Trump Tax Reform Bill Faces Delays, Says Mnuchin

By Jeff Reynolds

Taxpayers may have to wait a little longer for Congress and President Donald Trump to begin work on federal tax reform, because other policy agenda items are consuming more time and effort than expected, according to media reports.

A May 8 article by Axios political reporter Mike Allen reported congressional leaders are becoming pessimistic about the timetable for negotiating a tax reform bill with the president after the health care reform bill, the American Health Care Act, did not speed through the House of Representatives as rapidly as White House strategists had expected.

In April, U.S. Secretary of the Treasury Steven Mnuchin told Financial Times reporters earlier predictions of writing, passing, and signing a tax reform bill by August were “highly aggressive to not realistic at this point.”

“It is fair to say it is probably delayed a bit because of the health care,” Mnuchin told reporters.

No Easy Task
David Burton, a senior fellow in economic policy with The Heritage Foundation,
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Trump Signs $1.1 Trillion Spending Bill

By Jeff Reynolds

President Donald Trump signed a $1.1 trillion spending bill into law, funding the federal government until October 1.

Signing the bill in his private New Jersey residence on May 5, Trump approved the spending mere hours before funding for federal government operations was scheduled to lapse.

The bill approved by Trump contained few of the spending reductions and reforms he proposed earlier this year. It included taxpayer funding for Planned Parenthood, the National Endowment for the Humanities, and the National Endowment for the Arts, and the White House and both chambers of Congress, the real question is: If not now, then when will they get serious about making spending reforms? Ultimately, many members have been willing to support reforms rhetorically but have not been willing to put them into action when given the chance.

Slim Chance for Reform?

Taxpayers could get a better deal in September, when lawmakers will begin working out the next year’s budget, but Bydlak says he wouldn’t bet on it.

“We’ll have to wait and see whether the united Congress does better in their Fiscal Year 2018 budget and appropriations, but it’s obviously hard to be optimistic,” Bydlak said.

New York, New Jersey Governors Call for Transit-Station Privatization

By Jesse Hathaway

The governors of New York and New Jersey urged the National Railroad Passenger Corporation, the government-owned corporation operating Amtrak, to allow a private company to operate Pennsylvania Station, the main intercity railroad station in New York City, writing, “The time, energy, and suffering of our commuters in both states require nothing less.”

On May 11, New York Gov. Andrew Cuomo (D) and New Jersey Gov. Chris Christie (R) sent the letter to the chief operating officer of the National Railroad Passenger Corporation. “Decades of underinvestment by Amtrak have produced a series of failures at Penn Station,” Cuomo and Christie wrote.

“Between New York and New Jersey, we pay approximately $150 million a year for our respective use for the facility,” Cuomo and Christie wrote. “As Amtrak’s management of Penn Station continues to produce multiple failures, we believe systemic changes cannot wait.”

Jesse Hathaway (jhathaway@heartland.org) is managing editor of Budget & Tax News.
How to Save a Life Without Spending a Dime

Thanks to lawmakers across the country patients with terminal illnesses have new hope—and it’s not costing states a dime. State Right to Try Acts are sweeping the country and are passing with overwhelming bipartisan support. And it’s working. In Texas, for example, almost 100 terminal cancer patients have access to a life-saving treatment that they wouldn’t otherwise. Good ideas can’t become good policy without lawmakers who are willing to do the right thing. So thank you. We thank you and the millions of American families with a loved one facing a terminal illness thank you.

Continued from page 1

saying reforming the federal tax code will necessarily take a long time.

“Anybody who thought tax reform was going to be easy hasn’t really been paying attention,” Burton said. “It’s going to take a lot of work. It’s going to take presidential leadership. It’s going to take a major effort by leadership in the House and Senate. Then, they’re going to have to try to piece together a majority for pro-growth tax reform.”

Reforms Delayed, Recovery Deferred

Delaying tax reform means postponing economic recovery, says Burton.

“In principle, if you do major tax reform along the lines of what President Trump and the House leadership are discussing, you could see GDP gains of 10 percent over a decade, which is an extra [percentage point] per year, for 10 years,” Burton said. “That would mean a great deal to the average American. Delay means that we stay in this very tepid recovery, as opposed to robust economic growth.”

Whatever reform plan lawmakers craft should incentivize hard work and earning money, Burton says. “You want to encourage economic activity,” Burton said. “Stated differently, you want to reduce disincentives to save, work, invest, and produce things in the United States. That means reducing marginal tax rates, getting rid of tax preferences that distort the economy, not artificially raising the cost of investment, [and] making U.S.-based international businesses more competitive. There are lots of different pieces.”

Cost-Benefit Analysis

Dan Johnson, executive director of the Tax Revolution Institute, says the nation’s tax system is broken because government’s costs exceed the benefits it provides taxpayers.

“Just look at the numbers,” Johnson said. “When you add the $1 trillion per year cost of compliance, Americans pay over half—50.71 percent—of their hard-earned money into the local, state, and federal tax systems. What do we get back? Special interests have taken over the tax code and our economy. The code itself is thousands of pages, and court rulings, regulations, and the law all contradict each other, larding otherwise innocent taxpayers in jail for nothing other than failing to understand the tax code.”

Too Many Captains

Reforming taxes is difficult because so many lawmakers disagree on what tax reform should do, Johnson says. “Don’t think of tax reform like health care reform, or welfare reform, or reform in any single policy domain,” Johnson said. “Think of it as an attempt to change a tool that lawmakers want to keep as it is, because of what it allows them to get away with. ‘Tax reform’ would mean asking Congress to throw out or seriously weaken the one lawmaking tool that they can reliably exploit to get reelected.”

Jeff Reynolds (jefferyreynolds@comcast.net) writes from Portland, Oregon.
Court Date Imminent for Baltimore Food- Truck Lawsuit

By Michael McGrady

With the hearing date for a lawsuit challenging Baltimore’s zoning restrictions on mobile food vendors drawing near, Mayor Catherine Pugh announced the creation of 10 new “food truck zones” where such operations will be allowed.

Pugh’s concession for concessions arrived a few months before a scheduled court hearing on a lawsuit filed by two area food-truck vendors seeking the repeal of a 2014 ordinance restricting the city’s mobile food-vending industry.

In May 2016, food-truck operators Joey Vanoni, owner of Pizza di Joey, and Nikki McGowan, owner of Madame BBQ, filed a lawsuit against the Baltimore, Maryland mayor in Baltimore City Circuit Court.

Current city zoning regulations prohibit food-truck vendors from operating within a 300-foot radius of brick-and-mortar restaurants serving similar kinds of food.

The lawsuit brought by Vanoni and McGowan will be heard on August 18 by the Maryland Circuit Court for Baltimore City Judge Cynthia Jones. Pugh announced the new food-truck zones in April.

Defending the Dream

Gregory Reed, an Institute for Justice attorney representing Vanoni and McGowan, says the lawsuit is about defending people’s right to engage in voluntary exchanges.

“After we filed the case, the city filed a motion to dismiss, saying that this is much ado about nothing, even for the individual entrepreneurs’ pursuit of the American dream,” Reed said. “The court ruled correctly against the city’s motion to dismiss, because Maryland case law demonstrates that economic protectionism is simply unconstitutional under the state’s Declaration of Rights. It is just simply wrong, as a matter of everyday opportunity, in a city like Baltimore, which is desperate for more economic choices for its residents.”

‘Halfhearted’ Deregulation

Nick Zaiac, a policy analyst at the Maryland Public Policy Institute, says Pugh’s decision is only a gesture toward deregulation.

“Food-truck zones are a halfhearted attempt to allow street vending, and this one is particularly onerous,” Zaiac said. “It’s attempting to centrally plan truck zones disproportionately [located] on college campuses.”

Cafe Cronyism

Baltimore’s food-truck regulations were designed to benefit traditional restaurant owners, Zaiac says.

“The ban on selling the same food at nearby brick-and-mortar stores is as close to naked protectionism as one could design,” Zaiac said. “A better way would be to allow them to park where they wished, subject to basic health and safety standards, as long as they pay the market rate for street parking or arrange to park on private land.”

Michael McGrady (mmcgrady@mcgradypolicyresearch.org) writes from Colorado Springs, Colorado.

Cleveland Stadium Deal Dunks on Taxpayers

By Lindsey Curnutte

Taxpayers in Cleveland, Ohio will be paying for renovations to Quicken Loans Arena—the home of the Cleveland Cavaliers, a National Basketball Association team—thanks to city lawmakers’ approval in April of a financing deal between team owners and the local government.

Between 2024 and 2035, the city government will give $88 million in hospitality and entertainment tax revenues to the Cavaliers to fund arena renovations, in addition to $140 million in new public debt and more than $60 million in county government tax revenues.

Reverse Robin Hood?

Marc Poitras, an associate professor of economics at the University of Dayton, says sports stadium subsidies transfer wealth from taxpayers to wealthy sports team owners.

“The primary beneficiaries are team owners, who get a new arena without having to pay for it themselves,” Poitras said. “The new facility increases team revenue by allowing the team to sell more tickets at higher prices. Even if the facility did manage to bring in some money to the city, that extra economic activity typically comes at the expense of other local communities.”

Poitras says stadium subsidies are effectively the result of government-sanctioned extortion.

“In essence, [the threat of relocation] is a form of extortion,” Poitras said. “The pro sports leagues are basically shaking down taxpayers all over the country by running [what amounts to] an extortion racket.”

Planning for the Future

Greg Lawson, a research fellow for The Buckeye Institute, says renovating the stadium doesn’t guarantee a financial payoff for taxpayers.

“You can have a great arena, but what happens after [Cavaliers player] LeBron [James] retires?” Lawson said. “How is the franchise going to keep its fans excited and willing to voluntarily part ways with their money? A nice arena won’t overcome a poor product on the court or the field. Taxpayers should not be treated as a negotiating chip every time an owner seeks leverage with city officials.”

Investing in Team Pride

Lawson says team owners should finance renovations by convincing fans and private investors to invest in the team’s desired improvements.

“Fans are rightly devoted to their teams,” Lawson said. “Working with them on a voluntary basis can be the basis of a win-win scenario. Where there is a will, there should be a way. The real hard work should be to use the market and leverage private resources that are both large and small.”

Lindsey Curnutte (lindseycurnutte@gmail.com) writes from Athens, Ohio.
Tennessee Auditors Review State Park Privatization Deal

Continued from page 1

As of May 10, comptroller agents were still reviewing the contract, according to John Dunn, the public information officer for the comptroller of the treasury. The Falls Creek contract between the state’s Department of General Services and JLL was signed in April. The Comptroller Office’s approval is required for the contract’s enactment.

Handling the Handoff
Savas says Falls Creek Park employees may not even notice the transition from the public to the private sector if the contract goes through.

“The common way that is handled is the following: The operator who wants to take over operating the hotel should be required to offer jobs to the existing employees, not necessarily at the current rate of pay and not necessarily for the same term,” Savas said. “If the employees are not satisfactory, then they could be sent back to the government agency.”

Local Michigan School Board Gets on the Privatization Bus

By Emma Vinton

The Cedar Springs, Michigan School Board approved a contract with a private business in May to provide transportation services, reducing annual spending by between $330,000 and $400,000 per year, in addition to $610,000 in one-time revenue resulting from the sale of the buses to the company.

Starting in August, Lansing-based Dean Transportation will operate the western Michigan school district’s busing services. The company will hire the district’s 28 bus drivers and be responsible for maintaining the buses.

Focusing on Education
Michael LaFaive, director of the Morey Fiscal Policy Initiative at the Mackinac Center for Public Policy, says the school board’s decision to get out of the transportation business is a sound idea.

“The mission of public schools is to educate children, not to run a transportation company, a food company, or a cleaning company,” LaFaive said. “These ancillary services are best performed by those whose specialty is in those fields. As a bonus, there is often substantial savings for those who do it, and do it correctly.”

LaFaive says many Michigan government schools already partner with private businesses in some manner.

“More than 70 percent of Michigan public school districts contract out for at least one of the three major non-instructional services—custodial, food, and transportation—and in 2016, 25 percent contracted out for busing to some degree,” LaFaive said.

Transportation Tradition
LaFaive says privatized school transportation has a long track record of success.

“Part of the East Coast history of private contracting for busing is a function of how transportation for students evolved,” LaFaive said. “When it started in those states back in the 1800s, farm people contracted with a fellow farmer to take their kids to school. Since school-bus contracting has been done for decades and is done extensively in Michigan, I expect the service will be at least equal for students and parents.”

Profit Motives
Teresa Mull, a research fellow with The Heartland Institute’s Center for Transforming Education, says privatization of school services is a win-win situation for parents and governments. Budget & Tax News is published by The Heartland Institute.

“Private companies compete to win contract bids, so they are incentivized to provide the best, most cost-effective services, which benefits everyone,” Mull said. “If anything, outsourcing school transportation will allow more people to be involved in the district and community, and we have seen that when government has a monopoly and no one with whom to compete, the quality of service dramatically decreases.”

Mull says the Cedar Springs School Board should be commended for its reform.

“It’s definitely a positive change, when a public institution moves in the private direction in any sense,” Mull said. “Taking away a government-imposed hurdle will allow the market to work more efficiently and for everyone to access the highest-quality, least-expensive goods and services.”

Module

“The mission of public schools is to educate children, not to run a transportation company, a food company, or a cleaning company. These ancillary services are best performed by those whose specialty is in those fields.”

Michael LaFaive
Director of the Morey Fiscal Policy Initiative
Mackinac Center for Public Policy


Emma Vinton (evint7@gmail.com) writes from Troy, Michigan.
U.S.-Canada Trade Relations
Deteriorate with New Lumber Tariffs

By Leo Pusateri

U.S. Secretary of Commerce Wilbur Ross called rumored retaliatory tariffs and trade bans by Canadian lawmakers “inappropriate,” as trade conflicts between the two governments began to heat up in May.

On May 5, Canadian Prime Minister Justin Trudeau announced plans to begin studying the feasibility of prohibiting American businesses from shipping coal from Canadian ports and increasing taxes on U.S. goods in retaliation for new taxes on Canadian softwood lumber sold to American consumers.

The next day, Ross issued a statement warning the Canadian government to abandon those plans, calling the ideas “inappropriate.”

In April, Ross announced the creation of new tariffs—taxes added to the price of incoming goods—on Canadian lumber, as retaliation for government subsidies giving Canadian producers an unfair advantage over their American counterparts.

Most Canadian lumber is harvested by businesses paying severance fees—negotiated in long-term agreements—to the government, instead of directly paying for and owning the property.

Since 1982, U.S. trade organizations have claimed Canadian lawmakers are setting severance fees, known as stumpage, too low, effectively subsidizing Canadian lumber.

Unfair Practices?
Zoltan van Heyningen, executive director of the U.S. Lumber Coalition, an organization representing domestic lumber producers and organized labor groups, says it’s unfair that American businesses have to play by the rules when Canadian businesses don’t.

“In the United States, 80 percent to 90 percent of the fiber is owned by private owners and is priced according to market realities,” van Heyningen said. “The clash comes when Canada takes subsidized product and ships it into our market. Canadian jobs displace U.S. jobs when Canadian products displace U.S. products.”

Claims Little Consumer Harm
Increasing the cost of imported lumber won’t affect American consumers very much, van Heyningen says.

“In an average $350,000 home, ... the kind of lumber that’s actually subject to this case currently costs $6,000,” van Heyningen said. “If Canadian lumber makes up one-third of the U.S. market, one-third of $6,000 is $2,000, and 20 percent of that is $400, so $400 would be the absolute maximum impact. That assumes that that amount is not absorbed by the Canadian lumber distributor or homebuilder, but completely by the consumer.”

Easy Way Out
Increasing the cost of foreign goods for U.S. consumers makes domestic businesses feel good but does little else, Lester says.

“An alternative to imposing duties on lumber would be to bring the case directly to the [World Trade Organization], where they can prove certain subsidies and/or their effects actually violate WTO rules,” Lester said. “Instead, the simpler path is for U.S. industries to ask that special duties be imposed. That gets them the immediate protection they want, but it doesn’t change the practice.

“We’re just caught up in an endless cycle of imposed tariffs, litigated outcomes, settlements, and then it starts over again,” Lester said.

Leo Pusateri (psycmeistr@fastmail.fm) writes from St. Cloud, Minnesota.

Oregon Lawmakers Consider Repair Shop Business-License Bill

By Jeff Reynolds

With the end of the Oregon state legislature’s 2017 session approaching, the fate of a bill that would require business owners operating current or opening new auto repair businesses to purchase licenses from the state government is at stake.

The Oregon House Business and Labor Committee held a public hearing on March 15 on House Bill 3322, sponsored by state Rep. Paul Evans (D-Salem). Since then, no further action has been taken on the bill, and the committee has yet to vote on it. The Oregon state legislature’s 2017 session ends on July 9.

HB 3322 would require auto repair shop owners to pay a $40,000 fee to the state for each shop they own.

‘A Burden on New Businesses’

Steve Buckstein, a senior policy analyst with the Cascade Policy Institute, says Oregon lawmakers haven’t demonstrated a need for the new fees.

“It’s a solution in search of a problem,” Buckstein said. “Consumers will have fewer choices.”

‘They Get Political Points’

Buckstein says lawmakers are incentivized to create new laws, even if they’re not needed.

“I don’t know if it’s just a matter of, ‘Oh, here’s a business we forgot to regulate,’ Buckstein said. “If one constituent comes to one legislator and says they got ripped off at an auto repair shop and they should be licensed, the legislator might just say, ‘We license all these other things, so let’s do that.’ They get political points with their constituents, but they don’t look at the downside, the harm it causes.”

‘It’s a Wealth Transfer’

William Anderson, a professor of economics at Frostburg State University, says the bill takes from consumers and small business owners and gives to big businesses.

“Let’s face it,” Anderson said. “It’s a wealth transfer. It’s a wealth transfer from the smaller shops who can’t pay for all this stuff. It’s also a wealth transfer from consumers. It will reduce the opportunities for consumers to get their vehicles repaired, and it will drive up consumer costs.”

Jeff Reynolds (jeffreyreynolds@comcast.net) writes from Portland, Oregon.
By Elizabeth BeShears

The Federal Communications Commission (FCC) took its first formal step toward rolling back rules granting FCC dominion over regulating broadband internet service providers (ISPs) as common carriers, such as railroads and electric utility companies.

The regulations, commonly called “net neutrality” rules, were enacted by former FCC Chairman Tom Wheeler in 2015.

The proposed reversal of net neutrality, if approved, would remove FCC’s authority to govern ISPs under Title II Wheeler’s rule, claiming FCC has the legal justifications for controlling ISPs.

Unlike when Wheeler proposed his 2015 rules, Pai released the full text of the proposed rollback in April, hewing to earlier promises to manage FCC more transparently.

The vote, held on May 18, does not repeal the rule, but it does begin the deregulation process. FCC will solicit comments from the public this summer before crafting and voting on a final rule.

Shifting Definitions

Evan Swarztrauber, communications director for TechFreedom, says activists have redefined net neutrality.

“The definition of net neutrality has changed over the years, and that’s one of the reasons we’re in this mess,” Swarztrauber said. “The original definition was uncontroversial and bipartisan. It’s the kind of stuff net neutrality used to be about: People should be able to access any lawful content online, they should be able to connect their devices to the connection in their home, and they should be able to receive meaningful information about their service plan—essentially, transparency.

“It was really about protecting consumers, which we absolutely should be concerned with,” Swarztrauber said.

Return to Net Normalcy

Swarztrauber says the net-neutrality debate is focused on determining the proper role of government.

“I think it’s fair to say that net neutrality is not really what the debate is about,” Swarztrauber said. “It’s the FCC’s power over the internet, and that debate has been such a big argument between Republicans and Democrats and between internet providers and startups. [Pai is] actually just going to put us back to where we were a few years ago, in June 2015.”

Swarztrauber says the net neutrality fight is essentially a proxy war between FCC and the Federal Trade Commission, another government agency.

“Before we had Title II, the Federal Trade Commission regulated broadband providers, both in terms of privacy and transparency,” Swarztrauber said. “It’s long past due that Democrats and Republicans come to the table and resolve this issue. It is the job of our elected representatives to solve these big policy disagreements.”

Permission for Progress?

Steven Titch, a telecommunications policy advisor for The Heartland Institute, which publishes Budget & Tax News, says FCC’s net-neutrality rules have stifled digital innovation.

“What the FCC under Wheeler did is create a kind of ‘Mother, may I?’ regime, which basically said prioritization [of data] would be a network-neutrality violation,” Titch said. “He kind of waivered by saying the FCC will make decisions on a case-by-case basis. He made an exception for ‘reasonable network management,’ although he declined to define exactly what that was.

“He essentially made the FCC an arbiter of what network neutrality would be defined as on an ad hoc basis,” Titch said.

By Elizabeth BeShears (liz.eros@gmail.com) writes from Trussville, Alabama.
Calif. Imposes Big Gas Tax Hike to Fund New Road Construction

By Kimberly Morin

 Californians will pay more at the fuel pump this fall, after Gov. Jerry Brown (D) signed a gasoline tax hike into law in late April to fund new road construction.

Brown signed Senate Bill 1 on April 28, increasing the state’s excise tax on gasoline to 40 cents per gallon, a 12 cent—or about 43 percent—hike.

The tax increase is expected to raise about $5.2 billion in new annual revenue and is scheduled to take effect on November 1.

Road Funding for Roads

Akash Chougule, a policy director with Americans for Prosperity, says most gas tax revenue is used to build things other than new roads and bridges.

“California would be a lot smarter if they actually used gas taxes to fix roads and bridges,” Chougule said. “In California, the biggest culprit is the high-speed rail. It’s obviously a huge boondoggle: It’s way over [budget on] cost and way over time. That’s being funded partially by gas tax dollars that are supposed to be fixing roads and bridges in the state.

“You have the gas taxes paying for highway beautification, bike paths and sidewalks, and all this other stuff that is not what the gas tax should be used for,” Chougule said. “Those are local projects which should funded by local dollars.”

Not a Revenue Problem

Chougule says California’s problem is too much spending, not too little tax revenue.

“There’s plenty of money going into the state budget in California,” Chougule said. “Spending is really not the problem. It’s the total lack of priorities and a lack of concern for the well-being of people, let alone who the gas tax hits the hardest. The gas tax increase is very regressive. Lower- and middle-income people are the ones who are hit hardest by it.”

Infinite Wants, Finite Resources

Gabriel Roth, a research fellow at the Independent Institute, says lawmakers always want to spend more taxpayer money, even if they don’t know what they’re going to buy with it.

“The politicians say they want to spend so many millions a year, and there’s no evidence that this is really needed,” Roth said. “Obviously, one knows, to some extent, what is needed for maintenance and operating costs, but when it comes to expanding the road system—building new roads, building truck ways, [and] subsidizing mass transit—really, there are no firm figures for this.

“These are just politicians’ wish lists,” Roth said. “The money they want is always more than the money available.”

Kimberly Morin (kimberlyamorin@gmail.com) writes from Brentwood, New Hampshire.

Ala. Considers Raising Gas Tax

By Elizabeth BeShears

Shortly after Alabama state Rep. Bill Poole (R-Tuscaloosa) pulled his bill to increase the state’s gas tax by 6 cents over the next five years, state Sen. Arthur Orr (R-Decatur) proposed another bill that would raise the state’s motor-fuel tax.

Poole’s bill, House Bill 487, was removed from consideration before it could be considered by the full House of Representatives. HB 487 would have over seven years gradually increased the state’s gas tax from 18 cents per gallon to 27 cents per gallon.

When the bill was pulled on April 13, state Rep. Ed Henry (R-Hartselle) posted on Twitter saying it happened “presumably because they didn’t have the votes for passage.

A week later, on April 20, Orr sponsored Senate Bill 386, which would allow county governments to ask voters to approve gas tax increases as high as 5 cents per gallon.

SB 386 was approved by the Alabama Senate Governmental Affairs Committee on April 25. It had not been voted on by the full Senate at press time.

Taxpayer Unrest

Patrick Gleason, director of state affairs with Americans for Tax Reform, says taxpayers want to see lawmakers using existing revenue wisely before giving the government more money.

“The public does not see proper prioritization of current revenues. After all of the taxes the state levies already, and all the things the state spends money on, the lawmakers who wanted to pile on with the gas tax increase to fund transportation claimed that it was because transportation was a priority for them.”

PATRICK GLEASON
DIRECTOR OF STATE AFFAIRS
AMERICANS FOR TAX REFORM

Alternatives to Consider

Baruch Feigenbaum, assistant director of transportation policy at the Reason Foundation, says there are better ways to fund road construction than gas taxes.

“The first one is tolling, because that’s a stronger user-pay, user-benefit system, and the next one is what we call mileage-based user fees, which is a charge for the exact section of roadway you’re using,” Feigenbaum said.

“People pay gas taxes based on how fuel-efficient their vehicles are, but if you drive an older vehicle, your vehicle might not be very fuel-efficient and you might not be traveling very far. If you drive a Prius, for example, your vehicle is fuel-efficient and you could be traveling far and not be using much gas.”


Elizabeth BeShears (liz.erob@gmail.com) writes from Trussville, Alabama.
Texas Bill to Reform Dallas Pension System Advances to Senate

By Michael McGrady

The Texas House of Representatives passed a “framework” to shore up Dallas’ public pensions, which have been on the path toward default for years.

On May 4, the Texas House of Representatives approved House Bill 3158 to increase the amount of money Dallas government employees pay into their own pensions and create an 11-member pension board to oversee the city’s public-safety pension funds.

HB 3158 was sent to the state Senate on May 9.

Without significant changes, the Dallas Police and Fire public pension fund is expected to go broke by 2030 as a result of the unsustainable benefit promises and risky fund investments gone bad, such as real estate deals in Hawaii and other states.

Pensions in ‘Serious Trouble’

HB 3158 sponsor state Rep. Dan Flynn (R-Canton) says his bill will prevent Dallas taxpayers from being forced to bail out the failing fund.

“Pensions are in serious trouble,” Flynn said. “They have major unfunded liabilities. They are actuarially unsound. If we are unable to achieve passage, the fund would go broke. The city does have an obligation. Their pension board and the city have a responsibility, and they have not owned up to that responsibility.”

James Quintero, director of the Texas Public Policy Foundation’s Center for Local Governance, says Flynn’s bill won’t lift the burden pensions are putting on Dallas taxpayers.

“Dallas’ public pension problems are not solved by the passage of HB 3158,” Quintero said. “At best, the bill lets officials kick the can down the road at taxpayer expense. At worst, it sets up a nightmare scenario that puts both Dallas taxpayers and retirees in harm’s way.”

Says System Is Broken

Defined-benefit pension systems guaranteeing pension payout levels are “unworkable,” Quintero says. Defined-contribution plans, similar to those enjoyed by private-sector employees, are a much better option.

“The pension crisis unfolding is a prominent reminder that defined-benefit systems are unworkable,” Quintero said. “Public employees deserve a better, more sustainable retirement option, like defined-contribution plans.”

By Kimberly Morin

North Dakota shoppers will be subject to a new online sales tax if the U.S. Supreme Court changes a longstanding precedent protecting businesses from taxes charged by states in which they are not located.

Gov. Doug Burgum (R) signed Senate Bill 2298 into law in April. It would require businesses outside the state to collect and pay sales taxes to the state on purchases made by in-state consumers.

The new law will not take effect unless the U.S. Supreme Court issues an opinion reversing or altering its decision in Quill v. North Dakota, a 1992 case creating a “nexus” standard for business taxation.

Currently, unless a business maintains a physical location, or nexus, in a taxing jurisdiction, it need not collect sales taxes. Consumers are supposed to pay the tax directly to governments, but compliance is low.

Challenging ‘Quill’

Alan Viard, a resident scholar at the American Enterprise Institute studying federal tax and budget policy, says governments and traditional retail businesses are becoming more aggressive in attacking the Quill ruling.

“A number of states are trying to challenge the Supreme Court decision in Quill v. North Dakota,” Viard said. “There’s been increasing frustration over the years by states and also by some brick-and-mortar stores that the decision, in their view, is outmoded.”

Daring the Court

Viard says the quest for more tax revenue is driving the legislation.

“States are adopting a number of strategies to take action on their own,” Viard said. “Until recently, states were just trying to kind of chip away at the Supreme Court decision, by just trying to stretch the concept of what it means to be a physical presence in the state. These latest bills are a frontal attack, and they’re designed to try to persuade the Supreme Court to overturn its decision.”

Simple Standards

Andrew Moylan, executive director and senior fellow of the R Street Institute, says the fight over Quill is not about fairness between online and physical retail businesses.

“What [Quill] says is that if a business has a physical presence in a state, it has to collect that sales tax,” Moylan said. “It doesn’t say anything about online or brick-and-mortar or anything like that. It applies equally to everybody. If you have a physical presence, you have to collect the state sales tax. That’s a simple standard that everyone operates by today.”

‘Battle Between Big Businesses’

Moylan says both sides of the fight over e-commerce are driven by self-interest.

“Ultimately, what this is really is a battle between big businesses,” Moylan said. “You have big businesses trying to crush smaller business, and not only big-box, brick-and-mortar retail, but also big retail in the internet context.

“They are pushing a lot of these bills because they see it as an opportunity to really sort of put the screws to their competition and put the screws to smaller businesses, specialty products, and other kinds of things that sell online,” Moylan said.

Kimberly Morin (kimberlyamorin@gmail.com) writes from Brentwood, New Hampshire.

“States are adopting a number of strategies to take action on their own. Until recently, states were just trying to kind of chip away at the Supreme Court decision, by just trying to stretch the concept of what it means to be a physical presence in the state. These latest bills are a frontal attack, and they’re designed to try to persuade the Supreme Court to overturn its decision.”

ALAN VIARD
RESIDENT SCHOLAR
AMERICAN ENTERPRISE INSTITUTE

ND Enacts Online Sales Tax As It Awaits Supreme Court Ruling

By Kimberly Morin

North Dakota shoppers will be subject to a new online sales tax if the U.S. Supreme Court changes a longstanding precedent protecting businesses from taxes charged by states in which they are not located.

Gov. Doug Burgum (R) signed Senate Bill 2298 into law in April. It would require businesses outside the state to collect and pay sales taxes to the state on purchases made by in-state consumers.

The new law will not take effect unless the U.S. Supreme Court issues an opinion reversing or altering its decision in Quill v. North Dakota, a 1992 case creating a “nexus” standard for business taxation.

Currently, unless a business maintains a physical location, or nexus, in a taxing jurisdiction, it need not collect sales taxes. Consumers are supposed to pay the tax directly to governments, but compliance is low.

Challenging ‘Quill’

Alan Viard, a resident scholar at the American Enterprise Institute studying federal tax and budget policy, says governments and traditional retail businesses are becoming more aggressive in attacking the Quill ruling.

“A number of states are trying to challenge the Supreme Court decision in Quill v. North Dakota,” Viard said. “There’s been increasing frustration over the years by states and also by some brick-and-mortar stores that the decision, in their view, is outmoded.”

Daring the Court

Viard says the quest for more tax revenue is driving the legislation.

“States are adopting a number of strategies to take action on their own,” Viard said. “Until recently, states were just trying to kind of chip away at the Supreme Court decision, by just trying to stretch the concept of what it means to be a physical presence in the state. These latest bills are a frontal attack, and they’re designed to try to persuade the Supreme Court to overturn its decision.”

Simple Standards

Andrew Moylan, executive director and senior fellow of the R Street Institute, says the fight over Quill is not about fairness between online and physical retail businesses.

“What [Quill] says is that if a business has a physical presence in a state, it has to collect that sales tax,” Moylan said. “It doesn’t say anything about online or brick-and-mortar or anything like that. It applies equally to everybody. If you have a physical presence, you have to collect the state sales tax. That’s a simple standard that everyone operates by today.”

‘Battle Between Big Businesses’

Moylan says both sides of the fight over e-commerce are driven by self-interest.

“Ultimately, what this is really is a battle between big businesses,” Moylan said. “You have big businesses trying to crush smaller business, and not only big-box, brick-and-mortar retail, but also big retail in the internet context.

“They are pushing a lot of these bills because they see it as an opportunity to really sort of put the screws to their competition and put the screws to smaller businesses, specialty products, and other kinds of things that sell online,” Moylan said.

Kimberly Morin (kimberlyamorin@gmail.com) writes from Brentwood, New Hampshire.

“States are adopting a number of strategies to take action on their own. Until recently, states were just trying to kind of chip away at the Supreme Court decision, by just trying to stretch the concept of what it means to be a physical presence in the state. These latest bills are a frontal attack, and they’re designed to try to persuade the Supreme Court to overturn its decision.”

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Texas Bill to Reform Dallas Pension System Advances to Senate

By Michael McGrady

The Texas House of Representatives passed a “framework” to shore up Dallas’ public pensions, which have been on the path toward default for years.

On May 4, the Texas House of Representatives approved House Bill 3158 to increase the amount of money Dallas government employees pay into their own pensions and create an 11-member pension board to oversee the city’s public-safety pension funds.

HB 3158 was sent to the state Senate on May 9.

Without significant changes, the Dallas Police and Fire public pension fund is expected to go broke by 2030 as a result of the unsustainable benefit promises and risky fund investments gone bad, such as real estate deals in Hawaii and other states.

Pensions in ‘Serious Trouble’

HB 3158 sponsor state Rep. Dan Flynn (R-Canton) says his bill will prevent Dallas taxpayers from being forced to bail out the failing fund.

“Pensions are in serious trouble,” Flynn said. “They have major unfunded liabilities. They are actuarially unsound. If we are unable to achieve passage, the fund would go broke. The city does have an obligation. Their pension board and the city have a responsibility, and they have not owned up to that responsibility.”

James Quintero, director of the Texas Public Policy Foundation’s Center for Local Governance, says Flynn’s bill won’t lift the burden pensions are putting on Dallas taxpayers.

“Dallas’ public pension problems are not solved by the passage of HB 3158,” Quintero said. “At best, the bill lets officials kick the can down the road at taxpayer expense. At worst, it sets up a nightmare scenario that puts both Dallas taxpayers and retirees in harm’s way.”

Says System Is Broken

Defined-benefit pension systems guaranteeing pension payout levels are “unworkable,” Quintero says. Defined-contribution plans, similar to those enjoyed by private-sector employees, are a much better option.

“The pension crisis unfolding is a prominent reminder that defined-benefit systems are unworkable,” Quintero said. “Public employees deserve a better, more sustainable retirement option, like defined-contribution plans.”

Michael McGrady (mmcgrady@mccgradypolicyresearch.org) writes from Colorado Springs, Colorado.

INTERNET INFO

Congress, Trump Consider Splitting Commercial and Investment Banking

By Leo Pusateri

White House Press Secretary Sean Spicer says President Donald Trump supports “a 21st century Glass-Steagall,” referring to proposals to restore financial regulations prohibiting banks and financial institutions from engaging in commercial and investment banking.

In May, Spicer told reporters, “The President’s pro-growth agenda, including instituting what he has called a 21st century Glass-Steagall, will allow these banks to spend less time complying with unnecessary requirements, many of which were designed to police much larger entities, and more time infusing their communities and local small businesses with capital.”

In an April interview with Bloomberg, Trump said he was considering pushing for bringing back the financial regulations, which were removed by lawmakers in 1999. “I’m looking at that right now,” Trump said in the interview. “There’s some people that want to go back to the old system, right? So, we’re going to look at that.”

In April, Senate Bill 881, titled the 21st Century Glass-Steagall Act, was introduced by Sen. Elizabeth Warren (D-MA) and referred to the Committee on Banking, Housing, and Urban Affairs, where it awaits a hearing.

Steady Growth … of Government

Bruce Tuckman, a finance professor at New York University’s Stern School of Business, says the solution to a government-created problem is not more government. “The banking system and many individual banks are likely too big and too risky, because the government excessively encourages credit creation through, for example, underpriced deposit insurance and mortgage guarantees,” Tuckman said. “Financial stability would be best advanced by removing these credit-market distortions, not by preventing banks from engaging in relatively safe and risk-diversifying businesses like investment banking.”

Tuckman says splitting up the banks would make them less useful and wouldn’t solve the risk problems. “Many banks and nonbanking financial institutions took too much risk in the years leading up to the financial crisis, and the government felt obliged to save them to protect the broader economy,” Tuckman said. “The solution, however, is not to reduce the scope and usefulness of bank activities in ways that will not necessarily reduce risks to the financial system.”

Big Bank Protections

John Berlau, a senior fellow with the Competitive Enterprise Institute, says Glass-Steagall protected big banks instead of protecting consumers. “Glass-Steagall greatly reduced competition to Wall Street from hometown banks,” Berlau said. “It meant that if you were an entrepreneur wanting to take your company public, you had to go through a Wall Street investment bank such as Goldman Sachs or Lehman Brothers, rather than a bank in your city, because Glass-Steagall prohibited small banks from performing this.”

An Anti-Entrepreneurial History

Glass-Steagall discouraged entrepreneurship by restricting access to investment capital, Berlau says. “In 1919, about 15 years before enactment of Glass-Steagall, Atlanta-based Coca-Cola went public through the local Trust Company of Georgia, a predecessor of SunTrust bank,” Berlau said. “Georgians were able to get the first shares of stock and grow wealthy with a home-state company. But if Coca-Cola went public after Glass-Steagall, it would most likely have had to work with a Wall Street investment bank to do so.”

Leo Pusateri (psycmeistr@fastmail.fm) writes from St. Cloud, Minnesota.

Who is violating the Constitution today?

Our American Constitution

The new website by Robert G. Natelson

Natelson is a nationally known constitutional scholar and senior fellow in constitutional jurisprudence at The Heartland Institute.

Professor Natelson’s articles and books span many different parts of the Constitution, including groundbreaking studies of the necessary and proper clause, federalism, founding-era interpretation, regulation of elections, and the amendment process of Article V.

Keep up with Natelson’s latest projects and commentaries at RobNatelson.com where he explains constitutional law issues, gives updates on the Article V Convention movement, discusses historical events and people, calls out political players on both sides who violate constitutional liberties, breaks down the Constitution’s meaning on controversial subjects, and much more.

Visit RobNatelson.com to find out.
House Democrats Urge Committee Chairs to Stall Dodd-Frank Repeal

By Lindsey Curnutte

Democratic Party members of the U.S. House of Representatives are urging committee chairmen to stall the progress of House Resolution 10, the Financial CHOICE Act, after the House Financial Services Committee voted in April to allow the bill to proceed to the House floor for consideration.

On May 3, U.S. Reps. Elijah Cummings (D-MD), John Conyers Jr. (D-MI), and Bobby Scott (D-VA) called on Reps. Jason Chaffetz (R-UT), Virginia Foxx (R-NC), and Bob Goodlatte (R-VA) to block HR 10 by having the bill referred to committees they lead—the Committee on Oversight and Government Reform, the Committee on Education and the Workforce, and the Committee on the Judiciary, respectively—instead of proceeding to a full vote.

The Financial CHOICE Act, introduced by Rep. Jeb Hensarling (R-TX) in April, would remove some financial restrictions enacted by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, commonly referred to as “Dodd-Frank.”

Dampening Economic Recovery

Thaya Brook Knight, associate director of financial regulation studies at the Cato Institute, says Dodd-Frank banking restrictions have throttled the country’s recovery from its most recent economic recession, which began in 2008.

“This recovery has been a very slow one,” Knight said. “In the past, you tended to see a sharp recession followed by a sharp recovery, and you don’t see that here. Every crisis is different, and it may be some other factor, but the fact that we do have all of this new regulation that people have to worry about is going to affect the flow of funds, and it’s going to affect the [economic] growth rate.”

Big Banks Benefit

Knight says increasing the cost of regulatory compliance “always” benefits bigger businesses at the expense of smaller competitors.

“Bank of America can bear those costs that small banks cannot,” Knight said. “If you add a lot of regulations, they are always going to favor incumbents and large established corporations.”

Intentions and Results

David D’Amato, a law professor at DePaul University, says Dodd-Frank is a cure that’s worse than the disease it was prescribed to treat.

“The problem is that, good intentions notwithstanding, the law seems to be aggravating the very problem it hoped to solve, by concentrating market share in mega-banks and reducing the number of regional and community banks,” D’Amato said. “Bank mergers and acquisitions are therefore at some of their highest levels. This means that consumers confront extremely powerful oligopoly firms, which are able to offer terms on a ‘take it or leave it’ basis. Community banks can’t afford to compete, so they go under.”

More Reforms Needed

Repealing Dodd-Frank would be a good starting point for reform, D’Amato says.

“If it passes, there will remain thousands of needless regulations that limit competition, often, as noted, to the benefit of the largest, most entrenched and politically savvy national banks,” D’Amato said. “Reform in this area should focus on lowering legal and regulatory barriers to market entry, thus opening the way for competition, the only mechanism that actually protects consumers.”

Lindsey Curnutte (lindseycurnutte@gmail.com) writes from Athens, Ohio.

California Cities Consider New Wave of Smoking Bans

By Michael McGrady

Following the implementation of a ban on tobacco and e-cigarette use in Novato, California in January, lawmakers in neighboring cities are considering similar bans on tobacco and e-cigarette use in public and private spaces.

In January, Novato Mayor Denise Athas signed an ordinance prohibiting tobacco and e-cigarette use in all spaces, government and private, except inside individuals’ automobiles and single-family homes.

In April and May, lawmakers in Dana Point, Mill Valley, and Placentia held hearings to consider ordinances similar to the Novato ban.

Beginning in January 2018, Novato residents caught using tobacco or e-cigarettes in restricted areas will be fined between $250 and $1,000 per violation.

Treating Guests Right

Aeon Skoble, a professor of philosophy at Bridgewater State University, says the owners of private spaces, such as restaurants, are better equipped than lawmakers to determine what their customers want.

“Even if it is a restaurant, the owner is in the best position to know whether his or her customers care about this or don’t care about this,” Skoble said. “You don’t have to be too old to remember when you walk into a restaurant and they ask if you want a smoking or a nonsmoking section.”

Home Invasions

Skoble says lawmakers are overriding residents’ property rights.

“The idea that we can just decide what these rules are going to be and overriding the property owner’s request is not the point of property rights,” Skoble said. “Even if you can make some public health case for that—and I am skeptical that you could—it is going one step further.”

What’s Yours Is Mine?

William Anderson, an economics professor at Frostburg State University, says applying such bans to private parking spaces amounts to government taking property without compensation.

“On the economics side, this is essentially an allocation of government-approved resources,” Anderson said. “The government is imposing costs on business owners that business owners have to absorb, but there are no revenues. You have people impose costs on someone, and that person doesn’t get any return on it.”

Michael McGrady (mmcgrady@mcmgradypolicyresearch.org) writes from Colorado Springs, Colorado.
Texas Approves Amendments Convention Resolution

By Veronica Harrison and Elizabeth BeShears

The Texas state legislature passed a resolution calling on Congress to draft new constitutional limitations on the federal government’s power and the duration of federal officials’ time in office.

Senate Joint Resolution 2, sponsored by state Sen. Brian Birdwell (R-Granbury), was enrolled with the Texas secretary of state on May 11, officially calling on Congress to convene an amendment resolution “for the limited purpose of proposing one or more amendments to the constitution to impose fiscal restraints on the federal government, to limit the power and jurisdiction of the federal government, and to limit the terms of office of federal officials and members of Congress.”

The resolution is based on model legislation proposed by Convention of States (COS), a project of Citizens for Self-Governance, a nonprofit organization advocating restoration of state and local authority.

Article V of the U.S. Constitution establishes methods for proposing and enacting amendments. After 34 states call for an amendments convention, the gathering of commissioners selected by state lawmakers is limited to consideration of amendments requiring the federal government to enact the proposal specified by the call.

Currently, 28 states have passed similar resolutions that would mandate a balanced budget, with 11 approving the COS resolution.

States’ Critical Role

Katie Kerschner, a project coordinator with the Texas Public Policy Foundation’s Tenth Amendment Center, says repairs to a broken federal government system must be done from outside the national government.

“We know that Washington cannot fix itself, and that it will not restrain itself,” Kerschner said. “Because of this, it is important for states to use the tools given to them by the Founders. States have an important role in acting as a check and balance to the federal government.”

Kerschner says state lawmakers should return accumulated federal power back to its proper place: among the states and people.

“By states joining together, we can restore the balance of power and restrain the leviathan federal government. We have reached a point where far too much power is concentrated in Washington, DC. It’s time for states to fulfill their constitutional role and work to restore much of that power back to the states and the people. It is time for us to stop allowing Washington, DC to tell us how to live our lives, and return to the principles of freedom and liberty that have made America the greatest nation on Earth.”

KATIE KERSCHNER
PROJECT COORDINATOR AT THE TENTH AMENDMENT CENTER
TEXAS PUBLIC POLICY FOUNDATION

Independent Baseball League Supports Illinois Employment Law Revision

By Scot Bertram

An independent baseball league is voicing support for an Illinois bill proposing to exempt players from the state’s minimum-wage laws.

House Bill 3631 was introduced in the Illinois Senate on May 3. It passed in the House of Representatives in March. The bill would exempt minor league baseball players, such as those in the Frontier League, from the state’s minimum-wage laws.

The Frontier League is an independent baseball organization unaffiliated with Major League Baseball. The league has teams in Illinois cities such as Crestwood, Joliet, Marion, Normal, Sauget, and Schaumburg, as well as Avon, Ohio; Traverse City, Michigan; Washington, Pennsylvania; Evansville, Indiana; Florence, Kentucky; and O’Fallon, Missouri.

Seasonal Work at the Ballpark

Tom Yursa, general counsel for the Frontier League, says the league supports the bill, but not for the reasons one might think.

“The issue for the Frontier League is not about anything to do with any proposed raising of the minimum wage in Illinois,” Yursa said. “The issue for the Frontier League is to get Illinois law the same as federal law when it comes to whether employers of seasonal employees are to comply with the Minimum Wage Act.”

Yursa says owners need this change to keep players on the field in the summer months.

“If [the owners’] seasonal employees, which is what they are, are not exempt, the costs associated with that threatens the business model and threatens to leave many municipal stadiums empty and without tenants,” Yursa said.

Scot Bertram (info@FranklinCenterHQ.org) is a writer for Watchdog.org. An earlier version of this article was published at http://watchdog.org/293283/frontier-league-supports-bill-exempt-certain-players-state-minimum-wage/. Reprinted with permission.

By states joining together, we can restore the balance of power and restrain the leviathan federal government. We have reached a point where far too much power is concentrated in Washington, DC. It’s time for states to fulfill their constitutional role and work to restore much of that power back to the states and the people. It is time for us to stop allowing Washington, DC to tell us how to live our lives, and return to the principles of freedom and liberty that have made America the greatest nation on Earth.”

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Veronica Harrison (vharrison@heartland.org) is the marketing director at The Heartland Institute. Elizabeth BeShears (liz.eob@gmail.com) writes from Trussville, Alabama.
By Kimberly Morin

The Wisconsin Senate Committee on Labor and Regulatory Reform approved a bill to remove restrictions on how state government agencies may partner with private businesses on capital infrastructure projects, allowing the bill to proceed to a hearing by the full state Senate.

The Wisconsin Senate Committee on Labor and Regulatory Reform recommended Senate Bill 216 for passage on May 3. The bill would repeal the state’s laws requiring the use of artificially inflated pay scales for taxpayer-funded projects, known as prevailing-wage policies.

Instead of allowing government contractors to determine their employees’ pay rates, prevailing-wage laws require government agencies to mandate the pay and benefits given to workers on projects such as construction and repair, often using inaccurate or skewed surveys sponsored by labor unions to determine the rates.

In 2016, Wisconsin repealed its prevailing-wage requirements on local government projects but retained the mandates for state projects.

Resetting Priorities
SB 216’s sponsor, state Sen. Leah Vukmir (R-Brookfield), says the government should get out of the business of telling construction companies how to run their operations.

“Wages shouldn’t be artificially inflated on the back of taxpayers,” Vukmir said. “The free market, not government, should be in control of setting wages. The dollars used to prop up wages could be better allocated toward investments in education, sustaining critical community services, infrastructure, and needed tax relief that will help all Wisconsinites.”

Money-Saving Opportunity
Allowing market forces to set wages will enable the state to do more construction work with less taxpayer money, Vukmir says.

“Wisconsin is in the middle of a large transportation budget debate right now, and the savings from repealing the state’s prevailing wage would help lower costs and ultimately save taxpayers money in that arena,” Vukmir said. “As lawmakers, we have a responsibility to manage our state budget effectively so taxpayers are not overburdened and Wisconsin can afford needed infrastructure improvements, making our quality of life better for the next generation.”

Calling for New Ideas
Chris Rochester, director of communications for the John K. MacIver Institute for Public Policy, says prevailing-wage laws are outdated policies held over from previous centuries.

“The first prevailing wages date back to just after the Civil War and really became commonplace during the Great Depression,” Rochester said. “The intentions might have been good, but the real-world effect of these anti-free-market laws has been to prop up union labor, wall off the construction industry from lower-cost competitors, and increase the cost of public-works projects.

“A Depression-era law has no place in the 21st century, especially with taxpayers already drowning in government debt,” Rochester said.

Kimberly Morin (kimberlyamorin@gmail.com) writes from Brentwood, New Hampshire.

INTERNET INFO

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NYT Reporter Misrepresents U.S. Supreme Court’s Composition

By Rob Natelson

A recent *New York Times* news story by political reporter Adam Liptak illustrates how left-of-center media distort perceptions of the U.S. Supreme Court.

The problems in the article, titled “A Polarized Supreme Court, Growing More So,” begin with the lead paragraph’s assertion Justice Neil Gorsuch’s appointment is “a conservative replacing another conservative.”

Confusion of Terms

What Liptak probably intended to say is that the appointment replaces an originalist with an originalist; “originalism” and “conservatism” are not the same thing.

Originalism is untied to political results, whether liberal or conservative. It applies the methods English and American judges have used for centuries to interpret most documents, including constitutions.

The primary difference between modern originalists and non-originalists hinges on whether judges should be consistent or should change the rules of interpretation for some hot-button constitutional issues.

Misleading Descriptions

In the article, as elsewhere, Liptak describes the Court as split five to four, with the majority constituting a “conservative bloc.” It is more accurate to describe the Court as split four ways: liberal activists, originalists, advocates of judicial deference, and social libertarians.

“And, in a shift in recent years, partisan affiliation has become a very strong predictor of voting trends for all its members,” Liptak wrote.

That sentence is technically true but substantially misleading. This description would be better: “Although Democratic appointees have been reliably liberal on most issues, Republican appointees have commonly slipped to the left—a slippage reduced recently as GOP administrations have adopted better vetting procedures.”

‘Not a Moderate Anything’

Liptak’s description of Justice Anthony Kennedy as “a moderate conservative” is a thigh-slapper. Anyone familiar with Kennedy’s judicial style knows he is not a moderate anything, much less a conservative. It is true he has voted to strike down some particularly ambitious pieces of congressional legislation, but he has also reaffirmed the very liberal view that the federal government may exercise almost unfettered control over the national economy.

More importantly, Kennedy has written a series of opinions reaching radical social results through an untethered and virtually unprecedented methodology.

Stacking the Deck

Similarly revealing are the “experts” Liptak quotes. Apparently, there are no experts in “flyover country” or in the South. Everyone worth hearing is from the Northeast or West Coast, it seems. For example, he describes former Obama appointee Merrick Garland as “not especially liberal.”

Liptak quotes an unrebutted claim that Garland was “centrist,” yet the reporter’s own article shows this to be untrue by including another unrebutted quotation in which a long liberal wish list is described as “safe” with Garland.

If Garland were a centrist, presumably he would sometimes disagree with liberals.

Delayed Caution

In fairness, Liptak does quote an expert who cautions against the article’s stereotyped nomenclature, pointing out that labeling Gorsuch and Garland as “conservative” or “liberal” is “too simplistic and unfair to both of them.”

That caution, however, is buried at the end of the article.

Rob Natelson (think@heartland.org) is a senior fellow in constitutional jurisprudence at The Heartland Institute. An earlier version of this article was published at http://watchdog.org/293176/. Reprinted with permission.

“What Liptak probably intended to say is that the [Gorsuch] appointment replaces an originalist with an originalist; ‘originalism’ and ‘conservatism’ are not the same thing.”
E-Cigarette Competitors Fund Critics’ Research

By Kathy Hoekstra

Jeff Stier, a risk analyst for the National Center for Public Policy Research, once signed up for NYC Quits, a government tobacco-control program giving away free nicotine patches and gum every year, out of curiosity.

“I got a few free nicotine patches,” Stier said. “I was interested in seeing if I could feel the nicotine, but the next morning in the shower, I felt something strange on my skin and I was like, ‘Oh yeah, I forgot!’ It was imperceptible.”

Stier says he’s alarmed by the government’s support of the patch as a smoking-cessation product.

“If you’re a smoker and you want nicotine, this product is going to do nothing for most people,” Stier said.

The patch is one of four nicotine replacement therapies (NRT) approved by the Food and Drug Administration to help people quit smoking. The three others are Nicotrol NS, a nicotine nasal spray, and Chantix and Zyban, non-nicotine medications. All three do not require a prescription.

Studies show e-cigarettes might also belong on the Food and Drug Administration’s (FDA) list. Researchers have found e-cigarettes are 95 percent less harmful than the combustible version and have helped 6.1 million people in Europe quit smoking. Another nine million Europeans cut back on their habit, which means 15.1 million smokers in the European Union have quit or curtailed an activity that kills 400,000 Americans per year by using a product that’s 95 percent less harmful.

So, people who have tried repeatedly to quit and failed don’t have other choices that the public-health establishment supports,” Stier said.

Conflict of Interest?

That “establishment” is getting help from medical researchers funded by large pharmaceutical companies that benefit from FDA-approved tobacco-harm-reduction policies.

The prestigious Minnesota-based Mayo Clinic and its Nicotine Dependence Center, for example, have followed FDA’s lead in telling people to avoid e-cigarettes as a smoking-cessation alternative because of a lack of risk data and the “mixed results” produced by the studies conducted thus far.

Mayo Clinic addiction expert and researcher Dr. Jon Ebbert has been an outspoken critic of e-cigarettes for several years. The star of Mayo Clinic in-house podcasts and videos, Ebbert has repeatedly advised against e-cigarettes.

“I think we need to be very clear as clinicians that these electronic cigarettes have an unknown safety profile,” Ebbert said in Mayo Clinic videos published in 2015 and 2016.

Pfizer makes Nicotrol NS, a nicotine nasal spray, and Chantix. The company’s website and the ProPublica database show Ebbert received $646,584 in government grants between 2010 and 2014. GlaxoSmithKline (GSK), which produces Zyban and Nicorette gum and lozenges, paid Ebbert $7,129 in consulting fees in 2010 and 2011.

The Mayo Clinic, Ebbert, and GSK did not respond to requests for comment.

Pfizer sent a statement saying physicians offer companies vital feedback and advice grounded in their expertise and clinical practice experience, and there’s nothing wrong with those companies paying for it.

Scaring Consumers

Boston University public health professor and tobacco-control expert Dr. Michael Siegel says the Centers for Disease Control and Prevention is also working against e-cigarettes.

“It’s a phenomenon in the entire e-cigarette industry,” Siegel said. “Nowhere do [researchers] actually come out and say e-cigarettes are a lot safer than cigarettes and there’s a huge relative risk difference between the two.

“They’re really using scare tactics to demonize e-cigarettes,” Siegel said. “It’s going to convince many smokers who might otherwise have quit by switching to e-cigs to not quit.”

Self-Funded Science

Facing a regulatory burden that could cost $77 million in compliance costs each year, the vaping industry sees the pharmaceutical companies’ massive research footprint as an effort to squeeze out competition.

Lou Ritter, president emeritus of the American E-Liquid Manufacturing Standards Association (AEMSA), a trade organization that develops safe manufacturing standards for the liquids used in vaping products, says self-funding scientific research is the standard in most industries, but it’s not the norm for pharmaceutical companies.

“Every other industry funds its own science,” Ritter said in a March 25 conference call hosted by the E-Vaping Coalition of America. “They’re just big corporations that are out there competing, and they have a lot more money. [Vaping] is the first industry that has really come up through consumer incentivization and consumer motivation, so there isn’t a lot of money in one place.”

Ritter was invited to a workshop in February held by the National Academies of Sciences, Engineering, and Medicine as part of an FDA directive to review existing research on the health effects of electronic nicotine delivery systems and identify future federally funded research needs. The report is due for release at the end of 2017 or early 2018.

Kathy Hoekstra (khoekstra@watchdog.org) is a regulatory policy reporter for Watchdog.org. An earlier version of this article was published at http://watchdog.org/292762/e-cigarette-critics-get-research-dollars-from-big-pharma-competition/. Reprinted with permission.
Interior Department Finds Administrative-Leave Abuse

By Kathy Hoekstra

Between 2013 and 2016, nearly 250 U.S. Department of the Interior (DOI) employees received pay without doing work, according to a report from DOI’s independent auditor.

National Park Service (NPS) employees cost taxpayers the most money. Sixty-nine NPS employees earned a combined $2,059,968 while on paid extended leave, the March 30 report noted. The Bureau of Indian Affairs had the most employees on extended administrative leave, 83, and they collected a combined $1,821,214.

Administrative leave is typically an excused absence from work for important contingencies, such as donating blood and missed work due to bad weather conditions. Supervisors sometimes assign leave to deal with subpar employee performance or misconduct, but federal guidelines direct agencies to do so only for brief absences and only if there is no reasonable alternative.

The report capped off two years of investigations into the misuse of paid leave at the department.

Calls for Speedy Resolution

Paul Driessen, a senior policy analyst for the Committee for a Constructive Tomorrow, says paid leave is appropriate when an employee is accused of a crime or misbehavior.

“No one should be deprived of employment or income until guilt can be demonstrated, but that process should not drag on for years,” Driessen said. “If guilt is determined or the employee resigns rather than be convicted or terminated, there should be repercussions. Loss of pay, benefits, and pension payments, extending backward and or forward, should be among the options.”

Inefficiencies Noted

Out of 30 DOI employees who were found to have taken advantage of extended paid leave for 45 or more days, 22 are alleged to have committed misconduct on the job. The inspector general determined the amount of time on paid leave was exacerbated by legal requirements, agency inefficiencies, and lax documentation.

The report details a case in which NPS proposed firing an employee in 2014. The process dragged on for 751 days, costing taxpayers almost $160,000 in salary, before the worker was finally fired.

In another case documented in the report, a U.S. Park Police officer spent more than 400 days on paid leave while under investigation for drinking on the job. Even after the officer admitted to the offense, removing him from his position took more than a year, during which he collected more than $100,000 in salary.

Before the report was released, DOI claimed its administrative-leave policy did not require documentation of approved extended leaves or consideration of alternatives to paid leave. In response to the inspector general’s report, DOI revamped its documentation procedures and shortened allowable administrative-leave time, from 45 days to 14 days.

Zinke Promises Reforms

Things are going to change under new Interior Secretary Ryan Zinke, says Heather Swift, a spokeswoman for DOI.

“Secretary Zinke made clear on day one his intent to lead the department by the highest ethical standards and put a stop to the waste of taxpayer dollars,” Swift told Watchdog.org in an e-mail.

The DOI report is similar to a 2015 report examining similar policies at the U.S. Environmental Protection Agency (EPA). In that report, EPA administrators were found to have granted paid leave to employees disciplined for disruptive behavior, insubordination, drug possession, and committing sex acts with underage people.

Additionally, in a 2015 Senate Judiciary Committee investigation, the Government Accountability Office calculated 17 agencies spent nearly $80.6 million in 2014 on employee administrative-leave cases longer than one month.

Congress passed the Administrative Leave Act of 2016, reforming executive agency administrative-leave policies, as part of the 2017 National Defense Authorization Act. The law clearly defines and restricts paid administrative leave to 10 work days per calendar year, creates granular leave categories, and spells out documentation requirements for managers.

DOI has not complied with the Act’s documentation requirements, the report’s authors wrote, complicating the audit.

“Without appropriate documentation, DOI cannot demonstrate that it is appropriately managing the use of extended administrative leave,” the authors wrote. “In addition, DOI will need to begin planning how it will meet the requirements of the Act.”

Agency Resistance?

Driessen says it’s unclear whether government agencies will actually implement the Leave Act reforms.

“Whether they will be enacted and carried out remains to be seen, especially in the current atmosphere, with numerous career, pre-Trump political appointees still in the government, powerful employee unions, and when most congressional Democrats and much of the media are seemingly resolved to battle President Trump on every possible reform,” Driessen said.

‘A Long-Term Process’

Driessen says the Trump administration’s slow pace of appointing individuals to government posts has worsened the problem.

According to Political Appointee Tracker, a website maintained by Partnership for Public Service—a nonprofit organization—49 nominations for positions requiring U.S. Senate confirmation hearings have been filed and 456 positions remain empty at press time.

“The paucity of mid-level Trump appointees, to this point, makes implementing reforms more difficult,” Driessen said. “It is likely to be a long-term process, raising the question of who will demonstrate the greatest perseverance.”

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