

28 April 2010


Today's Tabloid

PERSONAL NEWS FOR Ign@limitedgovernmentnetwork.com

FISCALLY CONSERVATIVE BLOG FEEDS

Glen Urquhart Signs Taxpayer Protection Pledge in Delaware Congressional Contest [Americans for Tax Reform]

APR 27, 2010 05:24P.M.

Delaware businessman Glen Urquhart recently signed the Taxpayer Protection Pledge in the contest for Delaware's sole congressional district. Urquhart is running in the GOP primary f... 

FISCALLY CONSERVATIVE BLOG FEEDS

The Ninth Circuit's Controversial New Class Action Decision [Cato at Liberty]

APR 27, 2010 05:05P.M.

By Mark Moller

The Ninth Circuit has issued its long-awaited en banc decision in *Dukes v. Wal-Mart*, a pathbreaking class action seeking relief from Wal-Mart for alleged gender discrimination on behalf of somewhere between 500,000 and 1.5 million women. The upshot: a 6-5 partial affirmance of one of the most questionable class certification approvals in recent memory.

The case is sparking considerable commentary: see here, here, and here, for starters. Cataloguing all the myriad questionable parts of the 135+ page decision, which range from the standard for admitting expert testimony in support of certification, to the permissibility of so-called "issue classes," to due process restraints on award of class-wide punitive damages, would take a blog post rivaling the length of the Ninth Circuit's own monster-of-an-opinion.

Here, though, are a few problems that pop out on first reading.

First, the Ninth Circuit's certification decision depends on an exceedingly questionable understanding of federal civil rights law. As Richard Nagareda has written, the case is premised on "a bold, new

conception of prohibited discrimination under Title VII – a notion that the scholarly literature encapsulates in the term 'structural discrimination.'" The idea is that a corporation can violate federal antidiscrimination laws by structuring the workplace in a way that enables unconscious discrimination by frontline managers.


Wal-Mart is said to have engaged in this sort of scheme because it permits its managers to engage in highly subjective decision-making about pay and promotion, rather than imposing uniform objective criteria. In effect, the idea is that Wal-Mart's laissez faire approach to personnel management masks a conscious effort to use its managers, and their unconscious biases, as a conduit for the company's own unstated policy of gender discrimination.

As Nagareda points out, the theory of structural discrimination "has enjoyed a run in academic discourse out of line with its meager acceptance as a matter of actual doctrine." Indeed, as he notes, "one broadly shared starting point in the literature" is that structural discrimination is not consistent with current law. Yet, the viability of this suit turns on this theory. And the trial court and the original Ninth Circuit panel in turn authorized a class without ever squarely deciding whether Title VII does, in fact, embrace this theory.

The en banc panel appears to make some (meager) effort to rectify this problem. But its elliptical treatment of the structural discrimination theory, spanning a couple of paragraphs buried deep in the belly of the mammoth opinion, is ephemeral—a far cry from Nagareda's suggestion that the panel first "resolve the meaning of the statute squarely and forthrightly" before undertaking class certification analysis. One senses the often-reversed Ninth Circuit, fearful of the Roberts Court peering over its shoulder, is trying to bury the lede.

Second, a more technical problem: the en banc decision exacerbates an already troublesome circuit split over the conditions for approving a class under Rule 23(b)(2). This is a popular vehicle for class actions among plaintiffs' lawyers for two reasons: first, assuming a class qualifies for treatment under it, class members are not entitled to an automatic right to exit the class (or "opt out") and, second, Rule 23(b)(2), in addition, imposes less stringent requirements for class certification. In their advisory notes, the drafters of the federal class action rule suggest a class qualifies for treatment under Rule 23(b)(2) if injunctive relief "predominates" over monetary relief. And one might think that in a suit, such as this, seeking massive punitive damages on behalf of an veritable army of women, certification under Rule 23(b)(2) is therefore obviously inappropriate. But rather than squarely so hold, the Ninth Circuit now stakes out an entirely new, multi-factored balancing test for determining when injunctive or monetary relief predominates—creating a three-way circuit split about the meaning of Rule 23(b)(2)'s predominance test.

Another more fundamental problem: The text and structure of the Civil Rights Act also strongly suggest that in suits seeking backpay and punitive damages, defendants must have a chance to present affirmative, individualized evidence, on a case by case basis, rebutting claims they have discriminated. In addition, the Supreme Court's due process cases also strongly suggest punitive damages should be awarded based on an individualized determination of fault. Yet, although the ultimate trial plan remains in flux, the en banc panel greenlights jettisoning the defendant's right to present this kind of affirmative, individualized, case-by-case rebuttal evidence. It has done so, of course, in the service of facilitating the class action: if a case-by-case opportunity to affirmatively rebut discrimination is mandated by Congress, or the Fifth Amendment, in hundreds of thousands of suits seeking back pay and punitive damages, its hard to avoid concluding that those claims predominate over the request for injunctive relief, disqualifying them from Rule 23(b)(2) treatment even under the Ninth Circuit's new "third way" test . . . and raising serious concerns about whether the claims for monetary relief are certifiable at all.

Class action practice is, alas, one area where the Supreme Court has been, largely, AWOL. The result—an ever-lengthening array of circuit splits on key questions that affect when a class action can be green-lighted. *Dukes*—a decision chock full of questionable, boundary-pushing decisions—is the inevitable result. Some suggest Supreme Court review of this decision is close to a sure thing. Let's hope that's right. 

FISCALLY CONSERVATIVE BLOG FEEDS

A School Choice Movie and a Discussion? What a Deal! [Cato at Liberty]

APR 27, 2010 05:02P.M.

By Neal McCluskey



Friday nights are movie nights, but aren't you tired of just watching movies without getting to discuss them with everyone else in the theater? And aren't you sick of seeing movies that aren't about dysfunctional public schooling?

If you answered yes to either of these questions, and if you are going to be in Washington, DC, the evening of Friday, April 30, then have I got a deal for you:

Come to the E Street Cinema at 7:15 Friday night and not only will you be able to catch *The Cartel*, a searing documentary about what ails American education, but afterward you'll be able to participate in a discussion about the film hosted by yours truly and the Heritage Foundation's Lindsey Burke!


Fantastic!

So take your movie night to a whole new level, and join us for *The Cartel* this Friday evening! 

FISCALLY CONSERVATIVE BLOG FEEDS

Strike II for Dodd's Wall Street Bailout – Cloture Fails Second Day in a Row [Americans for Tax Reform– Cloture Fails Second Day in a Row]

APR 27, 2010 04:58P.M.

[PDF DOCUMENT] Today, for the second day in a row, the U.S. Senate failed to reach cloture on Sen. Dodd's "Wall Street Bailout" bill, S. 3217 the Restoring American Financial ... 

FISCALLY CONSERVATIVE BLOG FEEDS

The Federal Solution to Illegal Immigration [Cato at Liberty]


APR 27, 2010 04:36P.M.

By Daniel Griswold

A silver lining of the Arizona immigration law is that it has turned up the heat on Washington to re-examine federal policy. As I've made the rounds of talk radio shows today, one of the questions that keeps coming up is just what changes should be made in federal law to tackle illegal immigration. Glad you asked.

In brief, the single most effective change would be to expand opportunities for legal immigration, including for low-skilled workers who make up the large majority of the illegal population.


I make the case for comprehensive immigration reform in an op-ed in today's *Philadelphia Inquirer*.

For a more comprehensive case for comprehensive reform, see the lead article I wrote for the current issue of the *Albany Government Law Review*, titled "Comprehensive Immigration Reform: What Congress and the President Need to do to Make It Work." 

FISCALLY CONSERVATIVE BLOG FEEDS

Dodd Bill Violates Consumer Privacy: Gov to Track Americans' Purchases, Share with Corporations [Americans for Tax Reform]


APR 27, 2010 04:22P.M.

[PDF DOCUMENT] Senator Dodd's "Wall Street Bailout" bill, S. 3217 the Restoring American Financial Stability Act of 2010, does more than coddle Wall Street with permanent bail... 

FISCALLY CONSERVATIVE BLOG FEEDS

ATR Urges House Financial Services Committee Support for Rep. Garrett Amendments [Americans for Tax Reform]

APR 27, 2010 03:28P.M.


Today, Americans for Tax Reform (ATR) urges all members of the U.S. House Financial Services Committee to support Rep. Scott Garrett's Amendments to H.R. 5072, the FHA Reform Act of 2010 that... 

FISCALLY CONSERVATIVE BLOG FEEDS

Tuesday Links [Cato at Liberty]

APR 27, 2010 03:16P.M.

By Chris Moody

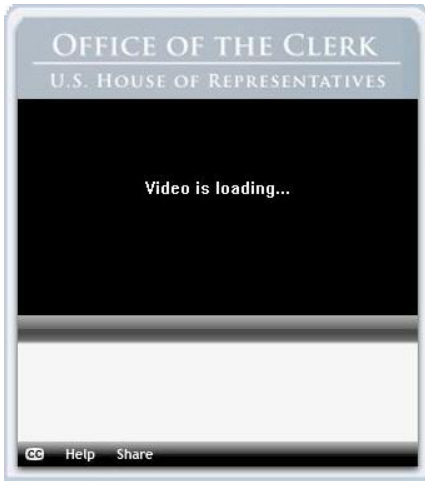
- Arnold Kling: "The case for auditing the Fed is obvious."
- The key to reducing illegal immigration: A robust temporary-worker program.
- Surprise! The "financial reform" bill is full of kickbacks to well connected cronies: "The public needs to understand that, far from protecting the little guy and sticking it to the fat cats, this bill keeps good, old-fashioned political patronage alive and well."
- When did this happen? "Historians find long-lost clause of U.S. Constitution giving federal authorities unlimited jurisdiction over the American palate." Oh wait, it didn't.
- Podcast: "The New Old Urban Renewal" featuring Eileen Norcross. 

FISCALLY CONSERVATIVE BLOG FEEDS

HouseLive.gov Video: Wait and See [Cato at Liberty]

APR 27, 2010 03:15P.M.

By Jim Harper



The potential of streaming video from the House of Representatives is so great that my first impression of the House's new video offering, HouseLive.gov, has been disappointment. There is much room to improve HouseLive.gov, and I hope it will improve.

At first, I couldn't find any video that was actually live. (That would inject a bit of irony into the name, eh?) But there is live video: On the homepage, scroll down to the top of the "Most Recent Sessions" chart. If the top of the list has an item called "In Progress," the House is in session. Clicking the video link will get you live video from the House floor.

(Don't be fooled by the "Subscribe to Live Feeds" box. Those are RSS feeds, which are "live"—as in regularly updated. They're not live video or audio.)

Most people will probably access this from the House clerk's familiar "Floor Summary" page, which has near-real-time updates about House activity. But that page says "Streaming video is not available for this session." That's a hiccup that should be easy to fix.

Selecting a past day, one can watch the video of that day, but in my early tests, you had to watch the video from the beginning. I don't think many people are going to watch 10 hours of video to pick up their representative's remarks on the bill to congratulate Camp Dudley of Westport, New York, on its 125th anniversary.

I've been testing in Firefox. In Internet Explorer, I got some links that do things. It appears you will be able to navigate around a day's video based on the activity of the House. That is, you can jump to where the House


began debate on the Camp Dudley bill.

Hopefully, the system will work in standards-compliant browsers, not only Microsoft's. I note that the video currently plays only in Windows Media Player or Microsoft's Silverlight. I'll leave it to friends better versed in video to critique the selection of formats, but I have doubts about these two as being the best, and most open, available.

Beyond junctures in House debate, there should be more tagging to make the video useful. Not only should you be able to navigate via House activity, you should be able to navigate by bill number, and by member of Congress.

When you do navigate around, I don't see that the "share" link changes. This needs fixing so that people can direct friends and colleagues to key portions of debates. In fact, you should be able to link to any point in the video. Ideally, there should be an embed function that allows defined segments of video to go into blog posts and such. That latter one is a big ask, but Congress is a big, important institution.

It's early yet. Maybe these things are in the works or on the drawing board. Rolling HouseLive.gov out in "beta," getting feedback, and fixing it is A-OK. But sometimes government agencies set a course and have a hard time changing after that. The Thomas legislative system, brilliant as it was for 1995, still isn't publishing bill data in good formats, and a private provider has had to take up the slack.

HouseLive.gov is better than nothing. It can be much, much better than it is. 

FISCALLY CONSERVATIVE BLOG FEEDS

Seven (Free-Market) Ways to Boost U.S. Exports [Cato at Liberty]

APR 27, 2010 03:14P.M.

By Daniel Griswold

President Obama has committed his administration to the ambitious goal of doubling U.S. exports in the next five years. I don't believe the government should be setting such targets—the rate of growth of U.S. exports should be left to the marketplace—but I am all for the administration seeking ways to expand the freedom of U.S. companies to sell in global markets.

In the "Economic Watch" column of the *Washington Times* today, I suggest six policy changes that will help American producers sell more of their goods and services abroad. None of them involve subsidies, threats of sanctions, or other government involvement.

Among my suggestions: enact into law the three free-trade agreements that have already been negotiated, repeal the trade embargo against Cuba, keep trade peace with China, and set a good example by keeping the U.S. market open.

If I could have added another suggestion (alas, space in a real newspaper is limited), it would be to issue more visas for trade delegations visiting the United States. Under misguided notions of national security, we make it more difficult than it should be for delegations from China and other markets to visit the United States to inspect U.S. goods offered for sale. But like the other suggestions, this one is politically challenging as well.

If the president wants to boost exports, he will need to show the necessary leadership to remove the government-imposed barriers that still remain. 

FISCALLY CONSERVATIVE BLOG FEEDS

Mismanaged States Blame Messenger [Cato at Liberty]

APR 27, 2010 03:11P.M.

By Mark A. Calabria


Mismanaged municipal and state governments around the country are finding a new target to blame for their own self-inflicted wounds: the growing market for credit defaults swaps (CDS) on municipal debt.

A municipal credit default swap would be a derivative that pays off in the event of default by a specific state or a default on one of said state's debt instruments.

As reported in today's *Wall Street Journal*, a handful of state treasurers are demanding information from Wall Street firms on who exactly is "betting against" these states.

It should come as no surprise, except to state officials, that the major buyers of these CDS are the very bondholders investing in their state. In fact the availability of municipal CDS will likely *increase* the demand for municipal debt. Just speaking for myself, there's no way I'd buy debt issued by California if I couldn't at least hedge some of that credit risk

Of course states complain that "betting on a default creates a perception of risk," as if there wasn't already a widespread perception of risk to investing in municipal debt of certain states. The states also express concern that adverse movements in the price of CDS could impact their credit ratings, and hence their cost of borrowing. Given the slow speed of which credit ratings moved on sub-prime mortgage debt, I am not sure that cities and states have much to worry about rating agencies being "too aggressive". If these states had even a small understanding of how markets work, they'd understand the rating is just one element that goes

into pricing. Witness the large spread in yields of similarly rated debt. No rating, or credit default swap price for that matter, is going to fool investors into believing that many American local and state governments are just anything other than mini versions of Greece. 

FISCALLY CONSERVATIVE BLOG FEEDS


Downsizing on Glenn Beck [Cato at Liberty]

APR 27, 2010 02:51P.M.

By Tad DeHaven

Fox News' Glenn Beck Show recently spent a week featuring Chris Edwards and the Downsizing Government website.


The following video provides highlights of Glenn's discussions with Chris on how we can downsize the federal government:

We applaud Glenn's efforts to shine a spotlight on the urgent need to rein in the federal government before massive spending, deficits, and debt bankrupt the country. 

FISCALLY CONSERVATIVE BLOG FEEDS

ATR Files Comments to FCC Opposing Net Neutrality [Americans for Tax Reform]


APR 27, 2010 02:49P.M.

Yesterday, ATR filed comments with the Federal Communications Commission strongly opposing government regulation of the Internet under proposed Net Neutrality rules. We focused on many aspect... 

FISCALLY CONSERVATIVE BLOG FEEDS

Baucus Considering Bank Tax and Carried Interest Tax Hike [Americans for Tax Reform]


APR 27, 2010 02:21P.M.

Word today that Senate Finance Committee Chairman Max Baucus (D-Mont.) is considering a “bank tax” and a tax hike on carried interest to “pay for” existing tax relief like the A... 

FISCALLY CONSERVATIVE BLOG FEEDS

Wall Street Bailout Update [Americans for Tax Reform]

APR 27, 2010 01:02P.M.

The Cloture on the motion to proceed to Financial Reform failed last night by a vote of 57-41. All Republicans voted no, 2 Democrats voted no – Nelson (NE) and Reid (voted no for procedural r... 

FISCALLY CONSERVATIVE BLOG FEEDS

Advice to Tea Partiers [Cato at Liberty]

APR 27, 2010 12:57P.M.

By Chris Moody

The Tea Party movement may endure, but its endurance will be a testament to its ability to understand that cutting government means having a long-term focus, says John Samples, author of the Cato book *The Struggle to Limit Government*. In a new video, Samples outlines an assessment of what Tea Partiers should do if they want to sustain an effort to cut government.

He offers five pieces of advice for members of the Tea Party movement:

1. Republicans aren't always your friends.
2. Some tea partiers like big government.
3. Democrats aren't always your enemies.
4. Smaller government demands restraint abroad.

5. Leave social issues to the states. 

FISCALLY CONSERVATIVE BLOG FEEDS

Club for Growth PAC Readies Refund Effort in Case of Crist Party Switch [The Club for Growth]

APR 27, 2010 11:40A.M.

WASHINGTON S COMMITTEE. 202-955-5500. 

FISCALLY CONSERVATIVE BLOG FEEDS

Misguided Fears of Crime Fuel Arizona Immigration Law [Cato at Liberty]


APR 27, 2010 11:38A.M.

By Daniel Griswold

Arizona's harsh new law against illegal immigration is being justified in part as a measure to combat crime. The murder of an Arizona rancher in March, allegedly by somebody in the country without documentation, galvanized support for the bill.

The death of the rancher was a tragedy, and drug-related violence along the border is a real problem, but it is a smear to blame low-skilled immigrant workers from Latin America for creating a crime problem in Arizona.

The crime rate in Arizona in 2008 was the lowest it has been in four decades. In the past decade, as the number of illegal immigrants in the state grew rapidly, the violent crime rate dropped by 23 percent, the property crime rate by 28 percent. (You can check out the DoJ figures here.)

Census data show that immigrants are actually less likely to commit crimes than their native-born counterparts, as I unpacked a few months ago in an article for *Commentary* magazine titled, “Higher Immigration, Lower Crime.” 

FISCALLY CONSERVATIVE BLOG FEEDS

Highlighting The V-Shaped Recovery [Larry Kudlow's Money Politic\$]

APR 27, 2010 11:37A.M.

With all eyes trained on the financial-regulation bill and the Goldman Sachs hearings, I'd like to keep hope alive by focusing attention on the V-shaped recovery. You may have seen yesterday's New York Times front-page story: "From the Malls to the Docks, an Economic Recovery Boom Set to Roar." Of course, I agree. As you know, this has been a key theme of mine in recent months.

Now, it may not last forever. There is a big-government-tax-hike wall standing in front of us next year and beyond. But tea-party politics may tear down that wall in the November midterms. So keep hope alive.


But as far as this year goes, I'm still highlighting the blowout profits and trillions of dollars of capital gains coming from the stock market rally. Profits and capital gains are the purest and most effective economic stimulus of all. Profits are what matter.

Moreover, the stock market may still be undervalued. A new report suggests that S&P; companies may earn almost \$86 a share in the next year. With today's S&P; index trading just north of 1,200, \$86 bucks a share is only 14 times future earnings. And that, at least theoretically, makes stocks the cheapest they've been since 1990 (except for the months directly following the Lehman meltdown).

Another key point on the stock market rebound: Did you know that bull markets tend to last about four years on average? They can last as long as five to six years, and they can be as short as a year. But they're usually about four years. Are we in the early innings of a bull-market run?

And while bank stocks have been clocked recently, I don't think the proposed financial legislation is going to damage profits to the extent that the banks can't recover.

To be perfectly honest here, as much as I love to dig into all the money-politics issues — including the financial-reform bill — I'm much more interested in these big profits and capital gains. This V-shaped recovery is the most important item on my radar screen. It's the single-biggest investor issue out there right now. I don't think the bull market in stocks is over yet.

Again, regarding taxes and regulations, I'll warn about next year. But frankly, I think the prosperity theme is issue number one. 

FISCALLY CONSERVATIVE BLOG FEEDS

The Case for Auditing the Fed [Cato at Liberty]

APR 27, 2010 11:36A.M.

By Cato Editors

Recently, the Federal Reserve has significantly altered the procedures and goals that it had followed for decades. Rep. Ron Paul (R-TX) has introduced a bill calling for an audit of the Fed.

Remarkably, there is significant opposition to such oversight, and the political prospects for undertaking such an audit are relatively bleak. In a new paper, Cato scholar Arnold Kling examines the processes and outcomes on which an audit should focus, and looks at opposition to the audit:


We should document why the Fed took each step, what the expected results were, and whether those results were achieved. ...The profit or loss of the Fed's investments would provide a very helpful indicator of whether the Fed's actions served the economy as a whole or merely transferred wealth from ordinary taxpayers to bank shareholders.

Read the whole thing. 

FISCALLY CONSERVATIVE BLOG FEEDS

Obama: Asking About My Tax Pledge is a "Washington Game" [Americans for Tax Reform "Washington Game"]

APR 27, 2010 11:25A.M.

[PDF Version] Consider yourself warned: Americans should not ask President Obama about his "firm pledge" not to raise any form of taxes on families making less than \$250,000.&... 

FISCALLY CONSERVATIVE BLOG FEEDS

Dumb Quote of the Day [The Club for Growth]


APR 27, 2010 10:37A.M.

Here are some Don Boudreaux 

FISCALLY CONSERVATIVE BLOG FEEDS

CBO: Millions To Pay Obamacare Tax [Americans for Tax Reform]


APR 27, 2010 10:30A.M.

Okay, so, admittedly President Obama's pledge to not to raise "any form" of taxes on families making less than \$250,000 per year has become little more than a running joke, bre... 

FISCALLY CONSERVATIVE BLOG FEEDS

GOP: No Earmarks in War Bill [The Club for Growth]


APR 27, 2010 10:07A.M.

Look who continues to be tough on earmarks...House Republicans. 

FISCALLY CONSERVATIVE BLOG FEEDS

FYI, State Income Tax in Washington State is Unconstitutional [Americans for Tax Reform]

APR 27, 2010 10:04A.M.

After a long drawn out special session where legislators raised taxes by \$2.5 billion, the State of Washington has yet to see the end of proposed tax hikes. Now, Bill Gates Sr. (who by the wa... 

FISCALLY CONSERVATIVE BLOG FEEDS

Financial Reform Bill Fails to Proceed in Senate [The Club for Growth]


APR 27, 2010 09:59A.M.

The Senate couldn't pass a news report on the subject. 

FISCALLY CONSERVATIVE BLOG FEEDS

Economists Agree: The "Stimulus" Failed [Americans for Tax Reform]

APR 27, 2010 09:30A.M.

Well, well, well, color me shocked: "In latest quarterly survey by the National Association for Business Economics...a majority of respondents felt the fiscal stimulus had no impact...Abou... 

FISCALLY CONSERVATIVE BLOG FEEDS

Massachusetts Would Gain \$412 million From Offshore Drilling [Americans for Tax Reform]

APR 27, 2010 09:26A.M.

With Massachusetts facing a predicted \$5.6 billion shortfall and 9.5 percent unemployment, Americans for Tax Reform continues to urge President Obama, Congress, and state elected officials to look ... 