causing considerable uncertainty for employers and employees alike.

Today under the Obama administration, the NLRB's rulemaking and court decisions blatantly favor organized labor, as seen from its interference of Boeing's construction of facilities in a right to work state or redefining the community of interest within a bargaining creating micro-unions. In particular, the appointed board members and counsel highlight the agency's departure from Congress' intentions to create a nonpartisan agency.

In conclusion, Congress should abolish the NLRB by enacting Representative Trey Gowdy's (R-S.C.) National Labor Relations Reorganization Act (H.R. 2926), introduced in the 112th Congress, which would transfer the NLRB's responsibility to monitor union elections to the Office of Labor Management Standards. In addition, the Board's adjudicatory power would be transferred to the Department of Justice.

Trey Kovacs, Ivan Osorio, and Matt Patterson

Eliminate Wage Ceilings for Unionized Workers

Workers need incentives to perform to their utmost capability. Working hard and performing a job well is usually rewarded with greater compensation. Unfortunately, this is not the case at many unionized workplaces, where collective bargaining agreements impose a wage ceiling, in addition to a wage floor. The vast majority of these agreements grant pay increases based on seniority rather than merit.

The National Labor Relations Board and the courts have held that employers with collective bargaining agreements can only deal with a union and not with an individual employee. This means that in most cases an employer cannot reward a union employee for being more productive without violating the National Labor Relations Act (NLRA.)

The Rewarding Achievement and Incentivizing Successful Employees (RAISE) Act, sponsored in the 111th Congress by Rep. Tom McClintock (R-Calif.) and Sen. David Vitter (R-La.), would amend the NLRA to allow employers to pay productive workers more than the base amount set in the union's collective bargaining agreement. If the RAISE Act becomes law, union workers' earnings could rise by between $2,600 and $4,300 per year, according to an estimate by Heritage Foundation labor expert James Sherk. This is a common sense idea that is long overdue.

Trey Kovacs, Ivan Osorio, and Matt Patterson

End Government-Subsidized Union Activity

Every United States civil service employee pledges an oath to defend the constitution and to effectively and "faithfully discharge the duties of the office on which I am about to enter. So help me God." (5 U.S.C. §3331)

Yet under Title V United States Code, federal employers are required to authorize public servants to break their vows to the people. Section 7131 of Title V allows the practice of union "official time," which requires federal agency employers to give paid time off to unionized federal employees to perform union duties while on the job. Official time is a direct federal subsidy to federal labor unions, using tax dollars to promote private interests.

Federal employees perform a variety of tasks on official time including, lobbying, collective bargaining, file grievances and attend union conferences. These activities remove government employees from their regularly assigned duties they swore to uphold while still receiving their taxpayer funded salary and benefits.

Although the total cost of official time is unknown, due to limited scope of the federal government's record keeping and disclosure, in FY 2010, federal employees spent over 3 million hours—costing taxpayers $137.4 million—on union official time. Representative Phil Gingrey (R-Ga.) estimates repealing official time would save more than $686 million over five years and more than $1.3 billion over 10 years.

Congress should pass Rep. Gingrey's Federal Employee Accountability Act, which would amend Title V to prohibit union official time.

Trey Kovacs

End the Pension Benefit Guaranty Corporation's Insurance Subsidy

The Pension Benefit Guaranty Corporation (PBGC), the federal agency that insures private sector pensions, reported a $34 billion deficit for fiscal year 2012. Created by Congress in 1974 as part of the Employee Retirement Income Security Act, the agency is funded through premiums paid by insured companies, not federal tax dollars, but taxpayers should still worry about getting hit in the wallet.

Problems arise because PBGC premiums are set by Congress, which makes no effort to take the risk of private pension plan default into account when setting those premiums. This undermines one of the most important purposes of insurance premiums: pricing risk, as determined by market signals, in order to deter risky behavior. Worse, the beneficiaries of those low premiums—primarily unions and large unionized firms—have an incentive to lobby to keep those premiums low.

To his credit, the PBGC's current head, Joshua Gotbaum, has asked Congress to allow the agency to raise premiums, and the Government Accountability Office has endorsed the proposal. Congress should oblige Gotbaum's request. Moreover, Congress should not simply raise premiums to some other legislatively determined level, but give the PBGC the flexibility to adjust its own premiums to reflect risk in the future. Lawmakers should not be in the business of setting prices, and there is no reason to make an exception for pensions, especially for an insurer supposedly funded by premiums.

The U.S. government is not directly responsible for the PBGC's unfunded liabilities, but the agency's massive, mounting deficit makes a federal bailout a real possibility. In fact, some politicians have already proposed such a bailout. A bill introduced in the 112th Congress by Sen. Robert Casey (D-Penn.) sought to make the federal government explicitly liable for multiemployer plans under the PBGC's purview. The bill failed, but similar schemes could come up again, especially if the PBGC's deficit were to get much worse. Congress should resist any attempt at a bailout.

In its current structure, the PBGC creates a major moral hazard. Without a federal guarantee, many large firms would have had a greater incentive to reform their pension systems long ago, perhaps by paying out existing commitments and phasing out defined benefit pensions for new employees. The PBGC is effectively propping up an institution that is becoming increasingly anachronistic: defined benefit pensions. These plans pay out a fixed amount, regardless of the value of assets in the pension fund. The job of defined benefit fund managers is to project the returns they need to pay

out pension obligations and determine what investments they need to stay afloat. But as any investor knows, projecting future returns is an inexact science, at best. Thus, PBGC premiums are lower than they should be to deter underfunding. That gives unions and large firms an incentive to over-promise benefits and underfund pension plans, knowing that the PBGC—and eventually Congress and taxpayers—bear the risk of said underfunding. All the while, liabilities keep growing.

In recent years, defined contribution plans have been steadily replacing defined benefit plans across most industries. Why have defined benefit pensions survived for so long? Quite simply, because they could. Today, defined benefit pensions are largely confined to government employers and private sector unions. Interestingly, the major industries that have unloaded their pensions onto the PBGC—airlines, steelmakers, and automakers—once had something in common with government: They all once operated in an environment of very little competition. The implication is clear: Defined benefit pensions thrive in stasis. In a highly competitive economy, however, they are extremely risky.

For private sector unions, a shift away from defined benefit pensions is a troubling prospect, because it takes away a major selling point for union membership: a guaranteed secure retirement. But there is nothing secure in pension plans for which the numbers simply do not add up.

Would defined benefit pensions plans survive intact if the PBGC were to shift toward risk-based premium pricing? Perhaps; perhaps not. But whatever the outcome, we will not know for certain until they are allowed to operate without a huge insurance subsidy. And a PBGC that sets risk-based premiums is the best way to protect taxpayers from the prospect of a massive pension bailout.

Ivan Osorio

Avoid Energy and Global Warming Policies That Pose More Risk Than Global Warming

Although global warming has been described as the greatest threat facing mankind, policies designed to address global warming actually pose a greater threat. The international and domestic policies to ration carbon-based energy would do—and are doing—little to slow carbon dioxide (CO_2) emissions, but would have enormous costs. These costs would fall most heavily on poor people, not only in the United States, but also in the world's poorest nations. The correct approach is not energy rationing, but rather long-term technological transformation and building resiliency in developing societies by increasing their wealth.

Since the Kyoto Protocol was negotiated in 1997, atmospheric CO_2 concentrations have increased by almost 7 percent. The global mean temperature peaked in 1998 and has since remained flat. Precipitate and colossally expensive measures to reduce greenhouse gas emissions are not warranted at this time—and likely never will be warranted.

Per capita carbon dioxide emissions in the United States have remained flat since 1980, according to the federal Energy Information Administration. Meanwhile, the U.S. population has increased by slightly more than 1 percent per year. Population growth means that the U.S. needs more energy, not less.

The European Union (EU) ratified the Kyoto Protocol and has implemented mandatory greenhouse gas reduction programs, but emissions in the EU-15 (the 15 member countries before the recent EU expansions) had risen considerably until the global recession, since 1997. The EU's Emissions Trading Scheme has raised energy prices for consumers and producers, but has done little to reduce emissions. Gasoline taxes have been raised to $3 to $4 per gallon in most EU countries, yet emissions from transportation continue to increase.

The most thorough economic studies by leading academic economists (who are not global warming skeptics) have found that mandatory emissions reductions add to the total potential costs of global warming. For example, Dr. William Nordhaus, professor of economics at Yale University and one of the world's leading resource economists, concluded that attaining the emissions reductions advocated by former Vice President Al Gore would avert $12 trillion of the projected costs of global warming impacts, but at a cost of $34 trillion.

A cap-and-trade program would be the biggest government intrusion in the economy since the rationing system adopted during the Second World War. It would also be the biggest government limitation of, and interference with, people's personal freedoms since that war.

The rapid economic growth in major developing countries has been accompanied by rapid emissions increases. According to the most recent data prepared by international agencies, annual Chinese emissions have surpassed U.S. and EU emissions combined. China's CO_2 emissions tripled over the past decade—an increase large enough to cancel out an 80 percent reduction in U.S. emissions. The Chinese government has made it clear that it will not undertake mandatory emissions reductions because it would limit the country's economic growth. Instead, China hopes to be paid by developed nations, and corporations in developed nations, to reduce its emissions.

The economic rise of China and India is lifting hundreds of millions of people out of poverty. Hundreds of millions of more people in poor countries hope to follow down the same path. That requires much more—and much more affordable—energy than can be provided by non-carbon sources, like windmills, solar panels, and nuclear plants.

Any successor to the Kyoto Protocol requiring emissions reductions in developing countries would consign billions of people to prolonged poverty.

Congress should:

- Reject proposals to enact cap-and-trade legislation or a carbon tax in order to reduce greenhouse gas emissions.
- Reject further mandates, subsidies, or incentives for alternative energy technologies or for "green jobs" programs.
- Oppose the closing of more federal areas for energy production.
- Oppose placing regulatory obstacles in the way of building energy infrastructure, including transmission lines, pipelines, coal-fired power plants, nuclear plants, and windmills.
- Revoke the federal government's authority to regulate greenhouse gases.
- Reject any new international agreement to succeed the Kyoto Protocol that would require mandatory emissions reductions by the United States.
- Repeal onerous regulations targeted at the U.S. coal industry, including the Utility MACT and New Source Performance Standards for power plants.
- Repeal existing mandates, subsidies, and incentives for all types of energy production, efficiency, and conservation.
- Require the Department of the Interior to open federal the Outer Continental Shelf areas and the coastal plain of the Arctic National Wildlife Refuge to oil and gas exploration and production.
- Replace the current depreciation schedules for investments in new capital stock and equipment with immediate expensing.

Myron Ebell and Brian McGraw

Improve Oversight of the Environmental Protection Agency

Energy and environment policy is increasingly determined by federal agencies like the Environmental Protection Agency (EPA) and the Department of the Interior, without a Congressional mandate. In this fashion, unelected bureaucrats are usurping the policy making prerogatives of Congress. With regulators developing and implementing policy behind closed doors, administrative transparency has never been more important.

Many Congressional committees in the 112th Congress performed a laudable job overseeing the Executive. Their work must be expanded in the 113th Congress. In particular, the Congressional Committees should make increased use of employment detail from federal agencies. This would expand the committee's investigative capabilities and would not require any additional taxpayer funds. Congress should also consider investing in staff resources. While it is true that government spending is rarely the answer, outlays to Congressional oversight of regulatory policymaking would pay for itself many times over in avoided regulatory costs. This would enable an engaged Congress to head off politically motivated regulation and regulatory capture.

Congress should end a particularly insidious form of Executive policy making, known as "sue and settle," which entails friendly lawsuits against the EPA by environmentalist special interests, resulting in consent decrees that bind the agency to promulgating new regulations on a specific timetable, with states—the regulated entities—left out of the negotiations. Often, these consent decrees establish deadlines that shortchange states of their rightful role in the regulatory process.

William Yeatman

Repeal the Utility MACT Rule

President Obama has openly stated that he intends to "bankrupt" coal-fired power plants. Originally, he planned to achieve this through a cap-and-trade program. After the November 2010 election gave Republicans control of the House of Representatives, Obama vowed to find other ways to achieve his goal. One such means is the still-unfolding cascade of U.S. Environmental Protection Agency greenhouse gas (GHG) regulations promulgated via the Clean Air Act (CAA), a statute adopted long before global warming became a public policy issue. Another is a series of costly non-GHG rules that will accelerate retirements of existing coal plants and block construction of new coal generation.

The most important of those non-GHG rules is the Utility MACT Rule, which the EPA adopted in February 2012. The MACT Rule requires coal-fired power plants to meet "maximum achievable control technology" standards for emissions of mercury and other hazardous air pollutants (HAPs). By the EPA's own admission, the estimated annual cost of the rule's mercury emission reductions—$9.6 billion in 2016—exceeds the quantifiable health benefits by 1,600 to one or even 19,200 to one.

The health risks from mercury emissions, unlike other those from other air pollutants, arise not from inhalation but from consumption of mercury-contaminated fish. Supposedly, pregnant women whose diets are high in self-caught (non-commercial) fish may have blood mercury levels high enough to damage fetal brain and neurological development. Based on dubious epidemiology, the EPA claims the MACT Rule's mercury reductions will avert the loss of 0.00209 IQ points per child annually in a guesstimated population of 240,000 subsistence fishing households. This undetectable and unverifiable benefit exists only in EPA modeling. In the 22 years since Congress tasked the agency to study the health effects of mercury, it has not identified a single child whose learning or other disabilities can be traced to power plant mercury emissions.

The alleged health risks posed by other air toxics regulated by the Rule, such as acid gases, are so miniscule and conjectural that the EPA does not even try to quantify them. Yet the required emission reductions are so stringent that pollution-control equipment manufacturers cannot guarantee that power plants equipped with state-of-the-art controls will meet the standards. Absent such a guarantee, utilities face too much financial risk to build new coal power plants. The MACT Rule thus effectively bans new coal generation—a policy Congress never approved.

Despite the abysmal cost-benefit ratio of the required mercury reductions, the EPA claims the MACT Rule will pay for itself many times over. This supposedly is due to the "co-benefits" of coincidental reductions in non-HAP emissions, particularly sulfur dioxide, which is a precursor of fine particulate matter ($PM_{2.5}$). The EPA estimates that in 2016, the Rule's coincidental $PM_{2.5}$ reductions will avert 4,200 to 11,000 premature deaths, generating co-benefits of $33 billion to $89 billion, or $3 to $9 in health benefits for every dollar of cost. None of this is credible.

As Anne Smith of NERA Economic Consulting points out, almost all of the projected 11,000 premature deaths averted are in areas already in attainment with the EPA's National Ambient Air Quality Standard (NAAQS) for $PM_{2.5}$. By law, NAAQS are set at a level "requisite to protect public health" with an "adequate margin of safety." Even more problematic, the EPA attributes up to 89 percent of the Rule's co-benefits to $PM_{2.5}$ reductions below the lowest exposure associated with mortality risk in any epidemiological study.

The MACT Rule's illusory benefits come at a very high cost. Not only will the Rule kill the future of coal generation, the workhorse of the U.S. economy, it will make the utility sector more dependent on natural gas, a fuel with a history of price volatility and a future clouded by environmentalist hostility to hydraulic fracturing. Premature retirements of up to 50,000 megawatts and more combined with hundreds of thousands of megawatts that must be taken offline to install new pollution control equipment will create significant reliability challenges for grid operators, increasing the risk of power failures, rolling blackouts, and brownouts.

Because wealthier is healthier, the MACT Rule will likely do more harm than good to public health. NERA Economic Consulting estimates that MACT and three other EPA regulations could reduce annual average disposable income by $34 billion from 2012 to 2020. That is money households will not be able to spend on health care, nutrition, and stress-relieving vacations. NERA also estimates that the four EPA regulations could reduce net employment by an average of 183,000 jobs per year. Many people who lose their jobs also lose their health insurance. Numerous studies demonstrate that unemployment increases the risk of sickness and death.

Congress should repeal the MACT Rule. Rather than defer to the judgment of an agency imbued with anti-coal zealotry and a vested interest in expanding its control over the electric power sector, Congress should hold hearings to determine what types of controls, if any, are cost-effective in addressing the less-than-evident health risks of power plant HAP emissions.

Marlo Lewis

Trash Counterproductive Waste Disposal Policies

Solid waste. Much of the nation's current solid waste policies follow an outdated, politicized, and government-centered model. State and local regulators focus on deciding how much waste should be recycled, placed in landfills, or burned in incinerators. This approach fails to discover the most environmentally and economically sound mix of options. Policy makers lack the necessary information and therefore focus on misplaced perceptions about the various disposal options. As a result, they produce recycling programs that cost more and use more resources than they save. In contrast, private sector competition between recycling, landfilling, and incineration providers reduces costs and saves resources.

Federal policy makers should resist attempts to increase federal regulation in solid waste disposal. Local governments should seek ways to increase private markets in the waste disposal industry. They should change waste policies to allow market-driven competition between various disposal options—allowing recycling, landfilling, and incineration companies to complete so that the most environmentally and economically sound mixture of disposal options results.

Electronic waste. Increasingly, news reports and environmental activists claim that we are facing a new solid waste crisis. As a result of such rhetoric, Europe has passed several "e-waste" laws, U.S. states have begun looking into their own regulations, and members of Congress have proposed federal legislation. Unfortunately, misinformation and the misguided notion that government is positioned to improve electronic waste disposal is leading to misguided policies and legislation.

- Despite claims to the contrary, there is no "e-waste crisis." E-waste risks and costs are manageable by allowing private recycling and disposal efforts to continue.
- Manufacturers should not be forced to take back electronic equipment, since they are in the manufacturing, not disposal, business. Some firms have voluntary programs for recycling computers, which offer a market-based approach for some products.
- Congress should avoid creating new government e-waste programs, as they promise to promote inefficiencyies, increase environmental problems, and hinder market solutions.
- Consumers should not be taxed when they purchase computers or other electronics, but they should be responsible for disposing of discarded products in a safe and legal fashion. Disposal may include paying somebody to dispose of the product via a voluntary private party agreement or disposal through local government trash collection.

Hazardous waste. Federal hazardous waste policy—as embodied in the Superfund law and the Resource Conservation and Recovery Act—has long been governed by federal mismanagement, perverse incentives, unjust liability schemes, and misuse of science. The Superfund regime of randomly taxing and suing parties not actually responsible for hazardous waste contamination needs reform. Policies should target those who have produced harm—an approach that rewards good behavior and discourages bad.

- Hazardous waste sites are exclusively a state and local concern. Given the demonstrated success of states in managing such sites locally, there is little reason for federal involvement. Thus, Congress should seek ways to further devolve the program to the states.
- Absent devolution, hazardous waste programs should be reformed to provide regulatory relief by setting standards that consider the use of the land and that are not needlessly onerous.
- Liability schemes should be reformed to ensure that only the parties directly responsible for polluting should be held liable. Currently, the Superfund law holds anybody remotely connected to a disposal site liable even if that party did not have any control over the site or the contamination. Parties unfairly held liable include generators of waste that was eventually disposed of at a site, parties that hauled waste to a site, and parties that gained ownership of polluted property.

Angela Logomasini

Purify Federal Water Policies

Drinking Water. Drinking water policy should focus on how best to ensure that Americans have clean and safe water to drink. Currently, many communities are forced to spend limited resources to meet misguided and scientifically questionable federal mandates. States and localities are better able to set priorities based on their particular needs. Moreover, drinking water policy would benefit from a more market-driven model, one that allows for more private innovation in the provision of drinking water services:

- Congress should return full authority to set standards to the states, allowing them to work with localities to meet their specific needs.
- Should the federal government remain involved, there are ways to help empower localities within a federal framework. Congress should engage in greater congressional review of safe drinking water rules to ensure that the Environmental Protection Agency has employed the "best available science" as demanded under the law. If large questions remain over science, and standards are likely to impose considerable costs, Congress should preempt the overly stringent standard.
- Congress should consider ways to grant states discretion on how to regulate the naturally occurring contaminants, such as radon and arsenic, to reflect localized levels of risk.

Water Quality. Waterways throughout the United States have suffered from various pollution problems because they have long been held in common—so no one was in charge of keeping them clean. Congress passed the Clean Water Act in 1972, which has been a mixed blessing. While many waterways have seen improvements, the program is very bureaucratic, and it has promoted too much expensive litigation that focuses on paperwork violations rather than on improving water quality. The science underlying many of the regulations is weak. In addition, parts of the Act have proven ineffective, such as programs addressing non-point source water pollution (water runoff from lands). Policy makers would be wise to look at innovative, market-based systems for advancing water quality:

- Instead of focusing on paperwork violations, policy makers should hold polluters liable for the actual harm they cause to other persons or to their property.
- States need flexibility. Because the science of water pollution control is evolving, and because each state and watershed has different needs and problems, Congress should give states flexibility in water quality management approaches.

Angela Logomasini and CEI Staff

Embrace Private Conservation of Land and Natural Resources

Private stewardship and markets play a critical role in land and natural resource conservation. Much of America's land and other natural resources have suffered because government ownership encourages mismanagement and overuse, because no individual has a long-term stake in protecting resources owned in common. In addition, public lands are managed based on political priorities that often produce misguided political management decisions. Examples include the devastation caused by uncontrolled forest fires, overgrazing, and destruction of species and habitat.

- Lawmakers should consider marketplace incentives and private property-based approaches to encourage land and natural resource conservation.
- Existing laws impede private conservation by making property owners lose use of their land. These laws should be reformed. These include measures in the Endangered Species Act, wetlands regulations, and potential invasive species laws.
- Lawmakers should look for ways to privatize resources owned in common to allow private conservation. Areas in which this has been done successfully but could be expanded include the establishment of fishing rights, privatization of coral reefs, and privatization of species and their habitats in private wildlife refuges.

Angela Logomasini and CEI Staff

Restore the Constitutional Right to Property

The right to property is an essential part of a free society, and widespread private property ownership is a key limitation on government power and growth. Property rights have traditionally been more secure in the United States than in any other country. However, this is being severely eroded with respect to ownership of real property, as the Supreme Court dramatically underscored in its 2005 *Kelo* decision, which deprived homeowners of their right to private property to allow commercial development. Private property has also been undermined by the Endangered Species Act (ESA), wetlands regulation under the Clean Water Act, and other environmental laws and treaties.

- Lawmakers should advance the constitutional principle of private property by reforming laws that adversely impact landowners to at least demand that government provide compensation when property values are decreased by regulatory measures.
- Lawmakers should ensure that governments—at all levels—do not have the right to seize private property for the purposes of commercial development. When the Framers of the Constitution established eminent domain, they did not intend it to be used to allow one private party to benefit at the expense of others. Public policies should ensure that use of eminent domain be restricted to cases of legitimate public use.

Angela Logomasini

Protect Endangered Species

The Endangered Species Act of 1973 is bad for wildlife, because it is bad for people. It has largely failed to protect endangered plants and animals because the threat of regulatory "takings" creates perverse incentives, inducing property owners to ensure that their land never becomes habitat or potential habitat for an endangered species.

- Congress should replace the ESA with a non-regulatory, incentive-based conservation program to encourage private landowners to protect and provide habitat. Property owners' natural incentive to be good stewards of their land can work in concert with effective species protection.
- Absent reforms that eliminate the ESA's punitive land use regulations, policies should require just compensation for landowners who are deprived of the right to use their land and whose lands are devalued by government regulation.
- Another policy change that would help species would be elimination of the estate tax. The costs of these taxes often force families to sell off estate properties to developers to pay for the estate taxes on the property. In many cases, individuals would rather keep the properties free from development, but high inheritance taxes make that impossible.

Angela Logomasini and Robert J. Smith

Clarify the Role of Invasive Species

In the past, policies addressing problem plants and animals followed a rational path. They focused on controlling organisms that posed serious threats to agricultural crops and other valued American plants and animals as well as public health. However, the issue associated with so-called invasive species is moving in a new direction, leading to an almost religious crusade to rid the nation of all "non-native" plants and animals. Despite claims to the contrary, many non-native species provide valuable public benefits. Wholesale eradication, instead of management, promises to cause more problems than it would solve. It would result in wasted taxpayer dollars and reduced access to many valuable plant and animal products. In addition, these polices are likely to expand federal land use regulations, undermining the constitutional right to property.

Policy makers in Congress and in the administration should focus on developing a scientifically sound definition of invasive species—one that focuses on harmful and noxious characteristics rather than on country of origin.

In addition, lawmakers should include language in all legislation involving this issue stating that all affected landowners will receive compensation for any economic costs placed on them to meet any invasive species regulations.

Angela Logomasini and Robert J. Smith

Reform Wetlands Policies

Wetlands regulations do a poor job of protecting wetlands habitat. Much federal regulation focuses on preventing development on lands that are dry most days of the year and that do not provide useful habitat for wildlife. In contrast, private initiatives have successfully ensured the protection, restoration, and creation of vital wetlands habitat around the nation. Yet federal wetlands regulations have seriously impeded such private wetlands protection initiatives, and even have forced some parties to abandon attempts to provide such habitat. State efforts, non-regulatory federal programs, and private conservation would do a better job of protecting ecologically significant wetlands than could the existing federal regulatory approach. These steps would enhance the protection of wetlands and private property without increasing the costs of conservation to taxpayers or to landowners. Policies that can better ensure private wetlands protection, while eliminating destructive and needless red tape, include the following.

- Congress should replace the Section 404 regulatory program, which regulates the dredging and filling of lands, with a non-coercive, incentive-based program.
- At a minimum, the federal government should provide financial compensation to property owners who lose the use of their land due to wetlands regulations.

Angela Logomasini and CEI Staff

Affirm the Role of Property Rights in Water Rights Policies

Battles over limited water supplies in the United States and around the world have long produced conflicts and costs to affected communities. While limited supplies are a problem in and of themselves, political management of water is the key problem. Government control of water allocation generally produces inefficient and unfair results.

- A property rights-based system could alleviate water shortages and pollution problems by properly pricing water resources and giving parties a stake in ensuring water quality.
- Policy makers should rethink current approaches to facilitate water markets, which have developed in some areas and show great promise.

Angela Logomasini

Develop Free-Market Policies to Help Homeowners Deal with Natural Catastrophes

Natural catastrophes such as hurricanes, forest fires, earthquakes, and severe blizzards threaten nearly every state in the Union. Each year, such catastrophes impose billions of dollars' worth of costs on taxpayers, insurers, and governments; claim scores of lives; and destroy thousands of homes. Congress should:

- **Avoid policies that encourage unwise building.** Members of Congress continue to introduce measures in an attempt to add wind coverage to the National Flood Insurance Program and establish an implicitly government-backed entity to reduce reinsurance prices. Neither measure has much promise for providing coverage that would actually cost less than that available in the private market. Instead, both would encourage development in high-risk areas for catastrophic events while sticking taxpayers with the bill. Thus far, none of the measures have made it far in the legislative process, but efforts are likely to reappear in future sessions. Congress should reject any measure that could involve the federal government in the insurance or reinsurance business in disaster-prone regions.
- **Help states decontrol homeowners' insurance rates.** States perform nearly all oversight of homeowners' insurance rates. In the long term, federal policy should encourage states to let insurers charge risk-based rates that take all relevant risk factors into account. Many state insurance bureaucracies suppress rates in order to cater to homeowners who live in high-risk areas—often raising rates for those who live in safer areas. The federal government should offer tax credits over a phase-out period to homeowners in states that act properly and allow rates to rise. This would temporarily offset higher insurance premiums and allow homeowners to secure their homes against natural disasters. The tax credits should expire with the program.
- **Allow private insurers to reserve against catastrophes without paying taxes up front.** Current U.S. tax law makes it difficult for insurers and reinsurers to build up reserves against catastrophes. Larger reserves could make reinsurance more affordable. The United States should implement laws similar to those in Switzerland, Bermuda, and elsewhere that make it possible for insurers to build up "catastrophic" reserves. Money in these reserves could be held tax-free until spent to pay claims stemming from a major catastrophe.

John Berlau

Liberalize Home, Automobile, and Life Insurance Regulation

Currently, insurance in the United States is governed mostly by a patchwork of regulations at the state level. Some states have more cumbersome and confusing rules than others. Competition among states is good—in fact, it is a precept of American federalism. The problem is that in the insurance policy area, states do not compete, because consumers are restricted from purchasing insurance across state lines. This hampers innovation, raises insurance rates for those who behave prudently, and needlessly expands government bureaucracy.

In the realms of homeowners', automobile, and life insurance—the types of insurance that most Americans buy for themselves—the United States needs competitive federalism that leaves rate regulation to market forces. Congress should create interstate insurance choice by allowing state-regulated insurers to operate across state lines under the laws of their home state. This could yield many positive consequences without the need to create a new federal agency to administer it.

John Berlau

Phase Out the National Flood Insurance Program

Since it emerged in its current form in 1973, the National Flood Insurance Program (NFIP) has done little to meet its supposed purpose of protecting the nation from flood damage. Instead, it has encouraged development in flood-prone areas, endangered lives, and damaged the environment by suppressing market rates and discouraging flood protection innovation for repeatedly damaged properties in high-risk floodplain areas. Moreover, the program's existence has impeded the emergence of private flood insurance and imposed billions of dollars in costs. As of 2010, the program was deeply in debt to the U.S. Treasury and asking for a bailout of nearly $20 billion.

Privatization of the program would require three steps: improved flood mapping, rate changes, and a free market auction of policies within the current program. President Obama signed the bipartisan Biggert-Waters Flood Insurance Modernization Act in July 2012 incorporating the first two steps. It is time for the agencies to implement these reforms, and for Congress to pass further legislation finally phasing out the NFIP and allowing the private insurance market to create policies for floods just as it does for other natural disasters such as fires and earthquakes.

Improved flood mapping. Writing flood insurance coverage requires complex rate maps that make probabilistic determinations of the risk of flooding in various areas. The current maps that underlie the flood program are out of date and, despite hundreds of millions of dollars spent modernizing them, still are not very good. Better maps would make it possible for private companies to write practical, affordable insurance on a large scale. Flooding involves many unknowns. Therefore, it makes the most sense to allow multiple players to develop flood maps in a competitive market. Until it is fully privatized, the NFIP should utilize the innovations of private mapping services such as Google Maps.

Rate adjustment. New improved maps would allow companies that want to write flood policies to adjust rates to make them accurately reflect the risk involved. Some rates would go up based on new data while others would fall. In time, a large portion of the NFIP flood policies could be taken over by private insurers.

Auction of remaining NFIP policies. Following a period under this quasi-private system, the National Flood Insurance Program could auction off its remaining portfolio of policies. Certain high-risk areas likely would be rendered not insurable at rates that would offer any real value to those purchasing insurance, which would discourage building in the highest risk areas—a desirable outcome in terms of both costs and safety.

John Berlau

Advance a Global Pro-Trade Agenda

Increasing liberalization of world trade is a key factor behind the dramatic increase in global prosperity since the 1950s. However, in recent years, free trade and globalization have come under assault from populist politicians. This demagogy has led to some costly real-world consequences. Free trade agreements with friendly nations negotiated years ago were stalled by Congress before finally being passed. Some lawmakers decry China's currency "manipulation" as an unfair subsidy and seek to impose retaliatory duties on Chinese imports, even though lower prices on Chinese goods benefit American consumers. And internationally, the World Trade Organization's Doha Round remains stalled due to rich countries' reluctance to reduce their extensive agricultural support programs, which distort the world market and harm developing countries' ability to compete.

The progress that more open trade can bring is increasingly threatened by efforts to insert into trade agreements environmental and labor standards that function as a form of disguised protectionism. Imposing American- or European-level environmental and labor standards on developing countries would deprive poor people of jobs and harm the environment in those countries by undermining their economies' varying competitive advantages. There is also a more recent push to introduce carbon border taxes to penalize countries that have not taken steps to enact Kyoto-like regimes. Yet increasing wealth—via liberalized trade—is a key to raising both labor standards and environmental protection in the developing world.

Some constituencies seek this disguised protectionism. In the United States, organized labor would like to restrict labor market competition for its members by thwarting international trade liberalization as well as bilateral trade negotiations. Environmentalists likewise would like to "export" U.S. environmental mandates to poor countries.

In addition to its economic benefits, trade liberalization can help improve relations with neighbors, allies, and emerging nations. More open trade greatly benefits consumers. Too often, consumers have been neglected in the mercantilist assumptions that frame most trade debates: "Exports good, imports bad."

Since the end of the Second World War, American presidents and majorities in Congress from both parties have consistently pursued trade liberalization as a key American interest. The Obama administration and the new Congress should resist calls for divisive and misguided protectionist measures that would harm our fragile economy and isolate the U.S. from its international interests.

Fran Smith

Let Market Forces Regulate Internet Gambling

In June 2010, the 2006 Unlawful Internet Gambling Enforcement Act (UIGEA) was implemented after years of delays. The law regulates banking and credit transactions related to online gambling. This does nothing to protect Americans from crime. Instead, it criminalizes ordinary Americans' voluntary behavior and prevents businesses that are legal in many other countries from operating within the American economy.

People enjoy gambling and can legally do so in 48 states. Regardless of its legality, Americans have and will continue to gamble for money online. Banning the activity or making licensing prohibitively difficult will simply encourage gamblers to play on foreign sites and take greater risks. In a country where gambling has become a respected, mainstream pastime, these laws make no sense.

The Department of Justice recently declared that it would not apply the Wire Act of 1961, which bans interstate sports wagering, to online gambling on non-sports activities. That is a welcome step, but legislative action to allow adults to legally gamble online is still needed. Congress should repeal any law that criminalizes or in any way penalizes private individuals for voluntary gambling, whether it relates to sports, card games, and whether it is online or off. This includes repealing the Wire Act, UIGEA, and Professional and Amateur Sports Protection Act of 1992.

While individual states may choose to enact a licensing and regulatory scheme, allowing the free market to regulate Internet gambling will result in the best outcome for gamers, businesses, and payment processing companies. Governments should enforce existing contract and criminal laws against force and fraud. Companies based in the United States and income earned by players should be treated by U.S. tax code like any other lawful endeavor.

Gambling is essentially an entertainment activity where participants enjoy the possibility of profit, so there is no reason to assume that private market oversight or certification programs would be insufficient. Like cruise ship casinos, which voluntarily abide by specific regulations and agree to audits of their operations, online casinos could submit to review by a regulator. Inevitably, competition among private auditors would result in greater oversight than one federal watchdog. Auditors could offer a certificate or rating to guide consumers to the sites where they are most likely to enjoy fair play.

Michelle Minton

Respect the Constitution and Reduce the Government Burden on Alcohol-Related Businesses

Alcohol sales account for billions of dollars in sales, millions in tax revenue, and thousands of jobs throughout the country. Despite the faltering economy of the last four years, the alcohol industry remains strong and growing. There are now more than 2,000 craft brewers in the United States—an increase of 350 since last year and the numbers continue to grow. One way to encourage the growth of this sector is to reduce the federal excise taxes on alcohol. Another is to ensure that states regulate both in- and out-of-state businesses fairly so that they can grow and distribute their products throughout the nation without facing discrimination from state governments.

To this end, Congress should reject the ongoing attempts by some lawmakers to circumvent the Interstate Commerce Clause by declaring alcohol a "different kind" of consumer good and thus not worthy of protection under that clause.

Furthermore, Congress can act to protect the vibrancy of the small alcohol-makers market by discouraging the U.S. Food and Drug Administration from any attempt to ban the combination of alcohol and ingredients, such as caffeine, that are otherwise recognized as safe for consumers.

Michelle Minton

Rein in the FDA and Protect Consumer Access to Dietary Supplements

Dietary supplements are regulated in a different manner than pharmaceuticals as per the Dietary Supplement Health and Education Act of 1994, which was designed to make sure that the process of manufacturing supplements and getting them to market is not prohibitively expensive. Many of the ingredients found in dietary supplements have decades of observed use and generally cannot be patented. Some members of Congress want to give the U.S. Food and Drug Administration the power to require pre-approval for supplements, a long and costly process that would not improve consumer safety and would likely result in the reduction of vitamin availability and an increase in the cost for the supplements that remained on the market.

The FDA already has enough power to remove dangerous vitamins, drinks, and food from the market and giving it more responsibility will only further burden the overburdened agency. Congress should oppose any attempts to expand the FDA's power in this area.

Michelle Minton

Protect Federalism

The Framers of the Constitution intended federalism to act as a check not only on the national government, but on state governments as well. In addition to the relatively well-known limits on Congress, the Constitution imposes a number of limitations on the states. For example, the Compact Clause (Article I, Section 10) prohibits states from entering into agreements with other states without congressional approval. This was intended to restrict the ability of groups of states to gang up on other states or on the federal government.

But the constitutional restraints on both the federal government and on the states have been severely weakened. Quite clearly, there has been a growing federal intrusion into state and local issues, epitomized by Obamacare's massive imposition of new obligations on states.

Less obviously, states themselves have begun to create a new level of national regulation through state attorneys general (AGs) acting in concert. In areas ranging from financial regulation and tobacco control to global warming and fuel economy mandates, state attorneys general are entering into new alliances aimed at imposing national regulatory schemes via litigation. These joint litigation campaigns are often fueled by lucrative deals between state AGs and private lawyers, and many states join simply because such lawsuits have the potential to generate huge sums of money. Under the Constitution, such joint campaigns by the states require advance congressional approval. Congress should actively review them, rather than sit on the sidelines while state officials impose new national regulations by default.

Sam Kazman

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