



CASCADE UPDATE

VOL. 6, No. 3

CASCADE POLICY INSTITUTE • PORTLAND, OREGON

FALL 1999

No taxation through litigation

Cascade report critiques "tax increases" through government lawsuits

State legislators recently debated how to spend the spoils of Oregon's share of federal tobacco settlement money. In Portland, city commissioners considered suing gun manufacturers. With the backdrop of similar actual and proposed government lawsuits across the country, Cascade will soon publish *No Taxation Through Litigation*, a report by Cascade adjunct scholar Peter J. Ferrara, which critiques this disingenuous trend and offers solutions. Though it focuses on cigarette manufacturers and the federal government, the report's central points

are applicable to other industries and to state and local governments. The following is excerpted from "No Taxation Through Litigation."

The strong opposition of voters to higher taxes has generally stifled legislated tax increases in Congress and state legislatures. As a result, the forces of Big Government are turning to other, less

The clearest example of this is President Clinton's ordered federal lawsuit against cigarette manufacturers to recover the alleged costs paid by Medicare to treat smoking-related illnesses. This follows an initial joint suit by the states against these companies to recover the alleged smoking-related costs of Medicaid. That suit resulted in a settlement with cigarette manufacturers agreeing to

"If the current [tobacco] lawsuit is successful, it will establish a powerful precedent.... The list of potential victims is endless, limited only by imagination."

— Peter J. Ferrara

overt means to impose effective taxes to finance their ever greater grasp for more power. Perhaps the most dangerous of these new means is taxation through litigation.

pay almost \$250 billion to the states over the next 25 years. In effect, this settlement imposed a \$250 billion tax in-

[Turn to Taxation, page 4](#)

National school choice expert visits Portland

"School Choice: Is Oregon falling behind?" was the topic of Jeanne Allen's July 22 luncheon presentation in Portland. Allen, president of the Washington, DC-based Center for Education Reform, reported on the state of choice, charter schools and other education reforms around the nation to an audience of over 80 people. Her conclusion: yes, other states are currently more on the cutting edge of choice than is Oregon. Our new charter bill is too restrained, but it's a start.

Among the luncheon attendees were members of the Tigard-Tualatin, Salem-Keizer, and Gladstone school districts, area private schools, the Multnomah County Commission on Children, Families and Community, and local school boards.

Rounding out her Oregon visit, Allen spoke at a day-long workshop on charter school development, hosted by the Oregon Education Consumers Coalition. Participants learned the nuts and bolts of Oregon's charter school law and the steps necessary to begin a school. During her stay, Allen was interviewed by Bill Graves of *The Oregonian*, Phil Hodgen of *The East Oregonian* (Pendleton), news/talk 750 KXL's Lars Larson, KUIK's Larry George, KPDQ's Georgine Rice, and Victoria Taft of KNEWS 620 AM.



Jeanne Allen, president of the Center for Education Reform, is interviewed by news/talk 750, KXL's Lars Larson, on his top-rated radio talk show.

Livability means choice

What is livability? Politicians, planners, and editorialists often use the word livability to mean someone else making decisions for you.

In contrast, we at Cascade think the foundation of livability is choice. That is, individuals have the moral right to chose where to send their kids to school, how they should save for their retirement, what charities to support, which transit company to patronize, and so forth. Livability is determined by the multitude of decisions that *we* make for *ourselves*.

With the passage of a moderate charter school bill, Oregon's legislature saw fit to allow parents a bit more control over where and how their children will be educated. That's good. We encourage public officials to continue down the path that gives individuals more control, and more decision-making power, over their own lives.

Unfortunately, some of Oregon's local public servants are working hard to take away our choices when it comes to how we design our homes. They think they know best what our houses should look like and where our cars should be parked.

City planners in Portland and Albany think a garage in the front of your home is bad. In July, Portland city commissioners unanimously approved an ordinance banning prominent front-facing garages on new homes. Albany officials haven't yet decided whether garage placement to the side or rear of a home will be "required or merely encouraged."

Planners justify such violations of your property rights in the name of livability. Out of sight, out of mind seems to be a guiding principle here. If we don't notice garages, we won't think about cars. Portland's ordinance also mandates a certain amount of window space on

street-facing home walls, thereby encouraging neighbors to watch the street, possibly reducing crime. Interesting theories, but even the planners admit they have no facts to back them up. Even if they did, it wouldn't give them the right to replace your perception of livability with theirs.

Livability is not achieved by narrowing choices through political action. Livability is achieved when individuals are free to choose how to fulfill their personal wants and needs without violating the rights of their neighbors. Livability is about choice. Don't let anyone take yours away.

Steve Buckstein
President

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Cascade Update is published quarterly by Cascade Policy Institute, Oregon's premier public policy research organization. Nothing in *Cascade Update* should be construed as an attempt to aid or hinder the passage of any legislation, or as an endorsement of any candidate.

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Celebrating school choice!

More than 500 metropolitan-area students will attend the private schools of their choice this fall thanks in part to the Children's Scholarship Fund-Portland (CSF-P), which is facilitated by Cascade. Amid balloons and cookies, a festive crowd of some 350 winning families and participating educators gathered on August 10 to learn more about the private scholarship program.

Maura White, a CSF-P board advisor and the executive director of Portland's Police Activities League, welcomed the families, local educators, and program supporters. Featured speakers included Kathy Gritzmacher, principal of Holy Redeemer Area School, who discussed how to succeed in private school, and Rita Petherbridge of the Oregon Home Education Network, who addressed the unique challenges of homeschooling.

Families cheered as CSF-P executive director Julie Riggs introduced Cascade president Steve Buckstein, noting that, "Without him none of us would be here in this room, because he is the person who had the vision to bring this program to Portland." Sam Wheeler of the Wheeler Foundation, a major supporter of CSF-Portland, was also warmly welcomed by the families, many of whom took the opportunity to personally thank him for his contribution.

Special thanks goes to Nabisco, Inc. for its food donation, Portland Music Company, which provided the sound system, and All Saints School for hosting the reception.



Hannah Wright and other scholarship recipients take part in activities during the Children's Scholarship Fund-Portland celebratory event.

"I want to take this opportunity to thank you for the blessing that the scholarship program has sent our way..."

— Denise L. Baker, Mother of Scholarship Recipient

Building a better transit system

Speaker says “curb rights” and open competition, not money-losing government monopolies, would best serve transit users

Seventy people attended Cascade’s June 23 Portland luncheon, “Tri-Met, Jitneys & Curb Rights: Exploring Transit Alternatives,” featuring Adrian Moore. Among the attendees were representatives from ODOT, C-Tran, Tri-Met, Portland State University’s Dept. of Urban Studies and Planning, and two local private transit companies.

Moore is the director of economic stud-

ies at the Reason Public Policy Institute in Los Angeles, and co-author of *Curb Rights: A Foundation for Free Enterprise in Urban Transit*. Prior to his visit, he was interviewed by radio talk show hosts Mary Starrett at KPdq and Victoria Taft of KOTK, and by Portland’s *Business Journal*.

Around the country and world, private companies are providing mass transit services, making a profit, and doing so without being a burden on taxpayers. For example:

- In Atlantic City, 190 privately-owned and operated jitneys (shuttle vans that run regular routes) ply the streets providing rides for consumers 24 hours a day, 365 days a year. One-way cash fare is \$1.50; frequent rider tickets cost \$1.25; senior citizens can buy tickets for \$.50. The private jitneys carry some 11 million passengers per year and operate without tax subsidies.
- New York’s city council recently reversed course and allowed a Caribbean immigrant and fledgling entrepreneur to operate a private van service in Brooklyn. The entrepreneur will operate 20 vans — which will provide 40 jobs — at a savings of 50 cents per ride compared to the city’s tax-subsidized bus fares.
- In Dusseldorf, Germany, a private bus company operates on many of the same government bus routes. The government bus system loses money, and half its revenue comes from taxes. The private company makes a profit and receives no tax subsidies.
- Black-owned minibuses (“kombi-taxis”) provide commercial services to



Adrian Moore

42% of black commuters in South Africa. Approximately 105,000 minibuses with capacities from 15 to 19 people provide unsubsidized service in major metropolitan areas.

A more vibrant private transit market could exist in Oregon, and around the U.S., if many legal restrictions were cleared away. Counterproductive laws and regulations impede, or outright prohibit, competition and deny consumers the attendant benefits of improved service and lower costs.

Competitive and entrepreneurial transit markets would work best, Moore contends, with the creation of property rights in curb zones, bus stops, and other pickup points. By creating exclusive and transferable “curb rights,” leased by auction, Moore maintains that such problems as schedule jockeying and curbside conflict among competing operators would be avoided.

Further, a market-driven environment would foster innovations. Entrepreneurs would be able to introduce ever better service, quickly revise schedules and route structures, and establish connections with other transit providers. With competition-fostered improvements, travelers would find public transit more attractive, a goal that government planners have tried — and failed — to achieve through their heavily subsidized monopolies.

To order the book *Curb Rights: A Foundation for Free Enterprise in Urban Transit*, contact Cascade at (503) 242-0900.

Cascade wishes to thank Hewlett-Packard Company for its sponsorship of the Moore luncheon.

Liberty Link

[Cato Institute](#)

“Cato has helped change the terms of debate by challenging Washington’s conventional wisdom with a provocative appeal for the future.” — *Newsweek*

Founded in 1977, the Cato Institute was named for *Cato’s Letters*, libertarian pamphlets that helped lay the philosophical foundation for the American Revolution. Like Cascade, the Cato Institute seeks to promote solutions that are consistent with the traditional American principles of individual liberty, limited government, and peace.

Cato’s work spans the national policy spectrum. Cato holds conferences across the country and world, and publishes books and studies, in addition to the *Cato Journal*, *Regulation* magazine, and its bimonthly newsletter, the *Cato Policy Report*.

In recent years, Cascade has organized visits from William Niskanen, Cato’s chairman and former chairman of Reagan’s Council of Economic Advisors, and José Piñera, co-chairman of Cato’s Project on Social Security and former Chilean minister of labor and social welfare. Cato’s address is: 1000 Massachusetts Ave. NW, Washington D.C., 20001. Call them at (202) 842-0200 or visit www.cato.org.



Fred Barnes, executive editor of *The Weekly Standard* and nationally known political commentator, relaxes with Cascade’s John Charles. Barnes interviewed Charles for a national PBS program on growth issues, scheduled to air in February 2000.

The changing face of Cascade

Cascade wishes former Children's Scholarship Fund–Portland (CSF-P) coordinator Hallie Shapiro all the best. She recently relocated to The Windy City where her husband is enrolled in graduate school at the University of Chicago.

Hallie helped organize CSF-P from the ground up. Her dedication to better educational opportunities motivated her to assist hundreds of parents during the application process and to help them find private schools for their children. Hallie's organizational skills were further put to good use as Cascade's executive assistant. She will be missed by the Cascade staff and the local families and private school personnel that have come to know her so well.

[Tamar Hare](#) joined the Cascade staff in mid-August to replace Hallie. Tamar is currently finishing her master's degree in public administration at Portland State University. She is enthusiastic about the opportunity to work with the families and schools involved in the scholarship program.



Hallie Shapiro



Tamar Hare

Outrageous law repealed!

Did someone in the state legislature hear Cascade's call to repeal outrageous laws? Rep. Judy Uherbelau (D) of Ashland sponsored HB 3302, which removed from the books an obscure law that prohibited exhibiting a person in a trance. Rep. Uherbelau took action when she learned that ORS, Sec. 167.870 was actually being enforced in her district, preventing Southern Oregon College from using a hypnotist at a fundraising event.

The trance exhibition law was named a runner-up of [Cascade's 1997 Oregon Outrageous Law Contest](#), which sought examples of humorous, unenforceable, outdated, or wasteful laws. Legislators should repeal another Contest winner: Oregon's prevailing wage law. Nicknamed "The Little Davis-Bacon Act" after its federal counterpart, this law needlessly drives up the cost of Oregon government construction projects by 30 to 40 percent. A task for the next legislative session?

Taxation

Continued from page 1

crease on smokers, as the cigarette prices paid by smokers are the only source of funds to finance these settlement payments.

If the government's Medicare suit is successfully pursued, then it would result in another, even greater tax increase. Such a suit would be wrong, and should be immediately stopped, for the following reasons:

Taxes are already too high. Smokers already pay high federal, state, and even local excise taxes on cigarettes. Studies show that these tax increases are already greater than the total costs to government that can be attributed to smoking. Moreover, these smokers already pay substantial payroll taxes and monthly premiums that cover most of the costs of Medicare. In addition, early deaths from smoking result in substantial net savings to government due to lower costs for Social Security, Medicare, and Medicaid.

No legal basis for a suit. No statute

grants the federal government authority to recover for the impact of general health effects of smoking on Medicare. Under the common law, the government could not recover on behalf of individual smokers, because they knew the dangers of smoking which have been widely publicized for decades, and assumed the risk. Moreover, the government assumed the risk of covering smokers under Medicare knowing that many would get sick due to smoking.

Unconstitutional claims. To hold cigarette companies liable for some general social cost of smoking through general statistical proof rather than proven specific harm to specific individuals would unconstitutionally deprive the companies of due process of law and the right to trial by jury. Indeed, the Constitution limits judicial power to trying specific cases and controversies. The courts have no authority to adopt general legislative remedies as this suit would effectively ask them to do.

Lawsuit would subvert democracy. Only Congress has the power to raise taxes. Indeed, Congress rejected the Clinton administration's proposed increase in cigarette taxes last year. The

attempt to achieve such a tax increase now through the courts would subvert the democratic process. It would amount to taxation without representation.

Who's next? If the current lawsuit is successful, it will establish a powerful precedent for taxation through litigation. This precedent would then be used to impose wide ranging taxes on other industries. The list of potential victims is endless, limited only by imagination.

This new taxation through litigation must be stopped. Suits seeking recovery for general social harm proved by general statistics should be prohibited in all federal courts. In addition, Congress should amend the equity powers of all federal courts specifically to remove any power of a federal court to order a tax increase. The states should each adopt these provisions for their courts as well.

Peter J. Ferrara is chief economist and general counsel of Americans for Tax Reform, and a Cascade adjunct scholar. Ferrara is the author of two previous Cascade reports on the Oregon Health Plan.