FCC Chair Supports T-Mobile-Sprint Merger

By Juliana Knot

The U.S. Department of Justice has approved a merger between the wireless carriers T-Mobile and Sprint, which could speed the deployment of fifth generation (5G) wireless service and provide new broadband access in rural areas.

The merger and certain conditions of the settlement also must receive approval by the Federal Communications Commission (FCC), which regulates wireless firms and licenses them to use parts of the broadcast spectrum. FCC Chairman Agit Pai stated in a press release on August 14 he recommends approval of the settlement and an order allowing the transfer of spectrum allocations among the companies.

The draft order could be approved by the Republican majority of the commissioners after the FCC reviews public comments this fall.

T-MOBILE - SPRINT, p. 4

Jersey City Voters Could Ax Restrictions on Short-Term Rentals

By Bonner R. Cohen

Voters in Jersey City, New Jersey will decide the fate of a controversial ordinance that restricts short-term room and apartment rentals.

The Jersey City Council in June unanimously adopted an ordinance that bans tenants from subletting space for short-term rentals, limits rentals by property owners who do not live on site to a total of 60 days per year, and bans short-term rentals in any building comprising four or more units.

A property owner will have to obtain an annual permit from the city’s Division of Housing Preservation to engage

SHORT-TERM RENTALS, p. 8
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U.S. Supreme Court Accepts Montana ‘Blaine Amendment’ Case

By Ashley Bateman

The U.S. Supreme Court will consider a case challenging a Montana Supreme Court decision that found the state’s school choice program violated the state constitution.

Montana is one of 37 states that has a “Blaine amendment” barring “direct or indirect” state aid to religious schools. Montana’s Tax Credit Program, enacted in 2015, allowed taxpayers to take a state income-tax credit for donations to tuition scholarship organizations that paid for children to attend private schools chosen by their parents.

With this case, one single mother may open the door for education choice across the country. Kendra Espinoza is challenging a 2018 Montana Supreme Court ruling that struck down the state’s three-year-old tax credit scholarship program after the Montana Department of Revenue sought to block religious schools from participating.

The U.S. Supreme Court will hear Espinoza v. Montana Department of Revenue during its coming term, which starts on October 7, the court announced June 28.

Exemplary Case

The state bureaucracy betrayed Espinoza and other parents by denying their children a chance at a parochial school education, says Jamie Gass, director of the Center for School Reform at the Pioneer Institute.

“Kendra ... came under difficult circumstances, as a single mom, with children enrolled in a parochial school,” Gass said. “The Department of Revenue, in conjunction with the Montana Supreme Court, pulled the carpet out from under her.”

Espinoza’s family is the type that school choice programs are designed to help, Gass says.

“Generally speaking, tax credit programs are need-based, so I think the likelihood is that people of different backgrounds in need are going to be eligible for them,” Gass said.

Parents want a chance to decide what type of school is best for their children, says Leslie Hiner, vice president of programs for EdChoice.

“The desire of parents to have true choice for their children’s education is driven by the needs of their children,” Hiner said. “Kendra Espinoza is like most parents. She knows what works for her children, and she knows when her children are not getting what they need.”

Conflicting Rulings

The U.S. Supreme Court ruled vouchers are constitutional in Zelman v. Simmons-Harris in 2002, and it ruled in favor of tax credit scholarship programs in 2011 when their constitutionality came under question in Arizona Christian School Tuition Organization v. Winn.

Yet another Supreme Court ruling gave state courts an opportunity to restrict parents’ ability to choose.

“In another ruling, in 2004, Locke v. Davey, the high court left the door open for states to rely on their own state constitutions to limit funding for students pursuing faith-based education,” Hiner said.

“As a result, with no clear ruling or guidance from the U.S. Supreme Court regarding the constitutionality of state Blaine amendments, opponents challenge any school choice program they believe gives them the best chance to deny children the option to attend a school other than a public school,” Hiner said.

Based on Religious Bigotry?

Blaine amendments to state constitutions—and a failed amendment to the U.S. Constitution proposed by Rep. James G. Blaine (R-ME)—were promoted in the late nineteenth century specifically to limit the influence of Catholics and immigrants.

“I think people are becoming more and more aware of the legacy of bigotry that has been associated with these Blaine amendments. This case is a cross-section of law and religion and politics and education, and it has huge implications,” Gass said. “Education sits at the center of families and society, so it has big implications. We are very optimistic with the case being taken up by the Court.”

“Florida school choice programs have been sued multiple times, with the most recent lawsuit finally concluding after 10 long years, in Citizens for Strong Schools v. Florida Board of Education,” Hiner said. “Special interest opponents have vowed to sue again.”

Changing Supreme Court Climate

In 2017, in the case of Trinity Lutheran v. Comer, the U.S. Supreme Court upheld First Amendment protection for the participation of religious institutions in state programs.

“If the Court allows its judgment in Trinity Lutheran to be applied more broadly, to include educational choice, then Kendra Espinoza and the parents of tens of thousands of children across the country may achieve the success they so desperately need to help the children they so deeply cherish,” Hiner said.

Espinoza could lead to a landmark ruling, Gass says.

“I really do think this has the potential to be the Brown v. Board of Education [case] for school choice and religious liberty,” Gass said. “What is different now is the composition of the court. Not just with the majority, even with a few of the members of the minority there might be some support for this on religious freedom issues. I think that people are becoming more and more aware of the legacy of bigotry that has been associated with these Blaine amendments.”

“Education sits at the center of families and society, so it has big implications. We are very optimistic with the case being taken up by the Court.”

Ashley Bateman (bateman.ae@googlemail.com) writes from Alexandria, Virginia.
“Sprint is financially weak, so the merger helps guard against what could have been a bankruptcy and the loss of subscribers to other competitors. T-Mobile believes that with Sprint’s assets it will be a stronger competitor, because the combination now creates a company with the combined size to compete on the same scale as the other major competitors.”

JOSEPH P. FUHR
ECONOMICS PROFESSOR, UNIVERSITY OF THE SCIENCES IN PHILADELPHIA

Continued from page 1

The Justice Department and attorneys general of five states approved the acquisition of Sprint by T-Mobile for $26.5 billion. The companies’ merger plans were challenged by lawsuits by several states and were reviewed by the Justice Department under antitrust law for potential anti-competitive effects.

Strength in Numbers
The merger would benefit both companies and increase competition in the industry, says Joseph P. Fuhr, an economics professor at the University of the Sciences in Philadelphia and a policy advisor to The Heartland Institute, which publishes Budget & Tax News.

“Sprint is financially weak, so the merger helps guard against what could have been a bankruptcy and the loss of subscribers to other competitors,” Fuhr said. “T-Mobile believes that with Sprint’s assets it will be a stronger competitor, because the combination now creates a company with the combined size to compete on the same scale as the other major competitors.”

Success Through Failure
It appears the Justice Department approved the deal based on the economic theory of the failing firm, Fuhr says.

“The theory allows a merger that generally would not be allowed—in this case between the third and fourth largest firms in the industry—because one of the firms is considered to be failing,” Fuhr said. “This seems to be the case with Sprint. The theory is that the combined firm will be a stronger competitor than the one firm with the other leaving the market.”

By combining their assets, Sprint and T-Mobile will be able to deploy faster wireless services, Fuhr says.

“The combination will have considerable valuable spectrum that the other players, AT&T and Verizon, do not have—particularly mid-band, which is an important aspect for 5G,” Fuhr said.

‘Huge Investment to Compete’
To address concerns about the effect of concentration in the industry, T-Mobile and Sprint agreed to sell significant portions of their businesses to Dish Network, including spectrum allocations, cell towers, prepaid phone services, and other assets. This would allow Dish, which is primarily a satellite television operator, to create a fourth major wireless network. Dish will also have access to the T-Mobile network for seven years as it builds out its own system.

The cost of entry for companies looking to compete in the wireless market is high, and wireless carriers consistently top the list of companies with the highest expenditures, says Tom Giovanetti, president of the Institute for Policy Innovation.

“It takes huge investment to compete,” Giovanetti said.

The Obama administration’s DOJ wanted to maintain the four existing national carriers, and it blocked a proposed acquisition of T-Mobile by AT&T. The Trump administration takes a different view of antitrust, Giovanetti says.

“Democrats have a much more aggressive antitrust policy,” Giovanetti said.

‘Let the Market Decide’
Government concerns about lack of competition are overblown, Giovanetti says.

“We don’t know how many players there ought to be in a particular industry, so we let the market decide.”

It takes only two major wireless players—a duopoly—to compete, Giovanetti says.

“There’s a lot of consumers who only have two providers, and there’s still competition,” Giovanetti said. “As long as you have another product, there’s going to be competition.”

The number of competitors depends on the size of the market, Fuhr says.

“Some markets can only sustain so many competitors, and some markets are even perfectly fine with a duopoly,” Fuhr said.

Antitrust, Anti-Market?
T-Mobile, Sprint, and Dish would agree to meet certain service goals if the merger goes through. The combined company would promise to offer 5G service to 97 percent of the country within three years. Dish promises to offer new wireless service to 70 percent of the country within four years if the deal goes through.

Requiring government approval of acquisitions and mergers allows unelected bureaucrats at the DOJ essentially to write law instead of Congress, where the constitutional authority lies, Giovanetti says.

“With these deals, they force things that would never make it through Congress,” Giovanetti said.

Antitrust assumes the government knows better than the market, Giovanetti says.

“If you have a view of the government running everything, then you think a couple of bureaucrats can pick who wins and loses,” Giovanetti said.

“The DOJ is able to set policy during a merger review and extract all sorts of ridiculous concessions.”

Hurdles Remain
Five states—Kansas, Nebraska, Ohio, Oklahoma, and South Dakota—joined the Justice Department settlement announced on July 26. More than a dozen other states, led by New York and including California and Texas, that have filed complaints could still object to the settlement in court. After a 60-day period for public comments, the DOJ settlement agreement will also have to be approved by a federal district judge.

Juliana Knot (jjknot322@gmail.com) writes from Grand Rapids, Michigan.
A government program in southern Nevada intended to compete with app-based commercial ridesharing services brought in only $62,000 in its first two months of operation, while costing taxpayers $1.4 million.

The Southern Nevada Regional Transportation Commission’s (RTC) rideshare service, “Trip to Strip,” was launched in May. Las Vegas’ bus system has lost customers to ridesharing services such as Uber and Lyft.

The RTC created a fleet of eleven-passenger vans that riders can book through an online app. The government service does not have “surge pricing” that charges less during periods of lower use the way Uber, Lyft, and other ridesharing apps do. Also, RTC uses vans instead of passenger cars, and it stops only at fixed points on the strip, instead of on demand.

One reason for the poor performance is that the drivers are RTC employees, 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.

Uber and Lyft drivers are contractors, not employees of the companies, so the companies don’t have to provide benefits for their drivers, says Feigenbaum. RTC employees are unionized and have health care benefits.

“The value in the rideshare companies is in their cheaper labor costs,” Feigenbaum said.

Other factors, such as the limited geographic range of the app, the lack of consumer awareness of the program, and longer wait times for a vehicle may have also contributed to the poor ridership, says Feigenbaum.

Money-Losing Model
Startup costs, such as those for creating the user app, also contributed to the high price tag. Even so, revenues for the service are expected to cover only a fraction of its operating expenses, says Richard Fellner, policy director for the Nevada Policy Research Institute.

“The RTC operates on a model expecting to lose money,” Fellner said.

The RTC should sell or shutter the service if its revenue does not improve, says Fellner.

“If we’re going to take it as a given that the government is in this sector, it’s good for them to learn from the market,” Fellner said.

 “[The RTC is] willing to take a step in the right direction,” Fellner said. “I don’t think we should criticize them for that.”

Government can’t be truly competitive with private businesses, Feigenbaum says.

“It’s hard for a government agency to match what the private sector can do,” Feigenbaum said. “If [government services] can either be bad or be mediocre, I’d prefer them to be mediocre.”

Juliana Knot (jjknot322@gmail.com) writes from Grand Rapids, Michigan.
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Minnesota Winemakers Challenge Requirement to Use In-State Grapes

By Vivian E. Jones

Minnesota farm wineries will have a second chance to challenge a law that requires at least 51 percent of the grapes used for wines any such operation produces in the state be Minnesota-grown.

Minnesota’s cold weather prevents grape harvests in the state from meeting the demand of vintners, and grapes are imported to blend with the domestically grown fruit.

Two wineries that sued to overturn the Minnesota statute were granted standing to make their case in federal court by an opinion of the Eighth Circuit Court of Appeals issued on July 29.

Exemptions Required
Farm winery owners must make an annual request to the state for an exemption from the 51 percent rule, says Bailly.

“We do not have the freedom to go out on the market and purchase needed grapes without first securing permission from the Department of Public Safety in Minnesota,” Bailly said.

A farm winery must file an affidavit certifying there are not enough Minnesota-grown grapes or grape juice to constitute most of the winery’s product. The requirement to obtain an exemption creates uncertainty, says Bailly.

“Since I often lose a significant portion of my crop each year, this is a burden on the growth of my business,” Bailly said. “I have no assurance from the state that I will be guaranteed permission to buy needed grapes to make my wines.”

Without that needed affidavit from the state giving me permission to buy more grapes, I would not have any wine to sell and would go out of business.

Division System
Under Minnesota’s three-tiered alcohol distribution system, retailers are not allowed to manufacture alcohol, and manufacturers are not lawfully able to sell their products to retailers or the public, only to distributors.

Licensed farm wineries are an exception, allowed to manufacture wine and sell it directly to retailers and consumers, within strict limits. In addition to paying an annual fee, a farm winery must be located on agricultural land, produce fewer than 75,000 gallons of wine annually, and use mostly Minnesota-grown grapes in producing wines.

In dismissing the case in 2018, U.S. District Judge Wilhelmina Wright said wineries can change their business status from “farm winery” to “manufacturer,” which would allow them to expand without following the 51 percent rule.

This change of status, however, would prevent the wineries from selling directly to retailers and the public.

Bad Weather
Minnesota’s severe weather limits winemakers’ ability to grow consistent crops to sustain their businesses, Bailly says.

“It is very difficult growing grapes in Minnesota,” Bailly says. “I have always respected the 51 percent mandate to make the majority of my wines from Minnesota grapes, but the mounting losses I experience every year limit the growth and profits of my business.”

“I have not been able to find quality fruit grown in Minnesota to purchase at a fair price, and I have not succeeded in growing enough grapes from my vineyard,” says Brian Harrington, owner of Next Chapter Winery LLC.

Burden on Interstate Commerce
The winery owners contend the 51 percent rule is unconstitutional because it affords “differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter,” the appeals court stated.

The requirement violates the Interstate Commerce Clause of the U.S. Constitution, argue plaintiffs Nan Bailly, owner of the Alexis Bailly Vineyard, and Timothy Tulloch, owner of Next Chapter Winery LLC.

“Essentially, this law restricts my constitutional right to do interstate commerce,” Tulloch told Budget & Tax News.

“It is unconstitutional for the state to limit my right to engage in interstate commerce and freely purchase grapes from wherever I choose to make my wines,” Bailly said.

The 51 percent rule could prevent them from expanding their operations by purchasing out-of-state grapes, says Tulloch.

“The effect of the law is that in the event that my children want to really grow the business, they would not be able to, as they would not be able to get sufficient grapes from Minnesota,” Tulloch said.

District Court Hearing
Wright dismissed the lawsuit in 2018 for the Eighth Circuit, Docket No. 18-1846, July 29, 2019: https://www.heartland.org/publications-resources/publications/federal-appeals-court-opinion-minnesota-winemakers-have-standing-to-sue

Vivian E. Jones (vivianjones@aol.com) writes from Murfreesboro, Tennessee.

INTERNET INFO

“It is very difficult growing grapes in Minnesota. I have always respected the 51 percent mandate to make the majority of my wines from Minnesota grapes, but the mounting losses I experience every year limit the growth and profits of my business. I have not been able to find quality fruit grown in Minnesota to purchase at a fair price, and I have not succeeded in growing enough grapes from my vineyard.”

NAN BAILLY
VINEYARD OWNER
in short-term rentals. The ordinance marks a reversal of policy for Jersey City, which in 2015 became the first U.S. city to legalize peer-to-peer rentals.

**Popular Petition**

Opponents of the ordinance submitted to City Hall in mid-July a petition with 20,000 signatures to put the ordinance to a voter referendum on the November 5 ballot. The city clerk certified the petition had enough signatures on August 7. Under city law, the number of signatures required to get a measure on the ballot is 15 percent of the vote in the last municipal election, or 6,300 signatures in the current case. Opponents of the ordinance gathered more than three times that number.

Jersey City property owners are angry about the ordinance, says Tom DeWeese, president of the American Policy Center. “It’s no wonder that 20,000 people signed the petition to put the fate of the ordinance in the hands of voters this November,” DeWeese said. “They are rightly outraged at the city’s complete disregard of their property rights. People in Jersey City are to be commended for saying enough is enough.”

**Housing Shortage**

Situated on the Hudson River across from Manhattan Island, Jersey City provides a convenient jumping-off point for tourists who want to visit New York City while avoiding the Big Apple’s pricy hotels. Short-term rentals are making it difficult for people to obtain permanent housing at a time of low vacancy rates throughout the city, says Council Member James Solomon, a cosponsor of the ordinance.

“People have seen negative impacts by these investors and sort of corporate people coming in and buying up huge chunks of property and turning them into Airbnbs and basically, unstaffed hotels and neighborhoods taking away apartments from long-term rentals,” Solomon said, according to the Jersey Journal on July 18.

‘Nanny-State Ordinances’

Housing shortages are a problem in urban areas across the country, says Tom Randall, president of Winningreen, a Chicago communications firm. “Jersey City is not alone in facing a housing shortage,” Randall said. “The problem can be found in many urban areas, stretching from Boston to San Francisco.”

The cure for shortages of affordable housing is to reduce regulation, Randall says. “It is best dealt with by removing regulatory barriers that inhibit the construction of new housing units, not by passing nanny-state ordinances that undermine entrepreneurial initiatives of property owners,” Randall said.

**Money for Owners, City**

The short-term rental market, led by Airbnb, has brought big economic benefits to Jersey City. The city’s property owners made $32 million last year on short-term rentals, Airbnb reports.

Short-term rentals welcomed 181,000 guests in Jersey City last year, according to Airbnb.

“The vast majority of the listings are properties into which local residents have invested thousands or even millions of dollars to restore or maintain them,” Airbnb states.

Airbnb says short-term-rentals, which are subject to the city’s hotel tax, provided an additional $4 million in government revenues for the city last year.

Airbnb has more than 3,100 listings for Jersey City.

**Infringing Property Rights**

Voters overturned anti-Airbnb ordinances in California—one in San Diego and the other in Palm Springs—in 2018. In Palm Springs, 70 percent of the voters approved the ballot initiative to repeal the ordinance.

Last year in San Francisco, a restrictive ordinance cut the number of rental listings by 45 percent. Meanwhile, rental prices in the city rose by an average of 8 percent. New York City—where it is estimated half the short-term rentals are illegal under current restrictions—has enacted even tighter regulations than San Francisco.

Restrictions on the development and use of residential property are spreading, DeWeese says. “Similar infringements of our fundamental rights are happening across the country, brought about by a political class determined to impose its will on ordinary people,” DeWeese said.

“In Oregon and Minnesota, for example, efforts are well underway to do away with single-family houses in favor of putting up high-rise apartment buildings in their place,” DeWeese said.

**TOM RANDALL, PRESIDENT, WINNINGREEN**

“Jersey City is not alone in facing a housing shortage. The problem can be found in many urban areas, stretching from Boston to San Francisco. It is best dealt with by removing regulatory barriers that inhibit the construction of new housing units, not by passing nanny-state ordinances that undermine entrepreneurial initiatives of property owners.”

**INTERNET INFO**

Gov. Roy Cooper of North Carolina signed into law a bill applying the state sales tax to a wider array of online services and digital property.

S.B. 523 “broadens the scope of sales tax on digital property by eliminating the requirement under the state’s tax code that a digital item must have a taxable, tangible corollary in order to be taxable,” states the Legislative Analysis Division of the North Carolina General Assembly in a July 8 report on the bill signed by the governor on July 26.

Examples of goods with a “tangible corollary” include audio files, which are also sold on compact disks. Examples of items that fall into the intangible digital property category include e-learning materials and audiovisual materials sold as digital products that do not exist in a physical form.

North Carolina and other states are changing their laws to account for the increasing sales of goods and services over the internet, which are eroding states’ traditional sales tax bases—such as tangible goods sold by brick-and-mortar stores.

The new law will apply to sales occurring on or after October 1.

Includes Remote Sales

The broader definition of taxable sales in North Carolina will also apply to online sales by remote merchants. Under the U.S. Supreme Court’s Wayfair decision of June 21, 2018, a state can tax online sales by out-of-state sellers that have a nexus in the state. Nexus means a presence in the location, and it is defined by each state.

The North Carolina Department of Revenue defines nexus as having more than $100,000 in sales, or 200 separate transactions, to customers in the state in a year. Remote merchants who meet this threshold must register with the state, collect and remit the tax owed, and submit audited sales data. Following the Supreme Court decision, the state’s Revenue Department began collecting the tax on November 1, 2018.

The North Carolina General Assembly did not pass legislation authorizing these actions, which means the state is collecting sales taxes on online sales from out-of-state companies without an adequate statutory basis, says Joseph Coletti, a senior fellow at the John Locke Foundation in Raleigh, North Carolina.

“State legislators would have better spent their time defining the threshold and setting rules on audit liability for companies to begin collecting sales taxes on transactions into North Carolina,” Coletti said.

‘Provides a Little Clarity’

The new law provides a better definition of what online services and products are, Coletti says.

“The law provides a little clarity on what is taxable, because it is helpful to have a general definition of ‘item’ instead of trying to discern a service from personal property or digital property,” Coletti said. “This makes the law more convenient for regulators, as it lumps the sale of just about anything in any way as a taxable transaction.”

Vivian E. Jones (vivianjones@aol.com) writes from Murfreesboro, Tennessee.

Earmarks for Congressional Pork-Barrel Spending Reach $15 Billion

By Kenneth Artz

Members of Congress sneaked 282 earmarks totaling $15.3 billion into fiscal year 2019 spending bills despite a ban on congressional pork-barrel projects imposed in 2011, a watchdog group reports.

This was the largest amount of money directed to pet projects since Congress imposed the moratorium, states the 2019 Congressional Pig Book, the 27th edition of an annual report by Citizens Against Government Waste (CAGW), published June 12.

The total amount of earmarks increased by 21.6 percent over 2017.

Burros, Fish, Flies
Some of the highlights from this year’s Pig Book include seven earmarks totaling $1.8 billion toward the purchase of 16 additional F-35 Joint Strike Fighter jets, $13.8 million for wild horse and burro management—the largest amount ever—and $12 million for aquatic plant control.

Earmarks can be used to fund programs which the executive branch would like to discontinue, such as $65 million for the Pacific Coastal Salmon Recovery Fund and $9 million for the fruit fly quarantine program.

Since 1991, Congress has approved 111,144 earmarks costing $359.8 billion.

Undermining the Budget Process
Allowing individual members of Congress to allocate taxpayers’ dollars makes it difficult to control expenditures, says Justin Bogie, a senior policy analyst in fiscal affairs at The Heritage Foundation’s Institute for Economic Freedom.

“Congress continues to find ways to divert money to pet projects in the form of earmarks,” Bogie said. “Earmarks undermine the congressional budget process.”

Public information available before the moratorium showed earmarks were heavily slanted toward the most powerful members of Congress, says Bogie. For example, members of the House and Senate Appropriations Committees controlled nearly two-thirds of all earmarked spending.

“This is not the representative government American citizens expect to be getting,” Bogie said.

Secrecy, ‘Wheeling and Dealing’
Earmarks generally provide limited information on where and how the money will be spent, the report states. This anonymity allows backroom wheeling and dealing, says Edward Hudgins, research director at The Heartland Institute, which publishes Budget & Tax News.

“Earmarks are just a way for members of Congress to get around what few institutional checks are left on spending, so they can pass out favors to political friends and seek to buy votes,” Hudgins said.

“Recent earmarks are particularly shameful because Congress supposedly has placed a moratorium on such spending, so members earmark spending for their districts anonymously, behind closed doors, to hide their misdeeds from the public.”

Increasing Federal Deficits
Excessive spending has rapidly increased the annual budget deficit, Hudgins says.

“Irresponsible federal government spending has added more to the national debt in the past 12 years than was accumulated in the entire history of the United States before that time combined,” Hudgins said.

“In light of our nation’s $22 trillion debt, Congress should be carefully prioritizing every dollar it spends, not carving out earmarks for personally favored programs and projects,” Bogie said.

“Congress should focus on returning to regular budget order, restoring oversight and accountability to the appropriations process, and finding ways to put the federal government on a path which balances the budget and pays down the national debt,” Bogie said.

Kenneth Artz (kennethcharlesartz@gmx.com) writes from Dallas, Texas.
Report: Homeschoolers Much More Diverse Than Previously Thought

By Vivian E. Jones

Homeschooled students, and the educational opportunities available to them, are becoming more diverse than ever, a new study from the Center for Reinventing Public Education (CRPE) states.

“Black families are increasingly rejecting traditional district schools in favor of homeschooling,” writes Aaron Hirsh in his CRPE policy brief on “The Changing Landscape of Homeschooling in the United States,” released on July 22.

About 26 percent of U.S. homeschooling families—more than 400,000—are Hispanic, and 8 percent—about 130,000 families—are black, National Center for Education Statistics data show.

“The homeschooling community includes Muslim and Jewish families, military families, families of gifted students and of those with special needs,” Hirsh wrote. “Homeschoolers run the political spectrum from left to right and the economic spectrum from wealthy to poor.”

There are an estimated two million to three million homeschooled students in the United States today.

“While only 3 percent of K-12 students in the United States are homeschooled, this percentage has grown since 1999 and shows signs of continuing to increase,” Hirsh wrote.

Dissatisfied with Government Schools

Homeschooling was once perceived as a niche educational alternative practiced largely by conservative white families for religious reasons, but homeschoolers today come from many backgrounds, says Aaron Smith, director of education reform at the Reason Foundation.

“The fact is that homeschool families are much more diverse than commonly believed, and there are many reasons parents are increasingly choosing this option,” Smith said.

“Motives for opting out vary, but many black families cite racism and a lack of opportunity for black students in the traditional classroom,” Hirsh wrote.

“Almost no scholarly research has been conducted on the motivations and practices of Hispanic families who choose to homeschool,” Hirsh wrote.

Parents could be prompted by the failure of the default option, Smith says.

“One reason is dissatisfaction with the performance of their zoned public school,” Smith said.

Innovative Teaching

Homeschooling today is not limited to teaching at the dining room table. In many communities, parents have several choices of independent micro-schools and interfamily cooperatives where their children can attend classes taught by parents or others with expertise in their subject of instruction.

In addition to specialized cooperative class opportunities, many communities offer homeschoolers extracurricular activities such as varsity sports teams, robotics clubs, and mock trial and debate teams.

High school homeschooled students can also take college-level classes offered by local universities and community colleges, earning dual enrollment credits for both high school and college. A multitude of courses are also available online for students in kindergarten through 12th grade.

‘Force for Change’

Traditional education cannot meet the needs of all students, says Luther, Oklahoma Mayor Jenni White, co-founder and director of education for Reclaim Oklahoma Parent Empowerment.

“Classroom teaching will, unfortunately, always have the limitation of being unable to provide an equitable education to every child in the classroom, because children are individuals who intellectually and emotionally differ from one another,” White said. “This is the exact reason homeschooling is such a force for change in education.”

One-on-one teaching is the most effective form of education, White says.

“When you make the opportunity to meet a child at their level with whatever curricula or method—one, in person, visiting museums, experimentation—you’re able to utilize, that child truly learns the lessons that might completely escape him with a teacher who has limited classroom time,” White said.

Meeting Individual Needs

The wide range of options available to parents to customize education to their child’s specific needs has proven a great service to the individual student, particularly those with special needs, White says.

“Our youngest son was doing very poorly in his first-grade class and unable to keep up with math, specifically,” White said. “He would come home with poor grades, and his teacher would badger both him and me about his poor performance, which only added to the stress of the situation for both of us.”

When the White family chose to homeschool, they discovered their son had a form of dyslexia which made mathematics especially challenging, White says.

“Once we identified the problem, we were able to find assistance and rectify it,” White said. “I’m still uncertain if this discovery would ever have occurred had he stayed enrolled in public school.”

Of the six states that have Education Savings Accounts, three allow families to use ESA funds for homeschooling students with disabilities: Florida, North Carolina, and Tennessee. Only Nevada allows ESA funds to be used for homeschooling without restrictions.

Arizona families may use ESA funds for homeschooling of students who meet certain eligibility requirements.

Customizing Education

Homeschooling is innovative and less restricted than traditional schools, White says.

“Homeschooling allows parents to customize their child’s education to their unique needs and interests, which largely isn’t possible in a traditional setting. It also opens up a robust menu of learning opportunities that might otherwise be restricted or unavailable, such as regular field trips, customized projects, and quality curriculum.”


Aaron Smith, DIRECTOR OF EDUCATION REFORM, REASON FOUNDATION

INTERNET INFO

Vivian E. Jones (vivianejones@aol.com) writes from Murfreesboro, Tennessee.
California Legislature Advances Bills to Limit Charter Schools

By Ashley Bateman

The California State Legislature is considering several bills that would restrict the popular charter school option in the Golden State.

Proposed bills would cap the number of charter schools statewide, move authorization of new charters to school districts, and close some charter schools—including some that have waiting lists to get in.

The flurry of legislation is a reaction to the growing popularity of charter schools, says Vicki Alger, research fellow at the Independent Institute and author of The Federal Misedukation of America’s Children.

“Today, more than 10 percent of all California K-12 students are enrolled in charter schools—around 650,000 students—and charter schools have gained more than 100,000 students in the past five years alone,” Alger said.

Anti-Charter Bills

Though none of the anti-charter bills has become law, two have passed the state Assembly and could be considered in the state Senate when the legislature reconvenes in January 2020. This year’s session ended on September 13.

A.B. 1505, introduced by Assembly Member Patrick O’Donnell (D-Long Beach), would place charter authorization decisions solely in the hands of local school districts and counties, by eliminating appeals to the State School Board. It passed the State Assembly on May 22 and is pending in the Senate.

A.B. 1507, introduced by Assembly Members Christy Smith (D-Santa Clarita), Kevin McCarty (D-Sacramento), and O’Donnell, would remove the authority of a charter school to operate outside the chartering school district’s boundaries. It passed the Assembly on May 13 and is pending in the Senate.

Unions’ Active Opposition

The powerful California Teachers Association has lobbied hard against school choice, Alger says.

“In August 2016, the CTA launched a campaign against charter management organizations (CMOs), called ‘Kids Not Profits,’” Alger said. “Since April 2019, the CTA has spent more than $1 million per month lobbying against charter schools.”

Unions oppose this choice because most California charters operate outside of union control, says Larry Sand, president of the California Teachers Empowerment Network.

“Most charter schools are not unionized,” Sand said. “It is especially difficult to unionize individual charters and even small networks—too costly and time-consuming.”

The CTA wants to place power over charters in the hands of local school boards in order to increase union influence, Sand says.

“All too often, unions control local school boards,” Sand said. “By removing the option to appeal, the local board is in full control.”

‘Political Targets’

In Los Angeles, 26 percent of K-12 students are enrolled in charter schools, making them a special focus of union opposition, Alger says.

“The Los Angeles charter-school sector is one of the most successful in the country, despite receiving less money [than conventional government schools],” Alger said. “However, because most charter schools are not unionized, they’ve become political targets of the CTA and local unions. Additionally, when parents choose charter schools instead of district schools, districts receive less associated funding.”

Los Angeles Charter Success

Los Angeles charter school students do better academically than LAUSD students at a significantly lower cost, says Alger.

“LAUSD will spend around $591 million on charter schools serving 138,000 students this year,” Alger said. “In contrast, it will spend nearly $1 billion on retirement costs, which don’t serve any students.

“LAUSD is one of the country’s largest school districts, and the superior performance and efficiency of LA charter schools is an embarrassing reality check to the claims that more money and more unionization are needed to improve student achievement,” Alger said.

‘Power, Pure and Simple’

Anti-charter legislation is not about educating students, Alger says.

“The assault against charter schools in California has nothing to do with their performance,” Alger said. “Nor does it have anything to do with accountability. The current assault is about power, pure and simple.

“If charter schools are being set up to fail, then charter school operators will seek more welcoming areas to operate, which is a tragic outcome given the demand for more charter schools in the Los Angeles area,” Alger said.

Ashley Bateman (bateman.ae@googlemail.com) writes from Alexandria, Virginia.
By Kenneth Artz

Illinois’s state tax on gasoline doubled from 19 cents to 38 cents per gallon and the diesel fuel tax increased from 24 cents to 44.5 cents per gallon on July 1.

Gov. J. B. Pritzker signed into law on June 28 a $45 billion infrastructure plan that included the fuel tax hikes, making the burden paid by Illinois drivers among the heaviest in the nation.

The typical Illinois driver will pay at least $100 more for gasoline each year under a doubled gas tax, states an Illinois Policy Institute analysis published on July 26.

Ratcheting Up

The infrastructure law also increases the state’s vehicle registration fees, putting them among the highest in the nation, says Adam Schuster, director of budget and tax research at the Illinois Policy Institute.

“This move bumps Illinois’ total gas tax burden to at least the third-highest in the nation and—along with additional costs on licenses—will cost the typical family about $200 a year,” Schuster said.

Illinois car owners will pay $148 every year for vehicle registration, up from $98, starting in 2020.

In addition to the immediate pain at the pump, the gas tax will now rise by almost a penny a year in perpetuity.

“By 2025, drivers could face a state gas tax of 43.5 cents per gallon,” Schuster said.

Sales Taxes Top Off

Illinois drivers also pay a sales tax on gasoline, and the new law allows local governments to raise their local excise tax on gas.

“Before the hike, Illinois drivers already paid among the highest taxes in the nation, because Illinois is one of only seven states that applies a sales tax to gasoline purchases, which is added on top of state and local motor fuel taxes,” said Matthew Glans, a senior policy analyst at The Heartland Institute, which publishes Budget & Tax News.

Including wholesale excise taxes passed along to consumers, and sales taxes that apply to the purchase of gasoline, California has the highest average state tax on gasoline, at 61.2 cents per gallon, followed by Pennsylvania (58.7 cents) and Illinois (54.98 cents), according to a Tax Foundation report published on July 31.

Crossing Borders

Increasing the cost of motor fuel will have many bad effects, Glans says.

“A gas tax hike will raise prices on goods and services throughout the economy, not just on gasoline, because virtually all consumer goods are transported using gasoline-powered transportation,” Glans said. “These additional costs are inevitably passed on to consumers, with an especially negative impact on lower- and middle-income families.”

The economic impact will be particularly hard for communities near the borders with other states, Schuster says.

“This tax is dangerous for businesses and cities on the border who may see local families choose to commute to a different state to fuel up, taking more commerce with them,” Schuster said.

“The new hikes give Illinois the third highest gas tax rates of all the states, higher than all neighboring states,” Glans said. “With so many Illinois residents living near state borders, many drivers will vote with their feet and cross borders to purchase gas in Indiana, Iowa, Kentucky, Missouri, and Wisconsin.”

‘Littered with Wasteful Spending’

Not all the additional revenue will be used to improve roads, Schuster says.

“Our original research found billions of dollars of waste in Gov. J. B. Pritzker’s capital plan,” Schuster said. “Illinois families were sold on these increased taxes going to fix crumbling roads and bridges, but the plan is littered with wasteful spending on private grants, snowmobile paths, swimming pools, and more.”

“Lawmakers hijacked the plan to benefit their own interests, and Illinoisans should be demanding more transparency about how their hard-earned money is being used,” Schuster said.

Illinois spends transportation funds inefficiently and should reform its labor policies, Glans says.

“Two reforms Illinois should consider are the elimination of project labor agreements (PLAs) and prevailing wage laws,” Glans said. “PLAs unfairly benefit organized labor and increase project costs borne by taxpayers. Prevailing wage laws are a form of centralized planning and wage control that increases government-contracted construction costs, reduces competition, and politicizes public projects.”

Kenneth Artz (kennethcharlesartz@gmx.com) writes from Dallas, Texas.
Coloradans Will Decide Whether to Leave National Popular Vote Compact

By Ashley Bateman

A historic petition effort could lead to repeal of a Colorado law intended to change how the state determines its electoral votes in presidential elections.

Gov. Jared Polis signed into law a National Popular Vote (NPV) bill on March 15. The law places Colorado in a compact of states that pledge to award all their electoral votes to whichever presidential candidate receives a majority of the NPV. The Colorado law would go into effect if states with a total of 270 electoral votes—a majority nationally—join the compact. Fifteen states and the District of Columbia, with a collective 196 electoral votes, have done so thus far.

The Colorado State Constitution grants citizens the power to put a law enacted by the legislature on the statewide ballot, through a petition process, for voters to approve or repeal. Residents of the state had 90 days to collect 124,632 signatures after the adjournment of the General Assembly on May 3.

Mesa County Commissioner Rose Pugliese and Town of Monument Mayor Don Wilson led the signature drive by Coloradans Vote. The group turned in more than 227,000 names to the Secretary of State’s office on August 1.

The repeal measure will be on the November 2020 general election ballot.

Voter Pushback

Many Colorado voters dislike the NPV law, state Sen. John Cooke (R-Greeley) says.

“Many of them were upset over this bill,” Cooke said. “I think as soon as it passed out of the legislature, they wanted to get signatures and get it on the ballot and overturn it. I think the only place the National Popular Vote is popular is amongst the Democrats in the legislature. Most people I’ve come into contact with are upset about it and want it voted down.

“It was a pretty progressive [session], and I think people are going to push back on this one,” Cooke said.

‘Great Sign’ for Repeal

The success of the petition drive shows the intensity of support for repeal, says Jon Caldara, president of the Independence Institute.

“It is difficult to get something on the ballot,” Caldara said. “For them to bring in those numbers is incredible. It’s also highly leveraged, because not a single Republican in the legislature voted for this, not even a symbolic Republican [vote]. It won’t go into effect if we’re successful at the ballot box.”

The success of the ballot drive indicates voters will void the law, says Trent England, executive vice president at the Oklahoma Council of Public Affairs.

“The historic signature-gathering effort to repeal NPV is a great sign that voters will in fact repeal it next year,” England said.

Proponents’ ‘Unforced Errors’

Though referenda have been allowed in Colorado for more than a century, there has been limited action on them since the 1930s, primarily because the General Assembly has frequently blocked them.

Section 1, Article V of the Colorado State Constitution allows the legislature to foreclose the option of a referendum by declaring a law is “necessary for the immediate preservation of the public peace, health, and safety.” This “safety clause” allows a bill to take effect immediately upon the signature of the governor, essentially removing the possibility of a referendum.

The blocking provision has been used frequently. Cooke says, “Legislators usually just add the safety clause in,” Cooke said. “It’s so common you almost overlook it most of the time. It’s not on every bill, but it’s pretty close.”

The emergency language was left out of the NPV bill, says Caldara.

“They made a mistake by not putting in the safety clause,” Caldara said. “The governor then made a mistake by signing the bill when it passed, instead of waiting for the end of the session. By doing that, he gave opponents an extra five weeks of petitioning. A couple of unforced errors on the other side gave power to the opposition movement.”

Avoidance of Voters

In other states, NPV proponents have worked hard to keep voters from being allowed to decide, says England.

“The NPV campaign has done everything they can to keep voters from having a say,” England said. “When Oregon legislators who opposed NPV offered to send it to voters, the NPV group refused. And when activists in Ohio this year filed an initiative for NPV, the group asked its own supporters not to let people vote on it.”

TRENT ENGLAND
EXECUTIVE VICE PRESIDENT
OKLAHOMA COUNCIL OF PUBLIC AFFAIRS

‘Huge Ripple Effect’

In the 2020 general election when the NPV issue in Colorado will be decided, Colorado will elect a senator and vote for president and vice president.

“The importance of this cannot be overstated,” Caldara said. “Whoever is running in 2020 has to have an opinion on this, because it’s going to be on the ballot. It’s very possible that race could decide the majority of our United States Senate.

“Should this get repealed, ... I think that would have a huge ripple effect for the whole national popular vote movement,” Caldara said.

Ashley Bateman (bateman.ae@googlemail.com) writes from Alexandria, Virginia.

Official Connections:


INTERNET INFO

HUD Proposes Amendment to Housing Discrimination Rule

By Bonner R. Cohen

The U.S. Department of Housing and Urban Development (HUD) is proposing a regulation amending the agency’s “Interpretation of the Fair Housing Act’s Disparate Impact Standard” adopted during the Barack Obama administration in 2013.

The title of the proposed rule refers to business practices alleged to have a discriminatory effect on persons in a class—such as race, sex, or disability—protected by federal civil rights laws.

The new rule, proposed on August 19, would provide more certainty for developers, mortgage lenders, and home insurers, says HUD Secretary Ben Carson.

“This proposed rule is intended to increase legal clarity and promote the production and availability of housing in all areas while making sure that every person is treated fairly under the law,” Caron stated in a press release on August 19.

Shifting Burden of Proof

The disparate impact standard was enshrined in fair housing law by the 1990 Civil Rights Act. HUD’s 2013 rule implementing the standard put the burden of proof on defendants—primarily businesses—in cases of alleged discrimination. The new rule would shift this burden back to the plaintiff by establishing a five-step threshold in which defendants would have more leeway to rebut plaintiffs’ allegations.

Plaintiffs in cases involving charges of disparate impact in housing would have to establish the practice or policy is “arbitrary, artificial, and unnecessary” and show a “robust causal link” between the practice and the disparate impact, the proposed rule states.

In addition, plaintiffs would have to show the practice has an adverse effect on a protected class of people, not just an individual who happens to be a member of that class. The disparity would also have to be “significant,” and the complaining party’s alleged injury would have to be “directly caused” by the practice in question.

Common Sense’ Reform

The new rule will “insert common sense into each step of the litigation process,” says Roger Clegg, president and general counsel of the Center for Equal Opportunity.

“Plaintiffs will now have to identify with some precision what they are complaining about and how it results in racial disparities and by how much. What’s more, HUD rightly returns the burden of proof where it belongs, with the plaintiff.”

More Than Math

The evidence for claims that business practices have a discriminatory effect is often purely mathematical.

“Claims relying on statistical disparities must articulate how the statistical analysis used supports a claim of disparate impact by providing an appropriate comparison which shows that the policy is the actual cause of the disparity,” the proposed rule stated.

The disparate impact standard violates basic principles of justice, says Horace Cooper, an attorney and cochairman of the black leadership group Project 21.

“Regulations relying on disparate impact standards are inherently un-American because they assess guilt based on a statistical algorithm,” Cooper said. “A perverse system is created when banks, landlords, and other players in the housing industry are held liable for discrimination even if they aren’t actually intending to discriminate.”

Supreme Court Demanded Reform

The proposed revision to the disparate impact standard will bring it in line with a 2015 U.S. Supreme Court ruling, states HUD’s summary of the rule. In that decision, Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc., the court held disparate impact claims can be brought under the Fair Housing Act.

However, “disparate impact liability must be limited so employers and other regulated entities are able to make practical business choices and profit-related decisions that sustain a vibrant and dynamic free-enterprise system,” Justice Anthony Kennedy stated in the majority opinion.

The proposed rule responds to the concerns expressed in that opinion, Cooper says.

“The Supreme Court demanded reform, and Ben Carson delivered it,” Cooper said. “HUD wants to restore the constitutional protections of defendants and require plaintiffs to provide proof beyond simple numbers to substantiate charges of discrimination.”

HUD can enact the rule after the 60-day public comment period ends on October 18.

Bonner R. Cohen, Ph.D. (bcohen@nationalcenter.org) is a senior fellow at the National Center for Public Policy Research.
Congress Considers Union-Supported Labor Law Rewrite

By Bonner R. Cohen

Facing dwindling membership in a booming economy, U.S. labor unions are backing a comprehensive legislative package rewriting key provisions of the National Labor Relations Act (NLRA).

The Protecting the Right to Organize (PRO) Act working its way through Congress is a radical proposal, says Brian Hayes, an attorney with Ogletree Deakins and a former National Labor Relations Board (NLRB) member, the Society for Human Resource Management (SHRM) reported on July 30.

“It would radically change the NLRA, legislatively overrule hundreds upon hundreds of NLRB and federal court decisions, and completely rewrite fundamental U.S. labor law and policy,” Haynes told the SHRM.

“The PRO Act is a legislative grab bag of virtually every modification to the NLRA that organized labor has sought for decades,” Haynes said.

Big Changes

Among its many provisions, the PRO Act would authorize union-employer contracts that require workers to pay dues, effectively repealing right-to-work laws currently on the books in 27 states.

The PRO Act would also replace secret-ballot elections for union representation with a “card check” system in which organizers collect authorization forms from employees. It would repeal statutory protection of the First Amendment right of employers to express opinions and provide information to employees in the workplace regarding union representation, and it would prevent employers from hiring permanent replacements for striking workers.

The legislation would also allow secondary boycotts of companies that supply goods or services to an employer targeted by unions, which has been illegal under federal law for 70 years.

PRO-Union, ‘Anti-Worker’

The PRO Act is an effort to keep workers captive and make them pay for big labor unions, says Matt Patterson, a labor expert and executive director of Free California.

“Organized labor sells a product that workers just don’t want,” Patterson said. “Otherwise, union membership wouldn’t have plummeted from 20 percent to not even 7 percent in the past 30 years. The only way they can shore up their role is to make it harder for people to get out, which is exactly the point of this ridiculously anti-worker legislation.”

Tilting the law to favor labor unions is not in employees’ best interest, says Olivia Grady, a senior fellow in the Center for Worker Freedom at Americans for Tax Reform.

“Americans for Tax Reform strongly opposes the PRO Act because it enriches union bosses at the expense of American workers,” Grady said.

“The bill would restrict the freedom of American workers, increase unemployment, and subsidize labor unions by forcing millions of workers into unions where they would be forced to pay union dues,” Grady said.

Strong Support from Democrats

The Health, Employment, Labor, and Pensions Subcommittee of the U.S. House of Representatives held its second hearing on the PRO Act on July 25. The PRO Act could pass through the House this fall, where it has 204 Democratic cosponsors in the Democrat-dominated chamber.

The PRO Act (H.R. 2474) was introduced by U.S. Rep. Bobby Scott (D-VA) in the House, and an identical bill (S.1306), was introduced in the Senate by Sen. Patty Murray (D-WA), on May 2.

Bonner R. Cohen, Ph.D. (bcohen@nationalcenter.org) is a senior fellow at the National Center for Public Policy Research.
**University Leaders Receive High Pay, Job Insecurity**

**By Jane Shaw Stroup**

It is the best of times and the worst of times for college presidents.

In its latest compilation of salaries for university leaders—presidents, chancellors, system heads—the *Chronicle of Higher Education* found 61 private universities and 17 public universities paid their top executive more than $1 million in 2018. Three years earlier, 50 private university presidents were paid $1 million or more, as were seven public university presidents.

Several of these well-paid executives have had short, turbulent tenures, and in some cases their high pay reflects deferred compensation or a well-negotiated severance package. William McRaven, former chancellor of the University of Texas system, who received the highest pay among public universities in 2018, left after three years and four months. During his tenure, his total annual compensation rose from $1 million to nearly $2.6 million.

Steven Leath, who stepped down this year from Auburn University after a tenure of two years, received $692,394 in 2018 but has a $4.5 million severance package, the *Chronicle* stated in its report, released July 14. Like McRaven, Leath ran into conflicts with his board.

There is also evidence presidential terms are getting shorter. A study by the American Council for Education, a group representing major universities, found the average presidential tenure declined from 8.5 years in 2006 to 6.5 years in 2016.

**University Trustees Faulted**

The boards that hire these presidents are to blame for the turmoil and insecurity, says Tom Lindsay, director of the Texas Public Policy Foundation's Center for Innovation in Education.

“The bad situations we find with various presidents are entirely the responsibility of their ostensible bosses: the trustees,” Lindsay said.

Too often, trustees don’t fulfill their primary responsibility of providing oversight, Lindsay says.

“Board members generally have not taken their rights and duties as fiduciaries as seriously as their schools need them to do,” Lindsay said. “Instead of acting as legal overseers, they are too often cheerleaders for their schools. Such parochialism must end if we hope ever to reform higher education.”

Lindsay’s comments echo the findings of Stephen J. Trachtenberg and his colleagues, who studied failures of higher education presidents in *Presidencies Derailed*, published in 2013.

The writers blamed boards of trustees for at least some of the derailments. Sometimes the problem was a faulty selection process, but there was also the failure of trustees to support the president even during the initial “honeymoon” period.

‘A Culture of Complaint’

The environment presidents work in is far more pressurized than it used to be, Trachtenberg, retired president of George Washington University, told *Budget & Tax News*.

“Like corporate executives and public officials, university presidents face a new environment of communication, media, exposure, opposition, criticism, and less tolerance,” Trachtenberg said. “For decades, presidents were special. They had ‘a good life,’ even long vacations. Today, being a university president means being on the frontier of all the social issues at one time: race, sex, guns, toilets, fraternities, clubs.”

Life on campus changed with the arrival of the Millennial generation, Trachtenberg says.

“Students are more active than they have been since Vietnam, but now there is a culture of complaint and subgroup maximization—seeing who can make the case as to who is most disrespected or mistreated,” Trachtenberg said. “And you don’t have to have done anything wrong yourself. Your predecessors in the eighteenth century may have owned slaves, and now your school is being held accountable.”

‘In a Bad Patch’

These and other sticky issues have shortened college leaders’ tenure, Trachtenberg says.

“The environment is so complex that it is hard for presidents to sustain themselves over a long period of time,” Trachtenberg said. “We’re in a bad patch. We seem to have abandoned the notion that the other guy is capable of good will.”

In addition, boards and government overseers have become highly political in their dealings with colleges and universities, says Trachtenberg. Public university presidents must deal with often-hostile governors and legislatures, and even board members who are using the board as a springboard to higher office.

“There has always been a cultural divide between university towns and the rest of the state, but that has become more apparent now,” Trachtenberg said. “A president has always had to be thick-skinned. Today, the president has to be a Houdini of politics.”

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Jane Shaw Stroup (janeshaw5966@gmail.com) is higher education editor of School Reform News and chair of the board of directors of the James G. Martin Center for Academic Renewal.

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“Like corporate executives and public officials, university presidents face a new environment of communication, media, exposure, opposition, criticism, and less tolerance. For decades, presidents were special. They had ‘a good life,’ even long vacations. Today, being a university president means being on the frontier of all the social issues at one time: race, sex, guns, toilets, fraternities, clubs.”

**STEPHEN J. TRACHTENBERG**

RETIRED PRESIDENT

GEORGE WASHINGTON UNIVERSITY

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New Book Offers Solutions to the Failure(s) of Higher Education

By Jay Lehr

Richard Vedder’s Restoring the Promise: Higher Education in America is the very best book on higher education I’ve ever read. There is no one as qualified to explain in detail where we are and where we need to go in higher education. Vedder has spent his entire life in academia and is now in his 54th year of teaching economics at Ohio University in Athens, Ohio—a school often called “Harvard on the Hocking” after the river that runs through it.

Vedder writes with the verve of one who sees all with the clear vision of youth, yet he is such a giant in education and economics that 28 colleagues wrote detailed prepublication comments praising this book.

This book is the best starting place for any reader to understand the ongoing failures of today’s colleges and the ways to begin righting the wrongs. It answers most of the questions on the minds of families facing decisions about college for their children. Why go to college? Is it worth the cost? Will students receive the wisdom that helps make for a successful future?

For the reader with college in the rearview mirror, the book answers the important questions about the system for which they may still be paying off loans. Why do growing endowments not lower tuition costs? Why do so many colleges have an “edifice complex,” a desire for bigger buildings that don’t improve academic achievement? Why have campus diversity programs become such a scandal?

Vedder documents all the elements that have undermined higher education, including poor governance, low teaching loads, and a dysfunctional accreditation system. Political correctness limits academic debate and increases conformity. Reasoned debate is disappearing.

Cost Escalates, Quality Declines

American higher education has lost its way, says Vedder. Costs continue to escalate, there has been a documented decline in both the quality and quantity of the education transmitted, and there is a growing disconnect between educational experience and life prospects. Political agendas are inhibiting intellectual freedom and the pursuit of truth. Students emerge from college with little knowledge of our nation’s history and the achievements of Western civilization.

While growing incomes and wealth have made almost everything else more affordable, it now takes a larger portion of income for most Americans to pay for college than it did a generation ago. Private colleges use little of their endowment money to reduce tuition costs.

The main fault, Vedder tells us, is the vast infusion of government money which allows these institutions to avoid market discipline. Easy money from federally funded loan programs artificially boosts the demand for a college education, which in turn enables institutions to exploit students and creates a money trap for most graduates outside of focused fields such as engineering, technology, accounting, and nursing that teach vocationally useful material.

Gross Inefficiencies

Vedder describes in detail the inefficiency with which most schools operate in the absence of compelling incentives to lower costs and improve. The ratio of administrative employees to faculty has been growing, buildings are empty much of the year, and teaching loads for tenured faculty are shrinking.

At most universities, 25 percent to 40 percent of expenditures aren’t directly related to the academic mission—things such as food services, medical clinics, collegiate athletics, and spa-like amenities. As administrative staffs have soared in size and importance, the faculty has lost its influence on the management of the school and appears to be bribed by lower course loads.

Vedder contrasts nonprofit colleges with profitmaking companies and industries, where the incentives reward efficiency and customer satisfaction and punish failure. He describes the downfall of major corporations that did not incentivize improvement. A study of almost any college shows virtually no such incentives, whether it is to ask the ground crews and janitors to work more quickly or department heads to increase teaching loads and thereby reduce the number of professors.

Wrong Priorities

Universities should give priority to disseminating information rather than creating information through research, Vedder says. Too often the latter takes precedence because it brings in direct funding. What is so striking is how little information universities provide about how much students are learning and any benefits for life after college.

Vedder notes 40 percent of recent U.S. college graduates are underemployed, filling jobs traditionally done by high-school graduates, casting doubt on the value added by their higher education.

Calls for Innovation

Vedder’s solutions to the problems of tuition price inflation, lack of intellectual diversity, and feeble student gains from a college education are information, incentives, and innovation.

Tying financial incentives for administrators and teachers to performance would help reduce costs and improve quality. This could be done by rewarding departments or even professors with a share of overall revenue based on student enrollment in their classes.

Vedder writes that “higher education change must be tied at least in part, to innovations—new ways of doing things, with some using new technology, others perhaps utilizing older technologies in heretofore unused manners.”

Vedder’s discussion of online courses is particularly insightful. They are surely useful, Vedder says, but not quite all that proponents hoped for. He says he lectures his classes much as he did 50 years ago and as Socrates did 2,400 years ago.

Education in America is in crisis, both K-12 and college. This book will enlighten you about the problem and solutions as no other can.

Jay Lehr, Ph.D. (Jaylehr57@yahoo.com) is a senior policy analyst for the International Climate Science Coalition.
Labor Department Broadens Options for Small Businesses’ Retirement Plans

By Ashley Herzog

Employees of small- and medium-sized businesses will have access to more retirement savings options under a new U.S. Department of Labor rule. The new regulation under the Employee Retirement Income Security Act (ERISA) allows many more employers to join Association Retirement Plans (ARPs) in order to offer 401(k)-type savings plans to their employees.

ARPs are a type of retirement plan that covers employees of more than one employer, called Multiple Employer Plans (MEPs). ARPs had been restricted to employers in the same industry. They may now cover a geographic area, such as a common state, city, county, or a metropolitan area, even crossing state lines. The final rule was published on July 29.

In addition, working owners without employees, including sole proprietors, may now participate in these plans. “This includes self-employed and small-business entrepreneurs who might prefer a 401(k) plan rather than an IRA they would have to manage themselves or pay higher fees to have someone else manage for them,” said Edward Hudgins, research director at the Heartland Institute, which publishes Budget & Tax News.

Levels Playing Field

There are many potential benefits to the new rule, a DOL fact sheet states.

“The rule allows small businesses to benefit from the economies of scale for administrative costs and investment choices currently enjoyed by large employers,” DOL stated. “Participating in an ARP can lower costs and decrease the regulatory burden and fiduciary liability on small and mid-size businesses.”

About 85 percent of the workers at companies with more than 100 employees have access to retirement savings options. Only 53 percent of employees at smaller businesses could access such benefits as of March 2018, states the National Compensation Survey conducted by the U.S. Bureau of Labor Statistics.

This has placed small businesses at a disadvantage in competing with large firms to attract employees, says David S. Addington, senior vice president and general counsel of the National Federation of Independent Business, in written comments submitted to DOL on the proposed rule.

“The new rule will help small and mid-sized businesses recruit and retain quality employees, instead of losing them to bigger companies that offer better retirement benefits,” Addington stated.

Benefits for Small Employers

The regulation also allows ARPs to be sponsored by Professional Employer Organizations (PEOs)—firms that provide outsourced services, such as payroll and employee benefits, to their clients, which include partnerships, sole proprietors, and nonprofits. PEOs are considered the co-employers of these firms’ workers for tax purposes. The rule allows PEOs to sponsor retirement plans for their business clients’ workers.

“In such an arrangement, small and independent businesses who are clients of the PEO benefit, both because they can offer their employees a 401(k)-type benefit to aid in attracting and retaining employees and because they can share with other employers the costs of administering the benefit, including auditing costs,” Addington stated. The rule change will allow small businesses to pool resources, Addington says.

“NFIB appreciates the Department’s efforts to expand the availability to small and independent businesses of multiemployer defined contribution pension plans sponsored by professional employer organizations,” Addington stated.

Benefits for High-Skilled Workers

The new rule will help the economy accommodate changes to the workforce, Hudgins says.

“Coming decades will see major changes in labor markets as exponential technologies reduce the need for many traditional jobs, often with larger companies that can afford to offer retirement benefits,” Hudgins said. “But it also opens opportunities for innovative, smaller companies.

“These smaller companies will need to attract workers who will rightly expect compensation that matches their high levels of skills and knowledge,” Hudgins said. “ARPs will allow those companies, which will be so crucial for America’s economic future, to attract the best and the brightest.”

NFIB and other commenters asked the Labor Department to “give further consideration to facilitating ‘Open MEPs’—MEPs that cover employees of unrelated employers,” a DOL fact sheet on the rule states. This would remove restrictions limiting which types of businesses can join each ARP.

DOL has asked the public to provide additional information on the need for Open MEPs by October 29. The department could consider further regulatory changes based on the comments.

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Red-Light Cameras Undermine the Rule of Law

By Joe Barnett

Speed and red-light cameras are the bane of many motorists. A modern idea made possible by technology, they have been installed in at least 24 states. Although these cameras are a revenue boon for governments across the nation, their intrusion into daily life is disturbing, and their constitutionality is dubious.

Abridging Constitutional Rights
Among the constitutional issues the use of these cameras raises is the potential violation of the Sixth Amendment. The Confrontation Clause grants criminal defendants the right to be confronted with the witnesses against them. Since the witness is a camera and not a person, such violations generally cannot be considered a criminal offense. The ticket is issued to the owner of the vehicle, not to the person driving it, leaving ambiguity regarding the identity of the offender.

Most citations for speed and red-light cameras result in civil fines, making enforcement and collection difficult. To date, governments have dealt with this problem by requiring payment of the fine before motorists can renew their driver’s license or auto registration. Although there generally are appeals procedures, they typically do not give drivers a day in court. In other words, what happened to being innocent until proven guilty?

Revenues Generate Corruption
The financial incentives of automated traffic-control cameras create conflicts of interest for local elected officials and camera companies to game the system in their favor. There are several nonprofit companies that install and operate the cameras, some of them foreign-owned.

In a typical arrangement, a camera company will contract with a local government to pay the capital cost of installing the cameras in exchange for a share of the revenue generated by fines. In short, governments get a new revenue stream without any operating cost, and the camera companies make a tidy profit.

Government officials’ money hunger and the contractors’ involvement in traffic management can be corrupting. Redflex, an Australian ticket-camera provider, paid the city of Chicago $20 million to settle a lawsuit charging bribery and mismanagement. Such incidents can undermine citizens’ faith in government and breed mistrust of authority.

If ticket revenues fall to the point that red-light cameras are no longer profitable, they go away, says Jim Walker, executive director of the National Motorists Association Foundation, which argues against red-light cameras.

“In almost every case, if a camera program in a city starts to lose money, it gets canceled as soon as the contract allows,” Walker said.

Questionable Safety Benefits
The companies and government officials argue the cameras reduce the number of accidents and the increased government revenue benefits the local community.

Studies to confirm those claims have yielded mixed results. Research paid for by the camera companies or governments usually shows a reduction of accidents. Independent studies and those financed by opponents usually show no gains and sometimes worse results.

There was no reduction in total accidents or injuries at red-light camera intersections in Houston, Texas over a 12-year period, a 2017 study by researchers at Case Western Reserve University found. Though there were fewer side-impact accidents at camera-enforced intersections, motorists were more likely to hit the brakes hard, increasing the incidence of rear-end collisions.

On the other hand, a study by the Insurance Institute for Highway Safety that looked at changes in traffic fatality rates in 14 cities that removed red-light cameras during the years 2010 to 2014 found rates of fatal red-light-running crashes were 30 percent higher than they would have been otherwise after the cameras were turned off.

There is more evidence that public safety improvements depend on the timing of yellow and red lights. Longer yellow and all-way red times—simultaneous red lights in all directions—have been shown to significantly reduce accidents. Some cities have lengthened their yellow lights by one second in response to drivers’ complaints, says Walker.

Just Saying ‘No’
Unsurprisingly, these cameras are deeply unpopular with the public. Since 1991, there have been 42 voter referenda on adopting or prohibiting speed or red-light cameras or both. In all but two of these, voters have opposed the cameras, by an average of 63 percent.

Polling on the issue can show different results. A recent Public Opinion Strategies survey of 800 likely voters nationwide found 69 percent of respondents either strongly or somewhat support red-light cameras, and 29 percent somewhat or strongly oppose. Forty-seven percent of those same respondents thought most of their neighbors opposed the cameras.

A possible explanation is that most respondents to national polls do not live in localities with red-light cameras. Less than half the states allow them, and not all jurisdictions in those states have them. As a result, many people have never experienced them. Familiarity breeds contempt.

We are brought up to respect the legal system that was handed down to us through English common law. We expect the laws to be just and fairly applied. We expect to have recourse to the courts and to be able to confront our accusers. Most importantly, we always expect to be treated equally before the law. Speed and red-light cameras are contrary to those expectations.

This policy is not good for civil society, especially at a time when distrust in government is high.

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Space Economy Requires Property Rights, Free Market

By Ross Hatley and Charles N. Steele

The first launch of SpaceX’s Starlink broadband satellite constellation in May marked the beginning of what will soon be a multitrillion-dollar space economy.

Pivoting on the heels of that event, NASA announced it will permit private companies and tourists to use the International Space Station.

The space economy is here, and the opportunity is overwhelming. New markets, systems, and innovations have the potential to transform civilization, offering greater wealth for society, as well as potential solutions to climate, energy, and resource problems. The promise of the space economy is huge.

‘Rules of the Road’
It is widely recognized among those who have studied space policy that for successful economic development of space, what is needed is an entrepreneurially driven, competitive market system—the decentralized model. This requires the right “rules of the road”—the institutional framework that facilitates a competitive market system.

To flourish, the space economy requires policy reforms to establish a legal framework that fosters imagination, entrepreneurial innovation, and a free market, not government direction and central planning.

Basic rules need to be established that allow the development of private property rights, including intellectual property rights, over space assets such as installations on celestial bodies, positions within orbits, and spots on the electromagnetic spectrum. Rules are also needed for title registries, enforcement by courts of law, and markets for trading assets to facilitate deploying them where they’ll create the most value for humanity.

These are necessary for a sustainable space economy. Competitive markets direct resources to where they create the most value and curtail loss-making projects that consume resources more valuable than the output they create.

Problem: Space Junk
Private property rights and markets can solve some of our current challenges in space development. Consider, for example, the problem of space debris—defunct satellites and other pieces of material that threaten to clog valuable orbits.

The current Outer Space Treaty recognizes space junk is the responsibility of the launching nation. This principle can be extended to establish that national and private ownership, and liability, remains after the satellites have been rendered inoperable.

With liability and enforcement, owners of satellites will have incentives to dispose of defunct satellites either directly or by contracting with others to do so. Thus, startup firms working on deorbiting, reuse, and recycling of junk would be promoted by the institutions of private property rights to purchase or be paid for junk and contract for its removal.

The establishment of general law, property rights, and an enforcement mechanism are all that is required to incentivize entrepreneurs to keep “open skies” over Earth in a cost-effective way.

Problem: Crowded Skies
Low Earth orbits and geostationary orbits and trajectories are currently open-access and are subject to scarcity. Defining tradable rights over them would solve the crowding problem.

High-value orbits such as geostationary slots are already well on their way to being definable “land” that can be owned and exchanged. Tradability would ensure they’d go to the highest-valued uses.

Conversely, a space regulator would allocate orbits to those with political clout instead of the most valuable uses. Establishing property rights for these limited resources would drive growth and cooperation, whereas government planning would only stunt and distort their utilization.

Problem: Spectrum Allocation
Similarly, private property and markets offer a solution to electromagnetic spectrum allocation. Once divided and allocated, the spectrum could be privately purchased and exchanged.

This may be why FCC Chairman Ajit Pai has indicated his desire to accelerate spectrum auctions, including bandwidth for space and 5G. Widespread auctions would open critical resources for development and allocate resources to the highest-valued uses through market transactions.

Many astronomers currently object that commercial use of physical space and the electromagnetic spectrum will block scientific research. Tradable property rights would help solve this problem by permitting these scarce resources to be allocated to those who value them most, by permitting positive-sum, mutually beneficial trading instead of zero-sum political competitions.

If researchers in basic science have insufficient wherewithal to compete in the market, it would make more sense to subsidize them and allow them to buy the assets most valuable for their activities, rather than impose a bureaucratic regulatory system that stifles the space economy in its infancy.

In the end, the expansion of space access and assets can benefit celestial observation, not harm it.

Problem: Centralized Control
Instead of limiting government involvement to creating the legal environment for commercial activities in space, such as establishing and enforcing property rights, some advocate having government manage every aspect of space development.

Centralized planning and regulation might sound attractive to some, but government planners have little incentive to make the right choices or improve their performance. They don’t bear the costs of poor decisions, nor do they reap the benefits of success. Without meaningful profit-and-loss signals, they can’t even distinguish between value-creating and wasteful activities.

In addition, regulators are susceptible to capture by special interests lobbying for privileges, slowing innovation by locking out startups and new competition.

Central planning would destroy the economic viability and sustainability of the nascent space economy.

By contrast, free markets and “creative destruction” of firms are results-oriented and reward valuable research and innovation.

Entrepreneurs, disruptive innovators, and engineers, not central planners, are the ones who imagine and build economies, whether on Earth or in space. Politicians and regulators can never have more than an enabling role. So, we say: Extend basic laws and regulation minimally, humbly, and carefully, and let mankind boldly go.

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Embattled Electoral College Protects Individual Rights, Promotes Consensus

By Trent England

Criticis of the Electoral College say they simply want to elect the president the way we elect most other officials.

Every state governor is chosen by a statewide popular vote. Why not a national popular vote for president?

Delegates to the Constitutional Convention in 1787 asked themselves the same question, and they rejected a national popular vote along with several other possible modes of presidential election.

The plan they adopted is found in Article II, Section 1 of the Constitution: “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress.”

This decision of the founders has had beneficial effects throughout the nation’s history.

Limits Contested Votes

Under the Electoral College system, presidential elections are decentralized, taking place in the states instead of purely on the national level. Although some see this as a flaw, this decentralization has proven to be of great value.

For one thing, state boundaries serve a function analogous to watertight compartments on an ocean liner. Disputes over mistakes or fraud are contained within individual states. Illinois can recount its votes, for instance, without triggering a nationwide recount. This was an important factor in America’s messiest presidential election—which was not in 2000 but in 1876.

That year marked the first time a presidential candidate won the electoral vote while losing the popular vote. It was a time of organized suppression of black voters in the South, and there were fierce disputes over vote totals in Florida, Louisiana, and South Carolina. Each of those states sent Congress two sets of electoral vote totals, one favoring Rutherford Hayes (R) and the other for Samuel Tilden (D).

Just two days before Inauguration Day, Congress finished counting the votes—which included determining which votes to count—and declared Hayes the winner. At the very least, the Electoral College contained these disputes within individual states so that Congress could endeavor to sort it out. It can be argued the Electoral College prevented a fraudulent result.

Boosts Legitimacy

Four years later, the 1880 presidential election demonstrated another benefit of the Electoral College system: It can amplify the results of a presidential election.

The popular vote margin that year was less than 10,000 votes—about one-tenth of one percent—yet James Garfield (R) won a resounding electoral victory, with 214 electoral votes to Winfield Hancock’s (D) 155. There was no question who won, let alone any need for a recount.

More recently, in 1992, the Electoral College boosted the legitimacy of Bill Clinton (D), who won with only 43 percent of the popular vote but received over 68 percent of the electoral vote.

Discourages Regional Candidacies

There is no doubt that the greatest benefit of the Electoral College is the powerful incentive it creates against regionalism.

In 1888, incumbent President Grover Cleveland (D) lost reelection despite receiving a popular vote plurality. He won this plurality because he won by a very large margin in the overwhelmingly Democratic South. He won in six southern states by margins greater than 30 percent, whereas only tiny Vermont delivered a victory percentage of that size for Benjamin Harrison (R).

In other words, the Electoral College ensures that winning supermajorities in one region of the country is not sufficient to win the White House. After the Civil War, and especially after Reconstruction, that meant the Democratic Party had to appeal to interests outside the South to earn a majority in the Electoral College.

Indeed, when Grover Cleveland ran again for president four years later in 1892, although he won by a smaller percentage of the popular vote, he won a resounding Electoral College majority by picking up California, Illinois, Indiana, New York, and Wisconsin, in addition to the South.

Encourages Coalition-Building

Today, the Electoral College continues to push parties and presidential candidates to build broad coalitions. Critics say swing states get too much attention, leaving voters in so-called safe states feeling left out. But the legitimacy of a political party rests on all those safe states—on places that the party has already won over, allowing it to reach farther out.

In 2000, for instance, George W. Bush needed every state that he won—not just Florida—to become president. Of course, the Electoral College does put a premium on the states in which the parties are most evenly divided. But would it really be better if the path to the presidency primarily meant driving up the vote total in the deepest-red or -blue states?

Similar electoral systems prevail around the world. In parliamentary systems such as in Canada, Israel, and the United Kingdom, prime ministers are elected by the legislature. This happens in Germany and India as well, which also have presidents who are elected by something like an electoral college. In none of these democratic systems is the national popular vote decisive.

Safeguards Our Rights

The measure of our Constitution is whether it is effective at encouraging just, stable, and free government—government that protects the rights of its citizens. The Electoral College is effective at doing this. We need to preserve it, and we need to help our fellow Americans understand why it matters.

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“Today, the Electoral College continues to push parties and presidential candidates to build broad coalitions. Critics say swing states get too much attention, leaving voters in so-called safe states feeling left out. But the legitimacy of a political party rests on all those safe states—on places that the party has already won over, allowing it to reach farther out.”

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