Unions Target Right-to-Work
In a bid to reverse the decline of private-sector unions, labor unions are trying to get Congress to obstruct states’ right-to-work laws.  

Michigan Tax-Taking
The Michigan Supreme Court will hear a case in which the government confiscated a person’s property because of $8.41 in unpaid interest on taxes.

CA High-Speed Rail Waste
The project to build a high-speed rail line from San Francisco to Los Angeles is mismanaged and woefully short of funding, the state auditor reports.

‘First Step’ in Legal Reform
The FIRST STEP Act reforms federal sentencing guidelines for nonviolent offenders and expands early prison-release programs.

Voters Reject Tobacco Taxes
Montana and South Dakota voters rejected hiking taxes on tobacco and tobacco alternatives, but Oregon lawmakers still considering new levies.

Supreme Court Orders Review of North Dakota Attorney Bar Fees
The U.S. Supreme Court has ordered a lower court to reconsider a North Dakota case challenging mandatory attorney bar fees in light of its Janus ruling on public employees’ First Amendment rights.

USDA Secretary Perdue Proposes Improved Food Stamp Work Requirements
T he U.S. Department of Agriculture (USDA) is proposing stricter work requirements for some recipients of Supplemental Nutrition Assistance Program (SNAP) benefits, popularly known as food stamps.

By Bonner R. Cohen

The Court’s Janus decision affirmed Trump administration had requested. Agriculture Secretary Sonny Perdue announced a proposed rule in late 2018 focused on tightening SNAP’s work requirements for able-bodied adults without dependents (ABAWDs) between the ages of 18 and 49. The rule would not apply to the elderly, the disabled, or pregnant women.
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Wisconsin Attorney General: ‘Wedding Barns’ Subject to State Liquor Laws

By Bonner R. Cohen

Outgoing Wisconsin Attorney General Brad Schimel says barns rented for events such as weddings are subject to the Badger State’s liquor licensing laws.

In an informal legal opinion requested by state Rep. Rob Swearingen (R-Rhinelander), chair of the state Assembly Committee on State Affairs and Government Operations, Schimel says “wedding barns” used for private events must comply with the same state liquor laws as bars and restaurants.

Rep. Swearingen is the owner of the Al-Gen dinner club and former president of the Wisconsin Tavern League, which supports requiring event hosts to hold liquor licenses.

Lack of Definition
Wisconsin law states, “No owner, lessee, or person in charge of a public place may permit the consumption of alcohol beverages on the premises of the public place, unless the person has an appropriate retail license or permit,” Schimel noted in his written opinion.

However, “The term ‘public place’ is not defined,” Schimel wrote.

Private venues rented out for limited, private events are still public and thus subject to state laws covering places where alcohol is served, Schimel’s analysis stated.

In 2015, the Wisconsin Department of Safety and Professional Services issued guidelines requiring agricultural facilities repurposed as public buildings to comply with the state’s commercial building codes. That action by state regulators has fueled the debate over whether wedding barns should have to comply with Wisconsin’s liquor laws.

‘Purely Private Events’
Dairy farmers renting out unused barns for additional revenue compete for business with bars and restaurants, and the Tavern League, a lobbying group representing the state’s restaurants and bars, wants to eliminate that competition, says Lucas T. Vebber, deputy counsel and director of regulatory reform and federalism at the Wisconsin Institute for Law & Liberty.

“Another Example of Crony Capitalism’
M.D. Kittle, an investigative reporter at the McIver News Service, a Madison-based free-market organization, says his sources see cronyism behind the attacks on wedding barns.

Critics of the move to license wedding barns say it’s just another example of crony capitalism, special-interest-driven protectionist policy aimed at knocking out smaller competitors,” Kittle said.

Bonner R. Cohen, Ph.D. (bcohen@nationalcenter.org) is a senior fellow at the National Center for Public Policy Research.
Cracking Big Green is a stunning expose of Big Green – the modern environmental movement and its hidden financial masters.

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Supreme Court Orders Review of North Dakota Attorney Bar Fees

Continued from page 1

the right of individual government employees to choose whether or not they want to become members of public labor unions and contribute dues and fees to them. The suit was brought by Illinois Department of Healthcare and Family Services Child Support Specialist Mark Janus.

‘You Have to Join’

In 2015, North Dakota lawyer Arnold Fleck sued to overturn a state law that requires all attorneys in the state, after they pass the bar exam, to pay fees to the State Bar Association of North Dakota. Fleck claimed the association uses the dues to fund political activities he does not support, including donations to political campaigns, in violation of his First Amendment rights.

Lawyers should be able to choose whether they want to join and pay fees to a private bar association, says Jeffrey Schwab, senior attorney with the Liberty Justice Center, which represented Janus in his case.

“If you want to be a lawyer in North Dakota, you have to join a private bar association,” Schwab said. “You have to pay money to them, and they basically make political statements and lobby.”

“Under the laws in North Dakota, however, most lawyers likely won’t even know what they’ve gotten into,” said Schwab. “They will do what the default is, because it’s easy. They might not even know that they’re funding what they’re funding.”

New Ground

A federal district court and the Eighth Circuit Court of Appeals ruled against Fleck in 2017. The Goldwater Institute petitioned the U.S. Supreme Court to consider whether the bar association laws in North Dakota conform to the Janus ruling.

Timothy Sandefur, vice president for litigation at the Goldwater Institute, says compelling lawyers to fund state bar associations sometimes means their money supports political beliefs they do not hold.

“The First Amendment guarantees freedom of speech and freedom of association,” Sandefur said. “You can’t be required to subsidize political opinions you disagree with.”

Applying Precedents

Fleck v. Wetch will have another hearing at the Eighth Circuit Court, says Sandefur, because lower courts cannot assume their opinions are invalidated by a U.S. Supreme Court ruling.

“The next step would be for the Court of Appeals to order another round of briefing and probably oral arguments on how the Janus case affects their views,” Sandefur said.

Under current law, North Dakota lawyers who pass the bar must make a specific choice to leave the association. “We had argued before Janus was decided that the Constitution requires an opt-in [to membership and dues],” said Sandefur.

Sandefur says opt-in is the only constitutionally justifiable route, but the Eighth Circuit Court must apply its existing precedents and decide whether to overrule its own decision.

The Eighth Circuit Court may find that opt-in is required only for labor unions, Sandefur says. In that situation, the Fleck case would probably go to the U.S. Supreme Court for another hearing, at which Sandefur and his team would argue again that the mandatory bar fee violates the First Amendment guarantees of freedom of speech and association, Sandefur says.

Nolan Ryan (nryan1@hillsdale.edu) writes from Hillsdale, Michigan.
Labor Unions Push to Reverse Decades of Labor Reforms

By Bonner R. Cohen

In a bid to reverse decades of declining membership in private-sector unions, labor organizations are seeking major changes to federal law, a recent report from the U.S. Chamber of Commerce states.

Since peaking at roughly 35 percent of the workforce in the 1950s, union membership has steadily declined and stood at just 10.7 percent of all U.S. employees in 2017, including only 6.5 percent of private sector workers, the report states.

The labor unions’ priorities include a major rewrite of the National Labor Relations Act (NLRA), which governs relations between labor and management, says the report. Specifically, unions want to remove states’ authority to enact “right-to-work” laws that make union membership and payment of “agency fees” for collective bargaining voluntary for individual employees.

“Today’s union movement in America is completely out of touch with the direction of the economy,” said Ed Hudgins, research director at The Heartland Institute, which publishes Budget & Tax News.

Most States Affected

The 1947 Taft-Hartley Act amended the NLRA to allow states to enact right-to-work statutes. Since then, 28 states have adopted such laws, including manufacturing and mining states such as Indiana, Michigan, West Virginia, and Wisconsin.

In 2018, two bills were introduced in Congress that would roll back right-to-work laws: the Workplace Democracy Act and the Workers’ Freedom to Negotiate Act.

The Workplace Democracy Act would ban right-to-work laws by repealing section 14(b) of the NLRA. The Workers’ Freedom to Negotiate Act would require nonunion employees to pay agency fees for bargaining and representation by unions in states with right-to-work laws.

Both bills are expected to be reintroduced in the new session of Congress, and they could be considered by the U.S. House of Representatives, led by Speaker Nancy Pelosi (D-CA). Voting for the bills could be hazardous, says Greg Mourad, vice president for legislation at the National Right to Work Committee, which supports state and federal right-to-work legislation.

“A House vote to wipe out state right-to-work laws would be a serious mistake on Nancy Pelosi’s part. They might be able to pass it through the House, but if they did, the backlash from outraged voters would very likely end the career of virtually every Democrat in a right-to-work state.”

Greg Mourad
Vice President for Legislation
National Right to Work Committee

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Bonner R. Cohen, Ph.D. (bcohen@nationalcenter.org) is a senior fellow at the National Center for Public Policy Research.
Report: CA Rail Project Mismanaged, Underfunded, Behind Schedule

By Bill Eastland

The project to build a high-speed passenger rail line between San Francisco and Los Angeles, California, is mismanaged and far short of the necessary funding, a state audit found.

California State Auditor Elaine M. Howle says mismanagement by the California High-Speed Rail Authority (CHSRA), the agency overseeing the project, is responsible for the cost overruns.

“Costs to date have been significantly greater than originally projected,” says the November 2018 report, “because the Authority moved forward before it completed many critical tasks such as purchasing land, planning how to re-route utility systems, or obtaining agreements with external stakeholders.”

The audit says there is a “high risk” that costs could go much higher.

Deadline for Federal Money

CHSRA says its estimated cost to complete the rail line has increased from $40 billion in 2008 to $77.3 billion today. State general obligation bonds and other state revenues and federal grants will provide $12.7 billion of the total funds needed, and CHSRA says it has identified additional future funding of $15.6 billion, for a total of $28.3 billion.

The funds received include $3.5 billion in federal money from the 2009 stimulus bill, the American Recovery and Reinvestment Act. CHSRA began construction in 2013 on a 119-mile segment in California’s Central Valley in an attempt to meet a 2017 construction deadline under the federal grant.

The federal deadline was pushed back to December 2022, and by that part of the rail line is not completed by then, the state will have to pay back the federal money. Construction is far behind schedule, the report states.

“To meet the current [2022] schedule,” says the audit, “the Authority will need to ensure that construction proceeds twice as fast as it has thus far.”

‘Flawed from the Beginning’

Though CHSRA says $28 billion will cover completion of segments in the Bay area and in the Central Valley, it will not be able to connect them or build the rest of the line to Los Angeles.

CHSRA has no idea where it will get the money to finish the project, says Baruch Feigenbaum, assistant director of transportation policy at the Reason Foundation and a policy advisor to The Heartland Institute, which publishes Budget & Tax News.

“The California high-speed rail project has been flawed from the beginning,” said Feigenbaum. “As the auditor notes, the California High-Speed Rail Authority has only identified about a third of the funding it needs to build the train, and cost overruns are likely.”

The cost overruns are occurring because the agency does not understand how to manage a transportation project, says Feigenbaum.

“It has 56 contract managers that perform minimal functions while outside contractors lack management and direction,” said Feigenbaum. “This project has a history of escalating costs and inept management.”

Not so Fast

California voters authorized a high-speed rail-line dedicated to passenger service, but CHSRA began modifying its plans in 2012 to utilize local rail service on the San Francisco Peninsula and in Los Angeles and to share a freight corridor between San Jose and Gilroy, in order to reduce costs, says the audit.

The audit says the use of existing rail lines “subjects high speed trains to lower speed limits and sometimes requires sharing time on the tracks with other rail operators.”

CHSRA’s plan to “blend” high-speed rail with slower transit and freight lines is not what voters approved, says Feigenbaum.

“The system, originally designed as true high-speed rail similar to trains that operate in France and Japan, is now ‘blended’ and will operate much more slowly in the L.A. and San Francisco areas, violating the terms of the 2008 ballot measure,” Feigenbaum said.

Planners vs. the People

Newly elected California Gov. Gavin Newsom has indicated he wants to focus on completing the northern half of the line to serve commuters from the Central Valley to the San Jose-area Silicon Valley.

Newsom is looking for a solution to a problem caused by governments' efforts at social engineering, says Rick Centner, former deputy director of communications for the Federal Transit Administration.

“Federal planning grants encourage state and local governments to undertake projects that do not serve markets that actually exist,” said Centner. “Instead, they serve the vision of the planners, with the hope that ridership will follow.”

‘Train to Nowhere’

Such projects rarely attract the ridership anticipated, says Centner, and the idea that Silicon Valley workers would move to the Central Valley and commute ignores reality.

“People do not locate or relocate based on housing costs alone,” said Centner. “They consider schools and amenities—and the time and cost of commuting.

“You could probably provide a chauffeur-driven limousine to everyone in the Central Valley who wants to commute to San Francisco, for less money,” Centner said.

Feigenbaum says the project should be canceled or scaled back.

“It is my hope that Gov. Newsom will cancel or at the very least reduce the length of the train line,” said Feigenbaum.

“I would like to see the project canceled and any remaining funds disbursed to taxpayers,” Feigenbaum said. “It would be hard to find a worse use of taxpayer funds than this overpriced, unneeded train to nowhere.”

Bill Eastland (eastland@reagan.com) writes from Arlington, Texas.
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REPRESENTATIVE ISAAC LATTERELL
SOUTH DAKOTA
The American people created SNAP to help people through difficult times, not as a lifelong income supplement, said Perdue in a press release announcing the proposed rule. “Long-term reliance on government assistance has never been part of the American dream,” Perdue said. “As we make benefits available to those who truly need them, we must also encourage participants to take proactive steps toward self-sufficiency. Moving people to work is common-sense policy, particularly at a time when the unemployment rate is at a generational low.”

States Loaded Up on Waivers

Under current SNAP requirements, able-bodied adults without dependents are supposed to work or participate in an employment training program at least 20 hours a week to continue to receive benefits for more than three months over a 36-month period.

States, however, may request a waiver from the time limit in areas with an unemployment rate above 10 percent—areas with unemployment rates of under 5 percent—a rate normally considered to be full employment,” states the USDA press release.

As a result of state waivers, nearly three-fourths (2.8 million) of the 3.8 million ABAWDs on food-stamp rolls were not working in 2016.

Failing the Target Population

Thirty-six states currently waive the work requirements for all or some of the ABAWD population, Perdue says in the USDA press release.

“These waivers weaken states’ ability to move the ABAWD population to long-term self-sufficiency because they do not require ABAWDs to engage in work and work training,” said Perdue.

The Trump administration wants to ensure work provisions are waived “only when necessary,” with the goal of encouraging states to move participants on the path to self-sufficiency, Perdue said.

Some states also stockpile waivers. States are currently allowed to waive up to 15 percent of ABAWDs from work requirements. If a state doesn’t use those waivers, they can hold on to them and use them later to go above the enrollment limits. Secretary Perdue says that California has more than 800,000 stockpiled waivers.

State Policy Choices

Ending waiver abuse is essential to reforming SNAP, says Perdue. “As the national unemployment rate continues to decrease, the number of ABAWD waivers in areas with low unemployment should also decrease,” said Perdue in a letter to every state governor advising them of the proposed rule.

“I strongly advise states with ABAWD waivers to review your policy choices concerning when and where to request these waivers,” Perdue said.

The proposed rule would also limit states’ ability to “gerrymander” areas, merging places with low unemployment with those with high unemployment in order for a geographical area to qualify for waivers.

The rule could be finalized this spring, and the USDA looks to expand comments from the public.

Widespread Fraud

SNAP is the fourth-largest means-tested federal program, and fraud is widespread, says Mathew Glans, a policy analyst at The Heartland Institute, which publishes Budget & Tax News. Illegal trafficking consists primarily of SNAP recipients selling their benefits for cash at food retailers, often at a discount, says Glans.

“From 2012 to 2014, according to the FDA, 35,891 food retailers nationwide illegally trafficked in more than $1 billion each year,” Glans said. “The retailers then used the cards as a commodity while the SNAP recipients used the cash received illegally from retailers to buy items that cannot be purchased using SNAP funds.

“During a three-year period, 11.8 percent of the 303,522 retail stores authorized to accept SNAP benefits were involved in illegal trafficking,” said Glans.


Michigan Supreme Court Agrees to Hear Property Confiscation Case

By Nolan Ryan

The Michigan Supreme Court agreed to hear a case later this year over government officials having confiscated a man’s property for $8.41 in unpaid interest on taxes and kept the $24,500 it fetched at auction.

Uri Rafaeli failed to pay the interest owed on property taxes for a rental property several years ago. Oakland County, Michigan eventually foreclosed on his property for the $8.41 plus $277 in additional interest and fees. The county sold his property at an auction in 2014 for $24,500 and kept the whole amount.

Rafaeli sued Oakland County for the difference, but a trial court ruled he had forfeited his property. An appeals court agreed.

The appeals court said the officials acted properly under the state’s General Property Tax Act, which requires officials to take property for any amount of unpaid taxes and keep all the proceeds if they sell it.

Fifth Amendment Case

The Pacific Legal Foundation (PLF) asked the Michigan Supreme Court to review the case on the grounds Michigan’s General Property Tax Act violates property owners’ Fifth Amendment rights, says PLF attorney Christina Martin.

The Takings Clause of the Fifth Amendment to the U.S. Constitution says the government cannot take private property “for public use, without just compensation.”

“The fundamental problem is that the Act fails to recognize that equity in real estate is protected by the Takings Clause in the U.S. Constitution and the Michigan Constitution’s counterpart: Article X, Section 2,” said Martin.

 “[The Act] claims the power to entirely swallow that equity, no matter how valuable the property or how small the debt,” Martin said.

‘More Than It Is Owed’

Martin says she hopes the Michigan Supreme Court will rule that when the government seizes property, it does not have a constitutional right to keep more than what the former property owner owes the government.

“We recognize that government has the power to sell property to collect a debt, including statutory penalties, costs, and interest,” said Martin. “But when government takes and sells property to collect a debt, it should not be allowed to keep more than it is owed. But that’s exactly what Michigan’s General Property Tax Act purports to authorize.”

A favorable ruling in Rafaeli’s case would require the government to give him the remaining funds from the auction of his property.

Most states do refund the surplus, says Martin, but Michigan is one of a few which either require or allow the government to keep all the profits from the sale of private property. Massachusetts, Minnesota, North Dakota, and Oregon have such laws.

“At minimum, to respect the Takings Clause, when the government sells property to collect a tax debt, it should have to refund the surplus profits from the sale of foreclosed property to the former owners,” Martin said.

“In Rafaeli’s case, that would mean the government should have refunded the $24,215 from the sale of [his] house, which exceeded [his] tax debt, interest, penalties, and fees,” Martin said.

‘Poor Discretion’

Although the General Property Tax Act allows for seizure of property, it is against common sense for the government to keep more than it is due, says Patrick Wright, vice president of legal affairs at the Mackinac Center for Public Policy.

“It is fair to say that regardless of the constitutionality, refusing to accept a late payment for $8 is ridiculous,” said Wright. “The county officials seem to have exercised poor discretion in deciding to process this.”

Oakland County made $22.5 million from tax foreclosure auctions from 2006 to 2015, according to the Detroit News.

The foundation’s appeal brief is due in February, and oral arguments before the court “will most likely be scheduled for October 2019,” Martin said.

Like all tax laws, Michigan’s property taxes are primarily meant to be sources of revenue and should be consistent with property values, Wright says.

“The presumption would be that people should pay a portion of the tax commensurate with the value of property,” Wright said.

Nolan Ryan (nryan@hillsdale.edu) writes from Hillsdale, Michigan.

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by Paul A. Ballonoff

“The presumption would be that people should pay a portion of the tax commensurate with the value of property,” Wright said.
Arizona Voters Prohibit Sales Taxes on Services

By Sarah Quinlan

Arizona voters approved an amendment to the state constitution prohibiting the state and local governments from enacting new taxes, or increasing tax rates, on personal or financial services.

Opponents of the measure included lawmakers and organizations on both ends of the political spectrum, including Gov. Doug Ducey and Ducey’s gubernatorial opponent, David Garcia.

Proposition 126, which passed with 64 percent of the vote, was placed on the ballot after a petition campaign financed by the Arizona Association of Realtors.

Arizona does not currently impose a sales tax on most services, but the state does tax most sales of tangible goods. A bill proposed in 2016 to expand sales taxes is an example of preferential treatment in the tax code, not tax reform, says Andrew Clark, Arizona state director of Americans for Prosperity, which opposed the measure.

“We look forward to working with the legislature to find solutions to end preferred treatment for special-interest groups who have riddled our system with subsidies, credits, and exemptions that favor these groups at the expense of Arizonans,” Clark said.

Governments should lower tax rates for everybody, instead of creating carve-outs like Proposition 126, Clark says.

“Americans for Prosperity continues to stand by Arizona’s taxpayers through advocating for a fairer, lower tax rate,” said Clark.

‘Preferred Treatment’

Exempting the service industry from sales taxes is an example of preferential treatment in the tax code, not tax reform, says Clark. "Poorly drafted, Prop. 126 bans new taxes on services, but it didn’t define services. And [it] ignored that sales tax areas in Arizona are organized by explicit categories—for example, transient lodging—not as goods or services.”

Dave Wells
Research Director, Grand Canyon Institute

‘Poorly Drafted’

The success of the initiative shows the power of special-interest groups, says Dave Wells, research director of the Grand Canyon Institute.

“Prop. 126 unfortunately shows that the real estate lobby with $8 million can mislead voters,” Wells said.

The language of Proposition 126 was unclear, and its passage will lead to litigation, says Wells.

“Poorly drafted, Prop. 126 bans new taxes on services, but it didn’t define services,” said Wells. “And [it] ignored that sales tax areas in Arizona are organized by explicit categories—for example, transient lodging—not as goods or services.

Consequently, in 2019 expect lawsuits to define its impact as many municipalities like Mesa may find that up to 40 percent of revenue in new voter-approved sales tax levies are lost due to Prop. 126,” Wells said.

‘Reform That Tax Code’

Ducey, who won his 2018 reelection bid, staked his opposition to Prop 126 during the campaign.

“I think putting a permanent and unchanged tax policy at the ballot box is a bad idea,” Ducey said at an event with local business leaders in Phoenix before the election.

Instead, the tax code needs reforming, Ducey says.

“I think when you look at the income tax, the sales tax, and the property tax, you can see opportunities where you can reform that tax code which brings in more revenue but makes the state even more attractive from a quality of living,” said Ducey.

Sarah Quinlan (think@heartland.org) writes from New York City, New York.

The 12 Most Ridiculous Laws Regulating Drinking

By Ben Dietderich

Marking the 85th anniversary of the end of Prohibition, the R Street Institute released a report identifying the 12 most ridiculous laws regulating alcohol consumption in the United States.

“America’s Dumbest Drink Laws,” an R Street policy paper by Jarrett Dietderich and Daniel DiLoreto, notes most of these are state and local laws enacted after the 21st Amendment repealed nationwide prohibition of alcoholic beverages.

“In one way or another, all of these [laws] have nonsensical rationales—and, in some cases, downright offensive ones,” the report notes.

No Large Containers

The eleventh worst drinking law in the United States, says the report, is a law in Washington D.C. that ban patrons from moving anything larger than a single beverage from table to table.

The law essentially applies to moving pitchers of beer, because bar patrons aren’t served a whole bottle, says John Nothdurft, former director of government relations at The Heartland Institute, which publishes Budget & Tax News.

“You can drink at bars, you can walk around at bars, but you cannot drink and simultaneously walk around at bars,” said Nothdurft. “[So-called bottle service in bars [is limited]. Patrons are not allowed to move alcoholic beverages in any container holding multiple servings, so basically [this applies to] pitchers of beer,” Nothdurft said.

The reason for the regulation, says the report, is because Washington D.C. liquor regulators wanted to prevent large containers of alcohol from being used in “altercations.”

Warm Beer Only

A law in Indiana limits sales of refrigerated beer to liquor stores, though convenience stores and grocers can sell warm beer. There are ways to get around the law and chill your beer at an accelerated pace, says Donny Kendal, host of "In the Tank Podcast," a weekly production of The Heartland Institute.

“You put your beer in a bucket of ice, jiggling occasionally, that’s going to take 20-30 minutes to get chilled, if you add water to the mix and jiggle occasionally, you get a cold beer in 10 minutes,” Kendal said.

“Here’s the secret: add a cup of salt for every three pounds of ice and again jiggle occasionally, you can get that cool time down to 2-3 minutes,” said Kendal.

Ban on Native American Distilleries

Winning the title of the number one dumbest—and most offensive—alcohol regulation in the United States is a federal law that dates back to 1834. President Jackson, infamously known for displacing Native Americans through the Trail of Tears, signed a law that banned distilleries on Native American lands.

“Apparently, our federal government still considers Native Americans second-class citizens because the law is still on the books,” the report notes.

The true goal of alcohol regulation “should be to protect public health and safety,” says the report. Kendal agrees.

“There are strong arguments to be made that alcohol is one of the most dangerous drugs out there—if not, the most,” Kendal said. “Specifically, in terms of physical, sociological, social harm, having said all that, these are the dumbest laws I’ve ever heard of.”

Ben Dietderich (bdietderich@hillsdale.edu) writes from Hillsdale, Michigan.

INTERNET INFO

Montana Supreme Court Nixes Education Tax-Credit Scholarship Program

By Joe Barnett

The Montana Supreme Court ruled the state’s education tax credit program violates the state constitution.

Montana’s Tax Credit Program, enacted in 2015, allowed a tax credit for donations to tuition scholarship funds for private school students or supplemental donations to public schools.

The December 13, 2018 decision marks the first time any state’s highest court has struck down a tax-credit scholarship program, says Tim Benson, a policy analyst with The Heartland Institute, which publishes Budget & Tax News.

Religious Schools Were Excluded

The Montana program allowed individuals to receive a dollar-for-dollar tax credit against state income taxes owed for up to $150 in donations to nonprofit Student Scholarship Organizations (SSOs) for tuition at a Qualified Education Provider (QEP). The purpose of SSOs “is to provide parental and student choice in education with private contributions through tax replacement programs,” the law states.

The Montana Department of Revenue adopted a rule that excluded religious schools from the definition of QEPs. Parents who wanted the aid for their children to attend religious schools sued the Revenue Department.

In the five-to-two decision in the case, Espinoza v. Montana Department of Revenue, the Montana Supreme Court ruled the state constitution’s Article X, section 6, prohibits the use of government funds to provide “direct or indirect” aid to sectarian schools.

The court additionally found the whole program was unconstitutional even though some of the QEPs are non-religious private schools.

“Because the Tax Credit Program does not distinguish between an indirect payment to fund a secular education and an indirect payment to fund a sectarian education, it cannot, under any circumstance, be construed as consistent with Article X, Section 6,” the court’s ruling states (italics in original).

The decision did not consider federal precedents, the court said, because the state had a right to a more restrictive prohibition than the First Amendment to the U.S. Constitution against “an establishment of religion.” The court ruled the First Amendment guarantee of the right to “free exercise” of religion did not apply to this case.

‘A Better Education’

The Montana Supreme Court’s decision deprives students of a quality education, says Lennie Jarratt, project manager for the Center for Transforming Education at The Heartland Institute, which publishes Budget & Tax News.

“The ruling against the tax-credit scholarship program denies many underserved Montana students a choice of a better education,” said Jarratt.

The court’s decision incorrectly treats tax credits to individuals as if they were state funds, says Jarratt.

“This ruling clearly implies the court believes an individual who is allowed to keep more of their own money is really being given funds from state coffers, which means the court believes an individual’s income belongs to the state instead of the individual,” Jarratt said.

Court Against the Grain

Education tax credit programs have survived constitutional challenges in every other case, says Benson.

“Before this unfortunate ruling by the Montana Supreme Court, not a single one of the 22 other tax-credit scholarship programs enacted in 17 different states had been struck down,” said Benson.

“These programs have already essentially been ruled constitutional by the U.S. Supreme Court in 2011, when it dismissed the challenge to Arizona’s program in Arizona Christian School Tuition Organization v. Winn,” Benson said.

Biased Against ‘Religious Residents’?

The Montana decision will be appealed, says Jarratt, giving federal courts an opportunity to rule on the constitutionality of state prohibitions on aid to students in religious schools.

“This case will be appealed to the U.S. Supreme Court, providing them a chance to rule on state Blaine amendments,” said Jarratt. “These are state constitutional amendments that specifically disallow any state monies from being appropriated to religious institutions.”

Benson says this is a case of discrimination against religious Montanans.

“It will take the Supreme Court to reverse this decision, and hopefully it will do so, noting how Montana is discriminating against its religious residents by blocking them from receiving public benefits,” said Benson.

Joe Barnett (joepaulbarnett@att.net) is a research fellow with The Heartland Institute.
NJ Considers Defined- Contribution Public Employee Pensions

By Bonner R. Cohen

New Jersey legislators are considering moving new state and local public employees out of the Garden State’s underfunded pension systems into defined-contribution plans similar to 401(k) accounts.

New Jersey’s total pension liability is $115 billion, reports the New Jersey Economic & Fiscal Policy Workgroup, a bipartisan blue-ribbon panel of 25 legislators and experts formed to propose solutions to the state’s economic and fiscal problems.

The panel reports the state’s traditional public pensions are only 56 percent funded, meaning the expected return on the investment of previous funds paid into the systems by taxpayers will not cover much more than half of the projected cost of benefits. By 2030, New Jersey taxpayers will be obligated to pay an additional $7.1 billion into the state’s pension systems, which cover nearly 800,000 current and retired employees.

Shifting workers to defined-contribution plans is one of 30 recommendations for fiscal reforms made by the panel in its 2018 report, “Path to Progress.”

State Senate President Stephen M. Sweeney (D-Gloucester), an originator and leader of the panel, publicly supports action on the recommendations in the 2019 session of the legislature. There is also organized opposition. The New Jersey Education Association, the state’s largest teacher’s union, has labeled the panel’s recommendations “unfair, unreasonable, and unconscionable.”

‘Path to Progress’
The panel proposes moving new workers with less than five years of employment under the current pension system into a plan that structurally resembles the Thrift Savings Plan for federal government workers, which replaced the old defined-benefit pension system in the mid-1980s.

Alternatively, the state could provide a blended or hybrid system, with a defined benefit for the first $40,000 of an employee’s income and an investment account for income above $40,000, the panel suggests.

The panel also recommends raising the full-benefit retirement age for new employees from 65 to the regular Social Security retirement age for their birth year.

“It's Only a Start”
The proposed pension reforms would save the state billions of dollars but do not go far enough to solve the fiscal problem, says Scott Andrew Shepard, policy director at the Yankee Institute for Public Policy and author of a recent Mercatus Center report, “New Jersey’s Pension Crisis: Flailing in Deep Waters.”

“Sweeney’s efforts represent a good and honest start in grappling with New Jersey’s pension-funding crisis. But it’s only a start. Like California, Connecticut, and other states facing these problems, Sweeney makes a proposal that asks everything of younger employees and newer hires. Responsibility should be shared among all workers by applying the 401(k)-style programs to all work not yet performed by all current workers.”

ANDREW SHEPARD
POLICY DIRECTOR
YANKEE INSTITUTE

Similar efforts clearing problems are widely recognized, says Shepard. But “it’s only a start.”

The reforms would not touch the pension structure for current workers who have been employed by the state more than five years, putting all the responsibility on new and younger ones, says Shepard.

“Like California, Connecticut, and other states facing these problems, Sweeney makes a proposal that asks everything of younger employees and newer hires,” said Shepard. “Responsibility should be shared among all workers by applying the 401(k)-style programs to all work not yet performed by all current workers.”

The state should also look at the benefit packages of higher-income employees and retirees, some of whom have used loopholes to enhance their benefits, says Shepard.

“The state should review the size, scope, and provenance of packages for current and future retirees,” Shepard said. “It should think about trimming some of the larger packages if they were achieved by troubling practices such as pension spiking, double dipping, and unconscionably large—and deeply underfunded—initial awards.”

‘No Time to Lose’
Shepard disagrees with other pending proposals to fix New Jersey’s pension problems, including ideas by Gov. Phil Murphy (D), such as imposing a “millionaires’ surtax,” transferring more control over pensions to public-employee unions, and dedicating lottery funds to pension funding. These measures would not fix or even help reduce the pension crisis, Shepard said.

Shepard recommends one more thing: prompt action.

“Further delay in taking the necessary steps to address New Jersey’s pension crisis will only increase the likelihood of more pervasive—and less equitable—cuts later on,” said Shepard. “New Jersey has no time to lose.”

‘Alternate Plan’ Option
Merrill Matthews, a resident scholar with the Institute for Policy Innovation, says several state and local governments have transitioned to defined-contribution plans, which eliminates unexpected public financial obligations and ensures retirees actually receive their money.

“In 1981 and ’82, three Texas counties—Galveston, Matagorda, and Brazoria—opted out of Social Security and created what’s known as the ‘Alternate Plan,’” said Matthews.

“County workers and the government deposit the same amount as private-sector workers pay in FICA taxes for Social Security, into a private account,” Mathews said. “That money is pooled and loaned to financial institutions that pay interest, with a guaranteed [benefit] floor.”

The private accounts are a reliable source of retirement income for the participants, says Matthews.

“Those accounts have never lost a dime in the 35-plus years of operation, and the counties have no long-term pension obligations,” said Matthews. “Workers retire with roughly twice what they would have received under Social Security.”

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Official Connections:
New Jersey Senate Pres. Stephen M. Sweeney (D-Gloucester):
https://www.njleg.state.nj.us/members/BIO.asp?Leg=216

INTERNET INFO
Virginia, New York Snag Amazon’s HQ2 for $2 Billion from Taxpayers

By Sarah Quinlan

A
ter a nationwide bidding war by a
city and state governments for Amazon’s “HQ2” operations center, the
one online retailing giant accepted offers of more than $2 billion in economic incentives to locate facilities in Arlington, Virginia; Crystal City and New York City’s Long Island City.

Some 238 U.S. cities entered the competition. Though many bids were kept secret, the average offer of publicly available bids from the 20 semi-finalists was $2.15 billion from cities and $6.75 billion from states over the next 15 years, according to the Mercatus Center.

Incentives offered by the winning cities and states were lower than the average bid.

Virginia will give Amazon $573 million in tax breaks if the company reaches its hiring target, and the city of Arlington will give Amazon a cash grant of $523 million over 15 years.

New York City and the state will give Amazon $1.2 billion in tax credits and a cash grant of $325 million over 10 years if the company reaches its hiring and building targets, amounting to more than $60,000 in taxpayer subsidies per new job created in New York.

Amazon says it will invest $5 billion in its two new headquarters and employ more than 25,000 people in each location.

‘Bribes, Really’
Using taxpayer-funded payoffs to attract businesses is a money-losing proposition, says Ed Hudgins, research director of The Heartland Institute, which publishes Budget & Tax News.

“For decades, states have sought to attract high-profile businesses with subsidies—bribes, really—for taxpayers, but the bribes offered are usually not offset by the number of jobs, economic activity, and new tax revenues generated by those businesses,” said Hudgins.

“As states try to outbid each other by offering larger handouts to a prospective business, the potential benefits go down so the state that ‘wins’ the business often loses overall on the deal,” Hudgins said.

Tax Cuts Expand Local Business
Other locations actually offered Amazon bigger handouts than Virginia and New York, says Hudgins, citing an analysis by the Mercatus Center at George Mason University. “This shows that factors other than those bribes go into business location decisions,” said Hudgins.

“The study also shows the levels of broad-based business tax cuts a state could make in lieu of offering subsidies to out-of-state companies to move in,” Hudgins said. “Such tax cuts would allow local businesses to be established and expand rather than suffering under high tax burdens which can put them out of business or drive them out of state.”

Hudgins says low taxes and reasonable business regulations are the superior economic development policy.

“The best general policy for a state is to keep its own taxes low and business regulations minimal,” Hudgins said. “This will not only improve state economies but can attract out-of-state businesses without subsidies.”

‘Open to Abuse and Cronyism’
Economic development incentives usually don’t benefit local residents, says Seth Barron, associate editor of City Journal and project director of the NYC Initiative at the Manhattan Institute.

“Generally speaking, offering tax incentives and economic development bonuses to corporations is a bad policy to open to abuse and cronyism,” said Barron. “The best way to attract businesses is to have an attractive regulatory and tax climate, combined with low crime and solid amenities,” Barron said.

Though undeniably expensive, the Amazon incentive package is not as bad as other such projects in New York, says Barron.

“The money being offered to Amazon for its HQ2 is largely consistent with existing incentives and is tied to creation of actual jobs,” said Barron. “Furthermore, the $3 billion will be spread out over decades, when total city and state expenditures will total many trillions of dollars.

“In sum, the tradeoff is much more efficient than in the case of other recent economic development debacles across the state,” Barron said.

Taxpayer Money for Billionaires
Subsidies for gigantic businesses such as Amazon are inherently unfair, says Justin Haskins, a research fellow at The Heartland Institute.

“These kinds of deals are so disgusting because you have taxpayers basically footing the bill for people who are already billionaires,” Haskins said. “In this case, Amazon is literally one of the most valuable companies in the entire history of human civilization, and you have taxpayers in New York subsidizing their second headquarters. It’s pure insanity.”

Haskins says instead of offering monetary incentives or other forms of special treatment, cities and states should make themselves as attractive as possible to all businesses.

“The reason New York City, Chica-
Report: Occupational Licensing Is Costly to the Economy

By Kenneth Artz

Occupational licensing imposes heavy costs on the state and national economies, a recent study by the Institute for Justice (IJ) reports.

Nationwide, 19 percent of all jobs require some form of occupational licensing, the report estimates. In the 36 states with sufficient data to allow state-level estimates, the share of workers licensed ranged from 14 percent in Georgia to 27 percent in Nevada, the study found.

Licensing costs the U.S. economy $6.2 billion in lost output and $183.9 billion in misallocated resources each year, the study found. At the state level, by the broader measure of misallocated resources, annual losses range from $675 million in Rhode Island to more than $22 billion in California.

By shutting out aspirants, licensing barriers may be costing the national economy more than 1.8 million jobs, the report estimates. The state-level job toll of licensing ranges from 6,952 in Rhode Island to 195,917 in California, the report states.

Less Competition, Higher Prices

Lee McGrath, managing attorney of IJ’s Minnesota office and the organization’s senior legislative counsel, says the reduction of competition causes higher prices and benefits the remaining providers.

“For instance, if I am in a licensed occupation, I have a cartel requiring you to only buy from me or people like me, and because I have fewer competitors, those people who can’t jump over the hurdles and can’t get an occupational license means I can raise my prices,” McGrath said.

“The benefit of my competing with fewer competitors means you’re paying more and I’m receiving more, to the tune of $6 billion a year,” McGrath said.

The reported $184 billion in misallocated costs shows the overall effect of licensing on the economy, says McGrath.

“This number captures the fact someone who doesn’t have a license, or can’t get a license, has to do something suboptimal,” said McGrath. “This can include military people and their spouses, military people who transfer from one base to another for a short period of time, people with a criminal record, or those who just don’t have the resources or time to get the requisite education even though they know how to do the profession or job.”

Little Evidence of Effectiveness

There is little to indicate occupational licensing boards are effective at weeding out incompetence and consumer fraud, says McGrath.

“Take, for example, Bernard Madoff, the greatest fraudster in American history,” McGrath said. Madoff was registered as a broker dealer with the Securities and Exchange Commission (SEC), the federal regulator of brokers and financial transactions involving securities. “The SEC did not bring him down,” McGrath said. “It was the New York Attorney General, using banking laws that prohibit unfair and deceptive trade practices.”

Reputation is the best consumer protection, says McGrath.

“In fact, consumers are better protected than ever before, with iPhones and review websites, without the help of licensing boards,” said McGrath.

Superiority of ‘Market Regulation’

There are many alternatives to occupational licensing, and the most important one is what we might call “market regulation,” says Clark Neily, vice president for criminal justice at the Cato Institute.

“For example, we’re seeing them in ridesharing services and restaurants,” Neily said. “When you get a ride from Uber or Lyft, their system for when you get a bad driver lets you try and contact the company directly or give [the driver] a low rating.

“My experience is if you give an Uber or Lyft driver less than four stars, you’ll get a call from someone at the company immediately to see what the problem was,” said Neily. “The same thing is happening with restaurants. You give them a bad review on Yelp, and it’s very common for the restaurant to contact you to try and fix the problem.”

Another important form of market regulation is private certifying bodies, says Neily. The IJ report estimates 5.6 percent of U.S. workers are certified in their occupation. IJ says certification is not a barrier to employment.

“There are a number of vocations where you can get certified by certain individuals with a history and knowledge of the vocation,” Neily said. “This information is valuable to the consumer because they can see you have certain credentials which would lead them to believe you are a qualified practitioner.”

Licenses ‘Exclude Outsiders’

Neily, an attorney, says the public tends to put too much faith in the reliability of occupational licensing, as there is no evidence licensing of lawyers, for example, has reduced the number of incompetent or unethical legal practitioners.

“They assume that once you put a regulatory board in charge, theoretically to ensure quality within the vocation, then it must be so, but the evidence is quite sparse,” Neily said. “Some regulatory boards don’t seem interested or particularly efficacious when it comes to ensuring high standards among practitioners.”

On the flip side, Neily says, occupational licensing has been extremely successful at keeping out competition.

“I don’t think it’s been very effective at increasing quality, but it is certainly effective at reducing competition and for enabling politically connected insiders to exclude outsiders,” Neily said.

Kenneth Artz (kennethcharlesartz@gmx.com) writes from Dallas, Texas.
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Trump Signs Bipartisan ‘First Step’ Criminal Justice Reform

By Sarah Quinlan

President Trump has signed into law a bipartisan federal criminal justice reform bill, the First Step Act.

The Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act (FIRST STEP Act) passed overwhelmingly in the Senate, 87 to 12, and in the House, 358 to 36, and Trump signed it on December 21, 2018.

The legislation received widespread support on both the Right and the Left, says Justin Haskins, a research fellow with The Heartland Institute, which publishes Budget & Tax News.

“It’s good to see there is still some common ground between liberals and conservatives,” said Haskins.

The purpose of the reforms is to encourage successful reentry into society, says Haskins.

“What it says is we want to help people be independent and not dependent on government,” Haskins said.

Several Reforms Included

The First Step Act includes reforms in sentencing, credits for participation in prison programs, and early prisoner release.

The act reduces the mandatory minimum sentence for repeat offenders under the federal “three strikes” law from life in prison to 25 years for prisoners convicted of nonviolent, low-level drug offenses.

It also requires the U.S. Bureau of Prisons to house federal prisoners in facilities within 500 miles of their homes and families.

The new law allows prisoners to receive early-release credits for time in work training programs, and it allows prerelease custody in which nonviolent offenders can serve part of their sentences in halfway houses or on monitored in-house arrest.

States Led the Way

The First Step Act draws on reforms implemented in several states, says John Nothdurft, former director of government relations at The Heartland Institute, which publishes Budget & Tax News.

“The First Step Act is a great step on criminal justice reform, which has been led for a long time at the state level by states such as Georgia and Texas, and that has finally percolated up to the federal level.”

JOHN NOTHDURFT, FORMER DIRECTOR OF GOVERNMENT, THE HEARTLAND INSTITUTE

“The First Step Act is a great step on criminal justice reform, which has been led for a long time at the state level by states such as Georgia and Texas, and that has finally percolated up to the federal level.”

JOHN NOTHDURFT, FORMER DIRECTOR OF GOVERNMENT, THE HEARTLAND INSTITUTE

‘Starts a Conversation’

Haskins says the new law can be a starting point for other criminal justice reforms.

“It starts a conversation that can lead to other reforms, such as in civil asset forfeiture,” says Haskins.

The reforms will benefit society as well as the prisoners, says Nothdurft.

“We need to get people coming out of prison into the workforce, said Nothdurft. “We have more jobs than we have people to fill them.”

Sarah Quinlan (think@heartland.org) writes from New York City, New York.
By Kenneth Artz

Conditions are ripe in Georgia to prune occupational licensing laws burdening the Peach State, with the support of new officeholders Gov. Brian Kemp and Secretary of State Brad Raffensperger.

“There’s great hope for occupational licensing reform in Georgia in the next legislative session,” said Benita M. Dodd, vice president of the Georgia Public Policy Foundation and a policy advisor to The Heartland Institute, which publishes Budget & Tax News.

‘A Dramatic Increase’
The percentage of the workforce in occupations requiring government licenses has grown nationwide, from 5 percent of workers in 1950 to 19 percent today, according to a 2018 study of available data on 36 states by the Institute for Justice (IJ).

“Like most of the nation, Georgia has seen a dramatic increase in the number of occupations requiring a government license,” said Randy Hicks, president of the Georgia Center for Opportunity.

From 1993 to 2012, Georgia added 23 new licenses and certifications, according to a 2018 study by the Archbridge Institute.

Some 14 percent of the workforce in Georgia are in occupations requiring a license, compared to a nationwide average of 19 percent, says the IJ report.

‘A Negative Impact’
The increase of licensing in recent decades has prevented low-income Georgians from entering higher-paying occupations, says Hicks.

“These new licenses had a negative impact on Georgians’ upward economic mobility and increased overall income inequality between the richest and poorest Georgians,” Hicks said. “In other words, increased occupational licensing harms the ability of Georgians to move up the economic ladder.”

In addition, says Hicks, a 2017 study by economists Evgeny S. Vorotnikov and Morris M. Kleiner in the Journal of Regulatory Economics found that across the United States, once an occupation is licensed, wages in those jobs rise by an average of 13.4 percent and employment declines by 11.4 percent. The study found Georgia has 91,376 fewer jobs than it would without occupational licensing.

“(Georgia) has some of the nation’s more onerous licensing requirements, coupled with an active protectionist lobby in several professions—especially medical fields, where more workers are sorely needed,” said Dodd.

‘A Climate of Reform’
Important Georgia government officials support licensing reform, says Dodd.

“The campaign platform of incoming Secretary of State Brad Raffensperger, previously a state representative, included occupational licensing reform, which is handled by that office,” said Dodd.

“In his previous position as Secretary of State, incoming Gov. Brian Kemp worked on streamlining occupational licensing requirements, including online renewals to reduce delays and long trips,” Dodd said.

Georgia’s previous governor helped create conditions for reform by successfully advocating changes in state law to stop state employment and licensing applications from asking about arrests for crimes, says Dodd.

“Outgoing Gov. Nathan Deal leaves behind a climate of reform,” said Dodd. “He championed ban-the-box efforts in state government and occupational licensing, so that former offenders have an opportunity to apply for jobs without being automatically eliminated before an interview, and to obtain jobs in professions where they are not a risk once they have paid their debt to society.”

Considering Alternatives
Hicks says the legislature should look at less intrusive alternatives before licensing occupations.

“When considering licensing a new occupation, lawmakers in Georgia should consider much less restrictive forms of regulation, such as certification or registration, and carefully consider if any regulation is needed at all for that particular industry,” Hicks said.

Kenneth Artz (kennethcharlesartz@gmx.com) writes from Dallas, Texas.

Retiring Ohio Gov. Kasich Signs Occupational Licensing Sunset-Review Bill

By Ken Artz

Every occupational license in Ohio has been put on a six-year clock for review and potential elimination, under a law signed by retiring Gov. John R. Kasich on Jan. 11, 2019.

The law (S.B. 255) requires the legislature to review every occupational license in the state of Ohio, says Lee McGrath, managing attorney of the Institute for Justice’s Minnesota office and the organization’s senior legislative counsel.

“Over a six-year horizon, Ohio will look at each of its occupational licenses and determine if they should remain or be repealed, because the bill automatically repeals all of them,” said McGrath.

The state could renew each licensing requirement, convert it to a lesser type of regulation, or let it lapse, says McGrath.

Nebraska enacted similar reforms in April 2018, says McGrath.

“By enacting this bill, Ohio joins Nebraska as leaders in implementing rigorous sunset review of all occupations,” McGrath said.

‘Least Restrictive Regulation’
Ohio has an “over-licensing” problem, said Greg R. Lawson, a research fellow at The Buckeye Institute and a policy advisor to The Heartland Institute, in testimony before the Ohio House Federalism and Interstate Relations Committee.

“Nearly every Ohio license that requires training can be earned in less time in another state,” said Lawson. “[O]nerous licensing burdens … make Ohio less competitive, less prosperous, and less attractive to entrepreneurs and their employees.”

S.B. 255 takes several steps toward fixing Ohio’s occupational licensing problem, Lawson said.

Frist, said Lawson, “Policy makers would be required to use the least restrictive regulation.” Second, “Boards that the General Assembly does not proactively reauthorize would simply dissolve.”

Finally, in addition to its sunset provisions, “SB255 also creates a ‘sunrise’ review process to be used whenever a new licensing bill is introduced,” Lawson testified.

Kenneth Artz (kennethcharlesartz@gmx.com) writes from Dallas, Texas.

INTERNET INFO
Washington State Restrictions Ownership, Expands Definition of ‘Assault Rifles’

By Joe Barnett

Voters in Washington State approved a ballot measure that imposes restrictions on firearms ownership, including raising the minimum age to purchase semiautomatic rifles from 18 to 21 years.

Washington State Initiative 1639 amends state law by imposing restrictions on the purchase and ownership of semiautomatic “assault rifles” as defined by the proposal. The measure mandates a 10-day waiting period and firearms training for purchases of semiautomatic rifles, and it bans sales of semiautomatic rifles to nonresidents of the state. The law also requires gun owners to keep their weapons in locked safes and requires officials to conduct more extensive background checks on gun purchasers.

Fifty-nine percent of Washington voters in the November 6 election approved the measure, which was placed on the ballot through a public petition. The higher age limit went into effect on January 1, 2019, and the other provisions will take effect July 1.

Expanding Its Definition

Initiative 1639 defined a semiautomatic rifle as “Any rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.” In other words, the term applies to any semiautomatic rifle.

Supporters promoted the initiative as an effort to reduce homicides and mass shootings, but it is unlikely to do either, says H. Sterling Burnett, a senior fellow with The Heartland Institute, which publishes Budget & Tax News.

“Research consistently shows so-called assault weapons are used in relatively few crimes, including mass shootings, so this measure will do little or nothing to reduce violent crime,” said Burnett.

“While it won’t save lives, it does rob citizens between ages 18 and 20 of part of their right to keep and bear arms guaranteed to them under the Constitution of the United States,” Burnett said.

‘It Is Absurd and Wrong’

Raising the age limit for firearms purchases will not reduce murder rates, says Lennie Jarratt, a project manager at The Heartland Institute.

“Research shows age restrictions on gun purchases do not decrease homicide rates,” said Jarratt.

“All this Washington law does is prevent law-abiding citizens from making purchases while making anti-Second Amendment activists feel good about themselves,” Jarratt said.

The law also means individuals in military service who have been using fully automatic weapons cannot legally purchase a semi-automatic rifle until they are 21, says Burnett.

“It is absurd and wrong,” said Burnett. “Voters in Washington State are telling young men and women who are trusted to carry and use fully automatic machine guns—true assault weapons—and even operate weapons of mass destruction in defense of our country while serving in the military, they can’t purchase semiautomatic rifles if they serve and live in Washington State.”

The National Rifle Association, the Second Amendment Foundation, gun dealers, and 18- to 20-year-olds affected by the age limit are challenging the law in federal court, citing multiple violations of the U.S. Constitution.

Joe Barnett (joepaulbarnett@att.net) is a research fellow with The Heartland Institute.
Oregon Considers Tobacco Tax Hikes, Montana and South Dakota Reject

By Ben Dietderich

In the face of voters in nearby Montana and South Dakota rejecting ballot measures to increase tobacco taxes, Oregon Gov. Kate Brown is including a tobacco tax hike in her proposed budget.

In South Dakota, a proposal put on the November 2018 ballot by petition would have increased the tax on a pack of cigarettes by one dollar, from $1.53 to $2.53.

In Montana, a proposal placed on the ballot by petition would have increased the cigarette tax two dollars, from $1.70 to $3.70, and would have expanded the tax to vapes and to other tobacco products, such as snuff.

Doubling Down in Oregon
Brown recommends more than doubling Oregon’s tobacco tax in her budget proposal for the next three years.

The 2019-2021 budget marks the first time Brown has proposed raising tobacco taxes since she unsuccessfully tried to increase taxes on cigarettes by 85 cents per pack two years ago.

Oregon’s tax on cigarettes is currently $1.33 per pack. Brown proposes a $2 increase, more than doubling the tax to $3.33 a pack. The increase would put Oregon’s cigarette tax significantly above the national average of $1.68 per pack.

Brown would also extend the tax on cigarettes to vapes and to other tobacco products.

Funding State Government
In Oregon, as in Montana’s rejected proposal, the taxes would be used to help cover the rising costs of the state’s Medicaid program. In South Dakota, the money would have funded tuition reductions at the state’s four technical higher-education institutions and general state spending.

It is notable none of the proposed taxes are intended primarily to fund smoking cessation efforts, says Lindsey Stroud, state government relations manager at The Heartland Institute, which publishes Budget & Tax News.

“It is pretty significant that both measures were rejected, as states have increasingly relied on tobacco taxes to fund programs other than cessation efforts,” Stroud said. “For instance, in 2018, states used only about 3 percent of the revenue generated from tobacco lawsuits and taxes on cessation efforts.”

States depending on tobacco tax revenues are setting themselves up for budgetary trouble, says Stroud.

“The problem is, tobacco revenues continue to decrease, so relying upon them for programs is very poor fiscal responsibility,” said Stroud.

‘Opportunities for Avoidance’
Tobacco excise taxes are ineffective in deterring smoking and can increase crime, says Dr. Brad Rodu, a senior fellow of The Heartland Institute and a researcher in tobacco harm reduction at the University of Louisville.

“State governments are not at liberty to increase excise taxes without consideration of the adverse effects of tax avoidance via smuggling and cross-border purchases,” Rodu said. “Economists have documented that large differences in cigarette excise taxes between neighboring jurisdictions provide opportunities for avoidance by affected consumers.”

Instead of quitting, smokers can avoid high taxes by buying cheaper, contraband cigarettes smuggled from low-tax locations and/or by direct cross-border purchasing,” said Rodu.

‘Simply a Tax Grab’
Many workers and ranchers in rural South Dakota smoke or chew tobacco, says state Sen. Stace Nelson, and the initiative would have taxed them to provide a free college education for others.

“There are plenty of South Dakotans that chew or smoke tobacco who have their own student loans they have to pay for,” said Nelson. “Instead of allowing them to take care of their own loans, we’re going to hit them a little bit harder by taking more money out of their pockets.”

In addition to tuition costs, a large percentage of the tax would have gone to the state’s general fund. Proponents of the South Dakota tax hike didn’t promote any effect on smoking cessation, says Nelson, but focused instead on education spending.

“They’ve been brazen about the fact that this is simply a tax grab,” Nelson said.

Ben Dietderich (bdietderich@hillsdale.edu) writes from Hillsdale, Michigan.

Internet Info
FL Supreme Court Rebuffs Challenge to Public School System

By Joe Barnett

The Florida Supreme Court ended a decade-long challenge to the constitutionality of the state’s public-school system, rejecting plaintiffs’ arguments the courts should mandate specific quality standards and order the legislature to increase funding for government schools.

The plaintiffs in Citizens for Strong Schools v. Florida State Board of Education argued the state legislature was violating Article IX, section 1(a) of Florida’s constitution. In language adopted in 1998, Article IX states, “Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education.”

In a four to three decision on January 4, the Florida Supreme Court ruled the adequacy of the schools is a political question for the legislature to decide, not a judicial question.

Respecting Separation of Powers

In the majority opinion, Chief Justice Charles Canady wrote the plaintiffs want “the courts to order the State ‘to establish a remedial plan that . . . includes necessary studies to determine what resources and standards are necessary to provide a high quality education to Florida students.’”

This is a policy question, not a judicial one, and a court’s restructuring of the education system would violate the state constitution’s separation of powers, Canady stated in his decision.

“The judiciary . . . lacks the institutional competence—or the constitutional authority—to make the monumental funding and policy decisions that the petitioners (the plaintiffs) and the dissenters seek to shift to the judicial branch,” Canady wrote. “And there is not a hint of any manageable judicial standards to apply in making those decisions.”

Targeted Education Choice

The lawsuit also pressed for the court to declare the state’s education choice programs unconstitutional. The plaintiffs described the Florida Tax Credit Program (FTC) and McKay Scholarship for Students with Disabilities Program (McKay) as cases of government waste that divert taxpayer funds from public schools to private schools and create a separate and unequal education system.

The FTC program allows a dollar-for-dollar credit on corporate income taxes and insurance premium taxes for donations to scholarship-funding organizations (SFOs), nonprofit groups that provide scholarships for low-income students to attend participating private schools.

Leslie Hiner, vice president of legal affairs for EdChoice, says the Florida Supreme Court upheld the trial court’s finding that the plaintiffs did not have standing to challenge the FTC program because it “does not involve any specific limitation on the legislature’s taxing and spending power and does not involve a disbursement of funds from the state.”

In the trial court, the plaintiffs did not show the McKay program, which is funded by taxpayers, had a negative effect on the quality of education, says Hiner.

“The lower courts also affirmed that the McKay Scholarship voucher program provided a ‘beneficial option’ for children with disabilities to access high-quality education,” Hiner said.

‘Repeatedly Defeated Politically’

Lennie Jarratt, education project manager for The Heartland Institute, which publishes Budget & Tax News, says the plaintiffs went to the courts to try to force the legislature to do what they could not achieve through the political process.

“The plaintiffs, repeatedly defeated politically, turned to the courts,” Jarratt said. “Thankfully, the courts rejected their attempted political end run around the state’s legislature, providing an important victory for the students of Florida, many of whom have been able to choose an education that meets their individual needs because of these important scholarship programs.”

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NM Supreme Court Approves Program Lending Textbooks to Religious Schools

By Joe Barnett

The New Mexico Supreme Court has ruled a state program that lends textbooks to private schools, including religious ones, is constitutional.

The court’s December 12, 2018 decision reversed its own 2015 ruling that the textbook lending program was unconstitutional, which it was required to reconsider by order of the U.S. Supreme Court (SCOTUS).

SCOTUS required the state court to reconsider the case in light of the Supreme Court’s 2017 decision in Trinity Lutheran Church of Columbia, Inc. vs. Comer.

Cites Trinity Lutheran

In the Trinity Lutheran case, the state of Missouri refused to grant government funds to a church-run preschool to resurface its playground under a program that benefited non-religious private schools. SCOTUS said an institution cannot be barred from a state aid program just because it is religious.

In the New Mexico case, Moses v. Ruszkowski, the state Supreme Court ruled its original decision did not accord with First Amendment guarantees of free exercise of religion, in light of the Trinity Lutheran ruling.

The court also found the textbook loan program does not violate the state constitution’s Blaine provisions, which prohibit aid to sectarian schools, because the textbook program is a benefit to the students and “[a]ny benefit to private schools is purely incidental.”

‘Equality to All’

The New Mexico decision recognizes the equal rights of all students, says Lennie Jarratt, project manager for the Center for Transforming Education at The Heartland Institute, which publishes Budget & Tax News.

“This ruling brings equality to all students, since the state is no longer allowed to discriminate against a school solely due to it having a religious affiliation,” said Jarratt.

“These schools can now borrow state-purchased textbooks and computer programs the same as nonreligious schools,” Jarratt said.

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INTERNET INFO


INTERNET INFO

This Little-Known Fact Will Make It Harder to Tackle the National Debt

By Dennis W. Jansen and Thomas R. Saving

The federal government is skirting dangerous shoals with an irresponsible fiscal policy. We are running massive budget deficits in a booming peacetime economy. These deficits are increasing our federal debt—which means we are also paying more to service the debt and more interest on every dollar of debt.

Although the Federal Reserve (Fed) has been covering a significant portion of those servicing costs since the debt started ballooning in 2007, Fed revenues are declining, so it won’t be able to shoulder as much of that burden.

Revenue from the Fed

It is not widely recognized that the Fed is a source of federal government revenue. The Fed creates money and uses that money to purchase assets, typically government bonds. These assets earn interest, generating revenue for the Fed. After paying its expenses, the Fed returns the remainder of its revenues to the U.S. Treasury, which has been using it to service the federal debt.

In 2006, prior to the financial crisis and the Great Recession, the Fed held assets of $873.4 billion and had relatively few actual liabilities.

That year, the Fed’s interest earnings were $36.8 billion and interest expenses were $1.3 billion. After paying operating expenses, the Fed returned $29.1 billion to the Treasury.

Fed’s Balance Sheet Expands

In the aftermath of the Great Recession, several changes occurred. First, the Fed greatly expanded the assets and liabilities on its balance sheet. In doing so, it created an equally large amount of funds in the form of reserves or currency.

Second, to keep the money supply from expanding proportionally with the increase in assets—that is, in order to keep inflation in check—the Fed began for the first time to pay interest on bank reserves. The Fed did this to give banks an incentive to hold part of the newly issued funds as bank reserves in lieu of putting them into circulation. Third, because the interest rate on Fed assets was greater than the interest rate on these bank reserves, the interest earned on the increase in Fed assets exceeded the interest it paid on the higher bank reserves.

The net effect was a large increase in both Fed net revenue and, therefore, in Fed payments to the Treasury. In fact, by 2010, the Fed was financing 39 percent of the interest cost of the national debt, and such high levels of financing continued through 2016, when Fed transfers to the Treasury reached $100 billion and covered 48 percent of the interest cost of the debt. But since 2016, the Fed has been covering less of that cost.

Declining Fed Transfers

In fiscal year 2018, the debt service cost was $322 billion and Fed transfers are projected to be $60 billion, or only 21 percent of the debt servicing cost. The Congressional Budget Office projects that in 2019, Fed transfers will cover only 11 percent of the debt servicing cost, and by 2020 the Fed will cover less than 10 percent of a debt service cost of $485 billion.

This decline is dramatic. In a mere four years, the Fed will move from covering half of the debt servicing cost and one-quarter of the deficit to under 10 percent of debt servicing and 5 percent of the deficit.

Rising Debt Service Costs

What is behind this decline in the Fed’s contribution to the Treasury? First, it’s important to understand why interest payments are rising. As mentioned, as the national debt grows, the cost of servicing it for a given interest rate also grows. Another reason is that the interest rate on government bonds was unusually low in the aftermath of the financial crisis but has now returned to more typical levels, meaning that newly issued debt now incurs a higher interest rate than it did before. Further, some portion of the outstanding debt matures each year and is rolled over by the Treasury into new debt, and this new debt is refinanced at current, higher interest rates.

Rising Long-Term Rates

But why are the Fed’s contributions falling so dramatically?

Fed earnings are tied to the difference between the interest earned on its assets and the interest paid on its liabilities (that is, bank reserves). The Fed’s assets are mostly comprised of long-term securities for which the interest payments were set on their issue date. As long-term interest rates rise and existing securities mature, the Fed replaces them with securities paying the higher interest rate. In essence, the rise in rates affects the Fed’s earnings, but with a long lag.

To maintain control of the money supply, the Fed must quickly raise the short-term interest rate it pays on bank reserves. To make matters worse, short-term rates are rising faster than long-term rates, and the interest rate the Fed pays on reserves is rising faster than interest rates in general.

What does this mean for U.S. fiscal policy? The deficit and the cost of servicing the debt now take up more than half of all federal income tax revenue. The days of the Treasury counting on the Fed to help out with government finances are coming rapidly to a close, and the full bill for our fiscal policy choices is coming due.

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Autonomous Vehicles: Is the Consumer Bloom Off the Rose?

By Thomas A. Hemphill

If automotive industry leaders thought 2018 would be the “breakthrough” year in which American consumers finally embraced autonomous vehicles (AVs), they were mistaken.

Media reports on safety-related accidents involving automobiles with driverless capabilities, or technology with self-driving capabilities—resulting in multiple deaths and injuries, with several of these crashes investigated by the National Transportation Safety Board—have taken their toll on American consumers’ confidence in AV technology.

A May 2018 American Automobile Association opinion poll found 73 percent of U.S. drivers would be too afraid to ride in a fully self-driving vehicle, up from 63 percent in 2017. A July 2018 public opinion poll commissioned by Advocates for Highway and Auto Safety found 69 percent of American adults are concerned about their safety as motorists, bicyclists, or pedestrians when sharing roadways with AVs.

A July 2018 internet poll by the Brookings Institution found only 21 percent (9 percent “somewhat likely” and 12 percent “very likely”) of U.S. adults were inclined to ride in an AV, compared to 61 percent (46 percent “very unlikely” and 15 percent “somewhat unlikely”) who would not.

Not Ready Yet

Although these opinion poll results do not bode well for AVs in today’s political environment, it is necessary to place them in a technology perspective. The Society of Automotive Engineers has developed a ranking scale to describe the six different levels of artificial intelligence for AVs: Level 0 (No Automation); Level 1 (Driver Assistance); Level 2 (Partial Automation); Level 3 (Conditional Automation); Level 4 (High Automation); and Level 5 (Full Automation).

Where in the AV levels of self-driving is the automotive industry today? Early in Level 2, where under certain conditions the vehicle may take over steering, braking, and acceleration but the driver is still responsible for the overall safety operation of the vehicle. Some examples of this AV technology in commercially available vehicles include Mercedes-Benz’s Drive Pilot, Tesla’s Autopilot, and Nissan’s ProPilot Assist.

At Level 2, AV self-driving technology is still far from Level 4, where a vehicle can be driven by a person but does not always need to be, as it can drive itself under certain circumstances. Thus, American consumers should not expect any fully self-driving vehicles (Level 4) being commercially available in the near future, although field testing and development of AV driverless technology is now underway in regulated circumstances at the state level.

Nevertheless, consumer apprehension is not only understandable given these media reports, but also to be expected. Most of today’s vehicles are at Level 1 and will have at least one vital function, such as adaptive cruise control, which the car can take over for a limited time. With Level 1 technologies introduced over the last decade, this transition has allowed for consumer adjustment and AV technology improvements.

Complex Ethical Challenges

The safety of AV vehicles is but one among many outstanding ethical, social, and environmental issues that will emerge as AV levels increase, especially to AV Level 3.

Heather M. Roff, a senior research analyst at the Johns Hopkins Applied Physics Lab, released a Brookings Institution report, “The Folly of Trolley: Ethical Challenges and Autonomous Vehicles,” in December 2018, which illustrates ethical challenges for AV vehicles are more complex than found in the (unlikely) Trolley Problem, where there is “one decision to make at one point in time.” (This is the hypothetical choice faced by a trolley operator who will hit five people unless he or she switches tracks and hits one bystander.) As Roff, a political scientist and nonresident fellow at the Brookings Institution, says, “From a value-sensitive design standpoint, one may consider not only the question of lethal harm to passengers or bystanders, but a myriad of values like privacy, security, trust, civil and political rights, emotional well-being, environmental sustainability, beauty, social capital, fairness, and democratic values.”

Roff sagaciously notes, “[I]t is not whether a car ought to kill one to save five [as found in the Trolley Problem], but how the introduction of the technology will shape and change the rights, lives and benefits of all those around it.”

Regulatory Uncertainty

Not surprisingly, American consumers are rarely asked their opinions on such wide-ranging, probing questions in public opinion surveys. Yet, before getting too far ahead of advanced-level AVs on American highways in the next decade, it would be prudent to heed Roff’s call for a systemic approach to adopting a new technology that has far-reaching second- and third-order ethical and sociopolitical consequences.

From a commercial standpoint, the American automotive industry is still awaiting a comprehensive safety- and liability-oriented public regulatory framework to allow AV technology to proceed to higher commercialization levels. The gradual introduction of new AV-related technology in Levels 2 and 3 over the next several years should offer adequate time to address important ethical and public policy questions systematically before the automotive industry offers commercial availability of AV Levels 4 and 5.

This systemic approach to evaluating and implementing new AV technology is not only good public policy but also a good business policy for the U.S. automotive industry. It is too early to prognosticate that the consumer bloom is permanently off the AV rose.

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Florida Supermajority Requirement for Tax Increases Goes Into Effect

By Sarah Quinlan

Florida has joined at least 14 other states that require supermajority consent in both houses of the state legislature in order to increase taxes.

Two-thirds of Floridians voting in November 2018 approved Amendment 5 to the state constitution, well above the 60 percent threshold required to pass the measure.

The amendment “[p]rohibits the legislature from imposing, authorizing, or raising a state tax or fee except through legislation approved by a two-thirds vote of each house of the legislature,” the ballot language states.

Some tax hikes in Florida require an even higher supermajority, says Matthew Glans, a senior policy analyst for The Heartland Institute, which publishes Budget & Tax News.

“The Florida Legislature must get approval from three-fifths of each legislative chamber before imposing any corporate tax increase,” Glans said.

In addition, any new taxes must receive approval by a supermajority of voters, says Glans.

“Florida law also requires any proposed constitutional amendment imposing a new state tax or fee to be approved by two-thirds of the voters in the next election held after such an amendment is considered,” said Glans.

Popular Option

Several other states require a supermajority of the legislature for approval of budgets, taxes, or other finance-related measures, according to the National Conference of State Legislatures.

A two-thirds supermajority of legislators is required for tax increases in Arizona, Arkansas (except on sales and alcohol taxes), California, Colorado (waived in emergencies only), Florida, Louisiana, Missouri, Nevada, South Dakota, and Wisconsin (on sales, income, and franchise taxes).

Nebraska and Rhode Island require approval of two-thirds of each house of the legislature to pass budgets, and Illinois requires a three-fifths majority for budgets passed after June 1.

Arkansas, Michigan, and Oklahoma require approval by a three-fourths majority of each house of the legislature for taxes, and Delaware, Mississippi, and Oregon require three-fifths.

In addition, several states have miscellaneous supermajority requirements for spending, according to the NCSL. For example, Connecticut requires three-fifths of each house of the legislature to approve spending exceeding state expenditure caps, and Hawaii requires two-thirds of each house of the legislature to bust its spending caps.

Massachusetts requires a two-thirds majority of each house of its legislature to approve its annual capital budget. Michigan requires a three-fourths supermajority in each house of its legislature to appropriate public money or property for a local or private purpose.

‘A Solid First Step’

Glans says Amendment 5 will help Florida control spending.

“Supermajority requirements are a solid first step toward reining in out-of-control state budgets,” said Glans.

“States must learn to live within their means and adopt reforms that limit spending,” said Glans. “Controlling spending would force the government to more closely monitor and limit state spending, thereby properly balancing the budget while limiting the need for future tax hikes,” Glans said.

“These new rules ensure any tax passed has reached consensus and received full consideration.”

‘Consistency in the Tax Climate’

Sal Nuzzo, vice president of policy at the James Madison Institute, a Florida think tank, says the supermajority requirement will encourage business owners to flock to Florida because of the more predictable tax environment it creates.

“One of the biggest challenges Floridians have in the next 25 years is diversifying our economy,” Nuzzo said. “We’re beginning to see more activity in things like financial services and high-tech manufacturing, and they need to continue to maintain growth.

“This amendment would guarantee a high degree of consistency in the tax climate,” said Nuzzo. “Consistency in taxes lets business leaders know what their outlooks will be when they look for where to start and invest in businesses.”

The supermajority requirement means legislators will have to find ways to balance the budget other than raising taxes, such as cutting unnecessary spending, says Lew Uhler, president of the National Tax Limitation Committee and a policy advisor for The Heartland Institute.

“The balanced-budget requirement is part of the state’s constitution, and by increasing the threshold, you restrain those who try to increase the total tax load as a means to balance the budget,” Uhler said. “Making this threshold for increase a part of the constitution is a wise approach for the people.”

Sarah Quinlan (think@heartland.org) writes from New York City, New York.
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