CEI PLANET
Advancing Liberty from the Economy to Ecology
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The Rise of the Regulatory State Comes at the Expense of Us All

BY WAYNE CREWS AND RYAN YOUNG

As this year's battle to control Congress heats up, Republicans and Democrats are blaming each other for Washington's runaway spending and chronic high deficits. And they're both right. A positive result of all this mudslinging is that many voters are becoming familiar with some sobering numbers. This year, the federal government will spend about $3.5 trillion and will run a deficit of about $500 billion. But another equally important figure has yet to gain enough attention: Federal regulation costs the economy an additional $1.86 trillion annually.

If it were its own country, the federal regulatory state would be the world's 10th largest economy—greater than the entire GDPs of Canada, Italy, or India. Federal regulations amount to a hidden tax of almost $15,000 per household. That's more than families spend on food, clothing, health care, education, and other necessities. Only housing costs more. Factor in regulation, and the federal government is half again as large as most people think it is.

The above figures are from the recently released 2014 edition of the Competitive Enterprise Institute's annual *Ten Thousand Commandments* report, which gathers such important big-picture information in one easily accessible document. (It has drawn coverage from the *Wall Street Journal*, *Investor's Business Daily*, Fox News, and a host of other outlets.) As a matter of basic transparency, the federal government should issue an annual report similar to *Ten Thousand Commandments* on its own. But it doesn't, so CEI is leading by example.

Every year, more than 3,600 new regulations hit the books—a rate of nearly 10 new rules per day. That is equivalent to a new regulation appearing every two and a half hours, 24 hours a day, 365 days a year. This annual flow of new regulations piles on to an existing stock of old regulations that now fills more than 175,000 pages in the *Code of Federal Regulations*, including more than 1 million specific regulatory restrictions that impose a significant burden. Something has to give, and so far, it's been the economy.

Incumbent firms use regulations to stifle smaller and potential new competitors. Licensing requirements prevent ordinary,

(continued on page 3)

FROM THE PRESIDENT

CEI Celebrates 30 Years of Liberty Advocacy

by Lawson Bader

Here's a trivia question. What do the Competitive Enterprise Institute and the University of Notre Dame have in common? Before I answer, allow me a digression.

Thirty years ago, I graduated from high school. In of itself, that is not unique (though my full head of hair at the time might raise some eyebrows today). However, two months earlier, in Fred and Fran Smith's kitchen 2,412 miles to the east, something unique did happen. The Competitive Enterprise Institute was born.

Fred has been described as a "despairing optimist" and in 1984 he put that to the test as CEI spread its infant wings. There was reason for optimism. Railroad, airline, and trucking had been deregulated and antitrust law reformed. Microsoft and Apple were revolutionizing home computing. There were opportunities to infuse consumer protection and environmental law with free-market perspectives. Within that first decade, CEI achieved legal victories, and policy reforms reflecting its commitment to advocacy grounded in intellectual consistency.

I have been described as an "opportunistic pessimist," and now, as CEI enters its fourth decade, I believe that description is apropos. The political landscape doesn't look favorable. We face a grim reality where government deems what is "best" when it comes to buying health insurance, financing mortgages, or even eating certain foods. In the current regulatory climate, I'm not sure that Steve Jobs, Bill Gates, or Sam Walton would be as successful as they were many years ago. But in all this, there is opportunity

Our legal work is paving the way. We are forcing an alphabet soup of agencies—including the EPA, SEC, CFPB, and NLRB—to grudgingly live up to President Obama's promises of transparency. We are awaiting the results from our pending Obamacare challenge. We are preparing for our appellate-level challenge to the Dodd-Frank financial reform law. And we have filed 14 new FOIA cases against six federal agencies to expose their illegal collusion with environmentalist pressure groups.

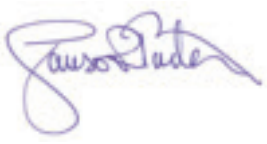
We're just getting started, and expect a lot of push-back. Such is the world we face. But rather than throw our hands up, we're energized by the challenge—as we always have. And this anniversary year is the perfect occasion to renew that commitment.

So what about that Notre Dame question? The technically correct answer is that one of my colleagues played hockey for the Irish. But the real answer is hidden throughout this newsletter. As part of our 30th anniversary, CEI has undergone a facelift, including new color scheme, an overhauled website and social media presence, and—here's the key, our new logo.

We have long viewed the globe as indicative that our work is grounded in ideas that benefit the entire world. The blue represents scholarship, the green a nod to our focus on environment and energy issues.

Look closely, though, and you might make out the letters of our CEI acronym. But that big "i" is the one that has people talking: the importance of the individual within society; the flame of free enterprise's truth; the outstretched arms indicating the possibilities when we unleash our creativity and innovation. Or, as it was pointed out to me recently, it's really Touchdown Jesus, who keeps watch over Notre Dame.

Whatever you see, know this. As we celebrate our anniversary year, we we have no plans to rest on our laurels. While we appreciate our accomplishments over the past 30 years, like college football players at spring practice, we remain fresh for upcoming policy fights the over next three decades. Too much is at stake, and too much may be lost. And thank you for supporting us from what has been to what will be.



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Regulatory State, *continued*

> *Congress has long since delegated away most of its lawmaking authority to regulatory agencies.*

honest people from making a living. Other regulations have a chilling effect on innovation. Considering, with the rate of today's technological progress, that most of the world's wealth hasn't been created yet, $1.86 trillion looks more like a floor than a ceiling for regulation's true cost. It could well be the next Google is never founded because regulations made it impossible.

However Capitol Hill's balance of power shifts after this year's midterm elections, don't expect any action from Congress on removing these barriers to wealth creation. Congress has long since delegated away most of its lawmaking authority to regulatory agencies. For instance, last year Congress passed and the President signed into law 72 bills, whiles agencies issued 3,659 regulations. The difference, which we call the Unconstitutionality Index, is greater than a factor of 50.

Congress rather likes this arrangement, as it can shift blame for burdensome or controversial rules onto agencies, which don't have to face voters. This is regulation without representation, and it must end.

Unfortunately, with the rules of the political game as they are, reform is extraordinarily difficult. The regulatory process is very efficient at creating new rules, but it is nearly impossible to get rid of old rules. The solution is not to pray for favorable political winds, but to change the rules of the regulatory process itself to make it easier to repeal unneeded regulations.

One method is an independent Regulatory Reduction Commission, modelled along the lines of the successful Base Realignment and Closure (BRAC) Commission from the 1990s that closed unneeded military bases after the Cold War ended. The idea has broad political support, and has been backed by figures from former Sen. Phil Gramm (R-Tex.) to the Progressive Policy Institute's Michael Mandel.

Just as no politician would vote to close a base in her district, no politician would vote to repeal a regulation that has an outsize impact on her district. The result, as we see now, is that nothing gets done. But an independent Commission can get around that problem. The Commission would comb the books annually and send a repeal package to Congress, which would be legally required to hold a timely up-or-down vote, with no amendments allowed, in order to prevent vote-trading and other political hijinks that would water down the package.

Even if certain individual regulations might cause political trouble for some members, the total package would have such a net benefit that it could command a majority vote. The process would repeat annually for as long as necessary.

As dire as the government's fiscal situation is, the problem of overregulation is at least as serious. If enough people learn the true size of the federal regulatory state, politicians from both parties will have no choice but to take note and enact serious reforms or risk ending their careers—perhaps as soon as this November.

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The Troubling Basis for the EPA's Rosy Cost-Benefit Analysis of the Clean Air Act

BY WILLIAM YEATMAN

Perhaps you've heard or seen the eye-popping statistics, trumpeted by the Environmental Protection Agency and its supporters, regarding the incredible benefits supposedly wrought by the Clean Air Act.

In a recent study, for example, the EPA claimed that in 2020 alone, the Clean Air Act would be responsible for "approximately $2 trillion" in benefits. Given that the costs of the Clean Air Act are estimated to be $65 billion in 2020, this represents a benefits-to-cost ratio greater than 30, which renders the agency's work in a very favorable light.

And it's not just the EPA trumpeting these numbers. The agency's political benefactors in Congress readily defend agency regulations as a bargain. And environmental interest groups are always quick to cite these benefits whenever they defend the agency they've captured.

The EPA's rosy cost-benefits analysis is, in fact, largely derivative of two variables: (1) how many deaths the EPA purports to prevent and (2) the supposed value of these prevented deaths. The agency forecasts that its regulations will prevent almost 240,000 deaths in 2020; it estimates that the value of a statistical life is about $7.4 million. Multiply those two data points, then adjust for inflation, and voila!—you're at $1.7 trillion in "benefits" in 2020, or 85 percent of EPA's total claimed Clean Air Act benefits.

These putative "benefits" are a sham, because the underlying numbers are unreliable to the point of being meaningless.

Start with the EPA's calculation of "prevented deaths"—the mortality benefits of environmental regulations. This estimate is based almost entirely on controversial "secret" science. To be precise, in establishing a relationship between decreased air pollution and decreased mortality, the agency relies on decades-old data from two reports—the Harvard Six Cities Study and the American Cancer Society's Cancer Prevention Study II. So when

The EPA's estimates of mortality avoided due to the Clean Air Act cannot be trusted, because the science behind them cannot be replicated.

the EPA claims that it will prevent 240,000 deaths in 2020, this number is an extrapolation from these two key studies.

And yet, despite the evident importance of these two studies, the EPA refuses to make publicly available the underlying data. For two years, House Science, Space, and Technology Committee Chairman Lamar Smith (R-TX) has pressed the agency to produce this "secret science." And for two years, his requests have been rebuffed by the EPA. Meanwhile, Sen. David Vitter (R-La.), Ranking Member of the Senate Environment and Public Works Committee, has taken the lead in requesting the data behind the EPA's mortality estimates. He, too, has been stonewalled by the agency.

Remember, these studies were funded by taxpayers. Moreover, they serve as justification for public policy. It is a troubling sign of the growth of the Executive Branch's power that an agency refuses to turn over the data to a Member of Congress.

In any case, the EPA's estimates of mortality avoided due to the Clean Air Act cannot be trusted, because the science behind them cannot be replicated, due to the EPA's refusal to share the underlying data. I'd have expected more from the self-proclaimed most transparent administration, ever!

What about the other variable, the value of a statistical life? How does the agency calculate this figure? The EPA does not place a dollar value on individual lives. Rather, when conducting a benefit-cost analysis of new environmental policies, the agency uses estimates of how much people are willing to pay for small reductions in their risks of dying from adverse health conditions that may be caused by environmental pollution.

Below is the example provided by the agency:

> *Suppose each person in a sample of 100,000 people were asked how much he or she would be willing to pay for a reduction in their individual risk of dying of 1 in 100,000, or 0.001%, over the next year. Since this reduction in risk would mean that we would expect one fewer death among the sample of 100,000 people over the next year on average, this is sometimes described as "one statistical life saved." Now suppose that the average response to this hypothetical question was $100. Then the total dollar amount that the group would be willing to pay to save one statistical life in a year would be $100 per person × 100,000 people, or $10 million. This is what is meant by the "value of a statistical life."*

This metric simply makes no sense. The "value" of each "prevented death" is ascertained by asking people how much hypothetical money they'd be willing to spend in order to avoid a fraction of 1 percent chance of death. How could this possibly have meaning? Absolutely nothing is concrete. The question doesn't actually pertain to your money, after all. More importantly, there's no referent for estimating the value of reducing your mortality risk by a fraction of 1 percent. The "benefit" is a total abstraction.

The EPA's cost-benefit analyses are merely statistical gobbledygook. When the agency boasts of adding $2 trillion to the U.S. economy, it is misleading the public, because the $2 trillion figure is the product of multiplying two highly suspect variables: (1) mortality avoidance due to the Clean Air Act and (2) the value of a statistical life. Variable 1 is based on "secret" science that EPA won't share; variable 2 bears no relation to reality.

The next time your progressive friends tout the trillions of dollars in Clean Air Act net benefits, you can let them know how much you value this supposed bargain.

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Cronyism versus the Free Market

BY LAWSON BADER

As the economy has continued to falter under his watch, President Obama's response has been to try to hang the albatross of the nation's woes around the neck of, as he put it recently, "a certain crowd in Washington who, for the last few decades, have said, 'Let's respond to this economic challenge with the same old tune.' 'The market will take care of everything.'"

So "free market types" have been running the country for some time now? That's news to me! If free market policies reign in Washington today, I'd hate to see what real socialism looks like.

Truth is, for the past century, with a few notable exceptions, free marketers have been playing defense. The Federal Reserve has taken over the money supply and finance. We have had government schools, Social Security and Medicare, the War on Poverty, the creation of hundreds of federal agencies and bureaus. We have had the Progressive Era, the New Deal, and the Great Society. It was the regulatory state that imploded in 2008, not "capitalism." We have most decidedly not tried it during the past decade, Mr. President!

Over the last few decades, those in power, whether Republican or Democrat, have responded to every crisis with essentially the same old tune: "The government will take care of everything." Pile on more regulations and raise taxes and the economy will grow strong. The Fed will ensure jobs trickle down to everybody. That we have tried. And it decidedly has not worked.

Unleashing the creative spirits of America's entrepreneurs-to-be requires more than good policy; it requires good politics. That means reaching out to the disaffected—those who have continued to lose under the Obama administration's attempts to play Robin Hood.

Obama points to the soaring stock market to defuse the charges he's a socialist. Yet during his administration, corporations have earned record profits even as median family earnings fell. Yes, politically connected big businesses form a privileged class that never seems to lack for access to the corridors of power. But the problem isn't that they're big; the problem is that many owe their privileged position to government overreach that picks winners and losers.

Which brings me to the crucial question: What is to be done?

The federal regulatory Leviathan won't be dismantled in a day. But, just as a journey of a thousand miles begins with a single step, we have to start somewhere. A good starting point is to define the battle as one between cronyism and the free market. If Republicans ever wish to put a governing coalition together again, they need to connect with the budding entrepreneurs who often find their efforts thwarted by pettifogging rules and box-checking exercises.

It's time to end crony capitalist subsidies to all businesses, to kick loser industries off the public dole. In this, Washington's current corporatist consensus offers a target-rich environment.

First on the chopping block should be the indefensible sugar program, which drives up the cost of sugar for Americans, puts taxpayer money at risk, and kills U.S. jobs, all to benefit a handful of politically connected sugar producers.

Next up, subsidies for uneconomic "renewable" energy industries like wind energy and ethanol; restrictions on fossil fuel exports, which function as a subsidy for manufacturers, who pay artificially low energy prices; and protection of "too big to fail" banks through the implicit promise of a bailout when things go south.

> *"It's time to end crony capitalist subsidies to all businesses, to kick loser industries off the public dole. ...Death to the collusion of regulators and politically connected businesses shielding the big guys from new competitors!*

We are all better off thanks to the efforts of countless individual inventors, tinkerers, investors, entrepreneurs, and just plain folks who are finding better ways to do things every day. Keeping that lesson in mind—trusting people to order their own lives—should be our top priority. Communicating that message in a way that connects with people will be key to ensure that our future is a bright one.

So death to the collusion of regulators and politically connected businesses shielding the big guys from new competitors! Long live the food trucks, the raw milk dairy farmers, the hair braiders, the Mom-and-Pop tax preparers, and the next big thing now taking shape in someone's garage!

Lawson Bader (lawson.bader@cei.org) *is President of CEI. A version of this article originally appeared in* Human Events.

Genetically Modified Foods Are as Safe as Conventional Ones

BY GREGORY CONKO

From "organic" to "gluten-free," consumers seem more interested than ever in knowing how their food is produced. This spring, legislators in more than 20 states will consider proposals to mandate special labeling of genetically modified foods, purportedly to give shoppers more information.

Critics of genetically modified foods claim they might be unsafe. But even if they are not, they say, consumers have a right to know what is in the foods they eat. So why not tell people if the ingredients in their cupcakes and cereal have been engineered, and let them decide what to buy?

This may sound reasonable and seem to reflect how our choice-driven marketplace works. But it reflects a deep misunderstanding about what genetic engineering actually is and how it compares to the changes people have been making to crop plants for thousands of years.

For starters, nearly every food on grocery store shelves has been modified by human hands at the genetic level. In agriculture, it's called breeding. And as many of us learned in high school biology class, breeding alters a plant's genes so it expresses new traits. This may be as simple as a new color or flavor, or even resistance to pests and plant diseases. And whether we use genetic engineering or more conventional techniques, breeding can mean just tweaking the genes already inside a plant or introducing entirely new ones.

The primary characteristic that makes genetic engineering unique is the power and precision it gives us to make those changes and then test for safety afterward. As a result, it has given us food that is both safer for our families and better for the environment. Plants with a built-in resistance to chewing insects, for example, have allowed farmers to use millions of gallons less of pesticide every year.

Dozens of the world's most prestigious scientific bodies, including the National Academies of Science, American Medical Association, and World Health Organization, have studied genetic engineering for more than 30 years and concluded that such foods are at least as safe as, and often safer than, conventionally bred ones.

The other trait that makes genetically modified plants different is that they are subject to intense scrutiny by three different regulatory agencies in the U.S. alone. It takes an average of five to 10 years to develop and test a crop for consumer and environmental safety. This is followed by an additional two to four years of review by the Food and Drug Administration, Department of Agriculture, and Environmental Protection Agency. And the wait is even longer in order to secure approval overseas, which poses a major obstacle, because most American farmers will not plant genetically modified crops they cannot export to global markets in Europe, Asia, and South America.

The regulatory costs alone for testing and getting approval for a genetically modified plant variety average at more than $35 million. By the time a new crop makes it to market, its safety has been confirmed by regulators in dozens of countries.

In 30 years of testing and commercial use in more than two dozen countries, genetically modified foods have caused not a single sniffle, sneeze, or bellyache. This outstanding safety record is why the FDA does not require blanket labeling of such foods. It does, however, require labeling any time a food differs from its conventional counterpart in a meaningful way—such as a reduction in nutrients, the introduction of an allergen, or even a change in taste or smell.

In fact, if consumers want to know what is "in their food," the FDA's policy is a far better way to supply that information than simply labeling a product as "genetically modified." That tells consumers nothing useful, because genetic engineering is not "in food," it is simply one of many tools we can use to raise crop yields, increase their nutritional value, or protect them from pests or disease. To really know what's in your food, you need to know what change was made, not how, and that's exactly what the FDA already requires.

Consumers, of course, are free to be skeptical. And for those who are, there are tens of thousands of affirmatively labeled, non-genetically modified foods available in stores from Whole Foods to Walmart. But there is no denying that genetically modified plants are among the most extensively tested products in history and have an exceptional record of producing safe, wholesome, and nutritional foods.

Gregory Conko (greg.conko@cei.org) *is Executive Director and a Senior Fellow at CEI. A version of this article originally appeared in* The Washington Examiner.

Praying for an Escape from Obamacare

BY JOHN BERLAU

Matt Drudge's widely discussed March tweet about having paid the Obamacare "liberty tax" highlights the uncertainties faced by the self-employed from the health care law and the tax code in general. As an *Investor's Business Daily* editorial points out, "[S]elf-employed entrepreneurs ranging from Drudge to small-shop proprietors and independent contractors have long been aware of the requirement to estimate their tax liability and send a quarter of it in every three months, and that this amount includes 'other taxes' such as the Obamacare opt-out penalty."

Whatever the final numbers of those who signed up by the deadline, the threat of the IRS penalty from Obamacare's individual mandate, perhaps more than the president yucking it up with Zach Galifianakis, may be the real driver for enrollment. "Worries over fines aid health insurance sign-ups," reads a March 23 *Wall Street Journal* headline. Even if the penalty this year is relatively small for many Americans, fear of the IRS can be a great motivator, especially given its recent politically motivated activities.

The good news for Drudge—and for other Americans who don't want to buy an Obamacare-compliant plan due to personal objections or just plain cost—is that in many cases there is a practical escape hatch from the IRS penalty. And this option may end up offering better and more affordable care than Obamacare. The only catch is: You've got to have a little faith.

Buried in Section 1501 on page 148 of the so-called Patient Protection and Affordable Care Act is an exemption from the individual mandate for a "health care sharing ministry," a group whose members "share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs." For any member of such group, the law says, "No penalty shall be imposed."

It's somewhat of a mystery how the law's supporters allowed such a potentially large exemption to the individual mandate to be inserted in the first place. This is definitely a case, four years after the law's passed, where they really don't seem to know what's in it. But fortunately, many Americans are finding and utilizing this escape hatch, which has strong historical antecedents in private health care cooperatives that predate the welfare state.

Health care ministries have been around since the 1990s, but they have grown by leaps and bounds since Obamacare passed—and especially since the disastrous launch of the exchanges last fall. According to FoxNews.com, "Since the launch of HealthCare.gov on Oct. 1, membership at each of the ministries has exploded, with nearly 30,000 new enrollees—more than the number of people who selected a plan through Obamacare in 24 states."

Health care ministries are not insurance in the sense that there is no contractual obligation to cover any service. As described by CatholicVote.org, "It's a program in which members make a monthly monetary donation which is matched with the needs of other members who face medical bills, thus covering each other's medical costs through a program of mutual, voluntary giving." Yet, the article notes:

The programs are structured in such a way that it's not just a "give what

you want, when you can" situation. There are coverage levels. There are tiers. If you pay so much a month, your annual out-of-pocket expenses will be adjusted accordingly. It looks and feels a lot like insurance, and based on the satisfied testimonials of many who have participated over the years, it operates in a similar, if more personal way.

Two out of the four health care ministries eligible for the coverage exemption—Medi-Share and Christian Healthcare Ministries—have A-plus ratings from the Better Business Bureau. And Medi-Share utilizes the MultiPlan PHCS network, the same large physician provider network that many insurance companies use. So even if Medi-Share's members pay for medical services out of pocket, they often get the same in-network discounts that insurance policyholders do.

In January, Religion News Service reported that monthly dues for Medi-Share for a family of four were almost $300 cheaper than the monthly premiums for a similar Obamacare insurance plan, though the Obamacare plan might be slightly cheaper if the family were eligible for all the subsidies offered—a big if.

Health care sharing ministries are similar to the voluntary mutual aid societies that supported many social welfare institutions in early 20th century America in nearly every community. Mutual aid societies, including the Masons and the Odd Fellows, collected dues from each member and assisted members in need with covering the costs of necessities like medical care and funerals. As historian David Beito has documented, mutual aid societies were the primary source of health care coverage in many communities before the New Deal. "Mutual aid was a creature of necessity," Beito writes in a Heritage Foundation paper, but "a reinvigoration of mutual aid... is not out of the question in the 21st century."

Now the Obamacare mandates on individuals, employers, and insurance firms have left the descendants of mutual aid societies as the only entities with pre-Obamacare freedoms. Ironically, a health care ministry has more freedom to price for risk and to exclude coverage of certain items—whether for religious objections or budgetary reasons—than an insurance company. These savings can be passed on to members.

Though it is a miracle that the health care ministry exemption exists at all under Obamacare, it is still unduly narrow. The exemption only applies to ministries created before January 1, 2000, a criterion only four organizations meet.

These four groups are Christian, but vary in membership requirements. According to Delaware's *The News Journal*, "[T]hree of the four require members to share their Christian faith, attend church regularly, submit a letter of reference from their pastor and live by standards they say are mapped out in the Bible."

But the paper notes that one, Liberty HealthShare, "has a broader umbrella, inviting all who can embrace its members' 'shared beliefs' in God as the source of all rights and liberties, freedom to worship 'the God of the Bible' in his or her own way, the obligation to assist others, the duty to maintain a healthy lifestyle, and the right to direct one's own health care free of government dictates." The Liberty HealthShare communications director told the *News Journal* that his ministry accepts Jews, Muslims, and same-sex couples as members.

Congress should expand this mutual aid "ministry" option to groups of all faiths and no faith, in addition to liberalizing all mandates that impede quality, affordable health care. In the meantime, there may be a whole bunch of Obamacare victims suddenly getting religion.

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R.M. FREEDMAN SOCIETY

Help the Competitive Enterprise Institute carry on its work for generations by joining the R.M. Freedman society.

In 2013, CEI established the R.M. Freedman Society in honor of Robert M. Freedman, a business owner from West Bloomfield, Michigan, who placed CEI in his estate and, in 2009, sadly passed on and gave CEI its first legacy gift. We named the society in appreciation of his generosity.

Many of CEI's extended family choose to include CEI in their estate plans through:

- Bequests,
- Charitable Remainder Trusts,
- Charitable Lead Trusts, or as a
- Life insurance beneficiary.

If you make the decision to include CEI in your estate plans, please reach out and let us know.

While these sorts of decisions should be undertaken with the help of an estate planner, Lauren Avey and Al Canata of CEI can be a resource to you. You can reach them anytime at 202-331-1010.

SAVE THE DATE

CEI

30th Anniversary Dinner and Reception

The annual CEI Dinner and Reception brings together an audience of policy professionals, distinguished scholars, congressional staff, and CEI supporters to celebrate 30 years of CEI's effective advocacy for freedom. It is often cited as one of the most enjoyable Washington events of the year.

Thursday, June 19, 2014 • J.W. Marriott, Washington

2014 Julian L. Simon Memorial Awardee

John Tierney

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Master of Ceremonies

Kennedy

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Keynote address by

Matt Ridley

Scientist, Journalist and Author of *The Rational Optimist*

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The Julian L. Simon Memorial Award, named in honor of the late free market economist, was established in 2001.

Administration Still Dragging Its Feet on Official Time

BY IAIN MURRAY

"Official time" is the policy whereby taxpayers subsidize unions. Under official time, full time union officials who are nominally government employees are paid to do union work while pretending to work for the taxpayer. The IRS alone has over 200 such employees, paid by the taxpayer but working for the union.

The Obama administration is now more than two years late in releasing an important report on the scope of this practice within the federal government. It is supposed to be documented annually in the Office of Personnel Management's (OPM) Official Time Usage in the Federal Government Report. Yet, the administration has only released official time statistics once since taking office. The latest available union official time use and cost figure is from 2011.

In response, Reps. Phil Gingrey (R-Ga.) and Dennis Ross (R-Fla.) have asked OPM Director Katherine Archuleta to get a move on and publish the official time report, which tallies up the number of hours federal employees performed union activities on official time and the cost during FY 2012 (FY 2013 is another matter).

What is the scale of official time within the federal government? According to the last OPM report, federal employees spent 3.4 million hours on union activities in fiscal year 2011, an increase of nearly 300,000 hours from FY 2010. That cost taxpayers $155 million in salaries and benefits, up $15 million from the 2010 report.

But these official time costs are understated, as the OPM report does not include the cost of travel, per diem, offices, or supplies.

Furthermore, CEI has unearthed a report from the Social Security Administration that contradicts OPM's official time costs for that agency, with a discrepancy of around $2 million between the cost of official time reported by OPM for FY 2011 and that reported by the SSA. The 2011 Social Security Administration's "Report on Expenditures for Union Activities" lists the dollar value of employees' compensation—including salary and benefits—taken up by official time at $11.2 million and time spent on union business at 229,195 hours.

However, OPM reports the same number of hours but places their cost to the SSA at $9.9 million in salary and benefits. That discrepancy alone amounts to more than $1 million. Add the cost of travel, office space, and arbitration expenses incurred by the public for federal employees on official time (OPM does not report these costs), and the difference between the SSA and OPM reports jumps to approximately $2.8 million.

That's just for one agency. Spread across the entire federal government, the costs are likely to be far larger than the official estimate.

Yet there is reason for hope. The Arizona Supreme Court recently found the practice to be unconstitutional under the state's "gift clause," which bars the state government from providing things of value to special interests. (In Great Britain, the Conservative government has recently moved to crack down on its version of the scheme.) If Rep. Gingrey's bill gets traction—and it should—we might be able to rid the taxpayer of this burden and force politicized government unions to pick up their own costs.

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Obama's Overtime Pay Proposal Is Really a Bid for Votes

BY ALOYSIUS HOGAN

Imperial president? Moi?

In announcing a contentious overtime pay proposal in March, President Obama seems to have shed any pretense of willingness to work with Republicans, whose theme of his leading an "imperial presidency" is resonating ever louder. However, this proposal may be more smoke than fire.

The administration acknowledges its overtime proposal, which would circumvent Congress, is unilateral and would anger business groups. It is also bad policy, an encore of Obamacare—from which, ironically, the overtime proposal is meant as a distraction. Republicans should call his bluff and bring the story back to Obamacare. Here's why.

Under the proposal, millions of executives and professionals would see their salaries eliminated. They would be shoved into hourly work. Their time would be micromanaged. Hours would be cut to part time and below 40 per week to avoid overtime. By turning salaried workers into part-time, hourly workers, the Obama proposal would be catastrophic for Middle America.

> *By turning salaried workers into part-time, hourly workers, the Obama proposal would be catastrophic for Middle America.*

If it were to take effect—and that's a big if. *The New York Times* called Obama's plan, "part of a broader election-year effort by the White House to try to convince voters that Democrats are looking out for the middle class." Indeed, Democrats have made clear they want to make income inequality their election-year theme.

A the *Times* notes, Obama and his fellow Democrats are after the votes of "several million additional fast-food managers, loan officers, computer technicians, and others whom many businesses currently classify as 'executive or professional' employees." But do these executives and professionals want to become part-time, hourly workers?

That the proposal was announced after a Florida special election loss for the Democratic candidate, in a district Obama won in 2012, further underscored its political nature. And skepticism about its seriousness extends to professionals familiar with its enforcement.

Paul DeCamp, former administrator of the Labor Department's Wage and Hour Division, which would administer the policy, told me an interview:

> *If the administration has its way and makes it significantly more difficult to classify workers as exempt [from overtime], the result will be to convert a whole lot of salaried employees into hourly workers who punch a clock and have their time micromanaged by others. ... [t]o prevent workers from exceeding 40 hours and getting into a 'premium pay' situation. ... This would be the Affordable Care Act all over again, with employers cutting employee hours.*

And we all know how well the ACA has played for Obama.

DeCamp adds, "I think it is very unlikely that these contemplated changes to the Part 541 [overtime] regulations will become law. If DOL goes forward with this type of regulatory package, it will be 2004 all over again, when there was a very intense battle in Congress."

Is the White House itching for a fight? Most likely, yes, so it can wage class warfare against Republicans. And as with Obamacare, when it blamed insurers for people being dropped from their policies, the administration will seek to pin job losses and reduced hours on employers.

Alex Passantino, former Wage and Hour Division acting administrator, is also skeptical. He told me in an interview:

> *If some of the salary levels [more than doubling] mentioned in the* Times *article were actually implemented, this proposal would have a dramatic impact on the [overtime] exemption landscape. I can't imagine that they would open the regs just to tinker with salary levels and primary duty.*

But again, actually finalizing the rule may not be the real goal. Furthermore, average rulemaking times of more than a year indicate this proposal likely would not become a final regulation before November, leaving it an open issue with which to attack Republicans during campaigns.

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Republican Online Gambling Ban Sets a Dangerous Precedent for States' Rights

BY MICHELLE MINTON

Should lawmakers in Washington override state laws and impose their values on the states? Some members of Congress seem to think so, and they are trying to impose a retroactive federal ban on Internet gambling, including in three states that have already legalized the activity. Not only does the proposal trample states' rights, it will fail to eliminate illegal online gambling while making consumers less safe online, eliminating millions of dollars in tax revenue for states, and favoring a special interest. It is also based on a blatant misrepresentation of existing law.

The Restoration of America's Wire Act (S. 2159 and H.R. 4301), sponsored by Sen. Lindsey Graham (R-S.C.) and Rep. Jason Chaffetz (R-UT), would rewrite the Federal Wire Act of 1961 to criminalize all "wire" communications related to gambling. Chaffetz and Graham insist that the original intent of the 1961 Act was to ban all forms of online gambling. However, in 2011 the Department of Justice looked at the statute and determined that the letter of the law only applied to sports betting.

Following the 2011 DOJ decision, Nevada, Delaware, and New Jersey passed laws to legalize and regulate online gambling within their borders. Graham and Chaffetz insist the DOJ flip-flop is an example of the Obama administration bypassing Congress and "ignoring the law"—even though the Wire Act specifically mentions sports betting. In fact, the Graham/Chaffetz bill would excise language mentioning sports betting and add new language to extend the prohibition to "Internet" communications. In 2002, the U.S. Court of Appeals for the Fifth Circuit agreed with the DOJ's reading of the law, but that hasn't stopped these lawmakers from attempting to rewrite a 50-year-old statute to stop states from legalizing online gambling.

Supporters of a ban on Internet gambling claim to be concerned about a host of social ills legalization would visit upon our society, including children gambling, increases in addiction, and crimes like fraud and money laundering. However, a ban would make all those problems worse, by moving online gambling into the black market.

As we have seen, bans on Internet gambling cannot stop the activity. In 2013, prior to states authorizing online gambling within their borders, Americans spent almost $3 billion on illegal, offshore gambling websites, according to the American Gaming Association. However, many countries have had legal and regulated online gambling for decades without experiencing a decline in their quality of life. Even in the United States, where consumers have had access to online gambling since the 1990s, the rate of gambling addiction has remained stable for 30 years.

It's downright puzzling for supposed champions of federalism and states' rights to get behind an effort for Congress to override laws democratically decided upon by states. When discussing the Affordable Care Act in a 2009 op-ed for CNN, Chaffetz, a member of the Tenth Amendment task force (which aims to spread the word about the importance of states' rights), noted, "Each state has unique demographics, resources and health challenges," and that "federalism works because it allows state and local governments to tailor their policy solutions to the needs of their population."

Sen. Mike Lee (R-UT), a co-sponsor of the Senate bill to ban online gambling, declared federalism as one of the three principles that ought to guide the conservative agenda in a speech at the Heritage Foundation last year. According to Lee, each state has "a functioning, constitutional government. And just as important, each state has a unique political and cultural history, with unique traditions, values, and priorities." Lee also derided "progressives" who "insist on imposing their values on everyone." Yet, when it comes to online gambling, Chaffetz and Lee seem perfectly happy to impose *their* values on the states.

Even more troubling than the hypocrisy behind the Wire Act rewrite, the bill was actually written by a lobbyist for casino magnate Sheldon Adelson, a major GOP donor with a financial interest in protecting his brick-and-mortar casinos' market share.

Banning online gambling may win some Republican legislators points with a few donors, but in the long run it will do more harm than good to their credibility and, more importantly, to Americans' freedom and safety.

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THE GOOD

IEA BREXIT PRIZE

CEI's Iain Murray Runner-Up in London Brexit Prize Competition

CEI Vice President for Strategy Iain Murray and co-author Rory Broomfield, Deputy Director of The Freedom Association and Director of Better Off Out, won second place at the Institute for Economic Affairs' (IEA) "Brexit Prize" competition in London on April 9. Launched in 2013, the competition solicits proposals for a practical, realistic exit plan to extract the United Kingdom from the European Union. "It was a huge honor to receive the second prize in the IEA's 'Brexit' competition about what Britain should do if it left the European Union," said Murray. Murray and Broomsfeld were one of six finalists in the competition, out of 179 entrants. The top prize of €100,000 was awarded to Iain Mansfield, the Director of Trade and Investment at the United Kingdom's embassy in the Philippines.

THE BAD

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

EPA Still Stonewalling Records Request

Also on April 9, CEI filed a lawsuit against the Environmental Protection Agency to compel the release of text messages sent by gov-ernment officials, as required by the Freedom of Information Act (FOIA). In December 2013, CEI requested the text message correspondence associated with a handful of top EPA officials and current Administrator Gina McCarthy when she was in charge of plans to regulate or tax carbon dioxide. The EPA previously acknowledged destroying all copies of McCarthy's text message correspondence on her EPA-assigned account. This request sought her EPA colleagues' copies, which EPA has stonewalled at turning over. "This lawsuit challenges, yet another in a pattern of EPA, moves to block access to public records," said CEI Senior Fellow Christopher Horner.

THE UGLY

New York High Court Rejects Challenge to Regional Greenhouse Gas Initiative

On April 4, the New York Court of Appeals rejected a challenge by three small business owners to the state's involvement in the Northeast Regional Greenhouse Gas Initiative (RGGI). The business owners had argued that the state legislature never authorized New York to join RGGI, and therefore the governor had no authority to impose cap-and-trade restrictions on carbon dioxide emissions from power plants. They contended that the resulting increases in electricity prices amounted to an illegal tax. "RGGI itself is a very dubious policy measure, but to make matters worse in New York, it's become an illegal energy tax," said CEI General Counsel Sam Kazman, who coordinated the lawsuit. "If this case becomes a precedent for avoiding such constitutional issues through questionable procedural loopholes, that may be the worst development of all."

MediaMENTIONS

CEI Vice President for Policy Wayne Crews takes on the cost-benefit analysis of regulation on Fox News:

Federal agencies are required to report all the regulatory actions they have under consideration in what's known as the Unified Agenda twice a year. In addition, the White House Office of Management and Budget is mandated to provide a cost-benefit analysis of federal regulations to Congress each year.

According to the Competitive Enterprise Institute and American Action Forum, that has not been happening.

Wayne Crews, CEI's vice president for policy, says, "This is the administration that claims transparency but on the other hand, says it's going to use its pens and its phones and it's gonna work around Congress at every opportunity."

–APRIL 3,
Fox News Channel

CEI's annual Human Achievement Hour discussed in *The Washington Post*:

This week I remarked upon the World Wildlife Fund's Earth Hour on Saturday at 8:30 p.m. I just learned there is an alternative sponsored by the Competitive Enterprise Institute: "On March 29, some people will be sitting in the dark to express their 'vote' for action on global climate change. Instead, you can join CEI and the thousands of people around the world who will be celebrating Human Achievement Hour (HAH). Leave your lights on to express your appreciation for the inventions and innovations that make today the best time to be alive and the recognition that future solutions require individual freedom not government coercion."

It is actually an annual event "meant to recognize and celebrate the fact that this is the greatest time to be alive, and that the reason we have come is that people have been free to use their minds and the resources in their environment to experiment, create, and innovate."

–MARCH 28,
The Washington Post

In *Politico*, CEI Fellow Marc Scribner points out the hypocrisy of banning cell phones on planes:

The Competitive Enterprise Institute has filed comments on DOT's proposal to ban in-flight cell phone calls, going against what most groups have said by opposing a ban.

CEI fellow Marc Scribner writes that people should "note the inherent absurdity of prohibiting voice calls from *mobile* devices while we have allowed seatback AirFone-style voice calls for decades with little complaint."

The CEI comments came in around the same time that the Global Business Travel Association and the Transportation Trades Department, AFL-CIO registered their support of the DOT rule. "Once again, populist outrage is being used to mask an argument's intellectual defects," Scribner wrote.

–MARCH 28,
Politico Morning Transportation

CEI General Counsel Sam Kazman discusses the ongoing *Halbig* v. *Sebelius* case on Fox Business:

"Today's hearing brings the case one step closer to the Supreme Court, according to Kazman, as neither side is likely to bow out.

"It was a pretty energetic argument," Kazman said of today's hearing. "Each side got a half hour, which was three times as much time as the two cases before us got. The judges generally knew a huge amount of statutory background, and were very well-versed in the issues."

One of the judges and the plaintiff's attorney, Mike Carvin of Jones Day, got into a heated exchange over whether the suit is an attempt to undermine the individual mandate, which requires every individual in the country to have insurance by the end of open enrollment period on March 31, or face a fine of $95 a year or 1 percent of their annual income.

"That is ascribing a political purpose to a case that goes beyond the question of who is right and who is wrong," Kazman says."

–MARCH 25,
Fox Business Network

CEI Senior Fellow William Yeatman takes on taxpayer-funded solar subsidies at FoxNews.com:

Critics say it's an abuse of taxpayer dollars—and a risky investment.

"I could see no rational reason why anybody would put money behind this company," said William Yeatman, a senior fellow with the Competitive Enterprise Institute, a free-market think tank in Washington, D.C. "They have been the beneficiary of $11 million from the stimulus and $411 million from subsidies. It's a crass market decision based on political considerations.

"Anyone taking this stock is making a bet that the federal government will not turn off these subsidies."

–MARCH 3,
FoxNews.com

***Reason* magazine quotes CEI Adjunct Fellow Fran Smith on the latest Farm Bill:**

"The farm bill continues the command-and-control sugar policy—with its domestic production restrictions, price supports, and quotas on imports," says Fran Smith of the Competitive Enterprise Institute. "As a result the high cost of domestic sugar is estimated to cost consumers up to $4 billion per year and has led many confectionery companies to close or move to other countries."

– FEBRUARY 1,
Reason

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...END NOTES

Kennesaw State Locks Down over Cell Phone in Pocket

Paranoia over violence on college campuses is nothing new. There is an entire profession that stokes and caters to this fear. But Kennesaw State University in Atlanta's northern suburbs may have taken bad risk management protocols to a new level. For more than an hour and a half on April 25, the entire university was in lockdown. The reason? A "suspicious man" was sighted on the quad with a possible concealed weapon in his pocket. Dozens of police officers from multiple agencies rushed to the scene. They soon identified the likely suspect: a man with a cell phone in his front pocket. Officers immediately "confirmed that he was not a threat and never posed a threat to the community," according to university officials.

Bored New Yorker: Ban Tall Buildings that Cast Chilly Shadows

Warren St. John, the New York journalist best known for his book on the Alabama Crimson Tide's 1999 season, *Rammer Jammer Yellow Hammer*, and introducing America to the term "metrosexual," is on a one-man crusade to save Central Park from excessive shadows. He's livid that he and fellow New Yorkers with too much time on their hands "never had the debate" about whether buildings' construction permits should be denied when the shadows they cast are too long and thin, which may make him feel "a little chillier." St. John points to One*57*, the tallest building on the southern edge of Central Park. "Nobody is sitting on these benches, but over there where the sun is, people are sitting," St. John told an actual reporter at National Public Radio. "They're having a snack."

Scottish Brewery Humorously Mocks Nanny State Regulator

The United Kingdom's Portman Group regulates alcohol marketing through its "Code of Practice on the Responsible Naming, Packaging and Promotion of Alcoholic Drinks." While technically private, the Portman Group is known for doing the UK government's dirty work. When the group recently ruled that BrewDog brewery's Dead Pony Club pale ale label "encourages both anti-social behaviour and rapid drinking," BrewDog co-founder James Watt responded. "On behalf of BrewDog PLC and its 14,691 individual shareholders, I would like to issue a formal apology to the Portman Group for not giving a s*** about today's ruling," Watt wrote. "Indeed, we are sorry for never giving a s***about anything the Portman Group has to say, and treating all of its statements with callous indifference and nonchalance." The Portman Group has so far stood by its ruling.

Litigious American Seeks $275,000 in Alleged Pet Duck Attack

A Washington State woman is seeking $275,000 from her mother's neighbor in an animal attack. Cynthia Ruddell claims her mother's neighbor, Lolita Rose, knew her pet had "abnormally dangerous propensities in attacking people." The offending pet: a duck. Ruddell says the May 2012 attack resulted in her falling and breaking her right wrist, spraining or straining her elbow and shoulder, and causing a rotator cuff injury. Ruddell is seeking $25,000 for medical expenses and $250,000 for her pain, suffering, and the interference her injuries have had on her normal, daily activities. When reached by local reporters, both Ruddell and Rose declined to comment on the negligence case.