



FACTS & OPINIONS

On Public Interest Issues

Quotes

It is very imprudent to deprive America of any of her privileges. If her commerce and friendship are of any importance to you, they are to be had on no other terms than leaving her in the full enjoyment of her rights.

– Benjamin Franklin

Freedom is important in order that all the different individuals can make full use of the particular circumstances of which only they know. We therefore never know what beneficial actions we prevent if we restrict their freedom to serve their fellows in whatever manner they wish. All acts of interference, however, amount to such restrictions.

– Friedrich A. Hayek

Liberty is often a heavy burden on a man. It involves the necessity for perpetual choice which is the kind of labor men have always dreaded.

– Oliver Wendell Holmes

In Defense of Cowboy Capitalism

Roger Donway

Many Americans — and even more Europeans — employ a pre-modern ideal when judging the market economy. According to this ideal, individuals enter occupational niches, perform specified tasks, and receive appropriate material and reputational rewards via society's structures. Sociologically, it is a clockwork view of the economy: One does not take a job to make money; rather, a person does his job and society arranges to have money and other rewards flow back to him. Psychologically, the pre-modern view interprets work according to what David Kelley has called the "managerial" outlook: "a view of one's life [in this case, one's work] as a franchise one has been given, to be operated in accordance with rules from the main office" (IOS Journal, December 1994). Morally, the pre-modern economy adopts a public-service model: to employ one's job principally for personal gain is at best a conflict of interest and at worst a betrayal of trust.

I call the idea pre-modern because it arises from the idealized medieval society, which divided the

population into those who fight, those who pray, and those who labor (basically, grow food). Each sector performed its task on behalf of all sectors, with people rewarded through traditional social mechanisms. Though never fully realized, the ideal began to break down when commercial traders appeared on the scene. They were reckoned as among "those who labor," but they did not fit neatly. The problem was that traders tended to pursue their own goals on their own terms rather than performing a fixed role within a clockwork society. To use the concepts coined by Sir Henry Maine, traders belonged to a society of contract and could not be easily subsumed by a society of status.

Pre-modern Muckraking

Today, it is hopeless to interpret the American economy as a clockwork. Yet, implicitly, that is the model our elites employ. They demand that businessmen adopt the role of "stewards" for the public's wealth. They decide what stewardship decisions are "in the public interest," and they prescribe

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President
Dr. Don Racheter

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Focus on Iowa Wesleyan College

Carol L. Brown

Enrollment for the Fall 2004 semester has increased by six percent from the last academic year. Full-time enrollment numbers are 564 students and 212 part-time students for a total of 776. This is an increase from 531 full-time students last year, making this the second consecutive year of full-time enrollment growth. The College welcomed 209 freshman and transfers to campus this fall. Increased numbers of returning students indicate rising retention rates for this academic year.

"Our commitment to providing a quality student experience at Iowa Wesleyan College is evident," said President William N. Johnston. "The trustees, alumni, faculty, and staff are working together to transform the College to be a leading church-related, four-year, liberal arts college in the Midwest. Our second consecutive year of enrollment growth is a testament to that commitment."

With the creation and implementation of the new Strategic Plan, steps have begun to enhance the quality of the student learning experience, which includes helping faculty in professional advancement and compensation and the updating of classroom spaces and student residences to create better learning environments.

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What's New at Public Interest Institute?

In October, Research Analyst Brad Cook attended the Iowa Conference of Political Scientists at the University of Northern Iowa, located in Cedar Falls, Iowa. Though each session of the conference covered an array of subjects, Ohioan Cook was interested in learning more about the Iowa political scene.

Amy Frantz, a Research Analyst at Public Interest Institute for eight years, was recently promoted to Senior Research Analyst. Congratulations, Amy! A graduate of Central College in Pella, Iowa, Frantz was a staffer on Capitol Hill for Rep. Jim Nussle before working at Public Interest Institute.

Finally, Dr. Don Racheter, President of Public Interest Institute, has been asked to write a chapter on Iowa's role in the 2004 presidential elections along with Kimberly Conger, an assistant professor of political science at Iowa State University, for the forthcoming book *The Values Campaign?: The Christian Right in the 2004 Elections*. This book follows 2002's "Iowa: Crucible of the Christian Right" in *Marching Toward the Millennium*.

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In Defense of Cowboy Capitalism

Roger Donway

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what business arrangements constitute “a conflict of interest” for these economic stewards.

Naturally, because they hold a status view of the economy, our elites are constantly damning the actual world of commerce, and especially America’s less regulated economy. They denounce executives for seeking personal gain rather than acting as stewards. They deplore practices that are innovative and risky rather than traditional and prudent. And they thunder against executive compensation that fails to meet their notion of a just price. “Cowboy capitalism” is the term often used to decry the disparity between the pre-modern image of how markets should operate and the reality of how relatively open markets do operate. But the day-to-day work of destroying “cowboy capitalism” is carried out by legislators, regulators, prosecutors, and journalists who convert perfectly understandable business behavior into crimes and scandals, either legally or in the popular mind. One need go no further than the New York Times business section to see the process in action.

Considered as financial journalism, the “Business Day” section of the New York Times does not amount to much. For example, on May 27, the section was only fourteen pages long, including four pages of tables and perhaps another four pages of ads. Nevertheless, the Times’s business section is extremely valuable as an

indicator of what the elite media think is important in the world of business. And on May 27, as on many days, there was no doubt what the Times’s business reporters took to be important. In the six pages of news that day were eight stories about business scandals. Of the five stories on the section’s first page, three were about business scandals. Here was a vivid display of how the elite media see American businessmen: as individuals driven by a mindless desire for unlimited wealth; as dangerous characters whose insatiable avarice is constantly tempting them into law-breaking; and thus as people who are, at best, in need of close government supervision and, not rarely, in need of imprisonment.

Defending Capitalists

After I read the New York Times on May 27, my mind went back forty-two years to the very first number of The Objectivist Newsletter and to its page-one article: “Choose Your Issues,” by Ayn Rand. The issues she urged her followers to take up were the regulation of broadcasting by the Federal Communications Commission and the prosecution of businessmen under the antitrust laws. In the decades since, America has made progress in liberating broadcasters from government control, in part because freedom of political speech is an area in which Left and Right agree more than they disagree.

But the persecution of businessmen has by no means abated, and indeed it seems to have gotten much worse. In the last forty years, businessmen have become more entrepreneurial and less managerial, more innovative and less traditional. They have also become more openly interested in making money and less concerned with their social status and community standing. Meanwhile,

businesses have become more complex — more technological or more abstract, and so more distant from the obvious processes of agriculture and industry. During the same period, politicians and the media have become more anti-capitalist and more primitivist — more suspicious of progress, more averse to risk, and more given to Dickensian sentimentality. As a result of these contrary trends, the slander and the mistreatment of businessmen have grown rapidly.

Now let me say, before proceeding, that sometimes businessmen do take actions that should be publicly denounced. (See my article on Enron: “The Collapse of a Postmodern Corporation,” in the May 2002 Navigator.) And sometimes people in business commit frauds that should be prosecuted as crimes. But after admitting the existence of such behavior, one is still left with the question: How can we limit the prosecution and persecution of businessmen to the very narrow area in which it is actually justified?

Apparently, we cannot count on Republican office-holders to chide anti-business prosecutors and polemicists, for the first impulse of nominally pro-business politicians is to flee from any taint of bad publicity. And obviously, despite the media’s much-vaunted adversarial relationship with government, we cannot count on anti-business journalists to expose anti-business legislators, regulators, and prosecutors. On the contrary, such officials are applauded by our “watchdog” journalists, who pen their “first rough-draft of history” in the style of the old muckrakers.

What we need, then, are authors who will write a first rough-draft of revisionist history, one that exposes regulators and prosecutors as oppressors and the elite media as their cheering squad.

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In Defense of Cowboy Capitalism

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Evidently, this task must fall to the non-elite media: that relatively small number of editorialists, columnists, think-tank analysts, and Web-log authors who are staunchly pro-capitalist.

Yet even this group cannot always be counted on for a sound defense of businessmen. Libertarian authors typically defend producers on the sweeping grounds that all non-coercive activity should be unregulated: prostitution, pornography, peddling drugs — and producing software. What this defense misses is Ayn Rand's insight that productive achievement is man's noblest activity.

Conservative authors, on the other hand, mute their defense of any overtly acquisitive individual. The author will concede that, yes, the fellow was outrageously greedy and therefore wicked, but after all, the author will say, it does not appear that he committed any fraud. How is that for an inspiring slogan: "Businessmen are evil, but they're not crooks!"

In still other instances, crusading authors defend certain productive businessmen but are hesitant to stand up for big-business executives who have played rough with competitors, stepped on a lot of toes, and perhaps even violated some regulations. These writers prefer to champion innocuous little-guy businessmen who have innocently fallen afoul of a mindless

bureaucracy. In contrast to this tendency, I think of the businessmen Ayn Rand chose to defend in her first issue of *The Objectivist Newsletter*: They were not hapless little guys. They were executives from large American firms — General Electric, Westinghouse, Allis-Chalmers — and they had unquestionably met, for years, in secret, for the express purpose of violating the antitrust law. Yet she said that it was obscene to send them to jail, though the sentence was for all of thirty days. What would she say about the multiyear sentences that have been meted out to businessmen in recent decades — ten years in the case of Michael Milken? More to the point: What will we say?

Let Us Now Praise Wheeler-Dealers

I believe it is time for pro-capitalists to offer a defense of big-business executives that is not undercut by libertinism, postmodern moral skepticism, religious morality, or utopian illusions about the free market. To that end, I suggest ten rules of thumb that ought to govern such a defense.

1. Selfishness is good, and, if the words be properly understood, greed is good. No one can ever "have enough" when it comes to income or wealth. Anti-wealth journalists ask: How many cars can you drive? How many homes can you live in? But that is irrelevant. The capital of most wealthy businessmen exists as an investment in their companies or the companies of others, so the relevant question: How much money is "enough" for those purposes? And the answer: No amount.

2. Equality before the law is an important political value, but equality of condition is not morally desirable. To use coercion to

increase equality of condition is an abomination, and even the condemnation of freely achieved inequality is vicious.

3. But far more sinister than "equality of condition" is the Trojan horse "equality of opportunity." Too often, this has been set forth as the proper alternative to equality of condition. People say: "We don't care if individuals end up unequal as long as they have an equal chance." Yet this idea of a fair-and-square horse race is subversive nonsense when applied to society. People who are born earlier have a head-start over people born later, in experience if nothing else. People who previously acquired money have a lead over people who did not. That, indeed, is one principal purpose of acquiring money — not just to have an advantage in consumption but to have an advantage in future production. Another purpose is to give an advantage to family and friends, who may then have an advantage over others. It is immoral to base any denunciation of businessmen or any regulation of business on the assumption that people should not take full advantage of their unequal opportunities.

4. There is no basis for the allegation that agriculture and manufacturing are somehow more real or more valuable than economic activity in the service sector or the financial sector. The idea that bankers or financial traders are not doing anything economically worthwhile — an idea made popular by Tom Wolfe's novel *The Bonfire of the Vanities* — is a slander. All economic activity that serves genuine human well-being is valuable. Admittedly, it can be difficult for a non-economist to see exactly what

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economic efficiency is obtained by a highly complex business activity. But that is usually a limitation in the observer, not in the activity. (This is not to adopt the subjectivist view that every activity finding market support is a worthy one. Vice, vulgarity, and vapidness are ubiquitous in our culture, and many people make handsome fortunes from them.)

5. Much regulation of economic activity is immoral, and those responsible for such immoral regulations are more to be condemned than those who fall afoul of them.

6. An important distinction exists in the law, as Donald J. Boudreaux wrote in connection with the Martha Stewart case:

An act that is *malum in se* is 'wrong in itself, in its very nature being illegal because it violates the natural, moral, or public principles of a civilized society.' Examples are murder, rape, and theft. In contrast, an act that is *malum prohibitum* is not obviously wrong — not obviously injurious to civil society — not clearly one that should be illegal. The Latin translation of this term is 'wrong because prohibited'; that is, the only reason a *malum prohibitum* act is wrong is that the government has declared it to be wrong." ("Insider-Trading Prohibitions Should Go out of Style," The Future of Freedom Foundation Web site, June 6, 2003)

Prosecutors would have quite enough to do if they focused on deeds that are illegal because they violate another citizen's rights. To the extent their discretion permits, therefore, prosecutors should give secondary attention to deeds that are illegal only because some politicians or regulators decided they did not like the behavior. When they cannot avoid prosecuting such harmless offenses, they should

seek the lightest possible punishment.

7. Given government's "ten thousand commandments," it is inevitable that businessmen will violate some of them and thus leave themselves vulnerable to power-seeking prosecutors. In an interview with Declan McCullagh (CNET News.com, May 18, 2004), T. J. Rodgers said: "The zoning ordinances and environmental ordinances are a classic example. I guarantee you that nobody truly understands them, and no plant can meet all of them simultaneously. So you end up with a dynamic that there are no laws, and there are no rules, and you're completely at the mercy of the local government." And Rodgers was speaking only of zoning and environmental ordinances!

8. Prosecutors say they must treat "obstruction of justice" seriously because, in the case of economic crimes, they rely heavily on voluntary cooperation. All right. But if, in the end, investigators plausibly conclude that no underlying, rights-violating offense was committed, they should overlook the "obstruction" as the very human reaction of an innocent person who was suddenly threatened with criminal prosecution. As lawyer David Feige wrote in *Slate* (May 6, 2004): "The problem is, when the criminal law holds ordinary people to superhuman standards, we all become vulnerable to this picking and choosing. And when the government falls in love with a crime for which it can pretty much arrest, prosecute, and incarcerate anyone at any time, we are none of us safer for it."

9. The idea of what a company owes to its shareholders has been expanded out of all proportion. If a person wishes his money to bring

him ever-expanding wealth, it is his responsibility to find the right stock. The directors of a company may not intend to maximize shareholder wealth. They may wish to invent new products or make old products widely available or expand the company's market share. These projects may attract certain investors, but be of no interest whatever to others. If a person does not know what the company's purpose is, or if its purpose does not mesh with his, he has an obvious course — don't invest!

10. Lastly, businessmen are quite right to be aggressive in taking every advantage to which they reasonably believe themselves entitled. It may turn out that they overreached and so broke the rules. But business — especially big business — should be looked upon like hockey. Rule-breaking should incur penalties, but a certain degree of rule-breaking should be reckoned as an inevitable part of the game. And the penalties for reasonable rule-breaking should therefore be civil and proportionate, not criminal or company-destroying.

The Business of America Is Freedom

No doubt, some businessmen who come under attack are guilty of rights-violating malfeasance by any reasonable measure. Every group has its bad apples. Moreover, we live a century after the time of America's great industrialists, and we know that there has been a rapid decline in America's moral standards during that period. It is not possible such a decline has left businessmen unaffected.

But that said, even today's businessmen will be found much more admirable when judged by the proper standards of "cowboy capitalism" than when measured

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Tax-and-Spend Policies Costing Politicians Their Careers

Sandra Fabry

During this year's election primary season, the issue of taxation was a decisive factor in races across the county. Numerous incumbents who had voted to raise taxes, or had refused to clearly rule out the option of tax increases, saw their careers come to an abrupt end.

Voters continued their rejection of politicians who taxed them at irregular rates, and they continued a trend that began earlier in the decade with voters taking to the polls to reject tax hikes by large margins at the ballot box.

Anti-Tax Trend Firmly Established

Two years ago, for example, Virginia voters rejected a sales tax increase in the Tidewater area and in the more liberal northern area of the state.

One year ago, after citizens rejected Alabama Gov. Bob Riley's (R) \$1.2 billion tax hike by 68 to 32 percent vote, residents of Seattle, Washington, known for their liberal sympathies, rejected a measure that would have added a 10 cent tax to every espresso drink.

In California, years of fiscal profligacy by the state government led to the unprecedented recall of Gov. Gray Davis (D). He was replaced by actor-turned-politician Arnold Schwarzenegger, who ran on a no-new-taxes platform. Schwarzenegger kept his word: California's 2004 budget did not include any tax increases.

In Oregon, a tax increase passed by the legislature in 2003 was put on the ballot by people's

Facts & Opinions
Question of the Quarter:
Should Iowa Adopt a Taxpayers Bill of Rights?
Send your thoughts on this issue to us at
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We will publish some of your ideas in the next issue
of *Facts & Opinions* in May 2005 and on our Website at
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In response to our previous question, is Iraq just a diversion?:
**Diversion Indeed! The battle in Iraq (not war) is merely one of the many
battles we are fighting and will continue to fight until we win the
WAR ON TERROR.**
Sam Jennison, Burlington

initiative and went down to a crushing defeat in February 2004.

Only weeks later, Californians again spoke out against higher taxes, defeating a proposal aimed at weakening the state's tough, two-thirds supermajority requirement for tax increases.

On the same day on the opposite coast, voters in the small ski resort town of Killington, Vermont protested high property taxes by voting to secede from the state and petition New Hampshire to take them in.

Tax Hikers Losing Debate, Jobs

"The last few years have clearly shown that tax hikers are on the losing side of the debate," said Grover Norquist, president of Americans for Tax Reform (ATR). "This summer, with primary ballots heating up, the issue became personal. Politicians seem to think their constituents are stupid — but, as this year's primaries showed, there is no such thing as a permanently sleeping electorate. Taxpayers know who their friends and foes are, and have chosen to cast their vote accordingly."

This year's unseating of tax hikers began in Nebraska, where Republican voters rejected the presumed leading candidate, Curt Bromm, in the race to replace retiring Congressman Doug Bereuter (R-1). Voters had not forgotten that Bromm, as speaker

of the unicameral State Legislature, had pushed several tax increases through the assembly over a veto by Gov. Mike Johanns (R). Voters chose Jeff Fortenberry, a Lincoln City Councilman and signer of ATR's Taxpayer Protection Pledge.

The momentum was also evident in Oregon, where the tax increase of 2003 was repealed by referendum in March of this year.

"The 2004 Oregon primary still felt the shockwaves of the defeated \$1 billion tax increase, with most Republican House members who voted for it not re-running, and high profile defeats in the primary when a serious challenger was involved," said Jason Williams, executive director of the Taxpayer Association of Oregon.

Voting for higher taxes cost the Republican Party nomination for State Sen. Jackie Winters, who sought a seat in Congress, and State Rep. Vic Backlund seeking re-election. Key Republican representatives and supporters of the tax increase, including Rob Patridge, John Mabrey, and Patt Farr, decided not to run for re-election. Realizing voters were likely to withdraw their support because of their votes for the tax increase, State Reps. Max Williams and Lane Shetterly accepted high-profile jobs in Gov. Ted Kulongoski's (D) administration.

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against the anti-individualist standards of a medieval social ideal. When businessmen are accused of abandoning traditional practices, we should answer, "Exactly!" When they are denounced for ignoring the public interest, we should reply, "Good for them!" And when they are charged with being selfish, we should say, "That is their value."

Forty-two years ago, Ayn Rand delivered a talk at Ford Hall Forum called "America's Persecuted Minority: Big Business." In it, she said: "Businessmen are the symbol of a free society — the symbol of America. If and when they perish, civilization will perish. But if you wish to fight for freedom, you must begin by fighting for its unrewarded, unrecognized, unacknowledged, yet best representatives — the American businessmen."

Let us heed her call to arms.

Mr. Donway is Associate Editor of the NAVIGATOR, a publication by the Objectivist Center in Poughkeepsie, New York. This article was reprinted with permission from the July/August 2004 edition of the NAVIGATOR. For more information, visit www.objectivistcenter.org.

Tax-and Spend Policies

Sandra Fabry

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Other Taxers Kicked out

As Karl Peterjohn, executive director of the Kansas Taxpayer Network, reported in the September issue of *Budget & Tax News*, Kansas voters continued a "Kansas revolution" and rejected Bill Kassebaum and Cindy Neighbor, the two GOP Legislators who led a recent, unsuccessful push for higher state taxes. Fiscal conservative incumbents Kay O'Connor and John Faber successfully fought off challenges from self-identified moderates.

Kansas Sen. Dave Corbin, chairman of the Senate Finance Committee, backed several tax increases and was challenged in the Republican primary by former Rep. Peggy Palmer, an ATR pledge signer with a good record on taxes. Palmer won in a landslide.

In South Carolina, the leading newspaper, *The State*, "Clearly, primary losses by Republican incumbents who supported and voted for tax hikes last year sent a loud and clear message to the Nevada GOP," said Chuck Muth, a political commentator and chairman of the Nevada Republicans Liberty Caucus. "Voters do not elect Republicans to raise their taxes. If they want to give the government more

of their money, they can vote for Democrats. The Nevada primary results show that Republicans who wander too far off the No-New-Taxes ranch are likely to be permanently booted out."

Jim Clark, a vice chairman of the Washoe County Republican Party, put it more bluntly in a September 10 article in the *North Lake Tahoe Bonanza*: "Memo to Nevada politicians: Don't raise taxes and avoid scandals unless you have a day job, because you ain't going to be in office long."

Arizona, Wisconsin Send Taxers Packing

Arizona tax hikers suffered a fate similar to that of their tax-hiking peers elsewhere. In the Grand Canyon State, 14 GOP representatives had teamed with Democrats to pass a big-spending budget for 2004-2005. Four of the 14 were defeated in their primary elections. In the Senate, Slade Mead (R) pushed a series of spending increases totaling \$1 billion, and Linda Binder (R) also pushed for higher spending. Mead was defeated in the primary by State Rep. John Huppenthal, a pledge-signer with a spotless record on taxes.

Binder retired rather than face voters again. State Rep. Bill Wagner (R) sought the open seat, but having sponsored the only tax increase package in the House this year, he was defeated by conservative anti-taxer Ron Gould. Sen. Jack Harper (R), a pledge-signer with a record of opposing tax hikes, defeated teacher union-backed candidate Susan Burke.

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Tax-and-Spend Policies

**Sandra Fabry
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In the last round of Republican primaries, one race in Wisconsin stood out. Senate Majority Leader Mary Panzer had reportedly worked behind the scenes to sabotage an effort to pass a strong Taxpayers Bill of Rights (TABOR). Her efforts were leaked to the public, and voters rejected her bid for re-election, favoring pledge-signer Glenn Grothman.

Trend Likely to Continue

Virginia activists, residents, and taxpayer advocacy groups are already looking beyond November and turning up the heat on the tax hikers of 2004 who will face voters in 2005. Serious challengers who have committed themselves not to raise taxes have arrived.

The vote for higher taxes already has claimed a casualty there: State Sen. Ken Stolle (R), who voted for a \$1.6 billion hike passed by the Legislature in April 2004,

sought the Republican nomination to replace retiring Congressman Ed Schrock. He lost to State Rep. Thelma Drake, a pledge-signer who opposed the tax hike. According to Virginia Club for Growth President Peter Ferrara, "Grassroots sentiment among Republicans in the state is overwhelmingly against the increase and those who voted for it, but business groups are already raising lots of money for the pro-tax incumbents.

"Leading elected Republican officials are also stating that they will support all incumbents, but the Virginia Club for Growth will be taking the position that the party and other elected leaders must stay out of primaries until a candidate is chosen, or else be tagged with the pro-tax label themselves," Ferrara said.

The trend to reject tax hikes and the politicians who support them became quite evident this year, and it is measurable not only in primary victories for anti-taxers

and the rejection of tax increases at the ballot, but also in other areas, as NTU Director of Government Affairs Paul Gessing pointed out.

"At the state level, with balancing the budget more of a necessity, the backlash against taxes can also be measured by the sheer number of Taxpayers Bills of Rights (TABORs) that are under consideration," he said. "With dozens of states considering the adoption of TABOR, including Wisconsin, Tennessee, New Hampshire, and many others, we are hoping to push Legislators to act proactively against the need for future tax hikes, not just to punish them after the deed has already been done. If the trend of punishing politicians for their 'tax-and-spend' votes continues and the TABOR is adopted on a more widespread basis, taxpayers will be the ultimate winners."

Ms. Fabry is an associate at American's for Tax Reform. Reprinted with permission from the Heartland Institute's BUDGET & TAX NEWS, www.heartland.org.