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## Five Free Market Truths



BY MATT RIDLEY

*On June 19, CEI hosted its 30th Anniversary Gala in Washington, D.C., featuring bestselling author Matt Ridley as keynote speaker and Kennedy, co-host of Fox Business' "The Independents," as master of ceremonies. New York Times contributor John Tierney received this year's Julian L. Simon Memorial Award. Following is an excerpt of Matt Ridley's speech.*

I'd like to begin by recognizing some of the people here who have been a big influence on me.

First, Julian Simon. He taught me to at least consider the possibility that as far as planet Earth is concerned, people are the solution, not the problem.

He challenged the bizarre idea that the birth of a calf was a good thing, while the birth of a child was a bad thing.

Second, Fred Smith. It was Fred as much as anybody who opened my eyes to the idea that government did not always deserve the credit for what went right. People did. Ordinary people.

Third, Iain Murray. Partly because he's a fellow Geordie, from Tyneside, and a proud alumnus of the school my son attended and my wife is a governor of. Iain continues to teach me invaluable things about British politics, even from 4,000 miles away.

Fourth, Jo Kwong of the Philanthropy Roundtable. Nearly 30 years ago, she opened my eyes to the idea that free markets, not command and control, were the answer for many environmental problems. Again, people, not regulations, were the key.

Fifth, Gerry Ohrstrom who has been the generous host, godfather, people mixer, and serendipity generator for so many great ideas. Gerry has a peculiar talent for

*(continued on page 3)*



# Thirty Years of CEI

by Lawson Bader

FROM THE PRESIDENT

This year marks a quarter century since the Berlin Wall's collapse. That got me thinking about how the world has changed over the last three decades. This year also marks the 30th anniversary of the founding of the Competitive Enterprise Institute, which I am now privileged to lead.

The year CEI was born, 1984, was an enlightening one, for CEI's founder, Fred Smith, on one continent, and for me, on another. What I learned then still matters today.

Back then, I lived briefly with a family in northern Germany. One day, we drove to the countryside, to see where Helga, the family matriarch, had grown up—a beautiful town that fell under Soviet occupation after the war.

We stopped at a field. Across a heavily guarded fence with tank traps, landmines, and guard towers, we could just make out an old church steeple. Helga told me it was the church where she had been baptized and married. But it was now impossible to visit. Even more tragic, her mother had died there the year before, never having met her grandchildren.

It was in that moment that I became a libertarian.

No institution has the authority to control the human conscience. And no economic system is as averse to human flourishing as that which destroys our innate sense of worth and stifles our incentive to experiment and grow.

But there are other, less visible barriers to human progress. One of the biggest is the stifling, ever-growing regulatory state.

Regulatory agencies don't face the same scrutiny as Congress, and lawmakers hide unpleasant or unpopular policies by delegating their authority to those agencies.

Last year, Congress passed 72 laws, while federal agencies issued 3,659 regulations. That is 50 times more regulations than laws, as CEI's Wayne

Crews points out. And this from the "most transparent administration" in American history!

That's why we at CEI are focused on confronting those in power who rain down regulations, sapping the nation's entrepreneurial energy.

We are currently involved in two legal challenges to Obamacare, specifically its illegal exchange program. And we have filed suit against the National Security Agency (NSA). When Environmental Protection Agency officials told us they didn't have records of their communications with their environmentalist buddies, we asked the agency that probably does have them (thank you, Edward Snowden).

That day in that German forest, I did not imagine I would make defending and promoting economic liberty my calling and mission. Nor could I have conceived that border fence would now lie in ruins.

We've come a long way. But that does not mean we should ever accept the status quo, especially when it comes to the government's ability to disrupt our lives and throw a wrench in our dreams.

The work of advancing opportunity and innovation is a trying task, but a rewarding one as well. In our 30 years in Washington, CEI has witnessed government overreach up close and fought back in the trenches. We have survived five presidents and three wars. And we're about to outlast Henry Waxman!

But we're far from done. There are still plenty of capitalists to save and central planners to shame.

Let's get to it.

*A version of this article originally appeared in Human Events.*

## Free Market, continued

bringing together interesting people, and I think Gerry and I have been on similar paths from evolutionary biology to scientific skepticism to free markets.

Sixth, of course, the great John Tierney. I first noticed John when he wrote the famous “Recycling is Garbage” article in 1996—which according to Wikipedia, broke *The New York Times*’ hate mail record. His superb reporting has been a joy to read ever since as have his books and all his commentary.

I was not yet a contrarian on environmental issues in the late 1990s, though I had started down that road.

It takes a lot of courage to challenge any conventional wisdom, but especially on planetary pessimism.

Just saying you think the world may not be going to hell in a handbasket is treason. And it makes people very, very cross for some reason. Good news is no news. If it bleeds it leads.

It’s lonely being right about climate change. And the bizarre thing is: The longer the pause in global warming, the greater the gap between prediction and reality, the lonelier it gets.

I talk to scientists all the time who are certain that climate change is not the greatest threat, but they won’t say so for fear of the Inquisition. They are very happy that journalists like me and John are out there taking the flak but they won’t man the barricades.

But don’t lose hope. The greens know that if they lose the battle over climate change, they’ll lose the war. Climate change could be their Stalingrad—or Gettysburg.

For me, this has all been a rude awakening.

I have defended science all my career. I carried a lot of water for scientists in many debates with their critics, on topics like cloning, genetically modified food, evolution, and so on. I did so because I am passionate about science.

“The greens know that if they lose the battle over climate change, they’ll lose the war. Climate change could be their Stalingrad—or Gettysburg.”

And by science I mean discovering the truth without fear or favor, wherever it leads.

Turns out it’s not about that. It’s about—and here I quote from an essay by Jerome Ravitz, a guru of postmodern science—“a product of social construction, of negotiation among interests, or merely relative to a professional consensus.”

Science now means the political priorities of scientists.

The National Academy and the Royal Society no longer act as clubs of people seeking to roll back ignorance. They are trade unions who see their job as boosting the finance of science and telling politicians what decisions to take.

I see this all the time in the Parliament.

One day I got up and criticized the subsidies we were giving to wind farm developers. Whereupon a colleague from my own party, a former cabinet secretary, stood up and said I was wrong, because he had had a meeting that very morning with executives from a wind farm company, and they had told him that the subsidies were *not high enough*, so he thought we should raise them. Just like that.

Politicians, I’ve discovered, have far more affection for industries that ask them for money than for the ones that don’t.

Anyhow, as John and I and Julian Simon and Bjorn Lomborg and others have discovered, once you start challenging received wisdom it becomes a bit of a habit.



As Tierney put it, “Just because an idea appeals to a lot of people doesn’t mean it’s wrong. But that’s a good working theory.”

So let me give you a few counterintuitive truths:

One, the world is getting greener because of fossil fuels, not despite them.

Two, we’ve passed peak farmland. We will need less and less farmland from now on, which means we can have more wildlife.

Three, the richest countries are the ones with the most recovery in wildlife and forest cover, showing that growth is good for the environment.

Four, the more we save the lives of babies, the slower the population of the world will grow.

And five, the solution to global warming is to grow the world economy as fast as possible, develop new technologies, and expand trade.

And here’s my dirty little secret. That last one is not contrarian. It’s what the expert consensus actually says.

We live in incredible times. The world as a whole is getting rapidly wealthier, healthier, happier, cleverer, kinder, freer, cleaner, safer, more peaceful and yes more equal.

Yet the forces that have caused those improvements are vilified and castigated.

John Stuart Mill once wrote, “It is not the man who hopes when others despair, but the man who despairs when others hope—who is regarded by a large class of persons as a sage.”



# Obamacare and the Rule of Law

BY SAM KAZMAN

The D.C. Circuit's decision in *Halbig v. Burwell* on July 22 is a major victory for the rule of law. And correspondingly, the Fourth Circuit's contrary ruling hours later in *King v. Burwell*, is a loss. The conflict between these two decisions will, we believe, be resolved by the Supreme Court.

Under the Constitution, Congress is responsible for making the law while the president must faithfully execute it. With a statute as complex as the Affordable Care Act (ACA), it's tempting for the administration to bend it for policy reasons. But, as the D.C. Circuit ruled, this is flatly illegal.

The critical language of the ACA says individuals are entitled to federal

subsidies only for health insurance purchased through "an exchange established by the state." This means these subsidies—and the employer mandates and penalties that accompany them—go only to states that choose to establish their own insurance exchanges, rather than to the non-participating "refusenik" states, where the federal HealthCare.gov exchange operates.

By structuring the law this way, Congress gave the states an incentive to establish their own exchanges—and thereby avoided a national exchange that would have been costly, difficult, and politically toxic. As the huge problems that have plagued the HealthCare.gov site demonstrate, Congress, at least in this respect, got it right.

The administration wanted to subsidize insurance across the board. Through the IRS, it promulgated a rule that essentially ignored the basic congressional distinction between state and federal exchanges.

Some critics of the D.C. Circuit ruling argue that it's based on a glorified "typo." That is false. The state-federal distinction, as one judge pointed out at the court hearing, appears in the ACA seven times.

If that needs fixing, then it's up to Congress and only Congress to fix it. Those who claim this is a typo need to learn more about both the law and about typography.

*Sam Kazman (sam.kazman@cei.org) is general counsel of CEI, which coordinated and funded both the Halbig and King lawsuits. A version of this article originally appeared in USA Today.*



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# EPA's Illegitimate Climate Rule

BY WILLIAM YEATMAN

On June 2, the U.S. Environmental Protection Agency (EPA) issued a proposed rule under the Clean Air Act, the Clean Power Plan, to regulate greenhouse gas emissions from electricity generation. If finalized, the rule would constitute an unprecedented usurpation of power by the EPA from the states and fundamentally overhaul the electricity industry. Congress never approved this gross expansion of the regulatory state and President Obama never vetted this power grab with voters. Most troubling of all, the rule was written by powerful special interests that helped get the president elected.

Oversight of electricity markets has been the exclusive preserve of the states since the New Deal. The Clean Power Plan would fundamentally alter this regime by placing energy policy nationwide under the EPA's thumb.

The Clean Power Plan would undermine states' discretion to give priority to economic considerations in overseeing their electric systems. Instead, states would be forced to give priority to the agency's climate goals, which are based on four "building blocks":

1. A 6 percent efficiency improvement to each existing coal-fired power plant;
2. Operating combined cycle natural gas plants at 70 percent capacity utilization;
3. A green energy production mandate calculated regionally;
4. A 1.5 percent annual reduction in electricity demand.

States are not required to implement the precise policies embodied in the building blocks, but they are responsible for emissions reductions commensurate with these goals. If a state fails to comply, the EPA is empowered to impose a federal plan. Thus, the proposed Clean Power Plan grants

the agency the authority to impose a green energy production quota or even require participation in a regional cap-and-trade energy rationing scheme.

Clean Air Act Section 111 (d), under which the Clean Power Plan is supposedly authorized, is defined primarily by what it is *not*. The foundational air quality regulatory regime established by the Clean Air Act is the National Ambient Air Quality Standards program (NAAQS), which addresses six "criteria" pollutants. The objective of § 111 (d) is to regulate existing sources of pollution that are *not* "criteria" pollutants, and thus subject to a NAAQS, or hazardous air pollutants.

Applications of this catch-all provision have been few and far between. Since implementing regulations were first promulgated in 1975, the EPA has used § 111 (d) to regulate four pollutants from five source categories. It is inconceivable that Congress would have intended for this rarely used provision of the Clean Air Act to empower the EPA to usurp state oversight of electricity markets as practiced since the New Deal.

Finally, and perhaps most importantly, the 111th and 112th Congresses repeatedly considered legislation that would have implemented a national climate change mitigation plan. Each time, the legislation failed in a bipartisan fashion. If the people's representatives failed to enact climate policy via the legislative process, why are unelected bureaucrats imposing such policy using the regulatory process?

The Clean Power Plan also lacks electoral approval of any sort.

President Obama avoided climate change during his reelection campaign. This made sense, insofar as public opinion polls indicated the American electorate gave ultra-low priority to global warming. It was only after President Obama was reelected that he announced his Climate Action

*The Clean Power Plan would undermine states' discretion to give priority to economic considerations in overseeing their electric systems.*

Plan. Simply put, the EPA's climate rules were hidden from voters, as the president refused to subject his climate policy to voter scrutiny.

But the EPA did not ignore all outside parties in crafting this policy. Three employees of the Natural Resources Defense Council wrote the Clean Power Plan's "blueprint," according to *The New York Times*.

So what should Congress do? Following is a brief list of ideas of possible non-legislative action that could be accomplished by any Member of Congress without a vote.

- Request the Energy Information Administration to study impact on retail electricity prices of running all combined cycle natural gas power plants at 70 percent capacity utilization.
- Request the Congressional Research Service to investigate what an EPA federal implementation plan would look like under a "beyond the fence" electric system-wide Clean Air Act § 111 (d) regulatory regime for greenhouse gases.
- Support the Senate Environment and Public Works minority's information requests from the EPA and NRDC about the extent of their collaboration.
- Participate in the regulatory process by commenting on the rule.

*William Yeatman (william.yeatman@cei.org) is a Senior Fellow at CEI.*

2014 CEI DINNER  
30TH ANNIVERSARY

CEI FOUNDER  
FRED SMITH AND  
FRAN SMITH



SEATED LEFT TO RIGHT:  
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INSTITUTE FOR HUMANE STUDIES  
PRESIDENT AND CHIEF EXECUTIVE  
OFFICER MARTY ZUPAN, REASON  
MAGAZINE EDITOR-IN-CHIEF  
MATT WELCH; STANDING: REASON  
SCIENCE CORRESPONDENT  
RONALD BAILEY



CATO INSTITUTE EXECUTIVE VICE  
PRESIDENT DAVID BOAZ



ATLAS NETWORK OPERATIONS MANAGER  
KRISTINA CRANE (LEFT) AND KATHRYN  
WASHBURN



WASHINGTON EXAMINER COLUMNIST  
MICHAEL BARONE

LEFT TO RIGHT: JENNIFER GLEBA, SARAH SCAIFE FOUNDATION PRESIDENT AND TREASURER MICHAEL GLEBA, AND MERCATUS CENTER SENIOR VICE PRESIDENT CARRIE CONKO



MASTER OF CEREMONIES KENNEDY, CO-HOST OF "THE INDEPENDENTS" ON FOX BUSINESS, ADDRESSES THE CROWD



CEI PRESIDENT LAWSON BADER (LEFT) AND ARCADIO CASILLAS, PRESIDENT AND CHIEF EXECUTIVE OFFICER OF PREFERRED COMPENSATION

LEFT TO RIGHT: DAILY CALLER OPINION EDITOR J. ARTHUR BLOOM, TAX FOUNDATION ECONOMIST AND MANAGER OF STATE PROJECTS SCOTT DRENKARD, CATO INSTITUTE RESEARCH FELLOW TREVOR BURRUS, AND AMERICAN LEGISLATIVE EXCHANGE COUNCIL DIRECTOR OF DEVELOPMENT AND MIDWESTERN RELATIONS LAUREL BUCKLEY



LEFT TO RIGHT: LOUISA GREVE OF THE NATIONAL ENDOWMENT FOR DEMOCRACY; ALAN DYE OF WEBSTER, CHAMBERLAIN & BEAN, LLP; AND CEI PRESIDENT LAWSON BADER



CEI PRESIDENT LAWSON BADER WELCOMES GUESTS TO THE 2014 CEI DINNER



JOHN TIERNEY, WINNER OF THE 2014 JULIAN L. SIMON MEMORIAL AWARD, ADDRESSES THE AUDIENCE



LEFT TO RIGHT: JOE COON OF THE NISHANEN CENTER, CEI BOARD MEMBER KERRY HALFERTY HARDY, AND CAPITAL RESEARCH CENTER DIRECTOR OF DEVELOPMENT GORDON CUMMINGS



FOUNDATION FOR ECONOMIC EDUCATION EXECUTIVE DIRECTOR WAYNE OLSON (LEFT) AND JON BASIL UTLEY



DAVID PARKER OF OLD BOSTON RESTORATIONS



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JIM AND GAYLA VON EHR



CEI PRESIDENT LAWSON BADER PRESENTS THE JULIAN L. SIMON MEMORIAL AWARD TO 2014 AWARDEE JOHN TIERNEY



CATO INSTITUTE PRESIDENT JOHN ALLISON (LEFT) AND ATLAS NETWORK CHIEF EXECUTIVE OFFICER BRAD LIPS



FOUNDATION FOR LAND AND LIBERTY PRESIDENT AND CEO KAREN BULICH MOREAU AND CEI DISTINGUISHED FELLOW ROBERT J. SMITH



CEI EXECUTIVE DIRECTOR GREGORY CONKO AND MASTER OF CEREMONIES KENNEDY



LEFT TO RIGHT: SAMAH NORQUIST; AMERICANS FOR TAX REFORM PRESIDENT GROVER NORQUIST; LOREN A. SMITH, SENIOR JUDGE ON THE U.S. COURT OF FEDERAL CLAIMS; AND PETER WALLISON, ARTHUR F. BURNS FELLOW IN FINANCIAL POLICY STUDIES AT THE AMERICAN ENTERPRISE INSTITUTE



## 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.**

# Uber Hires Its General; What Is Plouffe's Battle Plan?



BY FRED L. SMITH

Uber CEO Travis Kalanick's decision to hire former Obama campaign manager David Plouffe raises some interesting questions. Uber, a social network offering consumers an attractive transportation option, has expanded rapidly but now faces fierce opposition from traditional car service companies, their unionized employees, and regulators fearful of losing power.

Of course, entrepreneurs have always faced such opposition. Innovation is a creative destructive process, threatening losses for vested interests. At one time, popular support for entrepreneurs and economic growth rendered such opposition a mere nuisance. However, as the regulatory Leviathan has grown over the last century (CEI estimates the costs of current regulation as around \$1.86 trillion!), the power of the past to block the opportunities of the future has sharply increased.

To date, Uber has relied on the enthusiastic support of those enjoying its services, its superior service, and its ability to reach out to supporters through social networking. Yet, the opposition has become better organized, threatening Uber's growth, if not its existence. Faced with this threat, Kalanick initially responded unapologetically: *Permission? I don't need no stinking permission!*

But social media and creativity can only get you so far. In today's politicized environment, a firm also needs political legitimacy. Uber has gained such legitimacy from its users. Moreover, it has done an excellent job in empowering its drivers in a way that makes them eager to serve as ambassadors, as legitimizers of their firm. One recently told me: "We're not

a cab company, we're really a social network—our apps allow drivers and riders to cooperate."

Uber must operate in cities. To continue, it must find ways of responding to the old guard's attacks. In time, Uber's customer base would likely reach the critical mass needed to survive, but will it get that chance to grow, to continue to innovate? Uber is not the first to face this challenge. Napster was popular—but not popular enough to survive political attacks. Other promising innovations, including agricultural genetic modification, DNA testing, and biomedical innovation, now languish in regulatory holding pens.

Kalanick, to his credit, seeks to win his battle, not simply appease his critics. Many of his allies are young urban professionals. His opponents are vested cab companies and cronyist local politicians. Thus, his selection of Plouffe, an individual familiar with both audiences, to lead that fight, may well be brilliant. Certainly he's the ideal individual to legitimize what Kalanick, in a recent *Wired* article, called "Uber the Candidate."

Kalanick, in this choice, may prove to be as innovative in the political market as in the transportation market, seeking economic liberalization to free Uber to evolve and grow in exciting, yet unforeseen, ways. Yet, this is not the course that most Washington insiders would have recommended. So it's worth asking: Will Plouffe take on the establishment to create a more competitive transportation sector or will he seek simply to cut Uber into the current cartel? Will he achieve a more economically liberal cityscape or one even more fortified against future creative change? And which outcome should Uber prefer?

To date, Uber has been highly innovative, rapidly addressing a wide

array of challenges. As noted, it has mobilized both passengers and drivers to fight back against regulatory threats. It has proven adroit at screening and enlisting quality drivers, in attracting and pleasing customers, and in negotiating innovative insurance coverage. Its use of both customer and driver reputational ratings has created the trust necessary for its cooperative network to flourish. And its successes have forced traditional cab companies to become more innovative, by for example, expanding their use of GPS systems, providing more data about drivers, and even allowing reputational ratings.

Uber and Kalanick are demonstrating anew that competition encourages innovation, that ours is an Alice in Wonderland dynamic world where *firms must run to survive and must run even faster to grow!*

But innovators rarely seek survival in a static world. And history shows that the firm's initial innovations soon beget even more creative ideas. The history of Apple illustrates this well. Thus, being allowed into the game if it entails accepting restrictions on future innovations will not likely be in Uber's longer term interest.

Given Plouffe's experience, I have little doubt of his ability to mobilize and train the army Uber needs. But will he and Kalanick use that army to defend Uber as it now exists? Or, will they go on the offensive, seeking the freedom to become the mobility sector Apple of tomorrow?

Kalanick has chosen Plouffe as his general. The question: Did he get McClellan or Grant?

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*Fred L. Smith (fred.smith@cei.org) is Founder of CEI and Director of CEI's Center for Advancing Capitalism.*

# Ron Paul's Campus Legacy Catches Fire as Cool Libertarian Kids Eclipse Cult of Obama

BY BILL FREZZA

Youthful rebellion takes many forms. But when was the last time you saw college kids turning out in large numbers calling for fiscal prudence, personal responsibility, and restoring the Constitution? Something is brewing on campus, and it's not just beer.

I had the pleasure of attending and speaking at the sixth annual Young Americans for Liberty (YAL) convention in Arlington, Virginia, July 30-August 3, just outside the nation's capital. It was the group's largest convention yet, with about 200 of the over 525 YAL campus chapters represented and attendees from all 50 states. At first, it looked like many other student confabs, but I noticed something different about these conferees. A fire burned in their bellies, the kind I haven't seen since people of my generation marched against the Vietnam War.

Who lit their fuse? What kind of firebrand incites such passion? Would you believe ... a septuagenarian obstetrician who "treats you like a grandson" and behaves with such deep authenticity that you "would never suspect he was a politician," according to Jeff Frazee, who went from interning in Rep. Ron Paul's House office to coordinating youth outreach for Paul's presidential campaign to leading YAL today.

"I didn't feel like I fit in with the left," he says. "I didn't feel like I fit in with the right, I was disenchanted with the wars, and my roommate said, 'You might be a libertarian. You should look into Ron Paul.'"

*"I didn't feel like I fit in with the left," [Frazee] says. "I didn't feel like I fit in with the right, I was disenchanted with the wars, and my roommate said, 'You might be a libertarian. You should look into Ron Paul.'"*

Since Frazee's campus awakening, the lead baton has passed to Ron's son, Sen. Rand Paul, who seems to have inherited both his father's principles and his ability to connect with young voters. Robert Reich, Bill Clinton's famously liberal labor secretary, called Rand Paul "one of the few politicians who can get a standing ovation at CPAC [the Conservative Political Action Conference] and Berkeley." Both father and son headlined the YAL conference, receiving the rock star treatment.

But it's not all hype and lofty speeches. As Frazee describes it, YAL's mission is to "identify, educate, train, and mobilize youth activists committing to winning on principle." The organization is building college chapters all across the country, identifying leaders, educating them on the economic and philosophical foundations of liberty, and mobilizing them into the political process.

The most pleasant surprise for me was that while these young activists espouse conservative values, they are

careful not to confuse their political beliefs with their personal ones. They may go to church, but, says Jeff, "They don't want to legislate morality." A perfect example is YAL's efforts to end the failed war on drugs, a position usually associated with the left. "The world is not coming to an end because Colorado legalized marijuana," says Frazee. "As a result people are being more tolerant of other people's private activities."

But if you really want to get these kids going, ask them about government spending, overregulation, and fiscal responsibility. "The size of the [national] debt is too hard to comprehend," says Frazee, but it's not hard to understand that its trajectory is not sustainable. YAL is making sure today's college students know their current share of the national debt—\$150,000 each. If carrying that burden on top of paying \$40,000-plus in student loans is not enough to turn them into libertarians, I don't know what is.

As for the campus cool factor, Jeff claims Obama worship has slowly given way to Obama bashing. "Obama was seen as the savior." And yet on many issues like NSA spying and government bailouts, "Obama just doubled down on George Bush's policies. Young people figured out that he did not deliver the hope and change they were looking for."

It took a generation for the Left to radicalize college campuses. Perhaps the tide is starting to turn?

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*Bill Frezza is the 2013-2014 Warren Brookes T. Brookes Journalism Fellow at CEI and host of the RealClear Radio Hour. A version of this article originally appeared in Forbes.com*

# Worker Freedom Is Key to Economic Growth, New CEI Studies Show

BY ALOYSIUS HOGAN

What do labor policies that encourage unionization and restrict worker freedom cost you? Do the costs extend beyond the dues paid by union members and the work rules and salaries paid out by employers? A series of three studies recently published by CEI seeks to answer those questions. In sum, the answers are 1) a lot, and 2) yes, indeed.

Today, many states face budget crunches due to massive pension debts, often in the billions of dollars, that have accumulated over the past two decades. State government pension debt burdens labor markets and worsens the business climate within each state. To get a clear picture of the extent of this effect around the nation, economist Robert Sarvis's new CEI study, "Understanding Public Pension Debt," amalgamates several estimates of states' pension debts and ranks them from best to worst.

Individuals and businesses in states with underfunded pensions understand that the piper will have to be paid eventually. Without significant reform, these debts will adversely affect their business through higher taxes, fewer basic government services, or both.

Also crucial to a state's business climate is workers' freedom of association. The compelling preponderance of evidence suggests there is a substantial, significant and positive relationship between economic growth in a state and the presence of a right to work (RTW) law.

"An Interstate Analysis of Right to Work Laws" by economist Richard Vedder and public policy expert Jonathan Robe presents labor-economics analysis of the effect of a right to work law on state economies, and ranks states' per-capita income loss

from not having a right to work law. Currently, 24 states have RTW laws, which give workers the right not to join unions as a condition of employment and prohibit the coercive collection of dues from workers who choose not to join.

RTW laws tend to lower union presence, reduce the adversarial relationship between workers and employers, and make investment more attractive. Over the study period, employment grew 71 percent nationwide, 50 percent in non-RTW states, and 105 percent in right to work states.

The study provides complete rankings of all states. The 10 states most negatively affected by the failure to adopt right to work laws are Alaska, Connecticut, California, New Jersey, Illinois, Hawaii, Maryland, Wisconsin, New York, and Michigan.

For all states, the median income loss per capita is \$3,278, over \$13,100 for a family of four.

However, the costs of unionization extend beyond non-right to work states.

"The Unintended Consequences of Collective Bargaining" by economist Lowell Gallaway and Jonathan Robe analyzes the effect of unionization on economic growth on a state-by-state basis, and calculates the "deadweight loss" resulting from unionization.

By raising the cost of labor, unions decrease the number of job opportunities in unionized industries. That, in turn, increases the supply of labor in the nonunion sector, thereby driving down wages in those industries. The effect of this situation is to increase the natural rate of unemployment, thus imposing a deadweight loss of economic output on the economy.



*The compelling preponderance of evidence suggests there is a substantial, significant and positive relationship between economic growth in a state and the presence of a right to work law.*

This assessment does not suggest that, in an ideal world, workers should be paid increasingly less to ensure further economic growth. Rather, increases in productivity—not artificial increases in labor prices—are the key to economic growth.

Taken together, the three studies suggest that lawmakers should seek to enact policies that extend worker freedom if they are serious about promoting economic growth. Right to work laws are a good place to start.

Aloysius Hogan (aloyus.hogan@cei.org) is a Senior Fellow at CEI.

# “Operation Choke Point” Is the Government’s Helicopter Parent

BY LAWSON BADER

Having spent a great deal of time in playgrounds—first as a child, then as a parent—I’ve learned some important lessons. First, bringing together children of disparate ages and skills invariably leads to conflict. Second, learning to resolve those conflicts teaches important life skills. And I have found that left to their own devices, kids usually achieve détente far more effectively—and permanently—than do their overseeing parents. For a lesson in spontaneous order, it’s hard to beat a playground.

Yet these days, we hear a lot about “helicopter parents,” who seem reluctant to sit back and let the kids sort things out. That’s not a good thing. The bigger issue here in the nation’s capital, is that those same parents then leave the playground, drive to their government offices, and apply to public policy the same failed conflict-resolution tactics from the playground. The result? Overbearing “preventive” policies like Operation Choke Point.

Operation Choke Point is, at least in theory, an ongoing federal initiative to “protect” U.S. banks from fraud by going after some of their clients. In practice, it has become a fishing expedition that threatens the rule of law, civil liberties, the nation’s economy, and some of the poorest people in society. Under Operation Choke Point, the government has harassed legal businesses that have broken no laws and cut many of them off from the financial system.

Federal regulators are putting the screws to banks and other third-party payment processors that do business with companies and industries deemed to pose a “reputation risk” to the bank, with the aim of “choking” off cash flow to those industries. It’s not hard to see

how this could go wrong quickly.

You can read more about this effort in a recently released CEI study by Iain Murray, CEI’s Vice President for Strategy. Officially, Operation Choke Point is a joint effort of the Department of Justice, Office of the Comptroller of the Currency, and, leading the charge, the Federal Deposit Insurance Corporation (FDIC). Its purported aim is to protect Americans from falling prey to fraud in a variety of industries the government considers “high-risk.” And it’s gone with particular ferocity after the payday lending industry.

The threat to due process is enormous, as the government can isolate certain companies or individuals from accessing the financing they need to operate, without showing that the targeted groups have in fact violated any laws. Especially dangerous is the lack of a clear definition of “reputation risk.”

The listed categories of “high risk” industries run from suspected Ponzi schemes and get-rich-quick products to tobacco sales, telemarketers, gun sales, pornography, and online gambling. Inclusion on it seems to be based on nothing more than government wishing to assert control over industries it views with suspicion. But as the CEI study’s author, Iain Murray, points out, “The FDIC’s list of high risk industries seems guided more by moral censure than by any real prospect of criminality.”

Operation Choke Point also threatens civil liberties. Some porn stars have had their bank accounts closed solely for pursuing a choice of employment of which certain government officials disapprove—a choice of employment, by the way, protected by the First Amendment. And some firearms dealers have seen their bank accounts suddenly closed because of Operation Choke Point—which raises some troubling Second Amendment implications.

Operation Choke Point also poses a major threat to the nation’s economic well-being. Banking is already a highly regulated industry, so any additional regulatory compliance costs are bound to place a significant burden on small and mid-size banks, which cannot afford the extra supervision that comes with a Choke Point subpoena. As a result, they often face no choice but to drop their “high-risk” clients.

Finally, Operation Choke Point places more roadblocks in the way of “unbanked” low income customers seeking access to the financial system. Nearly 10 million, or 8.2 percent of U.S. households were unbanked as of 2011, and 20.1 percent were “underbanked,” according to the FDIC. For individuals who lack access to either a bank account or a viable credit rating, payday lenders help fill the gap through check cashing and utility payment services, as well as through pre-paid payment cards. Without access to those services, many will be tempted to seek out riskier—perhaps even illegal—sources of credit.

Choke Point, through its heavy-handed attempt to help the nation’s poorer and more financially desperate citizens, ends up hurting those same citizens in the long run.

I find the name “Choke Point” a bit ironic. I thought using physical force and intimidation to get our way was a bad thing. In the playground, there’s a word for children who act this way: bullies. You learn to avoid them for their behavior. Often they get the message and change. But the architects of Operation Choke Point seem like the bullies who never learned. Now they’ve grown up, and are still trying to get their way.

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# THE GOOD



## Supreme Court Curtails Obama Recess Appointment Overreach

On June 26, a unanimous Supreme Court, ruling in *Noel Canning v. National Labor Relations Board*, limited the president's ability to make recess appointments while the Senate is in pro-forma session. CEI Senior Attorney Hans Bader, who contributed to an *amicus* brief in the case, noted that the decision may be of broader importance. "Today's ruling also confirms the invalidity of President Obama's 'recess' appointment of Richard Cordray as head of the Consumer Finance Protection Bureau," Bader said. "He was appointed the same day, during the same non-existent recess, as the NLRB appointments invalidated by today's ruling. This decision supports CEI's legal challenge against Cordray's appointment and the constitutionality of other aspects of the Dodd-Frank financial services legislation that remains pending as well."

# THE BAD



## Highway Fund Patched by Risky Pension Trick

In late August, Congress finally agreed to a 10-month bailout of the Highway Trust Fund. Without the patch, the Secretary of Transportation would have begun withholding money from the states. Not only did Congress fail to deal with the core problem of overspending, it funded this 10-month bailout largely by way of an accounting gimmick called pension smoothing. Pension smoothing allows pension managers to make lower pension contributions by basing payments on overly optimistic projections about future investment returns, thereby leaving more income subject to taxation, and putting pension funds and taxpayers at increased risk. The 10-month patch relies on 10 years of expected additional revenue. Unfortunately, this is not the first time Congress has used this trick. In 2012, CEI harshly criticized the Senate for a similar provision that ultimately was included in the full reauthorization of the Highway Trust Fund.

# THE UGLY



## EPA Text Message Destruction Scandal Grows

CEI Senior Fellow Christopher Horner has been leading the charge for improved transparency in what was once called "the most transparent administration in history." A recent lawsuit from CEI led to what may be the Environmental Protection Agency's first-ever release of text messages under the Freedom of Information Act. Lately, Horner has been locked in a legal battle with the EPA over text messages to and from EPA Administrator Gina McCarthy that the agency claimed to have illegally destroyed. Horner's latest suit against the EPA involves its suspected collusion with leftist environmental groups in its "war on coal." Proposed onerous climate rules should be stalled until the EPA is able to comply with basic transparency laws. "The Federal Records Act requires this," Horner noted. "That this is the result not of incidental loss but serial and deliberate destruction only compounds the matter. We have sued EPA seeking this. Their answer called it an 'intrusive' attempt to make them comply with record-keeping laws that no one can make them obey."

# MediaMENTIONS



**Director of the Center for Energy and Environment Myron Ebell talked global warming and hysterical media in *National Review*:**

More and more people in the middle of America—both geographically and culturally—have come to believe either that global warming is manageable or that extraordinary efforts to slow the economy to combat it aren't worth the cost. But that "doesn't faze the bicoastal urban media elite," says Myron Ebell of the Competitive Enterprise Institute. These elites, he adds, "have become more hysterical in their treatment of the issue, blaming everything from drought to wildfires to hurricanes on climate change."

—MAY 23,  
*National Review*

**Vice President for Policy Wayne Crews's annual *Ten Thousand Commandments* report was heavily cited in *The Washington Post*:**

Ronald Reagan lightened the weight of government as measured by taxation and regulation. Obama has done the opposite. According to the annual "snapshot of the federal regulatory state" compiled by Clyde Wayne Crews, Jr. of the Competitive Enterprise Institute, four of the five largest yearly totals of pages in the *Federal Register*—the record of regulations—have occurred during the Obama administration. The CEI's delightfully cheeky "unconstitutionality index," measuring Congress' excessive delegation of its lawmaking policy, was 51 in 2013. This means Congress passed 72 laws but unelected bureaucrats issued 3,659 regulations.

—MAY 28,  
*The Washington Post*

**Senior Fellow Chris Horner discusses CEI's recent lawsuit against the NSA in *The Washington Times*:**

The Competitive Enterprise Institute has been trying to pry cellphone and text message records from the Environmental Protection Agency for months but was

rebuffed. The EPA said it didn't store the data.

The institute then turned to the NSA, arguing that records of the communications likely were scooped up in the phone-snooping program revealed last year by former contractor Edward Snowden.

"We have found the silver lining of the NSA affair: While spying on all of us, our federal spooks inadvertently caught some of their lawbreaking political operatives at EPA," said Christopher C. Horner, one of the lawyers involved in the lawsuit.

—JUNE 9,  
*The Washington Times*

**Policy Analyst Trey Kovacs was quoted by CNN on the Supreme Court's ruling in *Harris v. Quinn*:**

The conservative Competitive Enterprise Institute, however, celebrated the ruling as a major victory.

"This decision delivers a major blow to the coercive powers of government unions," CEI policy analyst Trey Kovacs said in a statement. "The ruling frees thousands of home care and child care providers from financially assisting government unions that they disagree with."

—JUNE 30,  
CNN

**General Counsel Sam Kazman was cited by Fox Business Network on the victory in CEI's *Halbig v. Burwell* case:**

Sam Kazman, general counsel for the Competitive Enterprise Institute, which is coordinating the case on behalf of small business owners and individuals across six states, says the ruling is a win for states' rights.

"Today's court decision to strike down the illegal IRS rule is a victory for the rule of law. It is also a victory for states' rights and welcome relief to the individuals, small businesses, and employees who live in the 36 states that chose to opt out of establishing Obamacare insurance exchanges. This illegal rule would have cost employers

crippling fines, destroyed jobs, and forced Americans to pay for insurance that they didn't want or need," Kazman said in a statement.

—JULY 22,  
*Fox Business*

**In *USA Today*, Sam Kazman further discussed the *Halbig* decision:**

"This illegal rule would have cost employers crippling fines, destroyed jobs, and forced Americans to pay for insurance that they didn't want or need," said Sam Kazman, general counsel of the Competitive Enterprise Institute, which coordinated the lawsuit. "The court's decision put an end to the administration's power grab that the IRS rule represented."

—JULY 24,  
*USA Today*

**CEI and its annual gala were highlighted in a *New York Times Magazine* cover story, "Has the 'Libertarian Moment' Finally Arrived":**

C.E.I. is a 30-year-old organization that routinely sues federal agencies, often when new and onerous regulations are posted in the *Federal Register*. Tonight's banquet had advertised itself as having an '80s theme, and so several of the 800 attendees arrived dressed as pop icons of that decade.

After being introduced by Kennedy, the institute's president, Lawson Bader, strode to the stage wearing the decidedly pre-1980s Scottish formal attire of black jacket and kilt. Announcing pending lawsuits against the Affordable Care Act and the N.S.A., Bader thundered, to righteous applause, "C.E.I. will continue to push back!"

—AUGUST 10,  
*The New York Times Magazine*

# ...END NOTES



## Illinois Fails to Fund Transparency Law?

In 2012, Illinois legislators passed a bill mandating the state's Department of Central Management Services to create a database of salary information for local government employees. The purpose was to increase transparency in a state known for government corruption. Unfortunately, in expanding the Illinois Transparency and Accountability Portal to cover local government employees, lawmakers never appropriated any money to implement their law, according to the agency. But this excuse isn't sitting well with some politicians. Rep. Jack Franks (D-Marengo) fumed to reporters, "There was no appropriation necessary. They already have this information and all they have to do is transmit it to the state electronically. There's absolutely no cost and anybody who hides behind that ought to be tarred and feathered."

## Customs Agents Target Bagpipers

A New Hampshire teen who recently performed at a Canadian music festival got a rude surprise when attempting to reenter the United States: His heirloom bagpipes were seized for violating the Convention on International Trade in Endangered Species (CITES). The bagpipes belonged to Campbell Webster's father, a British national who served as the sovereign piper to Queen Elizabeth II. Made in 1936, his bagpipes have an ivory mouthpiece. CITES is only supposed to apply for musical instruments containing ivory made after 1976, and Campbell had the documentation to prove his bagpipes were exempt, but this did not deter the customs agents. Eventually, Webster's congressman was able to negotiate the return of his instrument—in exchange for a \$576 payment to the U.S. Fish and Wildlife Service.

## New York Bans Tiger Selfies

In August, New York Governor Andrew Cuomo signed a law prohibiting direct contact between members of the public and big cats at traveling shows. The law came in response to a supposedly troubling trend of young men posing with tigers and lions for online dating site photos. "This is a serious issue," Assemblywoman Linda Rosenthal (D-Manhattan) told the Associated Press. "People who take selfies with wild animals are fooling with their lives. And it harms the animal because they're generally not well-treated. They're seen as profit-making props." Rosenthal had previously told *The New York Post* that the law was narrowly tailored to exclude posing with other large wildlife. "They can still pose with bears and monkeys," the assemblywoman said.

## NLRB Creates Right to Curse at Bosses

Two recent National Labor Relations Board decisions concluded that employees can curse out their employers and not be fired. The first involved an employee of Plaza Auto Center who, in a meeting with management, called his supervisors "f\*\*\*ing mother f\*\*\*er," "f\*\*\*ing crook," and "a\*\*hole." The NLRB ruled that because workplace conditions were discussed and it took place behind closed doors, he could not be terminated. The second involved a union activist employed by Starbucks, who was upset with the chain's ban on employees wearing pro-union pins. The activist employee said to his manager in front of customers, "You can go f\*\*\* yourself, if you want to f\*\*\* me up, go ahead, I'm here." The NLRB ruled that Starbucks could not fire him for insubordination and threatening a store manager because the confrontation involved union activity and the company's response was disproportionate to the employee's poor conduct.