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Susan Low Bloch

Laws Made For a President's Foes

The current presidential crisis is embarrassing, dangerous and avoidable—at least in the future—if we recognize and correct the unfortunate legal structure we have created. The combination of the Supreme Court's decision allowing Paula Jones's suit to proceed while the president is still in office and the independent counsel statute that authorizes single-minded and wholly unrestrained pursuit of the president has emerged as a deadly combination that can seriously damage the office of the presidency.

Had the suit by Paula Jones against President Clinton been deferred until the president was out of office, as many constitutional law professors urged, the present circus would not be taking place. It was the relentless discovery pursued by Paula Jones's attorneys that triggered the present frenzy.

This is not to say President Clinton might not bear some responsibility for allowing this feeding frenzy to find fodder for its sustenance. I do not know the facts and urge everyone to avoid a rush to judgment. My principal concern is that we recognize the dangerous legal structure we have created in which it is relatively easy for political enemies of the president to attack and undermine the office.

It is too late to avoid the present crisis. We have to hope we survive it without unduly eroding the majesty and power of the office of the presidency. But we should try to restructure our system so that it minimizes, rather than increases, the likelihood of such crises. The Supreme Court is unlikely to reconsider its decision to allow civil damage actions to proceed against sitting presidents. But Congress can and should act to protect the presidency in the future. Indeed, the Supreme Court in the *Clinton v. Jones* case explicitly invited Congress to do so.

Specifically, Congress should enact a law providing that presidents may defer civil damage actions until they are out of office. The events of the past few weeks make it clear that one cannot sue a sitting president for civil damages and expect the case to proceed in the same way it would against an ordinary citizen. That is especially true if the cause of action is a salacious accusation. The level of scrutiny, the ability to get attention and the leverage to make exorbitant settlement demands are much great-

er when the president is the target. In addition, given that discovery in civil sexual harassment suits is notoriously wide-ranging and unconstrained, there is likely to be a broad fishing expedition that can do the kind of substantial damage we have witnessed these past few weeks. Without the discovery permitted in Paula Jones's suit, there would have been no subpoena demanding Monica Lewinsky's testimony at this time. Moreover, these "he says, she says" suits are extraordinarily difficult to dismiss without a trial.

Adding to this volatile mix is the institution of the independent counsel. Congress created this office, after Watergate, to try to de-politicize inquiries into serious accusations against high executive officials. But coupling this institution with the decision to allow suits such as Paula Jones's to proceed against a sitting president throws the worst nightmare of politics and talk-show tripe right back into the legal morass. The independent counsel statute gives the appointed counsel awesome power, unlimited money and unconstrained time with which to scrutinize the activities of one individual, including the president of the United States. These features, as Justice Scalia astutely observed in 1988, are dangerous. The convergence of these two bodies of law—the extravagant breadth of the independent counsel statute and the unfortunate decision to permit civil damage actions against a sitting president to proceed—provides powerful tools with which political antagonists can undermine the president. The combination is clearly challenging this president and, left unmodified, threatens all future presidents as well.

Whatever the outcome of the current crisis, I hope we learn from this dreadful experience. We should repair our legal system to protect the office of the presidency for ourselves and our children.

The writer is a constitutional law professor at the Georgetown University Law Center. She helped to write the amicus briefs in 'Paula Jones v. Clinton.'

James K. Glassman

Don't Raise the Minimum Wage

Here we go again. To the cheers of Democrats on Capitol Hill, President Clinton has announced he wants to raise the minimum wage by another dollar. It's been increased from \$4.25 to \$5.15 over the past two years. Next stop: \$6.15.

The minimum wage can't be boosted without GOP help, and the last time, 160 Republicans in the House and 27 in the Senate voted for the hike. They wanted to look "compassionate"—even though the minimum wage hurts the very people it's supposed to help. That capitulation, of course, encouraged the latest move. This time, they had better muster some courage, stand and fight.

It won't be easy, with Democratic hucksters selling the press and the public a shiny new perpetual motion machine. Using a dubious study, they contend they can raise the minimum wage without putting people out of work—something economic theory and an avalanche of data dispute.

"Every time we have raised the minimum wage in my lifetime," said President Clinton on Feb. 13, "there

have been those that say, 'If you do this, it will cost jobs.' The last time we did it, it didn't cost jobs. We continued to create jobs at a very brisk pace."

This is nonsense, and Clinton is smart enough to know it. Yes, job growth has been brisk since the October 1996 increase. The question is whether it would have been brisker without it.

Economists aren't certain about many things, but on the minimum wage, nearly all of them (90 percent, according to one survey) believe that the case is open and shut. All else being equal, if you raise the price of something (for instance, labor), then the demand for it (for instance, by employers) will decline. That's not just a theory; it's a law.

The effects have been measured dozens of times. Charles Brown of the University of Michigan, for example, cites 19 studies between 1970 and 1991 and concludes, "a 10 percent increase in the minimum wage reduced teen employment by 1 to 3 percent." Using Labor Department data, the Employ-

ment Policies Institute, an industry group, says that is precisely what has happened since the last increase: It "resulted in 128,000 fewer teen jobs."

Raising the minimum wage hurts people whose work is worth \$5.15 rather than \$6.15, depriving them of a chance to learn on the job and move up. What the government says is, "Too bad, Mr. Entry-Level Worker. We won't let you work for \$5.15 anymore. If no one is willing to pay you \$6.15, you're out of a job."

Unlike low-skilled workers, businesses have choices. They can replace workers with machines or with fewer but more skilled employees (whose wages aren't set by government decree), or they can buy their labor abroad.

Don't believe that it's low-wage people who are hurt? Consider history. In 1923, the District of Columbia passed one of the earliest minimum-wage laws, which "had the effect of depriving Ms. Willie Lyons of her job as the operator of an elevator in the Congress

Hotel," writes legal scholar Hadley Arkes in his book, "The Return of George Sutherland."

After being fired, Lyons sued to overturn the law. It was *she* who was damaged, not her employer. And the Supreme Court, with an eloquent opinion by Sutherland, ruled in her favor. (It reversed itself in 1937.)

The minimum wage was then increased regularly until Ronald Reagan took office (and 18 million jobs were created in eight years). Now, wage hikes are back. Democrats are armed with a study by David Card and Alan Krueger of Princeton, which purports to show that a 1992 increase in the New Jersey state minimum wage actually led to increased employment in fast-food spots.

That study has been disputed by other economists, notably David Neumark of Michigan State and William Wascher of the Federal Reserve, who themselves have published seven works on minimum wages. They con-

tend the New Jersey hike "led to a relative decline" in employment.

Card and Krueger say they've just reconfirmed their study, but ask yourself: If a 90-cent increase has a small positive effect, why shouldn't a \$9 increase have a large positive effect?

Maybe Card and Krueger are right, but more likely, they haven't looked hard enough for other explanations—which is why they have so few supporters among labor economists.

Still, the question at hand is whether an *additional* \$1 hike will be benign. Not even Krueger thinks so.

"I guess I'd be less confident that another increase in the minimum wage, so quickly after the previous one, would have no effect on employment," he said two weeks ago on National Public Radio. "I would think it's probably more likely that it could have an adverse effect." Hmmm.

There's a bigger issue at stake here than economics: whether the state should interpose itself between two people freely entering into a contract.

Arkes writes that in the 1923 mini-

mum-wage cases, Sutherland "simply sought to judge whether the formulas in the legislation contained real principles: When the law imposed restraints on personal freedom, did it in fact proscribe things that were in principle wrong...?"

Sutherland thought that, by paying \$35 a month to Willie Adkins, the employer "has neither caused nor contributed to her poverty. On the contrary, to the extent of what he pays, he has relieved it."

But there may be a case for boosting the pay of low earners. Instead of hiking the minimum wage, why not end the payroll tax for everyone making, say, less than \$7 an hour? That would raise take-home pay while actually boosting demand for labor.

Such a tax cut is urgent with so many Americans leaving welfare for work. With a higher minimum wage, they may not find it.

The writer is a fellow at the American Enterprise Institute.

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