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In earlier work, Ayres and Brown introduced the “Fair Employment Mark,” and its licensing agreement, which gives a licensee’s employees and applicants contract rights of action as third-party beneficiaries if the licensee discriminates on the basis of sexual orientation. This Essay takes up some issues earlier work only briefly addressed. First, the Essay discusses the public good that private contracting might produce, including filling in gaps and hastening progress toward statutory protections. Second, this Essay explains why, in addition to public benefits, self-interest might drive employers to adopt the Fair Employment Mark as a way to manage litigation risk. Third, the authors consider the balance of public and private good when the licensing agreement and third-party rights of action become subject to arbitration clauses in employment contracts. Finally, this Essay discusses potential revisions to the licensing agreement.

THE BODY MARKET: RACE POLITICS & PRIVATE
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Racial exploitation is now the powerful, conventional challenge to emerging discourses on alternative methodologies of procuring organs, especially markets. Those committed to providing equitable opportunities to suffering patients must ask whether challenges to organ markets benefit patients, especially racial minorities. Has the altruistic procurement process reduced waitlists or resolved racial disparities in organ allocation? These questions are relevant to any discussion about equity, access, and class in organ procurement and allocation in the United States. The evidence, including growing waitlists and thousands of deaths each year, informs us that altruistic organ procurement remains an ineffective approach to meet the growing demand for organs. This Article interrogates the altruism presumption and its concomitant race card politics and advocates a hybrid system, including both voluntary and privately ordered organ sharing.

CUBEWRAP CONTRACTS: THE RISE OF DELAYED
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This Article calls for an end to employers' practice of requiring worker assent to "cubewrap" contracts—standardized agreements provided after initial acceptance of employment. Through delayed-term noncompete and arbitration agreements, employers succeed in reallocating base line rights to better reflect their interests absent the degree of assent requisite for legitimate private ordering. This Article condemns this practice through analogy to "shrinkwrap" consumer contracts. It argues that the justifications for delayed-term commercial agreements are inapplicable to employment contracts and that the dangers of withholding terms are particularly acute in this context. It calls for mandatory disclosure of employment terms on penalty of non-enforcement as a supplement to substantive initiatives aimed at limiting unfair terms.

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This Article tracks the ongoing adaptation of U.S. contract law to the 1990s' contraction of the welfare state. Many courts partake of the prevailing ideological shift away from socially sensitive adjudication and towards market mechanisms of private autonomy. Legal scholarship has given this phenomenon considerable attention in the past decade. Other courts, however, strive to compensate for the shortage of welfare services and to pursue redistributive goals. This Article provides examples of the latter trend and then analyzes the non-linear relation between doctrines, judicial redistribution, and welfare politics in both case law and scholarship. Finally, this Article discusses the role of socially sensitive judicial discourse in light of contemporary welfare politics and explains its continuing importance.

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In a world where terrorism and natural disasters have become part of the reality of American life, it is essential to identify how the federal government can respond to domestic emergencies, including the extent to which the military, the government's most versatile tool, can be used. Currently, the Posse Comitatus Act, 18 U.S.C. § 1385 (2006), largely prohibits the military from engaging in domestic law enforcement. This Note aims to determine the actual scope of the PCA's prohibition on domestic law enforcement, to identify how successful the Act has been throughout its history, and to recommend a new statute that will clear the way for military assistance in domestic emergencies while maintaining our national tradition of limiting domestic military use.

EXPANDING THE SCOPE OF THE EXPANSIVE
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This Note examines the United States Supreme Court's construction of workplace retaliation under Title VII of the Civil Rights Act of 1964 and advocates for the application of this approach to the scores of other federal statutes containing provisions making it unlawful for employers to discriminate against employees who participate in protected activities. Rejecting earlier circuit courts' approaches—which defined unlawful retaliation as conduct that implicates ultimate employment decisions or that has a close connection to the employment—the Court defined retaliation as *any* conduct tending to deter an employee from reporting unlawful workplace discrimination. This Note contends that the expansion of this approach to all federal anti-retaliation laws is not only consistent with the Supreme Court's historical treatment of retaliation, but it would also prevent specious claims from reaching trial while promoting the enforcement of the underlying substantive law.

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