

27 January 2010

Today's Tabloid

PERSONAL NEWS FOR craig.kirchoff+fisccon@gmail.com

FISCALLY CONSERVATIVE BLOG FEEDS

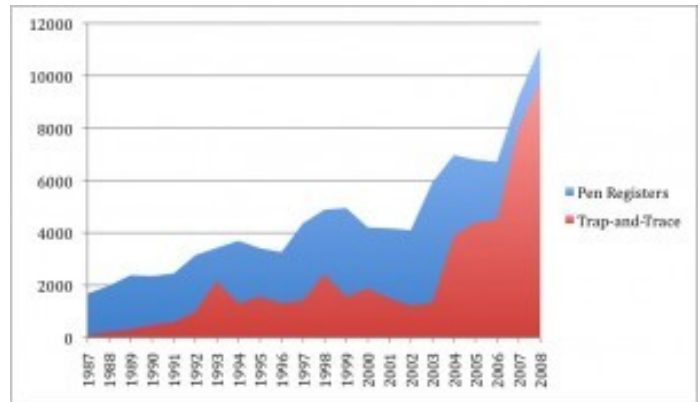
Fresh Surveillance Data Show Spike in Traffic Tracking [Cato at Liberty]

JAN 26, 2010 07:06P.M.

By Julian Sanchez

The Department of Justice is required to report annually to Congress on its use of an array of surveillance tools. These include so-called “pen register” and “trap-and-trace” orders (often combined as “pen/trap orders”), which give investigators realtime access to traffic data from a target’s telephone or e-mail/Internet accounts. In combination with another type of court order, these are sometimes used to gather location tracking data on cellular users, but they’re primarily used to establish patterns of communication—to determine who the target is in contact with, and when. (Those in contact with the target may then come under further scrutiny.)

Unfortunately, there’s been no public reporting on the use of pen-traps since a five-year dump the Justice Department submitted in 2004. It’s not clear whether Congress, at least, has been getting them—other such surveillance reports are typically posted on the DOJ Web site—but thanks to intrepid privacy researcher Chris Soghoian and the Freedom of Information Act, we now have statistics on the use of pen-trap orders. In 2002, the federal government sought 4103 pen register orders (affecting 6540 people’s phone lines). By 2008, that number had risen to a whopping 11,126 pen register orders (affecting 13,998 people’s phones)—in other words, an increase of more than 171%. Bear in mind, that’s 13,998 people having their call behavior monitored in realtime, *just* at the federal level, and not counting foreign intelligence pen/traps under FISA. (I nevertheless use the first full year after 9/11 as a comparison point, since one might expect an uptick in terror-related criminal investigations.) It’s also not counting government requests for people’s historical call records—records that *USA Today* reported in 2006 were being vacuumed into a massive database by the tens of millions.



As the graph makes clear, it has also become more common for agencies to routinely obtain trap-and-trace orders (for data on incoming calls) when they obtain a pen register order (for outgoing calls), though the extent of the increase may be exaggerated because the U.S. Marshals Service, which appears to get combined pen/trap orders by default, did not provide separate statistics for trap-and-trace requests prior to 2004. The Justice Department also now appears to have begun tracking orders for e-mail and electronic networks, though it’s unclear whether these are being counted separately or represent a subset of the general pen/trap figures. In 2008, the FBI, DEA, and U.S. Marshals Service reported a total of 208 such orders.

What explains that substantial spike, at a lag of several years after 9/11? One possibility is that increasingly sophisticated tools for social network analysis and pattern-based data mining have made pen/trap orders a more valuable tool—or at least made them *appear* more valuable to investigators—for ferreting out suspicious patterns or uncovering organizational structures. Fans of the justly-celebrated HBO series *The Wire* may recall the episode “Back Burners,” in which Detective Lester Freamon shows a map of the Stanfield crew’s communication patterns, suggesting that it’s typical of a drug-dealing organization. There’s another technological angle to consider: If automation and digitization of the request process make it relatively painless to get pen/trap data, agents may be more likely to request more of them.

Intriguingly, the U.S. Marshals Service accounts for a huge proportion of the increase. In 2002, they sought only 556 pen registers (compared with 1703 for the FBI and 1841 for DEA). That had grown nearly tenfold by 2008, to a stunning 5475 (far more than the 2092 sought by FBI or 3260 for DEA). This, surely, is the figure that most cries out for further inquiry. Why is the USMS doing *ten times* the amount of traffic surveillance they conducted in 2002? I’ve put in a query with their public affairs office, but I’d encourage any enterprising reporters out there to follow up as well. [↗](#)

FISCALLY CONSERVATIVE BLOG FEEDS

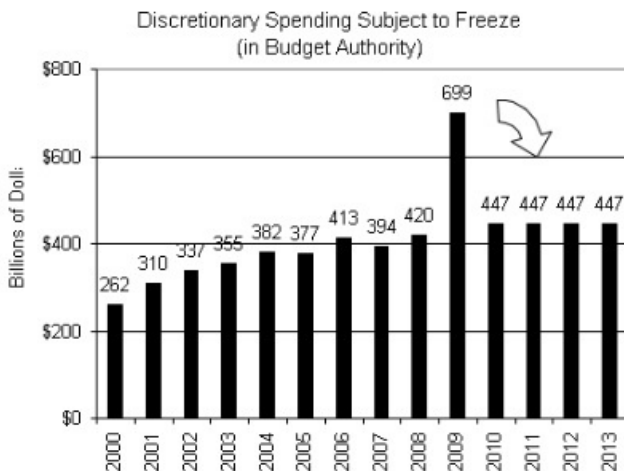
Obama's Spending Freeze [Cato at Liberty]

JAN 26, 2010 05:18P.M.

By Chris Edwards

President Obama is apparently planning to freeze a portion of federal spending for three years. The portion to be frozen is discretionary spending less spending on defense, homeland security, and veteran's affairs. That portion of spending—about 13 percent of the overall budget—would be held to \$447 billion between FY2010 and FY2012.

The chart puts the freeze in context by illustrating the recent growth in this portion of the federal budget. The data is in "budget authority," which is the amount of new spending authorized each year. Note that a portion of that authorized spending usually splashes over into subsequent years.



The first thing to note is that the portion of the budget to be frozen grew 60 percent between 2000 and 2008, during a period of low inflation. And since this portion of spending excludes defense, homeland security, and veterans affairs, it has nothing to do with the response to 9/11 or various foreign wars.

Then comes 2009 and the massive "stimulus" bill, which pushed up spending on this part of the budget to \$699 billion. Finally, the figure shows the freeze at \$447 billion, which is 71 percent higher than the level of authorized spending in 2000.

Here's the important point: a very large part of the 2009 spending spike of \$699 billion will be sloshing forward into 2010 and later years. (As illustrated by my fancy arrow in the chart). The new CBO budget estimates (Table A-1) show that only 18 percent of authorized stimulus funding will be spent in 2009, with the rest sloshing forward.

Obama is "freezing" the budget only because he already has a large amount of cash floating around from the stimulus bill that he can spend on all his favorite big government projects in 2010 and beyond. It budget-speak, federal spending measured in "outlays" will be far from frozen.

Finally, a president's proposals for discretionary spending beyond the current budget year are meaningless. Obama will be back with a new budget in February 2011, no doubt with a whole new set of assumptions and priorities.

Data note: chart data of budget authority from OMB, *Mid-Session Review*, Table S-14, and budget historical tables.

FISCALLY CONSERVATIVE BLOG FEEDS

Tuesday Links [Cato at Liberty]

JAN 26, 2010 05:15P.M.


By Chris Moody

- How the right has 'Avatar' wrong: "At its core, the movie is about defending property rights — something conservatives should embrace."
- Americans tuning out the State of the Union: "When Obama had to make way for 'Lost,' some lamented the fact that many Americans preferred trash TV over presidential enlightenment. But the public's lack of interest in the SOTU is actually a sign of political health."
- Why the health care takeover failed.
- Obama's "mini-me" plan for health care.
- Podcast: "U.S. Should Cash Out of Social Security" featuring Michael D. Tanner.

FISCALLY CONSERVATIVE BLOG FEEDS

ATR and CFA to Senate: Oppose PAYGO [Americans for Tax Reform]

JAN 26, 2010 05:11P.M.

After having rejected the Conrad/Gregg commission amendment, the U.S. Senate will be taking up Sen. Harry Reid's Pay-as-You-Go amendment, yet another flawed idea. ATR and CFA will be rating ... 

FISCALLY CONSERVATIVE BLOG FEEDS

Groopman on How Behavioral Economics Undermines the Case for Central Planning [Cato at Liberty]

JAN 26, 2010 04:23P.M.

By Michael F. Cannon

In *The New York Review of Books*, oncologist and author Jerome Groopman delivers a stunning rebuke to those in the Obama administration (read: OMB director Peter Orszag) who think the federal government can improve health care quality by telling doctors how to practice medicine:

in the Senate health care bill...Doctors and hospitals that follow "best practices," as defined by government-approved standards, are to receive more money and favorable public assessments. Those who deviate from federal standards would suffer financial loss and would be designated as providers of poor care...

Over the past decade, federal "choice architects"—i.e., doctors and other experts acting for the government and making use of research on comparative effectiveness—have repeatedly identified "best practices," only to have them shown to be ineffective or even deleterious.

For example, Medicare specified that it was a "best practice" to tightly control blood sugar levels in critically ill patients in intensive care. That measure of quality was not only shown to be wrong but resulted in a higher likelihood of death when compared to measures allowing a more flexible treatment and higher blood sugar. Similarly, government officials directed that normal blood sugar levels should be maintained in ambulatory diabetics with cardiovascular disease. Studies

in Canada and the United States showed that this "best practice" was misconceived. There were more deaths when doctors obeyed this rule than when patients received what the government had designated as subpar treatment (in which sugar levels were allowed to vary).

That's just one of many examples Groopman offers of where government planners have gone awry. He concludes:

Ironically, the failure of experts to recognize when they overreach can be explained by insights from behavioral economics...

The care of patients is complex, and choices about treatments involve difficult tradeoffs. That the uncertainties can be erased by mandates from experts is a misconceived panacea, a "focusing illusion."

Read the whole thing. 

FISCALLY CONSERVATIVE BLOG FEEDS

Data Privacy Day's Man About Town [Cato at Liberty]


JAN 26, 2010 03:18P.M.

By Jim Harper

Betcha didn't know that January 28th is Data Privacy Day. That's the day on which it's customary to give gifts of cash and money to your favorite privacy advocate. No, not really. Though Hallmark hasn't gotten a hold of it, it is a day on which some extra attention gets paid to privacy issues.

I'll be speaking at two events coinciding with Data Privacy Day. On Wednesday, I'll be speaking at the 2010 Internet Data Privacy Colloquium put on by a group called Dialogue on Diversity. Register here.


And on Thursday I'll be speaking at an event put on by the Future of Privacy Forum called "Online Privacy: Your Reputation is ON the LINE." (Get it? "ON the LINE"? Online? We're talkin' computers, folks.) You can register for it on the event's page.

There you have it! Data Privacy Day! The one day this year, among many, that you should lavish your favorite privacy expert with gifts and praise. And gifts. 

FISCALLY CONSERVATIVE BLOG FEEDS

Mr. Freeze? Hardly. The Fake Spending “Restraint” of Obama [Americans for Tax Reform]

JAN 26, 2010 02:40P.M.

The political media is awash in news that President Obama will propose a freeze in non-defense, non-security discretionary spending over the next three years. This will reduce the spending basel... 

FISCALLY CONSERVATIVE BLOG FEEDS

Obama the Deficit Peacock [Cato at Liberty]

JAN 26, 2010 02:35P.M.

By Tad DeHaven

Last week the Democratic-friendly Center for American Progress published an essay entitled: “How to Spot a Deficit Peacock: Four Ways to Tell When Someone Isn’t Serious About the Deficit.” According to the author, “Deficit peacocks like to preen and call attention to themselves, but are not sincerely interested in taking the difficult but necessary steps toward a balanced budget.”

#2 on CAP’s list is particularly interesting given that President Obama is reportedly going to propose a three-year freeze on non-defense discretionary spending in his upcoming budget:

Beware anyone offering easy answers. We face a very large budget gap over the coming decade, and the scale of the problem is such that no one solution is going to solve it all. It is going to take a mix of increased revenues, spending reductions, and improved government efficiency to get our fiscal house in order. Those who claim that we could get the budget back to sustainability if we only cut out earmarks, or say that the solution is to simply freeze discretionary spending, are just peddling fiscal snake oil.

If freezing discretionary spending is “peddling snake oil,” what does the CAP consider proposing to freeze only the non-defense portion of it?

Although I want to give the administration credit for proposing to at least freeze *something*, it’s too little too late. The *Washington Post*, which spoke with senior administration officials on the details, says that “the freeze would shave no more than \$15 billion off next year’s budget.” That’s chump change compared to the president’s \$787 billion stimulus bill and \$900 billion for health care reform. And as I warned in December, any new-found “austerity” on the part of the president would

be a political sleight of hand:


The “minibus” appropriations bill signed by the President last week jacked up funding by a combined 8 percent for programs ranging from education to housing to transportation. And that’s at a time when inflation is low. Further, funding hasn’t been passed yet for the president’s recently announced troop surge in Afghanistan, which will cost around \$40 billion per year.

President Obama will be probably be announcing in his new budget a FY2010 deficit that’s even larger than FY2009’s massive \$1.4 trillion deficit. He’s blowing the bank on his stimulus bill, giant health care bill, and large increase in FY2010 appropriations. He’s also looking at the polls, which show his plunging popularity and rising concerns over federal spending and debt.

He’s got to pretend to introduce an “austere” budget for his political survival and the political survival of Democrats up for election next year. That’s why I’m wondering whether the Democrats are purposely jacking up FY2010 spending so high so that they can show a freeze or even “cuts” for FY2011.

Today the Congressional Budget Office released its budget outlook for the next ten years. One paragraph in particular puts the president’s proposed deficit-reduction effort in context:

Those accumulating deficits will push federal debt held by the public to significantly higher levels. At the end of 2009, debt held by the public was \$7.5 trillion, or 53 percent of GDP; by the end of 2020, debt is projected to climb to \$15 trillion, or 67 percent of GDP. With such a large increase in debt, plus an expected increase in interest rates as the economic recovery strengthens, interest payments on the debt are poised to skyrocket. CBO projects that the government’s annual spending on net interest will more than triple between 2010 and 2020 in nominal terms, from \$207 billion to \$723 billion, and will more than double as a share of GDP, from 1.4 percent to 3.2 percent.

In the president’s first year in office, he continued the Bush spending spree. He supported jacked-up appropriations, and he’s proposing more defense and entitlement spending. And now he proposes a non-defense discretionary freeze with savings that would pale in comparison to the rising cost of financing the federal debt. Calling the president a “deficit peacock” would probably be too kind. 

FISCALLY CONSERVATIVE BLOG FEEDS

In Before the Ban [Cato at Liberty]

JAN 26, 2010 02:30P.M.

By Jason Kuznicki

From the *Washington Post*:

Travel along a two-block stretch of Central Avenue in Prince George's County, and you'll find a staggering 11 fast-food restaurants.

For community activist Arthur Turner and state Sen. David C. Harrington (D-Prince George's), the strip is evidence of the proliferation of burger joints and Chinese takeouts in the county, especially in poorer, inner Capital Beltway communities.

Pointing to studies that rank Prince George's residents among the least healthy in Maryland, Turner and Harrington want to limit new fast-food restaurants in the county, a far stricter approach than what has been enacted in such places as New York City and Montgomery County, which banned the use of trans fats in those establishments...

"Our county is inundated with unhealthy food choices," Turner said. "In some areas, if someone wants a healthy choice, there are no options. We want healthy options in our community."

Opponents of such efforts say that what people eat is a matter of personal choice and that it should be up to the free market to determine which restaurant goes where...

Turner said that his group identified Panera Bread and Chipotle as preferable alternatives to a fast-food burger restaurant and that he plans to seek similar compromises with other developers.


Given the weak correlation between dieting and long-term weight loss, and the very, very weak correlation between dieting and *the marginal difference between Chipotle and McDonald's*, basically all that we have here are politicians and activists remaking the community to suit their personal tastes, as if Prince George's County were just *SimCity* with slightly cooler graphics.

My prediction: This is a very good deal for any fast food restaurant that gets in before the ban. 

FISCALLY CONSERVATIVE BLOG FEEDS

New Democrat Campaign Strategy [The Club for Growth]

JAN 26, 2010 02:11P.M.

Leading Democrats, including DSCC chairman Senator Robert Menendez, want to get Republican opponents on the record regarding the following questions in the hope that it will paint them as too extreme to be elected: Do you believe that Barack Obama is a U.S. citizen? Do you think the 10th Amendment bars Congress from issuing regulations like minimum health care coverage standards? Do you think programs like Social Security and Medicare represent socialism and should never have been created in the first place? Do you think President Obama is a socialist? Do you think America should return to a gold standard? 

FISCALLY CONSERVATIVE BLOG FEEDS

'Avatar' Is about Property Rights [Cato at Liberty]

JAN 26, 2010 01:47P.M.

By David Boaz


In the *Los Angeles Times* today, I write about "Avatar", which has just become the biggest-grossing movie in Hollywood history, and how conservatives have missed the issue at its core:

Conservatives see this as anti-American, anti-military and anti-corporate or anti-capitalist. But they're just reacting to the leftist ethos of the film.

They fail to see what's really happening. People have traveled to Pandora to take something that belongs to the Na'vi: their land and the minerals under it. That's a stark violation of property rights, the foundation of the free market and indeed of civilization....

"Avatar" is like a space opera of the Kelo case, which went to the Supreme Court in 2005. Peaceful people defend their property against outsiders who want it and who have vastly more power. Jake rallies the Na'vi with the stirring cry "And we will show the Sky People that they cannot take whatever they want! And that this is our land!"

Economists may wonder about the claim that "Avatar" is the highest-grossing film of all time. The Hollywood Reporter estimates that so far it may only have sold half as many tickets as the 1997 "Titanic," and Box Office Mojo says that adjusted for inflation "Gone with the Wind" remains the movie with the highest U.S. revenue, followed by "Star

Wars." the message, now that it's clearer. And that's the heart of the matter. 

FISCALLY CONSERVATIVE BLOG FEEDS

Obama's Dilemma [Cato at Liberty]

JAN 26, 2010 01:41P.M.

By Roger Pilon

Today Politico Arena asks:

State of the Union: What Should Obama Say?

My response:

Obama's in a difficult spot: His head tells him to tack right, but his heart's not in it — and he's not the first Democrat to be in that spot. That's brought out today in a CNN Opinion piece, "When liberals revolt," written by Arena's (and Princeton's) Julian E. Zelizer. Tracing similar dilemmas that Johnson, Carter, and Clinton faced, Zelizer shows how they all paid a price for tacking right, which it looks like Obama may do. Johnson faced primary challenges that led him to withdraw from the 1968 race. Carter was challenged by Ted Kennedy. He prevailed; but weakened, he then lost to Reagan in 1980. And Clinton's move to the center after the disastrous 1994 midterm elections helped him win reelection, Zelizer argues, but it also left him with a thin legislative record on domestic policy.

In short, moving right has its costs, Zelizer claims. Many liberals are "deeply unhappy with the president, believing that he has already drifted too far away from the promises that animated his supporters in 2008." He'll need those liberals in 2010 and 2012. Pointing to the "long tradition of Democratic presidents taking the left for granted at a cost to their administrations," Zelizer notes that they learned "that the ire of the left — a constituency that is very vocal, highly mobilized and politically engaged — can cause enormous damage."

That it can. But can the left do more than cause enormous damage? In particular: Can it govern? Zelizer cites Ted Kennedy castigating Carter, saying that "the Democratic Party needed to 'sail against the wind' of conservative public sentiment by using the federal government to help alleviate social problems." Fine speechifying. But will it get you (re)elected — much less enable you to govern? The evidence is not encouraging. In fact, the deeper problem the left is facing is that self-identified conservatives in America outnumber liberals by better than two to one. Cambridge may have voted against Scott Brown by 84 to 14, but that just shows how out of touch Harvard is *with the rest of Massachusetts* — to say nothing of the rest of the country. Obama won not because the country was enthralled with his vague message, but because his opposition, like Clinton's in 1996, was so uninspiring. In sum, the left's problem — and Obama's — is that the country isn't buying

FISCALLY CONSERVATIVE BLOG FEEDS

Union Membership Declines [The Club for Growth]

JAN 26, 2010 01:35P.M.

As Tyler Cowen said, I s ability to influence elections and legislation. On Friday, the Labor Department reported private-sector unions lost 834,000 members, bringing membership down to 7.2% of the private-sector work force, from 7.6% the year before. The broader drop in U.S. employment and a small gain by public-sector unions helped keep the total share of union membership flat at 12.3% in 2009. In the early 1980s, unions represented 20% of workers. 

FISCALLY CONSERVATIVE BLOG FEEDS

Agricultural Exceptionalism [Cato at Liberty]

JAN 26, 2010 12:56P.M.

By Sallie James

House Agriculture Committee Chairman Colin Peterson (D, Sugarbeet Farmers) announced yesterday [\$] that he would begin hearings on the 2012 Farm Bill this spring. I'm still recovering from the traumatizing 2008 Farm Bill fight, so I heard this news with some trepidation.

But wait! Put those red pens away, folks, because Chairman Peterson plans to keep on spending on agricultural programs. Heaven forbid that agriculture should take any of those "cuts" we've been hearing so much about. :

House Agriculture Committee Chairman Collin Peterson, D-Minn., said... he is determined to write a bipartisan bill that is within the funding baseline that exists in 2012.

The funding baseline is the amount of money that the Congressional Budget Office determines would be spent on all programs in the farm bill if the same programs were to continue after 2012. CBO projects the funding levels based on spending in programs in past years.

Peterson said at least initially he expects each major farm bill section — the farm program, conservation and nutrition — to stay within its 2012 baseline.

He also specifically pledged to fight off any attempts to lower direct

payments, which flow to current or past farmers of certain crops year-in-year-out, regardless of whether they still farm or not.

Some further details on his plans for the next farm bill can be found in this *National Journal* article [[\\$ again, sorry](#)] but the gist of it is that Chairman Peterson doesn't want reformers interfering the way they did last time, even if farmers were left practically unscathed from the battle.

In a speech to the National Association of Wheat Growers and U.S. Wheat Associates, Peterson said that reformers "who don't understand how this works ... defined what reform is" in 2008. Peterson said there should be changes to the farm bill, but he ridiculed one of the reformers' biggest goals: limitations on payments to big farmers.

The campaign to lower payment limits "is not reform. It's an ideology," he said. Reformers want Congress to decide what size farms should get subsidies, a notion that Peterson rejects. "We are not smart enough in government to decide what farm size is," he said.

(Sidebar: Isn't it cute how Chairman Peterson couches his opposition to farm payment limits in libertarianish terms about how government "isn't smart enough." His support for a 80+-year-old suite of government interventions suggests he is not as skeptical about government's smarts as he indicates in this little political aside. But I digress.)

And in a charming dismissal of the importance of free trade (he's an old-hand at dismissing international obligations in this area), Chairman Peterson offered this:

Peterson said he did not think pressures to comply with trade agreements would be too much of a problem in the farm bill because "the trade situation is dead in the water," and negotiators realize they cannot get approval from Congress if agriculture is not satisfied. "We've got some power over that system," he said.

"I am not going to turn myself into a pretzel to accommodate this latest trade agreement," he said.

A disappointing start to the 2012 Farm Bill fight, to be sure, but my hope is not dashed. With any luck, the recent signs of voters' disgust with Washington will translate into some extra political support for those of us working for real reform. (see examples [here](#) and [here](#).) 

FISCALLY CONSERVATIVE BLOG FEEDS

On CNBC's Kudlow Report Tonight [Larry Kudlow's Money Politic\$]

JAN 26, 2010 12:39P.M.



This evening at 7pm ET:

OBAMA'S SPENDING FREEZE

- President calls for 3-yr freeze
- Is the fiscal tide tide finally turning?
- Obama the supply-sider??

CNBC's Hampton Pearson reports from Washington.

- *Robert Reich, Fmr. Labor Secretary; Author, "Supercapitalism"; CNBC Contributor Univ. of CA., Berkeley, Prof. of Public Policy
- *Dan Mitchell, senior fellow at the Cato Institute

AIG...DID THE NY FED ENGAGE IN A COVER UP?

Sen. Jim DeMint will join us from Washington.

FED WATCH: FED WEIGHS INTEREST ON RESERVES

- *David Goldman, Senior Editor First Things Magazine
- *Vincent Reinhart, American Enterprise Institute Resident Scholar; Fmr. Dir. of Monetary Affairs at the FOMC

GOP 2010 OUTLOOK & THE SCOTT BROWN REVOLUTION

So where's the leadership?

Sen. John Cornyn (R-TX) will be aboard.

MARKETS... IS THERE BUBBLE TROUBLE AHEAD?

Fortune's Shawn Tully will address four potential asset bubbles facing investors.

Please join us. *The Kudlow Report*. 7pm ET. CNBC. 

FISCALLY CONSERVATIVE BLOG FEEDS

Pence Is Not Running for Senate [The Club for Growth]

JAN 26, 2010 11:54A.M.

Erick Erickson at RedState has the scoop, including Pence The letter starts off with: As many of you are aware, I have been approached about running for the United States Senate in 2010. Karen and I have been humbled by the outpouring of support and encouragement which we received from across Indiana, especially since there are several capable and qualified candidates already seeking the Republican nomination. After much prayer and deliberation, I have decided to remain in the House and to seek reelection to the 6th Congressional District in 2010.



FISCALLY CONSERVATIVE BLOG FEEDS

Mayors Want More Federal Money [Cato at Liberty]

JAN 26, 2010 10:24A.M.

By Tad DeHaven

Hundreds of city leaders are in Washington for the winter meeting of the U.S. Conference of Mayors. Considering that winter weather in our nation's capital is about as warm as Barney Frank's personality, there's only one reason for the mayors to meet there: grovel for more federal hand-outs.

From the *New York Times*:

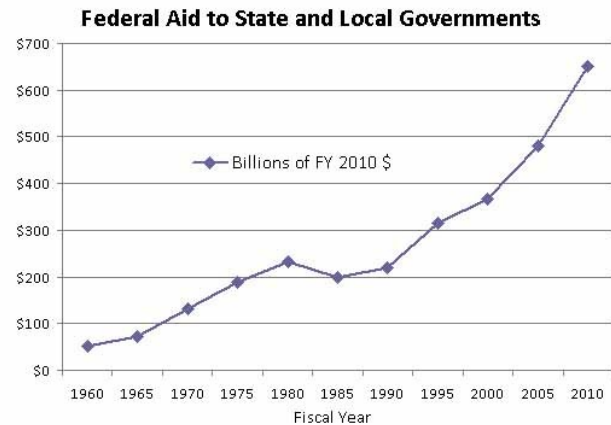
Saying that last year's \$787 billion economic stimulus plan has failed to ease urban unemployment, the nation's mayors are asking the federal government for a second wave of stimulus money.

If you don't succeed the first time, apparently you should fail, fail again. Charleston's mayor, Joseph P. Riley Jr., says that "most economists" believe more federal stimulus spending is the "only thing" that can reduce unemployment. Most Keynesian economists—such as Mark Zandi and Paul Krugman—perhaps, but the broader profession is actually divided on the issue.

The mayors are upset that they "are being deprived of the federal aid owed to them." To be fair, they are referring to the fact that formulas used to allocate federal surface transportation funds in the stimulus bill went disproportionately to non-metro areas. But this only serves to illustrate why it's inefficient for citizens to be taxed by the federal government only to have the money returned to state and local governments through some politicized mechanism. State and local governments should fund their own transportation needs. But mayors

are all too happy to receive the "free" money from Washington than funding their spending through the more transparent method of taxing their own constituents.

It takes a tremendous amount of gall for some officials and analysts to argue that the federal government is depriving state and local governments of resources. Donald Kettl, the dean of the School of Public Policy at the University of Maryland, made such a claim in the December issue of *Governing*. The chart shows that federal subsidies to state and local government have been going through the roof:



Source: U.S. Budget, FY2010, Analytical Perspectives, Table 8-2

Instead of wasting time and money trying to get federal taxpayers to make their political careers easier, the nation's mayors should focus on solving their own problems, which as a Cato essay on HUD community development programs notes, are often a result of poor policies:

The reality is that no amount of federal money can overcome the local hurdles to growth in cities such as Detroit—including political corruption and destructive tax and regulatory policies. Indeed, just like international development aid, federal aid to the cities likely increases corruption and stalls much-needed local reforms.

With the federal government running huge deficits, it cannot afford to fund ineffective and often wasteful local development projects. Community development is a local concern, and only local leaders and businesses using their own funds can make sound cost-benefit decisions on projects. By providing local leaders with handouts from Washington, we simply encourage them to make irresponsible decisions. At the same time, experience has shown that federal politicians use local projects as political tools that are disconnected from sound economics.

FISCALLY CONSERVATIVE BLOG FEEDS

Biased Budget Reporting [Cato at Liberty]

JAN 26, 2010 10:22A.M.

By Jason Kuznicki

I was certainly surprised to see Barack Obama propose any sort of spending freeze. Less surprising, however, is how it's been reported.


For reasons that I admit escape me, it is apparently a law of journalism that any budget-related act will be made to look as stingy as possible. Remember this when you read the news.

Spending increases that were planned all along aren't considered increases at all and do not make the news. *Unplanned increases*, those over and above the planned ones, are reported as though only the unplanned parts were increases. *Large spending increases* get extra praise for boldness. *Reductions in the rate of spending growth* are called "spending cuts." *Real though tiny cuts* are described as draconian measures. We would probably have to invent a new word, something scary with reference to the intimate anatomy, if significant, across-the-board spending cuts ever arrived. Within most of our lifetimes, this has never happened.

Today's reporting fits the pattern perfectly. The *Washington Post* headline proclaims, "Obama to Propose Freeze on Government Spending." The *New York Times* declares, "Obama to Seek Freeze on Some Spending to Trim Deficits." It is, we learn, "an initiative intended to signal his seriousness about cutting the budget deficit."

Wonderful! Or stingy! Or both!

But not, you know, accurate. The details are in the fine print, and they don't remotely live up to the headlines. The freeze applies only to discretionary spending. It doesn't touch military or entitlement programs, and these are the large majority of the budget. It may not even be a meaningful freeze on the discretionary portion, as my colleague Dan Mitchell points out. And it's only down in the fifth paragraph where the *Times* notes that "The estimated \$250 billion in savings over 10 years would be less than 3 percent of the roughly \$9 trillion in additional deficits the government is expected to accumulate over that time."

In other words, today's news is a virtual nothing with almost no likelihood of being carried through anyway. If this is "intended to signal seriousness," I wonder what an unserious proposal would look like. I also wonder what sort of proposals we'd get from our politicians if our media reported on budget matters without its deeply ingrained bias against fiscal discipline. 

FISCALLY CONSERVATIVE BLOG FEEDS

NRA Cares More about NRA Than Gun Rights, Liberty, Professional Courtesy [Cato at Liberty]

JAN 26, 2010 08:53A.M.

By Ilya Shapiro

Yesterday the Supreme Court granted the NRA's motion for divided argument in *McDonald v. Chicago*. What this means is that Alan Gura's 30 minutes of argument time on behalf of Chicagoland gun owners just became 20, with 10 going to former Solicitor General Paul Clement, whom the NRA hired at the last minute to pursue this motion and argument. (Full disclosure: Alan Gura is a friend of mine, and of Cato.)

The NRA's motion was premised on the idea that Alan had not fully presented the substantive due process argument for selective incorporation of the Second Amendment — presumably out of an outsized concern for the Privileges or Immunities Clause arguments about which I've previously blogged and written a law review article. This is a highly unusual argument and is a facial slap at Alan's abilities as an advocate. Sadly, it's also typical of how the NRA has behaved throughout this case and before that during the *Heller* litigation — sabotaging Alan at every turn and showing again and again that, even in the face of winning arguments that fully support its legal positions, the NRA prefers to seek glory for itself rather than presenting the strongest case for its purported constituency of gun owners.

Alan rightfully opposed the NRA's motion because the group's participation at argument adds nothing substantive to the case. No one will ever know why the motion was granted, as the Court need not (and did not) provide any reasons. Nonetheless, it's a safe bet that this is solely a testament to Clement's talent and reputation (notably, the motion was not filed by any of the NRA's other excellent attorneys, who briefed and argued their case in the lower courts and in a cert petition and brief before the Supreme Court).

I have great respect for Paul Clement, and have worked with him by filing amicus briefs in two cases he's already argued this term, but I do take issue with his repeated suggestion that the motion's purpose — and the reason behind its granting — was so that "all the avenues to incorporation, including the due process clause, are fully explored at the argument." This kind of comment — again impugning Alan's litigation strategy — is uncalled for, and renews concerns over the NRA's conduct.

Throughout this case, Alan has consistently and forcefully advocated for the Second Amendment's incorporation under the Due Process Clause. That didn't change when his case was taken up by the Supreme Court. The thing is that the due process arguments are not all that complex, and simply do not merit the same care and attention in the briefs as

arguments based on the Constitution's actual text and history. A first-year law student who's taken constitutional law – let alone a Supreme Court clerk – could write a due process incorporation argument in her sleep! In any event, the oral argument will be driven by the justices' questions, not by any long soliloquies by counsel. Alan's – and all attorneys' – job is to be ready for anything.

If the NRA were concerned about the final outcome of the case, it would be unlikely to attack Alan's strategy or question his preparation (an odd way to be "helpful" to one's side). It is not a stretch to predict that this case will be favorably decided at least in part on due process grounds, however, so what we are seeing here is likely an attempt by the NRA to position itself as responsible for such a victory – and that Alan isn't.

Ultimately, then, the NRA is engaging here in fundraising, not liberty-promotion or ethical lawyering. 

FISCALLY CONSERVATIVE BLOG FEEDS

Obama's Spending Freeze: Is It Real or Is He Copying Bush? [Cato at Liberty]

JAN 26, 2010 08:48A.M.


By Daniel J. Mitchell

As reported by the *Wall Street Journal*, the Obama Administration will propose a three-year freeze for a portion of the budget known as "non-defense discretionary" spending. Many critics will correctly note that this is like going on a drunken binge in Vegas and then temporarily joining Alcoholics Anonymous. Others will point out that more than 80 percent of the budget has been exempted, which also is an accurate criticism. Nonetheless, even a partial freeze would be a semi-meaningful achievement.

But don't get too excited yet. It is not clear whether the White House is proposing a genuine spending freeze, meaning "budget outlays" for these programs stay at \$477 billion for three years, or a make-believe freeze that applies only to "budget authority." This is an enormously important distinction. Budget outlays matter because they represent the actual burden of government spending. Budget authority, by contrast, is a bookkeeping measure that – at best – signals future intentions. During the profligate Bush years, for instance, apologists for the Administration tried to appease fiscal conservatives by asserting that budget authority was growing at ever-slower rates. In some cases, they were technically correct, but their arguments were deceptive because real-world spending kept climbing to record levels. And needless to say (but I'll say it anyhow), future intentions never became reality.

Domestic discretionary spending soared from less than \$350 billion to more than \$600 billion during the Bush years (and rose almost another

\$100 billion in Obama's first year!). If the Obama Administration proposes a genuine outlay freeze, he will be taking a genuine (albeit small) step in the right direction. If the "freeze" applies only to budget authority, however, that will be another indication we are in George W. Bush's third term.


To attack the \$1.4 trillion deficit, the White House will propose limits on discretionary spending unrelated to the military, veterans, homeland security and international affairs, according to senior administration officials. Also untouched are big entitlement programs such as Social Security and Medicare. The freeze would affect \$447 billion in spending, or 17% of the total federal budget, and would likely be overtaken by growth in the untouched areas of discretionary spending. It's designed to save \$250 billion over the coming decade, compared with what would have been spent had this area been allowed to rise along with inflation. ...administration officials acknowledged the freeze is directed at only a small part of overall spending, but that fiscal discipline has to start somewhere. President Obama had requested a 7.3% increase last year in the areas he now seeks to freeze. 

FISCALLY CONSERVATIVE BLOG FEEDS

Let Me School You in My Austrian Perspective [Cato at Liberty]

JAN 26, 2010 08:32A.M.

By Julian Sanchez

It's been making the rounds, but in case anyone hasn't seen it, this Hayek/Keynes Battle Rap – with Friend-of-Cato Russ Roberts penning the rhymes of F.A. (for "Flow Assassin") Hayek – may be humanity's greatest contribution to the fields of music, theater, and political economy all at once: 

FISCALLY CONSERVATIVE BLOG FEEDS

The Case of the Missing Evidence [Cato at Liberty]

JAN 26, 2010 08:31A.M.

By Andrew J. Coulson

Last fall, the 9th Circuit Court of Appeals reinstated a lawsuit against Arizona's K-12 scholarship donation tax credit program. Under the program, citizens can donate to non-profit organizations that help families pay for private school tuition, and in return, the donors receive a dollar-for-dollar tax cut. The 9th Circuit, ruled that the program violates the Establishment Clause of the First Amendment, because many taxpayers choose to donate to religious scholarship-granting organizations whose scholarships are only usable at religious schools. This, in the Court's view, meant that the program unconstitutionally favored religious scholarship-seeking parents over secular ones.

Supporters of the program will soon be appealing this decision to the U.S. Supreme Court. They're very likely to win, for a variety of reasons. Foremost among them, the Establishment Clause forbids only *governments* from favoring religion, but imposes no similar limit on individual citizens. It is for this reason that charitable tax deductions can be claimed for donations to both religious and secular charities without running afoul of the First Amendment — even if taxpayers overwhelmingly choose to donate to religious charities.

In rereading the original complaint, I noticed something interesting: even if the 9th Circuit's misconstrual of the Establishment Clause were correct, plaintiffs still wouldn't have a case. That's because the evidence they presented did not — and still does not — support their claim that secular parents have been at a comparative disadvantage in obtaining scholarships. To see why, read on....

The only evidence plaintiffs presented to show the claimed disadvantage of secular parents was that most of the scholarship funds have been distributed by religious organizations. That is not dispositive. To prove that secular parents were at a disadvantage in getting scholarships, plaintiffs would have to show that secular parents were being rejected by scholarship programs at a higher rate than religious parents, or that, at the very least, the share of religious-only scholarship funds was higher than the share of parents seeking religious schooling.

That, as it turns out, was not the case in the school year (1998-99) for which plaintiffs provided data, and it is not true today. In 1998-99, about 75.5 percent of private school children were in religious schools, but only 75 percent of (the very tiny amount of) scholarship funds distributed in that year were reserved for religious schooling. In 2007-08 (the most recent year for which data are available), 81.4 percent of private school students were in religious schools, but only 65 percent of the donated scholarship funds in 2008 were reserved for religious schooling.

There is thus no evidence that secular parents are any more likely to be

turned away for a scholarship than are religious families, because the share of scholarship funds available for use at secular schools is now nearly twice as large as the share of children being enrolled in secular schools.

So even if plaintiffs and the 9th Circuit were right on Establishment Clause jurisprudence, which they certainly are not, the evidence still wouldn't support their case.

For all the relevant numbers I used to reach the above conclusion (sourced from the Arizona Dept. of Revenue and the National Center for Education Statistics) see this Excel spreadsheet file. 